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NEW YORK – REVISED REGULATIONS OVERVIEW

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KEY TAKEAWAYS:

- **Timeframe:** New York regulators are on track to open up general cannabis licensing following Labor Day.
- **Competitive Applications:** The Revised Regulations have changed the application process from one that was "continuous and rolling" to set application windows for limited licenses based on regions.
- **Corporate Considerations:** Priority status remains highly relevant – as do the complicating and highly fact-specific true party of interest restrictions and prohibitions.
- **Registered Organizations:** While these rules have certainly improved the pathway for licensure for medical operators, significant issues still remain.

New York's Office of Cannabis Management ("OCM") has posted, and the Cannabis Control Board (the "CCB" or "Board") voted to approve the filing of, certain revised adult-use regulations (the "Revised Regulations"). While these Revised Regulations merely contain amendments to the robust first set of proposed rules ("Prior Draft"), they are important given both the timing for general adult-use licensing it lays out, as well as the roadmap for what the application process and adult-use marketplace will look like in the weeks, months, and years to come.

Overview

Timeline

As it relates to timing, the million dollar question for prospective cannabis businesses in New York has been when will general licensing commence. Most are familiar that the only licenses issued in New York, to date, have been conditional licenses with extremely limiting conditions (hemp program licensure, qualifying businesses, qualifying convictions), meaning, license opportunities have not been available to any old businesses and/or individuals that wished to apply. However, the posting of the Revised Regulations today aligns with statements made by Senior Level OCM officials regarding the anticipated roll-out towards regular licensing. For

instance, Axel Bernabe, Chief of Staff and Senior Policy Director of OCM, previously gave the anticipated timeline as follows:

> The regulations that we filed for public comment, we're really trying to get them done by our **May 11 board meeting**. If we get it done by then, we should be able to file final regs by the end of August. **Then we can start opening the general application period within a couple months of that**. These are all tentative dates, but in the fall, **after Labor Day**, that's when we can start to award more dispensaries.

(Emphasis added.)

In short, several months after this comment was made, OCM's predication on the time-frame for the Revised Regulations have hit the mark, with the hope that the remainder of the timeline noted above also holds true.

From here, we wait for the formal publication of the Revised Regulations in the New York Register, and another forty-five (45) day comment period. After the publication of the Prior Draft, an initial sixty (60) day comment period commenced. Following the close of that comment period, the Board could have adopted, revised, or withdrawn the rule proposal. Given that they have revised the regulations, the Board was required to submit a Notice of Revised Rule Making, which triggered the immediate forty-five (45) day review period.

Roadmap

Rolling Licenses Have Evolved to Application Periods

One of the biggest changes to the application process is that whereas the Prior Draft noted that applications would be solicited and accepted "on a continuous rolling basis," the Revised Regulations have changed this to distinct application periods. For example, the Revised Regulations identify that "[l]icensing applications shall be accepted during specific license type application periods, which shall be announced no less than thirty (30) days before the application period opens for that specific license type, as established by the Board." Meaning, this will not be an open and rolling application period, like we've seen in other recent adult-use states such as New Jersey, and instead, more akin to what we've seen during the Adult-Use Conditional Cultivator, Adult-Use Conditional Processor, and Conditional Adult-Use Retail Dispensary ("CAURD") rounds. The Revised Regulations have maintained the language identifying potential caps, wherein it identifies that "[l]imitations may be imposed on the acceptance of licensing applications, including, but not limited to, the total number of licenses; locations or authorized regions of operations; size of operation or output; limitations associated with true party of interest; eligibility criteria; and operating conditions, such as sustainability, public health and safety, and social and economic equity factors."

In short, we're likely to see, like we did with the CAURD licensing round, an opening of applications subject to specific criteria and that limits the total number of opportunities by

region. For instance, when the CAURD round was initially announced, OCM solicited only one hundred fifty (150) total CAURD licenses, and broke that down by different regions of the state. Though OCM subsequently doubled that to three hundred (300), this example is certainly in stark contrast with an open application round that accepts application on a seemingly continuous and rolling basis.

We note that this again holds true to public comments made by senior-level OCM staff, who had anticipated:

> . . . a phased rollout to a certain extent, so we don't have a thousand people all looking for dispensaries at the same time. We have like, 100, and then another 100, and then a couple months later, another 100. Then you don't have 500 people descending on a county and all scrambling and fighting for space and bidding up the price.

How Will These Applications Be Processed?

While priority was certainly important under the Prior Draft, it has become especially important in light of the defined application periods noted above. The regulations identify that applicants will be reviewed based on priority, including based on "provisional, social and economic equity status, or any additional criteria to be set by the Board." Social and economic equity applicants include those entities who are owned and solely controlled by: (a) an individual from a community disproportionately impacted ("CDI") by the enforcement of cannabis prohibition; (b) minority owned businesses; (c) woman-owned businesses; (d) distressed farmers; (e) and service-disabled veteran owned businesses. Moreover, the rules give OCM the ability to provide extra priority to those businesses owned by those from a CDI and who have income lower than 80% of the median income in the county in which the applicant resides plus convicted of a cannabis related offense.

How Will Applications Be Evaluated?

Largely the same as under the Prior Draft, including by reference to: (a) community impact plan; (b) operational and regulatory compliance plans, highlighting technologies, techniques, and strategies to protect the surrounding environment, limit carbon footprint, and leverage sustainable energy sources; (c) completion of workforce or training programs offered by OCM; (d) applicant's history in creating or maintaining an equitable workplace environment through the review of previous business and management practices; (e) history in creating or delivering culturally and linguistically competent services to diverse and underserved populations; (f) service in community leadership roles; (g) relative performance of applicants based on such criteria; (h) applicant's qualification for provisional licensing status; and (h) consideration to whether applicants have entered into an agreement with a statewide or local bona-fide building and construction trades organization for construction work on its licensed facilities.

Importantly, the request for operational plans should not be overlooked, as they constitute the regulatory meat of the submissions associated with the application. Operational plans will

include reference to: (a) energy and environmental standards; (b) site, operating, and environmental plans; (c) security and storage of cannabis; (d) employee requirements and obligations; (e) responsible workforce training; (f) worker health and safety standards; (g) sanitary facility, equipment, and handling standards; (h) inventory and tracking; (i) quarantine and recalls; (j) transport of cannabis and cannabis products; (k) management of cannabis and other waste; (l) inspections and audits; (m) general recordkeeping; and (n) processing samples for internal quality control. In short, the preceding is akin to the types of application sections and materials that we see in most other competitive marketplaces. Moreover, when one of the criteria to be assessed by OCM in connection with license issuance is the "relative performance of applicants based on such criteria," the message is that the narrative responses must not only meet the relevant regulatory criteria, but exceed it by reference to best practices that differentiate one applicant's protocols from another.

Do Towns Play an Active Role in this Process?

Certainly – especially given the change identified in the application process from continuous and rolling to a process focused on a limited number of licenses by region. Indeed, as identified previously, part of the reason for the change was forecast by OCM, wherein they stated that their goal of a phased rollout is:

> so we don't have a thousand people all looking for dispensaries at the same time. We have like, 100, and then another 100, and then a couple months later, another 100. Then you don't have 500 people descending on a county and all scrambling and fighting for space and bidding up the price.

By way of reminder, the MRTA required municipalities to "opt-in" or "opt-out" by December 31, 2021, but only as it relates to retail and/or on-site consumption. The MRTA still provided towns the ability to pass "time, place, and manner" type restrictions on all licenses, and, to date, we have begun to see towns beginning to wake up and pass ordinances testing the boundaries of what constitutes reasonable "time, place, and manner" restrictions. The greatest check on municipal overreach is the principal, created by MRTA and fleshed out in both the Prior Draft and Revised Regulations, noting that municipal ordinances relating to the operation of cannabis businesses may not be "unreasonably impracticable," and the Revised Regulations provide more definition of what constitutes "unreasonably impracticable," as well as a process and procedure for OCM engagement.

What is Provisional Licensing Status?

A provisional licensee is a relatively new concept identified under the Revised Regulations. While the Prior Draft referenced provisional licenses, it mainly referenced in the context of an approved application status prior to final license issuance (much like we've seen in Ohio for approved medical dispensaries prior to ultimate license issuance). The Revised Regulations discuss provisional license applicants as those applying without the other required elements for applicants identified under the rules, specifically calling out the potential omission of "the right

to use a proposed premises." While there is not yet a tremendous amount of substance on this point in the Revised Regulations, it seems to suggest a process similar to the conditional license we've seen across-the-river in New Jersey. Or, it could also look similar to the CAURD process, which focused more on who the applicant and the TPIs are, while providing the provisional license phase to fill in the relevant regulatory requirements, safeguards, and site control. In any event, the Provisional Licensing Period identified under the Revised Regulations is twelve (12) months from the date of the issuance of the provisional license, unless extended.

Do the Extra-Territorial Restrictions Remain?

