



Adult-Use Regulations: Parts 118, 119, 120, 121, 123, 124, 125, 131

Assessment of Public Comment

Part 118.1(a) – Definitions

Immature Cannabis Plant

COMMENT: Many comments were made on the definition of “immature cannabis plant,” which was, by far, the most commented on subdivision in all of Part 118. Most commenters understood the Office’s concern, especially when it came to canopy space and how plants would be counted towards it. However, many also believed the definition itself would harm the long-term success of the industry in New York as it could potentially limit genetics by allowing plants to grow in the same space together. However, the most prevalent comment related to this subdivision was that the height restriction should be removed from this definition. Commenters believed that plant height is an arbitrary identifier for cannabis plant maturity and that observable buds and/or flower is the only accurate way to identify it. Further, commenters believed “seedling or small clone stage” is similarly included in arbitrariness in identification.

RESPONSE: The proposed regulations to this definition were amended to remove plant sex and height restrictions and rely on the appearance of flower or buds that can be observed by visual examination as a result of this comment.

Craft Product

COMMENT: Several commenters were either seeking clarification on the definition of “craft product” or submitted potential changes that could provide clarity on whether mechanical processes could be partially utilized during production. For example, allowing machine trimming, provided that all final products are still produced at smaller-scaled tiers and reviewed and inspected by farm owners and staff. Some commenters also presented issues with the definition related to ADA compliance and how it could potentially be in violation of such, and that there should be either allowances for robotics, or limited use of automated machinery.

RESPONSE: The proposed regulations were revised to provide for future flexibility and for the Office to provide licensees direction through guidance.

Mature Cannabis Plant

COMMENT: Many comments were submitted stating that plant height is an arbitrary identifier for cannabis plant maturity and that observable buds and/or flower is the only accurate way to identify it.



Several commented that the definition would inhibit good farming and cultivation practices because under this definition they argue that growers could suffer in the Northeast’s climate in cooler months if they are forced to classify cannabis plants as “mature” in their canopy. This could be a possibility when there are limitations due to frost or other climate issues before the plant is ready for outdoor planting. It should be noted that other states such as Vermont and New Mexico refer to cannabis plant maturity as a female cannabis plant that has observable buds or flowers without referring to plant height.

RESPONSE: The proposed regulations were revised as a result of this comment to clarify that a mature cannabis plant must have observable buds or flowers.

Concentrate or Concentrated Cannabis

COMMENT: Several comments were made regarding the reference to resin in the definition, and the idea that resin refers to concentrates that are made with solvents. Rosin, on the other hand, are a solventless process and both are considered concentrates. Additionally, commenters states that the definition should be edited to specify product types to further align with permissible cannabis products. Finally, commenters stated that naturally occurring cannabis flower can have up to 30% by weight or by volume of total cannabinoids.

RESPONSE: This definition is directly based on the definition in Cannabis Law. No changes were made to the proposed regulation as a result of these comments.

Hoop House

COMMENT: Several comments made on the definition of “hoop house,” subdivision 118.1(a)(42). Most commenters primarily believed that limiting the materials that can be used in construction of a hoop house would limit ingenuity. Further, commenters also believe that other acceptable materials would allow for full penetration of sunlight to cannabis plants.

RESPONSE: The proposed regulations were revised as a result of this comment to provide further flexibility for growers.

Cannabis Flower Product

COMMENT: Comments were received which indicated that many cannabis producers blend or pre-roll with florals such as roses. Commenters recommend removing the word “blend” from the definition or allow for the inclusion of infused pre-roll products. Others also recommend that the word “trimmings” be defined.



RESPONSE: The proposed regulations were revised to further clarify that any cannabis flower product must consist predominantly of the flower, buds and leaves of the plant.

Outdoor Cultivation

COMMENT: Comments were received asking for clarification as to whether outdoor cultivation use of artificial lighting would require the same photon photosynthetic standards contained in the definition for mixed light. Additionally, commenters stated that outdoor is simply cultivating with sunlight, minus climate control or artificial light, therefore, the use of fans, which is intended to only move the air around rather than control temperature, do not need to be listed. Commenters wanted to remove the list of structures, as there are many different types of sunlit structures that could be used in grows that are not simply defined as hoop houses. Finally, commenters believed that outdoor cultivation should not include keeping a mother plant indoors or to propagate seedlings indoors and should instead be listed under business operations and prohibitions.

RESPONSE: The Office acknowledges this comment, but this definition was not added or amended, but changes will be reflected elsewhere in the regulations to provide licensees with certain accommodations.

