

## 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.

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52

**PLEASE REMOVE ANY COVERSHEET OR FORM NOT  
REQUIRED WITH THE CURRENT FILING BEFORE DELIVERY!**

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52

**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 2: Regulation of Cannabis Establishments**

\_\_\_\_\_/s/ James Pepper\_\_\_\_\_, on 2/3/2022  
(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 2: Regulation of Cannabis Establishments**

2. PROPOSED NUMBER ASSIGNED BY THE SECRETARY OF STATE

21P039

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) 836-7708 Fax:

E-Mail: kimberley.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)

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.

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)

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. §§ 843, 865, 866, 881, 883, 884, 901, 902, 903, 904, 907, Section 8 of Act 164 (2020).

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):

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

15. 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.

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 rule makes sense to a reasonable person.

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.

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.

**17. 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.

**18. 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.

**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: 1/14/2022

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):

1/21/2022

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



## 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.

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### 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

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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.

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 CO<sub>2</sub> 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 CO<sub>2</sub> emissions by new vehicles used in cannabis transportation is presumed to have a minor environmental impact and is generally unavoidable.

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 CO<sub>2</sub>, 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.

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.

**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.):**

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.

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.

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.

Cultivator inspections and required operational plans will mitigate the risk of pollutant discharge into both surface and ground waterways.

**5. 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 be more significant over a greater area. There is

likely insignificant impact to local biodiversity due to historical disturbance from intensive agriculture in the state.

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) will remove a significant portion of cultivated wastes from entering the municipal waste stream. Allowing for the collection of recyclable post-consumer packaging at retail locations, as has been permitted by Rule 2.8.5, 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.

Removing the legal requirements that cannabis packaging be of a certain size and opaqueness would allow producers a greater range in packaging materials which would result in more environmentally friendly options, including increasing the recyclability, reusability, and compostability of consumer products.

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

There will no impact on recreation.

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

Certain methods of manufacturing 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.

**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 comment the Board may choose to implement an odor

abatement plan requirement that could reduce potential impacts of nuisance odors. Municipalities, however, retain any ability they currently have to regulate nuisances under their own statutory authority.

Cultivation establishments may use pesticides in their production systems which can negatively impact the environment by contaminating water and degrading the local environment by decreasing biodiversity by affecting non-target species. The Agency of Agriculture, Food, and Markets' rules and guidelines will mitigate these impacts by only allowing state registered pesticides and requiring pesticide applicator training. These requirements are presumed to lower the potential impacts of pesticide use to moderate to low significance.

There is minimal potential for conversion or over-covering of prime soils. There is also minimal potential loss of prime soils from current, or agricultural, use. As noted above, our market analysis currently indicates the market will only need approximately 15 total acres across the entire state to accommodate demand, with a majority of that coming from indoor controlled environmental agriculture production. The Board can encourage cover cropping and rotation of outdoor grow operations at a site to mitigate soil depletion.

**9. SUFFICIENCY: DESCRIBE HOW THE ANALYSIS WAS CONDUCTED, IDENTIFYING RELEVANT INTERNAL AND/OR EXTERNAL SOURCES OF INFORMATION USED.**

For this analysis, the Board has relied on a review of the proposed rules by Jacob Policzer, an outside expert in environmental and sustainability issues related to cannabis.

## 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 2: Regulation of Cannabis Establishments**

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, and will continue to be, to hear from all possible stakeholders in a legal cannabis market.

The Board has already sought and received extraordinary public involvement and input in the development of these 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 lived experience of such issues, medicinal cannabis patients and experts, public health experts and advocates, environmental and energy experts and advocates, agricultural experts and

## Public Input

advocates, and more. The Board has considered all of this input in formulating its rules.

In addition to the Board's own meetings, the Board's Advisory Committee (provided for by 7 V.S.A. § 843(h)) have met four times, and its subcommittees have met more than 70 times. Each Advisory Committee and subcommittee meeting was noticed, recorded, open to the public, and included a public comment period. The subcommittees consulted experts and advocates on various aspects of cannabis policy and they produced recommendations for the Board that have been considered by the Board in formulating the proposed rules.

Outside of the formal meetings, board members have individually had extensive discussions with members of the public and various experts and advocates.

A consultant working for the Board, the National Association of Cannabis Businesses, held two Social Equity Town Halls and have met with many Vermonters in order to provide informed advice regarding the Board's social equity policies. The Board has also worked with VS Strategies, a cannabis policy consulting firm that has brought national regulatory experience and economic expertise to the Board's efforts to design a functional market.

The Board plans to hold more than one public hearing during the notice and comment period for these rules, and plans to engage seriously with comments that it receives during the notice and comment period. The Board is ready to make appropriate amendments to the rules in the basis of that feedback.

#### **4. BEYOND GENERAL ADVERTISEMENTS, PLEASE LIST THE PEOPLE AND ORGANIZATIONS THAT HAVE BEEN OR WILL BE INVOLVED IN THE DEVELOPMENT OF THE PROPOSED RULE:**

In addition to the people and organizations named above, the Board has relied extensively on the

## Public Input

expertise of other Vermont state government agencies. The Department of Health helped design warning labels and packaging. The Agency of Agriculture, Food, and Markets provided expertise on laboratory testing and cannabis cultivation issues. The Department of Public Service provided expertise on building and energy standards. The Agency of Natural Resources assisted with environmental standards. The Natural Resources Board consulted on matters related to Act 250.

The Board will continue to seek the advice of experienced regulators to ensure any changes that may be made during the notice and comment period are consistent with the best practices of regulatory experts in the relevant field.

## Scientific Information Statement

**THIS FORM IS ONLY REQUIRED IF THE RULE RELIES ON SCIENTIFIC INFORMATION FOR ITS VALIDITY.**

**PLEASE REMOVE THIS FORM PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:**

### **Instructions:**

In completing the Scientific Information Statement, an agency shall provide a summary of the scientific information including reference to any scientific studies upon which the proposed rule is based, for the purpose of validity.

#### 1. TITLE OF RULE FILING:

**Rule 2: Regulation of Cannabis Establishments**

#### 2. ADOPTING AGENCY:

Cannabis Control Board

#### 3. BRIEF EXPLANATION OF SCIENTIFIC INFORMATION:

These are not primarily rules that are based on scientific information, but portions touch on scientific issues. These portions include laboratory testing, building and energy standards, and environmental standards.

#### 4. CITATION OF SOURCE DOCUMENTATION OF SCIENTIFIC INFORMATION:

The laboratory testing standards were largely drafted by the Agency of Agriculture, Food, and Markets, based on their own Cannabis Quality Control Program, with appropriate amendments for the adult use market. The Public Service Department's Commercial Building Energy Standards provided the basis for energy standards, with appropriate amendments as stated in Rule 2, for the adult use cannabis market. Rules from the Agency of Natural Resources Department of Environmental Conservation provided the basis for regulations regarding water usage.

**5. INSTRUCTIONS ON HOW TO OBTAIN COPIES OF THE SOURCE DOCUMENTS OF THE SCIENTIFIC INFORMATION FROM THE AGENCY OR OTHER PUBLISHING ENTITY:**

Information from the Agency of Agriculture's Cannabis Quality Control Program can be found here:

<https://agriculture.vermont.gov/public-health-agricultural-resource-management-division/hemp-program/hemp-potency-and-contaminant>. The Commercial

Building Energy Standards can be found here:

[https://publicservice.vermont.gov/energy\\_efficiency/cbe](https://publicservice.vermont.gov/energy_efficiency/cbe)s. Water usage regulations can be found here:

<https://dec.vermont.gov/water>.

## Incorporation by Reference

**THIS FORM IS ONLY REQUIRED WHEN INCORPORATING MATERIALS BY REFERENCE. PLEASE REMOVE PRIOR TO DELIVERY IF IT DOES NOT APPLY TO THIS RULE FILING:**

### **Instructions:**

In completing the incorporation by reference statement, an agency describes any materials that are incorporated into the rule by reference and how to obtain copies.

This form is only required when a rule incorporates materials by referencing another source without reproducing the text within the rule itself (e.g., federal or national standards, or regulations).

Incorporated materials will be maintained and available for inspection by the Agency.

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1. TITLE OF RULE FILING:

**Rule 2: Regulation of Cannabis Establishments**

2. ADOPTING AGENCY:

Cannabis Control Board

3. DESCRIPTION (*DESCRIBE THE MATERIALS INCORPORATED BY REFERENCE*):

This rule references Board Rule 1, filed at the same time as this rule.

4. FORMAL CITATION OF MATERIALS INCORPORATED BY REFERENCE:

The Secretary of State has given Board Rule 1 the citation: 21P038.

5. OBTAINING COPIES: (*EXPLAIN WHERE THE PUBLIC MAY OBTAIN THE MATERIAL(S) IN WRITTEN OR ELECTRONIC FORM, AND AT WHAT COST*):

Other Board rules can be accessed at no cost on the Board's website: <https://ccb.vermont.gov/>.

6. MODIFICATIONS (*PLEASE EXPLAIN ANY MODIFICATION TO THE INCORPORATED MATERIALS E.G., WHETHER ONLY PART OF THE MATERIAL IS ADOPTED AND IF SO, WHICH PART(S) ARE MODIFIED*):

Run Spell Check

**STATE OF VERMONT  
CANNABIS CONTROL BOARD**

**RULE 2: REGULATION OF CANNABIS ESTABLISHMENTS**

- 2.1 General Provisions
  - 2.1.1 Authority
  - 2.1.2 Scope and Purpose
  - 2.1.3 Definitions
  - 2.1.4 Applicability
  - 2.1.5 Time
  - 2.1.6 Severability
- 2.2 Generally Applicable Regulations
  - 2.2.1 Business Records
  - 2.2.2 Insurance
  - 2.2.3 Continuing Disclosure and Background Check Requirements
  - 2.2.4 Health, Safety, and Sanitation
  - 2.2.5 Employment and Training
  - 2.2.6 Tracking of Cannabis and Cannabis Products
  - 2.2.7 Transportation of Cannabis and Cannabis Products
  - 2.2.8 Waste Disposal
  - 2.2.9 Packaging
  - 2.2.10 Warning Labels
  - 2.2.11 Advertising
  - 2.2.12 Audience Composition Presumptions for Advertising
  - 2.2.13 Visitors
  - 2.2.14 Inspections
  - 2.2.15 Inversion and Diversion from the Legal Market is Prohibited
  - 2.2.16 Compliance in Other Jurisdictions
  - 2.2.17 Reporting Theft or Loss
  - 2.2.18 Co-Location
  - 2.2.19 Adulterated Cannabis and Cannabis Product
  - 2.2.20 Cannabis Establishment Identification Card Requirement
- 2.3 Regulations Applicable to Cultivators
  - 2.3.1 Pesticides
  - 2.3.2 Visitors to Cultivation Sites
  - 2.3.3 Testing
  - 2.3.4 Cultivator Processing
  - 2.3.5 Cultivator Packaging
  - 2.3.6 Cultivator Inspections
  - 2.3.7 Sanitation
  - 2.3.8 Cultivation and Operations Information
  - 2.3.9 Vendor and Employee Samples

- 2.4 Regulations Applicable to Outdoor and Mixed Cultivators
  - 2.4.1 Outdoor Security Management Practices
  - 2.4.2 Standards For Outdoor Security Management Practices
  - 2.4.3 Minimum Outdoor Security Management Practices
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## **2. Rule 2: Regulation of Cannabis Establishments**

Not every applicable prohibition, restriction, and requirement is contained in this rule. All Cannabis Establishments must abide by the prohibitions, restrictions, and requirements of Chapter 33, Title 7 of the Vermont Statutes. Cannabis Establishments must also abide by all other applicable laws, including but not limited to worker's compensation laws and tax laws.

### **2.1 General Provisions**

#### **2.1.1 Authority**

The Cannabis Control Board adopts this rule pursuant to 7 V.S.A. §§ 865, 866, 881, 883, 884, 904, 907, and other applicable law.

#### **2.1.2 Scope and Purpose**

The Board is charged with implementing and regulating a legal market for Cannabis in Vermont. This rule regulates Cannabis Establishments.

#### **2.1.3 Definitions**

All definitions in 7 V.S.A. § 861 shall apply to this rule. The following definitions shall also apply:

- (a) "Board designee" means a person designated by the Board to act as its agent for the purpose of executing the Board's responsibilities. This may be an employee of the Board, another government agency, or a contractor.
- (b) "Greenhouse" means a structure or a thermally isolated area of a building that maintains a specialized sunlit environment exclusively for, and essential to, the cultivation or maintenance of Cannabis plants and that is in use for a period of 180 days or more each calendar year.
- (c) "Harvest lot" means a grower's harvested Cannabis produced during a single growing season in a contiguous area containing the same cultivar or variety.
- (d) "Home occupancy business" means a business operated on the premises of an individual's home or property where the individual is domiciled.
- (e) "Indoor cultivation" means growing Cannabis using artificial lighting.
- (f) "Interest holder" has the same meaning as defined in 11A V.S.A. § 11.01(11).
- (g) "Inventory Tracking System" means a method implemented by the Board for tracing all Cannabis and Cannabis Products grown, manufactured, and sold in Vermont.
- (h) "Licensee" means a person who has been issued a license pursuant to Board Rule 1. A licensee does not include a person who has been issued a prequalification approval.
- (i) "Outdoor cultivation" means growing Cannabis in an expanse of open or cleared ground or in a structure that does not use artificial lighting and is not a greenhouse.

- (j) “Pesticide” shall have the same meaning as “economic poison” as defined in 6 V.S.A. § 911(5).
- (k) “Physical site of operations” means:
  - i. a cultivator’s grow site;
  - ii. a wholesaler’s product storage facility;
  - iii. a manufacturer’s site of manufacture;
  - iv. a retailer’s store location; or
  - v. a testing laboratory’s testing facility.
- (l) “Plastic” means a synthetic material made from linking monomers through a chemical reaction to create a polymer chain that can be molded or extruded at high heat into various solid forms that retain their defined shapes during their life cycle and after disposal, including material derived from either petroleum or a biologically based polymer, such as corn or other plant sources.
- (m) “Process lot” means any amount of Cannabis concentrate, Cannabis Product or Cannabis-infused product of the same type, processed at the same time, using the same ingredients and same standard operating procedures.

Any time this rule references a retail Cannabis Establishment or otherwise references retail stores, such references shall include the retail portion of an integrated licensee unless the text of the rule plainly states that it does not.

#### 2.1.4 Applicability

This rule applies to Cannabis Establishments and persons who control, operate, manage, or are employed by Cannabis Establishments.

#### 2.1.5 Time

- (a) In computing any time period, measured in days, that is established or allowed by this rule or by order of the Board or Chair:
  - (1) the day of the act or event that triggers the period shall be excluded;
  - (2) every day, including intermediate Saturdays, Sundays, and legal holidays shall be counted;
  - (3) the last day of the period shall be counted, but if the last day is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday, or legal holiday.
- (b) A “legal holiday” means:
  - (1) any day declared a holiday by the President or Congress of the United States; and
  - (2) any day declared a holiday by the State of Vermont.

#### 2.1.6 Severability

If any portion of this rule is found to be invalid, the remaining portion of the rule shall remain in force and effect.

## 2.2 Generally Applicable Regulations

The requirements in this section are generally applicable to participants in the regulated market for Cannabis and Cannabis Products.

### 2.2.1 Business Records

Cannabis Establishments are required to maintain the following records in such a way that they can be readily accessed from the physical site of operations and made available for inspection by the Board, upon request:

- (a) employee list;
- (b) information related to facility security;
- (c) advertising records, if applicable;
- (d) inventory records;
- (e) insurance records;
- (f) visitor log, to the extent required by this rule;
- (g) all records retained for tax purposes;
- (h) waste log;
- (i) surveillance logs, if applicable;
- (j) testing records, including all Certificates of Analysis;
- (k) sampling unit records;
- (l) standard operating procedures manuals; and
- (m) corrective action plan and preventive action records, if applicable.

### 2.2.2 Insurance

- (a) A Cannabis Establishment shall obtain and maintain commercially reasonable levels of insurance.
- (b) A Cannabis Establishment that documents an inability to obtain commercially reasonable levels of insurance coverage as required by subsection (a) of this section must place in escrow a sum in one of the following amounts:
  - i. For retailers, wholesalers, integrated licensees, testing laboratories, tier 1 manufacturers, and tier 4, 5, and 6 cultivators of any type, a sum of no less than \$250,000 to be expended for coverage of liabilities.
  - ii. For tier 2 and 3 manufacturers and tier 2 and 3 cultivators of any type, a sum of no less than \$50,000 to be expended for coverage of liabilities.
  - iii. For tier 1 cultivators of any type a sum of no less than \$10,000 to be expended for coverage of liabilities.
- (c) The escrow account required in subsection (b) of this section must be replenished within ten business days of any expenditure.
- (d) Cannabis Establishments must be prepared to demonstrate compliance with this subsection at any time, with records maintained in such a way that they can be readily accessed from the physical site of operations upon the request of the Board or Board designee.

### 2.2.3 Continuing Disclosure and Background Check Requirements

At the Board's discretion, the entities or persons named in Rule 1.4.2 or 1.4.3 may be required to resubmit any information described in those sections if the Board has reason to believe that information has changed since the time of a license application or license renewal. They may be subject to the same background checks and financial disclosures provided for in those sections. The information may be shared with other state agencies, as provided for by Rule 1.4.8.

#### 2.2.4 Health, Safety, and Sanitation

Cannabis Establishments shall:

- (a) develop safe and sanitary handling procedures for all products;
- (b) provide regular training on health, safety, and sanitation procedures;
- (c) ensure that employees follow procedures;
- (d) immediately report to the Board breaches in health, safety, and sanitary procedures that pose a risk to consumer safety; and
- (e) comply with applicable health, safety, and sanitation rules, including, but not limited to, the Vermont Occupational and Safety and Health Administration Rules, applicable fire safety rules, applicable building standards and occupancy rules, and the Good Manufacturing Practices for Food Rule, as promulgated by the Vermont Department of Health.

Subsection (e) does not assign responsibility for enforcing those regulations to their respective state agencies, nor does it indicate such responsibility.

#### 2.2.5 Employment and Training

- (a) Licensee Training: In accordance with 7 V.S.A. 865(a), the agents of those who control a Cannabis Establishment shall complete an enforcement seminar once every three years. For the purposes of this section, an agent refers to anyone who is an employee of the establishment, who works at the establishment, or who plays a significant operational role within the licensee, including members of the licensee's board of directors or similar governing body.
- (b) General Employee Training: within 60 days of hire and annually after that, employees of Cannabis Establishments must complete trainings regarding the following topics, except that employees of retail establishments may not sell Cannabis or Cannabis Products to consumers without first completing trainings regarding the first 5 topics of the following list:
  - i. the Cannabis Establishment's operating, security, health, safety, and sanitary procedures;
  - ii. compliance, enforcement, inspection, incident reporting, and record-keeping;
  - iii. acceptable forms of identification for staff and visitors, if permitted by this rule;
  - iv. inventory control and appropriate tracking systems;
  - v. cash handling;
  - vi. human trafficking and domestic violence awareness;
  - vii. diversity, equity, and inclusion;
  - viii. racism and bias; and

- ix. sexual harassment and discrimination.
- (c) Retail Employee Training: customer-facing employees of retail Cannabis Establishments must complete trainings regarding the following topics, and may not sell Cannabis or Cannabis Products to consumers until they do so:
  - i. the health effects of Cannabis and Cannabis Products;
  - ii. preventing the sale of Cannabis to minors; and
  - iii. signs of overconsumption and signs of mental health or substance abuse disorder.

#### 2.2.6 Tracking of Cannabis and Cannabis Products

- (a) Cannabis Establishments shall comply with the Inventory Tracking System in a manner determined by the Board and shall cooperate with any third-party vendors the Board utilizes for the purpose of implementing the system. The Inventory Tracking System policy shall be readily available to the public and will not change without at least 90 days of notice.
- (b) Cannabis Establishments shall be responsible for costs associated with compliance with, and adoption of, the Inventory Tracking System.
- (c) All Cannabis and Cannabis Products must be tracked using the Inventory Tracking System from the time the Cannabis is grown by a cultivator until it is sold to a consumer by a retailer. A Cannabis Establishment must reconcile all on-premises and in-transit Cannabis or Cannabis Product inventories each month and must complete the reconciliation within 15 days of the end of each month.
- (d) Cannabis Establishments must have the ability to reconcile transported and on-hand Cannabis and Cannabis Product inventory with the Inventory Tracking System and the associated transaction history and transportation order receipts.
- (e) If Cannabis or Cannabis Product is not ultimately sold to a consumer, it must be disposed of in the manner prescribed by section 2.2.8 of this rule and the disposal must be entered into the Inventory Tracking System.
- (f) Cannabis Establishments and the individuals using the Inventory Tracking System are responsible for the accuracy of all information entered into the Inventory Tracking System. Any misstatements or omissions may be considered a license violation affecting public safety.

#### 2.2.7 Transportation of Cannabis and Cannabis Products

Cannabis and Cannabis Products may be transported by the following individuals in the following ways:

- (a) Only individuals who have a Cannabis Establishment identification card issued pursuant to Rule 1.6 are permitted to transport Cannabis or Cannabis Products between Cannabis Establishments. Individuals transporting Cannabis or Cannabis Products must carry their identification card at all times while transporting Cannabis or Cannabis Products.
- (b) Transportation must take place in a vehicle, except that transportation in a vehicle is not required if the licensee is transporting Cannabis or Cannabis Product from one licensed premises to another within the same or a contiguous property, or any transport where the destination Cannabis Establishment can be seen by the unaided eye from the originating Cannabis Establishment.

- (c) When Cannabis or Cannabis Products are transported in a vehicle:
  - i. they must not be visible from outside the vehicle;
  - ii. the driver must not be able to access them from the driver's seat; and
  - iii. the vehicle must be unmarked.
- (d) Vehicles used for transportation must be registered and current in their registration, inspection, and insurance. Vehicles must have a valid registration with a state's Department of Motor Vehicles, or equivalent agency.

Cannabis Establishments must conduct transports as follows:

- (e) Cannabis Establishments may transport Cannabis and Cannabis Products only between Cannabis Establishments.
- (f) The transporting Cannabis Establishment must enter all Cannabis and Cannabis Products to be transported into the Inventory Tracking System.
- (g) Prior to departure from a Cannabis Establishment, the establishment must generate a transport manifest that contains the following:
  - i. departure date, location, and approximate time of departure;
  - ii. name and location of the destination Cannabis Establishment(s);
  - iii. name and identification card number of those transporting the Cannabis or Cannabis Product;
  - iv. product name and quantities (by weight and unit) of each product to be delivered to the specific Cannabis Establishment(s);
  - v. estimated time of arrival at each Cannabis Establishment;
  - vi. transport vehicle's make, model, and license plate number; and
  - vii. a signature line and time notation to be signed by an employee of the Cannabis Establishment who receives the transported product.
- (h) Cannabis Establishments must transmit transport manifests to receiving Cannabis Establishments before departure.
- (i) While transporting Cannabis or Cannabis Products, individuals must log the times of arrival at, and departure from, any stops, whether planned or unplanned. Logs must be maintained contemporaneously and must give a reason for stops that are not at Cannabis Establishments.
- (j) To the extent possible, individuals transporting Cannabis or Cannabis Products must stay with their vehicles while transporting Cannabis or Cannabis Products. Where Cannabis Licensed Agents have the option to stay with their vehicle, they must choose that option. Except for the entry and exit of those transporting the Cannabis or Cannabis Product, vehicles must be locked and secured.
- (k) No transport of Cannabis or Cannabis Products shall cross state borders.

Cannabis Establishments must receive transports as follows:

- (l) Cannabis Establishments receiving Cannabis or Cannabis Product from a transport must log the time of receipt.
- (m) Upon receipt of a transport, the receiving Cannabis Establishment shall ensure that the products received are as described in the transport manifest and shall adjust its records and the Inventory Tracking System to reflect the receipt of inventory within 24 hours of when it is received. If there are discrepancies, the receiving Cannabis Establishments must specify them.

Transports must meet these additional conditions:

- (n) Storage and transportation shall be under conditions that will protect Cannabis and Cannabis Products from loss and theft, as well as against physical, chemical, and microbial contamination and against deterioration of product.
- (o) If a Cannabis Establishment is transporting over 20 pounds of Cannabis on a dry weight basis, the Cannabis must be transported in a secure, locked storage compartment within the transportation vehicle.
- (p) Cannabis Establishments shall report to the Board any vehicle accidents, diversions, losses, or other reportable incidents that occur during transport, within not more than 24 hours of such accidents, diversions, losses, or other reportable incidents.
- (q) In the event Cannabis has failed required testing, has been contaminated, or otherwise presents a risk of cross-contamination to other Cannabis, such Cannabis may only be transported if it is physically segregated and contained in a sealed package that prevents cross-contamination.

#### 2.2.8 Waste Disposal

- (a) All applicable federal, state, and local statutes, regulations, and ordinances apply to waste disposal from Cannabis Establishments. This includes, but is not limited to, all regulations pertinent to chemical, dangerous, and hazardous waste, such as those that may be generated during product manufacturing processes, as well as all pesticides and other agricultural chemicals.
- (b) Cannabis or Cannabis Products must be rendered unusable and unrecognizable before disposal. The acceptable methods for rendering Cannabis and Cannabis Product unusable and unrecognizable will be enumerated by the Board in a policy that will be readily available to the public.
- (c) Organic material that has either no tetrahydrocannabinol content or a tetrahydrocannabinol content under 0.3%, doesn't need to be rendered unusable or unrecognizable. It can be composted onsite or disposed of in a manner otherwise consistent with applicable law and regulation.
- (d) Disposal of Cannabis and Cannabis Products must be tracked with the Inventory Tracking System, as provided for by section 2.2.6 of this rule.

#### 2.2.9 Packaging

- (a) The following requirements apply to all Cannabis and Cannabis Product packaging as it is transferred between Cannabis Establishments. Such packaging must:
  - i. meet the requirements of section 2.2.10(b) of this rule;
  - ii. clearly identify package contents;
  - iii. be free from false or misleading statements; and
  - iv. not use objects, such as toys, inflatables, movie characters, cartoon characters, child-friendly depictions of food or other consumables, or include any other display, depiction, or image designed in any manner likely to be appealing to minors or anyone under 21 years of age.

- (b) Packaging that is intended for consumer purchase at a retail location shall be reusable and shall not be plastic. In addition, such packaging shall meet further requirements to the extent provided for in sections 2.3.5, 2.6.3, 2.7.3, and 2.8.4 of this rule.

#### 2.2.10 Warning Labels

The Board will make copies of the labels below readily available for use by Cannabis Establishments.

- (a) All marketing, advertising, branding, packaging, and promotion must include the following warning exactly as it is below:

*This is a cannabis product and has not been analyzed or approved by the Food and Drug Administration (FDA). For use by individuals 21 years of age and older or registered qualifying patient only. **KEEP THIS PRODUCT AWAY FROM CHILDREN AND PETS. DO NOT USE IF PREGNANT OR BREASTFEEDING.** Possession or use of this product may carry significant legal penalties in some jurisdictions and under federal law. It may not be transported outside of the state of Vermont. **The effects of edible cannabis may be delayed by two hours or more.** Cannabis may be habit forming and can impair concentration, coordination, and judgment. Persons 25 years and younger may be more likely to experience harm to the developing brain. It is against the law to drive or operate machinery when under the influence of this product. National Poison Control Center 1-800-222-1222.*

- (b) All product packaging must use the following warning symbols:



#### Minimum Size

**Packing and Labeling:** 0.5" x 0.5"  
**Edible Marijuana Product:** At least 25 percent of the servings' height and width, but not less than 0.25" x 0.25"

#### Required Colors

When used on the marketing layer, the universal symbol and optional "not safe for kids" icons must be reproduced in black and red.

**Black** (CMYK): 0, 0, 0, 100

**Red** (CMYK): 0, 95, 100, 0

**Red** (Pantone): PMS 485

Coloring is not required for on-product markings.

#### Background

The icons must be placed on a white or light-colored background. The interior of the icon must remain white.

#### Restrictions

- Do not recreate or modify the icons in any manner.
- Do not stretch or distort the icons.
- Do not use the icons smaller than the minimum size.
- Do not change the icon colors (Note: Coloring is not required for on-product markings.)
- Do not use the icons on a dark background.

- (c) All product packaging must include the following statement, including capitalization, in at least 10-point Times New Roman, Helvetica or Ariel and bolded font:

## **KEEP OUT OF REACH OF CHILDREN**

- (d) All product packaging for products that contain multiple servings must contain the following statement, including capitalization, in at least 10-point Times New Roman, Helvetica or Ariel and bolded font:

## **INCLUDES MULTIPLE SERVINGS**

### 2.2.11 Advertising

In addition to those contained in 7 V.S.A. § 864 and section 2.2.10(a) of this rule, the following prohibitions and requirements apply to advertising Cannabis or Cannabis Products:

- (a) Cannabis Establishments are prohibited from using objects, such as toys, inflatables, movie characters, cartoon characters, child-friendly depictions of food or other consumables, or include any other display, depiction, or image designed in any manner likely to be appealing to minors or anyone under 21 years of age. This includes, but is not limited to, brand logo development and any advertising used for the purposes of marketing the licensee's dispensary and/or products.

- (b) Cannabis Establishments are prohibited from advertising or promoting in a manner that is false, untrue, or misleading.
- (c) Cannabis Establishments are prohibited from including in its advertising any statement concerning a brand or product that is inconsistent with any statement on the labeling thereof.
- (d) Websites for Cannabis Establishments must have age-gating.
- (e) Social media accounts for Cannabis Establishments may only promote products using links to their age-gated websites. Any images or other text regarding products is otherwise prohibited.

#### 2.2.12 Audience Composition Presumptions for Advertising

When considering whether a proposed advertisement meets the requirements of 7 V.S.A. § 864 and of this rule, the Board will make the following presumptions:

- (a) That more than 15% of the audience will be under 21 years of age, unless the prospective advertiser can show by a preponderance of the evidence that less than 15% of the audience is reasonably expected to be under 21 years of age. Evidence must include reliable, verifiable, and current audience composition data.
- (b) That the audience for any outdoor advertisement is the general public, and those under 21 years of age will have the same prevalence in that audience as they do in the general public, unless a prospective advertiser can demonstrate that an outdoor space will not be accessed by the general public and that those who can access it meet the audience metric of 7 V.S.A. § 864(c).
- (c) Except for signage as defined in 7 V.S.A. § 861(2)(D), window displays, or items, text, or objects inside a retail Cannabis Establishment that are visible to a person standing outside the establishment, will be considered an outdoor advertisement for the purposes of this rule.

#### 2.2.13 Visitors

- (a) Visitors are only permitted to the extent provided for in this rule.
- (b) If this rule makes no provision for visitors at a type of Cannabis Establishment then visitors are not permitted at that type of Cannabis Establishment, provided that the following individuals may be admitted to Cannabis Establishments:
  - i. Contractors, or professional advisors such as lawyers or accountants, if they are accompanied by a Cannabis Establishment principal or employee who has an identification card issued pursuant to Rule 1.16;
  - ii. Persons entering for an educational purpose if they are accompanied by a Cannabis Establishment principal or employee who has an identification card issued pursuant to Rule 1.16;
  - iii. Board designees or other state and municipal officials; and
  - iv. Those making lawful deliveries pursuant to section 2.2.7 of this rule.
- (c) A Cannabis Establishment shall not permit a person under 21 years of age to enter a building or enclosure on the premises where Cannabis or Cannabis Product is located. The Cannabis Establishment is responsible for ensuring compliance with age limitations.

- (d) For home occupancy businesses, the provisions of this section apply only to the areas where Cannabis or Cannabis Product is kept, which must be secured in accordance with the provisions of this rule.
- (e) This section shall not be interpreted to limit the actions of emergency responders in the course of their duties.
- (f) This section 2.2.13 does not apply to retail Cannabis Establishments.

#### 2.2.14 Inspections

Cannabis Establishments shall submit to inspections of their physical site of operations and their records upon request of the Board or a Board designee.

#### 2.2.15 Inversion and Diversion from the Legal Market is Prohibited

No Cannabis Establishment may purchase or obtain Cannabis or Cannabis Products from an entity that is not licensed pursuant to Board Rule 1. Except for retail Cannabis Establishments, no Cannabis Establishment may sell or transfer Cannabis or Cannabis Products to any person other than a licensed Cannabis Establishment.

#### 2.2.16 Compliance in Other Jurisdictions

To the extent the controller or principal of a licensee also controls or is a principal of a licensed Cannabis Establishment, or the equivalent of a Cannabis Establishment, in a different jurisdiction, that Cannabis Establishment must remain in compliance with the laws and regulations of its jurisdiction.

#### 2.2.17 Reporting Theft or Loss

- (a) Cannabis Establishments must report theft of Cannabis or Cannabis Product to the Board immediately after discovery of the theft and enter the associated loss into the Inventory Tracking System.
- (b) Cannabis Establishments must enter any loss of Cannabis or Cannabis Product into the Inventory Tracking System.

#### 2.2.18 Co-Location

Cannabis Establishments may operate at the same location, subject to the following conditions:

- (a) The co-located operation is not in violation of any local ordinances or regulations.
- (b) Each Cannabis Establishment operating at the same location shall do all the following:
  - i. Have distinct and identifiable spaces, areas, or plots, with each licensee operating in its own separate space, area, or plot.
  - ii. Post notice of its license in its distinct area, space, or plot.
  - iii. Maintain all the business operations, compliance requirements, and record-keeping that a Cannabis Establishment would maintain if it were operating in its own location.

