

**STATE OF VERMONT
CANNABIS CONTROL BOARD**

RULE 4: COMPLIANCE AND ENFORCEMENT

4.1 Section 1: General Provisions

- 4.1.1 Authority
- 4.1.2 Scope and Purpose
- 4.1.3 Definitions
- 4.1.4 Applicability
- 4.1.5 Time

4.2 Complaints and Investigations

- 4.2.1 Investigations
- 4.2.2 Complaints

4.3 Duty to Cooperate

- 4.3.1 General Duty
- 4.3.2 Cooperation with Inspections

4.4 Violations and Penalties

- 4.4.1 Violations Generally
- 4.4.2 Penalties

4.5 Categories of Violations and Associated Penalties

- 4.5.1 Category I Violations and Penalties
- 4.5.2 Category II Violations and Penalties
- 4.5.3 Category III Violations and Penalties
- 4.5.4 Category IV Violations and Penalties
- 4.5.5 Category V Violations and Penalties

4.6 Health and Safety Orders

- 4.6.1 Health and Safety Orders Generally
- 4.6.2 Limitations on Health and Safety Orders
- 4.6.3 Disposal, Quarantine, and Assignment of Costs

4.7 Mitigating and Aggravating Factors

4.8 Issuance of a Notice of Violation

- 4.8.1 Notice of Violation
- 4.8.2 Content of A Notice of Violation
- 4.8.3 Waiver Amount
- 4.8.4 Sufficiency of Service

4.9 Process for Notices of Violation Without Immediate Effect

4.10 Process for Notices of Violation with Immediate Effect

4.11 Extensions and Consolidations

4.12 Health and Safety Notices

4.12.1 Purpose of a Health and Safety Notice

4.12.2 Content of a Health and Safety Notice

4.12.3 Process for a Health and Safety Notice

4.13 Administrative Appeals Process

4.14 Letter of Warning

4.15 Confidentiality

4.1 Section 1: General Provisions

4.1.1 Authority

4.1.2 Scope and Purpose

4.1.3 Definitions

4.1.4 Applicability

4.1.5 Time

4.2 Complaints and Investigations

4.2.1 Investigations

4.2.2 Complaints

4.3 Duty to Cooperate

4.3.1 General Duty

4.3.2 Cooperation with Inspections

4.4 Violations and Penalties

4.4.1 Violations Generally

4.4.2 Penalties

4.5 Categories of Violations and Associated Penalties

4.5.1 Category I Violations and Penalties

4.5.2 Category II Violations and Penalties

4.5.3 Category III Violations and Penalties

4.5.4 Category IV Violations and Penalties

4.5.5 Category V Violations and Penalties

4.6 Health and Safety Orders

4.6.1 Health and Safety Orders Generally

4.6.2 Limitations on Health and Safety Orders

4.6.3 Disposal, Quarantine, and Assignment of Costs

4.7 Mitigating and Aggravating Factors

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted

Formatted

Formatted

Formatted

Formatted

Formatted

Formatted

Formatted

Formatted

Formatted

PROPOSED

4.8 — Issuance of a Notice of Violation

4.8.1 — Notice of Violation

4.8.2 — Content of A Notice of Violation

4.8.3 — Waiver Amount

4.8.4 — Sufficiency of Service

4.9 — Process for Notices of Violation Without Immediate Effect

4.10 — Process for Notices of Violation with Immediate Effect

4.11 — Extensions and Consolidations

4.12 — Health and Safety Notices

4.12.1 — Purpose of a Health and Safety Notice

4.12.2 — Content of a Health and Safety Notice

4.12.3 — Process for a Health and Safety Notice

4.13 — Administrative Appeals Process

4.14 — Letter of Warning

4.15 — Confidentiality

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

Formatted: Default Paragraph Font, Check spelling and grammar

4 **Rule 4: Compliance and Enforcement**

4.1 **Section 1: General Provisions**

4.1.1 Authority

The Cannabis Control Board adopts this rule pursuant to 7 V.S.A. §§ 863, 864, 881, 882, 32 V.S.A. § 7906, and other applicable law.

