Notice of Decision to Take Action
On Proposed Regulation

Re: Regulation Concerning Adult-Use Cannabis, PR2024-050

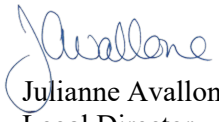
The Department of Consumer Protection opened a public comment period from November 25, 2024 through January 10, 2025 to solicit public input regarding proposed regulations concerning adult-use cannabis.

The purpose of the proposed regulations is to codify the Department's existing Policies and Procedures into the Regulations of the Connecticut State Agencies in accordance with Section 21a-421j of the general statutes. The existing Policies and Procedures, and these proposed regulations that will replace them, are purposed to provide the provisions necessary to operationalize Connecticut's adult-use cannabis industry, including the parameters by which persons licensed by the Department shall operate. Importantly, these proposed regulations set forth consumer protections including product quality, safeguards for minors and security of product against diversion.

The document attached summarizes the comments received and the Department's intended revisions of the proposed regulations in response.

The proposed regulations, as modified based on the comments received, will be published on the website of the Secretary of the State. The Department will continue the process by forwarding these regulations to the Office of the Attorney General for review. Thank you for your interest in this proposed regulation and the work of the Department of Consumer Protection.

Very truly yours,



Julianne Avallone
Legal Director

Dated: February 20, 2025

Proposed Amendments to Regulation Concerning Adult-Use Cannabis

Summary of Public Comments and the Department's Responses:

The Department of Consumer Protection ("Department") received several comments from individuals James Ruscitto, Lou Rinaldi, Mark Plavecki, Kenyatta DeMudd, Andrew Allen, Vincent Caizzi, Erin Doolittle, Gretchen Swanson, Yasha Kahn, Ivelissa Correa Brown, David Nathan, Brian Dunphy, Jason Blakesley, Josiah Schlee, Rebecca Rutenberg, Eileen Kopec, Steven Inc, Jennifer Fell, Benjamin Zachs, Mark Waldron, Kevin Hawley, John Jannes, Kennard Ray, Ethan Werstler, Nicholas Cimadon, Kyle Motola, Carl Tirella, Tanner Chialastri, Christina Captain, Brian Essenter, Tyler OHazo, Marghie Giuliano, Richard Carbray, and James Daddario. The Department of Consumer Protection ("Department") also received comments from the following entities: BLM860, Doctors for Drug Policy Reform, CT CannaWarriors, Vicente LLP, Connecticut Cannabis Chamber of Commerce, Fine Fettle, Coastal Cannabis, Rome Smith Kowalski, Soundview, Earl Baker, and Budr Cannabis.

Cannabis Product Nomenclature

One commentor articulated concerns that medical marijuana names were inaccurate due to regulatory restrictions upon medical marijuana products only, and that naming conventions for medical marijuana products should be more aligned with the adult-use market. These proposed regulations place the same naming convention restrictions on both medical marijuana products and adult-use products, such that the requirements remain the same across both markets.

Cannabis Display Guidance

Some comments expressed a desire for product displays in cannabis establishments. Displays are permitted and the parameters around them can be found in the proposed regulations. Additionally, guidance about cannabis displays can be found on the Department's website.

Disclosures

Some commentors requested disclosures addressing remediation, laboratory testing failures, the use of certain materials in production and manufacturing, as well as warning labels about the environmental impact of cannabis cultivation. The disclosures mentioned by these commentors can be found on the extended content labels required by proposed regulation section 21a-421j-32. Warning labels are dictated by statute in section 21a-421j of the general statutes.

Home Grow

Some commentors conveyed an aspiration to home-grow cannabis outdoors. Many aspects of home-grow are governed by statute, for both patients and consumers. The proposed regulation restricting home-grow to the indoors is a reflection of the increased security and quality concerns attendant to cannabis. Cannabis grown outdoors can be more easily accessed, and would be subject to additional impurities in the soil that are absorbed and stored in the plant, creating a potential risk to health and safety. Another commentor proposed removing the home-grow limitations on plant height and number in order to amass more crop; these restrictions are based on statute and support the overall licensing scheme that requires cultivators and micro-cultivators to be licensed with the Department.