Yes, but just for the retailers (and not medical retailers, as discussed below). Specifically, the language still remains that "no adult-use retail dispensary or its true party of interest is permitted to hold a direct or indirect interest, including by being a true party of interest, passive investor, or having a goods and services agreement with, or by any other means, in an adult-use cultivator, processor, distributor, cooperative or collective, microbusiness, ROD, ROND, registered organization under Article 3 of the Cannabis Law, or cannabis laboratory licensee or permitted, **or any person outside of New York State**, otherwise licensed to conduct the activities authorized under such licenses, registration, and permits." In short, if an applicant and/or its true parties of interest hold an interest in cultivation *outside* of New York, that will preclude it from becoming a true party of interest to a retailer *inside* of New York.

What About the Medical Operators?

The good news is that the Prior Draft – which included unnecessarily punitive restrictions on Registered Organizations ("ROs") – has been amended both to remove the extra-territorial retail restrictions noted above and to clarify the process and timeline for commencing retail operations sooner.

First, ROs converting to adult use dispensing (ROs with dispensaries referred to as "RODs," ROs with no dispensaries (essentially cultivators/wholesalers) referred to as "RONDs"), are no longer subject to the same extra territorial restrictions as other retailers. In the Prior Draft, RODs were subject to the same extra-territorial restriction as the retailers noted above, a major impediment to ROs that had been already been operating in the State for years and servicing the medical patient population, most of which are multi-state operators with cultivation operations in other States. The extra-territorial restriction imposed on them in the Prior Draft essentially voided the right of all of them to convert, as provided under the MRTA. However, this restriction was removed as an impediment to conversion for RODs.

Second, the Prior Draft was amended under the Revised Regulations to streamline the time-frame for commencing ROD retail sales. In particular, the Prior Draft identified that RODs could not commence retail sales until three (3) years after the first adult-use retail sale in New York (which occurred in late December 2022). Instead, the Revised Regulations identify that RODs may open their first co-located store after December 29, 2023, and their second and third after June 29, 2024. ROs may only co-locate three adult-use/medical retail outlets.

However, RODs will be required to dedicate a minimum of 50% shelf space for products cultivated and processed by licensees that are not RODs until January 1, 2025 (up from 40% under the Prior Draft), and 40% shelf-space for these non-ROD licensees thereafter.

Any Changes to TPI Limitations?

Anyone familiar with the New York adult-use cannabis industry is painfully aware of true party of interest ("TPI") limitations.

Whereas other jurisdictions focus on who is an "owner," "financial source," and/or "management services provider," New York keys in on who is receiving the lion's share of economics of a license, designates them as TPIs, and identifies cross-ownership prohibitions associated on TPI status, as opposed to mere ownership (though ownership is still a direct tie to who is a TPI as well). While the TPI definition largely remains the same, it has increased some of the economics. For instance, as it relates to those receiving aggregate payments from a license holder, the language remains the same that a person receiving 10% of the gross revenue and 50% of the net profit are TPIs, while increasing the monetary threshold from $100,000 to $250,000. Importantly, the analysis for a TPI is someone receiving the "greater of" the 10% of gross revenue, 50% of net profit, or $250,000.

The other noteworthy change to the definition of TPIs relates to spouses. New York treats as a TPI not only those individuals holding direct interests in an applicant/license holder, but also their spouses who might not otherwise be in direct privity with the entity, necessitating that both the husband and wife fill out the onerous TPI personal history disclosure form. However, whereas the Prior Draft designated that only the spouses of the applicant/licensee's owners, stockholders, and officers were TPIs, the Revised Regulations have now identified that the spouses of "each person that makes up the ownership structure of each level of ownership for an applicant or licensee that has a multilevel ownership structure" are also TPIs. While we note that this definition gets cross-referenced with the passive investor definition, noting an exception to more robust disclosure for passive investors that hold no more than 5% of an applicant whose shares are publicly traded, 10% of a non-publicly traded ROD license and microbusiness licenses, or 20% for everyone else, the preceding nevertheless identifies an expansion to the field of spousal TPIs.

What Else is New?

The Revised Regulations discuss a "licensed premises for cannabis events," which is essentially a temporary cannabis pop-up event license. Anyone who holds a retail, on-site consumption, microbusiness, or ROD license may petition for a temporary (30 day) pop-up license, as approved by OCM. While this license includes several other regulatory requirements and restrictions, it nevertheless provides a retailer the opportunity to host events beyond its own brick and mortar.

Regulations Addressing Licenses:

Overview of License Types

- Nursery
- Cultivator
- Processor
- Distributor
- Retail Dispensary
- Microbusiness
- Cooperative
- Registered Organization Cultivator, Processor, and Distributor (Non-Dispensing) ("ROND")
- Registered Organization Adult-Use Cultivator, Processor, and Distributor Retail Dispensary ("ROD")
- Delivery

Term/Transferability/Change of Location

- Licenses remain in effect for a term of two (2) years.
- Licenses are not transferable or assignable without prior written approval of the CCB.
    - A change in majority ownership or controlling interest in the license constitutes a transfer of the license.
        - Changes to any true parties of interest not constituting majority ownership merely requires approval by OCM.
    - Transfer request may be denied where:
        - Fails to demonstrate compliance with the rules.
        - Licensee has record of poor performance (two or more Class 1 or Class 2 violations within the past two (2) years).
- Licensees may change locations through written approval of OCM (not the CCB).

Rights and Limitations by License Type

- **Nursery**
    - Rights
        - A nursery may hold only 1 nursery license but may cultivate at multiple premises. A nursery's true parties in interest are not restricted in the number of nursery licenses they can have an interest in. § 123.1(f).
        - A nursery may produce and sell clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, and cannabis seed only to a licensed nursery, cultivator, cooperative, microbusiness, ROND or ROD, retail dispensary, or registered organization in New York State. § 123.1(a).

        - A nursery may propagate mature cannabis plant solely for production of clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, and cannabis seeds or for sale to other nurseries for production of the same. § 123.1(b).
    - Limitations
        - A nursery shall only distribute seeds, seedlings, clones, cloned propagation material, tissue culture, and immature cannabis plants to a licensee authorized to sell cannabis products to consumers if any such plants are under 2-feet tall. § 123.2(a)(2).
        - A nursery shall use any mature cannabis plants only for seed production, and unless the nursery licensee is a licensed cultivator or processor of such plants, shall, after using such plants in the production of the aforementioned goods either § 123.2(a)(3):
            - Sell or transfer such plants to another licensee authorized to use such plants after the seeds have bene removed, or
            - Manage and dispose of such plants pursuant to section 125.11.
        - A nursery is prohibited from distributing for retail sale any mature cannabis plants or immature cannabis plants that are 2 feet or taller to a licensee authorized to sell cannabis products to consumers. § 123.2(b)(1).
        - A nursery may not produce clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture or cannabis seeds in a nursery area that is larger than provided under § 120.3. § 123.2(b)(2).
            - Outdoor nursery: up to 100,000 square feet
            - Mixed-light nursery: up to 10,000 square feet
            - Indoor nursery: up to 10,000 square feet
        - Nurseries may not sell or transfer any cannabis to any person that is not a licensee. § 123.2(b)(3).

- **Cultivator**
    - Rights
        - There are four different license types for cultivation:
            - Outdoor;
            - Mixed light;
            - Combination of outdoor with mixed light;
            - Indoor.
        - A cultivator may only have 1 cultivator license which will authorize the cultivator to cultivate within a specified type and canopy tier. § 120.3(b)(1).
        - A cultivator may under § 123.3(a):
            - acquire, possess, cultivate, trim, harvest, dry, and cure cannabis;
            - sell cannabis only to an entity licensed to process cannabis (e.g., processor, microbusiness, cooperative, ROD, ROND, or cannabis research licensee);

- transfer cannabis to a processor for processing without relinquishing ownership of that cannabis;
    - if such cultivator also holds a processor license, may purchase cannabis from another cultivator for processing.
- purchase clones, seedlings, cloned propagation material, tissue culture, cannabis seeds, and other immature cannabis plants, including mother plants, form a nursery.

▪ A cultivator that has a processor license may apply for and obtain 1 distributor license. § 123.3(b).
▪ A conditional cultivator licensee is subject to all rules and regulations applicable to a cultivator. § 123.4(i).
▪ A conditional cultivator shall be given priority in the review of its application for a full cultivator, processor, or distributor license. § 120.3(f)(2).

o Limitations
▪ Canopy tiers for indoor, mixed-light, and outdoor cultivators (§ 120.3(b)(2)):
- Tier I: up to 5,000 square feet
- Tier II: 5,000 to 12,500 square feet
- Tier III: 12,500 to 25,000 square feet
- Tier IV: 25,000 to 50,000 square feet
- Tier V: 50,000 to 100,000 square feet

▪ Canopy tiers for cultivators authorized to cultivate outdoors with mixed light (§ 120.3(b)(3)):
- Tier I Combination Cultivator: up to 5,000 square feet of outdoor and 2,500 square feet of mixed light
- Tier II Combination Cultivator: 5,000 to 12,500 square feet of outdoor, and 2,500 to 6,250 square feet of mixed light
- Tier III Combination Cultivator: 12,500 to 25,000 square feet of outdoor, and 6,250 to 12,500 square feet of mixed light
- Tier IV Combination Cultivator: 25,000 to 50,000 square feet of outdoor, and 10,000 to 15,000 square feet of mixed light
- Tier V Combination Cultivator: 50,000 to 100,000 square feet of outdoor, and 15,000 to 30,000 square feet of mixed light

▪ A cultivator shall assign a tag to each established lot of immature cannabis plants. The lot must be uniform in cultivar and contain no more than 100 individual immature cannabis plants at any time. § 123.4(a)(1).