4.1.2 Scope and Purpose

The Board is charged with implementing and regulating a legal market for Cannabis in Vermont. This rule provides for enforcing compliance with the Board's rules.

4.1.3 Definitions

All definitions in 7 V.S.A. §§ 861 and 951 and Board Rules 1 and 2 shall apply to this rule. The following definitions shall also apply:

- (a) "Administrative penalty" means a monetary fine.
- (b) "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 or of another government agency.
- (c) "Caregiver" means a resident of Vermont who has been issued a Caregiver registration card by the Board, identifying the person as someone who has agreed to undertake responsibility for managing the well-being of a Patient with respect to the use of Cannabis or Cannabis Products for symptom relief.
- (d) "Corrective action plan" means a required set of actions imposed by the Board upon a Cannabis Establishment or dispensary for the purpose of curing a violation of Board Rules or of 7 V.S.A. chapter 33, 35, 37, or 39.
- (e) "Inventory Tracking System" means a method implemented by the Board for tracing all Cannabis and Cannabis Products grown, manufactured, and sold in Vermont.
- (f) "Licensee" means a person who has been issued a license pursuant to Board Rule 1 or Board Rule 3. ~~A licensee does not include a person who has been issued a provisional license.~~
- (g) "Notice of Violation" means a document in which the Board informs a licensee or a person engaged in the transfer or sale of Cannabis or Cannabis Product that they are the subject of an enforcement action by the Board and includes such other information as required by this rule.
- (h) "Patient" means a resident of Vermont who has been issued a registration card by the Board, identifying the person as having a qualifying medical condition pursuant to the provisions of this rule.
- (i) "Pesticide" shall have the same meaning as "economic poison" as defined in 6 V.S.A. § 911(5).
- (j) "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.

4.1.4 Applicability

This rule applies to persons who engage in the sale or transfer of Cannabis or Cannabis Products, including sales or transfers related to cultivating, manufacturing, wholesaling, or retailing Cannabis or Cannabis Products. This rule also applies to those who provide testing services to persons who engage in the sale or transfer of Cannabis or Cannabis Products.

4.1.5 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.

4.2 Complaints and Investigations

4.2.1 Investigations

The Board shall be empowered to conduct investigations of all persons who engage in the sale or transfer of Cannabis or Cannabis Products to ensure compliance with Board rules or of 7 V.S.A. chapter 33, 35, 37, or 39. The Board shall further be empowered to conduct investigations of those who provide testing services to persons who engage in the sale or transfer of Cannabis or Cannabis Products. Such investigations may include undercover investigations. Investigations shall be carried out by Board designees.

4.2.2 Complaints

The Board may accept complaints from any person regarding compliance with these rules, provided that a complaint without further corroboration will not comprise the basis for disciplinary action by the Board. Anyone may file a complaint in a manner determined by the Board and made readily available to the public. Complainants do not have a right to receive updates on disciplinary actions.

4.3 Duty to Cooperate

4.3.1 General Duty

Licensees and Cannabis Establishment identification card holders shall cooperate with the Board and Board designees who are conducting investigations relevant to the enforcement of the Board's rules and related law.

4.3.2 Cooperation with Inspections

Licensees and Cannabis Establishment identification card holders shall cooperate with the Board and Board designees who are conducting inspections and shall give the Board and Board designees immediate access to facilities and records upon request, including access to their physical site of operations.

4.4 Violations and Penalties

4.4.1 Violations Generally

Any violation may be subject to an enforcement action by the Board. The Board will assess the penalty and the severity of the penalty as provided in this rule.

4.4.2 Penalties

One or more of the following penalties may be imposed for a violation in accordance with the categories defined in section 4.5 of this rule:

- (a) Requirement to produce or comply with a corrective action plan.
- (b) Administrative penalty.
- (c) Suspension of a license or Cannabis Establishment identification card.
- (d) Revocation of a license or Cannabis Establishment identification card.

4.5 Categories of Violations and Associated Penalties

The Board will levy administrative penalties and other penalties in accordance with the following categories, provided that the maximum administrative penalties for violations associated with the operations of tier I cultivators and tier I manufacturers shall be half the amount provided for in the categories.

To the extent a violation is not listed in this section the Board shall have discretion to assign the violation to an appropriate category and issue a penalty accordingly.