- iv. Otherwise comply with the provisions in the relevant statutes and these rules.
- (c) Co-located Cultivation Cannabis Establishments must limit their total canopy to the relevant Tier 6 plant canopy limit, provided that the Board retains discretion to waive this limit.
- (d) Co-located cultivation Cannabis Establishments must utilize the security measures that would be required if the combined plant canopy of all the co-located cultivators were treated as belonging to a single Cannabis Establishment.
- (e) Co-located Cannabis Establishments that include non-cultivation licensees must utilize the security measures that are the most stringent required of any one of the co-located establishments, as provided by this Rule.
- (f) No person may operate in a manner that has the effect of subverting 7 V.S.A. § 901(d)(3)(A) or any other licensure requirements contained in 7 V.S.A. chapter 33 or Board Rule 1, and no person shall exercise control over a Cannabis Establishment without the disclosures required in Board Rule 1.4. At its discretion the Board may require additional information from Cannabis Establishments to ensure compliance with this section.
- (g) Multiple retail Cannabis Establishments may not operate at the same location.

This section does not apply to dispensaries, which are governed by section 2.10.3 of this rule and by Rule 3.

#### 2.2.19 Adulterated Cannabis and Cannabis Product

- (a) Licensees must abide by all orders of the Board issued pursuant to 7 V.S.A. § 904(e)(1) and Board Rule 4.
- (b) If Cannabis or Cannabis Product is adulterated due to the willful or intentional misuse of a pesticide, the Cannabis must be destroyed in accordance with section 2.2.8 of this rule and reported to the Board by:
  - i. The cultivator, or
  - ii. A testing laboratory, which must destroy whatever adulterated Cannabis or Cannabis Product is in its possession.
- (c) If Cannabis or Cannabis Product is adulterated due to no fault of the license holder they may attempt to remediate if doing so can be done safely, provided that Cannabis or Cannabis Product that tests at impermissible levels of human pathogens may not be remediated. Adulteration without fault may occur due to atmospheric drift of an adulterant, or a similar natural phenomenon.
  - i. Remediation may include refinement into a manufactured product using a licensed manufacturer.
  - ii. Any remediated product needs to be retested for the adulterant subsequent to remediation.
  - iii. If an adulteration poses a public health issue subsequent to remediation the Cannabis or Cannabis Product will need to be destroyed in accordance with section 2.2.8 of this rule.

#### 2.2.20 Cannabis Establishment Identification Card Requirement

- (a) All persons working at a Cannabis Establishment must have an identification card issued by the Board pursuant to Rule 1.16.
- (b) Any person working at a Cannabis Establishment must have their identification card in their possession at all times while working at the Cannabis Establishment.

### **2.3 Regulations Applicable to Cultivators**

The requirements in this section apply to Cannabis Establishments with any cultivator license.

#### **2.3.1 Pesticides**

Cultivators shall abide by the rules and guidelines regarding pesticides that are promulgated by the Vermont Agency of Agriculture, Food and Markets.

Cannabis Establishments with a cultivator license shall maintain a record of pesticide usage in such a way that it can be readily accessed from the physical site of operations upon the request of the Board or Board designee.

#### **2.3.2 Visitors to Cultivation Sites**

- (a) Visitors must be escorted at all times by a Cannabis Establishment employee who has an identification card issued pursuant to Rule 1.16.
- (b) Visitors may not consume cannabis in any form on site.
- (c) Visitors may not purchase cannabis on site, provided that this shall not be interpreted to prohibit sales at retail Cannabis Establishments that are co-located with a cultivation Cannabis Establishment in accordance with all applicable regulations.
- (d) A Cannabis Establishment shall not permit a person under 21 years of age to enter a building or enclosure on the premises where cannabis is located. The Cannabis Establishment is responsible for ensuring compliance with age limitations.
- (e) Cannabis Establishments must issue identification badges to visitors, provided that this provision does not apply to any tier 1 cultivation licensees. The badge will:
  - i. have a design approved by the Board;
  - ii. be visibly displayed while on the physical site of operations; and
  - iii. be returned upon exit.
- (f) Visitors must be logged with time of entry and exit, and the log will be made available to the Board or a Board designee upon request. Logs must be retained for 1 calendar year.
- (g) A safety protocol must be established by license holder before allowing visitors.
- (h) Subsections (e) through (g) of this section do not apply to the following individuals:
  - i. Contractors, or professional advisors such as lawyers or accountants, if they are accompanied by a Cannabis Establishment principal or employee who has an identification card issued pursuant to Rule 1.16;
  - ii. Board designees or other state and municipal officials; and
  - iii. Those making lawful deliveries pursuant to section 2.2.7 of this rule.
- (i) For home occupancy businesses, the provisions of this section 2.3.2 apply only to the areas where Cannabis is kept, which must be secured in accordance with the provisions of this rule.

- (j) This section shall not be interpreted to limit the actions of emergency responders in the course of their duties.

### 2.3.3 Testing

Cultivators must have their products tested in accordance with rules and guidance established in section 2.9 of this rule. Testing for potency of a crop must take place prior to packaging for transfer to another licensee. Other testing will occur in accordance with the relevant regulations and policies. All test results shall be saved for no less than 1 year.

### 2.3.4 Cultivator Processing

- (a) The word “process” in 7 V.S.A. § 904(a) means:
  - i. packaging or wrapping Cannabis flower in any manner that Cannabis flower may be transported or consumed.
  - ii. Trimming Cannabis flower, or other activities necessary for preparing Cannabis flower for packaging or transport.
- (b) The word “process” in 7 V.S.A. § 904(a) does not mean transforming Cannabis flower into another substance through manufacturing.

### 2.3.5 Cultivator Packaging

- (a) Except as provided in subsection (b) of this section 2.3.5, when a cultivator transfers Cannabis to another licensee packaging must meet the requirements of:
  - i. Section 2.2.9(a) of this rule; and
  - ii. 7 V.S.A. § 904(d)(1).
- (b) When a cultivator transfers Cannabis to a retail licensee and the Cannabis is intended for consumer purchase as packaged, packaging must:
  - i. Meet the requirements of section 2.2.9 of this rule;
  - ii. Meet the requirements of 7 V.S.A. § 904(d)(1);
  - iii. Meet the requirements of 7 V.S.A. § 907(c); and
  - iv. Include testing results, which can be conveyed using a website address, QR code, or similar means of providing access to information accessible on a website.

### 2.3.6 Cultivator Inspections

- (a) The Board or Board designee will conduct inspections, which may or may not be noticed in advance, to ensure compliance with these rules and Title 7, Chapter 33 of the Vermont Statutes.
- (b) Inspections may include:
  - i. collecting samples;
  - ii. taking photographs or video;
  - iii. talking to employees, principals, or owners;
  - iv. inspecting records;
  - v. inspecting equipment or vehicles used for growing, processing, or transporting Cannabis; and

- vi. taking any other reasonable measure to evaluate compliance.
- (c) Information obtained from inspections at non-cultivator Cannabis Establishments may inform inspections at cultivator licensees.
- (d) Cannabis samples obtained during inspections may be used to assess consumer safety issues and may also be used by the Board for genetic testing and research into taxonomic determinations of cannabis cultivars or varieties grown.

### 2.3.7 Sanitation

To the extent not already required by section 2.2.4 of this rule, cultivators will ensure:

- (a) that any illness or bodily injury to an individual at a cultivation site does not become a source of microbial contamination to a Cannabis crop;
- (b) that litter and waste are properly removed so they do not become a source of microbial contamination; and
- (c) sufficient sanitation to minimize potential for attracting, breeding, or harboring pests.

### 2.3.8 Cultivation and Operations Information

Cultivating licensees shall submit cultivation and operations information to the Board within 60 days of gaining a license. The information shall include the following:

- (a) cultivation schedule;
- (b) waste management plan; and
- (c) integrated pest management plan.

### 2.3.9 Vendor and Employee Samples

- (a) Vendor samples must meet the following requirements:
  - i. Cultivators may provide a sample of flower to a wholesaler, manufacturer, or retailer, provided that such samples may not be consumed on any licensed premises. Samples must be tested in accordance with rules and guidance established in section 2.9 of this rule.
  - ii. Samples will be limited to the following aggregate amounts in a calendar month: four grams per strain of flower per vendor, and no more than seven strains of flower per vendor.
  - iii. Vendor samples must be labeled: **VENDOR SAMPLE NOT FOR RESALE.**
  - iv. Samples must be designated and identified in the Inventory Tracking System.
- (b) Employee Samples must meet the following requirements:
  - i. Cultivators may provide samples to employees to determine whether to make product available to sell, provided that such samples may not be consumed on any licensed premises.
  - ii. Samples will be limited to the following aggregate amounts in a calendar month: four grams per strain of flower per employee, and no more than seven strains of flower per employee.
  - iii. Employee samples must be labeled: **QUALITY CONTROL SAMPLE NOT FOR RESALE.**

- iv. Samples must be designated and identified in the Inventory Tracking System.

## **2.4 Regulations Applicable to Outdoor and Mixed Cultivators**

The requirements in this section apply to Cannabis Establishments with an outdoor or mixed cultivator license.

### **2.4.1 Outdoor Security Management Practices**

The Board deems the following to be Outdoor Security Management Practices:

- (a) fencing;
- (b) video surveillance system with unobscured views of area;
- (c) alarm system;
- (d) photographic surveillance;
- (e) motion activated flood-light, which may face away from the plant canopy;
- (f) security services, which may include the physical presence of a security guard; and
- (g) controlled point of access.

### **2.4.2 Standards For Outdoor Security Management Practices**

- (a) Fencing must be sufficient to prevent unauthorized entry to any cultivation areas.
- (b) Electronic security measures and security services, if applicable pursuant to section 2.4.3, must be operating for no less than the three-week period preceding a harvest, as well as while drying, curing, or storing a harvested crop.
- (c) Video and photographic surveillance equipment must:
  - i. retain footage for a minimum of 30 days;
  - ii. include date and time stamps on images without significantly obscuring the images;
  - iii. be capable of producing usable images in the lighting conditions in which it is placed;
  - iv. be placed in a way that allows for the clear and certain identification of any persons or activities at or in the immediate vicinity of any Cannabis or Cannabis Product, provided that video recordings may be motion-activated; and
  - v. be exportable and transferrable to standard computing equipment and have a resolution of 720p or greater or the equivalent of such a resolution.

### **2.4.3 Minimum Outdoor Security Management Practices**

Outdoor cultivators and the outdoor portion of a mixed cultivator's crop must implement Outdoor Security Management Practices to the extent required in this section unless they apply to the Board for a variance from the fencing requirement, which the Board will consider on a case-by-case basis.

- (a) Tier 1 outdoor cultivators and mixed cultivators must utilize at least 1 of the Outdoor Security Management Practices in section 2.4.1.
- (b) Tier 2 outdoor cultivators must utilize at least 2 of the Outdoor Security Management Practices in section 2.4.1 and one of them must be fencing.
- (c) Tier 3 outdoor cultivators must utilize at least 3 of the Outdoor Security Management Practices in section 2.4.1 and one of them must be fencing.
- (d) Tier 4 outdoor cultivators must utilize at least 4 of the Outdoor Security Management Practices in section 2.4.1 and one of them must be fencing.
- (e) Tier 5 outdoor cultivators must utilize at least 5 of the Outdoor Security Management Practices in section 2.4.1 and one of them must be fencing.
- (f) Tier 6 outdoor cultivators must utilize all of the Outdoor Security Management Practices in section 2.4.1.

#### 2.4.4 Visibility From a Public Road

If a crop would be visible from a public road, as defined in 24 V.S.A. § 4303(33), a physical barrier of concealment must be created such that the crop is not visible from the public road. Such barriers may include, but are not limited to, fencing, hedges, or building structures.

#### 2.4.5 Additional Requirements

- (a) At the Board's discretion, a physical site of operations may be inspected by a Board designee to determine security risks and visibility from a public road either before or after the Board has granted a license. The Board retains the right to require additional Outdoor Security Management Practices or barriers subsequent to such an inspection.
- (b) If a Cannabis Establishment experiences more than one incident of theft in a one-year time period, additional Outdoor Security Management Practices may be required at the Board's discretion.

#### 2.4.6 Security for Drying, Curing, and Storage

Security for Cannabis drying, curing, and storage must meet the requirements of section 2.5.1 of this rule.

#### 2.4.7 Allowance for Winter Indoor Storage

Mother plants, Cannabis plant-seeds, and clones in propagation or vegetation phase of development may be kept indoors during winter months when outdoor cultivation is not possible, provided that outdoor cultivation licensees may not cultivate Cannabis indoors.

### **2.5 Regulations Applicable to Indoor and Mixed Cultivators**

The requirements in this section apply to Cannabis Establishments with an indoor or mixed cultivator license.

#### 2.5.1 Security

Indoor cultivators and the indoor portion of a mixed cultivator's crop must utilize the following security measures:

- (a) All perimeter doors and windows must be locked, and only individuals with a Cannabis Establishment identification card, granted in accordance with Rule 1.16, may have keys or a key equivalent.
- (b) All perimeter doors and windows must have operational security alarms, provided that Tier 1 and mixed cultivators are not required to have security alarms unless the Board requires it, which the Board retains the discretion to do on a case-by-case basis.
- (c) Video surveillance with continuous monitoring of any space that contains Cannabis, whether growing or harvested, or Cannabis Products. Video surveillance must meet the standards of section 2.4.2(c) of this rule.

#### 2.5.2 Security for Drying, Curing, and Storage

Security for Cannabis drying, curing, and storage must meet the requirements of section 2.5.1 of this rule.

#### 2.5.3 Energy Standards for Buildings

- (a) Vermont Commercial Building Energy Standards (CBES) will apply to indoor cultivation facilities in the following areas to the same extent they would for any other commercial building:
  - i. The building envelope must meet CBES for insulation.
  - ii. Non-cultivation lighting must meet CBES for new buildings and retrofits.
  - iii. Ventilation must meet CBES.
  - iv. HVAC systems must meet CBES for efficiency, except that HVAC equipment used for cultivation does not need economizers and heat recapture.
- (b) Greenhouses must meet CBES for HVAC equipment efficiency, except that HVAC equipment used for cultivation does not need economizers and heat recapture.
- (c) Fans and clean water pumps at indoor cultivation facilities should, at the date of equipment purchase, comply with the most recent energy efficiency standards promulgated by the federal Department of Energy.

#### 2.5.4 Energy Standards for Lighting

Cannabis Establishments shall have one year from the date of licensure to come into compliance with the following requirements:

- (a) Lighting for indoor cultivation must have a minimum of 1.9 Photosynthetic Photon Efficacy (PPE).
- (b) Lighting for greenhouses:
  - i. The envelop must have a minimum u-factor of 0.7.
  - ii. If a greenhouse uses lighting fixtures to supplement the sun, the cultivation lighting must have a minimum of 1.7 PPE, except that if a greenhouse has a total

connected lighting load of less than 40 kilowatts it is exempt from lighting requirements.

#### 2.5.5 Energy Standards for Dehumidification

Cannabis Establishments shall have one year from the date of licensure to come into compliance with the following requirements:

One of the following dehumidification systems must be used for indoor cultivation:

- (a) Standalone dehumidifiers must meet the following minimum integrated energy factors:
  - i. Minimum integrated energy factor of 1.77 L/kWh for product case volumes of 8.0 cubic feet or less, or
  - ii. Minimum integrated energy factor of 2.41 L/kWh for product case volumes greater than 8.0 cubic feet.
- (b) Integrated HVAC system with on-site heat recovery designed to fulfill to least 75 percent of the annual energy for dehumidification reheat.
- (c) Chilled water system with on-site heat recovery designed to fulfill at least 75 percent of the annual energy for dehumidification reheat.
- (d) Solid or liquid desiccant dehumidification system for system designs that require dewpoint of 50° Fahrenheit or less.

#### 2.5.6 Energy Usage Reporting and Reduction Efforts

- (a) License holders must report energy efficiency benchmarks annually to the Board as a condition of license renewal.
- (b) License holders must annually update and submit to the Board written operating procedures regarding equipment maintenance, calibration and proper operation, for all major energy equipment, including, but not limited to, horticultural lighting, HVAC systems, and dehumidification systems.
- (c) License holders must annually assess and report to the Board on opportunities to reduce energy, which should include:
  - i. identification of potential energy use reduction opportunities (such as natural lighting and energy efficiency measures), and a plan for implementation of such opportunities;
  - ii. consideration of opportunities for renewable energy generation, including, where applicable, identification of building plans showing where energy generators could be placed on the site, and an explanation of why the identified opportunities were not pursued, if applicable;
  - iii. strategies to reduce electric demand (such as lighting schedules, active load management, and energy storage); and
  - iv. engagement with energy efficiency programs offered by Efficiency Vermont, Burlington Electric Department, or Vermont Gas Systems.

## 2.6 Regulations Applicable to Manufacturers

The requirements in this section apply to Cannabis Establishments with a manufacturing license.

Manufacturers shall abide by any requirements and limitations contained in 7 V.S.A. § 881(a)(3), 7 V.S.A. § 868, and 18 V.S.A. § 4230h, in addition to the requirements of this section.

#### 2.6.1 Manufacturer Security

Manufacturers must meet all requirements of section 2.5.1 of this rule.

#### 2.6.2 Testing

Manufacturers must have their products tested in accordance with rules and guidance established in section 2.9 of this rule. Test results shall be saved for no less than one year.

#### 2.6.3 Manufacturer Packaging

- (a) Except as provided in subsection (b) of this section 2.6.3, when a manufacturer transfers Cannabis to another licensee packaging must meet the requirements of section 2.2.9(a) of this rule.
- (b) When a manufacturer transfers Cannabis Product to a retail licensee and the Cannabis Product is intended for consumer purchase as packaged, packaging must meet the following requirements:
  - i. All requirements of section 2.2.9 of this rule.
  - ii. All requirements contained in 7 V.S.A. § 881(a)(3)(B) and (C).
  - iii. For consumable Cannabis Products packaging must include:
    - 1. the number of servings in the package and serving size, provided that servings must be easy for a consumer to measure, either by clear and visible marking on the Cannabis Product or physical separation of servings; and
    - 2. a warning that the impairment effects of the Cannabis Product may be delayed by two hours or more.
  - iv. For non-consumable Cannabis Products packaging must include:
    - 1. the ingredients used in production, including but not limited to scents or other additives, and common irritants warnings; and
    - 2. notice that the product is not for consumption.

#### 2.6.4 Additives

- (a) For Cannabis Products intended for oral ingestion, such as food, drinks, oil-based tinctures, and similar products, manufacturers may use any additive that the Food and Drug Administration has deemed Generally Recognized As Safe.
- (b) For Cannabis Products intended for inhalation, the Board will maintain an approved ingredient list that will be readily available to the public.
- (c) Manufacturers shall abide by any prohibition contained in 7 V.S.A. § 868(a)(4).

#### 2.6.5 Records

Manufacturers shall maintain the following records in such a way that they can be readily accessed from the physical site of operations upon the request of the Board or Board designee:

- (a) Records of purchases from any manufacturer or supplier of an ingredient, additive, component, or other substance, compound, or material obtained by the manufacturer.
- (b) Records of the name and business address of the manufacturer of any cartridge, battery, atomizer coil, hardware, device, or other component in vaporized products.
- (c) A copy of a Certificate of Analysis for each thickening agent, thinning agent, or terpene used in production. These Certificates of Analysis shall be provided to a retailer or wholesaler upon request.

#### 2.6.6 Vendor and Employee Samples

(a) Vendor samples must meet the following requirements:

- i. Manufacturers may provide a sample of Cannabis Product to a wholesaler or retailer, provided that such samples may not be consumed on any licensed premises. Samples must be tested in accordance with rules and guidance established in section 2.9 of this rule.
- ii. Samples will be limited to the following aggregate amounts in a calendar month: Five grams of concentrate or extract, or 100 servings of edibles per vendor, so long as the tetrahydrocannabinol content of each individual edible sample does not exceed five milligrams per serving and is within any applicable statutory or regulatory potency levels.
- iii. Vendor samples must be labeled: **VENDOR SAMPLE NOT FOR RESALE.**
- iv. Samples must be designated and identified in the Inventory Tracking System.

(b) Employee Samples must meet the following requirements:

- i. Manufacturers may provide a sample of Cannabis Product to an employee to determine whether to make a product available to sell, provided that such samples may not be consumed on any licensed premises.
- ii. Samples will be limited to the following aggregate amounts in a calendar month: five grams of concentrate or extract, or 100 servings of edibles per employee, provided that the tetrahydrocannabinol content of each individual edible sample does not exceed five milligrams per serving and is within any applicable statutory or regulatory potency levels.
- iii. Employee samples must be labeled: **QUALITY CONTROL SAMPLE NOT FOR RESALE.**
- iv. Samples must be designated and identified in the Inventory Tracking System.

## 2.7 Regulations Applicable to Wholesalers

The requirements in this section apply to Cannabis Establishments with a wholesaler license.

### 2.7.1 Wholesaler Security

(a) Wholesalers must meet all requirements of section 2.5.1 of this rule.

- (b) Manufactured Cannabis Product, but not Cannabis flower, must be kept in a reasonably secure locked space.

#### 2.7.2 Wholesaler Processing

- (a) The word “process” in 7 V.S.A. § 905(b) means:
  - i. Packaging or wrapping Cannabis flower in any manner that Cannabis flower may be transported or consumed.
  - ii. Trimming Cannabis flower, or other activities necessary for preparing Cannabis flower for packaging or transport.
  - iii. Packaging Cannabis Products in any manner that Cannabis Products may be packaged.
- (b) The word “process” in 7 V.S.A. § 905(b) does not mean transforming Cannabis flower into another substance through manufacturing.

#### 2.7.3 Wholesaler Packaging

- (a) Except as provided in subsections (b) and (c) of this section 2.7.3, when a wholesaler transfers Cannabis or Cannabis Product to another licensee packaging must meet the requirements of section 2.2.9(a) of this rule.
- (b) When a wholesaler transfers Cannabis to a retail licensee and the Cannabis is intended for consumer purchase as packaged, packaging must meet the requirements of section 2.3.5(b) of this rule.
- (c) When a wholesaler transfers Cannabis Products to a retail licensee, and the Cannabis Products are intended for consumer purchase as packaged, packaging must meet the requirements of section 2.6.3(b) of this rule.

### **2.8 Regulations Applicable to Retailers**

The requirements in this section apply to Cannabis Establishments with a retailer license.

#### 2.8.1 Buffer Zones

Retail Cannabis Establishments shall not be located at a place where the sale of a regulated drug would constitute a violation of 18 V.S.A. § 4237(d).

#### 2.8.2 Retail Security

Retailers must meet all requirements of section 2.5.1 of this rule, along with the following additional requirements:

- (a) Alarm systems installed by retailers must be installed by an alarm installation company with expertise in industry standard commercial-grade alarm systems.
- (b) Video surveillance must include point-of-sale areas, all entrances, exits, and any area where Cannabis or Cannabis Product is stored or handled.
- (c) Strict access controls to areas where Cannabis and Cannabis Product is stored or handled.

- (d) Video footage must be kept for at least 30 days, and video recording devices must be continuously recording.
- (e) Employees shall wear identification badges that clearly identify them as employees while on duty.
- (f) Upon request, a retailer shall make available to the Board or Board designee all information related to security alarm systems, monitoring, alarm activity, maps of camera locations and camera coverage, surveillance equipment maintenance log, authorized user list, operation instructions, and any other relevant information.
- (g) The number of customers in the retail area at any given time may not be more than can be easily monitored by the employees present in the retail area.
- (h) The requirements of 7 V.S.A. § 881(a)(5), to the extent not already covered by this rule.

### 2.8.3 Age Verification

- (a) Immediately upon a visitor entering the retail premises an individual who has been issued an identification card pursuant to Rule 1.16 shall inspect the visitor's proof of identification and determine the visitor's age. This age check shall take place in the immediate vicinity of the entrance to the retail premises.
- (b) "Acceptable form of identification" shall mean a photo identification issued by a government, and it must be current and valid.
- (c) No individual shall be admitted unless the retailer has verified that the acceptable form of identification matches the visitor and that the visitor is 21 years of age or older.
- (d) Prior to completing a transaction for the purchase of Cannabis or a Cannabis Product, an individual who has been issued an identification card pursuant to Rule 1.16 shall inspect the visitor's proof of identification and determine the visitor's age.
- (e) A retailer may not acquire or record visitor personal information other than information typically required by a retail transaction, which can include information to determine the visitor's age.
- (f) A retailer may not record or retain any additional personal information from a visitor without the visitor's permission.
- (g) Retailers shall refuse to sell to any visitor who is unable to produce valid proof of their age using an acceptable form of identification.

### 2.8.4 Retailer Packaging

- (a) Packaging for all Cannabis and Cannabis Products sold in retail establishments must meet the following requirements:
  - i. All requirements contained in section 2.2.9 of this rule.
  - ii. Packaging must have information regarding the test results of the Cannabis or Cannabis Product, provided that packaging may convey such information using a website address, QR code, or similar means of providing access to information available on a website.
- (b) For Cannabis, packaging must meet the requirements contained in section 2.3.5(b) and 907(c) of this rule in addition to subsection (a) of this section 2.8.4.
- (c) For Cannabis Products, packaging must meet the requirements contained in section 2.6.3(b) of this rule in addition to subsection (a) of this section 2.8.4.

### 2.8.5 Collection and Reuse of Consumer Packaging Waste

- (a) Retail Cannabis Establishments may collect, reuse, and recycle consumer packaging waste. Only retail Cannabis Establishments may collect consumer packaging waste for reuse and recycling. Such Cannabis Establishments may collect consumer packaging waste from consumers or from other licensees.
- (b) Any receptacles used for collection of Consumer Packaging Waste shall be located inside the Cannabis Establishment such that they are subject to the same security measures as the rest of the establishment. They shall be reasonably supervised by a licensee to ensure any consumer packaging waste is only removed by a licensee.
- (c) Any receptacles used for collection of consumer packaging waste shall be labeled. The label must at least identify the receptacle as “consumer packaging waste.” A licensee may choose to include additional information on the receptacle label.
- (d) Licensees collecting consumer packaging waste pursuant to this section 2.8.5 must ensure at a minimum that any remaining Cannabis or Cannabis Product in consumer packaging waste is removed and destroyed to the extent practicable. The waste disposal requirements of section 2.2.8 of this rule shall apply.
- (e) Once any remaining Cannabis or Cannabis Product has been removed and destroyed pursuant to these rules, a licensee may:
  - i. Reuse consumer packaging waste if the packaging has been sanitized and disinfected.
  - ii. Transfer consumer packaging waste to another licensee for reuse or may transfer consumer packaging waste to a person for recycling or reuse.
- (f) A Cannabis Establishment that is reusing consumer packaging waste must sanitize and disinfect the packaging.
- (g) Child-resistant containers may be reused as child-resistant containers to the extent they continue to meet the requirements of 7 V.S.A. § 861(16).

### 2.8.6 Standard Operating Procedures

Retailers must maintain standard operating procedures regarding the following subjects in such a way that they can be readily accessed from the physical site of operations upon the request of the Board or Board designee :

- (a) security measures;
- (b) employee security policies, including personal safety and crime prevention techniques;
- (c) description of establishment’s hours of operation and after-hours contact information for management;
- (d) plan for storage of inventory;
- (e) procedures to ensure accurate recordkeeping, including inventory protocols and compliance with the Inventory Tracking System;
- (f) quality control plans;
- (g) emergency procedures in case of a fire or other emergency;
- (h) how confidential information will be maintained; and
- (i) policy for immediate dismissal of an employee who has diverted Cannabis or Cannabis Product or engaged in unsafe practices.

### 2.8.7 Retailer Samples

Retailers may accept vendor samples as permitted by sections 2.3.9 and 2.6.6 of this rule but are prohibited from offering such samples for sale. Acceptance of such samples must be logged in the Inventory Tracking System.

### 2.8.8 Consumer Samples

Retailers may provide samples of Cannabis flower in enclosed containers for viewing or smelling by visitors. Such samples may not be touched by visitors or sold or transferred to visitors and their use and disposal must be tracked in the Inventory Tracking System.

### 2.8.9 Safety Information Flyer

Retailers shall display a safety information flyer created by the Board at the point of purchase, in accordance with 7 V.S.A. § 907(d). The Board shall make the flyer readily available to the public and to retail establishments for their use. The Board may update the flyer at any time and will provide notice to licensed retail establishments when it makes such an update.

## 2.9 Regulations Applicable to Testing Laboratories, Cultivators, and Manufacturers

The requirements in this section apply to Cannabis Establishments with a testing laboratory license, as well as to cultivators and manufacturers who must have their product tested in accordance with the standards in this section.

### 2.9.1 Testing Requirements

The following chart describes the testing requirements that each laboratory must be prepared to administer, and the sampling standard operating procedures that Cannabis Establishments must follow. The top row describes the test, the left column describes the substance that will be tested, and the boxes in the chart describe the relevant sampling standards. There are corresponding notes below the chart.

	<b>Potency</b>	<b>Moisture or Water Activity</b>	<b>Microbiological (human pathogens)</b>	<b>Heavy Metals</b>	<b>Pesticides</b>	<b>Residual solvents</b>
<b>Harvest lot</b>						
THC compliance	Each lot	Each lot	N/A	Note 5	Each Lot Note 6	N/A
<b>Plant material</b>						
Trim flower	Note 1	Each process lot	Each process lot	Note 1	Note 1	N/A

<b>Concentrates</b>						
Liquids	Each process lot	N/A	Each process lot	Each process lot	Each process lot	Note 3
Solids	Each process lot	N/A	Each process lot	Each process lot	Each process lot	Note 3
<b>Products and Infused products</b>						
Liquids, including infused products (tinctures, and water based)	Note 4	N/A	Note 2	Note 1 or Note 2	Note 2	Note 2 or Note 3
Solids, including infused edibles, tablets	Note 4	N/A	Note 2	Note 1 or Note 2	Note 2	Note 2 or Note 3

- Note 1 Harvest lot testing is sufficient to show compliance.
- Note 2: Trim flower or concentrate testing is sufficient to show compliance.
- Note 3: Residual solvents are tested whenever solvent based extraction techniques are used.
- Note 4: A certified laboratory’s certificate of analysis demonstrates that the product meets the acceptable potency level or the processor’s formulation demonstrates compliance with the acceptable potency level.
- Note 5: Testing for heavy metals is required whenever the crop land was used for orchard crops or any land use other than farming as defined in the Required Agricultural Practices Rule, unless a recent soils test demonstrates that the heavy metals are within the authorized action limits for soils.
- Note 6: No pesticide testing required if crop is certified by a third party to be pesticide free.
- Note 7: Testing for other contaminants is necessary when the Agency of Natural Resources has approved biosolids applications to crop land.

Sampling for the purposes of testing shall be representative sampling. The Board will define representative sampling in a policy that will be readily accessible to the public.

### 2.9.2 Potency Parameters

- (a) Cannabis must have no greater than a 20% variation from the label representation regarding total theoretical THC as defined by subsections (f) and (g) in this section 2.9.2, and other cannabinoids.
- (b) Cannabis Product with a label representation of between 0 milligrams to 10 milligrams of total cannabinoid content must have no greater than a 25% variation from the label representation.

- (c) Cannabis Product with a label representation of between 10 milligrams to 100 milligrams of total cannabinoid content must have no greater than a 20% variation from the label representation.
- (d) Cannabis Product with a label representation of greater than 100 milligrams of total cannabinoid content must have no greater than a 10% variation from the label representation.

In assessing potency, laboratories will use the following formulation:

- (e) Tetrahydrocannabinolic acid (THCA) is the precursor of delta-9 tetrahydrocannabinol (THC).
- (f) The laboratory determination of potency will be determined by total theoretical THC.
- (g) Total theoretical THC content is the maximum amount of possible delta-9 THC in a cannabis crop if total conversion from THCA to THC were to occur. The calculated amount of total theoretical THC is determined as follows:
  - i. the sum of the concentration of delta-9 tetrahydrocannabinol added to the amount of tetrahydrocannabinolic acid after it is multiplied by 0.877 on a dry weight basis and reported to two significant figures.
  - ii. The following mathematical equation expresses this calculation:

$$\text{Total theoretical THC} = ([\text{delta 9 THC}] + ([\text{THCA}] * 0.877))$$

### 2.9.3 Moisture Parameters

Moisture parameters will be set as follows:

Parameter	Action limits for trim flower
Moisture content	Less than or equal to 13 %
Water activity	0.65

### 2.9.4 Microbiological Parameters

The following human pathogens will be measured, and the limits set, in accordance with guidance issued by the Board. Such guidance will not be altered without at least 90 days of notice to licensees and the general public.

- (a) Shiga---toxin producing escherichia coli (STEC) – Bacteria
- (b) Salmonella species – Bacteria
- (c) Aspergillus flavus, Aspergillus fumigatus, Aspergillus niger, Aspergillus terreus - Fungus

### 2.9.5 Metal parameters

The following metals will be measured and the limits set in accordance with guidance issued by the Board. Such guidance will not be altered without at least 90 days of notice to licensees and the general public.

Arsenic
Cadmium
Lead
Mercury
Chromium
Copper
Nickel
Zinc

#### 2.9.6 Pesticides

As provided for by section 2.3.1 of this rule, cultivators will be required to abide the pesticide standards set by the Agency of Agriculture, Food, and Markets.

#### 2.9.7 Residual Solvent Parameters

Residual solvents will be measured and the limits set in accordance with guidance issued by the Board. Such guidance will not be altered without at least 90 days of notice to licensees and the general public.

#### 2.9.8 New Tests

When a laboratory seeks to gain certification for a new test, it must also submit to the Board the method validation summaries for any new test.

#### 2.9.9 Proficiency

A laboratory must maintain analytical proficiency for each test it administers.

#### 2.9.10 Records

In addition to all other relevant disclosure requirements, upon request of the Board or Board designee laboratories shall provide full access to all test records.

#### 2.9.11 Remediation of Adulterated Cannabis

Adulterated Cannabis or Cannabis Product may be remediated to the extent prescribed by section 2.2.19 of this rule.

#### 2.9.12 Other Parameters or Testing Methods

The Board retains discretion to change or add testing parameters, required pathogens, or other substances to the testing required under this rule.

## **2.10 Regulations Applicable to Integrated Licensees**

The requirements in this section apply to applications for an integrated license.

### **2.10.1 All Cannabis Establishment Regulations Applicable**

All regulations in sections 2.2 through 2.9 of this rule applies to integrated license holders.