- **Processor**
    - Types.
        - Notably, the proposed rules identify different types of processor licenses, including:
            - Extraction, infusing and blending, and packaging, labeling, and branding.

- Infusing and blending, and packaging, labeling, and branding.
- Packaging, labeling, and branding, including for the exclusive performance of written white labeling agreements. .

- Rights
  - A processor may acquire, possess, process and sell cannabis from a cultivator to a processor or distributor. § 123.5(a).
  - A processor may produce the following types of cannabis or cannabis products for sale: topicals, edibles (not in shapes considered to be attractive to individuals under 21), capsules, beverages, tablets, tinctures, baked goods, gummies, chocolates, vape cartridges or single-use pens, concentrates, cannabis flower products, cannabis extracts for intermediary sale, and any other cannabis product not prohibited by this Section with prior written approval of the Office. § 123.6(d).
  - A processor may process cannabis grown by a cultivator without taking ownership over that cannabis. § 123.5(b).
  - A processor may hold 1 distributor license. § 123.5(d).
  - A conditional processor shall be given priority in the review of its application for a full processor or distributor license. § 123.5(k).
- Limitations
  - A processor may only enter into branding or white labeling agreements with its true parties of interest, or another licensee.
  - A processor may not be a true party of interest in another processor.
    - However, a true party of interest of a processor may be a true party of interest in a cultivator, processor, distributor, cooperative or collective, microbusiness, ROD, or ROND license.
  - A processor may not produce cannabis products that:
    - contain liquor, wine, beer, cider or meet the definition of an alcoholic beverage;
    - contain tobacco or nicotine;
    - exceed the maximum total THC per serving and per package limits;
    - are attractive to individuals under 21 years of age;
    - contain synthetic cannabinoids;
    - contain any artificially derived phytocannabinoids;
    - require manufacture under sterile conditions;
    - are considered a potentially hazardous food;
    - contain any non-phytocannabinoid ingredient that would increase potency, toxicity, or addictive potential, or that would create an unsafe combination, known or unknown, with other psychoactive substances;
    - are manufactured by application of phytocannabinoid concentrate or extract to commercially available candy or snack food items without further processing of the product;

- are in the shape of, or imprinted with the shape, either realistic or caricature, of a human being, animal, insect, or fruit, or is otherwise attractive to individuals under the age of 21; or
- are in the form of an injectable, inhaler, suppository, transdermal formulations, or any other disallowed form, as determined by the Office. § 123.6(e).

▪ In general, all cannabis products processed for retail sale as an orally ingested product must conform to the product potency limit of 10 mg total THC per serving, and 100 mg total THC per package, with the exception of tinctures, which shall conform to the product potency limit of 10 mg total THC per serving, and 1,000 mg total THC per package. § 123.6(f)(1).

- **Distributor**
  - Rights
    - A distributor may acquire, possess, distribute, and sell cannabis products. § 123.7(a).
    - A distributor may acquire cannabis products from any licensed processor or distributor, including a microbusiness, cooperative, ROD, or ROND. § 123.7(b).
    - A distributor may only sell cannabis products to another duly licensed adult-use retail dispensary, a ROD, or on-site consumption licensee. § 123.7(c).
  - Limitations
    - A distributor shall only transport cannabis products between adult-use cannabis licensees and between the licensed premises of an adult-use cannabis facility for purposes of distributing the cannabis products. § 123.8(a)(2).
- **Retail Dispensary**
  - Rights
    - A retail dispensary may acquire cannabis products from any licensed distributor of such products. § 123.9(a).
    - A retail dispensary may acquire seedlings and immature plants from any licensed nursery once adult-use home cultivation is authorized by the Board. § 123.9(b).
    - A retail dispensary may possess, sell, and deliver cannabis products and cannabis paraphernalia. § 123.9(c).
    - A retail dispensary may sell cannabis products and cannabis paraphernalia to cannabis consumers. § 123.9(d).
    - A retail dispensary may operate a limited retail consumption facility. § 123.9(e). A retail dispensary shall be a physical brick and mortar store in New York State to be authorized to sell cannabis products and related items by in-person sale, over the internet or via a digital application. § 123.10(a).
    - A retail dispensary may operate a drive-thru service window and pre-order customer pick-up lanes with prior written approval from the Office and

consistent with all applicable state and local laws, rules, regulations, and guidance. § 123.10(b).

- Limitations
  - No employee shall be the employee in charge of more than 1 retail dispensary at the same time. § 123.10(c)(1).
  - A retail dispensary may not acquire or record cannabis consumer personal information without consent, unless this information is typically acquired in a sales transaction, which can include the cannabis consumer's age. § 123.10(d)(5).
  - A retail dispensary shall comply with the distance requirements contained in § 119.4. § 123.10(e)(5).
    - House of worship: cannot be on same road and within 200 feet
    - School grounds: cannot be on same road and within 500 feet
    - Community facility: cannot be on same road (if municipality has enacted corresponding ordinance under § 119.2)
    - City, town, or village with population of 20,000 or more: cannot be within 1,000-foot radius of another premises holding a license of the same type
    - City, town, or village with population of 20,000 or less: cannot be within a 2,000-foot radius of another premises holding a license of the same type
  - A retail dispensary shall not (§ 123.10(g)):
    - conduct or transact business at a retail dispensary under a name containing "drugs", "medicines", "drug store", "apothecary", "pharmacy", or similar terms, or in any manner by advertisement, circular, poster, sign or otherwise describe or refer to the licensed premises, or describe the type of service or class of products sold by the retail dispensary, by the terms "drugs", "medicine", "drug store", "apothecary", or "pharmacy";
    - display cannabis products or cannabis paraphernalia in an area that is visible from the exterior of the physical structure of the retail dispensary;
    - sell or otherwise dispense any cannabis product later than the product date of expiration or use by date marked on the label (except for the secure segregation and holding of such product for disposal);
    - dispense or otherwise sell cannabis products from a vending machine or allow such a vending machine to be installed at the interior or exterior of the premises of the retail dispensary;
    - abandon the licensed premises without surrendering the license to the Board and making appropriate arrangements for the disposal of cannabis products;

- sell cannabis products obtained through the use of, or accept a sale of cannabis products from any unlicensed business;
- provide cannabis samples to a cannabis consumer, other than to allow inspection of the product prior to purchase;
- allow employees under 21 years of age to have direct interaction with cannabis customers inside a licensed retail dispensary;
- engage in cannabis processing, manufacturing, or compounding at the retail dispensary;
- knowingly sell, deliver, or give away to a cannabis consumer:
    - any amount of cannabis product which they know would cause the cannabis consumer to be in violation of the cannabis law or possession limits;
    - any cannabis product, cannabis paraphernalia, or cannabis merchandise if the cannabis consumer is unable to produce valid proof of government-issued ID and age confirming that they are 21 years of age or older;
    - cannabis products if, in the opinion of the retail dispensary employee based on the information available to them at that time, the cannabis consumer or the public would be placed at risk (e.g., the cannabis consumer engaging in daily transactions that exceed the legal possession limits or that create a risk of diversion);
    - food, beverage, or personal care item that is not a cannabis product;
    - any product that contains nicotine; and
    - alcohol;
- make recommendations to a cannabis consumer who is also a medical cannabis patient if the patient's dosing recommendation is "Per Pharmacist Consultation" and that patient presents their patient certification at the retail dispensary, without disclosing to the cannabis consumer that they are not a pharmacist;
- solicit or receive an order for, keep or expose for sale, or keep with intent to sell any cannabis product or cannabinoid hemp product to a cannabis consumer by means of any vehicle or wheeled frame used for transporting objects, for carrying goods and materials;
- place back into stock of any retail dispensary or re-dispense cannabis product which is returned by a cannabis consumer;
- sell any form or type of cannabis product not permitted by this Chapter;
- sell any cannabis product that has not passed quality assurance laboratory testing pursuant to Part 130;
- sell any cannabis product for which the required tax has not been paid;

        - sell any cannabis product that does not meet the packaging and labeling requirements;
        - advertise or market any cannabis or cannabis products not in compliance with Part 129;
        - allow the consumption of any cannabis product by employees, individuals or cannabis consumers inside the premises of the retail dispensary, without prior approval from the Office;
        - market its cannabis products through an online platform that is operated by a third-party; or
        - fulfill any order referred to it by a third-party platform.
    - A retail dispensary shall provide consumer education materials to each consumer at the time of sale that include messages about safe consumption of cannabis products, public health, and other educational messages; consumer education materials may never make health claims regarding cannabis or cannabis products. Consumer education materials shall be made for inspection by the Office upon request. § 123.10(i)(1)–(3).
- **Microbusiness**
    - Rights
        - A microbusiness shall engage in cultivation and at least one of the following additional activities authorized by the Cannabis Law for a microbusiness: (1) processing, (2) distribution, or (3) retail sale. § 123.11(a).
        - If authorized through the application process, a microbusiness may:
            - sell cannabis to a processor;
            - sell cannabis products to a distributor;
            - sell cannabis products it has cultivated or processed to consumers;
            - sell cannabis products via delivery to consumers;
            - purchase cannabis flower;
            - send cannabis or cannabis products to a processor for processing without relinquishing ownership of that cannabis or cannabis product; and
            - operate a consumption facility. § 123.11(b).
        - A microbusiness may have its retail dispensary premises in a location separate from the premises where it is cultivating or processing cannabis, provided that:
            - the retail dispensary complies with all other zoning and operational requirements for retail dispensary licensees;
            - for licensees in a city with over 1 million persons, the retail dispensary premises is located in the same county as the cultivation and if applicable processing premises; and

- for licensees outside of a city with over 1 million persons, the retail dispensary premises is located within 25 miles of the cultivation and, if applicable, processing premise. § 123.12(a)(9).