4.5.1 Category I Violations and Penalties

Category I violations are of a severity that could make a person ineligible to receive, renew, or maintain a license or Cannabis Establishment identification card and include:

- (a) Operating without all required permits, Board approvals, certificates, registrations and/or licenses;
- (b) Making an intentionally false statement to the Board or a Board designee;
- (c) Intentionally destroying or concealing evidence of a violation;
- (d) Failure to abide by a corrective action plan;
- (e) Failure to pay taxes to the Department of Taxes;
- (f) Knowingly permitting unlawful activity on the premises of a Cannabis Establishment or dispensary, or during transportation of Cannabis or Cannabis Product, that results in death or serious physical injury;
- (g) Operating a Cannabis Establishment or dispensary while the license for the Cannabis Establishment or dispensary is suspended or revoked;
- (h) Attempting to change control of a licensee without prior approval of the Board in accordance with Rule 1.17;
- (i) Transporting Cannabis or Cannabis Product outside of the boundaries of this State;
- (j) Making verbal or physical threats to the Board or a Board designee;
- (k) Refusing to allow an inspection or obstructing a Board designee from performing his or her official duties;
- (l) Purchasing, selling, or transferring Cannabis or Cannabis Product that has not passed the required analysis by an independent testing laboratory;
- (m) Labeling Cannabis or Cannabis Products with potency limits that do not match independent laboratory test results;
- (n) Purchasing, manufacturing, selling or otherwise utilizing Cannabis or Cannabis Products from a source that is not a licensed Cannabis Establishment or dispensary;
- (o) Purchasing, manufacturing, selling or otherwise utilizing Cannabis or Cannabis Products from a Cannabis Establishment or dispensary whose license has been suspended or revoked;
- (p) Purchasing or selling Cannabis or Cannabis Product not found in the Inventory Tracking System;
- (q) Failure to properly collect taxes;
- ~~(r)~~ Transporting or storing Cannabis or Cannabis Product from an unlicensed source;
- ~~(s)~~ Diversion of Cannabis or Cannabis Products, including by mislabeling Medical Products or selling or providing Medical Products other than to an eligible Patient or Caregiver;~~or~~
- ~~(t)~~ Intentionally selling or transferring unauthorized or unlawful Cannabis Products; ~~or~~
- ~~(u)~~ Conduct of a character likely to deceive, defraud, or harm the public.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category I violations. In no event shall a Category I penalty be greater than those permitted in this section.

For a category I violation which is the:

- ~~(v)~~ (v) First violation in the immediately preceding 3 years, a corrective action plan, an administrative penalty of not more than \$20,000, a suspension of a license or Cannabis Establishment identification card for not more than 60 days, and/or revocation of a license or Cannabis Establishment identification card.
- ~~(w)~~ (w) Second or subsequent violation in the immediately preceding 3 years, a corrective action plan, a suspension of license or Cannabis Establishment identification card for a length of time to be determined by the Board, and/or revocation of a license or Cannabis Establishment identification card.

4.5.2 Category II Violations and Penalties

Category II violations are violations of a severity that create a threat to public health or safety and include:

- (a) Making an unintentional false statement or representation of fact to the Board or Board designee;
- (b) Unintentionally destroying or concealing evidence of a violation;
- (c) Failing to verify the age of, or selling or otherwise providing Cannabis or Cannabis Products to, a person who is less than 21 years, provided that patients with registry cards may purchase Cannabis or Cannabis Products at dispensary retail operations in accordance with Board Rule 3 and 7 V.S.A. chapters 35 and 37;
- (d) Allowing a person under 21 years of age to enter a transport vehicle or a building or enclosure on the premises of a Cannabis Establishment where Cannabis or Cannabis Product is located, provided that Patients with registry cards may enter dispensary retail operations in accordance with Board Rule 3 and 7 V.S.A. chapters 35 and 37;
- (e) Permitting employment or otherwise accepting work by a person without a Cannabis Establishment identification card or temporary work permit;
- (f) Allowing a person who is less than 21 years of age to work at a Cannabis Establishment or dispensary;
- (g) Failure to separate medical Cannabis or Cannabis Product sales from adult use retail sales;
- (h) Unlawful transfer of Cannabis or Cannabis Product from a dispensary into the adult use market;
- (i) Selling or transferring Cannabis or Cannabis Product in excess of transaction limits;
- (j) Failing to maintain required security systems;
- (k) Any intentional variance from approved procedures in a testing laboratory;
- (l) Failing to notify the Board of theft of Cannabis or Cannabis Products as required by Rule 2.2.17;