Mechanical Extraction

COMMENT: Comments were received on the need to add the definition of Office to be included in Part 118 to give more meaning to the reference in this definition. By including “as approved by the Office”, however, many commenters argue that this could lead to the interpretation that processors could use solvents or gasses that are not approved by the Office and that reference should be deleted. Commenters recommend defining solventless extraction or extraction done by mechanical means of pressure, heat, or cold as sufficient. Adding extraneous language on types of processes increases ambiguity and is short-sighted for potential future technology.

RESPONSE: The proposed regulations were revised to add “as approved by the Office” as a result of this comment.

Tincture

COMMENT: Comments received stated that the definition for tincture is inaccurate and exclude a myriad of substances that can suspend an extract. Commenters also indicate that there are several operational and packaging requirements that should be specified under those sections and not in the definition. Finally, some comments noted that the law states that THC should not be mixed with alcohol, but that ethanol, when



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used as a solvent, is one of the oldest and easiest forms of botanical extraction, as well as one of the safest methods.

RESPONSE: The proposed regulations were revised as a result of these comments to clarify what cannabis products can be dissolved into.

Cultivation Cycle

COMMENT: Some comments received stated that cultivars use tissue-cultures in cultivation facilities and that the current definition should be broken down into subsections for each phase of the cannabis life cycle such as: germination (first 3-10 days); seedling (next 2-3 weeks); vegetative stage (next 3-16 weeks); flowering stage (next 8-11 weeks). Commenters argue that cloning should have its own definition.

RESPONSE: The Office acknowledges these comments and may consider including the definition in future guidance and rulemaking; however, it was determined that this definition is no longer needed because of other edits made to the regulations and therefore, this definition is no longer required.

Harvest Batch

COMMENT: Comments argued that the definition for harvest batch is too limited and should be expanded and that the use of the term “similar conditions,” which commenters believe to be subjective and unenforceable, and that it is unclear if “under similar conditions” refers seasons, timing of run, or if it is compartmentalized by room, despite genetics, IPM schedules, feedings or planting/harvesting date – which ultimately dilutes the intent of traceability. Commenters also recommend adding a definition for production batch on the manufacturing side to hold traceability across the supply chain.

RESPONSE: The Office acknowledges this comment and may consider including the changes to the definition in future guidance and rulemaking. No changes were made to the proposed regulations as a result of this comment.

Integrated Pest Management (IPM)

COMMENT: Comments were received saying that the Marijuana Regulation and Taxation Act (MRTA) explicitly states that cultivation should be guided by regenerative agricultural methods and practices, therefore, the IPM standard practices in regenerative agriculture should be a part of the definition for IPM.

RESPONSE: The proposed regulations were revised to clarify methods that should be utilized by licensees in IPM.

Pests



COMMENT: Comments were received that conflicted regarding pests. Some commenters were concerned with the killing of native species and with the protection of species in the outdoor settings, while others state that pests not only contaminate dried product but also present a number of threats to the plant throughout the growing, harvesting and curing process.

RESPONSE: The proposed regulations were revised as a result of these comments to include “potential threat” and “contamination.”

Biodiversity

COMMENT: The Office received several comments regarding the definition of “biodiversity” and the importance of species diversity, which is more than the existence of individual species or their ability to work in balance with one another. The crux of biodiversity is the recognition of the importance of diversity within a species and among species and their importance to living and non-living planetary systems to minimize extinction events at either the species or system levels.

RESPONSE: The proposed regulations were revised as a result of this comment to better reflect the most prevalent edit submitted by commenters.

Cultivation

COMMENT: Many comments were received asking for a change in the definition of cultivation. Thirty-two of those comments asked for the addition of the word “micropropagation” to the list of activities performed by a cultivator; one asked for the definition of cultivation to include “minimal processing;” and another asked for a number of the terms in the definition to be defined further in regulation.

RESPONSE: The proposed regulations were revised as a result of this comment to add “micropropagation-tissue culture” to this definition.

Extracting

COMMENT: Several comments were received which requested adding “or terpenes” following the word “phytocannabinoid” in the definition of extracting. There was no explanation or commentary as to why commenters are seeking to add terpenes to this definition.

RESPONSE: The proposed regulations were revised and changes were made to this definition as a result of these comments to provide for additional extractions by processors and manufacturers.

Photosynthetic Photon Efficiency (PPE)



COMMENT: Comments were received that requested additional clarity on the definition of PPE. Commenters provided recommended changes they believe would provide such clarity.

RESPONSE: The proposed regulations were revised and changes were made to this definition as a result of these comments. These technical changes ensure clarity in the definition for the Office and for cultivators.