- Limitations
  - A microbusiness shall cultivate with 1 type of cultivation—outdoor, mixed light, or indoor—as approved in its application. § 123.12(a)(3).
  - Canopy tiers based on size of cultivation canopy and type of cultivation:
    - Indoor canopy: up to 3,500 square feet;
    - Mixed light canopy: up to 5,000 square feet;
    - Outdoor canopy: up to 10,000 square feet.
  - A microbusiness shall not purchase more than 500 pounds of cannabis biomass or extract equivalent cultivated by a cultivator unless the microbusiness suffered a significant crop failure. § 123.12(b).
  - If authorized to process biomass, a microbusiness shall process no more than 1,700 pounds of biomass per year, unless the biomass is cultivated solely by the microbusiness exclusively at its licensed premises. § 123.12(a)(6).
  - If authorized to distribute, a microbusiness shall distribute only their own cannabis products to retail dispensaries or on-site consumption sites. § 123.12(a)(7).
  - If authorized to conduct retail sales, a microbusiness shall sell only their own cannabis products to consumers. § 123.12(a)(8).

- **Cooperative**
  - Rights
    - A cooperative shall be organized as either a Cooperative, a Traditional Collective, or a Limited Collective. § 123.13(f).
      - A Cooperative shall be organized pursuant to New York State Cooperative Corporation Law. § 123.13(g).
      - A Traditional Collective shall have all voting rights held exclusively by members that contribute to the collective primarily with labor, and its profits, earnings, and losses distributed to members based on labor and not based on capital investment. Such members shall:
        - each have one vote;
        - comprise no less than a two-thirds majority of the governing body;
        - maintain a controlling interest of the Traditional Collective at all times;
        - own no less than 51% of the equity of the Traditional Collective at all times;
        - not have their capital or interest subordinated to the capital or interest of any other member group or shareholders; and
        - own and control the Traditional Collective. § 123.13(h)(1).
      - A Limited Collective shall:

- have two-thirds of its voting rights in the aggregate held by members who contribute to the primarily with labor, and such members shall:
    - not have their capital contributions proportionately tied to voting rights;
    - comprise a majority of the governing body;
    - receive distributions from the Limited Collective based on their labor contributions;
    - receive no less than 51% of profits and distributions, provided shareholders exist and are receiving distributions;
    - own no less than 51% of the equity of the Limited Collective at all times; and
    - own and control the traditional collective.
- permit member contributions to consist of tangible or intangible personal property, or any other benefit to the cooperative, unless otherwise provided by the Limited Collective's internal rules;
- permit, before determining the amount of profits, its governing body to set aside a portion of profits to create or accumulate: a capital reserve; reasonable reserves for specific purposes, such as expansion or replacement of capital assets; or education, training, and information;
- permit distributions to be made in any form;
- permit distributions to shareholders to be based on their capital contributions; and
- generate returns for members and shareholders based on profitability, distributions on profitable asset sales, refinancing, or through a liquidity event. § 123.13(i).

- A cooperative is not limited in the number of processing premises it may operate (but additional application and licensing fees may apply for each premises over 2 premises). § 123.13(a)(1).
- A cooperative is not limited in the number of cultivation premises it may operate (but additional application and licensing fees may apply for each premises over 6 premises). § 123.13(a)(2).

- Limitations
  - Square feet (000s) per Number of Members in the Cooperative (§ 120.3(e)(3)):

Square feet (000s) per Number of Members in the Cooperative												
Facility Type	Number of Members											
	5	6	7	8	9	10	11	12	13	14	15	>15
Indoor	25	37.5	50	62.5	75	87.5	100	100	100	100	100	100
Mixed-Light	25	37.5	50	62.5	75	87.5	100	112.5	125	125	125	125
Combo Mixed-Light & Outdoor	25	37.5	50	62.5	75	87.5	100	112.5	125	125	125	125
Outdoor	25	37.5	50	62.5	75	87.5	100	112.5	125	137.5	150	150

  - A member of a cooperative or collective shall not be a member of more than 1 cannabis collective. § 123.13(b).
  - A cooperative or collective shall have no fewer than 5 members that contribute primarily with labor. § 123.13(i).

- **Registered Organization Cultivator, Processor, and Distributor (Non-Dispensing) ("ROND")**
  - Limitations
    - A ROND shall not (§ 123.16(b)):
      - have more than 100,000 square feet of canopy, unless otherwise authorized by the Board in writing;
      - begin new construction or major renovations on any indoor cultivation area or facility, unless authorized by the Board in writing; and
      - contract with a laboratory permitted pursuant to Part 130 for voluntary testing services, unless otherwise authorized by the Office.
- **Registered Organization Adult-Use Cultivator, Processor, and Distributor Retail Dispensary ("ROD")**
  - Limitations
    - A ROD shall dedicate a minimum of 50% of shelf-space available for adult-use product cultivated and processed by licensees that are not RODs until

January 1, 2025, and thereafter dedicate 40% of shelf-space for such products. § 123.18(a)(3).

- A ROD shall co-locate its medical and adult-use dispensaries. § 123.18(a)(4).
- If co-locating more than one dispensing site, a ROD shall have at least one co-located dispensing site outside of New York, Kings, Bronx, Queens, Richmond, Nassau, Suffolk, and Westchester counties. § 123.18(a)(5).
- A ROD shall maintain enough medical cannabis product at each co-located retail dispensary to support the greater of:
  - the highest sales volume generated by that dispensary in the last 12 months; or
  - a minimum threshold set annually by the Board, based on the anticipated medical demand for that year and the number of registered dispensing sites in operation. § 123.18(a)(8).
- A ROD shall not (§ 123.18(b)):
  - have more than 100,000 square feet of canopy, unless otherwise authorized by the Board in writing;
  - begin new construction or major renovations on any indoor cultivation area or facility unless authorized by the Board in writing;
  - process more than 80,000 pounds of biomass, or the equivalent amount of cannabis extract or cannabis product, per year, if the ROD has purchased more than 25,000 pounds of cannabis or cannabis product at wholesale from another licensee in that calendar year;
  - contract with a laboratory permitted pursuant to Part 130 for voluntary testing services, unless otherwise authorized by the Office;
  - substitute adult-use cannabis product, should the licensee experience an unexpected shortage of medical cannabis products;
  - have more than 3 co-located dispensaries;
  - have more than 1 co-located facility in the same county or borough as any of its other licensed or registered dispensing sites;
  - operate a consumption facility;
  - locate any co-located adult-use dispensary premises in a prohibited location; or
  - be granted authorization to open:
    - the licensee's first co-located store before December 29, 2023; and
    - the licensee's second and third co-located stores before June 29, 2024.

- **Delivery**

- Rights
  - A delivery licensee may have a goods and services agreement with an on-site consumption or retail dispensary license, subject to all restrictions governing such relationships, including, but not limited to, undue influence, control, and true party of interest requirements. § 123.19(d).
- Limitations
  - No delivery licensee is permitted to hold a direct or indirect interest in a cultivator, processor, distributor, cooperative, microbusiness, ROD, ROND, registered organization, or cannabis laboratory licensee or permittee. §123.19(e).
  - Delivery licensees shall not (§ 123.20(c)):
    - conduct sales of adult-use cannabis or medical cannabis;
    - accept cannabis or cannabis products from any person other than a licensee authorized for the retail sale of cannabis;
    - deliver cannabis to any location outside of New York State;
    - deliver cannabis to anyone inside of a motor vehicle;
    - deliver cannabis or cannabis products to anywhere other than residential properties, including short and long-term residences and private businesses anywhere in New York State, and shall not deliver cannabis to:
      - public buildings;
      - public spaces including parks;
      - community centers;
      - any school grounds;
      - day-care centers; or
      - houses of worship.
  - have a total of more than 25 individuals providing full-time paid delivery services to cannabis consumers per week under one license; or
  - allow any employee providing delivery services on behalf of a licensee authorized for the retail sale of cannabis to leave the premises of a licensee authorized for the retail sale of cannabis with any cannabis products before having received at least one delivery order from a licensee authorized for the retail sale of cannabis.
- Employees providing delivery services on behalf of a delivery licensee or licensee authorized for the retail sale of cannabis shall not (§ 123.20(d)):
  - purchase cannabis products from a licensee authorized for the retail sale of cannabis and obtain reimbursement from the individual receiving the delivery;
  - solicit orders from potential consumers;
  - possess more than $20,000 of cannabis products in the aggregate in an enclosed vehicle, or $5,000 of cannabis products in the aggregate at any time in a non-enclosed vehicle.