### **2.10.2 Dispensaries and Medical Cannabis**

Except to the extent provisions in this section 2.10 impact dispensary operations, dispensaries and the medical cannabis registry are not regulated by this rule. They are regulated by Board Rule 3 and by Chapters 35 and 37 of Title 7 of the Vermont Statutes.

### **2.10.3 Co-located Operations**

- (a) Integrated licensees may commingle Cannabis cultivation for adult-use sales with cultivation for dispensaries.
- (b) Prior to transfer to either a dispensary or a retail establishment, the licensee must create and maintain strict separation between Cannabis and Cannabis Product that will be sold through a retailer and Cannabis and Cannabis Product that will be sold through a dispensary to a registered patient. The separation must be documented in the Inventory Tracking System.
- (c) Integrated licensees may co-locate operations from different license types in the same location, but co-located operations must maintain all relevant security requirements for each license type and must maintain all Inventory Tracking System requirements.
- (d) Dispensaries may be co-located with retail Cannabis Establishments, provided that:
  - i. integrated licensees must have a system in place to ensure that staff give priority of service, including priority of entrance and sales, to registered dispensary patients before adult use consumers. This shall include curbside sale, if requested, for dispensary patients.
  - ii. Strict protocols must be in place to ensure that medical products for dispensary patients are not sold to adult-use consumers.

### **2.10.4 Duty to Maintain Continuity of Services to Medical Patients**

- (a) Integrated licensees must ensure their dispensary operations maintain continuity of services to medical Cannabis patients.
- (b) If an integrated licensee has commingled their cultivation pursuant to 2.10.3(a), continuity of services will include designating sufficient biomass at an integrated licensee's cultivation facility to meet demand for medical Cannabis and Cannabis Products as indicated by dispensary sales data for the preceding 3 months. Such records and calculations will be provided to the Board or a Board designee upon request.

### **2.10.5 Use of Dispensary Cultivation for Integrated Licensees**

Dispensary operations may transfer Cannabis and Cannabis Products to integrated licensees to the extent provided by Section 8 of Act 164 (2020), subject to the conditions in this section.

Beginning on the date retail establishments that are not part of an integrated license may begin sales:

- (a) The tiered plant canopy limits in Rule 1.3.1 that apply to all cultivator licenses apply to the cultivator portion of an integrated license, except for cultivation dedicated to medical cannabis sold through a dispensary.
- (b) Other than cultivation for a dispensary, cultivator portions of an integrated license will be deemed to be in the largest cultivator tier that the Board has opened for an application acceptance period pursuant to Rules 1.3.1 and 1.10 and will be subject to the plant canopy limit of that tier.
- (c) If an integrated licensee has chosen not to commingle their dispensary and adult use Cannabis cultivation, the dispensary grow will be regulated by Board Rule 3 while the adult use grow will be subject to subsection (b) of this rule 2.10.5.
- (d) If an integrated licensee has chosen to commingle their dispensary and adult use Cannabis cultivation pursuant to section 2.10.3 of this rule, the cultivation will be subject to subsection (b) of this rule 2.10.5, with the following exception:
  - i. The total biomass of Cannabis required to meet the demand for medical Cannabis and Cannabis Products as indicated by dispensary sales data for the preceding 3 months will not be counted towards the total permissible square footage. If the total biomass set aside for medical Cannabis and Cannabis Products is ultimately not needed for that purpose, it may not be transferred to the adult-use market.
- (e) The Board at its discretion may require integrated licensees to provide the Board with any records that might demonstrate compliance or noncompliance with this section, including but not limited to sales and manufacturing data.

#### 2.10.6 Duty to Purchase From Small Cultivators

Integrated Licensees shall abide by the requirement in Section 10 of Act 62 (2021) regarding the purchase of Cannabis from small cultivators.

### **2.11 Licensee's Ongoing Duty to Disclose**

A Cannabis Establishment has an ongoing duty to fully and transparently update the information submitted with their licensing application or their last renewal form if they have renewed their license.

#### 2.11.1 Disclosure Insufficient For Changes In Control

If a Cannabis Establishment seeks to change location or alter the interest holders that control it, mere disclosure is insufficient to meet its obligations under this rule. It must seek a license renewal prior to any change in control, as required by Rule 1.17.

### **2.12 Waiver Provisions for Tier 1 Cultivators**

Tier 1 indoor cultivators, tier 1 outdoor cultivators, and tier 1 mixed cultivators are not required to comply with the requirements of the following subsections of this rule:

- (a) 2.2.1(l);
- (b) 2.2.4(a);
- (c) 2.2.4(b);
- (d) 2.2.4(c);
- (e) 2.2.5(b)(i);
- (f) 2.2.5(b)(v);
- (g) 2.2.7(j);
- (h) 2.3.2(g);
- (i) 2.5.3, provided that only home occupancy businesses are exempted from the provisions of this section;
- (j) 2.5.6(b); and
- (k) 2.5.6(c).

### **2.13 Universal Application of Licensure Requirements**

No person may operate in a manner that has the effect of subverting 7 V.S.A. § 901(d)(3)(A) or any other licensure requirements contained in 7 V.S.A. chapter 33 or Board Rule 1, and no person shall exercise control over a Cannabis Establishment without the disclosures required in Board Rule 1.4. At its discretion the Board may require additional information from Cannabis Establishments to ensure compliance with this section.

### **2.14 Municipalities**

Municipalities may regulate Cannabis Establishments to the extent permitted in 7 V.S.A. § 863.

To ensure coordination with the Board, municipalities must:

- (a) Notify the Board if they create a local control commission. The Board will not require local approval as a condition of an application pursuant to 7 V.S.A. § 863(c) unless the Board has received notice of the creation of a local control commission from the municipality.
- (b) Notify the Board if a local control commission grants or denies a local control license.
- (c) Notify the Board if a local control commission suspends or revokes a local control license.
- (d) Decide on grants or denials of local control licenses within 60 days of receiving an application. A delay of more than 60 days without a decision will constitute a presumptive grant of a local control license. This period may be tolled if the local control commission is communicating with the applicant about conditions the applicant must meet to be approved for a local control license. The Board will retain discretion to determine whether the time-period will be tolled and may request documentation regarding the process from either the municipality or the applicant, or both.

### **2.15 Confidentiality**

Information about Cannabis Establishments will be kept confidential by the Board to the extent required by 7 V.S.A. § 901(h).

## **2.16 Regulatory Waiver**

The Board, in accordance with the purposes and intent of Title 7 V.S.A. chapter 33 of the Vermont Statutes and this rule, may waive a regulatory requirement regarding the operations of a Cannabis Establishment to the extent such waiver does not conflict with any other state law, if in the Board's determination, such a waiver:

- (a) is necessary to achieve the purpose of Vermont law; and
- (b) does not create a danger to the public health, safety, or welfare.



## INTERAGENCY COMMITTEE ON ADMINISTRATIVE RULES (ICAR) MINUTES

**Meeting Date/Location:** December 15, 2021, Virtually via Microsoft Teams with Physical Location available in the Pavilion Building, 109 State Street, Montpelier, VT 05609

**Members Present:** Chair Kristin Clouser, Dirk Anderson, Jennifer Mojo, John Kessler, Diane Sherman, Clare O’Shaughnessy and Michael Obuchowski

**Members Absent:** Diane Bothfeld

**Minutes By:** Melissa Mazza-Paquette

- 1:04 p.m. meeting called to order, welcome and introductions.
- Review and approval of minutes from the [November 15, 2021](#) meeting.
- Note: The following emergency rules were supported by ICAR Chair Clouser:
  - Emergency Administrative Rules for Notaries Public and Remote Notarization’, Secretary of State, Office of Professional Regulation, on 12/7/21
    - These Emergency Rules define the "personal appearance" requirement for remote notarial acts conducted through a secure audio-visual communication link.
  - At Home COVID-19 Antigen Test Coverage, Department of Financial Regulation, on 12/8/21
    - The emergency rule requires health insurers to waive or limit certain cost-sharing requirements directly related to COVID-19 antigen tests (commonly referred to as “rapid” tests), including over-the-counter tests for use at home.
- No additions/deletions to agenda. Agenda approved as drafted.
- No public comments made.
- Presentation of Proposed Rules on pages 2-7 to follow.
  1. Reportable and Communicable Diseases Rule, Agency of Human Services, Department of Health, page 2
  2. Licensing Regulations for Afterschool Child Care Programs, Agency of Human Services, Department for Children and Families, page 3
  3. Child Care Licensing Regulations: Center Based Child Care and Preschool Programs, Agency of Human Services, Department for Children and Families, page 4
  4. Licensing Regulations for Registered and Licensed Family Child Care Homes, Agency of Human Services, Department for Children and Families, page 5
  5. Rule 1: Licensing of Cannabis Establishments, Cannabis Control Board, page 6
  6. Rule 2: Regulation of Cannabis Establishments, Cannabis Control Board, page 7
- Chair Clouser met briefly with members from LCAR to discuss ways to improve processes. A future meeting of the two bodies will be held to expand the discussion.
- Committee discussion of administrative rules in other states and ways to enhance our system to be more responsive to the public and governmental agencies. ICAR will meet with LCAR and discuss next steps and potential action items.
- Next scheduled meeting is Wednesday, January 12, 2022, 1:00 PM
- 2:49 p.m. meeting adjourned.

**Proposed Rule:** Reportable and Communicable Diseases Rule, Agency of Human Services,  
Department of Health

**Presented By:** Natalie Weill

Motion made to accept the rule by John Kessler, seconded by Jen Mojo, and passed unanimously with the following recommendations:

1. Title Page: Include 'Printed Name and Title'.
2. Proposed Filing Coversheet, #8: Be consistent with past or present tense. Describe the demographic information required. For clarity, consider adding 'in which' prior to '...VDH is to receive' in the following sentence "It defines the timeframe VDH is to receive reportable laboratory findings."
3. Proposed Filing Coversheet, #12: Clarify language regarding the reporting requirements and include any potential costs.
4. Economic Impact Analysis: Include any costs associated with the requirement or state none if applicable.
5. Economic Impact Analysis, #3: Provide details on the changes, requirements, economic impact and benefits.
6. Economic Impact Analysis, #5: Correct spelling of 'existence'.
7. Economic Impact Analysis, #8: Insert any favorable aspect, such as cost reduction.
8. Economic Impact Analysis, #9: Include source of information pertaining to the benefit of mandatory reporting.
9. Public Input Maximization Plan, #4: Include more details pertaining to the stakeholders and list those who were engaged in the process.

**Proposed Rule:** Licensing Regulations for Afterschool Child Care Programs, Agency of Human Services, Department for Children and Families

**Presented By:** Heidi Moreau

Motion made to accept the rule by John Kessler, seconded by Diane Sherman, and passed unanimously with the following recommendations:

1. Proposed Filing Coversheet, #5: Clarify the language in the second sentence. The 'd' in 'department' should be capitalized for consistency.
2. Proposed Filing Coversheet, #8: Include the purpose, rationale or justification for exempting the rules.
3. Proposed Filing Coversheet, #9: Clarify and include the reasoning and goal.
4. Proposed Filing Coversheet, #12: Clarify who the minimal financial impact pertains to.
5. Proposed Filing Coversheet, #13: Hearing are always encouraged. If the choice is to not hold one, include further explanation on the outreach done.
6. Economic Impact Analysis, #7: Include language that the agency determined such a valuation isn't appropriate.
7. Economic Impact Analysis, #8: Include language to the first sentence such as 'in a nondiscriminatory fashion' if applicable.

**Proposed Rule:** Child Care Licensing Regulations: Center Based Child Care and Preschool Programs, Agency of Human Services, Department for Children and Families

**Presented By:** Heidi Moreau

Motion made to accept the rule by Dirk Anderson, seconded by Jen Mojo, and passed unanimously with the following recommendations:

1. Proposed Filing Coversheet, #5: Clarify the language in the second sentence. The 'd' in 'department' should be capitalized for consistency.
2. Proposed Filing Coversheet, #8: Include the reasoning/objective for exempting the rules. Add a space after the comma in ',and' in the last line.
3. Proposed Filing Coversheet, #9: Clarify and include the reasoning and goal.
4. Proposed Filing Coversheet, #10: Include reference to center-based childcare programs if appropriate.
5. Proposed Filing Coversheet, #12: Clarify who the minimal financial impact pertains to.
6. Proposed Filing Coversheet, #13: Hearing are always encouraged. If the choice is to not hold one, include further explanation on the outreach done.
7. Economic Impact Analysis, #7: Include language that the agency determined such a valuation isn't appropriate.
8. Economic Impact Analysis, #8: Include language to the first sentence such as 'in a nondiscriminatory fashion' if applicable.

**Proposed Rule:** Licensing Regulations for Registered and Licensed Family Child Care Homes, Agency of Human Services, Department for Children and Families

**Presented By:** Heidi Moreau

Motion made to accept the rule by Diane Sherman, seconded by John Kessler, and passed unanimously with the following recommendations:

1. Proposed Filing Coversheet, #8: Include the reasoning/objective for exempting the rules. Add a space between ‘,and’ in the last line.
2. Proposed Filing Coversheet, #9: Clarify and include the reasoning and goal.
3. Proposed Filing Coversheet, #10: Include reference to center-based childcare programs if appropriate.
4. Proposed Filing Coversheet, #12: Clarify who the minimal financial impact pertains to.
5. Proposed Filing Coversheet, #13: Hearing are always encouraged. If the choice is to not hold one, include further explanation on the outreach done.
6. Economic Impact Analysis, #7: Include language that the agency determined such a valuation isn't appropriate.
7. Economic Impact Analysis, #8: Include language to the first sentence such as ‘in a nondiscriminatory fashion’ if applicable.

**Proposed Rule:** Rule 1: Licensing of Cannabis Establishments, Cannabis Control Board

**Presented By:** David Scherr

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

1. Proposed Filing Coversheet, #8: Presenter noted the concise summary will likely change to be more precise and including applicability from the proposed rule section 1.1.0.4, page 25, which ICAR supports.
2. Economic Impact Analysis, #3: Include the description of the estimated costs and benefits. As in the coversheet, identify the huge scope of parties that could be impacted from these brand-new rules.
3. Economic Impact Analysis, #6: Focus on the small businesses and then broaden the kind of overall potential economic impact, which could be added to the coversheet.
4. Environmental Impact Analysis: Preface to include the economic, or potential, impact of the entire market as it isn't necessarily related simply to the licensing requirement.
5. Public Input, #3: Include estimated number of future hearing is known.
6. Proposed Rule, 1.17, Section 17: If applicable, include reference to Rule 2.

**Proposed Rule:** Rule 2: Regulation of Cannabis Establishments, Cannabis Control Board

**Presented By:** David Scherr

Motion made to accept the rule by Dirk Anderson, seconded by John Kessler, and passed unanimously with the following recommendations:

1. Proposed Filing Coversheet, #8: Include more information.
2. Economic Impact Analysis, #3: Include the description of the estimated costs and benefits. As in the coversheet, identify the huge scope of parties that could be impacted from these brand-new rules.
3. Economic Impact Analysis, #6: Focus on the small businesses and then broaden the kind of overall potential economic impact, which could be added to the coversheet.
4. Environmental Impact Analysis: Preface to include the economic, or potential, impact of the entire market as it isn't necessarily related simply to the licensing requirement.
5. Public Input, #3: Include estimated number of future hearing is known.
6. Include Incorporation by Reference if applicable.

Date: February 3, 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 2

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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.

The Board received more than 180 substantively distinct comments about proposed Rule 2 and accepted, in whole or in part, recommendations contained in about one third of them. The proposed rule has been edited accordingly.

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 following 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. The Board’s rulemaking schedule moved the Board’s proposed Rules 1 and 2 through the process in tandem. As a result, many commenters had input about both Rules 1 and 2 in the same document or

submission, so the written comment compilation contains comments about both proposed rules.

In the subsequent pages, each distinct comment is noted with bullet point, and the Board's response is noted below each comment.

### **General Comments on Proposed Rule 2:**

- For ease of administration and the regulated community, it would be helpful to include all terms defined in statute in the rule. And if a statute guides the regulated community in some way (advertising, packaging, etc) it would be helpful to have directly included in the rule.

Board response: Although this rule strives for clarity, including statutory citations by reference instead of copying them into the rule will reduce the likelihood that potential legislative changes to cannabis-related statutes will put the rules in conflict with statute. Such a result would make the rules inaccurate and hard to follow, as a reader would have to parse where a statute may have been amended and track that amendment throughout the rule.

- Regulations that are outside the jurisdiction of the CCB may not be suitable for inclusion in the Rule, when the CCB does not have the ability to enforce that other jurisdiction's law, statute or rule. This could change if the CCB uses compliance with other laws as a basis for revoking a license or is a barrier to obtaining a license, but this should be outlined explicitly.

Board response: The Board has no authority to enforce laws or regulations outside of its jurisdiction. It has included citations to some of these laws and regulations as a reminder to cannabis business applicants and licensees that they will have to follow all applicable laws, not just those enforced by the Board. The Board has explicitly noted that, in some cases, failure to follow applicable laws could result in a cannabis business applicant or licensee falling afoul of Board rules as well.

- Reporting to the Board, or requiring giving information to the Board, should generally only be required when it may trigger some action by the Board. Otherwise, reporting is burdensome both for Board and licensee without serving a purpose.

Board response: After considering reporting requirements the Board chooses to eliminate the following from its initial proposed rule:

2.3.1: maintain a record, available upon request

2.3.8: delete (g), delete (d), delete (c), delete (b), amend (f) to “integrated” pest management plan.

2.5.6: Delete “water performance benchmarks” in (a). Delete “water usage” in (c).

## **Rule 2 Comments by Section:**

### **2.1.3:**

- Add the definitions of indoor and outdoor cultivation from Rule 1.

**Board response: Recommendation adopted.**

- Define Harvest lot with more specificity.
- Harvest lot definition: should be a single cultivar cannabis produced in a single season, and then the requirement in **2.9** should be that you test harvest lots for THC compliance. This means that anyone who grows anything between 1 plant and 20k square feet would only have to test once.

**Board response: the Board’s proposal is adopted from the Agency of Agriculture, which has expertise administering the Hemp Program. The Board will mostly follow the Agency’s model, except that it will add a provision that clarifies what constitutes sufficient representative sampling.**

### **2.1.3(c):**

- Greenhouse definition: why 180 days? Is there an agricultural basis for this? Should it be shorter?

**Board response: there is an agricultural basis for this: that is the crop cycle for cannabis. This is modeled from other commercial energy use standards around the country.**

### **2.2:**

- Clarify that not everything in this section would apply to labs.
- Labs should be explicitly exempted from the following sections:
  - a. 2.2.1 (f) seed-to-sale tracking records; (k) testing records, including all Certificates of Analysis; (l) sampling unit records;
  - b. 2.2.2
  - c. 2.2.6 Tracking of Cannabis and Cannabis Products
  - d. 2.2.9 Packaging
  - e. 2.2.10 Warning Labels
  - f. 2.2.11 Advertising
  - g. 2.2.12 Audience Composition Presumptions for Advertising

- h. 2.2.15 Inversion and Diversion from the Legal Market is Prohibited (we should be able to test Home Grows)
- i. 2.2.18

- In addition, a chunk of this section seems to focus on retail.

Board response: The Board will clarify that this section is about generally applicable regulations, not that everything contained in this section applies to everyone.

- Potency for cannabis products should be limited to 15%.

Board response: the Board has already decided not to adopt such a recommendation, as outlined in the Board's January 15 report to the legislature.

#### 2.2.1:

- Make (o) consistent with "corrective action plan" in Rule 4.

Board response: Recommendation accepted.

- This section requires that voluminous business records be maintained "onsite" by a licensee, potentially creating a significant paperwork storage issue.

Additionally, subpart (f) requires maintenance of "seed-to-sale tracking records" which may be unnecessary given that the Board is likely to require a centralized system, wherein such records would be maintained centrally, and subpart (m) requires maintenance of application records, copies of which the Board will necessarily already have.

#### *Recommendations:*

Allow the "onsite" requirement to be satisfied by maintaining such records digitally, including on cloud-based storage platforms, so long as the records can readily be made available for inspection by the Board. A similar adjustment should be made to §2.6.6(a), §2.8.5, and any other provision requiring onsite recordkeeping; and

Board response: Recommendation accepted.

Eliminate subparts (f) and (m).

Board response: Recommendation accepted.

- This list could be divided into categories and there could be some internal references to the sections of the rule that further layout expectations for required records-contents of the records, and their management- including revision dates, and signatures pages by

controlling employee. If the record applies to employees, requirements for employee signatures that indicate their knowledge and understanding of these terms of employment.

These are the three buckets I see among these records

1. Business records- (a), (e) adhering to 2.2.2, (h)- Are maintaining tax records covered by other laws? So is this necessary to outline here? Or does this address ability to review tax records , (c), (m), (o) SOPs addressing generally accepted accounting principles, employee onboarding training;
2. Security and risk management records - (b), (g), (j), (k), (l) SOPs on opening and closing procedures, handling money;
3. Inventory records -(d), (f), (i).

**Board response: This is a drafting issue, not a substantive recommendation. The content is clear, no need to change it.**

**2.2.1(g):**

- This needs to carve out retailers, as this is not required of retailers, and also needs to carve out those establishments where visitors are not permitted.

**Board response: Recommendation accepted.**

**2.2.2:**

- The coverage limits (\$1m per occurrence, \$2m aggregate) and alternative bond requirements (\$250,000) are too high for smaller operations such as some Tier 2 manufacturers, Tiers 1-3 cultivators, seeds-and-clones retailers, and unknown potential future license types.

*Recommendations:*

1. Replace the strict coverage limits with a requirement to maintain commercially reasonable levels of insurance commensurate with the licensee's quantum of risk, while maintaining a \$1m/\$2m minimum for larger operations such as full retailers, wholesalers, tier 1 manufacturers, and Tier 4-6 cultivators; and
2. Reduce the alternative bond amount for smaller operations to \$50,000.

**Board response: Recommendation accepted in broad outline: Insurance coverage limits amended to commercially reasonable levels of insurance for all tiers.**

For escrow amounts: small cultivators reduced to \$10,000; \$250,000 for retailers, wholesalers, tier 1 manufacturers, and tier 4-6 cultivators; \$50,000 for remaining license types/tiers.

- Given the considerable amount of revenue that retail businesses are already required to contribute to insurance of one kind or another (standard liability among them), I suggest avoiding the product liability category entirely if possible. Not only could this requirement invite undue complications and superfluous lawsuits, but if Vermont sincerely wants its cannabis market to be a bastion of small business, a financial obstacle like this could prove a considerable roadblock to that admirable ambition.

Board response: This comment is already addressed by the Board's change to the insurance requirements noted in the prior comment.

#### 2.2.4:

- The final sentence is overly burdensome if read to require CCB to enforce other agencies' rules.

Board response: Leave as is to protect other agencies. This does not impose any obligation on the Board.

- In (d): What is the expected outcome of a report to the CCB? An inspection? Or review of what happened and to what end? It may be necessary to define what a "breach" constitutes, to set clear expectations for when reporting is necessary. Contaminant testing could be used to determine if the breach would affect consumer safety. As an alternative the CE could document/ report what happened and the measures taken to address the issue that did not comply with an established SOPs.

Board response: The Board is clear that issues that affect public safety must be reported to the Board regardless of what action the Board may or may not take.

#### 2.2.5(a):

- This provision requires that all "agents of those who control" a licensee complete an enforcement seminar every 3 years, which seems to encompass investors who have no operational involvement in the business.

*Recommendation:* Limit scope to those control persons who have significant operational roles within the licensee, including any members of the licensee's board of directors or similar governing body.

Board response: Recommendation accepted.

- Subsection (a) says training requirements are every 3 years; (b) says training requirement is annual. Everything should be annual.

**Board response: Leave it as is. The different requirements here track the statute.**

#### **2.2.5:**

- Several of the training topics seem irrelevant to employees of licensees other than retailers, as well as non-customer-facing employees of retail licensees.

*Recommendations:*

1. Limit (ii) (health effects of cannabis), (vii) (preventing sales to minors), and (viii) (signs of overconsumption/disorder) to customer-facing employees of retailers;

**Board response: Recommendation accepted.**

2. Allow a waiver of (iv) (acceptable forms of ID) for any licensee which does not intend to allow customers or visitors to access the licensed premises;

**Board response: Recommendation accepted.**

3. Limit (vi) (cash handling) to employees of retailers; and

**Board response: Leave as is, every cannabis business will likely need training in cash handling.**

4. Limit (x) (diversity, equity, inclusion) to employees with management responsibilities.

**Board response: Leave as is, every cannabis business employee needs to be conversant in these issues.**

#### **2.2.6:**

- Is there a difference between seed to sale tracking and inventory tracking?

**Board response: No, these are interchangeable terms. These rules use the defined term “Inventory Tracking System” to refer to seed to sale tracking systems.**

- What does it mean to have the Inventory Tracking System “readily available” to the public?

Board response: The rule says that the Inventory Tracking System “policy” shall be readily accessible to the public.

- In (f): Should CEs be responsible for training employees to ensure the accuracy of the information entered into the tracking system? I am not sure that individuals should be held accountable; this sounds like a personnel issue- rather than a regulatory issue.

Board response: Leave as is. Rules 1 and 4 address individual culpability pursuant to the Board’s regulations.

- Should (c) and (g) be combined into one or follow each other in order?

Board response: Recommendation accepted to move sequentially.

**2.2.6(c):**

- Do cultivators need to track all plants with seed to sale, even those that never make it to market? Can plants that die be tracked another way? Or will they be tracked in the seed to sale system?

Board response: This is an operational issue, there will be a way to enter plants that don’t make it to market.

**2.2.6(e):**

- What will the audit add to the seed to sale tracking that is already required? If an audit is needed, what does “comprehensive annual audit” mean?

Board response: Recommendation accepted.

**2.2.6 and 2.2.7:**

- As a processor of products for other Vermont Companies, I’d like to see clear rules on tracking, and transferring distillate. Some of these VT brands use their oil in our products, then they are returned to the Company for distribution. I know they want this to happen in the rec market as well. I’d like to see more clarification on this process and understanding from the board member about the chain of command of oil/ distillate & transferring the finished product that is intended to be packaged and distributed by them. Will we need to package in the processing facility? Does it matter if there is documentation and manifests? If we could clarify this.

Board response: The rules do require strict tracking of all cannabis and cannabis product regardless of the form it is in, but there is nothing in the rules that restricts cannabis product from moving back and forth through the supply chain in any manner. This activity will be permissible.

#### 2.2.7:

- Subpart (d) requires that cannabis and cannabis product must be transported between licensed premises in a vehicle, even in cases where non-vehicular transportation may be sensible (such as transportation of harvested cannabis from a licensee's cultivation facility to its separately licensed extraction facility on a different part of the licensee's property). Additionally, subpart (i) requires active remotely accessible GPS tracking of all cannabis in transit throughout the entire route, which seems impractical given Vermont's notoriously poor cellular coverage.

#### *Recommendations:*

- Exempt certain short-distance transports from the vehicular transportation requirement of subpart (d), such as transportation from one licensed premises to another within the same or a contiguous property, and any other transport where the destination can be seen by the unaided eye from the departure point.

Board response: Recommendation accepted.

- Eliminate subpart (i) (regarding GPS tracking).

Board response: Recommendation accepted.

1. Are there general requirements for transporting, paperwork, and than specific requirements/ assigned responsibilities associated with being the agent delivering and CE receiving? Dividing this section into subsections covering overarching topic or assigned responsibility could make it more clear.

Board response: Recommendation accepted. Staff will work to make the section clearer by breaking it into sections.

- Should there be explicit provision for utilizing truck beds or trailers?

Board response: This is already allowed in the rule, there is nothing limiting transportation to cars. Transportation in any vehicle just needs to comply with the rule.

- In subsection (a): Why is the Cannabis Licensed Agent designation necessary, and what does it add? All employees must obtain cannabis establishment ID cards pursuant to Rule 1.16, and go through the application process to do so, why not just require that cannabis be transported by CE ID card holders?

Board response: Recommendation accepted.

- Only cannabis licensed agents are permitted to transport cannabis, and a cannabis licensed agent is defined as a person employed by the cannabis establishment (business). Could there be an allowance for cannabis establishments to hire qualified secure transportation company (think along the lines of armored car, but may be not as extreme), to remove safety concern for establishment employees during transportation. Joe and Ethel, small establishment owners, may not be comfortable transporting \$50k of product themselves. Or might a hired secure transportation company be considered employed (albeit temporarily) by the cannabis establishment and qualify as a licensed agent?

Board response: No need to specifically provide for this. A licensed wholesaler could take on this responsibility but would need to have a license.

- (d) and (e) The draft version of the rule indicated that transportation must take place in an unmarked vehicle. It is unclear what the CCB is using its discretion on. Does the CCB want to clarify that this is a motor vehicle? Should these sections be combined?

Board response: Already resolved by earlier comment, (d) will be clarified that not all transports must be in a vehicle.

- In subsection (f): Are vehicles required to be registered, and insured to the Cannabis Establishment?

Board response: They do not need to be insured to the Cannabis Establishment, but the rule will clarify it should be registered to a DMV.

- In subsection (j): Are transport manifests specific to each CE that will receive product? The rule seems to indicate that there are separate manifests for each delivery, but if not, what document is meant to be sent under (k), just that portion of the transport manifest for the particular CE receiving product? Maybe this is up to the CE to explain how it will meet these delivery documentation requirements.

Board response: This will be clarified in guidance but there is no requirement that Cannabis Establishments split up manifests.

- In subsection (l) and (m): outline the receiving CE responsibility, maybe create a new subsection within 2.2.7?

Board response: Recommendation accepted. Staff will work to make the section clearer by further breaking it into sections.

- where does the Cannabis Establishment log the time of receipt of a delivery? Maybe this is up to the CE to explain how it will meet these delivery documentation requirements.

Board response: It should be logged wherever make sense, but the specific format of this won't be mandated by rule. This information will ultimately be entered into the Inventory Tracking System.

- In subsection (n): Where is the LCA logging times ?

Board response: It should be logged in a way that makes sense, but the specific format of this won't be mandated by rule. This information will ultimately be entered into the Inventory Tracking System.

- In subsection (q): Should appropriate storage to prevent contamination be described in an SOP developed by the CE and adhered to by the LCA in deliveries.

Board response: No need to require this. The business is required to meet the obligation and can do so how they see fit.

- How will the CCB interpret (b) and (t) together. If transporting compromised/contaminated/adulterated cannabis or cannabis products where should the establishment take it? This final subsection (t) might be better placed in the waste disposal section.

Board response: these provisions make sense where they are because they are specific to transportation. There are other provisions dealing with waste disposal.

- (e) i.- Do the regulations pertaining to visibility apply to living plants?

Board response: by the plain terms of the rule, yes.

(ii.) Given the ambiguity attached to this statute, I can't help but be concerned with how this regulation might be abused by selective

enforcement. Taking into account the Control Board's commitment to social and racial equity, in its present form, this regulation has the potential to be a marked detriment to that mission.

**Board response: No change. These provisions are important for public safety.**

(j) - When one considers the fact that the state's Inventory Tracking System is designed to eliminate the possibility of products ending up in prohibited places, the rigorous demands of much of this subsection read like theatrical lip-service aimed at misinformed opponents of legalized cannabis. If licensed cultivators and retail establishments are in compliance with the state's own Inventory Tracking System, much of this section is rendered redundant, unnecessary, and unenforceable.

**Board response: A Cannabis Establishment need only create a manifest, which is not a significant burden. Invoices won't be accessible to the CCB. No change.**

(k) - If one takes into account the fact that any above-board business-to-business transaction is already conducted through the exchange of invoices and mutually agreed delivery schedules, this demand is an overbearing burden to businesses that are already required to do so much in compliance with product-tracking guidelines.

**Board response: No change. This is important for product tracking and consumer safety.**

(l) - Operating under the assumption that the Inventory Tracking System employed by the state will be both effective and efficient, this subsection is a sufficient form of record that would render irrelevant the sections discussed above.

**Board response: No change. This is also important for tracking and consumer safety.**

(m) - While I wholeheartedly endorse the practice of thoroughly checking incoming orders against an invoice, the window of time articulated here (the same day it is received) may not be wide enough in certain circumstances. 24 hours seems like a much more reasonable interval considering that some orders might not arrive until the end of a business day

**Board Response: recommendation accepted.**

(r) - Not only does this requirement rely on an arbitrary quantity, it also assumes that a criminal actor is less likely to rob a vehicle transporting 19.5

pounds than they are one carrying 20. Furthermore, it assumes that said criminal actor would not simply abscond with the entirety of the transport regardless of the manner in which it is secured. Finally, the financial burden inherent to purchasing this kind of hardware has the potential to penalize any small business unable to comply, thus forcing it to compete against more financially-equipped institutions at a considerable disadvantage.

**Board Response: No change. This provision is important for public safety.**

### 2.2.8

- a. In subsection (b): the cannabis and cannabis product should be “source separated” removing all packaging or inorganic material by the CE prior to disposal, and mixed with other organic material suitable for composting or digestion.

**Board response: specific ways to dispose are more appropriately dealt with in guidelines as best practices will change over time. All disposal methods will be in guidance that can be kept current as best practices are updated.**

- b. In subsection (d) this could reference back to 2.2.6 in the rule where it mentions the waste log.

**Board response: Recommendation accepted.**

### 2.2.9:

- This provision requires that all cannabis and cannabis product be packaged in opaque, child-resistant packaging (subpart (a), which remains resealable after multiple uses (f), and which contains a long mandatory warning label (b), even if it is packaged for wholesale trade and not retail sale. This is unnecessarily burdensome for wholesale commerce.

Additionally, it is unclear whether cannabis and cannabis products may be sold in reusable packaging. Encouraging the use of reusable packaging has clear environmental benefits.

*Recommendations:*

- a. Exempt cannabis and cannabis products which are not packaged for retail sale from the requirements of subparts (a), (b) and (f) of §2.2.9; and

**Board response: Recommendation accepted. The rule will create an explicit delineation between packaging intended for sale at a retail store, and packaging that is intended for intra-supply chain.**

- b. Explicitly permit the use of reusable packaging where appropriate.