Indoor Mixed Light

COMMENT: The Office received many comments about splitting this definition into two different categories, as OCM and the Board have touted New York’s cannabis cultivation program as one of the most environmentally friendly in the country, to the point where many adult-use products are entirely sun grown. Commenters believe that equating mixed light in a low carbon environment or a high carbon, climate-controlled environment is antithetical to the intent and goals of the MRTA. Commenters further argue that the state has delineated such best practices in commitments to carbon reduction and climate mitigation. Finally, commenters believe that there are cultivators who may want to supplement with lights during the last few weeks of flowering stage and confine such plants to the same canopy square footage, and the existing definition would deter cultivators from growing in natural conditions under small canopies.

RESPONSE: The Office acknowledges this comment, but this definition was not added or amended, but changes will be reflected elsewhere in the regulations to provide licensees with certain accommodations.

Plant Protection Products

COMMENT: There were many commenters against the inclusion and allowance of plant growth regulators in the definition of plant protection products. Commenters argued that plant growth regulators provide risks to cannabis consumers, including liver damage, cancer, and infertility. Commenters did not provide citations for these claims in their public comment submissions.

RESPONSE: The proposed regulations were revised as a result of these comments to remove plant growth regulators from the definition.

Indoor Cultivation

COMMENT: The Office received several comments from individuals who believe this definition should be amended to include carbon dioxide generators, as they will be necessary for successful indoor grows. Such commenters hope that this was an oversight during drafting, as the term “only” is utilized in the definition of what equipment can be used.

RESPONSE: The proposed regulations were revised and these technical changes were made to this definition as a result of these comments.



Cannabis Waste

COMMENT: Comments were received which wanted the removal of language referencing the intention of the sale of the cannabis byproduct, scrap, harvested cannabis and cannabis infused products in the definition of cannabis waste because the product intended for sale might become waste for various reasons, including but not limited to contamination, spillage, spoilage, etc.

RESPONSE: Products that were originally intended for sale to a cannabis consumer which became waste for whatever reason became products that are not intended for sale the moment they became waste. No changes were made to the regulation as a result of this comment.

True Party of Interest

COMMENT: Several comments were made on the definition of “true party of interest,” (TPI) subdivision 118.1(a)(81). Many commenters believed the definition was overly broad and included too many individuals that would be captured, including spouse. The issue of excluding spouses was commonly brought up from the public, as well as stakeholders in the private and public sector. Several commenters argued that because New York is not a community property state, recognizing that marriage does not confer on the spouse an interest on the other spouse’s individually owned property. The New York State Bar Association cited case law that upheld this in 1971 related to a decision with the SLA– the court relied on interpretation of the Domestic Relations Law. Other commenters also opined that some spouses file separate taxes and maintain separate financial lives outside of their domestic lives for whatever reason that is outside of government oversight, and as such these individuals are entitled to pursue their own entrepreneurial pursuits. Other comments in TPI included that the regulations should include a so-called “safe harbor” for certain indirect interest holders who own such indirect interest in New York or elsewhere by virtue of their ownership in a pooled investment vehicle over which such person does not have investment discretion, like provisions that exist in California regulations. Commenters argue that there is similar case law in New York that would support this proposition that were found in the Alcoholic Beverage Control Law. Additionally, other comments included that a TPI should not be calculated by a percentage-based aggregate payments, but rather a flat monetary limit of \$150,000. Further, commenters also believed that the definition should be clarified to include that a TPI that is a stockholder is not also a passive investor nor a person with a financial interest in the applicant or licensee who exerts control over operations of a licensee or applicant.

RESPONSE: Changes were made to this definition to clarify who is captured under the definition to include the original list under (a) and persons with equivalent titles that are in any entity in the applicant or licensee’s ownership structure. Additionally, subsidiaries, affiliates, parents, shells, and holding companies



have been removed from (c). The dollar amount for persons receiving aggregate payments under (d)(3) has been increased from \$100,000 to \$250,000. The definition will also allow the Office to include other persons as may be determined in guidance, provided it is consistent with the policies of the article. Finally, the definition was amended to clarify which persons who consult an applicant or licensee under a goods and services agreement will be included.

Community Facility

COMMENT: Many commenters believe that the definition of “community facility” is too broadly written and could potentially allow local municipalities to further restrict where cannabis could be sold from. There were some comments where individuals were concerned that the breadth of the definition could ostensibly allow certain other locations that may be infrequently visited by children, e.g., a yoga studio that typically provides classes to adults but may provide one class on weekends to children, to be classified as a community facility. Some commenters also believed the breadth of the definition would impede on the microbusiness license and what kind of activities that could be offered at such a business, such as educational opportunities for individuals 21 years and older. There was one comment that argued that municipalities, including New York City community boards, should be empowered to determine what a community facility is and that it should not be defined in regulations.