Ownership Restrictions

- True Party of Interest (TPI) and Limitations.
    - TPI includes:
        - owners, officers, managers, directors, trustees, board members (or equivalent titles);
        - stockholder;
        - each person that makes up the ownership structure of each level of ownership for an applicant or licensee that has a multilevel ownership structure including, but not limited to, subsidiaries, affiliates, parents, shells, and holding companies;
        - person with a right to receive aggregate payments in a calendar year, as part of a risk sharing or services agreement, that exceeds the greater of: 1) 10% of gross revenue, 2) 50% of net profit of a licensee, 3) $250,000 from the licensee in a calendar year;
        - person with a financial interest[1] in the applicant or licensee;
        - person that has authority to or exercises control over the applicant or licensee by controlling interest or otherwise;
        - person that assumes responsibility for the debts of the applicant or licensee; or
        - spouse of any owners, officers, managers, directors, board members (or equivalent titles), as well as each person that makes up the ownership structure of each level of ownership for an applicant or a licensee that has a multilevel ownership structure.
        - any other person that may have a direct or indirect interest, as may be determined in guidance by the Office, consistent with the policies and purposes of the Cannabis Law
    - EXCLUDES:

[1] Financial Interest means any actual or future right to ownership, investment or compensation arrangement with another person, either directly or indirectly, through business, investment, spouse, parent or child where the compensation exceeds the greater of: (i) 10% of revenue, (ii) 50% of net profit, or (iii) $100,000. Person with a financial interest does not include a passive investor.

- landlords who receive payment for rent on a fixed basis under a lease or rental agreement relating to applicant or licensee[2];
- persons who receive a bonus or sales commission based on the individual's sale, so long as the commission does not exceed 10% of sales of the applicant or licensee in any given bonus or commission period;
- contracts with the applicant or licensee to receive a commission for the sale of the business or real property;
- consultants receiving a flat or hourly rate of compensation under a goods or services agreement, unless such compensation exceeds 10% of the gross revenue, 50% of the net profit, or $250,000 in calendar year;
- Goods or services contractors so long as applicant or licensee retains the right to and controls business and such payments do not exceed 10% of the gross revenue, 50% of the net profit, or $250,000 in calendar year;
- Financial institutions – any bank, credit union, or other lending institution under DFS jurisdiction;
- Financiers; or
- Others as may be determined by OCM

- Financiers. Any person, other than a financial institution that gifts, grants, or loans capital pursuant to a secured or unsecured financing agreement.
  - Agreements will be assessed based on current and future right to ownership or interest on the licensee including but not limited to, interest in the event of default, bankruptcy, or reorganization.
  - May not receive ownership interest, control of the business, or a share of revenue in excess of (i) 10% of gross revenue, (ii) 50% of net profit, or (iii) $250,000 gross or net profits, a profit-sharing interest, or percentage of profits in exchange for a gift, grant, or loan.
  - Landlords, financiers, and financial institutions may be landlords, financiers and financial institutions across multiple licenses. If the financier, financial institution or landlord becomes a true party of interest in a license, they are subject to the prohibitions of true parties of interest for that license types. Cross ownership restrictions also apply to landlords and financiers (i.e. cannot be a financier or

[2] OCM may investigate a landlord in situations where a rental payment has been waived or deferred.

landlord to both a retail licensee and cultivation licensee as described further below).

- Principal repayment is excluded from any calculation off fees paid to a financier or a financial institution in a calendar year.

- Passive Investors.
  - Defined as a person that is a true party of interest of a licensee with an aggregate ownership interest of no more than 5% of outstanding shares of publicly traded licensee/applicant, 10% of the outstanding share or interest of a non-publicly traded ROD license and microbusiness license OR 20% of outstanding shares or interest of any other entity, whether such shares or interest are current voting shares, future voting shares, current equity shares or future equity share of the applicant or licensee, and does not otherwise have any control or influence over applicant/licensee.
  - A person can be a passive investor in (subject to cross-ownership restrictions):
    - Any number of cultivators.
    - Any number of retailers.
    - Any number of microbusinesses.
    - Any number of cooperatives or collectives.
    - Any number of ROND or ROD.
- Undue Influence and Incentives – no person may enter into an agreement which causes "undue" influence over a licensee
    - Does not prohibit the placing or accepting of orders for the purchase and delivery of cannabis or cannabis products that are made in accordance with usual and common business practices.
    - Licensee can only enter into agreements with third party platforms, marketplaces, or aggregators that:
      - sign and submit OCM's Confidentiality and User Agreement or other agreement as required by the Office.
      - list all licensees authorized for the retail sale of such cannabis products, when advertising or listing a cannabis product.
      - provide open read and write application programming interface access for all data points in a point of sale or track and trace system.

- when aggregating, compiling, anonymizing, or otherwise exhausting data derived from consumer interactions with a licensee, receive explicit opt-in from the licensee to establish such a data sharing agreement, and no standard software agreement by a third-party platform, marketplace, or aggregator shall include any default data usage rights for the technology provider, other than system usage data used to tune third-party system performance and database optimization in compliance with these regulations.

- For all digital interactions with a potential cannabis consumer only display, sort, or order cannabis products, or paraphernalia as part of a search result, browse grid, or other digital interface based on objective, consumer-oriented criteria and redirects from the third-party marketplace or aggregator to a domain or web-based interface hosted via a platform that supports search engine optimization or SEO credits accruing to the domain of a licensee authorized for retail sale of cannabis, before the price of adult-use cannabis products are displayed.

o No licensee shall list cannabis products on a third-party platform, marketplace, or aggregator, that does not allow:

- Any licensed distributor to be listed as an option for logistic and transportation purposes,

- Customers to negotiate fees for such services directly with such distributors, or

- Requires the exclusive use of such third-party platform, marketplace, or aggregator for the listing or the distribution of cannabis products

o No licensee shall enter into an agreement with a goods and services provider that conditions the sale or lease of one product or service on the consumer's agreement to take a separate product or service.

o No nursery, research license, cultivator, processor, distributor, microbusiness, cooperative, ROD, or ROND shall directly or indirectly advance money or a benefit such as gifts, discounts (except not in excess of one per centum for payment on or before ten days from date of shipment of such cannabis), customer loyalty programs, loans of money, premiums, rebates, royalties, free cannabis product of any kind, preferential shelf space of displays, and treats or services of any nature whatsoever.

- Licensees are prohibited from requiring the purchase of other products or services by other licensees as a condition of a transaction of cannabis or cannabis products.

- A cultivator, processor, microbusiness, cooperative, distributor, ROD, or ROND may provide retail dispensary, delivery, ROD, or on-site consumption licensees with retail advertising specialties the total value of which, may not exceed $200 per brand in any one calendar year per licensee, and licensees cannot pool or combine their dollar limitations to exceed the threshold.

- No nursery, cultivator, processor, microbusiness, cooperative, distributor, ROD, or ROND shall provide category management services to retailers.

- <u>Goods and Services Agreements</u>

  - What was previously referred to as "management services agreement" under the Prior Draft.

  - Exempt agreements (agreements not presumed to create undue influence) including but not limited to:

    - general goods and services providers which may include, but are not limited to, accounting, recordkeeping, non-cannabis materials and goods from unlicensed persons, office supplies, leasing equipment, architect services, construction, HVAC, plumbing, legal services, government relations, license application preparation, landlords, financiers, financial institutions.

  - Non-exempt agreements (agreements for consulting, advisory, or strategic services related to the licensed activities) – any person providing a non-exempt services that is not based on a flat fee (i.e. based on business performance, revenues, royalties, or profits) is prohibited from having any goods or services agreement with licenses in a separate licensing tier.

  - Stacking agreements where a person has multiple goods and service agreements and the value of the payments made under such agreement shall be combined for the purposes of determining whether a person has financial or controlling interest, and the combined agreements shall be held to the strictest prohibitions of each of the individual agreements.

- <u>Agreements Creating a Financial or Controlling Interest</u>

  - A third party will be deemed a TPI with a financial or controlling interest where such agreement: 1) compels a licensee not to purchase or sell cannabis, cannabis products, other goods or services, or materials to specifically identified licensees, 2) is not bargained for between the parties in an arms-length transaction, 3) does

not include the ability for either party to terminate with due notice, 4) generate a share of revenue paid by a licensee in excess of the greater of 10% of gross revenue, 50% of net profits, or $250,000 in one calendar year based on actual or anticipated annual performance.

- The Office may terminate the party's interest in the license and recommend a civil penalty be imposed when a provider violates the financial interest and controlling conduct prohibitions.