Board response: Recommendation accepted.

- Could the rule specify that packaging for flower/prerolls may be, or even must be, reusable?

Board response: Recommendation generally accepted—retail packaging must be reusable.

- Could there be retail collection of consumer waste for reuse/recycling? See CO's 3-240 collection of consumer waste for reuse and recycling rules.

Board response: Recommendation accepted.

- Could there be compostable/biodegradable packaging required?
- The requirement that packaging be child resistant and opaque limits the ability for clear glass jars, which are more sustainable and reusable/recyclable than plastic pouches, which is what a lot of cultivators will turn to if this isn't adapted to allow for clear jars with child resistant tops. Clear jars are a staple in other states, are cost effective, and help protect products better than pouches.
- I would like to know what is planned for recycling all the plastic containers that are used for cannabis products? Especially the flower containers that have pre rolls or grams or eighths and so on? I would like to have this placed in any section of the proposed rules that all Adult use cannabis products containers be recycled at all the dispensaries at no charge. This I find absolutely necessary since Vermont is an environmentally concerned state and wants to lessen the carbon foot print and slow climate change.
- There must be child-resistant packaging.

Board response: Recommendation accepted.

- Edibles must not be attractive to children, including the colors, shapes, and flavors used.

Board response: These provisions are in statute and rule already.

- Child resistant packaging is difficult for adults who are disabled or have arthritis.

Board response: The requirement for this packaging is in statute and can't be changed by rule.

- Warning label should say “does cause harm to developing brain” instead of “may”.

Board response: This language was already vetted and approved by the Department of Health. The Commissioner and his legal team reviewed this, approved it, and it was approved by the Board’s public health advisory subcommittee. Review by the Department of Health was mandated by statute, and for this reason the Board will not make unilateral substantive changes to the warning labels.

- I have had cultivators ask me, if they sell someone 5lbs of flower does it have to be packaged or can it be a full pound to be packaged in a processing facility. Can we clarify the language?

Board response: This issue has already been clarified by the earlier decision to allow for different packaging requirements for non-consumer, intra-supply-chain Cannabis transfer.

- Longer sentences in proposed warning label won’t be read, warning labels should instead just be a bulleted list of impactful words like psychosis, uncontrollable vomiting, suicide, etc.

Board response: This language was already vetted and approved by the Department of Health. The Commissioner and his legal team reviewed this, approved it, and it was approved by the Board’s public health advisory subcommittee. Review by the Department of Health was mandated by statute, and for this reason the Board will not make unilateral substantive changes to the warning labels.

#### 2.2.10:

- This provision requires a warning, which must appear on all packaging and advertising materials, that “the effects of edible cannabis may be delayed by two hours or more” – *including packaging and advertising of products to which the warning does not relate*. This could have negative consumer and/or public safety impacts, as novice consumers may inadvertently be educated to expect a delayed reaction from a vape cartridge or smokeable flower, when in reality the effects will be felt within seconds or minutes rather than hours. Imagine, for example, a consumer taking a puff from a vape pen before driving, expecting that the effect would not be felt until after he reached his destination.

Additionally, the mandatory warning label contains the words “this product” (including in **BOLD ALL CAPS**), and must be affixed to all advertisements, even if the advertisements are not specific to any product (e.g., an advertisement of a storewide sale). Requiring a warning to “this product”

when the advertisement does not contain an actual product is nonsensical and confusing to consumers. Further, providing confusing and irrelevant warnings will habituate those who view the advertisement to ignore the entire warning.

Finally, the warning label is quite large, and may not reasonably fit on smaller packages such as pre-rolls or single gram flower packages without reducing the typeface to a size that may not be legible. As written, this rule may inadvertently force licensees to use packaging that is larger than is necessary to contain the item being sold, which would be wasteful and environmentally destructive.

*Recommendations:*

1. Only require that packaging and advertisements for *edible* products contain the warning about delayed onset from edible products;

Board response: This language was already vetted and approved by the Department of Health. The Commissioner and his legal team reviewed this, approved it, and it was approved by the Board's public health advisory subcommittee. Review by the Department of Health was mandated by statute, and for this reason the Board will not make unilateral substantive changes to the warning labels.

2. Allow an alternative warning label for advertisements that are not product-specific which does not require a reference to "this product" (instead, you could warn to "keep cannabis away from children and pets", etc.); and

Board response: This language was already vetted and approved by the Department of Health. The Commissioner and his legal team reviewed this, approved it, and it was approved by the Board's public health advisory subcommittee. Review by the Department of Health was mandated by statute, and for this reason the Board will not make unilateral substantive changes to the warning labels.

3. Permit licensees to provide the warning required by subpart (a) via QR code, and to use a smaller font size for the warnings required by subparts (c) and (d), where the packaging size cannot reasonably accommodate the warnings as otherwise required.

Board response: A QR code does not provide sufficient warning. Leave as is.

- This should be clarified to include packaging.

Board response: recommendation accepted, added packaging to subsection (a).

- Warning labels must include acute physical and mental health risks associated with cannabis use, including: 1. Psychosis 2. Impaired driving

3. Addiction 4. Suicide attempt 5. Uncontrollable vomiting 6. Harm to fetus/nursing baby.

Board response: This language was already vetted and approved by the Department of Health. The Commissioner and his legal team reviewed this, approved it, and it was approved by the Board's public health advisory subcommittee. Review by the Department of Health was mandated by statute, and for this reason the Board will not make unilateral substantive changes to the warning labels.

- The warning label may be too long to read out loud during radio ads.

Board response: This language was already vetted and approved by the Department of Health. The Commissioner and his legal team reviewed this, approved it, and it was approved by the Board's public health advisory subcommittee. Review by the Department of Health was mandated by statute, and for this reason the Board will not make unilateral substantive changes to the warning labels.

- Consider alternative packaging, from Dr. David Nathan email (attached).

Department of Health

- A commenter wants the following warning to be placed on cannabis products, which appears to be borrowed from Massachusetts:  
This product has not been analyzed or approved by the Food and Drug Administration (FDA). There is limited information on the side effects of using this product, and there may be associated health risks. Marijuana use during pregnancy and breastfeeding may pose potential harms. It is against the law to drive or operate machinery when under the influence of this product. KEEP THIS PRODUCT AWAY FROM CHILDREN. There may be health risks associated with consumption of this product. Marijuana can impair concentration, coordination, and judgment. The impairment effects of edible marijuana may be delayed by two hours or more. In case of accidental ingestion, contact poison control hotline 1-800-222-1222 or 9-1-1. This product may be illegal outside of MA. This product may cause impairment and may be habit-forming. For use only by adults 21 years of age or older. Keep out of the reach of children. Please consume responsibly.

Board response: This language was already vetted and approved by the Department of Health. The Commissioner and his legal team reviewed this, approved it, and it was approved by the Board's public health advisory subcommittee. Review by the Department of Health was mandated by statute, and for this reason the Board will not make unilateral substantive changes to the warning labels.

**2.2.11:**

- The Board proposed to prohibit social media advertisements that promote products other than via link to an age-gated website, without an exception for age-gated social media platforms (Instagram, for example, has an age-gating option). Allowing products to be advertised on an age-gated website, but not via an age-gated social media platform (which is, of course, a type of website), seems arbitrary given that it is no harder for an underage consumer to evade a static website's age-gate than a social media website's age-gate.

*Recommendation:* Revise subpart (e) to allow promoting products on social media platforms if such platforms enable, and the advertiser implements, age-gating.

**Board response: Leave as is, insufficient protections on social media.**

- There should be a cross reference to 2.2.10(a), which requires the warning label as part of advertising.

**Board response: Accept recommendation.**

- Does branding include the product itself? Can gummies be in the shape of bears?

**Board response: It is a statutory requirement that the products cannot be enticing to children.**

**2.2.11 and 2.2.12:**

- VMS recommends:
  - a. The CCB work with the Vermont Department of Health and other public health experts to craft a robust advertising review to ensure that the percentage of Vermonters under the age of 21 exposed to cannabis promotion is 15 percent or less. Regulations should place the burden on the company advertising to prove that 85% of the audience is over 21. Given that age-gating has been shown in the context of e- cigarettes to be an inadequate barrier to youth viewing internet advertising, internet/digital/social media advertising should be prohibited unless and until an entity can demonstrate an effective method of ensuring over 85% of the audience is over 21;

**Board response: Already in rule.**

- b. The CCB creates an enforcement mechanism that includes fines for violating the advertising regulations and/or penalizes the licensee by making renewal of a license more difficult or no longer possible;

Board response: Already in rule.

c. The warning labels and warning symbols should be featured prominently on all packaging, advertisement, point of sale flyer, website, spoken word promotion and branded products;

Board response: Already in rule.

d. That the CCB include in advertising restrictions all forms of social and digital media that are increasingly hard to regulate and that the DLL, and other enforcement entities, must be trained on how to enforce the advertising restrictions over social and media forms;

Board response: Already in rule.

e. That the CCB develop a “responsible retailer program” similar to Massachusetts’ program, that educates retailers on how to avoid inadvertently promoting to youth;

Board response: Already in rule.

f. That the CCB is responsible for creating a comprehensive data collection system that includes data on advertising volume, distribution of retail shops and dispensaries, counter-marketing strategies and particular forms of advertising trends in order to dovetail youth behavior and use rates, to inform future regulations and to create targeted education and prevention programs. The CCB should partner with the Substance Misuse Prevention Council and the Vermont Department of Health to ensure that this data is captured and reported annually.

Board response: Board has requested a data analyst position in its budget proposal; there are plans to do this.

**2.2.12(c):**

- This regulation is simply untenable. As it stands at present, it would compel any retail establishment that does not wish to have tinted windows or curtains to design their interior in the most spartan manner possible in order to remain in compliance. Given that most of these establishments would rather have a compelling space inside their doors, one that allows them to fulfill their full potential, the end result would be a rash of seedy looking storefronts that have been modified on state order, against the wishes, but with the money, of their proprietors.

Board response: This a youth safety and public safety issue, the Board makes no change.

**2.2.13 and 2.3.2:**

- Some licensees are not permitted to allow members of the public to visit the licensee premises. An exception is made for “contractors” who are accompanied by “employees” of the licensee. This exemption is too narrow, and would prohibit certain on-site business meetings which ought to be accommodated. Additionally, these visitor restrictions will make at-home business unworkable.

§2.3.2(b) would prohibit on-site sales and consumption at cultivation sites, even if the licensee has another license type for the same site which would otherwise allow sales and/or consumption.

Recommendation:

- Expand the exception to allow vendors, professional advisors such as attorneys and accountants, insurance agents, potential investors/financiers, and state and municipal officials to visit licensed establishments provided they are accompanied either by either an employee *or a principal* of the licensee;

Board response: Recommendation accepted.

- For home-based businesses, clarify that all visitors to the premises are allowed (and may consume cannabis therein), so long as access to areas where cannabis is stored is properly restricted;

Board response: Recommendation accepted.

- Clarify that a retailer or other licensee located on a cultivation site (e.g., a retailer or future types such as social consumption or special events licensees) is not prohibited from selling or allowing consumption on the site by virtue of §2.3.2(b).

Board response: Recommendation accepted. Can clarify this in 2.3.2.

**2.2.13:**

- There should also be an “educational purpose” exemption.

Board response: Recommendation accepted. Allow but require compliance with all other laws and rules.

**2.2.14:**

- This language could be strengthened to something like: “Submission of an application for a license constitutes permission for board designees to enter any licensed premises during hours of operation and other reasonable times.”

Board response: Leave as is, proposed language makes little difference.

#### 2.2.16

- This section may not be enforceable by the CCB.

Board response: Leave as is, the Board is not proposing to enforce any rules but its own. It is merely conditioning full compliance with its own rules on full compliance elsewhere.

#### 2.2.17:

- At what level is loss reported, should it be any level? If a de minimus amount is missing is that a required report?

Board response: Change as follows: a loss only requires updating the Inventory Tracking System, but theft requires notifying the Board and the Inventory Tracking System.

- Reporting a theft of loss should include expectation for what should be in the report- an official statement from employee and the CE surrounding the incident, and what the CE might do to prevent an incident from happening again. Based on this information the CCB could then require updates to SOPs or security measures.

Board response: Leave as is. This will be further developed in policy and guidance.

#### 2.2.18:

- Update to allow for incubator style operations in retail spaces.

Board response: Leave as is, there will be incubation opportunities other than co-locating retail licensees.

- Recommend grouping the standards that apply to cultivators together and what generally apply to all CEs together

Board response: Recommendation accepted.

- In subsection (a): Unless the CCB intends to use failure to comply with local laws as a cause to revoke a license, it may not be necessary to

incorporate in CCB rules. This could be in guidance and FAQs to educate applicants.

Board response: this will be a dynamic changing regulated environment, it is good to remind people that it is here.

- In subsection (c): Is this managed exclusively by the co-located CEs? Will the CCB also manage/tally the potential canopy, as well? What standards are applied when the CCB exercises its discretion?

Board response: Leave as is. Nothing is managed exclusively by Cannabis Establishments, this will be heavily regulated by the CCB. If there is any issue, the standards will be governed by the enforcement process in proposed Rule 4.

**2.2.X:**

- Add a section requiring CE ID holders to carry their cards at all times while on the premises of the CE where they work or any time they are transporting cannabis.

Board response: Recommendation accepted. Add it as a new section.

**2.3:**

- The "process" definition from the wholesaler section (2.7.2) should also be in the cultivation section.

Board response: Recommendation accepted.

- Can cultivators package and sell their own prerolls?

Board response: Yes, the clarification in the “process” definition will make this clear.

**2.3.1:**

- “Department” should be changed to “Agency”

Board response: Recommendation accepted.

- Pesticides can be used post harvest on a crop.

Board response: Recommendation accepted, “at the time of harvest” phrase will be deleted.

- What will the CCB do with this information once collected? The CE can maintain this information and made available during a record review.

Board response: Recommendation accepted that the Cannabis Establishment can keep the information and make available upon request.

**2.3.2:**

- Subsection (f): The safety protocol should be similar to the biosecurity, safety and sanitation requirements for employees of the establishment. Instead of the CCB maintaining this information the CE should keep this among its records.

Board response: Recommendation accepted.

**2.3.3:**

- The three-week window doesn't reflect growing and curing practices. Perhaps change to requiring samples right before packaging for transfer to another licensee, or after curing is complete.

Board response: Recommendation accepted, will be changed to “prior to packaging.”

- Testing cannabis crop potency before harvest may not be necessary if the product potency is the regulated standard- potency on a label. This could be a cost savings for growers if they are not required to test before harvest.

Board response: Already addressed by prior edit.

- Does the record retention requirement for test results in this section apply to all results or just this potency result? Also, a longer retention schedule could demonstrate a pattern of compliance or changes in compliance overtime.

Board response: retain all testing results, not just potency.

**2.3.4:**

- “adulterated” should be defined. Is it only contamination from pesticide? Or could it include a presumption of adulteration with broken safety seal/ tamper evident seals?

Board response: Leave as is, this is a commonly understood term that refers to test results.

- Subsection (a): The VAAFMM is the authority for determining a pesticide mis-use and the determination will be based on the facts of the situation.

No response needed, but in the cannabis market the CCB will get notice of these issues first.

- This section provides guidance as to the actions a licensee must take with respect to adulterated cannabis, but it only applies to cultivators, and does not address adulteration of cannabis *products*.

*Recommendations:*

1. Revise the provision so that it applies to wholesalers, manufacturers, and retailers as well as cultivators; and

Board response: Recommendation accepted.

- Subsection (b)(ii): clarify that the testing lab is responsible for destroying what it has in its possession, not responsible for destroying everything else.

Board response: Recommendation accepted.

2. Expand the provision so that it instructs manufacturers, wholesalers, and retailers as to the remediation, re-testing, and, if necessary, destruction of cannabis products, not just cannabis.

Board response: Recommendation accepted.

- In addition, Board should consider whether a licensee can decontaminate, even if there is determined to be fault. Can they retest prior to remediation? What happens if retest is clean? Oregon does "2 out of 3" for the failed analyte. If fails 2x, then must undergo (1) waste, (2) decontamination, or (3) remediated and be full-panel retested.

Board response: This is a bright line in agriculture policy: if contamination is intentional, no remediation allowed. This is industry standard.

**2.3.4(b):**

- This should be a "may", not a "shall", because some willful misuse of pesticide may not require destruction (for example, if baking soda is used).

Board response: Same answer as above. Willful misuse gets no second chance.

### 2.3.5:

- This provision requires a cultivator to meet all packaging requirements set forth in §2.2.9, even where the cultivator is conducting a wholesale licensee-to-licensee transaction. Additionally, part (b) requires the cultivator to meet additional packaging requirements for retail-bound product, without allowing the cultivator and the retailer to otherwise allocate responsibility for retail packaging amongst themselves by contract.

*Recommendation:* the Board should permit cultivators and retailers to allocate retail packaging obligations amongst themselves, so long as the final packaging sold to consumers at retail meets the Board's requirements.

Board response: Intra-supply-chain distinction already made in response to prior comment. The second point requires a legislative solution but the rule will be drafted to accommodate either outcome.

- Add a hardcopy CoA at the time of receipt of product to this list.

Board response: Leave as is. No need to mandate this.

### 2.3.5(b)(iii):

- Incorrectly references another section of the rule.

Board response: Recommendation accepted.

### 2.3.6(d):

- Sampling requirements compromise the security of a grower's developed genetics.

Board response: Leave as is—confidentiality requirements in statute will protect grower's intellectual property.

### 2.3.7:

- Internal reference should be 2.2.4.

Board response: Recommendation accepted.

- Subsection (a): This should be applied to visitors as well as employees.

Board response: Recommendation accepted.

- This could be included in an SOP developed by the CE, which at a minimum includes these items, but there are likely to be additional items

that a CE might want to put in a sanitation SOP- including addressing visitor requirements, waste management plan, etc.

**Board response: Leave as is. No need to mandate this, cannabis establishments will be responsible for their sanitation plans.**

**2.3.9 and 2.6.7:**

- Parts (a)(i) and (b)(i) prohibit consumption of samples on the licensed premises, which is an unnecessary intrusion on the licensee's property rights, especially (but not only) those with home-based businesses, and further is inconsistent with prevailing cannabis culture.

*Recommendation:* Permit samples to be consumed on the licensed premises, except that samples may not be consumed on the premises of a licensed retailer when consumers are present.

**Board response: Leave as is, this is a public trust issue.**

- Sample limits might be too high—it could be more than an ounce per month.
- Conversely, sampling limits are too low.

**Board response: Leave as is, sampling limits are the same as those in MA.**

- Can sampling begin before licensing occurs?

**Board response: no activities can be done before licenses occurs.**

- Samples should be able to be consumed on licensed premises as long as employees are off the clock

**Board response: Leave as is, this is a public trust issue.**

**2.4:**

- Are “mixed cultivator license” the same as “mixed tier cultivation license” highlighted in section 1.2.1 (c)?

**Board response: Recommendation accepted.**

**2.4.2(c) and 2.8.2:**

- These require video surveillance footage to be stored at 1080p resolution, which may necessitate massive (multiple terabytes) and expensive data storage for multiple-camera, 24/7 surveillance. Retailers must maintain footage for 90 days, as opposed to the 30 days required of other licensees, tripling the required storage capacity per camera.

*Recommendation:* Reduce the surveillance standards as follows:

1. Require no greater than 720p resolution (a ~50% reduction in storage requirements over 1080p);
2. Allow event-based (i.e., motion-activated) recording instead of 24/7;
3. Align retailers' retention requirements with those of other licensees.

**Board response:** Board accepts recommendation to go to 720p resolution and 30 days of storage for retailers, and will continue the mandate for continuous recording for retailers, but all other license types may use motion activated recording.

- Add a requirement that lighting should be downcast and shielded to prevent illuminating the night sky. Light sources and reflectors/refractors shall be concealed/shielded from view from points beyond the perimeter of the area to be illuminated, so as to minimize impacts on neighboring properties and road.

**Board response:** Leave as is, this is a municipal issue.

#### **2.4.3:**

- Fencing removes the possibility of free ranging birds being utilized in the grow operation.

**Board response:** Leave as is, rule already allows for some flexibility in the fencing requirement.

- Criteria for issuing a variance and the process to obtain on should be outlined in the rule. Or the CCB could use its discretion, as mentioned in other sections of this rule.

**Board response:** Leave as is, Board will do this through guidance instead.

#### **2.4.5:**

- The section above uses the term "public road" this section uses "roadway".

**Board response:** Use "public road" to make consistent.

#### **2.5:**

- I would like to see language regarding light pollution / a dark skies provision especially regarding opaque buildings. Grow light should be shielded from radiating OUTSIDE the building. Just over the border in New York, there is a tulip (aquaculture) greenhouse complex. The grow lights are pinkish in color. A pink glow from the growhouses houses can literally be seen 15 miles away.

Board response: Leave as is, this is a municipal issue.

**2.5.3:**

- Consider requiring greenhouse gas accounting.

Board response: Not at this time, current regulations sufficient.

**2.5.3-2.5.6:**

- See attached document for Public Service Department comments.

Board response: these suggestions were already considered as part of our rulemaking process, including during the advisory subcommittee meetings. The Board's proposal took them into account, and the proposal was promulgated in consultation with national experts in order to accommodate the special needs of this market. The Board will leave the standards as they are.

- Energy standards are too onerous and will require significant renovation expenses for many buildings that are already constructed, on the order of tens of thousands of dollars. It may prove prohibitively expensive for home growers coming from the legacy market. These provisions could discourage legacy market participation in the regulated market.

Board response: Clarify that we are not asking people to go beyond what CBES require.

- Small cultivators especially can't meet these standards.
- At the very least, there should be a timeline in which all cultivators are required to meet the standard rather than impose it immediately.
- during the advisory group meetings addressing energy efficiency standards it was discussed that it would be possible for the Public Service Department to incorporate their recommendations for energy efficiency in greenhouses and indoor cultivation of cannabis and lighting standards into the CBES. The methods for enforcing these standards could be carried out through the existing framework if incorporated into the CBES, rather than by the CCB.

If the CCB is going to enforce these standards, it may be helpful to require licensees to show compliance with these standards by providing an attestation from the appropriate professional that these standards are met. Also, the CBES may apply to any building envelope, not only indoor cultivation (office, warehouse, manufacturers, etc.).

Board response: Board decides that for sections 2.5.4 and 2.5.5, all CEs get a year to come into compliance.

**2.5.6:**

- Subsection (a) - This is asking a lot of legacy cultivators attempting to participate in a sanctioned system for the first time. The ambiguity of the language only compounds that hindrance. With some guidance, the regulation's objective might be obtainable. As it stands now, however, it is nothing more than an undue stress on an already fragile enterprise. Furthermore, this is yet another example of regulatory overreach that could subvert the stated mission of social and racial equity.
- Subsection (b)- When one takes into account all of the time and energy it requires to maintain all of the equipment included in this statute, the obligation to additionally compose a record of that maintenance results in an undue burden on an already time-pressed cultivator. Not to mention that cultivators not taking proper care of their equipment, would not last long in a competitive market.
- Subsection (c): As I stated in the previous subsection, this statute smacks of overbearing redundancy. An opportunity to maximize a cultivator's efficiency, while also minimizing cost, is one that any successful cultivator will take. To demand that each and every cultivator, regardless of size, provide an annual report on the ways in which they're completing basic operations, is wildly unnecessary.

Board response: Board decides that for sections 2.5.4 and 2.5.5, all CEs get a year to come into compliance.

- Commenter is not comfortable with the suggestion in 2.5.6 (c)(iv) that establishments work with Vermont Gas Systems on energy efficiency. VGS is a purveyor of fossil fuels. They lie about the cleanliness of "natural gas" (which is neither clean, nor natural) and have force fed a fracked gas pipeline down the center of the state. Much of the work on that pipeline has been documented to be dangerously substandard and threatens numerous watersheds and waterways.

Board response: This is not an endorsement. Many locations can't choose their utilities. The rule simply notes all available efficiency servicers.

**2.6:**

- Don't allow disposable vape pens

Board response: recommendation accepted. This will be covered by the Board's mandate for reusable consumer packaging.

### 2.6.1:

- State that this section does not apply to in home operations.
- The fire code will apply or will not apply on its own terms. The Board cannot make it apply where it does not, nor can it exempt a business where it does.

Board response: recommendation accepted.

### 2.6.4:

- This provision does not distinguish between product packaged for retail sale and products packaged for wholesale trade. For example, the packaging for bulk distillate sold by a Tier 1 manufacturer to a Tier 2 manufacturer for use in the manufacture of edible products must include the number of “servings” and the “serving size”, neither of which is readily discernible to the Tier 1 manufacturer.

*Recommendations:*

1. Exempt cannabis and cannabis products which are not packaged for retail sale from the requirements of subparts (a), (b) and (f) of §2.2.9; and
2. Explicitly permit the use of reusable packaging where appropriate.

Board response: Supply chain packaging issue is already addressed, this will be fixed throughout.

- How does the CCB anticipate visual indentation of edible products, i.e., one cookie or brownie?

Board response: Recommendation accepted to add language that it doesn't only need to be indentation, can be some other mark.

- Subpart (c) contains an apparent cross-reference error, pointing to §2.2.8 instead of §2.2.9.

Board response: Recommendation accepted.

- There are many ways to create a dosable product that a customer can clearly define and comprehend. Clearly gummies and products like them are individually dosed with a specific amount per package. My question is about baked goods, what are the expectation to clearly define a dose on a cookie, or brownie? It is unrealistic to have a 5mg whole brownie, and can't have a 50mg, whole cookie without dosing information. Is it an expectation of indentations? Is it transfer paper, a template? So we need to have 5mg per whole piece? Thank you for clarification.

Board response: Recommendation accepted to add language that it doesn't only need to be indentation, can be some other mark.

**2.6.5:**

- Recommendation to allow the addition of herbal additives to stay competitive with neighboring states.

Board response: nothing in the rule prohibits this.

- Subpart (a) prohibits the use of “chemical” additives, a prohibition that, taken literally, encompasses every imaginable ingredient in a cannabis product (e.g., sugar, or sucrose, the chemical formula of which is C<sub>12</sub>H<sub>22</sub>O<sub>11</sub>).

Recommendations:

1. For cannabis products intended for oral ingestion (i.e., foods, drinks, oil-based tinctures, etc.), permit the use of any additive which is Generally Recognized As Safe (“GRAS”) by the Food & Drug Administration;

Board response: Recommendation accepted.

2. (2) It's important, however, *not* to apply the GRAS standard to products intended for inhalation, such as vape oils (e.g., Vitamin E Acetate is deemed GRAS for oral consumption, but is potentially lethal when combusted and inhaled). For inhaled products, the Board should maintain an approved ingredient list;

Board response: Recommendation accepted.

3. The prohibition on the use of artificial sweeteners and flavorings in oil products contained in subpart (c) should exempt oils intended for oral consumption (e.g., tinctures and infused cooking oils).

Board response: accepted in substance, the rule will incorporate statutory reference relevant to (c).

**2.7.1(b):**

- It might work better with industrial standards to say that the safe must be fireproof up to a certain timeframe, as opposed to requiring them to be bolted down.
- Recommendation to look to insurance providers for security requirements. The safe being bolted to the floor originated in requirements from insurance companies for theft insurance.

Board response: Recommendation accepted: must be reasonably secure.

2.7.2:

- The proposed definition of “process” allows a wholesaler to repackage bulk cannabis for further sale to licensees (such as retailers or manufacturers), but neglects to permit a wholesaler to repackage bulk cannabis *product* for such further sale. The definition also does not allow any other form of processing, such as trimming. 7 V.S.A. §905 authorizes wholesalers to both “process” *and* “package”, conveying a legislative intent that processing consists of something other than simply packaging, and further authorizes wholesalers to process and package both cannabis *and* cannabis products.

*Recommendation:* Expand the proposed definition of “process” to:

- (1) allow other forms of processing cannabis and cannabis products (while maintaining an appropriate distinction between “processing” and “producing cannabis products” which is the exclusive domain of licensed manufacturers); and
- (2) authorize wholesalers to package cannabis products as well as cannabis.

Board response: amend to make clear that “processing” cannot be manufacturing, but other ways of preparing product for market are acceptable.

2.8:

- With respect to the 1-ounce per transaction limit, which is in statute but not repeated in the rule, there should be a reference to the weight-equivalency guidelines that the Board will promulgate. A similar reference is in the current draft of Rule 3.

Board response: Recommendation accepted.

- There is mention of a break room and office space, and ample storage, are there more details on the expected parameters of those?

Board response: there are no such references.

- The Rules do not distinguish between full “storefront” retailers and the Board’s proposed “nursery” retail tier. It is reasonable to expect that nursery retailers will have significantly different impacts on public safety and their host communities as compared to traditional cannabis retailers, and operate in significantly different ways.

*Recommendation:* The Board should adopt different standards for nursery retailers than for storefront retailers, particularly with respect to buffer

zones, security requirements, packaging, samples, and safety information flyers.

Board response: Already addressed—there will be no retail nursery tier, will seek legislative fix.

**2.8.1:**

- In its present language, this statute is confusing. In order to ensure that every potential retail establishment is located in a sanctioned zone, the regulation requires more clarity.

Board response: We will clarify this in guidance.

- There should be a 1000-foot buffer zone from any place that “youth congregate”, including schools, parks, college campuses and childcare facilities, to help young people be safe. This is a best practice.

Board response: The board’s proposed policy is a reasonable compromise and public safety decision. The tight limitations on advertising and window displays will serve to protect young people.

- There should be no buffer zones at all because cannabis use should be normalized. In addition, if buffer zones include all childcare facilities there will be extremely limited locations to retail establishments.

Board response: The board’s proposed policy is a reasonable compromise and public safety decision. The current buffer zones serve to protect young people.

**2.8.2:**

- Video storage requirement should be brought in line with the current dispensary requirement of 30-day storage. 90 days is a significant added cost and are unnecessarily long. Incidents are addressed in the immediate 24 hours and footage from an incident can be saved should the CCB request that occur.

Board response: Recommendation accepted.

- Subsection (f): Board can request security system info; if Board’s database is breached that would be a problem

Board response: Leave as is, there no requirement that the Board collect the information, or keep it.

- Subsection (g): The CCB could prescribe a # of customer /retail floor area + a required # of employees during operation in order to set an enforceable standard.

Board response: Leave as is, this would be an unnecessary complication.

### 2.8.3:

- Does a retail facility need a vestibule type situation for ID checking?

Board response: No, it does not.

- Is it necessary to have the IDs be checked both upon entry and at the cash register? If they are checked upon entry checking again, at the cash register is redundant and slows down transactions without any public safety purpose. Checking twice will be treating cannabis differently than any other age-restricted item.

- 

Board response: Leave as is, this is industry standard across the country.

- Children should be allowed in retail establishments if they are with a parent or guardian [this would run counter to prior comment].

Board response: this is illegal under statute.

- Will a retail facility need a separate entrance and exit?

Board response: Not required under the rule.

### 2.8.4:

- Subpart (e) requires that customers leave the store with “sealed or stapled” carry-out bags. This does nothing to promote public or consumer safety, but potentially imposes significant unnecessary cost on retailers who will need to buy bulk quantities of sealable carry-out bags. This may also lead to an increase in use of non-recyclable materials and single-use plastics, and further may conflict with Act 69, which banned single-use plastic bags at retail checkout.

*Recommendation:* Eliminate (e). Allow customers to bring their own bags, and allow retailers to provide customers with either recyclable paper carryout bags or reusable carryout bags, in accordance with Act 69.

Board response: Recommendation accepted.

- The statute says that the flyer must be offered at the sale, is the rule clear enough? Should the flyer be added to the exit packaging?

Board response: Leave as is, the rule and statute are clear.

- Subsection (d): It may be important to define “ chain of custody” for the purposes of this section of the rule.

Board response: This will be deleted, except that test results will remain part of the requirement.

- The rule should clarify if deli style packaging is allowed.

Board response: Leave as is, no need to specifically write this in.

**2.8.5:**

- Test results should be on licensee’s website.

Board response: this is already achieved in subsection 2.8.4(e) earlier.

**2.9:**

- Commenter recommends that the Board maintain testing for STEC, Salmonella, and Aspergillus, and adopt standard action levels.

Board response: These are already in the rule. The action standards will be determined by guidance.

- Add testing for total yeast and mold.

Board response: It was not the recommendation of the experts working with the advisory subcommittee to add yeast and mold tests. The important focus was on human pathogens, which is captured by rule. In addition, the board has a catchall provision at the end of 2.9 in case of necessary changes in the future.

- Explicitly address failed tests and allow for remediation.

With mandatory testing for STEC, Salmonella, and Aspergillus, many operators may face the issue of batches of cannabis failing such tests. While preventing these batches from reaching consumers is good for public health, this could also lead to significant financial losses for cultivators, as destroying a batch can cost hundreds of thousands of dollars. Currently, the regulations do not address procedures in the event of a failed test. While the transportation of failed product is contemplated, it is not clear whether or how operators can remediate failed products in order to bring them into compliance. Most states address this question by allowing for the remediation of cannabis and cannabis products, as long as they pass a

subsequent round of testing to demonstrate compliance with stated action levels.

**Board response: Remediation should be allowable for everything but human pathogens.**

**2.9.1:**

- Harvest lot potency (three weeks before harvest) is not representative of the potency of cannabis flower. Potency should be tested by cultivar/strain of flower after harvest and be labeled on the product.

**Board response: Already accomplished by edits in another part of the rule.**

**2.9.2:**

- Is this testing parameter too tight? For hemp there is 20% variance allowable (according to commenter). With the cap of 5mg per serving and an increase in demand for micro-dosing, 10% may be difficult to obtain and will result in large amounts of waste.

**Board response: this will be changed to allow for increased variation in accordance with advice from the Agency of Agriculture.**

**2.9.4:**

- Commenter recommends that the Cannabis Control Board consider adding to subsection 2.9.4 Microbiological Parameters the following: "Aspergillus speciation testing shall be performed using a qPCR method or alternate DNA-based method on sample material that has been enriched in a medium that promotes fungal growth for a minimum of 24 hours."