- (m) Using unauthorized pesticides, soil amendments, fertilizers or other crop production aids;
- (n) Transferring, moving, or disturbing Cannabis or Cannabis Product which has been placed on stop sale or quarantined by the Board without Board approval; or
- (o) Failing to destroy, selling, or transferring Cannabis or Cannabis Product that has been ordered destroyed by the Board, or that has been adulterated or contaminated without successful remediation;
- (p) Selling or transferring unauthorized or unlawful Cannabis Products;
- (q) Altering, manipulating, or falsifying a certificate of analysis;
- (r) Failing to report lost, stolen, or adulterated cannabis or cannabis products; or
- (s) Failing to abide by Cannabis and Cannabis Product testing requirements.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category II violations. In no event shall a Category II penalty be greater than those permitted in this section.

For a category II violation which is the:

- (t) First violation in the immediately preceding 3 years, a corrective action plan, an administrative penalty of not more than \$15,000, and/or a suspension for not more than 20 days of a license or Cannabis Establishment identification card.
- (u) Second violation in the immediately preceding 3 years, a corrective action plan, an administrative penalty of not more than \$20,000, and/or a suspension for not more than 30 days of a license or Cannabis Establishment identification card.
- (v) Third or subsequent violation in the immediately preceding 3 years, a corrective action plan, a suspension of license or cannabis establishment identification card for a length of time to be determined by the Board, and/or revocation of a license or Cannabis Establishment identification card.

4.5.3 Category III Violations and Penalties

Category III violations are violations of a severity that create a potential threat to public health or safety and include:

- (a) Allowing consumption by any person of alcohol, Cannabis, or other intoxicants on the premises of the Cannabis Establishment or dispensary, or in areas adjacent to the premises of the Cannabis Establishment or dispensary that are under the licensee's control, except as authorized by the Board;
- (b) Failing to keep any required records, including updating the Inventory Tracking System;
- (c) Failing to respond to a Notice of Violation or failing to pay administrative penalties;
- (d) Knowingly permitting any activity on the premises of the Cannabis Establishment or dispensary, or during the transport of Cannabis or Cannabis Products from the premises, that violates Vermont law and that the licensee or an employee has knowledge of;
- (e) Selling or transferring unauthorized products or using unauthorized ingredients;
- (f) Failing to notify the Board of a modification or expansion of the facilities of the Cannabis Establishment or dispensary;

- (g) Violating packaging or labeling requirements, provided that the person or licensee who created the nonconforming label, and any retailer who allows the nonconforming label to be available for sale to a consumer, may both be liable for a violation under this subsection;
- (h) Violating advertising laws or regulations;
- (i) Storing or delivering Cannabis or Cannabis Products outside the Inventory Tracking System;
- (j) Failing to meet requirements for the disposal of Cannabis or Cannabis Product waste;
- (k) Violating restrictions on employee and vendor sampling;
- (l) Exceeding maximum serving requirements for Cannabis or Cannabis Products;
- (m) Failing to comply with requirements for employee hygiene;
- (n) Failing to maintain a reasonably sanitary Cannabis Establishment or dispensary in line with industry standards or applicable regulations;
- (o) Failing to maintain adequate food safety standards, where relevant;
- (p) Selling or failing to dispose of Cannabis, Cannabis Products or food items that are spoiled;
- (q) Failing to properly update the licensee's point of contact with the Board;
- (r) Failure to maintain quality assurance/quality control program in a testing laboratory; ~~or~~
- (s) Failure to maintain current standard operating procedures, where relevant; ~~or~~
- ~~(s)~~(t) Failure to file and maintain accurate governing documents, or failure to operate in conformity with governing documents of record.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category III violations. In no event shall a Category III penalty be greater than those permitted in this section.