- Contracting Requirements:
  - Licensees are prohibited from contracting out or subcontracting with a person or entity performing any function or activity directly involving the licensed activities authorized for that license type (including but not limited to cultivating, processing, manufacturing, distributing, or selling cannabis or cannabis products).
  - Licensees may contract out executive management services so long as all non-management activities arising from or related to such contract or subcontract are carried out by employees of the licensee.
  - Adult-use licensees may contract with a person or entity performing a function or activity ancillary to the licensee's licensed activities, including but not limited to, accounting, recordkeeping, architectural services, construction, heating, ventilating, air conditioning, refrigeration, plumbing, cleaning and janitorial, lighting, security, software, and legal services.
  - Adult-use licensees shall retain the right to audit, or use a third-party to audit, goods and services agreements with third parties.

- Subsidiaries:
  - Any subsidiary of an applicant or licensee shall be a wholly owned subsidiary and shall transfer or accrue to the licensee the communications from the Office, enforcement proceedings, information related to compliance with the rules and regulations of the license and any other requirements at the request of the Office or Board.
  - Any subsidiary shall be named and identifiable as a subsidiary to the licensee according to a naming convention including but not limited to:
    - Legal name of the licensee, a number indicating the sequential order in which it was created, and the term subsidiary or sub.

- Receivership:

- An individual may be appointed a receiver and temporarily operate the license business for a period of time determined by the Office in cases of death, disability, bankruptcy, insolvency, receivership, assignment for the benefit of creditors, shareholder or LLC member disputes, or other exceptional circumstances rendering one or more owners incapable of performing the duties of a licensee.

- The receiver shall not be permitted to conduct licensed activities without the express authorization by the Office, which may be granted upon submission and approval of a written request for the authority to temporarily conduct licensed activities.

    - Authorization to conduct licensed activities is conditioned on compliance with these regulations, including but not limited to restrictions on ownership and other interests, approval by the Office, and such authorization shall not constitute a guarantee of license issuance or renewal by the Board.

c. Rights to Participate in Difference License Classes.

1. Nursery

    a. May not hold: retail dispensary, on-site consumption, or delivery license

    b. May hold: cultivator, cooperative, microbusiness, registered organization, ROND, or ROD license

    c. A nursery can only hold one nursery license, but may engage in licensed activities at multiple premises

    d. True parties of interest in nursery license are not restricted in the number of nursery licenses they can have an interest in.

    e. Nursery or its true party of interest may have a goods and services agreement with an adult-use cultivator, processor, distributor, cooperative or collective, microbusiness, ROD, and ROND licensee, subject to all restrictions governing such relationships, including, but not limited to undue influence, control, and true party of interest requirements.

    f. No Nursery licensee or its true party of interest may hold a direct or indirect interest including by be a true party of interest, passive investor, or having a goods and services agreement with or by any other means, in an adult use retail dispensary, on-site consumption, delivery, RO, or cannabis laboratory licensee.

2. Cultivator

a. A cultivator or its true party of interest may be a true party of interest in a nursery, research, processor, distributor, cooperative or collective, microbusiness, ROD, or ROND license.

b. No person (other than a passive investor) can be a true party of interest in more than one cultivator or in an adult-use cultivator license and a cooperative or collective, microbusiness, ROD, or ROND license.

c. A true party of interest in an adult-use cultivator license may simultaneously be a passive investor in any number of adult-use cultivators, cooperatives or collectives, microbusinesses, RODs, or ROND, if such true party of interest complies with all restrictions governing such relationships, including, but not limited to, undue influence, control, and true party of interest requirements.

d. Cultivator or its true party of interest may be a true party of interest in a nursery, research, processor, distributor, cooperative or collective, microbusiness, ROD, or ROND license.

e. Cultivator or its true party of interest may have a goods and services agreement with an adult-use cultivator, processor, distributor, cooperative or collective, microbusiness, ROD, and ROND licensee, subject to all restrictions governing such relationships, including, but not limited to undue influence, control, and true party of interest requirements.

f. No cultivator or its true party of interest may hold a direct or indirect interest including by being a true party of interest, passive investor, or having a goods and services agreement with, or by any other means, in adult use retail dispensary, on-site consumption, delivery, registered organization registered under Article 3 of the Cannabis Law, or cannabis laboratory licensee or permittee.

3. Processor

a. A processor may only enter into a branding or white labeling agreement with its true parties of interest or another licensee.

b. A processor may hold one distributor license.

c. Processor may not be a true party of interest in another processer. A true party of interest in a processor may however be a true party of interest in a cultivator, distributor, cooperative, microbusiness, or ROND license.

d. Processor or its true party of interest may have a goods and services provider agreement with an adult-use cultivator, processor, distributor, cooperative or collective, microbusiness, ROD, or ROND license, subject to all restrictions governing such relationships, including, but not limited to, undue influence, control and true party of interest requirements.

e. No processor or its true party of interest may hold a direct or indirect interest including, by being a true party of interest, passive investor, or having a goods and services agreement with, by any other means in an adult use retail dispensary, on-site consumption, delivery, RO, or cannabis laboratory licensee.

4. Distributor

a. A distributor or its true party of interest may be a true party of interest in a cultivator, processor, distributor, cooperative or collective, ROD, or ROND license.

b. Distributor or its true party of interest may have a goods and services agreement with an adult-use cultivator, processor, distributor, cooperative or collective, ROD, or ROND license, subject to all restrictions governing such relationships, including, but not limited to, undue influence, control and true party of interest requirements.

c. No distributor or its true party of interest may hold a direct or indirect interest including, by being a true party of interest, passive investor, or having a goods and services agreement with, or by any other means, in an adult use retail dispensary, on-site consumption, delivery, RO, or cannabis laboratory licensee.

5. Retail Dispensary

a. No person may be a true party of interest in more than three dispensary licenses.

b. A true party of interest in a retail dispensary may simultaneously be a passive investor in any number of retail dispensary, delivery, and on-site consumption licenses, if such true party of interest complies with all restrictions governing such relationships, including, but not limited to, undue influence, control, and true party of interest requirements.

c. A retail dispensary or its true party of interest may also be true parties of interest in a delivery license.

d. A retail dispensary or its true party of interest may have a goods and services agreement with an on-site consumption or delivery licensee, subject to all restrictions governing such relationships, including but not limited to, undue influence control, and true party of interest requirements.

e. No retail dispensary or its true party of interest may hold a direct or indirect interest including by being a true party of interest, passive investor, or having a goods and services agreement with, or by any other means, in an adult use cultivator, processor, distributor, cooperative or collective, microbusiness, ROD, ROND, RO, or cannabis lab or any person licensed outside of New York state who

are licensed to conduct the activities authorized under such licenses, registrations, and permits.

6. Microbusiness

    a. A microbusiness cannot be a true party of interest in a cultivator, processor, cooperative or collective, ROD, or ROND license.

    b. A true party of interest in a microbusiness may be a TPI in a cultivator, processor, cooperative or collective, ROD, or ROND license.

    c. No person (other than a passive investor) may be a true party of interest in more than one microbusiness.

    d. A passive investor may be a passive investor in any number of microbusiness, cultivator, cooperative or collective, ROD, or ROND licenses, if such true party of interest complies with all restrictions governing such relationships, including but not limited to undue influence, control, and true party interest.

    e. A microbusiness or its true party of interest may have a goods and services provider agreement with a goods and services provider to an adult-use cultivator, processor, cooperative or collective, microbusiness, ROD, or ROND license, subject to all restrictions governing such relationships, including, but not limited to, undue influence, control and true party of interest requirements.

    f. No microbusiness or its true party of interest may hold a direct or indirect interest including, by being a true party of interest, passive investor, or having a goods and services agreement with, or by any other means, in an adult-use retail dispensary, on-site consumption, delivery, registered organization registered under Article 3 of the Cannabis Law, or cannabis laboratory licensee or permittee.

7. Cooperative and Collective.

    a. A member of a cooperative or collective may not be a member of more than one cooperative.

    b. A member in a cooperative or collective is a true party of interest of the cooperative.

    c. No cooperative or collective or its true party of interest may hold a direct or indirect interest, including by being a true party of interest, or having a goods and services agreement with, or by any other means, in an adult use retail dispensary, on-site consumption, delivery licensee.

d. a true party of interest in a cooperative or collective may simultaneously be a passive investor in any number of adult-use cooperatives, or collectives cultivators, processor, distributor, microbusinesses, RODs, or RONDs, if such true party of interest complies with all restrictions governing such relationships, including, but not limited to, undue influence, control, and true party of interest requirements.

8. Registered Organization Cultivator Processor Distributor ("ROND")

    a. No person (other than a passive investor) can be a true party of interest in more than one ROND.

    b. A passive investor may be a passive investor in more than one ROND if such passive investor complies with all restrictions governing such relationships, including, but not limited to, undue influence, control, and true party of interest requirements.

    c. ROND or its true party of interest may be a passive investor in a cultivator, processor, distributor, cooperative, ROD, or microbusiness license.

    d. A ROND or its true party of interest may have a goods and services agreement with an adult-use cultivator, processor, distributor, cooperative, microbusiness, ROD, or ROND license, subject to all restrictions governing such relationships, including, but not limited to, undue influence, control, and true party of interest requirements.

    e. No ROND or its true party of interest may hold a direct or indirect interest, including by being a true party of interest, passive investor, or having a goods and services agreement with, or by any other means, in an adult-use retail dispensary, on-site consumption, delivery, registered organization registered under Article 3 of the Cannabis Law, or cannabis laboratory licensee or permittee.