**Board response: Leave as is, these types of specifications will be in guidance, which is already permitted by the rule. Methodologies should not be overly specific in rule as they will change over time.**

**2.10.3:**

- Subsection (b): Recommend allowing integrated licenses to co-mingle inventory until the they reach retail. Requiring separate inventory will cause the business to incur double the costs.

**Board response: recommendation accepted.**

**2.10.4:**

- Integrated Licenses should be permitted to purchase product from T&R license to sell to registered patients through medical dispensaries in an effort to ensure medical patients have continuing access to product.

**Board response: this is already permitted.**

The inventory tracking and transfer of product between medical and adult-use should only be an issue if the Integrated License tier sizes are over the maximum allowable amount for adult-use. I would suggest including language that details the need to separately track or transfer inventory from Medical to Adult-Use should only apply if the total canopy for both operations is above 25k sq ft. This should simplify things dramatically while addressing the Board's concern that Integrated Licenses would try to use medical cultivation to increase their tier size for adult use.

**Board response: this is already permitted.**

**2.10.5:**

- Should this section clarify whether a dispensary can purchase or transfer product from the adult use cannabis supply to the dispensary side? [this is not prohibited by rule, but transfers in the opposite direction are prohibited in 2.10.5(d)(i)].

**Board response: this is already permitted. Board can clarify in Rule 3.**

**2.10.5(d):**

- Drafting issue: clarify that the reference to subsection (b) is specifically to the cultivation tier limit in subsection (b).

**Board response: unnecessary clarification, it's clear as is.**

**2.10.5(d)(i):**

- The Board should allow transfers from dispensary supply to adult use with the explicit permission of the Board.

**Board response: Leave as is, integrated licensees will be able to manage their supply in ways that minimize loss.**

**2.10.6:**

- Permanent requirement that 25% of integrated licensee purchasing must be from small cultivators

Board response: This is a legislative issue, outside the Board's authority to require.

**Questions where there is no corresponding section:**

- Is white labeling allowed? Can licensees transfer products from one licensee to another at various points in the supply chain?

Board response: there is nothing that restricts white labeling.

- The requirements for municipalities and municipal authority are unclear. The Board should adopt rules around how towns will report local decisions to the Board.

Board response: recommendation accepted.

- To help reduce instances of complex corporate structures either subverting the one license rule, or using corporate structuring or contractual agreements to avoid obtaining a license in the first place, the Rule should add a catch-all provision that tracks the language of 2.2.18(f).

Board response: recommendation accepted.

- The Board should generally utilize its authority pursuant to 7 VSA 904a to lower the burden on small cultivators. The rule as originally drafted doesn't do enough on this.
- Specifically, the Board should do the following:
  1. 2.2.1 **Business Records.** (f) seed to sale tracking records – wouldn't these be maintained within the tracking system? Why duplicate? (n) waive SOP's for small growers
  2. 2.2.2 **Insurance.** Reduce coverage limits for small growers to ~\$250k, reduce escrow to ~\$10k. 2.2.4 **Health, Safety, and Sanitation.** Waive (a) procedures and (b) employee training. Retain (e)
  3. requirement to comply with applicable rules.
  4. 2.2.5 **Employee Training.** Waive (i), (ii), (vi), (vii), (viii) (all irrelevant to growers), and (x), (xi), (xii). OK to retain (ix) – (xii) if the Board will provide standard training modules, otherwise overly burdensome.
  5. 2.2.7 **Transportation.** Waive (g) for owner-operators – given long distances, may add deliveries to their other errands (one client, for example, mentioned taking his dad to Burlington for cancer treatment, making a delivery while waiting for him to be done). Waive (i) for owner operators.
  6. 2.2.8 **Waste Disposal.** Allow on-site burning as disposal method if unless prohibited by municipal rules.

7. **2.2.9 Packaging.** Wider comment that this seems geared towards retail packaging and thus is burdensome for any product intended for further processing before retail sale. However, all but (c) should (also?) be waived for small growers under 904a unless package intended for retail sale.
8. **2.2.10 Warning Labels.** Same wider comment as 2.2.9. Waive (a) and (d) with respect to products not intended for retail sale.
9. **2.2.15 Inversion and Diversion.** How do we enable growers, particularly small growers, to continue their existing genetic lines, and get up and running before seed/clone retailers are licensed, without “inverting” seeds and clones? Partial waiver?
10. **2.3.2 Visitors to Cultivation Sites.** Waive (f) safety protocols filed with Board.  
**2.3.5 Cultivator Packaging.** Allow small cultivators to allocate to the retailer, by contract,
11. responsibility for packaging (and in those cases waive (b)).  
**2.3.8 Cultivation and Operation Information.** Waive (e), (f), and (g).
12. **2.3.9 Vendor and Employee Samples.** Waive (b) (i), (ii), and (iii) where owner-operator is sampling.
13. **2.5.3 – 2.5.6 Energy Standards and Reporting.** Waive all.

Board response: the Board will ease the burden on small cultivators in the following ways:

2.2.1:  
(f) waive  
(n) waive

2.2.2(a) and (b):  
10K in escrow for all Tier 1

2.2.4(a)-(c) waive  
2.2.5(b): waive: 1, 6-8.

2.2.7:  
(i) waive  
(o) waive

2.2.9:

2.3.2(f): waive

Define visitor: exempt family members who are living at the site of home occupancy

2.3.5: make consistent with intra-supply chain operations

2.5.3: waive for home occupancy

Waive 2.5.6(b) and (c)

## Cannabis Control Board

### Rule 2 Written Public Comment Compilation

I think the idea of making small cultivators reach CBES standards for grow spaces needs to be revisited.  
Justin Fisher

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Hello CCB!

I've been thinking a lot about how we can use the commercial cannabis market to make things better, and not worse.

I'm particularly concerned about the potential for adding to the solid waste stream - especially given the global prevalence of plastic pollution.

I know that child-resistant packaging has been a huge contributor to solid waste (not to mention the frustration of seniors, who often can't open it).

I understand that the rigor of everything you're demanding with the rules comes from the fear of cannabis after decades of prohibition. But quite frankly, I'm more worried about trash, clean water, and accelerated energy use than I am about someone eating too much infused chocolate (I know it happens, but it's not nearly as dangerous to our collective longterm wellbeing).

I know in 1.4.9.d you talk about prioritizing folks who have plans for using recyclable, compostable, or reusable materials, but that should be a baseline requirement for all VT cannabis establishments.

Can you specifically allow for re-useable tincture bottles and salve tins - either by letting customers come back for a refill or to bring their container back for cleaning and re-use (much like Saratoga Olive Oil Company does).

Are there any options out there for refillable gummy or flower bags?

I'm also thinking about energy use. In 2.5.6 you talk a lot about requiring reporting on energy use reduction efforts, but how do we make it even easier for growing establishments to do the right thing?

If a cannabis establishment can't generate their own clean, renewable energy, why not work to develop and promote cannabis solar CSAs where companies can buy into shares?

Why not even require that all cannabis establishment vehicles (especially delivery vehicles) be electric? Why not require all establishments to have charging stations in their parking lots? After all, there are plenty of options on the market.

After all, we are in a global environmental crisis. From climate change to plastic pollution to resource depletion to topsoil erosion and water/air pollution, all our problems are accelerating rapidly. It's incumbent upon us all - and especially you as rule-makers and industry-overseers - to ensure we're not making things worse.

To that end, I'm also not comfortable with the suggestion in 2.5.6 (c) iv that establishments work with Vermont Gas Systems on energy efficiency. VGS is a purveyor of fossil fuels. They lie about the cleanliness of "natural gas" (which is neither clean, nor natural) and have force fed a fracked gas pipeline down the center of the state. Much of the work on that pipeline has been documented to be dangerously substandard, and threatens numerous watersheds and waterways.

Thank you for your time and attention.

Kathryn Blume

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Hello CCB, I live in Andover, VT and hope very much our state will hold true to our craft industry tradition. I would very much like to apply for a small independent outdoor cannabis permit when available and please do not make the permit burdensome re:cost of permit. Please do not allow large multi state cannabis companies to come in and dominate our industry. This opportunity affords rural Vermonters such as myself to start a craft business that can be handed down from my generation to the next and so forth. Small is beautiful and I look forward to the application process when available. Warm regards

Andrew Izzo

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At the last CCB meeting, I heard that Opportunity Zones would not receive priority consideration. This seems to run counter to the intended purpose and goals of Opportunity Zones as designated economically disadvantaged areas in the state that could benefit by new industries and job opportunities that the cannabis industry can provide. If a farm or business has been domicile in such zones for some period of time, they should be given priority consideration.

Jared Rolston

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On trying to calculate whether it would be financially feasible to join the small cultivators market, one would need more figures to work with. I see the anticipated fees for licensing and lab testing, and can figure out the operating costs. However, I don't know what the anticipated "income" would be for a small cultivator, with a canopy of 500 sq. ft. or so, that would sell flower to the market. In what quantities would they be purchased, in ounces? And do you anticipate, if the quality is high, as much as can be reaped? I realize my answers would be purely speculative, but something to go on would be very helpful.

Patricia Warren

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I have concerns about the fees involved with getting a license to sell cannibals products. I am hopeful that the board will consider the size of any operation when imposing fees. I am in my 70â€™s and I make out of cannabis a slave using my bees wax and other organic products. I have never sold any and just

give it to family and friends. It helps with sore muscles, muscle cramping and swelling. It is not something which you can get a high from. I would like to start selling my product from my home. I am very limited on the amount I am able to make due to the fact I only have 2 beehives and only grow 2 plants per year. If the licensing fees are high, it would not be financially feasible for me to apply. I am respectfully asking the board to please consider a lower fee for people like me.

Kind Regards, Parma Jewett

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First let me say that I appreciate that what the CCB is trying to do in a very short period of time is an extremely difficult task. There are so many details to get right. Its a very challenging situation. I very much appreciate that you are working to get it right. But I'd like to bring up something very basic that I think you are getting terribly, terribly wrong. Your sizing for indoor Tiers is so out of whack it is shocking and scaring most small growers right off the page. You list 1000sf as the smallest size for an indoor grow. Everyone under 1000sf will be grouped together. Do you have ANY idea how many small growers you just booted out of the mix? NO small grower has 1000sf indoors. That is just NOT a thing. I know many, many small growers in VT and not a single one of them has that sort of operation. 50x20?? Are you kidding me? Thats a warehouse. 250 sf is a very big "small" operation. Most small growers in our state operate in under 100 sf. I want you to think about what it means to a small grower to be lumped in w/ commercial outfits that have the investment capital to sponsor a 1000sf grow. Because thats exactly what you are doing. You are throwing every small grower into a completely unbalanced and unfair pool of competition, just exactly as you assured us all that you would NOT be doing. But thats exactly what this is. Never mind the extremely challenging administrative hoops (see "Insurance and banking") you're asking every small person to jump through. You're asking them to do all that just to enter into an arena w/a bunch of much bigger and better funded operations to try and make a go. The proposed Nov 24 rules have basically scared shitless every single small grower that was considering getting a license and jumping on board as a wholesaler within the legal framework laid out by the CCB. That is where you are currently leading us. So how many small growers will agree to all of those administrative requirements knowing they must compete w/ someone 10x their size or better? You won't get a one is my prediction if you keep the sizing as it currently sits. You have the framework available to adjust ..... you've all ready separated indoor tier size from outdoor. Why not take the much-needed second step and re-adjust the indoor sf numbers to actually reflect what is happening in our state. If you have 1000sf of indoor growing space working then you are NOT a small grower in VT. You are a giant. You have financial backing. You are 1/4 to half the size of the existing medical dispensaries. Is THIS the model you are hoping to promote in VT? If you keep the 1000 sf tier size as the lowest indoor level then you will force every small grower right back into the black market and you will have the highly financed sharks fighting each other for the available market. So, basically we will become CA, WA, OR, and every other state that has completely destroyed their local cannabis markets by not including the small producers. This is directly where you are steering by choosing those indoor Tier sizes without regard to the on-the-ground reality of what actually happens in VT.

Again I will state that I understand the difficulties presented by the job in front of you. You have done so much in a short period of time. I'm attempting to offer some perspective from someone who has an eye on the local trends and conditions while there is still time to save the model. Keep that Tier 1 indoor at 1000sf and you will lose every small grower that was looking to legalize and get involved within the framework established by the CCB. I appreciate your time and consideration in this matter. I did not offer alternative suggestions for sizing but would be happy to contribute some input on re-sizing if the board decides to revisit this issue before it is too late.

Respectfully, I thank for your time and all you are doing, and trying to do, for all of us VTers.  
Christopher Mayone

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concerns are as follows:

-requirements for packaging and cultivators. We want to sell bulk so packaging requirements would cost us.

-no thc caps for flower, edibles or concentrates

Zach Noble

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Hello. I know edibles. I come from a viewpoint of cannabis being a medical tool. very versatile from anxiety to severe neurological conditions. Cannabis seems to help so many people.

The proposed limits of 5mg per an edible and 50mg for a package is very disappointing and in a way insulting to us vermont artisan crafters. We are doing things different here in Vermont. It is my understanding that this market is being set up, in majority part, so the state can reap the financial benefits of the cannabis industry . I want to remind everyone that we have existed in the black market forever, so asking us to bring our products to such low levels is crazy to me. We will be contributing to more landfills because this will require so much more packaging for such a tiny amount of product, which will cost us more money, which in turn will force manufacturers to choose less eco friendly packaging, which is also more expensive. I believe that many manufacturers will choose less eco friendly packaging to make their budget due to the expenses of so much more packaging. In my opinion this 5mg limit is going to be negative to our environment. A second note, the calories. people who are used to getting 20mg candies in the black market will consume 4x the amount of product to achieve their desired result. This is asking for a spike in health issues and we have a tapped out health system. People who choose to use cannabis as a tool to get off of hard drugs and alcohol addiction use heavy doses of cannabis to do this. Again, our Healthcare system is tapped out. I am saying this to you as someone who provides holistic self care tools to those in need. For someone like me who uses cannabis and hemp together for neurological balance, I use 600+ mg of cannabis a day and it has been my choice to not get the medical card but to instead make my own medication, like the law in 2018 changed to allow me to do. I think this legalization needs to be a thing that is also going to accommodate the medical side of things. People have the right to alternative medicine and with a 5mg dose it's hard to think anyone would be able to successfully medicate as part of a healthy regimen without consequences from the sheer volume of product they would be forced to take at 5mg a serving. Even 10mg, still insulting to people like me, would be better than 5mg. As far as the packages go, in an effort to actually help lessen expenses for the manufacturers (we already are looking at ALOT) and to say "I love you" to our planet I recommend we be allowed to package up to 250mg packs of candy. For someone who self medicates this would be an appropriate pack size of infused edible products to last several days. Because no one wants to have to stock up on tiny packs of medication.

Thank you for all of the work you are putting into this. There are a whole lot of people who have been really disadvantaged by the federal attacks on cannabis, its about time we change things and it starts locally. Thank you for considering my input.

I also have a few more things to add pertaining to the idea I saw in an article where a vermont medical

advocate group is requesting capping plant thc at 15 %..... please for the love of everything beautiful, just don't. I could leave you 100 reasons why that is a bad idea from loss to the cultivator, or overall ruining our market before it has a chance to even live, but let me just leave with this : I have enjoyed cannabis from all over the country. And Vermont produces the best, Vermonters like 25% thc plants... 15% is crap. Like our maple syrup, our flowers are just the best ;) We make exceptional infusions too, sometimes with that same amazing VT maple syrup lol. Anyway, please let us remain artists.

I want to also address the "fear of overconsumption"

I watched my husband get tossed around in this crap health care system we have. I watched him get turned down from rehab because the beds are needed for court mandated people. I watched him go crazy like a test subject trying one medication after another and I watched him get tossed into a rat race we call "mental healthcare"... he's sober and working on his mental health now.. without the rat race.. and he got sober using cannabis as a recovery tool..

Overconsumption almost always looks like eating and sleeping.

I know this because I've seen it because this is a method that many addicts use to get clean off of hard addictions and they do this because our current Healthcare system isn't equipped to deal with the mental Healthcare crisis that we are under, and have been under for some time now. I think we have all lost someone who lost their battle to addiction. I think we put addiction in an ugly little box, when it should be fully embraced as the disease which it is. It IS a mental health issue. And somehow we secluded it, we criminalize it. We punish the addicts because we don't have the resources to help. Cannabis IS a resource to help, not just the plant itself but the funding it will be able to raise towards recovery efforts in Vermont. Please consider how many people will be buying these products legally, in an effort to battle addiction, because that's real. Also the federal government has made it impossible to run testing on cannabis. The federal government has tried to scare folks to prevent them from using this plant and I can only speculate on why. Please take the input from those of us who have lived it, and continue to live it with more value than you take that of the federal government. Thank you and have a great holiday season.

Kelli Story

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Hello, Would current medical patients be considered social equity applicants?

Many registered patients are currently farming in a small scale, and a path towards commercially viable production seems logical, for those that choose to do so.

I'm a bit concerned by the lack of mention of currently registered patients in the proposed licensing regulations.

It seems registered patients should certainly qualify as social equity applicants, and programs tailored to these applicants would seem wholly reasonable.

Thank you,

Larry Phillips

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Thanks for taking the time to review my comments.

1st, I do not support a THC limit of any kind on retail cannabis products. A THC limit will stifle our retail market before it even begins. Customers / consumers will inevitably continue to purchase cannabis in whatever manner they already do rather than purchase weakened state limited products.

2nd. I just finished reading through the proposed rules. I do not see any regulations for an online cannabis retail company where customers never physically enter. In this instance, all transactions are completed 100% online and a private delivery service is used to delivered orders.

3rd. I did not see any regulations for delivery services.

Please add these items to the CCB agenda to formulate if they are not already.

David Nacmanie

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How can people utilize their home or small garage or small shed to cultivate if CBES must be met? Will CBES requirements really make licensing achievable for your average person? Will there be exemptions for someone who wants to turn a shed or a room in their house or a loft in a garage into a grow?

Justin Fisher

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Hello. I know I have written a few comments and I've spoke before too. This is more of a letter to the control board. I am reaching out for some support here. I am a crafter. I make edibles and other cannabis items that I donate to people who can't afford to buy similar products in dispensaries bc of their low or fixed incomes. What I do fills an actual need, especially since the pandemic and the start of the crumble of our Healthcare system. When I talk about what I do some professionals like to come back at me with lines like "most dispensaries offer a discount to those on fixed incomes"..... yes I am aware. But are you aware that even that discount isn't enough for most of these folks? A disability benefit recipient does not usually receive enough supplemental income to cover even the discounted rates in our medical dispensaries. Vermont doesn't regulate the prices or anything so why would these folks be able to afford the costs? At \$90 for a 1 ml tube of distillate (for example), that treatment isn't actually obtainable to these folks. These are often the same folks who get caught up in addiction due to

excessive prescription use. In any normal week at least one person takes the time to contact me to let me know that my help has saved their life by giving them the tools to manage their pain and the hope and strength to keep moving forward. I do this all while following the states rules which prevent me from being fairly compensated for my hard work. I need some help here please.

I am trying my best to get a small commercial space set up so I CAN in fact join the legal market. I deserve that and the people I help deserve that. I directly help with our overwhelming addiction problem! I have helped many people get clean from alcohol addiction and drug addiction just by supporting them and helping them. What I do really does matter. I keep hitting brick walls. The health department doesn't have a kitchen model for me because they say they won't be overseeing kitchens like mine. I almost cried when they told me this because it is just crushing at how challenging this is becoming. The fire Marshall's are helping me figure out what out the code I will have to follow would be and as we explore that, the cost is looking heavier than I can afford. How am I supposed to afford the costs when the law prevents me from being compensated for my work? Even if my credit didn't look like someone who was financially ruined in an abandonment in 2015, I can't get traditional funding and even with a legal staff on board this is becoming much more than someone like me, who uses organic ingredients, respects state laws and legitimately HELPS people can afford. The state isn't doing anything to help people like me get grants or funding! The work I do is needed, we are in a mental health crisis. People are dying every single day from silent diseases that lead to choices like suicide or OD.

In my kitchen the ovens would not exceed 240 degrees because I don't infuse with alcohol or other chemicals like majority cannabis processors will be seeking to do. In fact, this is how I make my oil : I put my plant matter into liquified organic coconut oil. I put them in a stainless steel container with a lid and cook it in my oven at 240 degrees for 4 hours. After the 4 hours is up I strain the oil and will process the same oil with more plant to make a concentrated baking base. I even potency test with lab gear that I had to save to buy from my own pocket to be able to give these people reliable numbers to work with their doctors with. I go above and beyond what the expectations SHOULD be. I go above and beyond to provide high quality and safe ingredients. Why should my kitchen have to fall under the same insanely strict guidelines of facilities that would be processing concentrates like shatter, distillite and RSO? Why? I don't even reach temperature in the 300s and the only heat sources in my kitchen would be a confectionary oven and my stovetop.

Today I feel frustrated because I have poured so much into this and I really want this. But for some reason adding one tiny ingredient to my menu, a natural ingredient made with zero chemicals, is somehow in the same house as those who infuse with alcohol and explosive materials. It's coconut oil... I have yet to even catch it on fire one time and I've been doing this for 13 years. The cost to set up a space should not be what throws me out of this game!

If people like me stay on the black market due to not being able to afford the excessive coding required for a kitchen, it will hurt the ones that go legal. Our quality is better than anything on the market. The craftsmanship of my product is better than anything on the market. My products are so popular because of their effectiveness in fighting pain and promoting good sleep that you would think they ARE on the legal market.

Please separate people like me who aren't doing dangerous infusions and just need a small confectionary or baking space for both processing their infused baking oil and also to make their infused creations. Please help make it financially obtainable to meet standards for people like me who could be charging 25 dollars a brownie on the black market but instead take the financial hit and charge \$0. I don't deserve to be in the same book as folks using potentially explosive material to make their candies and products. My products are organic and chemical free and deserve to be treated as such. Thanks

Kelli Story

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Should not the warning on cannabis at least include a statement such as "Consumption impairs your ability to drive a car or operate machinery?"

Robert Oeser

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Really curious if legacy cultivars will be allowed to cross over from black market to recreational market? Or does everything have to be started from seed to be tracked? Does this change depending on tier of licenses? Can't seem to get a straight answer

David delisle

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Greetings, hopefully consumers can be protected from PGR grown cannabis.

Hopefully, any quality certification testing will be able to assure consumers of a safe and clean product.

Regards

Larry Phillips

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I see that Proposed Rule 1 1.1.3.f states:

(f) Outdoor cultivation means growing Cannabis in an expanse of open or cleared ground that is not enclosed by a structure and in a manner that does not use artificial lighting.

And yet in many other places the rules require "fencing" for outdoor grows. Arguably "fencing" is by definition a "structure".

Perhaps this might be a problem.

Thank you

Kim Kolakowski

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Cannabis Control Board,

I am just submitting a public comment in an effort to show support of a possible license type that you guys have talked about.

I am hoping that you will make available a delivery license. Based on the outlined criteria, I will be

eligible to apply as a social equity applicant.

I am planning on applying for a Tier 1 cultivator license, and so would like to be able to sell and deliver my products directly to consumer.

I am a born and raised Vermonter, and am a UPS driver. Over the past couple of years I have seen how UPS has exploded in growth. I am confident that starting my own cultivation and delivery business will allow me to build a successful venture so that I can quit my full time job with UPS and dedicate my efforts to my own business.

Thank you,

William Bassler

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To the Cannabis Control Board,

I have read the proposed rule for license application and have the following comments:

As a small-scale beef and pork farmer, I have developed a profitable business cultivating and selling direct to consumer high quality, unique products. The USDA has prevented me from processing on-site, but I am fortunate to have a local processor that does a good job. I envision a similar business for cannabis; growing a small number of plants (less than 50), processing on-site (extracting into oil, making into edibles) and selling direct to consumer (through our existing network of contacts in the state). However under the proposed rule I would have to apply for three licenses, cultivator, manufacturer and retailer. I would hope that the board would provide an efficient and easy method for someone like me to apply, and not require performing the same tasks three times.

It is possible that over time I determine it's more efficient and profitable to simply grow and sell cannabis wholesale as a cultivator, but that will depend on the price, access and quality of the rest of the market. I expect in the beginning to have to do most of the work myself.

Further, I noticed in the application process a requirement to hold insurance against liability. I would hope the board has researched this topic and found reasonably priced insurance options for all license types in Vermont. I am imagining my insurance agent fainting at the thought...

Lastly, I commend the board for the timeline proposed. This timeline will allow outdoor cultivators to legally begin growing in 2022. If the rulings get delayed, I would urge the board to consider providing cultivator licenses to outdoor cultivators in April, so the crop can begin growing while the rest of the ruling is sorted out. An outdoor cannabis plant won't be ready for harvest until October or November of 2022.

Thank you for your time!

Nick Zigelbaum

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Hello. Kelli Story again.

I wanted to ask the people making the recommendations to please take the time to TRY the various

types of edibles made from different infusions. I am very upset that you want to put what I do in the same category as those whose extract using harsh chemicals. I have offered board members my products at events to give you the chance to actually try the organic and chemical free products I make, and others make too. I'm not the only one using this popular (and safest) method of infusion. I was told that you guys aren't allowed to take gifts. Even when they are literally the products you are supposed to be fairly making Vermont custom recommendations on. I'd really like you to see for yourself the difference in infusions and the effects of those different methods. I use Low heat extraction. No chemicals just organic matter, and its the type of product that you would give your grandma for rest and relaxation. The 5mg cap is absolutely ridiculous. Absolutely. You will ruin what I and other cannabakers do, with that level. Go to 10 at a minimum please, other legal states have set 10mg caps. There is no good excuse why Vermont can't ATLEAST do that. Please please please. I don't think you really are getting how negative a 5mg cap is going to impact the new legal market. Unless you're fluent in our current black market options, you wouldnt get it. So please. I beg you, I would even invite you into my kitchen to see firsthand what is going into my products to help you understand firsthand how a typical black market artist may operate. Please don't go with 5mg caps on edibles.

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With respect to the open comment period: re indoor cultivators - I would like to see language regarding light pollution / a dark skies provision especially regarding opaque buildings. Grow light should be shielded from radiating OUTSIDE the building. Just over the border in New York, there is a tulip (aquaculture) greenhouse complex. The grow lights are pinkish in color. A pink glow from the growhouses houses can literally be seen 15 miles away.

Obnoxious aromas are subjective, however, with regard keeping the character of the neighborhood, language protecting neighbors "downwind" would be welcome. Thank you.  
robert zeif

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Rule 2, 2.2.9 Packaging Section A  
(a) be child-resistant and opaque,

This limits the ability for clear glass jars, which are more sustainable and reusable/recyclable than plastic pouches, which is what a lot of cultivators will turn to if this isn't adapted to allow for clear jars with child resistant tops. Clear jars are a staple in other states, are cost effective, and help protect products better than pouches. We should all focus on decreasing the potential for waste in the industry and this rule doesn't help that in current form.

Thanks for your consideration!

Nate Reitman

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Dear Chair James Pepper, Ms. Julie Hulburd, Mr. Kyle Harris:

First, I would like to thank all of you and your entire staff for all of your diligent efforts within a demanding timeframe to create these proposed rules.

I would like to recommend that the Cannabis Control Board consider adding to subsection 2.9.4 Microbiological Parameters the following:

"Aspergillus speciation testing shall be performed using a qPCR method or alternate DNA-based method on sample material that has been enriched in a medium that promotes fungal growth for a minimum of 24 hours."

I thank you for your consideration of this recommendation.

Respectfully,  
Dr. Sherman Hom  
Director of Regulatory Affairs  
Medicinal Genomics Corp.

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Hello, just wanted to share some concerns while they are on my mind. I travel to Colorado on occasion and I'm shocked to see so many cannabis stores. There are so many that it makes you think negatively about the state. The town of Eagle-Vail is an example of a town with a few along its main street -- all very visible. We don't want so many stores here in Vermont. Can we limit the number? Also, because of the availability, skiers and snowboarders go to Colorado and smoke on the slopes. As you can imagine, this is not safe. (I've had an experience with a near-disaster.) We need to promote using it at home -- not on the roads and not on our ski slopes. How can we encourage this? What can we use as a "carrot" and "stick" to promote smart behavior as people buy cannabis in our towns in Vermont?

Kris Surette

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Hello,

Section 2.2.7.b states Only cannabis licensed agents are permitted to transport cannabis, and a cannabis licensed agent is defined as a person employed by the cannabis establishment (business). Could there be an allowance for cannabis establishments to hire qualified secure transportation company (think along the lines of armored car, but may be not as extreme), to remove safety concern for establishment employees during transportation. Joe and Ethel, small establishment owners may not be comfortable transporting \$50k of product themselves.

Or, might a hired secure transportation company be considered employed (albeit temporarily) by the cannabis establishment and qualify as a licensed agent?

Thank you,  
ADAM MCPADDEN

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What is stopping VTers from legally isomerizing hemp derived CBDA isolate into d9-THC, formulating edibles that are less than 0.3% tTHC and selling them in 50 states?

I understand that this process was banned for producing hemp derived d8-THC as I worked for the lab who was doing this when the legislation was drafted. The bill cites the reasoning for the ban to be the lack of d8-THC in hemp, therefore it is considered "synthetic".

This is not the proper use of the word synthetic. In chemistry, synthesis means to derive a complex compound from simpler building blocks. When you convert a plant isolate in a subtle manner the reaction could be considered semi-synthetic at best.

There being an allowable and therefore appreciable amount of d9-THC in hemp, does this ban then not apply to hemp derived d9-THC?

How does the hemp bill effectively ban "solvent" extractions, while allowing use of ethanol and

scCO2 as solvents for extraction?

Alcohol is an excellent solvent, as is scCO2. There are no extractions without solvents. Even in mechanical ice hash extraction, the solvent is water.

Alcohol is flammable and scCO2 has very high pressures. What is the justification for banning butane then? It is low pressure and flammable. I get that it's risky, but so is alcohol extraction and CO2.

When the VT CCB absorbs the VT hemp bill in the coming year, can we expect both of these issues to be resolved?

I believe we should not be so unreasonably restricted in our manufacturing options. The result is cost prohibitive entry into the market as cryo-ethanal and supercritical CO2 extraction equipment require orders of magnitude more capital than closed-loop butane technology, while having similarly controllable risks.

I own an unused closed loop butane system id like to put to work right away, but this solvent specific ban is unfair to small start up enterprises, which VT claims to be friendly to...

Might you develop tier 1 and 2 hemp processors licenses? Might you allow cross over of hemp and cannabis processing?

Matthew Falco

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Under "definitions" for proposed Rule #2 I noticed--

(3) "

Affiliate

" means a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with another person.

I think I may understand the intent but the language is problematic. One part of the sentence does not agree with the sense of the other parts. It even suggests that a "person" may be "owned".

Purely a language problem but an important one.

I suspect that my own roll in my sons operation will fall under this definition.

Kim Kolakowski

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It is my understanding after speaking with VSECU that they have put a moratorium on opening any accounts for cannabis businesses. This will be problematic as we move into adult use retail. I also have not heard of a plan to transport cash from retail establishments to financial institutions.

Scott Sparks

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Hello, My name Is Ben Fisher. I am writing to again voice my support for farm sales. Upon further thought and deliberation amongst hemp growers and potential recreational cannabis cultivators, it is apparent that allowing farms to sell direct to consumer in anyway at all would improve participation in the market place. The biggest reservation amongst growers to go legal is being able to bring their product to market. In particular our states hemp growers (who have the practical experience to grow high quality cannabis at scale) have struggled to sell their hemp and are rather pessimistic about their ability to sell their product if they invest the large amount of capital it will take to run a legal grow(the

best quotes for a tier 4 outdoor fence without a security system is running a minimum of 20k and the price per linear foot is higher for smaller operations). Personally I plan to participate in the legal market in spite of these challenges though I remain skeptical of my ability to sell at a fair price or sell at all. I whole heartedly believe (as do many other cultivators) that if there is any system at all for farmers to sell direct to consumer it would dramatically increase market participation.

The means of participation by farmers/cultivators could be limited to the safest and lowest risk methods such as only delivery or only curbside pick up. Delivery would be handled such as any delivery service offered by a retail establishment and if necessary in could be run by a third party. Curb side pick up could be done through a window with a sliding/revolving slot to exchange cannabis and cash, similar to a drive through bank window or late night convince stores in urban areas. I am not sure if Vermont has many of these style windows in convenience store but they are very common in more populated/urban areas.

I sincerely hope that you all at the decision making level take these points into consideration and make allowances or farm retail. What I am expressing is representative of the opinions of hemp and cannabis cultivators throughout the state. I believe that allowing farmers to sell their own product will be best for the market as a whole.

Thank you for your time and all of your hard work!

Benjamin Fisher

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Hello,

I feel the edible dosage is to low per package. Michigan has a pretty good set up for edibles. You should check out their rules.

Damien Evans

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Good morning, I wanted to ask a few questions bases on the information we currently have.

There are few processes and systems within the rules that I feel need more attention to detail and understanding.

#### RETAIL

1. Will a retail facility need a separate entrance and exit?
2. Does a retail facility need a vestibule type situation for ID checking?
3. There is mention of a break room and office space, and ample storage, are there more details on the expected parameters of those?
4. When can we expect more information on Seed to Sale tracking systems? This information needs to be in a business plan for all potential retail applicants.

#### PROCESSING

1. As a processor of products for other Vermont Companies, I'd like to see clear rules on tracking, and transferring distillate. Some of these VT brands use their oil in our products, then they are returned to the Company for distribution. I know they want this to happen in the rec market as well. I'd like to see more clarification on this process and understanding from the board member about the chain of command of oil/ distillate & transferring the finished product that is intended to be packaged and distributed by them. Will we need to package in the processing facility? Does it matter if there is documentation and manifests? If we could clarify this.