For a category III violation which is the:

- ~~(u)~~(u) First violation in the immediately preceding 3 years, a corrective action plan and/or an administrative penalty of not more than \$10,000.
- ~~(v)~~(v) Second violation in the immediately preceding 3 years, a corrective action plan, an administrative penalty of not more than \$15,000, and/or a suspension for not more than 10 days of a license or Cannabis Establishment identification card.
- ~~(w)~~(w) Third violation in the immediately preceding 3 years, a corrective action plan, an administrative penalty of not more than \$20,000 and/or a suspension for not more than 20 days of a license or Cannabis Establishment identification card.
- ~~(w)~~(x) Fourth or subsequent violation in the immediately preceding 3 years, a corrective action plan, an administrative penalty of not more than \$20,000, a suspension of license or Cannabis Establishment identification card for a length of time to be determined by the Board, and/or a revocation of license or Cannabis Establishment identification card.

Formatted: Font:

4.5.4 Category IV Violations and Penalties

Category IV violations create a climate which is conducive to abuses associated with the sale or production of Cannabis or Cannabis Products and include:

- (a) Failing to have in the immediate possession of each Cannabis Establishment or dispensary employee, while on the premises of a Cannabis Establishment or dispensary, a Cannabis Establishment identification card or temporary work permit;
- (b) Removing, altering or covering any required notice or sign;
- (c) Failing to post any required signs;
- (d) Failure to meet employee training and supervision requirements;
- (e) Improper storage of Cannabis, Cannabis Products, or other foods;
- (f) Failure to take reasonable steps to address pest infestations;
- (g) Lack of compliance with the statutory and regulatory requirements for the operation of a Cannabis Establishment or dispensary in another jurisdiction;
- (h) Violating Cannabis and Cannabis Product transportation regulations.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category IV violations. In no event shall a Category IV penalty be greater than those permitted in this section.

For a category IV violation which is the:

- (i) First violation in the immediately preceding 3 years, a corrective action plan and/or an administrative penalty of not more than \$5,000.
- (j) Second violation in the immediately preceding 3 years, a corrective action plan, an administrative penalty of not more than \$10,000, and/or a suspension for not more than 10 days of a license or Cannabis Establishment identification card.
- (k) Third violation in the immediately preceding 3 years, a corrective action plan, an administrative penalty of not more than \$15,000, and/or a suspension for not more than 20 days of a license or Cannabis Establishment identification card.
- (l) Fourth or subsequent violation in the immediately preceding 3 years, a corrective action plan, an administrative penalty of not more than \$20,000, and/or a suspension for not more than 30 days of a license or Cannabis Establishment identification card.

4.5.5 Category V Violations and Penalties

Category V violations are inconsistent with the orderly regulation of the sale or production of Cannabis or Cannabis Products and include:

- (a) Failing to notify the Board of any change in Cannabis Establishment or dispensary contact information;
- (b) Making a payment with a check returned for insufficient funds;
- (c) Failing to properly submit reports required by the Board; or
- (d) Failure to pay for costs involved in screening or testing related to required testing within 60 days.

Before consideration of the factors described in section 4.7 of this rule, the Board will presume that the following are appropriate penalties for Category V violations. In no event shall a Category V penalty be greater than those permitted in this section.

For a category V violation which is the:

- (e) First violation in the immediately preceding 3 years, a corrective action plan and/or an administrative penalty of not more than \$2,500.
- (f) Second violation in the immediately preceding 3 years, a corrective action plan, an administrative penalty of not more than \$5,000, and/or a suspension for not more than 5 days of a license or Cannabis Establishment identification card.
- (g) Third violation in the immediately preceding 3 years, a corrective action plan, an administrative penalty of not more than \$10,000, and/or a suspension for not more than 10 days of a license or Cannabis Establishment identification card.
- (h) Fourth or subsequent violation in the immediately preceding 3 years, a corrective action plan, an administrative penalty of not more than \$15,000, and/or a suspension for not more than 20 days of a license or Cannabis Establishment identification card.

4.6 Health and Safety Orders

4.6.1 Health and Safety Orders Generally

~~(a)~~ The Board may issue one or more of the following health and safety orders ~~for a violation related to public health and safety~~. These orders may be issued in addition to Rule 4.4.2 penalties.