9. Registered Organization Cultivator Processor Distributor Retail Dispensary ("ROD")

    a. No person (other than a passive investor) may be a true party of interest in more than one ROD or in a ROD license and an adult-use cultivator, cooperative, microbusiness, or ROND license.

    b. A passive investor may be a passive investor in more than one ROD if such passive investor complies with all restrictions governing such relationships, including, but not limited to, undue influence, control, and true party of interest requirements.

c. ROD or its true party of interest may have a goods and services agreement with an adult-use cultivator, processor, distributor, cooperative, microbusiness, ROD, and ROND, subject to all restrictions governing such relationships, including, but not limited to, undue influence, control, and true party of interest requirements.

No ROD or its true party of interest may hold a direct or indirect interest, including by being a true party of interest, passive investor, or having a goods and services agreement with, or by any other means, in an adult-use retail dispensary, on-site consumption, delivery, registered organization registered under Article 3 of the Cannabis Law, or cannabis laboratory licensee or permittee.

Social and Economic Equity

- Qualifications – sole control[3] of the applicant must be held by:
  - An individual from a community disproportionality impacted by the enforcement of cannabis prohibition ("CDI")
    - CDIs to be determined by the OCM.
    - Must provide proof that one or more members have resided in a CDI for an aggregate of five of the first 18 years of their life or aggregate of 7 years of their life.
      - The Office may consider a break in residency due to certain factors.
  - Minority owned business.
    - Must provide proof of state MWBE certification or sworn declaration attesting to MWBE status.
  - Woman-owned business

[3] Sole control means:

(i) has real, substantial, and continuing ownership of 51% equity share in the business.

(ii) Has the right to execute any material contracts.

(iii) Has the ability to exercise the authority to materially influence the day-to-day business decisions, operations, strategic priorities, capital allocaitons, acquisitions and divestments.

(iv) Has no timed or triggered recusal provisions or side letters or side agreements related to their recusal.

(v) Has an ability to direct decisions, voting or otherwise, such that no other person may exercise or have the ability to control the majority of voting rights or appoint or remove the majority of director seats or their equivalent or corporate officers or their equivalent on the governing body.

- Must provide proof of state MWBE certification or sworn declaration attesting to MWBE status.

- Distressed farmer

  - Must provide proof that applicant 1) meets the small farm classification defined in the Cannabis Law, 2) filed a Schedule F tax return, 3) filed other tax forms demonstrating revenues below the qualifying threshold established therein, or 4) provide proof of operating losses during the last three years.

  - A small farm operator must meet meets the small farm classification as defined in section 87 of the Cannabis Law.

  - A small farmer producer is an individual who is involved in making decisions for the farm operation involving planting, harvesting, livestock management, and marketing.

    - Documentation to meet the social and economic equity requirements include but are not limited to, tax documents, paystubs or proof of payroll or an employment, contracting or a rental or sharecropping agreement.

- Service-disabled veteran owned business.

  - Must provide proof of certification from the NYS Office of General Services Division of Service-Disabled Veterans' Business Development (DSDVBD)

  - Can submit DD214 or NG214 with line of duty report from USVA as conditional certification

- Minority and woman owned businesses must also submit proof it is a small business.

  - If operational for 3 years or more – quarterly payroll reports from the last 3 years.

  - If operational for less than 3 years – may submit a sworn declaration, gross quarterly receipts, by-laws, proof the business has no more than and will not exceed 300 employees.

- CCB may prioritize application review, selection, and issuance based on SE status.

- Extra Priority application review, selection, and issuance given to individuals from CDI + income lower than 80% of the median income in the county in which the applicant resides + convicted of a cannabis related offense or had a parent,

guardian, child, spouse or dependent, or was a dependent of someone convicted of a cannabis related offense prior to 3/31/21

- Application and license fees may be 50% reduced, waived, or deferred for SE applicants.

- Any person seeking to contribute to the sole control of the applicant must hold at least 1% equity share in the business.

Application Process

- Timing – up to the discretion of OCM/CCB.
  - Rules identify that they "may be accepted from time to time as may be deemed appropriate and necessary."
  - License applications will be accepted during specific license type application periods, which shall be announced no less than thirty (30) days before the application period opens for that specific license type, as established by the Board.
- License Limitations.
  - No strict cap by regulation.
  - Limitations may be imposed at the time of application acceptance, including for:
    - Total number of licenses.
    - Location or authorized regions.
    - Size of operation or output.
    - Limitations associated with true party of interest.
    - Eligibility criteria
    - Operating conditions, dependent on:
      - Sustainability.
      - Public health and safety.
      - Social and economic equity factors.
- Application Contents/Form.
  - Required information.

- Identification of applicant or TPIs.
- For entities: identification of each individual partner, member, member-manager, nonmember-manager, director, officer, trustee, certain shareholder, and each individual true party of interest of the applicant and of each level of ownership of the applicant.
- Personal history or entity history disclosure forms.
- All contracts, term sheets, agreements, or side letters between the applicants or its TPIs and any goods and services providers other than those exempted.
- Capitalization tables listing specific holders of ownership above 10% of interest in a private entity and 5% interest in publicly traded entities.
- Org chart.
- Description of licenses in any other state or jurisdiction.
- List of any charitable contributions by the applicant in the last five (5) years exceeding $5,000 annually or greater than $250,000 collectively for the applicant's donation history.
- FOIL exemptions to disclosure.
- Labor peace agreement with a bona fide labor organization.
- Criminal history and legal proceedings.
- Premises description, including:
    - Identification of landlord.
    - Street name and number, photographs, GPS coordinates, architectural drawings, or other items related to the appearance of the interior or exterior of such premises, and floor plans of the interior of any structures being utilized on the premises.
    - Identification of compliance with sensitive use distances.
    - Municipal notification.
    - Certificate of occupancy.
    - Copy of lease agreement.

        - Documentation that the applicant will be able to obtain insurance.

- Selection/Amendment/Reduction of canopy tier.
    - An applicant is required to select a tier as part of its application submission.
    - A cultivator can expand or reduce its canopy beyond its licensed cultivation tier if it applies to OCM and receives approval to do so.
    - A cultivator license authorized for up to 25,000 square feet of mixed light cultivation canopy with no more than 20 lights, shall only be eligible to expand into a Tier 3 Mixed Light License
- Application fees:
    - Regular Application fee - $1,000.
        - Licensing fees differ drastically depending on license types, approvals under the license types, etc.
    - ROD and ROND application fee - $10,000.
- Evaluation.
    - Selection criteria detailed in Section 64 of the Cannabis Law, including:
        - Social and economic equity status.
        - Maintaining effective control against the illegal diversion or inversion of cannabis.
        - Compliance with applicable state laws and regulations.
        - Readiness to carry on the activities for which the license is sought.
        - Possession or right to use land, building, and equipment to carry out the licensed activity.
        - Approval is in the public interest, including by reference to:
            - Number, class, and character of other licenses in proximity to the location and in the particular municipality.
            - Evidence that all necessary licenses and permits have been obtained or will be obtained.

- Effect of the grant on pedestrian or vehicular traffic, and parking, in proximity to the location.

- Existing noise level at the location and any increase in noise level that would be generated by the proposed license.

- Ability to increase climate resiliency and minimize or eliminate adverse environmental impacts, including but not limited to water usage, energy usage, carbon emissions, waste, pollutants, harmful chemicals and single use plastics.

- Effect on the production, price, and availability of cannabis and cannabis products.

  - Maintenance of a labor peace agreement with a bona-fide labor organization.

  - Commitment to contribute to communities and people disproportionately harmed by enforcement of cannabis laws.

  - Environmental and energy impact for cultivators or processors.

- Community impact plan highlighting the applicant's proposed strategy for community engagement.

- Submissions of any plans pursuant to Part 125 of this Title required by the Board, demonstrating planned compliance with standards and regulations, and highlighting technologies, techniques, and strategies to protect the surrounding environment, limit carbon footprint, and leverage sustainable energy sources, including with reference to:

  - Energy and environmental standards.

  - Site, operating, and environmental plans.

  - Security and storage plans.

  - Employee requirements and obligations.

  - Responsible workforce training.

  - Worker health and safety standards.

  - Sanitary facility, equipment, and handling standards.

  - Inventory and tracking.