Homogeneity Requirement

Homogeneity is an important feature that enables patients and consumers to accurately access their cannabis consumption. Knowing the amount of THC in each quantity of cannabis or cannabis product to be consumed allows patients and consumers to only consume the desired amount and greatly reduce the risk of over-dose and other undesired effects. Employing appropriate processing and manufacturing techniques can ensure a homogeneous product, and therefor these proposed regulations require cannabis products to provide such safeguards to patients and consumers. The Department understands that flower buds do not

lend to homogeneity throughout and entire batch, which is why it is important to have final package testing that increases the randomization and accuracy of testing.

Laboratory Testing

Several comments focused on aspects of laboratory testing. One commentor inquired about the process for patients and consumers to submit cannabis samples to cannabis testing laboratories for testing. In response to this comment, and in accordance with section 21a-408r of the general statutes, the Department is adding established procedures for cannabis testing laboratory testing by members of the public into the proposed regulations section 21a-421j-29. Another commentor disagreed with the destruction requirement for laboratory testing failures, which is prescribed by statute in section 3 of Public Act 24-76. One other commentor suggested that cannabis testing data be collected to allow for monitoring of the industry, enforcement for noncompliance, and indicators for desired policy changes; these proposed regulations do require such testing information collection through the State's cannabis track and trace system, which not only acts as a repository for cannabis testing information, but also helps to highlight industry trends and enforcement needs.

Other commentors questioned the value of chromium testing for cannabis, asserting that it was uncommon. After reviewing the detrimental impacts that chromium can have on health and human safety, and also talking to other states that employ chromium testing for cannabis, such as New York, New Jersey, D.C., Georgia, Illinois, Maryland, Michigan, Mississippi, Missouri and Vermont, the Department determined this to be a valuable test in order to protect patients and consumers.

One commentor suggested that the maximum batch size be lowered from 40 pounds for cannabis flower, to 10 pounds, in order to prevent "cherry picking" and ensure accurate testing. In addition to the batch size limit, the Department has also implemented random sampling by the cannabis testing laboratory employees and final package testing which should prevent cherry picking.

Some commentors expressed concerns about cannabis testing in final packaging, including apprehension about cost, and cited a 2020 California bill that was never signed into law to deceptively suggest that California had implemented and then abandoned final package testing. The Department researched the California bill to confirm that it was never signed into law, and then met with representatives from the Lab Division Services of California's Department of Cannabis Control, who confirmed that the same testing requirements have been in place since 2017, and that any claims of implementing and then abandoning final package testing, were most certainly false. The Department also met with many other states that have implemented final package testing, which states emphasized that final form testing: produced more accurate test results, caught more instances of product contamination, and most importantly, served as a safeguard against illicit and untested products being packaged and entering the market with false test results. Other states also indicated that similar cost concerns in their markets were unable to be substantiated by licensees. The Department also met with the cannabis testing laboratories operating in Connecticut and were informed that no meaningful cost increases were expected from the proposed regulations regarding cannabis laboratory testing.

Licensure

One commentor disagreed with the current process for licensure, and social equity considerations. Both the licensure process and social equity concerns are governed by statute, including the lottery selection process in section 21a-420g of the general statutes. Therefore, a statutory amendment is required to effectuate these changes.

Mold Standard

Some commentors expressed opposition to the 10^5 cfu/g standard, which has a prohibition on the presence of the Aspergillus species, proposed for the total yeast and mold count (the "TC Standard") as confirmed

by existing testing methods (the "TC Testing"). The Department has reviewed the TC Standard with several professional microbiologists and other laboratories both inside and outside of Connecticut. The Department also consulted with regulators in other states. Additionally, the Department reviewed existing testing requirements of other states and did a comprehensive comparative approach.

The consensus of the experts and the result of the comparative analysis was that the TC Standard is appropriate and safe in the context of the rest of Connecticut's medical marijuana testing requirements, namely the inclusion of requirements pertaining to Aspergillus. A general limit of 10^4 cfu/g would only concern the presence of microbes without delineating specific types, some of which are harmless or beneficial, while others, including the Aspergillus species, are proven harmful. This regulatory change was subsequently adopted through the regulatory approval process. Accordingly, the Department is retaining the TC Standard as previously adopted.