- ~~(a)~~i. Stop-sale order.
- ~~(b)~~ii. Quarantine of Cannabis or Cannabis Product.
- ~~(c)~~iii. Destruction and, if necessary, the prohibition of Cannabis or Cannabis Product.
- iv. Cease and desist order.

~~(d)~~(b) A Board designee may issue a health and safety order on the Board's behalf, provided that any cease and desist order must be authorized by the Board chair. The order shall be accompanied by a written statement of procedural rights explaining how person(s) subject to the order may, within 72 hours, be heard as to why the order should be modified, stayed, or vacated by the Board, as well as how to appeal from an adverse decision of the Board.

4.6.2 Limitations on Health and Safety Orders

The Board may issue health and safety orders only when necessary to mitigate a ~~there is a~~ threat or potential threat to health and safety, including when required to address adulteration pursuant to 7 V.S.A. § 904(e) or to secure illicit or unmarketable Cannabis or Cannabis Products. This section 4.6.2 shall not be construed as limiting the Board's authority to direct that Cannabis or Cannabis Products be secured for investigative or evidentiary purposes.

Formatted: List Paragraph, Outline numbered + Level: 1 + Numbering Style: a, b, c, ... + Start at: 1 + Alignment: Left + Aligned at: 0.25" + Indent at: 0.5"

Formatted

Formatted: Indent: Left: 1", No bullets or numbering

4.6.3 Disposal, Quarantine, and Assignment of Costs

(a) Licensees who are required to destroy Cannabis or Cannabis Product must dispose of it in accordance with applicable regulations in Board Rule 2.

(b) The Cannabis Establishment or dispensary in possession of Cannabis or Cannabis Product that the Board orders destroyed or quarantined is responsible for the destruction or quarantine. The Board shall not be a tribunal for determining any potential assignment of costs among licensees for such destruction or quarantine.

(b)

Formatted: Normal, No bullets or numbering

4.7 Mitigating and Aggravating Factors

The Board may consider mitigating and aggravating factors when considering the severity of a penalty. Factors may include:

(a) Any prior violations that the person has admitted to or was found to have engaged in.

(b) Whether the violation impacted public health and safety.

(c) Whether the violation is ongoing or has stopped.

(d) Good faith measures by the person to prevent the violation, including the following:

i. Proper supervision;

ii. Consistent and documented employee training; and

iii. Standard operating procedures established prior to the Board's investigation that include procedures directly addressing the conduct for which imposition of a penalty is being considered.

(e) Person's history of success or failure with compliance checks or prior corrective action plans.

(f) Corrective action(s) taken by the person related to the current violation or prior violations.

(g) Willfulness and deliberateness of the violation.

(h) Circumstances surrounding the violation.

(i) The size of the licensee or operation.

(j) The revenues of the licensee or operation.

(k) Person self-reporting the violation(s).

(l) Owner or management personnel is the violator or has directed an employee or other individual to violate these rules or the law.

4.8 Issuance of a Notice of Violation

4.8.1 Notice of Violation

If the Board finds that a person has violated any board rule or related law, the Board may issue a Notice of Violation.

4.8.2 Content of A Notice of Violation

A Notice of Violation shall contain the following:

- (a) A concise statement of the nature of the violation.
- (b) The factual basis for the violation.
- (c) The penalty or penalties to be imposed.
- (d) Health and safety orders, if necessary.
- (e) Information about how to contest the violation, pay a waiver penalty if applicable, and submit a corrective action plan if applicable.

4.8.3 Waiver Amount

If the Board assesses an administrative penalty, the amount assessed on the Notice of Violation shall be the waiver amount. Paying the waiver amount will constitute acceptance of the Board's administrative penalty.