- Quarantine and recalls.
- Transport of cannabis and cannabis products.
- Management of cannabis and other waste.
- Inspection and audits.
- Recordkeeping requirements.
- Processing samples for internal quality control.

o Completion of any workforce or training programs offered by the Office and completed by the applicant.

o History in creating or maintaining an equitable workplace environment through the review of previous business and management practices, including, but not limited to:

- Wages, including:
  - Starting hourly rates for hourly workers.
  - Starting salary for salaried workers.
  - Average annual wage percent increase in the last three years by classification of employee.
- Benefits, including but not limited to:
  - Number of hourly employees with 100% employer paid medical premiums.
  - Number of hourly employees receiving Family, Single +1 coverage
  - Number of hourly employees with employee co-contributions for medical coverage; or
  - Employer paid retirement benefits such as 401K match or direct contributions.
- Training, including, but not limited to:
  - Health and safety training
  - Retention rates

- Diversity in hiring and promotion.

- History in creating or delivering culturally and linguistically competent services and underserved populations, including but not limited to:
    - Training programs
    - Multilingual services
    - Published materials and curricula
    - Community outreach
    - Administrative and organizational accommodations
    - Any other qualifications deemed necessary by the Office
- Serving in community leadership roles within established and licensed businesses, nonprofits, religious organizations, educational institutions, philanthropic organizations, community clubs, neighborhood associations, cooperative development and bona fide labor organization, and any other qualifications deemed sufficient by the Office
- Supporting evidence that demonstrates the applicant's ability, capacity, and any initial steps taken to meet the Board's standards for the plans in paragraphs (2) and (3) of this subdivision
- The relative performance of applicants based on such criteria
- For applications from entities with twenty-five or more employees, the Office shall give consideration to whether applicants have entered into an agreement with a statewide or local bona-fide building and construction trades organization for construction work on its licensed facilities
- Applications qualifications for provisional licensing status
- Any other information requested by the Office

- Approval – OCM may approve of licenses using mechanisms, including but not limited to scoring, compliance-based evaluations, qualified lottery, randomized ordering or any combination thereof.
    - The Board will determine the eligibility criteria for each license type including provisional licenses.

- The Board may prioritize application submission, review, selection and issuance by, region, license type, provisional status, social and economic equity status, or any other criteria the Board may determine.

- Application submission, review, selection, and issuance may be prioritized by groupings consistent with Section 87 of the Cannabis Law, such as:

  - A group consisting only of applications that demonstrate the applicants are eligible for extra priority as defined in Section 121.1 of this Chapter provided the applicant is seeking to qualify as a social and economic equity applicant and

    - Is a member of a community disproportionately impacted by the enforcement of cannabis prohibition,

    - Has an income lower than 80% of the median income of the county in which the applicant resides, and

    - Was convicted of a marihuana-related offense prior to the effective date of the Act, or had a parent, guardian, child, spouse, or dependent, or was a dependent of an individual who, prior to the effective date of the Act, was convicted of a marihuana-related offense

  - A group consisting only of applications that meet the definition of distressed farmer as described in subdivision (h) of Section 121.1 of this Chapter

  - A group consisting only of applications that meet the definition of service-disabled veteran as described in subdivision (i) of Section 121.1 of this Chapter

  - A group consisting only of applications that demonstrate the applicant is from a community disproportionately impacted by the enforcement of cannabis prohibition as described in subdivision (d) of Section 121.1; and

- Applications may be considered in multiple groups pursuant to their eligibility for such groups

- If approved, applicants receive a provisional license, subject to whatever provisional process CCB approves.

- After receiving provisional approval, the applicant must fulfill any outstanding items requested by the CCB within twelve (12) months.

- Bases for denial of application.

- Failure to meet eligibility of rules.
- Applicant or TPI has a history of violations relating to its operation of owning or operating a business.
- Source of funds is determined to be a violation of true parties of interest restrictions or is questionable, unverifiable, or gained in a manner which violates the law.
- Failure to supplement application during cure period.
- False representations.
- Bad moral character.
- Outstanding violations, fines, fees, payments, or other indebtedness assessed against them by state, federal, or local authorities.
- History or knowledge of illicit sales, including through "membership clubs."
- Premises in a prohibited location.
- Failure of pre licensure inspection of premise
- Pattern of deficiencies.
- the applicant's true parties of interest are also true parties of interest in a number of pending cannabis license applications that, if licensed, would exceed the limit on the number of.
- licenses such true party of interest could be a true party of interest in at any one time.

Municipal Oversight and Rulemaking

- Municipalities are preempted from adopting local laws allowing retailers, microbusinesses, RODs, or on-site consumption licenses to be:
    - On the same road and within 200 feet of the entrance to a house of worship.
    - On the same road and within 500 feet of the entrance of a school.
    - On the same road and within 500 feet of a structure and its grounds used exclusively as a public youth facility.

- Municipalities are preempted from adopting any local law, rule, or prohibition with respect to ROs, adult-use cannabis licensees, or cannabis hemp licenses, including, but not limited to:
    - Imposing a special fee specific to that business.
    - Imposing a fee on retail.
        - However, it may impose such fee if the municipality imposes a fee on off-premises liquor establishments under the State Liquor Law pursuant to a law enacted prior to March 31, 2021.
        - No reference to how high such fee can be.
    - Imposing a fee for on-site consumption.
        - However, same exception as retail.
    - Imposing a tax or fee on cultivation, processing, manufacturing, distribution, or retail sale, other than usual and customary fees associated with similarly situated businesses.
    - Requiring community host agreement with either municipality, community organization, or associated affiliated with such municipality.
    - Denying any right, privilege, permit, variance, or approval to cannabis licensee associated with the premises where retail sale of adult-use cannabis to consumer occurs and for which a license has been in existence continuously from a date prior to the date when there came into existence:
        - A building that was occupied exclusively as a house of worship, within 200 feet.
        - A building and its grounds that was occupied exclusively as school grounds, within 500 feet; or
        - A structure and its grounds that was occupied exclusively as a public youth facility, within 500 feet.
    - Setting a standard for ventilation or odor control for an indoor area of an adult-use on-site consumption premises unless such standard is also applicable to all indoor areas of any business that allows the smoking or vaping of tobacco.
    - Setting a standard for ventilation or odor control for any outdoor area of an adult-use on-site consumption premises, where such standard requires a distance of no greater than 20 feet, unless a greater distance is approved by the Board, between

an area of an adult-use on-site consumption premises, that is outdoor and allows smoking and vaping, and an adjacent public thoroughfare.

- Municipalities may adopt rules governing time, place, and manner, provided such laws are not unreasonable impracticable.
    - Examples of reasonable time, place, and manner restrictions.
        - Hours of operation (differs slightly depending on size of town/city).
        - Visual or architectural integrity of the building.
        - Parking.
        - Traffic control, including pedestrian and vehicular traffic.
        - Odor.
        - Noise.
        - Distance requirements between retail facilities and public youth facilities.
- Distances between cannabis businesses.
    - Measurements between retail or microbusinesses and other retailers (including Ros, RODs, and microbusinesses).
        - In a municipality of 20,000 or more: 1,000 foot radius until December 2023.
        - In a municipality of 20,000 or less: 2,000 foot radius until December 2023.
    - Measurements between on-site consumption lounges.
        - No on-site consumption license will be granted within five hundred (500) feet of three (3) or more existing on-site consumption premises.
- Method of measurement for sensitive uses.
    - Straight line from the center of the nearest entrance of the premises licensed and operating as a retail dispensary, on-site consumption, microbusiness, or ROD to:
        - Center of the nearest entrance of the house of worship.
        - Center of the nearest entrance of the nearest building on the school grounds, to the licensed premises, taken in a straight line.

- Center of the nearest entrance of such adult-use on-site consumption premises.
- Center of the nearest entrance of the nearest building of such public youth facility.
- If no entrance exists, the nearest structure of such public youth facility.
- If no structure exists, the nearest point of the grounds of the public youth facility's legally defined property boundary as is registered in a county clerk's office.
- If no clear delineation of grounds exists, the nearest point of equipment, the primary purposes of which is reasonably expected to be used by children seventeen (17) years of age or younger.

- "Entrance" defined as:
  - Main door of a house of worship, a building on the school grounds, or public youth facility regularly used to give ingress to the general public attending the house of worship, a building on the school grounds, public youth facility, etc.
  - However, where a house of worship, building on the school grounds, public youth facility, or premises licensed pursuant to this Title is set back from a public thoroughfare, the walkway or stairs leading to such door shall be deemed an entrance, and the measurement shall be taken to the center of the walkway or stairs at the point where meets the building line, structure if applicable for public youth facility, or public thoroughfare.
  - Entrance does not include:
    - cellars, back and side doors, delivery entrances, or emergency exits.
    - A door that has no exterior hardware, or which is used solely as an emergency or fire exit, or for maintenance purposes, or which leads directly to a part of a structure not regularly used by the general public or patrons.

- Unreasonably impracticable review and determination.
  - Claimants may bring unreasonable impractical claims to OCM.
  - CCB may conduct a review of such law and issue an advisory opinion as to whether the law is unreasonably impracticable.

- Upon review and determination by the CCB, the OCM must send a copy of the advisory opinion to the claimant and the municipality from where the local law originates.

- Where the law is:

    - Adopted prior to the advisory opinion, the advisory opinion will be presumptive evidence that the local law violates the MRTA.

    - Proposed but not adopted, the municipality shall be preempted from adopting the local law because the local law, if adopted, would be unreasonably impracticable.