2. There are many ways to create a dosable product that a customer can clearly define and comprehend. Clearly gummies and products like them are individually dosed with a specific amount per package. My question is about baked goods, what are the expectation to clearly define a dose on a cookie, or brownie? It is unrealistic to have a 5mg whole brownie, and can't have a 50mg, (HOPEFULLY HIGHER) whole cookie without dosing information. Is it an expectation of indentations? Is it transfer paper, a template? So we need to have 5mg pieces? Thank you for clarification.

3. I have had cultivators ask me, if they sell someone 5lbs of flower does it have to be packaged or can it be a full pound to be packaged in a processing facility. Can we clarify the language?

#### Social Equity

It is my Understanding that the advisory board recommended that the Control Board remove Women from the social equity guidelines in Vermont. Federally women are included. There is language throughout the Regulations and Licensing that states women are disproportionately affected. Female CEOs in the Cannabis industry are declining, not increasing, as a business grows, they are increasingly taken over by large corporate predominantly male boards. Female historically work harder to be heard and respected and taken seriously in this industry, and in the business world in general, until these numbers change, I believe female should be part of the social equity conversation in Vermont as it is Federally.

#### Medical Patient Rights

As a medical patient, I personally am not happy with my options. An advocate for the Medical Program, I am as concerned as anyone that the integrated dispensaries will not be able to keep up the supply with the demand. I know medical patients are concerned about their rights and access. I have advocated in the past for ALL dispensaries to allow Medical Patients to cut to front of lines, Tax free product, and higher medical potencies. If we allow ONLY the Integrated dispensaries to sell to Medical Patients, they will have less choices than the average customer.

As a medical patient myself, I want to be able to choose where my medicine comes from and not be confined to the same 3 Choices only that I have had for 5 years.

As a potential retailer I would like the option to provide to medical patients, even if that means some adjunct licensing. Personally, I think it should be up to the Medical Patient to choose and they should have more choices than the rec Market customers. Stronger language advocating patients in the regulations would be a recommendation of mine.

Thank you for listening and thank you CCB For doing such a thoughtful job.

Sincerely,

Meredith Mann

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The successful future of our Vermont communities is built on the brains of our current youth and the thoughtful decisions we make as we envision being the best we can be for years to come. Decisions about regulating cannabis establishments is a vital opportunity to keep health, safety, and progress in mind as well as the economics. We must consider the unintended consequences and social costs, many of which we have already learned from the substances of tobacco and alcohol and from other states who have already allowed retail cannabis. Let's make this a win-win situation. We in the Prevention field have decades of experience working to delay youth use, protect the developing brain, provide education, and help build the environmental strategies to support the protective factors needed to prevent substance use disorder, impaired driving, and mental health issues.

Please consider these key elements in your regulation:

BUFFER ZONES should be more than 1,000 ft and include all areas where youth are at school and at play as well as a respectful, supportive, consideration for Recovery and Treatment centers.

POTENCY is recommended to be limited to 15%THC. This should be a health and mental health concern and the decision should not be driven by the manufacturers or what is easy or convenient to produce.

We have a chance to start this off right--let's not create a monster we cannot control.

MONEY from the 30% excise tax is needed to go to prevention and should go to the VT Dept of Health, ADAP, as this division is the expert in dispersing funds to prevention consultants and community coalitions to implement prevention strategies throughout the state in a coordinated effort.

ADVERTISING and marketing are major influencers on youth. Remember that smoking rates went down

when a variety of strategies took place, including no more tobacco ads on TV and Radio and no more Joe Camel cartoon stickers at youngster eye level on convenience store doors. It would be beneficial to limit the exposure youth have to ads and to increase ad campaigns about the danger of early use among youth.

A PLAN to enforce compliance of all of this is imperative. It makes a big difference in alcohol and tobacco in order to keep our kids safe. Let's do this with cannabis as well.

The CCB is in an important position to lay the groundwork for years to come. People, and kids, assume legal means safe. We need to make sure that the labels list all the risks, after all every food now has a warning about nuts; that we act as the adults caring for our next generations; accept the science that the brain is not fully developed until age 25 and that cannabis can be extremely detrimental to the health and mental health of youth. Thank you for your work in doing this right-- it is certainly an enormous task.

Ann Gilbert

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Hi Julie,

Amazing how quickly things are moving now that the session is underway.

The NurseGrown Organics team and I have been doing a lot of thinking about retail packaging, and the challenge of child-resistant packaging not being accessible to the elderly and handicapped.

We have found re-usable, brandable, certified child proof stash jars we like a lot, which we think would be manageable for the elderly and handicapped. Given that James has said heâ€™d be ok with cannabis flower not being sold in child-resistant containers, could the CCB make reusable containers for flower the industry standard?

Also, weâ€™d love to see compostable/biodegradable packaging - which weâ€™ve found and are using - be required for everything else, otherwise the state solid waste system will be inundated with mylar packaging because itâ€™s colorful.

You can see the packages weâ€™re using here.

Weâ€™ve not yet found childproof dab containers which are also workable for the elderly and handicapped, but weâ€™ll keep looking.

Bottom line: we really donâ€™t want to see the cannabis industry be part of The Problem in any way. Or at least as little as possible.

Finally, weâ€™ve looked at the NACBâ€™s power point on Social Equity Recommendations. We think theyâ€™re quite good and agree that if women arenâ€™t considered Social Equity candidates, they should definitely be considered Economic Empowerment candidates.

Thanks so much! Best of luck in all your work.

Kathy

## DRAFT FEEDBACK

### VCTA

- 1.1 Section 1: General Provisions
- 1.2 Section 2: License Application Format and Fees
- 1.3 Section 3: License Tiers
- 1.4 Section 4: License Application Requirements for All License Types
- 1.5 Section 5: License Application Requirements for Cultivators
- 1.6 Section 6: License Application Requirements for Manufacturers
- 1.7 Section 7: License Application Requirements for Retailers
- 1.8 Section 8: License Application Requirements for Testing Laboratories
- 1.9 Section 9: License Application Requirements for Integrated Licenses

Ask that the Board remove “free cannabis” as an option as the medical dispensaries are already required to providing a sliding scale fee system. The dispensaries already offer significantly discounted product and do so at a cost to their business. We recommend continuing the sliding scale fee system as it has clear requirements and qualifications that have been in place for years.

- 1.10 Section 10: License Application Acceptance Periods
- 1.11 Section 11: Criminal Records and License Suitability Determinations
- 1.12 Section 12: Issuance of Licenses
- 1.13. Section 13: Provisional Licenses
- 1.14 Section 14: Priority of Board Considerations for License Applications
- 1.15 Section 15: License Renewal Procedures

#### 1.15.1 License Renewal Timeframes

We are asking the CCB to allow Integrated Licenses to renew medical and adult-use at the same time to maximize efficiency. Renewals are time consuming and require the review of large quantities of documents. Should Integrated Licenses be allowed to renew medical and adult-use simultaneously, they will save significant amounts of time.

- 1.16 Section 16: Cannabis Identification Cards
- 1.17 Section 17: Applicant’s Ongoing Duty to Disclose
- 1.18 Section 18: Confidentiality

## DRAFT RULE 2 “REGULATION OF CANNABIS ESTABLISHMENTS

### DRAFT FEEDBACK

### VCTA

- 2.1 Section 1: General Provisions
- 2.2 Section 2: Regulations Applicable to All Cannabis Establishments
- 2.3 Section 3: Regulations Applicable to All Cultivators
  
- 2.3.5 Cultivator Packaging

VCTA recommends adding a hardcopy CoA at the time of receipt of product to this list.

2.4 Section 4: Regulations Applicable to All Outdoor Cultivators

2.5 Section 5: Regulations Applicable to All Indoor Cultivators

2.6 Section 6: Regulations Applicable to All Manufacturers

2.6.3 Additives

VCTA recommends allowing the addition of herbal additives to stay competitive with neighboring states.

2.7 Section 7: Regulations Applicable to All Wholesalers

2.7.1 Wholesaler Security

(b) VCTA recommends looking to insurance providers for security requirements. The safe being bolted to the floor originated in requirements from insurance companies for theft insurance.

2.8 Section 8: Regulations Applicable to All Retailers

2.8.2 Retail Security

90-day storage is a significant added cost. The medical cannabis dispensaries are required by Rules to keep 30 days of stored footage. Incidents are addressed in the immediate 24 hours and footage from an incident can be saved should the CCB request that occur.

2.9 Section 9: Regulations Applicable to All Testing Laboratories, Cultivators, and Manufacturers

2.9.2 New Tests

VCTA recommends looking to align THC requirements with those of hemp. There is currently a 20% tolerance for hemp vs 10% for cannabis. With the cap of 5mg per serving and an increase in demand for micro-dosing, 10% may be difficult to obtain and will result in large amounts of waste.

2.10 Section 10: Regulations Applicable to All Integrated Licenses

2.10.3 Co-located Operations

(b) Recommend allowing integrated licenses to co-mingle inventory until they reach retail. Requiring separate inventory will cause the business to incur double the costs.

2.10.4 Duty to Maintain Continuity of Services to Medical Patients

Integrated Licenses should be permitted to purchase product from T&R license to sell to registered patients through medical dispensaries in an effort to ensure medical patients have continuing access to product.

The inventory tracking and transfer of product between medical and adult-use should only be an issue if the Integrated License tier sizes are over the maximum allowable amount for adult-use. I would suggest including language that details the need to separately track or transfer inventory from Medical to Adult-Use should only apply if the total canopy for both operations is above 25k sq ft. This should simplify things dramatically while addressing the Board's concern that Integrated Licenses would try to use medical cultivation to increase their tier size for adult use.

2.10.5 Use of Dispensary Cultivation for Integrated Licenses

If there is excess medical product, the Integrated Licenses would like to have the option to transfer to T&R with explicit approval from the Board. This will prevent product from expiring and will support current medical dispensaries.

2.11 Section 11: Licensee's Ongoing Duty to Disclose

2.12 Section 12: Confidentiality

2.13. Section 13: Regulatory Waiver

Meg D'Elia

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As a nurse, I hope to see statewide cannabis education standardized, evidence based and mandatory for all.

As a woman, I would like females to be considered priority for licensing, whether as social equity applicants based on the drastically low and decreasing number of women in cannabis, or considered immediately after SE applicants, and before everyone else please.

I also support patients being able to shop at any adult use retail without paying adult use taxes.

I appreciate your time.

Samantha Gambero

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I am a primary care physician in Vermont. I would like to see labeling of cannabis products include the 6 proposed health warnings. 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.

Melissa Volansky

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2.2 Section 2: Regulations Applicable to All Cannabis Establishments.

(This adds testing laboratories to these rules)

2.2.1 Business Records

Cannabis Establishments are required to maintain the following records onsite and readily accessible and make them available for inspection by the Board, if requested: (f) seed-to-sale tracking records; (k) testing records, including all Certificates of Analysis; (l) sampling unit records;

2.2.2 Insurance

Cannabis Establishments are required to obtain and maintain insurance, or an equivalent, at the following levels:(a), and product liability insurance coverage for no less than \$1,000,000 per occurrence and \$2,000,000 in aggregate, except as provided by subsection (b) of this section. The deductible for each policy shall be no higher than \$5,000 per occurrence (b) A Cannabis Establishment that documents an inability to obtain minimum liability insurance coverage as required by subsection (a) of this section may place in escrow a sum of no less than \$250,000 or such other amount approved by the Board, to be expended for coverage of liabilities. (c) The escrow account required in subsection (b) of this section must be replenished within ten business days of any expenditure.

2.2.6 Tracking of Cannabis and Cannabis Products

2.2.9 Packaging

2.2.10 Warning Labels

2.2.11 Advertising

2.2.12 Audience Composition Presumptions for Advertising

2.2.15 Inversion and Diversion from the Legal Market is Prohibited (we should be able to test Home Grows)

2.2.18 Co-Location

We don't see the necessity to add Testing Laboratories to these rules as we won't be providing retail products to the public

Yearim plantillas

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First, thank you to the CCB and all related folks in the sub committees for their hard work getting the Vermont cannabis industry off the ground.

To provide context, my business partner and I (both queer women) own, and hope to operate, Siren Tea, LLC. Our goal is to be licensed as a tier 2 indoor cultivator as well as a tier 2 manufacturer and we will be running our business on land that we will also be living on, and farming, with our families.

I understand the objective of getting as many legacy growers into the regulated market as possible by lowering the barriers of entry in the licensing application and regulatory processes. I also understand that, in statute, "craft cultivator" is defined as a tier 1 cultivator. However, I think it needs to be understood that, unless you're coming from the illicit market, having already paid for your grow space and your equipment without the additional fees and expenses associated with the legal market, starting a legal indoor cannabis business as a tier 1 cultivator is not a profit making enterprise. Certainly not profit enough to be considered full time employment. With the current legislative definition of "canopy", tier 2 indoor cultivation is the minimum square footage needed to run a profitable business. Tier 2 cultivation is still a business that can be run by one person, two at most, with additional part time or seasonal labor for trimming. Tier 2 is still, very much, a small cultivator.

Additionally, whether using the interchangeable terms "legacy grower"/"craft cultivator"/"tier 1 cultivator" or even "applicant impacted by cannabis prohibition", given the lack of racial diversity in Vermont, you are generally speaking about one group of people, white men. Statistically speaking, your diversity applicants (BIPOC folks and women), are going to be entering the cannabis industry for the first time with the roll out of legal licensing, nearly guaranteeing diversity applicants will have to apply at tier 2 or above.

With all this being said, and given the other goal of Act 164 to create a diverse and inclusive industry, I suggest including tier 2 cultivators in the licensing and regulatory exemptions, to make a fair and equitable market place for all small cultivators, not just the legacy growers who already have a significant head start in their start up costs, customer base, genetics, etc.

My second comment is in regards to specific licensing requirements. I'll use the requirement for liability insurance or an escrow account as an example. I think this is a valid and important aspect of running a business, especially in the cannabis industry. However, this becomes a "cart before the horse" scenario. In order to secure a bank account (I've checked with VSECU), funding (which would need to go in the bank account), insurance, or almost any other essential component of starting a business, we must FIRST have a state issued license. Therefore, requiring any of these things in order to get a license becomes impossible or nearly impossible. In the case of escrow (in lieu of insurance, pre-license) you would need a significant amount of personal capital to meet the license requirement since both outside funding and insurance wouldn't be available pre-license. Expecting large sums of capital be available before licenses are issued is a significant barrier to entry that is far greater for

diversity applicants, much more so than for white male legacy growers who have been benefiting from the illegal market, systemic racism, and systemic sexism.

As it is, without even going into the insurance/escrow issue, for Siren Tea to get licensed, we are having to find alternative funding to purchase land, so we can give a physical location for our license application, so we can get our license, so we can then apply for more funding to build our cultivation space. The time that all takes (if we can even find people to invest in us before we're licensed), plus the time it will take to grow out the bases of our genetics from seed (because we are not legacy growers with genetics on hand), means that we will not have branded products in stores until summer of 2023 at the earliest.

As a solution, I suggest a two part licensing system, in which, most everything goes on your initial application, or a "preliminary license", other than the factors you can't perform without a license, and that we sign that we understand that in 6 months (for example) we will be subject to an inspection and that we'll need to provide proof that we've taken care of the things that required the licensing (insurance, bank account, etc) or our license will be revoked. Naturally this would only be necessary for anyone getting their first license, not for renewal, in which case you should have proof that you still have all of the requirements in place from the initial licensing process.

I hope these comments make sense and thank you so much for your time and effort.

All the best,

Tay Margison

Siren Tea, LLC

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To The Members of The Cannabis Control Board,

I'd like to begin with a word of gratitude for your tireless work with respect to Vermont's implementing a system of regulation for the sale of recreational cannabis. Your commitment to the

concerns of our state's cannabis community and your willingness to work with us, as opposed to ruling by decree, are the building blocks of the kind of collaborative relationship that is crucial for the sustained success of this industry. With that spirit of partnership in mind, I'd like to take this

opportunity to comment on Rules 1-5 as they exist at this time.

General Notes:

Total Tax- At a total of 21%, a tax of this magnitude has the potential to be a boon to the very black market that legalized cannabis is designed to eliminate. In order to ensure that even the smallest businesses have the chance to survive and thrive, and to incentivize consumer participation in the legal marketplace, a lower rate, one on par with alcohol (11%) for example, offers a far more sustainable path forward.

60% Cap On Concentrates- If these Rules are truly constructed to effectively eliminate the black market production and sale of cannabis products, a cap this stringent is not just self-defeating, it's decidedly counterproductive. Given the growing popularity of oils and concentrates, a cap

of this nature would essentially serve as the death blow to a legally regulated alternative. The entire point of producing and consuming concentrates is inexorably linked to their purity (often above 90%). To hamstring legal cannabis purveyors with this kind of limit would not only extend the existence of the black market, it would likely result in its expansion.

1 Ounce Limit- While this proposal does not provoke the level of alarm as those analyzed above, it does seem rather arbitrary and needlessly prohibitive. Once more, a limit like this one

could be a lifeline for the black market. And while I understand that matters of public safety require some kind of limit on the quantity of cannabis a single customer is permitted to purchase, a single ounce is simply too low.

#### Categorical Questions & Critiques:

1.7- License Application Requirements for Retailers- For clarity's sake, I'm curious about the parameters of this requirement. Are retailers only required to provide this list during the application process, or is this a quarterly/yearly submission? Considering the sheer amount of labor and time that operating a successful retail business demands, I suggest that this list be submitted only during periods of application or renewal.

2.2.2- Insurance- Given the considerable amount of revenue that retail businesses are already required to contribute to insurance of one kind or another (standard liability among them), I suggest avoiding the product liability category entirely if possible. Not only could this requirement invite undue complications and superfluous lawsuits, but if Vermont sincerely wants its cannabis market to be a bastion of small business, a financial obstacle like this could prove a considerable roadblock to that admirable ambition.

#### 2.2.7- Transportation of Cannabis and Cannabis Products-

(e) i.- Do the regulations pertaining to visibility apply to living plants?

( ii.) Given the ambiguity attached to this statute, I can't help but be concerned with how this regulation might be abused by selective enforcement. Taking into account the Control Board's

commitment to social and racial equity, in its present form, this regulation has the potential to be a marked detriment to that mission.

(j) - When one considers the fact that the state's Inventory Tracking System is designed to eliminate the possibility of products ending up in prohibited places, the rigorous demands of much of this subsection read like theatrical lip-service aimed at misinformed opponents of legalized cannabis. If licensed cultivators and retail establishments are in compliance with the state's own Inventory Tracking System, much of this section is rendered redundant, unnecessary, and unenforceable.

(k)- If one takes into account the fact that any above-board business-to-business transaction is already conducted through the exchange of invoices and mutually agreed delivery schedules, this demand is an overbearing burden to businesses that are already required to do so much in compliance with product-tracking guidelines.

(l)- Operating under the assumption that the Inventory Tracking System employed by the state will be both effective and efficient, this subsection is a sufficient form of record that would render irrelevant the sections discussed above.

(m)- While I wholeheartedly endorse the practice of thoroughly checking incoming orders against an invoice, the window of time articulated here ("the same day it is received") may not be wide enough in certain circumstances. 24 hours seems like a much more reasonable interval considering that some orders might not arrive until the end of a business day.

(r)- Not only does this requirement rely on an arbitrary quantity, it also assumes that a criminal actor is less likely to rob a vehicle transporting 19.5 pounds than they are one carrying 20. Furthermore, it assumes that said criminal actor would not simply abscond with the entirety of the transport regardless of the manner in which it is secured. Finally, the financial burden inherent to purchasing this kind of hardware has the potential to penalize any small business unable to

comply, thus forcing it to compete against more financially-equipped institutions at a considerable disadvantage.

#### 2.2.12- Audience Composition Presumptions for Advertising-

(c)- This regulation is simply untenable. As it stands at present, it would compel any retail establishment that does not wish to have tinted windows or curtains to design their interior in the most spartan manner possible in order to remain in compliance. Given that most of these

establishments would rather have a compelling space inside their doors, one that allows them to fulfill their full potential, the end result would be a rash of seedy looking storefronts that have been modified on state order, against the wishes, but with the money, of their proprietors. Furthermore, it suggests that cannabis, a product that the state has decided is worthy of legalization, is somehow more dangerous than alcohol or tobacco.

2.5.3- Energy Standards For Buildings- Given all of the costs that small cultivators are compelled to incur in order to comply with so many of these regulations, forcing them to observe these standards from the outset of their operation would be an outsized obstacle to their success. I do absolutely agree that Vermont's cannabis industry should be as progressive as possible with respect to energy conservation, however I think it would be more equitable to provide a timeline in which all cultivators are required to meet the standard rather than impose that they do so immediately.

#### 2.5.6- Energy Usage Reporting and Reduction Efforts-

(a) - This is asking a lot of legacy cultivators attempting to participate in a sanctioned system for the first time. The ambiguity of the language only compounds that hindrance. With some guidance, the regulation's objective might be obtainable. As it stands now, however, it is nothing more than an undue stress on an already fragile enterprise. Furthermore, this is yet another example of regulatory overreach that could subvert the stated mission of social and racial equity.

(b)- When one takes into account all of the time and energy it requires to maintain all of the equipment included in this statute, the obligation to additionally compose a record of that maintenance results in an undue burden on an already time-pressed cultivator. Not to mention that cultivators not taking proper care of their equipment, would not last long in a competitive market.

(c)- As I stated in the previous subsection, this statute smacks of overbearing redundancy. An opportunity to maximize a cultivator's efficiency, while also minimizing cost, is one that any successful cultivator will take. To demand that each and every cultivator, regardless of size, provide an annual report on the ways in which they're completing basic operations, is wildly unnecessary.

2.8.1- Buffer Zones- In its present language, this statute is confusing. In order to ensure that every potential retail establishment is located in a sanctioned zone, the regulation requires more clarity.

## 2.8.2- Retail Security-

(d)- The interval of 90 days is unnecessarily long, and would result in a undue financial strain on small businesses as the majority of surveillance services require premium payments to

retain footage for periods that surpass 30 days. One can assume that if something were to occur inside of a licensed establishment that would require the review of video footage, 30 days of retention is more than enough time to download the footage in question and save it for review.

2.8.3- Age Verification- Not only is this law a burden to an establishment's ability to conduct business with some manner of efficiency, but, once again, it suggests that cannabis is

somehow more dangerous than alcohol and tobacco. According to Vermont's DLC regulations, a bar is only

required to verify a patron's age a single time. The same goes for any business that sells tobacco or other age-restricted items. To compel cannabis retailers to do more, without any stated rationale, is gratuitous.

Tito Bern

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This warning needs to be placed on all cannabis products

This product has not been analyzed or approved by the Food and Drug Administration (FDA). There is limited information on the side effects of using this product, and there may be associated health risks. Marijuana use during pregnancy and breastfeeding may pose potential harms. It is against the law to drive or operate machinery when under the influence of this product. KEEP THIS PRODUCT AWAY FROM CHILDREN. There may be health risks associated with consumption of this product. Marijuana can impair concentration, coordination, and judgment. The impairment effects of edible marijuana may be delayed by two hours or more. In case of accidental ingestion, contact poison control hotline 1-800-222-1222 or 9-1-1. This product may be illegal outside of MA. This product may cause impairment and may be habit-forming. For use only by adults 21 years of age or older. Keep out of the reach of children. Please consume responsibly.

Keith Rowe

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Hello and thank you for considering my comment,

I am concerned about how Recreational and Medical cannabis is going to be differentiated in VT. It seems that there is an assumption that the medical market, as it is in VT currently, is perfect the way it is. That just is not true. As of right now, the medical cannabis market has very little regulation. They have been getting away with this little to no regulation for over 7 years now. They have basically been making their own rules and standards which resemble more of an un-regulated, card holders only club more so than a medical market. The only thing that makes these medical cannabis licenses "medical" is that they hold one of the few issued licenses that were given by the state of VT. That is about it. In the past they have not had any testing requirements for contaminants, pesticides, residual solvents, molds, toxins etc. They say that all their products are "tested" but what they are actually saying is that all their products have just been tested for potency, that is it, just potency. Who is stopping them from adulterating their potency numbers and lying to medical patients? No one.

The medical cannabis market produces high priced, not really regulated cannabis products to the people who were able to obtain a medical card. Some of the people getting "Medical Cannabis" here in VT have compromised immune systems and their "Medical Cannabis" is not held to any customer/patient safety standard. I know that most of the medical cannabis market is doing what they can to make "good enough" product for their "patients/customers" but they are not held accountable if they decide to cut some corners here or there, or put out sub-par/potentially harmful product because they legally can. Let's face it, they are out to make money and if they can do that with as little regulation as possible, they will continue to do so. There is little to no regulation of medical cannabis in Vermont and I think a lot of Vermonters were hoping that a regulated recreational cannabis market would bring more regulation to all aspects of cannabis in VT including medical cannabis.

If the recreational market is held to a certain standard, then the medical cannabis operations should be held to an even higher standard. If safety regulations like C1D1 rooms are required for extraction in the recreational market then guess what, the medical market also needs to comply to a C1D1 room to operate their extraction. It seems completely backwards to me that an existing medical cannabis license holder in VT could potentially forgo a recreational retail license and be less regulated than the recreational market. Let that sink in.

I know that the Cannabis Control Board is here to do the hard job of setting up a functional "recreational" cannabis market but how can you do that properly if you keep tiptoeing around the elephant in the room (the "medical" cannabis market). Now that Vermont is pursuing the "recreational cannabis market" the "medical cannabis market" also needs to be re-structured in a way that makes it a fair and consistent atmosphere for both sides of the equation. In my opinion, the medical cannabis dispensaries and all their operations should be more regulated than the

recreational dispensaries and the time to make those changes is now. Medical patients deserve the safest and most effective medicine held to the highest standards created by the cannabis control board. Please, Please, Please do not let the recreational cannabis market be more restrictive and regulated than the medical cannabis market.

Thank you for your time and consideration on this topic.

Austin Sachs

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I would like to know what is planned for recycling all the plastic containers that are used for cannabis products? Especially the flower containers that have pre rolls or grams or eighths and so on ? I would like to have this placed in any section of the proposed rules that all Adult use cannabis products containers be recycled at all the dispensaries. This would prevent all the plastic from entering garbage containers and adding to the landfills. If there is sustainability incorporated in the cannabis legislation for green energy and provisions for environmental protection for land use and lighting. Then we're is the provisions that require all dispensaries to take used plastic bags, containers. Pre roll containers and make them recycle at no charge to a customer who brings them back when they return to purchase cannabis. This I find absolutely necessary since Vermont is a environmental concerned state and wants to lessen the carbon foot print and slow climate change. I have seen no discussion about this subject and would like the CCB to evaluate this matter please view the attached web link above. If you have any further questions or need further information please feel free to contact me.

Keith Rowe

Vermont cannabis patient. I have sent emails to Kyle Harris and Nellie a long with Lindsey Wells the Cannabis program director for Medical prior to the transition. I know Lindsey has my email address from correspondents.

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Offering commentary and info in response to the questions raised at today's 1/24 Board meeting around equity, oversupply, non-contiguous areas, Act 250 constraints, and the overall outdoor tier structure.

Based on the equivalency in yield of 1,000 square feet of indoor cultivation to 125 plants or 3,125 square feet of outdoor cultivation (per my earlier comments), I analyzed some numbers and offer the following input:

1. Indoor-outdoor equivalency is critical for equity at all tier levels, not just Tier 1; without it, the opportunity to make money will be limited mostly to those who already have a lot. An indoor 5,000-sqft grow can return over 300% ROI, but a 5,000-sqft outdoor returns 39% at best, which is not a viable proposition for small farmers given the inherent risks of farming. With equivalency applied, the return on outdoor increases to 210%, giving less-capitalized entities a meaningful opportunity to build a viable enterprise.

2. The current supply model overestimates outdoor yield/sqft by 300%; equivalency will equal the program's supply assumptions, not exceed them. The supply model behind the 10/15/21 report estimates outdoor yield at 36g/sqft when experience shows it to be no more than 12g/sqft. Equivalency will not create an oversupply; on the contrary, the program's supply assumptions would be drastically incorrect without it.

3. Measure square feet of outdoor canopy in non-contiguous rows to accommodate microsite characteristics and encourage sustainable farming techniques. Otherwise growers will be incentivized to crowd their plants together, reducing yields and intensifying their use of water, fertilizers and pesticides.

4. Do not limit outdoor canopy size based on potential interactions with Act 250, which would unnecessarily constrain the benefits of outdoor production in pre-emption of another Agency's authorities and discretion. Growers should be free to tailor their plans according to local implementation of Act 250 and their readiness to engage on such matters, particularly given the likelihood the regulations or the Act itself will change in the near future.

CONCLUSION: Keep it simple! 3 square feet outdoors = 1 square foot indoors. Plant counts are the ideal approach for all outdoor tiers, and it's critically important for the Tier 1 level given the 1000-sqft definition of "small cultivator." But for all the other tiers it's probably simpler to go with the square-foot equivalent instead, and nothing in statute prevents the Board from establishing the higher outdoor tiers based on this 3:1 ratio (not even Act 250).

More background on #1-#4 follows below:

1. Equivalency is an equity issue at all tier levels, not just Tier 1.

Establishing appropriate equivalency is not only an equity issue for small cultivators, it's an equity issue at all tier levels because indoor cultivation requires so much more capital than outdoor.

In 100 days a 5,000-sqft indoor grow should be expected to produce 625 lbs—80% in premium flower and 20% in biomass for extraction—grossing approximately \$437,500 on an operating expense of about \$104,000, which is an ROI of 321%. So, if you've got the capital to stand up a 5,000-sqft grow, the future is bright.

By contrast, if you don't have that kind of capital, then the adult-use market probably isn't for you without that 3:1 ratio. A 5,000-sqft outdoor grow, as I've commented previously, can be expected to produce no more than 160 lbs of product per year—33% in premium flower and 67% in biomass for extraction—grossing \$64,000 on \$46,000 of operating expense. That's a best-case scenario of 39% ROI, which is insufficient from a risk standpoint. In general, most farmers are unwilling or unable to take on the inherent risks of farming for returns so far below 100%, particularly small farms.

However, if that 5,000-sqft outdoor tier is adjusted to 15,000 sqft (or 625 plants), the gross goes up to \$192,000 while the operating expense only increases to \$61,825, for an ROI of 210%. That's a real proposition for small farmers. Thus, the application of an appropriate equivalency at all outdoor tiers is necessary for less-capitalized entities to build a viable enterprise with meaningful prospects for growth.

2. Equivalency will not lead to oversupply; on the contrary, the current supply model overestimates outdoor yield by 300% and equivalency will correct this.

The concerns that equivalency may cause oversupply in the market appear to be based on incorrect assumptions about outdoor yield. The supply model provided by the Board's consultants estimates yield as 36 grams/sqft (see cell B213 of the "Market Analysis Model" tab in the VSS spreadsheet used to produce the Board's 10/15/2021 report), but based on 3 years of experience growing cannabis (hemp) at a commercial scale outdoors at varied locations in Vermont, a yield of no more than 12 grams/sqft can be expected

The 12g/sqft estimate is based on a minimum of 25 sqft per plant, a maximum yield of 1 pound (453.6g) per plant, and a crop loss rate of 33%, which is what a prudent Vermont grower should plan for (and mirrors Kyle's comment during the meeting estimating that 80 plants would be harvested from 125 planted). If equivalency is applied, this will increase outdoor productive capacity to comport with the supply assumptions informing the design of the overall program.

Also I reiterate that the possibility of exacerbating supply peaks is no cause for concern. Outdoor crops typically become ready for market in late November and early December, when the increase in supply meets increased demand by holiday shoppers and vacationers. And with a shelf-life of at least 12 months in proper storage, growers can delay or reduce their deliveries in anticipation of higher prices as supply tapers off.

3. Measure square feet of outdoor canopy in non-contiguous rows to accommodate microsite characteristics and encourage sustainable farming techniques.

I've commented at length in previous submissions about the need for growers to have flexibility to adjust spacings according to microsite characteristics and sustainable farming practices, such as interplanting, cover-cropping, integrated pest management and retention of native vegetation for pollinator and predator habitat.

Measuring outdoor canopy size based on plant count is one way to accommodate this. But if plant count is thought to present enforcement challenges at higher numbers, square feet can be measured instead by taking the linear sum of the rows and multiplying by 5 feet. This approximates the average diameter of a mature cannabis plant grown for flower production outdoors in Vermont, and thus represents the minimum spacing between plants so as not to restrict growth and yield. Therefore this approach does not result in overproduction, and it is easy to measure.

4. Do not limit outdoor canopy size based on potential interactions with Act 250, which would unnecessarily constrain the benefits of outdoor production in pre-emption of another agency's regulatory authority and discretion.

While specifying outdoor cultivation size limits in terms of plant count or canopy square feet is appropriate to the objectives of the adult-use program, it is understood that Act 250 and other land-use regulations are based on parcel size and other generalized land attributes as needed for the purposes of those other authorities.

However, there is no inherent conflict between the two regulatory schemes, nor is there a statutory requirement to limit outdoor cultivation to 37,500 square feet or any other pre-determined parcel size. The broad support expressed in today's Board meeting for licensing of non-contiguous areas exemplifies this.

In the absence of any inherent conflict or statutory mandate, it is incumbent upon each agency to develop the regulations that best implement its own authorities. Businesses of all kinds are responsible

for complying with various regulatory requirements established by diverse agencies to meet a broad range of statutory purposes: the larger the enterprise, the greater the burden of compliance; it's just the cost of doing business. CCB can be helpful to licensees by advising them that exceeding 37,500 square feet may trigger additional burdens for Act 250 compliance, but it can and should be left to each individual business to decide whether it's worth the trouble. The objectives and legislative intent of the adult-use program are not served by pre-empting another agency's authority to curtail outdoor cultivation based on policies that are outside of CCB's authority, and which may soon change in any case.

Herrick Fox

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1. Both rules reference an Inventory Tracking System:

Does the system exist, will it be provided to small growers, what are the system requirements to support it at the cultivation site level, will it support the integration of test results and inventory data?