4.8.4 Sufficiency of Service

- (a) The Board may accomplish service of a Notice of Violation in any of the following ways:
 - i. By delivering the notice using certified mail to a licensee's business address provided in accordance with Board Rule 1.
 - ii. By delivering the notice using certified mail to the registered agent of a licensee as recorded in the licensee's business registration with the Vermont Secretary of State.
 - iii. By delivering the notice using certified mail to a Cannabis Establishment identification card holder's address, as provided pursuant to Board Rule 1.16.3.
 - iv. By hand delivery to:
 - 1. a Cannabis Establishment identification card holder;
 - 2. a person who controls a licensee; or
 - 3. a person acting in violation of Board rules or of 7 V.S.A. chapter 33, 35, 37, or 39.
- (b) The Board shall also deliver a Notice of Violation by electronic mail provided pursuant to Board Rule 1, provided that this shall not constitute service unless a licensee chooses to accept service of a Notice of Violation by electronic mail.

4.9 Process for Notices of Violation Without Immediate Effect

Except as provided in section 4.10 of this rule, penalties imposed by a Notice of Violation will not take effect until the Board has rendered a final decision in accordance with the following process:

- (a) Within 15 days after service of a Notice of Violation, a person may contest the violation and/or the penalty to the Board by filing a response in writing. The response must specifically identify each issue and fact in dispute and state the position of the person, the pertinent facts to be determined by the Board, and the reasons supporting the person's position.
- (b) A failure to contest the violation within 15 days will constitute an admission of the violation and acceptance of the penalty.
- (c) The Board shall consider the person's response and issue a final decision in writing within 15 days after receiving the person's response.
- (d) A person who faces suspension or revocation of their license or Cannabis Establishment identification card may request a hearing before the Board. The hearing shall take place within 20 days of the Board receiving the request for a hearing unless the person waives the timeline. Evidence may be introduced at the hearing in accordance with 3 V.S.A. § 810. The Board may issue a final decision on the record at the hearing or may issue a final decision in writing within 15 days after the hearing is complete.
- (e) To the extent a person is contesting whether a violation occurred, the Board may not find that a violation occurred unless such a finding is supported by a preponderance of the evidence.
- (f) The Board's final decision may uphold its original Notice of Violation, may revise the penalty or penalties to be more or less severe, or may dismiss the Notice of Violation.
- (g) A person who is aggrieved by the Board's final decision may appeal in accordance with 7 V.S.A. 847.

4.10 Process for Notices of Violation with Immediate Effect

Suspensions, revocations, or health and safety orders imposed by Notices of Violation will have immediate effect if they are accompanied by a written finding that the licensee's violation poses an imminent threat to public health, safety, or welfare.

If an administrative penalty or a requirement to produce a corrective action plan accompanies a penalty imposed with immediate effect, the administrative penalty or corrective action plan will not take effect until the conclusion of the process provided for in this section.

- (a) The Board's initial Notice of Violation will plainly state that the penalty takes effect immediately. The Board will confirm the Notice of Violation and penalty within 7 days.
- (b) Within 15 days of service of such a violation, a person may contest the violation and/or the penalty to the Board by filing a response in writing. The response must specifically identify each issue and fact in dispute and state the position of the person, the pertinent facts to be determined by the Board, and the reasons supporting the person's position.
- (c) A failure to contest the violation within 15 days will constitute an admission of the violation and acceptance of the penalty.
- (d) The Board shall consider the person's response and issue a final decision in writing within 10 days after receiving the licensee's response.

- (e) A person who faces suspension or revocation of their license or Cannabis Establishment identification card may request a hearing before the Board. The hearing shall take place within 10 days of the Board receiving the request for a hearing unless the licensee waives the timeline. Evidence may be introduced at the hearing in accordance with 3 V.S.A. § 810. The Board may issue a final decision on the record at the hearing or may issue a final decision in writing within 10 days after the hearing is complete.
- (f) To the extent a person is contesting whether a violation occurred, the Board may not find that a violation occurred unless such a finding is supported by a preponderance of the evidence.
- (g) The Board's final decision may uphold its original Notice of Violation, may revise the penalty or penalties to be more or less severe, or may dismiss the Notice of Violation.
- (h) A person who is aggrieved by the Board's final decision may appeal in accordance with 7 V.S.A. 847.

4.11 Extensions and Consolidations

- (a) The Board may extend a deadline contained in section 4.9 or section 4.10 of this rule only for good cause. The Board must give written notice of the finding of good cause to the person who is the subject of the Notice of Violation prior to the expiration of the relevant deadline.
- (b) The Board may consolidate decisions and hearings for multiple persons to the extent that the disputed issues in the Notices of Violations relate to substantially similar facts.