Packaging and Labeling

Some commentors stated that packaging and labeling restrictions suppressed competition. Packaging and labeling, as well as marketing, are directed by statute, mainly in section 21a-421j of the general statutes. Therefore, a statutory amendment is required to effectuate this change.

Policy and Procedures Timeframe

Some commentors requested that the Department extend its timeframe for the Policies and Procedures to remain as such rather than be promulgated as regulations. The timeframe allotted to Policies and Procedures is dictated by section 21a-421j of the general statutes.

Price Control

A commenter requested the Department address high prices in the market by setting price controls. The Department is not authorized to implement or enforce price controls. A statutory amendment is required to effectuate this change.

Remediation

One commentor intimated that allowing remediation of cannabis diminishes the taste, smell and efficacy of the product. In follow-up consultation with experts in this area, the Department learned that the reliability and effectiveness of remediation varies widely based on the method used. Accordingly, the Department's proposed regulation solely allows for remediation pursuant to a plan approved by the commissioner. This ensures remediated cannabis does not pose a known health risk to qualifying patients and consumers. The Department's priority is public health and safety, therefore we cannot comment on a potential reduction in flavor or scent.

Stability Testing

Some commentors requested clarity about the different confidence intervals associated with laboratory testing and stability testing. The confidence interval for laboratory testing aligns with the capacities of laboratory equipment used for Certificate of Analysis testing. Contrarily, stability testing has a tighter confidence interval and margin for variance because it dictates which products are sufficiently similar to be registered with the Department using the same product name. Stability testing failures are not equivalent to cannabis testing failures, but rather an indication that a product is not suitable to be labeled as another product with the same name because those two products are too different in nature. Additionally, stability testing can proactively catch any issues with product packaging impacting the cannabis it contains, thus warranting a change in packaging or expiration date.

Staff Training

Some commentors proposed a requirement for cannabis establishment staff to be better trained and knowledgeable about cannabis. Proposed regulation section 21a-421j-11 provides requirements of all

cannabis establishments to provide training to employees based on the type of business they are employed by, including additional requirements for employees who work within the medical marijuana program.

THC Cap

Some commentors suggested removing the THC limits on flower and certain cannabis products, respectively. The THC limits are directed in statute pursuant to CGS section 21a-421j. Therefore, a statutory amendment is required to effectuate this change.

Universal Symbol

One commentor proposed an alternative universal symbol design. The commentor did not provide any research, data, or focus group related studies about the effectiveness of the proposed symbol. It was also not clear if the proposed alternative symbol was proprietary in nature and would have fiscal implications on the state or other liabilities for its use. While a few states and ASTM appear to have adopted the symbol, it has not been adopted consistently by state cannabis regulators in such way that would be indicative of standardization amongst cannabis regulators. Further, fellow New England states such as Massachusetts and Maine have adopted the same universal symbol for cannabis as Connecticut, lending to a greater efficacy of the current universal symbol.

Variety of Medical Products

Numerous commentors expressed dismay over the lack of medical marijuana product variety available to patients since the advent of the adult-use market. The Department is not authorized by statute to take measures to ensure specific product manufacturing or availability. As the program continues to grow and expand, additional grow and retail establishments will come online and may address these concerns.

Proposed Amendments: Upon further review of the proposed regulations, the Department has made the following technical revisions to the draft:

1. The term “developments” in section 21a-421j-11(a)(5) has been clarified to refer only to research and legal developments.
2. Remaining references to the Department’s “Policies and Procedures” in section 21a-421j-29 of the proposed regulations have been correct to “the Regulations of Connecticut State Agencies.”
3. In section 21a-421j-29, subsection (p) has been added to, as authorized by section 21a-408r of the general statutes, establish a protocol for a cannabis testing laboratory to accept samples for testing from qualifying patients, caregivers and consumers, as authorized by section 21a-408r of the general statutes.
4. The term “patients” has been corrected to the defined term “qualifying patients” in section 21a-421j-30(g)(5) of the proposed regulations.