2. I could not find details pertaining to specific testing requirements :

Are there testing requirements for Tiers 1 and 2 cultivators, when during the cultivation process do they apply, and will the CCB establish guidelines for the cost of testing at independent labs?

Joseph Carter

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Hi Julie,

Any idea where/when local governments will get an idea of what local rules will look like? I am not seeing much in the 5 rules you have made public. Am I missing something? Also...is the CCB still interested in a webinar with VLCT with our members to help with education/training?

Hope all is well.

Gwynn Zakov

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The NurseGrown Organics team and I have been doing a lot of thinking about retail packaging, and the challenge of child-resistant packaging not being accessible to the elderly and handicapped.

We have found re-usable, brandable, certified child proof stash jars we like a lot, which we think would be manageable for the elderly and handicapped. Given that James has said he'd be ok with cannabis flower not being sold in child-resistant containers, could the CCB make reusable containers for flower the industry standard?

Also, we'd love to see compostable/biodegradable packaging - which we've found and are using - be required for everything else, otherwise the state solid waste system will be inundated with mylar packaging because it's colorful.

You can see the packages we're using [here](#).

We've not yet found childproof dab containers which are also workable for the elderly and handicapped, but we'll keep looking.

Bottom line: we really don't want to see the cannabis industry be part of The Problem in any way. Or at least as little as possible.

Finally, we've looked at the NACB's power point on Social Equity Recommendations. We think they're quite good and agree that if women aren't considered Social Equity candidates, they should definitely be considered Economic Empowerment candidates.

Thanks so much! Best of luck in all your work.

Kathy

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Kathy Blume (she/her), Communications Director

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- 1.4
  - We need to add a general look-through provision for persons who are not natural persons (i.e., entities). I think perhaps this is implied in parts of 1.4.1 and elsewhere, but it is definitely not explicit.
  - Look-through will be important for 1.4.1, 1.4.2, and 1.4.3.
  - For example, as currently drafted, a control person could avoid getting a background check in 1.4.2 by simply inserting an LLC between them and the licensee. That can't be what was intended, so I think we need some drafting revisions.

- 1.4.1 Operating Plans
  - One thing we don't address is the influence of non-controlling persons. Specifically, I'm thinking about a potential high-flying cannabis investor who takes a 49% interest in many different licensees. Do we care about this theoretical scenario?
  - Perhaps 1.4.1.(i) covers us here, since we ask for documentation of all sources of capital. CCB might notice if the same name keeps popping up. But then the problem is that you'd still need a general look-through provision because otherwise the same high-flying investor could structure his/her minority investments through LLCs with different names for different licensees.
- 1.4.3 Financiers
  - I think we should add an explicit exception for traditional lenders who offer traditional financing. Specifically, I mean banks and credit unions offering standard debt lending.
  - But, of course, we want to limit that exception. Don't want to open a door for "shadow equity" through structured hybrid debt.
- 1.7
  - Seems odd to me that Manufacturers, Retailers, and Labs don't need to submit diagrams of their facilities at all. Cultivators do, but the other types of licensees don't?
  - In alcohol, all licensees need to submit diagrams. Distillers, Brewers, bars/restaurants, you name it. Pretty standard.
- 1.11.2(e)
  - We may want to exclude speeding violations from this provision. In Vermont, certain speeding violations can count as misdemeanors.
- 1.16.1
  - Another section that would benefit from a general look-through provision.
- 1.16.7 Identification Card Renewal
  - Slight drafting problem: In (c), we specify that if you don't get renewed, you can no longer work at a Cannabis Establishment. But, in the overall section, we never specify in the first place that you can't work in a Cannabis Establishment if you don't get a license. Just a minor drafting revision needed somewhere.
- Rule 1 overall doesn't seem to enact any requirements for Wholesalers. Was this missed? Or intentional?
- 2.1.3(a)
  - In defining a Board Designee I think we want to say that it can be an "employee or contractor" of the Board, rather than just "employee" as currently drafted.

- 2.1.3(c)
  - Why are we saying 180 days or more? That seems very high. We could consider 30 days or more, or even just 1 day or more (i.e., any duration whatsoever). Right now, if someone has a greenhouse that they only use for 179 days per year, it doesn't officially count as a greenhouse. That seems odd.
- 2.2.1 Business Records
  - In 2.2.1.(g) we require visitor logs for all licensees, but 2.8.3(e) and 2.8.3(f) seem to forbid visitor logs in retail establishments.
- 2.2.4(e)
  - So we're not sharing responsibility with the other agencies? Isn't that weird? Like, fire safety is definitely the domain of fire marshals, but we're saying it's only our domain?
- 2.2.5(b)
  - Requires the first six for new hires in retail, before they've done full training. That's smart. But, we should also include xi Preventing Sale of Cannabis to Minors in there too, and make it 7 items.
- 2.2.6(c)
  - Requires licensees to reconcile inventory every month. Great. But, it doesn't specify how soon reconciliation must happen. For example, we could require that reconciliation must happen every month, and it must be within the first 15 days of the following month.
- 2.2.7(e)
  - Why require that vehicles be registered in Vermont? This seems unfair, for example to a college student who lawfully retains out-of-state registration on their vehicle and could be working at a licensee.
- 2.2.7(l)
  - What does it mean to "immediately adjust" inventory records? Perhaps we should define this more clearly, for example saying that the records must be updated by the end of that day. (Or if we want it more tight, within the next hour, etc.)
- 2.2.18 Co-Location
  - David shared the alternate language under consideration, thank you.
  - I recommend that we *\*do\** allow shared use of equipment.
  - I recommend that we *\*do not\** require co-locating establishments to limit their total size to the Tier 6 limit.

- Discussion: I understand a general fear of “big could be bad for Vermont” and assume that’s where this suggestion arose. But, I don’t see any good rationale for limiting the total size of co-located spaces as long as the individual licensees at those spaces already adhere to Tier limits. If we have a massive Tier 6 facility who has more space than they’re allowed to use, and they want to sublet out the rest of their space to other smaller growers? And let the smaller growers use their fancy equipment? That could be really good for smaller growers!
- Further discussion: If, despite that, we're still worried that some folks will just be too big and will dominate the market, then we could limit this in a different way. For example, we could say that if co-locating, you can't have more than 1 licensee at the co-locating facility be Tier 5 or Tier 6. That way, you'd be limiting all the sublets to only smaller license tiers, while still allowing a big fish to sublet in the first place.
- Further discussion: One thing to be cautious of here is that this is another opportunity for shady practices that could generate “shadow equity” again. So, for example, I think we want to explicitly require that co-locating landlords are only paid defined cash rent laid out in the lease, and not let them be paid variable amounts that are a function of the subletting tenant’s sales, etc. We don’t want a super-landlord who is functionally a super equity holder in all the subletting tenants’ by sharing a stake in their profitability that's structured to evade the reporting requirements by making those payments appear to be rent.
- 2.3.2(c)
  - Might want to make an exception to the Over 21 rule for visitors when the visitors are family members of employees. For example, if a new parent wants to bring their newborn to work with them.
- 2.3.5 Cultivator Inspections
  - I think we want to say that the board \*may\* conduct annual inspections, not that the board \*will\* conduct annual inspections.
  - Also, I think we need additional specificity that says we might do more than one inspection per year. Otherwise, you can unintentionally encourage bad actors who have already had their annual inspection know that nobody is coming back again until next year.
- 2.3.9(b)(ii)
  - This is a lot of samples allowed! Right now, we’re allowing every single employee to take home over an ounce every month. That seems high!
- 2.4.7 Outdoor Co-Location
  - I think this is a bad rule and should be eliminated. See earlier discussion on limiting co-location.
- 2.5.7 Indoor Co-Location

- I think this is a bad rule and should be eliminated. See earlier discussion on limiting co-location.
- 2.6.2(ii)
  - I think we should say “time or time window” that the product will take effect. So, for example, the packaging can say: “Product may take effect between 30 and 60 minutes after consumption.”
- 2.6.5(b)(ii)
  - Similar to the earlier comment on employee samples, I think this seems high.
- 2.8.1 Buffer Zones
  - As currently drafted, you could locate a Retail store right next to a school as long as they’re “back-to-back” to each other. Because we’re measuring by the public road, a back-to-back layout would mean that their fronts are on different roads and likely more than 500 feet as traveled on the road while you travel around the block...
- 2.8.7 Consumer Samples
  - We should add a provision requiring documentation of destruction if the samples are eventually destroyed (e.g., they eventually go stale and get replaced).

Sivan Cotel

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From: Stephanie Smith, Cannabis Quality Control Policy Administrator, VAAFM

Date: 1/3/22

RE: Comments Rule 2 Regulation of Cannabis Establishments

General Comments

For ease of administration and regulated community/user friendly, it would be helpful to include all terms defined in statute in the rule. And if a statute guides the regulated community in some way (advertising, packaging, etc) it would be helpful to have directly included in the rule.

Regulations that are outside the jurisdiction of the CCB may not be suitable for inclusion in the Rule, when the CCB does not have the ability to enforce that other jurisdiction’s law, statute or rule. This could change if the CCB uses compliance with other laws as a basis for revoking a license or is a barrier to obtaining a license, but this should be outlined explicitly.

If a Cannabis Establishments (CE) is required to report or take some action to alert the CCB of some occurrence, the CCB should be clear about what it will do with that information. If the CCB is not going to take an action or have a standard for enforcement for a “breach”, vehicle accident, diversion, theft or loss at the point of the report then it wouldn’t be necessary to report. If at the end of a year a report is provided of a breach, vehicle accident, etc and if it occurs three times in a year outline the consequences or that it weighs in on CCB decisions in some way.

Also, the CCB may want to make CE responsible for maintaining records rather than reporting incidents to the CCB, unless warranted. The CCB will be responsible for managing these records/reports in accordance with the public records law.

#### Comments by Section

Section 2.2 Regulations applicable to all cannabis establishments

This section currently only focuses on retail. A general statement that Cannabis Establishments (CE) may only operate within the bounds of their license, may be appropriate.

#### **Section 2.2.1 ~~Business-Required~~ Records**

How long should these records be maintained for?

This list could be divided into categories and there could be some internal references to the sections of the rule that further layout expectations for required records-contents of the records, and their management- including revision dates, and signatures pages by controlling employee. If the record applies to employees, requirements for employee signatures that indicate their knowledge and understanding of these terms of employment.

These are the three buckets I see among these records

- Business records- (a), (e) adhering to 2.2.2, (h)- Are maintaining tax records covered by other laws? So is this necessary to outline here? Or does this address ability to review tax records , (c), (m), (o) SOPs addressing generally accepted accounting principles, employee onboarding training;
- Security and risk management records - (b), (g), (j), (k), (l) SOPs on opening and closing procedures, handling money;
- Inventory records -(d), (f), (i).

#### **Section 2.2.4 Health, Safety and Sanitation**

(d) What is the expected outcome of a report to the CCB? An inspection? or review of what happened and to what end? It may be necessary to define what a "breach" constitutes, to set clear expectations for when reporting is necessary. Contaminant testing could be used to determine if the breach would affect consumer safety. As an alternative the CE could document/ report what happened and the measures taken to address the issue that did not comply with an established SOPs.

#### **2.2.6 Tracking of Cannabis and Cannabis Products**

Is there a difference between *seed to sale tracking* and *inventory tracking*?

What does it mean to have the inventory tracking system "readily available" to the public?

(f) Should CEs be responsible for training employees to ensure the accuracy of the information entered into the tracking system. I am not sure that individuals should be held accountable; this sounds like a personnel issue- rather than a regulatory issue.

Should (c) and (g) be combined into one or follow each other in order?

#### **Section 2.2.7 Transportation of Cannabis and Cannabis Products**

Are there general requirements for transporting, paperwork, and than specific requirements/ assigned responsibilities associated with being the agent delivering and CE receiving? Dividing this section into subsections covering overarching topic or assigned responsibility could make it more clear.

(d) and (e) The draft version of the rule indicated that transportation must take place in an unmarked vehicle. It is unclear what the CCB is using its discretion on. Does the CCB want to clarify that this is a motor vehicle? Should these sections be combined?

(f) Are vehicles required to be registered, and insured to the CE?

(j) Are transport manifests specific to each CE that will receive product? The rule seems to indicate that there are separate manifests for each delivery, but if not, what document is meant to be sent under (k), just that portion of the transport manifest for the particular CE receiving product? Maybe this is up to the CE to explain how it will meet these delivery documentation requirements.

(l) and (m) outline the receiving CE responsibility, maybe create a new subsection within 2.2.7?

where does the CE log the time of receipt of a delivery? Maybe this is up to the CE to explain how it will meet these delivery documentation requirements.

(n) Where is the LCA logging times ?

(q) Should appropriate storage to prevent contamination be described in an SOP developed by the CE and adhered to by the LCA in deliveries.

How will the CCB interpret (b) and (t) together. If transporting compromised/contaminated/adulterated cannabis or cannabis products where should the LCA take it? This final subsection (t) might be better placed in the waste disposal section.

### **Section 2.2.8 Waste Disposal**

(b) the cannabis and cannabis product should be "source separated" removing all packaging or inorganic material by the CE prior to disposal, and mixed with other organic material suitable for composting or digestion.

(d) this could reference back to 2.2.6 in the rule where it mentions the waste log.

### **Section 2.2.16 Compliance in other Jurisdictions**

This section may not be enforceable by the CCB.

### **Section 2.2.17 Reporting Theft of Loss**

Reporting a theft of loss should include expectation for what should be in the report- an official statement from employee and the CE surrounding the incident, and what the CE might do to prevent an incident from happening again. Based on this information the CCB could then require updates to SOPs or security measures.

### **Section 2.2.18 Co-location**

Recommend grouping the standards that apply to cultivators together and what generally apply to all CEs together

- (a) Unless the CCB intends to use failure to comply with local laws as a cause to revoke a license, it may not be necessary to incorporate in CCB rules. This could be in guidance and FAQs to educate applicants.

(c) Is this managed exclusively by the co-located CEs? Will the CCB also manage/tally the potential canopy, as well? What standards are applied when the CCB exercises its discretion?

### **Section 2.3.1 Pesticides**

"Department" should be changed to "Agency"

Pesticides can be used post harvest on a crop.

What will the CCB do with this information once collected? The CE can maintain this information and made available during a record review.

### **Section 2.3.2 Visitors to cultivation sites**

(f) The safety protocol should be similar to the biosecurity, safety and sanitation requirements for employees of the establishment. Instead of the CCB maintaining this information the CE should keep this among its records.

### **Section 2.3.3 Testing**

Testing cannabis crop potency before harvest may not be necessary if the product potency is the regulated standard- potency on a label. This could be a cost savings for growers if they are not required to test before harvest.

Does the record retention requirement for test results in this section apply to all results or just this potency result? Also, a longer retention schedule could demonstrate a pattern of compliance or changes in compliance overtime.

### **Section 2.3.4 Adulterated Cannabis**

Is there a definition of "adulterated" - is it only contamination from pesticide? or could it include a presumption of adulteration with broken safety seal/ tamper evident seals.

(b) The VAAFM is the authority for determining a pesticide mis-use and the determination will be based on the facts of the situation.

### **Section 2.3.7 Sanitation.**

This could be included in an SOP developed by the CE, which at a minimum includes these items, but there are likely to be additional items that a CE might want to put in a sanitation SOP- including addressing visitor requirements, waste management plan, etc. Also, the internal reference should be 2.2.4.

## **2.4 Regulation applicable to Outdoor and mixed cultivators**

Are "mixed cultivator license" the same as "mixed tier cultivation license" highlighted in section 1.2.1 (c)?

### **Section 2.4.3 Minimum outdoor security management practices**

Criteria for issuing a variance and the process to obtain on should be outlined in the rule. Or the CCB could use its discretion, as mentioned in other sections of this rule.

### **Section 2.4.5 Additional requirements**

(a) The section above uses the term "public road" this section uses "roadway".

**2.5.3- 2.5.5 Energy Standards**—during the advisory group meetings addressing energy efficiency standards it was discussed that it would be possible for the Public Service Department to incorporate their recommendations for energy efficiency in greenhouses and indoor cultivation of cannabis and lighting standards into the CBES. The methods for enforcing these standards could be carried out through the existing framework if incorporated into the CBES, rather than by the CCB.

If the CCB is going to enforce these standards, it may be helpful to require licensees to show compliance with these standards by providing an attestation from the appropriate professional that these standards are met.

Also, the CBES may apply to any building envelope, not only indoor cultivation (office, warehouse, manufacturers, etc.).

### **Section 2.8.2 Retail Security**

(g) The CCB could prescribe a # of customer /retail floor area + a required # of employees during operation in order to set an enforceable standard.

### **Section 2.8.4 Retailer packaging**

(d) It may be important to define " chain of custody" for the purposes of this section of the rule.

### **Section 2.9.1 Testing Requirements**

Harvest lot potency (three weeks before harvest) is not representative of the potency of cannabis flower. Potency should be tested by cultivar/strain of flower after harvest and be labeled on the product.

Stephanie Smith

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Hello! Hope you are all well!

I wanted to please confirm that though you are allowing cottage licenses, and removing a lot of the mandates for the 1000sq ft cultivation license, they will still be subject to lab resign just the same?

My worry of course is home grows, home kitchens, etc, are much more prone to contaminants.

I personally have had lab extracted hemp concentrates pass all mycotoxin tests, and then when used in a certified lab to formulate products, still end up with mycotoxins from the environment, so this would be more pronounced and a bigger concern in homes.

I am hoping for some assurance around the lab testing mandate for consumer safety? I think the cottage kitchen idea is just one contamination after the other, and am growing more concerned about flower grown in homes. The main reason I support a regulated adult use market is to ensure cleanliness, which to me means out of the kitchen/home and into a clean, certified and regulated space. Animals, life, homes, etc, are just not clean imho.

Jessilyn Dolan (pronounced Jessie-Lynn), RN, CMT, CLD

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## 2.1 Regulations Applicable to Indoor and Greenhouse Cultivators

The requirements in this section apply to Cannabis Establishments with an indoor or mixed-use cultivator license.

### 2.1.1 Security

Indoor and mixed-use cultivators must utilize the following security measures:

- (a) All perimeter doors and windows must be locked, and only individuals with a Cannabis Establishment identification card, granted in accordance with Rule 1.16, may have keys or a key equivalent.
- (b) all perimeter doors and windows must have operational security alarms, provided that Tier 1 and mixed-use cultivators are not required to have security alarms unless the Board requires it, which the Board retains the discretion to do on a case-by-case basis.
- (c) Video surveillance with continuous monitoring of any space that contains Cannabis, whether growing or harvested, or Cannabis Products. Video surveillance must meet the standards of section 2.4.2(c) of this rule.

### 2.1.2 Security for Drying, Curing, and Storage

Security for Cannabis drying, curing, and storage must meet the requirements of section 2.5.1 of this rule.

### 2.1.3 Energy Standards for Buildings

- (a) Vermont Commercial Building Energy Standards (CBES) applies to all areas of indoor cultivation facilities including the following areas, except where detailed within this rule:
  - i. The building envelope must meet CBES for insulation.
  - ii. Non-cultivation lighting must meet CBES for new buildings and retrofits.
  - iii. Ventilation must meet CBES.
- (b) When converting an existing building for cannabis cultivation, if practical considerations result in an inability to full comply with all areas of CBES the building should be modeled and the energy loss from the non-compliant areas should be made up elsewhere in the building design.
- (c) Greenhouse building envelope must have a minimum u-factor of 0.7
- (d) Indoor cultivation areas and greenhouses must meet CBES for HVAC equipment efficiency, except that HVAC equipment. Economizers are not required in spaces cooled by HVAC equipment with an EER or IPLV at least 20 percent more efficient than CBES HVAC efficiency requirements.
- (e) Fans and clean water pumps at indoor cultivation facilities should, at the date of equipment purchase, comply with the most recent energy efficiency standards promulgated by the federal Department of Energy.
- (f) All opaque-walled facilities shall be required to be solar-ready, as defined in the CBES. Greenhouses should identify if they have an

Commented [MB1]: Duplicative to later language edits.

area suitable for on-site renewable energy using the same criteria as an opaque-walled facility and, if such an area is available, reserve space within their main electrical service panel to accommodate a renewable energy system.

- i. Cannabis growing facilities that choose to meet the CBES point for the Efficiency Package Credit requirement through the installation of solar would be required to install systems equaling a minimum of 0.5 Watts per square foot of floor area.

#### 2.1.4 Energy Standards for Lighting

- (a) Lighting for indoor cultivation must have a minimum of 1.9 Photosynthetic Photon Efficacy (PPE).
- (b) Lighting for greenhouses:
  - i. If a greenhouse uses lighting fixtures to supplement the sun, the cultivation lighting must have a minimum of 1.7 PPE, except that if a greenhouse has a total connected lighting load of less than 40 kilowatts it is exempt from lighting requirements.

#### 2.1.5 Energy Standards for Dehumidification

One of the following dehumidification systems must be used for indoor cultivation:

- (a) Standalone dehumidifiers must meet the following minimum integrated energy factors:
  - i. Minimum integrated energy factor of 1.77 L/kWh for product case volumes of 8.0 cubic feet or less, or
  - ii. Minimum integrated energy factor of 2.41 L/kWh for product case volumes greater than 8.0 cubic feet.
- (b) Integrated HVAC system with on-site heat recovery designed to fulfill at least 75 percent of the annual energy for dehumidification reheat.
- (c) Chilled water system with on-site heat recovery designed to fulfill at least 75 percent of the annual energy for dehumidification reheat.
- (d) Solid or liquid desiccant dehumidification system for system designs that require dewpoint of 50° Fahrenheit or less.

#### 2.1.6 Energy Usage Reporting and Reduction Efforts

- (a) License holders must report energy efficiency and water performance benchmarks annually to the Board as a condition of license renewal.
- (b) License holders must annually update written operating procedures regarding the following:
  - i. Equipment maintenance, calibration and proper operation, for all major energy equipment, including, but not limited to, horticultural lighting, HVAC systems, and dehumidification systems.
  - ii. Regularly assessing opportunities to reduce energy and water usage, which should include:
    1. Identification of potential energy use reduction

opportunities (such as natural lighting and energy efficiency measures), and a plan for implementation of such opportunities,

2. Consideration of opportunities for renewable energy generation, including, where applicable, identification of building plans showing where energy generators could be placed on the site, and an explanation of why the identified opportunities were not pursued, if applicable;
  3. Strategies to reduce electric demand (such as lighting schedules, active load management, and energy storage); and
  4. Engagement with energy efficiency programs offered by Efficiency Vermont, Burlington Electric Department, or Vermont Gas Systems.
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Public Service Department



Comments on Proposed Rule 2: Regulation of Cannabis Establishments  
Vermont Cannabis Control Board  
ATTN: David Scherr

Thank you for your work on implementing Vermont's adult use cannabis program, and for the opportunity to comment on these proposed regulations.

Willow Industries works with cannabis cultivators and processors across the country, with a focus on decontaminating cannabis with ozone to remove harmful microbes. We strongly support the inclusion of a mandatory testing program in these rules, and our experience with a wide range of regulatory environments has exposed us to emerging industry best practices that we respectfully recommend Vermont adopt as well.

We urge you to keep the mandatory testing program for Salmonella, Aspergillus, and Shiga toxin-producing E. coli (STEC), and recommend Vermont follow the standard action levels for these contaminants. We also recommend you expand mandatory tests to include Total Yeast and Mold (TYM). Finally, we respectfully request you add details on what happens in the event of a failed test, including giving cultivators the ability to remediate their products using ozone or other methods.

**Maintain testing for STEC, Salmonella, and Aspergillus, and adopt standard action levels.**

While many consumers are familiar with Salmonella from its potential presence in food products, it is more harmful to inhale it than to ingest it, and testing for Salmonella is standard practice in state cannabis programs. The public is similarly familiar with the dangers of E. Coli and will be happy to know it is being tested for.

While fewer states test for Aspergillus, it is even more dangerous than Salmonella and can even be fatal for immunocompromised people. Testing for Aspergillus is becoming standard in new cannabis programs, and states with older testing programs have either recently added this requirement or are actively working to do so.<sup>1</sup>

While we understand that action levels for these contaminants will be established in testing guidance, not regulation, we recommend that Vermont follow the emerging national standard of non-detection in 1 gram for each of them. While some other contaminants have a wider range of accepted action levels, nearly every state with a cannabis program uses non-detection for these three contaminants.

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<sup>1</sup> Colorado added testing for Aspergillus in 2021, and Oregon regulators recently proposed regulations to require it for their medical cannabis program.

## **Add mandatory testing for Total Yeast and Mold.**

These requirements do not include testing for Total Yeast and Mold, which is another established standard in most states, including Vermont's medical cannabis program.<sup>2</sup> We recommend adding TYM testing, as it is a helpful tool in identifying problem

When the testing guidance is later issued, we would recommend adopting an action level of 10,000 CFU/g for TYM in flower, which would align with the Vermont medical program as well as many other states.<sup>3</sup>

## **Explicitly address failed tests and allow for remediation.**

With mandatory testing for STEC, Salmonella, and Aspergillus, many operators may face the issue of batches of cannabis failing such tests. While preventing these batches from reaching consumers is good for public health, this could also lead to significant financial losses for cultivators, as destroying a batch can cost hundreds of thousands of dollars.

Currently, the regulations do not address procedures in the event of a failed test. While the transportation of failed product is contemplated,<sup>4</sup> it is not clear whether or how operators can remediate failed products in order to bring them into compliance. Most states address this question by allowing for the remediation of cannabis and cannabis products, as long as they pass a subsequent round of testing to demonstrate compliance with stated action levels.

There are multiple processes and techniques that are being used successfully in other states to bring the quantities of these contaminants down to acceptable levels. This includes our WillowPure ozone system, as well as radio frequency, irradiation, and other methods.

We have conducted multiple studies that demonstrate the effectiveness of ozone decontamination in reducing common contaminants to compliant levels. For example, partnering with Anresco Labs in California, we tested the efficacy of WillowPure treatment on TYM and Aspergillus. After 16 hours we were able to take TYM counts from an average of 45,900 CFU's to 1,388 CFU's, showing a 96.98% reduction.

The WillowPure also reduced Aspergillus counts from an average of 22,283 CFU's to 1,600, showing a 92.82% reduction.

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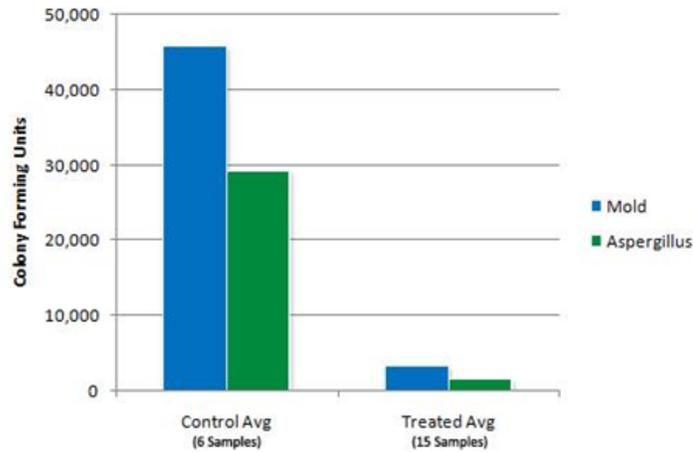
<sup>2</sup> See

<https://agriculture.vermont.gov/sites/agriculture/files/documents/PHARM/hemp/FINAL%20Master%20CQCP%20document%2010-16-20.pdf>

<sup>3</sup> Including Colorado, Washington DC, Hawaii, Louisiana, Maine, Maryland, Massachusetts, Nevada, New Hampshire, New Mexico, North Dakota, Oklahoma, Pennsylvania, Rhode Island, and South Dakota.

<sup>4</sup> See 2.2.7 Transportation of Cannabis and Cannabis Products

## 16 Hour Mold + Aspergillus Treatment



As this shows, ozone can be used to lower quantities of microbiological contaminants to compliant levels, saving failed batches of cannabis without turning them into concentrates or extracts. We believe that this will be an indispensable tool for operators with the three currently included contaminants, and even more important if TYM or others are added. Allowing licensees to remediate their usable cannabis will increase compliance while avoiding the unnecessary destruction of failed batches.

### Conclusion

Thank you again for your consideration of our suggestions. Please do not hesitate to contact us if you have any questions or would like more information — we would be happy to provide any additional data that would be helpful as you consider these important issues.

Submitted by,

Jill Ellsworth  
Founder & CEO  
Willow Industries  
[jill@willowindustries.com](mailto:jill@willowindustries.com)



To: Cannabis Control Board  
From: Jessa Barnard and Jill Sudhoff-Guerin, Vermont Medical Society,  
Stephanie Winters, American Academy of Pediatrics VT Chapter and Vermont  
Psychiatric Association  
Date: January 13, 2022  
RE: Comments Regarding Proposed Rule 2 - Regulation of Cannabis Establishments

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On behalf of the over 2,000 physician and physician assistant members of the Vermont Medical Society (VMS), the American Academy of Pediatrics Vermont Chapter (AAPVT) and the Vermont Psychiatric Association, we appreciate you considering our comments on Proposed Rule 2 as filed with the Vermont Secretary of State.

**Specifically, the VMS, AAPVT and VPA submits comments at this time regarding these sections of Proposed Rule 2 – Regulation of Cannabis Establishments:**

- **2.2.9 Packaging** must include child-resistant containers and include all required warning labels and symbols;
- **2.2.10 Warning label** should focus on acute physical and mental health risks;
- **2.2.11 and 2.2.12 Advertising** regulations that must not allow the promotion of cannabis use, include effective age-gating strategies and additional strategies to limit exposure of cannabis advertising to persons under the age of 21;
- **2.6.5 Additives** should continue to be prohibited as outlined in the proposed rule;
- **2.8.1 Buffer Zones** should be set to 1,000 feet from schools, parks, college campuses and childcare facilities.

**2.2.9 Packaging must include child-resistant containers and include all required warning labels and symbols**

Our organizations strongly support the proposed packaging requirements included in Proposed Rule 2 including that packaging:

- a. be child-resistant and opaque
- b. include required warning labels and symbols as provided by section 2.2.10 of this rule
- c. clearly identify package contents
- d. clearly identify ingredients,

- e. clearly identify tetrahydrocannabinol content
- f. be in resealable packaging that remains child-resistant for multiple uses if multiple servings are contained in the package
- g. be free from false or misleading statements
- h. not use objects, such as toys, inflatables, movie characters, cartoon characters, child friendly depictions of food or other consumables, or include any other display, depiction, or image designed in any manner likely to be appealing to minors or anyone under 21 years of age.

We applaud the emphasis on child resistant packaging in the proposed rules, as a recent JAMA study, published January 7, 2022, found that Ontario, Canada saw nine times more emergency department visits per month for cannabis poisonings in young children under the age of 10 after Canada legalized recreational cannabis.<sup>1</sup> 522 children under the age of 10 went to the Ontario Emergency Department for cannabis poisoning between January 2016 to March 2021. The average age of these children was three years, nine months. The study suggests stricter limits on what edibles look like and taste like out of the packaging may also be an important step towards preventing child cannabis poisonings. The U.S. Consumer Product Safety Commission has also indicated that child-resistant packaging should not be relied on and stated, "There is no such thing as child-proof packaging. So you shouldn't think of packaging as your primary line of defense. Rather, you should think of packaging, even child-resistant packaging, as your last line of defense."

**The VMS, AAPVT and VPA support the packaging requirements included in Proposed Rule 2, and also emphasize the necessity to ensure cannabis products themselves, especially higher potency THC cannabis products, are not attractive to children, including the colors, shapes and flavors used.**

#### **2.2.10 Warning labels to include acute physical and mental health risks associated with cannabis use**

Our organizations urge the Cannabis Control Board to require prominent labeling of all cannabis products with up-to-date, evidence-based warnings, which should currently include:

**WARNING: Cannabis/THC may cause: 1. Psychosis\* 2. Impaired driving 3. Addiction 4. Suicide attempt\* 5. Uncontrollable vomiting 6. Harm to fetus/nursing baby \*This can occur in individuals with no previous history of psychosis or mental illness**

Cannabis use is associated with increased urgent and emergency department psychiatric visits and increased mental health disorders including psychosis. According to a January 2020 report presented by the Vermont Department of Health, cannabis use can lead to the development of schizophrenia or other psychoses, as well as suicidal ideation and suicide completion.<sup>2</sup> A 2019 study published in the Lancet found that the strongest independent predictors of whether any given individual would have a psychotic disorder or not were daily use of cannabis and use of

<sup>1</sup> <https://www.sciencedaily.com/releases/2022/01/220107121502.htm>

<sup>2</sup> <https://legislature.vermont.gov/Documents/2020/WorkGroups/House%20Health%20Care/Regulation%20of%20Cannabis/W~Kelly%20Dougherty~Health%20Impacts%20of%20Marijuana~1-24-2020.pdf>

high-potency cannabis.<sup>3</sup> Currently, habitual users of marijuana are going to emergency rooms complaining of bouts of uncontrollable vomiting related to their frequent cannabis use. This condition, named “cannabis hyperemesis syndrome,” has been shown to subside when the consumer stops using cannabis products.<sup>4</sup>

**Therefore, VMS, AAPVT and VPA urge that the warning labels include these acute risks of acute physical and mental health reactions in order to adequately warn new users of the increased occurrence of uncontrolled vomiting, psychosis, and suicide attempts associated with cannabis use. These warnings should also be included on all product packaging and advertising.**

Our organizations stress that these recommended warnings can be the sole warnings contained on packaging and advertising and do not need to be in addition to the warning language currently proposed by the CCB. In fact, we believe the proposed warning label is long and contains too much information so will be overlooked by many consumers. Warning labels should be impactful and to-the-point, limited to the most important health risks.

**2.2.11 and 2.2.12 Advertising regulations must not allow the promotion of cannabis use, include effective age-gating strategies and limit exposure of cannabis advertising to persons under the age of 21**

Our organizations generally support the advertising regulations included in Proposed Rule 2. However, we urge the CCB to put in place robust advertising review, enforcement mechanisms and other strategies outlined below to ensure less than 15% of the audience is reasonably expected to be under 21 years of age. We also urge the CCB to think broadly about advertising, including social media and only allow online advertising if there is effective age-gating, which has proven woefully inadequate for e-cigarettes and vaping tobacco products.