4.12 Health and Safety Notices

4.12.1 Purpose of a Health and Safety Notice

The Board may find that, even without finding a violation by a person or license holder, the Board must act to protect public health and safety.

4.12.2 Content of a Health and Safety Notice

If the Board finds that Cannabis or a Cannabis Product is or may be unsafe to the public, it may issue a Health and Safety Notice to any Cannabis Establishment and include within it a health and safety order, as provided for in section 4.6 of this rule.

The Health and Safety Notice will contain the following:

- (a) The identity of the Cannabis or Cannabis Product at issue and a concise statement of the nature of the threat to public health.
- (b) The factual basis for the threat to public health.
- (c) The health and safety order(s) to be imposed.
- (d) Information about how to contest the Health and Safety Notice.

4.12.3 Process for a Health and Safety Notice

All Health and Safety Notices will have immediate effect. Licensees may contest the notice pursuant to the process established by section 4.10 of this rule.

4.13 Administrative Appeals Process

- (a) Appeal to Appellate Officer. A party to a contested case may appeal a final decision of The Cannabis Control Board (Board) to an Appellate Officer by filing with the Executive Director of the Board a written notice of appeal within 30 days of the decision in accordance with 7 V.S.A. § 847. The notice of appeal shall include a statement of questions to be determined by the Appellate Officer. Thereafter, every time a party files a paper, they must send a copy to the other party. The Director shall assign the case to an Appellate Officer. Board staff shall prepare the record of the proceeding or decision and deliver it to the assigned Appellate Officer.
- (b) Composition of record on appeal. The record on appeal shall consist of any original documents listed in 3 V.S.A. § 809(e), including exhibits, any transcript of the proceedings, if any, and any other relevant documents submitted by the appellant to the Board. The record shall be produced within 14 days of the notice of appeal unless good cause is shown for a delay.
- (c) Transcript of the proceedings. Tape-recordings of any oral proceedings shall be sufficient for a transcript. If a stenographic record of the oral proceedings was made the Board shall file the transcript with the Appellate Officer.
- (d) Appellate Prehearing Conference. In any appeal, upon 14 days' notice to the parties, the Appellate Officer may direct the parties to appear for a conference to consider simplification of the issues, possibility of settlement, and such other matters as may aid in disposition of the proceedings by the Appellate Officer.
- (e) Briefs; Oral Argument. The appellant must submit a brief within 30 days after the date on the notice that the record is complete. The Board must file any responsive brief within 21 days after the appellant's brief is filed. Briefs shall not exceed 15 double-spaced pages. A case shall be deemed ripe for oral argument when the responsive brief is filed or when the time for filing the responsive brief has expired. Oral argument may be scheduled in advance of the filing of the responsive brief consistent with the requirements of this Rule. Each party will be allowed 15 minutes for oral argument.
- (f) Taking Additional Evidence on Appeal. Upon motion and good cause shown, the Appellate Officer may schedule a hearing to take additional evidence on whether irregularities in procedure occurred that are not otherwise of record. The hearing on those irregularities is to be limited to those matters not of record. The Appellate Officer is not authorized to rehear substantive evidence that otherwise was or could have been raised before the hearing authority.
- (g) Decision. The Appellate Officer shall issue a written decision within 45 days of final hearing affirming the order of the Board, or reversing and remanding with instructions to the hearing authority on requirements to conform the Board's order to the law.

|

(h) Further Appeal. An individual aggrieved by a decision of the Appellate Officer may appeal directly to the Supreme Court as authorized by 7 V.S.A. § 847(c) and in accordance with the Vermont Rules of Appellate Procedure.

4.14 Letter of Warning

The Board may issue a letter of warning to a person instead of a Notice of Violation or other order. Letters of warning will notify a person of a concern with their compliance or operating standards and will be a part of the person's record with the Board. No penalty will be associated with a letter of warning.

4.15 Confidentiality

| The Board abides by the confidentiality requirements of 7 V.S.A. §§ 901a, 952(c), and 973(b).

PROPOSED