Our organizations recommend that all facets of promotion are considered in regulating the advertisement of cannabis in Vermont to ensure that advertising does not promote the use of cannabis, ensures that less than 15% of youth are exposed to cannabis advertising and that consumer protection, public health and public safety take priority over creating an industry dependent on developing new users.

Currently, Vermont has some of the highest rates of young adult use of marijuana in the country, with 38% of 18–25-year-olds using marijuana in the past 30 days. Among high school students, marijuana use during the past 30 days significantly increased from 24% in 2017 to 27% in 2019 and according to Andrea Villanti, PhD, MPH, from the Vermont Center on Behavior & Health at the University of Vermont, since the start of COVID-19, 50 percent of youth and young adult past 30-days users reported increasing their use of marijuana.<sup>5</sup> As Vermont builds out a retail system for cannabis, increases the availability of cannabis statewide and normalizes marijuana use among adults, there is an increased risk of youth and young adult use rates rising even higher.

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<sup>3</sup> [https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366\(19\)30048-3/fulltext#seccestitle140](https://www.thelancet.com/journals/lanpsy/article/PIIS2215-0366(19)30048-3/fulltext#seccestitle140)

<sup>4</sup> <https://www.cnn.com/2021/09/17/health/marijuana-vomiting-wellness/index.html>

<sup>5</sup> [https://ccb.vermont.gov/sites/ccb/files/2021-07/2021-07-08%20Villanti%20-%20VT%20Cannabis%20Control%20Board%20\(002\).pdf](https://ccb.vermont.gov/sites/ccb/files/2021-07/2021-07-08%20Villanti%20-%20VT%20Cannabis%20Control%20Board%20(002).pdf)

The data that Dr. Villanti cites shows a direct correlation with states that have legalized marijuana sales and a reduced perception of harm among youth and young adults. A CDC study from September 2020 looked at youth exposure to marijuana advertising after Oregon legalized retail sales of marijuana and found that about three-quarters of youths reported exposure to marijuana advertising, with exposure higher in youths in school districts with a closer average proximity to retail marijuana stores and persistent online exposure.<sup>6</sup>

Retail marijuana storefronts were among the leading source of advertising seen by youths. While Oregon restricts advertising deemed attractive to minors, little else in the state's rules curb the influence of retail storefronts on social norms. Our organizations strongly support Proposed Rule 2 that defines anything seen from the outside of the Cannabis establishment as an advertisement.

We are also very concerned about how advertising regulations will be enforced online. What we have seen with the explosion of youth use of tobacco vaping products is that age-gating was not an effective strategy in reducing underage access. According to a Time article from 2015, researchers asked 11 North Carolinian teens between ages 14 to 17 to try to buy e-cigarettes online from 98 of the most popular Internet vendors. The sale of e-cigarettes to minors in North Carolina is illegal—but of the 98 orders, only five were rejected based on a failed age verification. Eighteen orders failed for problems unrelated to age, like website issues. Overall, the minors made 75 successful orders.<sup>7</sup>

A high level of online exposure persists in Oregon despite state-level regulations that restrict internet advertising to locations where at least 70% of the audience is 21 or older. Like tobacco advertising and alcohol advertising, marijuana advertising could work in the longer term to similarly increase the likelihood of initiation and heavier use among youths by fostering positive attitudes and expectations of cannabis use.

The Massachusetts' Cannabis Control Commission currently regulates approximately 150 cannabis retailers and similar to Vermont, requires that all forms of advertising are only visible to 15% of youth under the age of 21. In that state, if the retailer is found to be in violation of these exposure limitations, they are subject to a hefty fine. A recent article states that Massachusetts' cannabis retailers have turned to podcasts, digital streaming services and the use of high-profile influencers to market their products and that this is leading to "increased availability and rapid de-stigmatization."<sup>8</sup>

**Specifically, the VMS, AAPVT and VPA recommend:**

- a) The CCB work with the Vermont Department of Health and other public health experts to craft a robust advertising review to ensure that the percentage of Vermonters under the age of 21 exposed to cannabis promotion is 15 percent or less. Regulations should place the burden on the company advertising to prove that 85% of the audience is over 21. Given that age-gating has been shown in the context of e-**

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<sup>6</sup> [https://www.cdc.gov/pcd/issues/2020/19\\_0206.htm](https://www.cdc.gov/pcd/issues/2020/19_0206.htm)

<sup>7</sup> <https://time.com/3725939/teens-buy-ecigarettes-online/>

<sup>8</sup> <https://www.masslive.com/cannabis/2021/08/advertising-restrictions-lead-cannabis-companies-to-get-creative.html>

**cigarettes to be an inadequate barrier to youth viewing internet advertising, internet/digital/social media advertising should be prohibited unless and until an entity can demonstrate an effective method of ensuring over 85% of the audience is over 21;**

- b) The CCB creates an enforcement mechanism that includes fines for violating the advertising regulations and/or penalizes the licensee by making renewal of a license more difficult or no longer possible;**
- c) The warning labels and warning symbols should be featured prominently on all packaging, advertisement, point of sale flyer, website, spoken word promotion and branded products;**
- d) That the CCB include in advertising restrictions all forms of social and digital media that are increasingly hard to regulate and that the DLL, and other enforcement entities, must be trained on how to enforce the advertising restrictions over social and media forms;**
- e) That the CCB develop a “responsible retailer program” similar to Massachusetts’ program, that educates retailers on how to avoid inadvertently promoting to youth;**
- f) That the CCB is responsible for creating a comprehensive data collection system that includes data on advertising volume, distribution of retail shops and dispensaries, counter-marketing strategies and particular forms of advertising trends in order to dovetail youth behavior and use rates, to inform future regulations and to create targeted education and prevention programs. The CCB should partner with the Substance Misuse Prevention Council and the Vermont Department of Health to ensure that this data is captured and reported annually.**

## **2.6.5 Additives**

**Our organizations support all of the prohibited additives to cannabis products currently included in Proposed Rule 2 especially the prohibition of flavored additives. This is a particularly crucial and effective youth prevention strategy. .**

## **2.8.1 Buffer Zones**

**Our organizations recommend that the “buffer zone” between cannabis establishments and schools, parks, college campuses and childcare facilities be at a minimum 1,000 ft.**

The 2016 Health Impact Assessment on Marijuana Regulation in Vermont, prepared by the Vermont Department of Health, used evidence from decades of tobacco control efforts to make recommendations to set caps on the number of marijuana licenses, the density of licenses (either per 1,000 population or by location), and to create buffer zones around youth-oriented venues (e.g. schools, parks, college campuses and childcare facilities) in order to reduce increased youth exposure to marijuana products and marketing, as well as ease of access.<sup>1</sup> This report points out that once cannabis retail shops are established it will be much harder for the State to reduce the number of licenses in the interest of public health, so they recommended erring on the side of child protection.

According to CounterTobacco.org, which is an organization focused on counteracting commercial tobacco product sales and marketing at the point of sale (POS), higher density of tobacco retail shops near schools result in higher youth smoking rates.<sup>2</sup> A 2019 systematic review of both US-based and international studies also found a positive association between higher density of retail outlets near schools and youth susceptibility to daily use.<sup>3</sup> A study on density of tobacco retail outlets in D.C. found that the closer retail outlets were to public high schools, the more likely they were to display exterior tobacco advertising.<sup>4</sup>

According to a RAND study published in December of 2020, the density of licensed marijuana outlets was associated with a greater intention by young adults to use marijuana.<sup>5</sup> A CDC study from September 2020 looked at youth exposure to marijuana advertising after Oregon legalized retail sales of marijuana and found that about three-quarters of youths reported exposure to marijuana advertising, with exposure higher in youths in school districts with a closer average proximity to retail marijuana stores.<sup>6</sup>

**Therefore, the VMS, AAPVT and VPA urges the CCB to establish at the minimum a 1,000 ft buffer zone between all cannabis retail outlets and marijuana dispensaries and schools, parks, college campuses and childcare facilities.**

Thank you for considering our comments. Please let us know if you have any questions.

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December 15, 2021

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Re: Labelling and Advertising of Cannabis in Draft Rule 2 – Follow Up letter

Dear Chair Pepper and Members Hulburd and Harris:

I write again on behalf of Physicians, Families and Friends Education Fund to address the proposed rule on advertising. Board Member Hulburd kindly contacted me to point out that my last submission had overlooked the provision in the proposed section on *labelling* that had also addressed *advertising*.

Ms. Hulburd was correct -- I had missed the sentence in Rule 2.2.10. Rule 2.2.10 is headed by the caption "Warning labels." When I was addressing advertising, I read and re-read the rule captioned "Advertising," which is Rule 2.2.11. That rule does not mention a required warning label or refer the reader back to Rule 2.2.10. I apologize for this error.

I would like to suggest some revised wording. A revised draft of Rule 2.2.10 could bear an amended caption such as "Warning Labels on Packaging and Advertising." This would place the reader on notice that section 2.2.10 governs both packaging and advertising.

Also, a revised draft of Rule 2.2.11 could include reference to the requirement found in Rule 2.2.10 such as "Any advertisement must also contain the warning set forth in Rule 2.2.10."

Now that I understand that the warning proposed for packaging is also proposed for all advertising, I hope you don't mind if I refer you again to the warning proposed by the Vermont Medical Society on behalf of all of the physicians in Vermont, who

have no interest in this matter other than protecting public health. The VMS warning is short and direct:

**WARNING: Cannabis/THC may cause:**

**1. Psychosis\* 2. Impaired driving 3. Addiction 4. Suicide attempt\* 5. Uncontrollable vomiting 6. Harm to fetus/nursing baby**

\*This can occur in individuals with no previous history of psychosis or mental illness.

This is a 38-word warning, if one counts the numbers 1 through 6 as words. In contrast, the warning in the proposed rule consists of 138 words. The shorter version is more likely to be read and to be remembered by the reader, which is the purpose of the warning.

The shorter version also provides more accurate and more useful disclosures than the longer version. Each disclosure is based on peer-reviewed medical literature. The VMS Resolution, already filed with the Board, identifies this medical literature. The succinct disclosures in the VMS version that are missing from your lengthier draft warning, are:

- ◆Draft Rule 2.2.10 does not warn potential purchasers of some of the medically-documented, most severe consequences of cannabis use: *psychosis and suicide attempts by individuals with no prior mental health history*.
- ◆Nor does the draft warn potential purchasers that *uncontrollable vomiting* may result, which very few consumers would be aware of without this warning.
- ◆And, while the draft warns not to use if pregnant or breastfeeding, it does not say why. The warning needs to state in plain English that *the fetus or infant may be harmed* if you use cannabis.
- ◆Also, warning that cannabis use may be “habit forming” is not accurate; the warning must disclose that cannabis use may cause *addiction*.

I also would like to address the fact that the proposed rule on advertising governs all forms of advertising, including the spoken word on radio or on other media such as youtube where the message will be aural. It will take at least 30 seconds

to articulate the 138-word package label. People will stop listening well before they reach the 30<sup>th</sup> second.

To summarize, I thank Board Member Hulburd for pointing out my mistake, and I hope that the Board will amend proposed Rule 2 as set forth above so that advertisements for cannabis products contain a succinct, memorable and accurate disclosure of the risks that the medical profession has identified.

Respectfully submitted,  
*/s/James A. Dumont*  
James A. Dumont, Esq.

# **Vermont Cannabis Equity Coalition Comments on the Cannabis Control Board's Proposed Rule 2: The Regulation of Cannabis Establishments**

January 30, 2022

## **Section 1: General Provisions**

*2.1.3 (c) "Greenhouse" means a structure or a thermally isolated area of a building that maintains a specialized sunlit environment exclusively for, and essential to, the cultivation or maintenance of Cannabis plants and that is in use for a period of 180 days or more each calendar year.*

Comment: The definition of a greenhouse in Section 1 uses permanence to define the structure, as opposed to energy consumption, or wattage per square foot, as other states do. Stretching the definition of a greenhouse to include structures such as a high tunnel or hoop house and the using exemptions to define mixed-light will force mixed-light growers into selecting a cultivation category that doesn't represent their cultivation practices, in turn, it will fail to meet the unregulated growers where they are now, and impede the intent of the enabling statute to transition the legacy market into the legal market for the purposes of equity and public safety.

A hoop-house, or other mixed-light setups that use a very small amount of artificial light to prevent flowering, but not enough to spur plant growth, will get grouped into the indoor category. Mixed-light needs its own definition, which would likely reside in Rule 1. We recommend the CCB explicitly define all cultivation categories – outdoor, mixed-light, indoor – using wattage per square foot such that "outdoor" to be defined as less than 1 watt per square foot, "mixed-light 1" as between 1-6 watts, a new "mixed-light 2" as between 6-25 watts, and "indoor" as more than 25 watts, and move away from an ambiguous definition for greenhouse that relies on exemptions.

## **Section 2: Regulations Applicable to All Cannabis Establishments**

*2.2.2 (a) A Cannabis Establishment shall obtain and maintain general liability insurance coverage for no less than \$1,000,000 per occurrence and \$2,000,000 in aggregate, annually, and product liability insurance coverage for no less than \$1,000,000 per occurrence and \$2,000,000 in aggregate, except as provided by subsection (b) of this section. The deductible for each policy shall be no higher than \$5,000 per occurrence. (b) A Cannabis Establishment that documents an inability to obtain minimum liability insurance coverage as required by subsection (a) of this section may place in escrow a sum of no less than \$250,000 or such other amount approved by the Board, to be expended for coverage of liabilities. (c) The escrow*

*account required in subsection (b) of this section must be replenished within ten business days of any expenditure.*

Comment: Considering that cannabis is still federally illegal, and the lack of traditional banking services available to prospective businesses and individuals, which have racial disparities of their own, the insurance requirements are too steep for the average Vermonter. The median household income in Vermont is \$61,581, and, per capita income for Black Vermonters is less than \$19,000 a year, according to data analyzed by Stephanie Seguino, a professor of economics at the University of Vermont. And nearly 25% of Black Vermonters live below the federal poverty line, more than double the poverty rate of white people. We recommend considering creating exemptions for the SE applicant, and possibly the craft cultivation licensee, for the insurance requirements.

*2.2.5 (a) Licensee Training: In accordance with 7 V.S.A. 865(a), the agents of those who control a Cannabis Establishment shall complete an enforcement seminar once every three years. For the purposes of this section, an agent refers to anyone who is an employee of the establishment or who works at the establishment.*

Comment: There is no definition of what enforcement training is, nor how much it will cost and which party is responsible for the expense. It is important to define this requisite service for cannabis establishments as to better ascertain the expense and burden for small businesses.

*2.2.6 (a) Cannabis Establishments shall comply with the Inventory Tracking System in a manner determined by the Board and shall cooperate with any third-party vendors the Board utilizes for the purpose of implementing the system. The Inventory Tracking System policy shall be readily available to the public and will not change without at least 90 days of notice.*

Comment: Tracking systems for cannabis are often cost prohibitive for many businesses and individuals and pose a barrier-to-entry for those without capital. Licensees will be responsible for the requisite tracking systems proposed in this section. Without a sliding scale, or other funding assistance, many Vermonters will likely not be able to afford a tracking system and will not be eligible for licensure. We recommend providing financial assistance, or a sliding scale, for craft cultivators and SE applicants to ease this potential barrier-to-entry. Also, other states with more mature adult-use markets are now beginning to scale-down their original regulations around tracking systems to better meet equity objectives, we urge you to explore why other states are now making moves to relax tracking rules and requirements, if those states are achieving greater equity, and if this is something for Vermont to implement.

There is no language on the initial transfer of living plants into tracking systems, leaving legacy producers with invaluable mother stock out of the market. Vermont has talented cannabis growers and breeders, and it often takes several years to develop a unique genetic variety with the cannabis plant, it is unfair to exclude the genetically unique and diverse cultivars developed in Vermont from its emerging legal marketplace, and it is shortsighted for market viability and the inevitable federal legalization. Unique and regional cannabis genetics are a driving force for cannabis tourism in other states, as it will be for Vermont, and such strains must be protected and considered in the rules or we risk successfully transitioning unregulated businesses into the legal market. We recommend the Board include explicit transfer details for living plants with a 100 plant transfer limitation.

2.2.10 (b) All product packaging must use the following warning symbols:



#### **Minimum Size**

**Packing and Labeling:** 0.5" x 0.5"  
**Edible Marijuana Product:** At least 25 percent of the servings' height and width, but not less than 0.25" x 0.25"

#### **Required Colors**

When used on the marketing layer, the universal symbol and optional "not safe for kids" icons must be reproduced in black and red.

**Black** (CMYK): 0, 0, 0, 100  
**Red** (CMYK): 0, 95, 100, 0  
**Red** (Pantone): PMS 485

Coloring is not required for on-product markings.

#### **Background**

The icons must be placed on a white or light-colored background. The interior of the icon must remain white.

#### **Restrictions**

- Do not recreate or modify the icons in any manner.
- Do not stretch or distort the icons.
- Do not use the icons smaller than the minimum size.
- Do not change the icon colors (Note: Coloring is not required for on-product markings.)
- Do not use the icons on a dark background.

(c) All product packaging must include the following statement, including capitalization, in at least 10-point Times New Roman, Helvetica or Ariel and bolded font:

**KEEP OUT OF REACH OF CHILDREN**

(d) All product packaging for products that contain multiple servings must contain the following statement, including capitalization, in at least 10-point Times New Roman, Helvetica or Ariel and bolded font:

**INCLUDES MULTIPLE SERVINGS**

Comment: While it is common for states to develop their own labeling system with warnings and symbols for THC content and child safety, this packaging and advertising requirement is often cost-prohibitive for many individuals and businesses, and financial assistance should be provided to SE applicants to help meet this market criteria.

*2.2.11 (e) Social media accounts for Cannabis Establishments may only promote products using links to their age-gated websites. Any images or other text regarding products is otherwise prohibited.*

Comment: Vermont is a state known for encouraging cottage and small business development, and the use of product photos and imagery is a lifeline for small businesses. Prohibiting cannabis businesses from portraying their products would have a crippling effect on the emerging adult-use marketplace, and will unnecessarily give the unregulated market a reason to continue to exist. We recommend allowing cannabis establishments to use product photos and imagery in advertising and packaging, including on social media, and possibly draw the line at photos or imagery of products in use. It will be important for small businesses, especially producers, to have the ability to visually communicate their products' appearance to consumers.

*2.2.13 Visitors are only permitted to the extent provided for in this rule. If this rule makes no provision for visitors at a type of Cannabis Establishment, then visitors are not permitted at that type of Cannabis Establishment, provided that contractors accompanied by a Cannabis Establishment employee who has an identification card issued pursuant to Rule 1.16, Board designees, and Cannabis Licensed Agents making deliveries are permitted at Cannabis Establishments.*

Comment: Many farms and small businesses in Vermont are family-run. Often when a parent or family member responsible for the business gets sick, hurt, or cannot participate in business operations, even on a temporary basis, it is common for a sibling or other family member to step-in to keep the business going. Would this language allow for this type of commonplace behavior for farms and small businesses?

*2.2.18 (c) Co-located Cultivation Cannabis Establishments must limit their total canopy to the relevant Tier 6 plant canopy limit, provided that the Board retains discretion to waive this limit.*

Comment: The CCB has previously stated, and rightly so, that incubator spaces will be needed for individuals and small businesses, especially SE applicants, to participate in the emerging marketplace. What implications does this canopy limitation have on

incubator spaces for cultivators? If an incubator space, indoor or outdoor, has 10 craft cultivators licensees at the location, would they be restricted to the tier 6 canopy size?

### **Section 3: Regulations Applicable to Cultivators**

*2.3 This section does not apply to dispensaries, which are governed by section 2.10.3 of this rule and by Rule 3.*

Comment: Medical dispensaries, to an extent, have their own set of rules of operation, unique from other adult-use establishments, if anything, this approach to rulemaking appears to lay the foundation for different regulations for different businesses.

*2.3.2 (d) Cannabis Establishments must issue identification badges to visitors, provided that this provision does not apply to Tier 1 cultivation licensees.*

Comment: Recognizing the Board intends to create more cottage-style and low-access licenses for small-scale cultivation and production, and as outlined in the enabling statute, we urge you include those future small business licenses in this visitor exemption.

*2.3.6 (c) Information obtained from inspections at non-cultivator Cannabis Establishments may inform inspections at cultivator licensees.*

Comment: Can this language be refined to ensure that the information is objective, such as data, the concern is to avoid a he-said-she-said situation that relies on hearsay?

*2.3.8 Cultivating licensees shall submit cultivation and operations information to the Board within 60 days of gaining a license. The information shall include the following: (a) cultivation schedule; (b) grow medium; (c) mixed-light cultivation plan and schedule, if applicable; (d) irrigation plan and schedule, if applicable; (e) waste management plan; (f) pest management plan; and (g) a plan to secure regulated products such as pesticides.*

Comment: Provide example plans or even templates for the general public for some or all of these requests, as other states have done to help make markets more accessible, especially to those not as highly-capitalized or resourced. For instance, California provides a PDF sample of a farm plan on its agency website, we suggest the CCB do something similar.

*2.3.9 (b) Employee Samples must meet the following requirements: i. Cultivators may provide samples to employees to determine whether to make a product available to sell, provided that such samples may not be consumed on any licensed premises. ii.*

*Samples will be limited to the following aggregate amounts in a calendar month: four grams per strain of flower per employee, and no more than seven strains of flower per employee.*

Comment: Cultivators and cultivator employees will require more frequent sample allowances than a licensed vendor. A vendor samples a product to determine if they're interested in a final form for resale, by contrast, cultivators, and by extension cultivator employees, sample to determine the desirability of a product *in-development* which often warrants greater iteration and sampling. We recommend increasing the employee allowance to no more than twenty-one (3x currently being proposed) strains of flower per employee per month.

Additionally, all cultivators should be allowed to sell living plants and seed to other licensed cultivators and the general public.

#### **Section 4: Regulations Applicable to Outdoor and Mixed Cultivators**

*2.4.4 Visibility From a Public Road If crop would be visible from a public road, as defined in 24 V.S.A. § 4303(33), a physical barrier of concealment must be created such that the crop is not visible from the public road. Such barriers may include, but are not limited to, fencing, hedges, or building structures.*

Comment: No other agriculture crop demands farmers visually hide production from the general public, we feel this perspective is rooted in a fear-based approach to cannabis legalization, one that continues social stigma, rather than a science and education-based approach. A living cannabis plant doesn't pose a health risk to humans, youth or adults, the intoxicating effects of the plant only emerge after a long drying curing process, therefore live crops growing in a field pose no public health risk. Vermont is also a state that prides itself on its natural beauty, we don't allow billboards for a reason, and to imagine the amount of fences and physical barriers needed to hide fields of cannabis from the general public will likely have implications on the overall natural beauty important to the state.

#### **Section 5: Regulations Applicable to Indoor and Mixed Cultivators**

*The requirements in this section apply to Cannabis Establishments with an indoor and mixed cultivator license.*

Comment: The mixed-light category should be excluded from this section, it requires its own section in Rules 2. It is likely that mixed-light will be a combination of some rules from the outdoor and some from the indoor category.

*2.5.3 (a) Vermont Commercial Building Energy Standards (CBES) will apply to indoor cultivation facilities in the following areas: i. The building envelope must meet CBES for insulation. ii. Non-cultivation lighting must meet CBES for new buildings and retrofits. iii. Ventilation must meet CBES. iv. HVAC systems must meet CBES for efficiency, except that HVAC equipment used for cultivation does not need economizers and heat recapture.*

Comment: Requiring indoor cultivators to comply with CBES is likely too out-of-reach for most individuals and small businesses interested in participating in the emerging market, especially tier 1 licensees and SE applicants. We recommend considering exemptions to some of the CBES criteria, or provide financial assistance to help SE applicants and tier 1 licensees meet the building requirements.

*2.5.5 (b) Integrated HVAC system with on-site heat recovery designed to fulfill to least 75 percent of the annual energy for dehumidification reheat. (c) Chilled water system with on-site heat recovery*

Comment: 2.5.5 (b) and (c) are two areas within the energy rules that are relevant and applicable for medium-to-large sized grow operations but smaller grows, such as a 1,000 sqft canopy and under, could benefit from greater flexibility and exemptions. New Jersey, and other states, have much larger canopies as their smallest cultivation tiers.

*2.5.6 (a) License holders must report energy efficiency and water performance benchmarks annually to the Board as a condition of license renewal. (b) License holders must annually update and submit to the Board written operating procedures regarding equipment maintenance, calibration and proper operation, for all major energy equipment, including, but not limited to, horticultural lighting, HVAC systems, and dehumidification systems.*

Comment: These two energy usage reporting and reduction rules are relevant and applicable for medium-to-large sized grow operations but smaller grows, such as a 1,000 sqft canopy and under, could benefit from greater flexibility and exemptions.

## **Section 6: Regulations Applicable to Manufacturers**

*2.6.1 The Vermont Fire and Building Safety Code, as promulgated by the Department of Public Safety, will apply to all manufacturing operations.*

Comment: Tier-1 product manufacturers are only allowed non-volatile manufacturing processes and therefore warrant exemptions throughout this section, especially regarding fire safety. What fire risk is posed by the water separation of plant matter? We

recommend considering revising this section to allow for the proposed rules to more reflect the risks and realities of the manufacturing processes allowed in tier-1.

*2.6.7 (b) Employee Samples must meet the following requirements: i. Manufacturers may provide a sample of Cannabis Product to an employee to determine whether to make a product available to sell, provided that such samples may not be consumed on any licensed premises. ii. Samples will be limited to the following aggregate amounts in a calendar month: five grams of concentrate or extract, or 100 servings of edibles per employee, provided that the tetrahydrocannabinol content of each individual edible sample does not exceed five milligrams per serving and is within any applicable statutory or regulatory potency levels.*

Comment: Product manufacturers and employees will require more frequent sample allowances than a licensed vendor. A vendor samples a product to determine if they're interested in its final form for resale, by contrast, product manufacturers, and by extension product manufacturer employees, sample to determine the desirability of a product *in-development* which often warrants greater iteration and sampling. We recommend increasing the employee allowance to no more than 200 (2x currently being proposed) samples per employee per month.

### **Section 8: Regulations Applicable to Retailers**

*2.8.2 Retailers must meet all requirements of section 2.5.1 of this rule, along with the following additional requirements: (a) Alarm systems installed by retailers must be installed by an alarm installation company with expertise in industry standard commercial-grade alarm systems. (b) Video surveillance must include point-of-sale areas, all entrances, exits, and any area where Cannabis or Cannabis Product is stored or handled. (c) Strict access controls to areas where Cannabis and Cannabis Product is stored or handled. (d) Video footage must be kept for at least 90 days. (e) Employees shall wear identification badges that clearly identify them as employees while on duty. (f) Upon request, a retailer shall make available to the Board or Board designee all information related to security alarm systems, monitoring, alarm activity, maps of camera locations and camera coverage, surveillance equipment maintenance log, authorized user list, operation instructions, and any other relevant information. (g) The number of customers in the retail area at any given time may not be more than can be easily monitored by the employees present in the retail area. (h) The requirements of 7 V.S.A. § 881(a)(5), to the extent not already covered by this rule.*

Comment: Future retailer licenses, such as delivery and on-farm sales, should be exempt from most, if not all, of these requirements. While it is true that retailers are often the small business with the greatest access to capital and resources, when it comes to empowered local producers, and diversifying the retailer licensees, it will be important

to revisit these regulations to ensure those individuals and small businesses are able to fairly participate.

*2.8.3 (a) Immediately upon a visitor entering the retail premises an individual who has been issued an identification card pursuant to Rule 1.16 shall inspect the visitor’s proof of identification and determine the visitor’s age. This age check shall take place in the immediate vicinity of the entrance to the retail premises.*

Comment: If there is an age limit on cannabis, or a cannabis product, and there is, age verification should take place at the time of sale, similar to other age-restricted products, such as tobacco products and alcohol. A bouncer-type security presence is more appropriate around establishments for consumption, not purchase, and this current requirement for retailers is onerous for the business and the consumer.

**Section 9: Regulations Applicable to Testing Laboratories, Cultivators, and Manufacturers**

*2.9.1 Testing Requirements The following chart describes the testing requirements that each laboratory must be prepared to administer, and the sampling standard operating procedures that Cannabis Establishments must follow.*

	Potency	Moisture or Water Activity	Microbiological (human pathogens)	Heavy Metals	Pesticides	Residual solvents
<b>Harvest lot</b>						
THC compliance	Each lot	Each lot	N/A	Note 5	Each Lot Note 6	N/A
<b>Plant material</b>						
Trim flower	Note 1	Each process lot	Each process lot	Note 1	Note 1	N/A
<b>Concentrates</b>						
Liquids	Each process lot	N/A	Each process lot	Each process lot	Each process lot	Note 3
Solids	Each process lot	N/A	Each process lot	Each process lot	Each process lot	Note 3
<b>Products and Infused products</b>						
Liquids, including infused products (tinctures, and water based)	Note 4	N/A	Note 2	Note 1 or Note 2	Note 2	Note 2 or Note 3
Solids, including infused edibles, tablets	Note 4	N/A	Note 2	Note 1 or Note 2	Note 2	Note 2 or Note 3

Comment: The testing requirements are good, we only recommend to include a mycotoxin test as an additional test, this will help measure any toxic colony forming units that species-specific testing cannot identify.

### **Section 10: Regulations Applicable to Integrated Licensees**

*2.10.4 (a) Integrated licensees must ensure their dispensary operations maintain continuity of services to medical Cannabis patients.*

Comment: Highly-capitalized companies can afford to pay fees and fines for regulatory violations, and oftentimes financial repercussions are not enough to change unwanted behavior – how will the Board ensure dispensaries maintain continuity of services, what are the enforcement measures for the integrated licensees, here?

*2.10.6 Duty to Purchase From Small Cultivators Integrated Licensees shall abide by the requirement in Section 10 of Act 62 (2021) regarding the purchase of Cannabis from small cultivators.*

Comment: The enabling statute, Act 62 (2021), states integrated licensees are directed to obtain product from small cultivators, if available – how is this being enforced? What defines available, stock quantity, price accessibility, etc.?

### **Section 13: Regulatory Waiver**

*2.13 Section 13: Regulatory Waiver The Board, in accordance with the purposes and intent of Chapter 33, Title 7 of the Vermont Statutes and this rule, may waive a regulatory requirement regarding the operations of a Cannabis Establishment to the extent such waiver does not conflict with any other state law, if in the Board's determination, such a waiver: (a) is necessary to achieve the purpose of Vermont law; and (b) does not create a danger to the public health, safety, or welfare.*

Comment: No specific recommendations, but interested to know the scope of discretion for waiving rules, as proposed in this section.

# STANDARDIZED WARNINGS FOR CANNABIS PACKAGES IN THE UNITED STATES OF AMERICA

David L. Nathan, MD, DFAPA

*October 27, 2021*

## INTRODUCTION

Consider this as an iterative process that will strive for consensus among all stakeholders, so please get involved and offer your feedback. Good people disagree on almost every aspect of labeling for regulated cannabis products, so obviously not all contributions will be incorporated into the final product. But who knows?... Your input just might show up on cannabis packages at the state and/or federal regulatory level!

There are three guiding principles that should shape standardized warnings for cannabis product packages:

1. **Readability** – The text of warnings should use language simple enough to be understood by all literate English speakers.
2. **Evidence** – While this goes without saying, there should be sufficient peer-reviewed scientific evidence (and preferably a consensus among scientists) to justify the inclusion of a particular warning. An exception is in pregnancy and breastfeeding, which lacks data and therefore merits inclusion in basic warnings.
3. **Brevity** – Fewer words allow for larger text in the allotted space on a package, so every letter counts. Standardized warnings should be as succinct as possible to maximize the likelihood that patients and consumers will actually read and remember them. Package warnings should be selected to maximize their impact on public health and safety, focusing on populations at greatest risk.

Let's start with a proposed list of populations most at risk from cannabis consumption:

- All patients and consumers (at risk for addiction and less common side effects)
- Patients and consumers who want to drive or operate heavy machinery (at risk for accidents)
- Patients and consumers who are new to cannabis (at risk for overconsumption)
- Small children and pets (at risk for accidental consumption)
- Minors (at risk for intentional non-medical consumption)
- Adults with or at risk for psychiatric disorders (including psychosis and substance use disorders)
- Pregnant and breastfeeding people (given a relative lack of safety data)

We may want to recommend rotating warnings, as seen on tobacco products and Canadian cannabis products, but we should first work out the basic warnings. Also, packages should have a QR code (i.e., a 2D barcode) or web address that links to more detailed warnings, but that's the subject of another conversation.

## PRODUCT WARNING TEXT FOR ALL CANNABIS PRODUCTS

**WARNING: Keep out of reach of children and pets. Do not drive or operate machinery while intoxicated. This product can be addictive. Use of this product may be harmful, especially if you are under 21, inexperienced with cannabis, pregnant, breastfeeding, or at risk for psychiatric problems.**

## **ADDITIONAL WARNINGS FOR PARTICULAR PRODUCT FORMS**

### 1. Inhaled concentrates:

**Inhale cannabis concentrates with caution to avoid overconsumption. Start low & go slow.**

### 2. Oral concentrates and edibles:

**Exceeding the serving size [or dose] can make you sick. Intoxicating effects can be delayed by 2 hours or more and can last 8 hours or more.**

### 3. Topicals:

**For external use only.**

## **OTHER WARNINGS FOR CONSIDERATION**

### A. Interactions with other drugs:

**Intoxication and other effects can increase greatly when this product is combined with alcohol or other drugs.**

### B. Tachycardia:

**This product may cause rapid heart rate.**

**PLEASE SEND ANY FEEDBACK TO [LABELING@DFCR.ORG](mailto:LABELING@DFCR.ORG).  
THANKS FOR YOUR INPUT!**