RESPONSE: The proposed regulations were revised in response to comments. This definition was revised and renamed “public youth facility” to clearly indicate that it is a public recreational location or structure intended to primarily serve individuals seventeen years of age or under.

Passive Investor

COMMENT: There were thirteen wide-ranging comments made on the definition of “passive investor.” Some commenters believe this definition should be either edited or entirely removed from the regulations. Several commenters suggested the definition be modified to remove any reference to “future voting shares” or “future equity share” so that persons are only afforded the status of a passive investor if, and until, they become an actual shareholder above the thresholds established therein. Other commenters believe that the reference to TPI should be removed, and the outstanding shares should be raised from 5% to 10%.

RESPONSE: The Office acknowledges this comment; however, no changes were made to the proposed regulations as a result of this comment as the Board is intending to reflect the intent of the MRTA by ensuring that any person with a vested financial interest that may be included in the future if they exceed the passive investor threshold.



Canopy or Cultivation Canopy

COMMENT: Several commenters sought clarification of why this canopy definition differs from the definition that is in the AUCC definitions. Similar comments also said the use of “vegetative” and “flowering plants” should be removed from the definition to be like the AUCC definition. However, at the same time some commenters also requested that the canopy space should apply only to the space taken up by the actual cannabis plants.

RESPONSE: The proposed regulations were revised and changes were made in response to comments so that this definition reflects the AUCC definition of “canopy” so that there is more clarity.

Financial Interest

COMMENT: Many comments were received which sought substantive changes to the definition of financial interest to largely exempt exempting certain goods and services providers, passive investors certain employees, holders of diversified pooled investment funds, and spouses from being considered to have a financial interest.

RESPONSE: The Office made limited changes in response to this section, increasing the compensation limits to \$250,000 instead of \$100,000 and clarifying that salaried employees are exempt from the compensation limits in the financial interest definition. No other exceptions or changes were added for goods and services providers.

Aggregate Ownership Interests

COMMENT: The Office received many comments that questioned why family members, specifically spouses, are included in aggregate ownership interest. Commenters said that if any family members should be included in this definition, it should only be dependents.

RESPONSE:, The Office acknowledges this comment; however, this regulatory provision was derived Cannabis Law provisions related to equity. No changes to the proposed regulation were made as a result of this comment

Financier

COMMENT: Many commenters were broadly concerned about the definition of Financier. Two commenters were concerned about provisions appearing to prohibit a financier from taking an ownership interest, especially considering existing financing relationships; one asked that the threshold for financial or controlling interest be raised to allow a safe harbor up to \$150,000. Lastly, one commenter asked that the definition of financier be expanded to include a local development corporation or a consortium of



lenders where one of the members is a government, government subdivision, government agencies, or local development corporation.

RESPONSE: The proposed regulations were revised as a result of these comments. This definition has been amended, and now allows any person to be a financier, other than financial institutions; additionally, the regulations were amended to raise the safe harbor for a financial or controlling interest to \$250,000. However, the Office notes that a financier is, by definition, not a true party of interest. Any person who is providing financing or capital to a licensee while taking an ownership would, therefore, be considered a true party of interest of the licensee, not a financier. As a result, no changes were made to the regulations due to the comments asking that financiers be permitted to hold ownership interests.

House of Worship

COMMENT: Commenters were uncertain what a house of worship is, and how it would be considered by the Office when analyzed related to measurement criteria and exclusivity. One commenter highlighted that an entire building or structure should be clarified as a house of worship, and not necessarily a “storefront church.” Other commenters also suggested requiring more stringent requirements for houses of worship meet a certain threshold, such as proving their IRS 501(c)(3) status.

RESPONSE: The proposed regulations were revised and a technical change was made to this definition as a result of comments to clarify what a “house of worship” is.

Public Convenience and Advantage Standards

COMMENT: Multiple people asked for the definition of public convenience and advantage be changed or clarified. Commenters broadly questioned the public convenience and advantage definition and process. Multiple commenters asked for clarification on what qualifies as a demonstrated need, saying the process felt arbitrary and subjective. One commenter proposed that the definition be amended such that the process would consider “any other factors, including the number of schools, community facilities in the area, or specified by law or regulation;” another noted that the standards seem redundant with municipal regulations over time, place and manner of licensed operations and spacing provisions in Section 119.2.

RESPONSE: Similar to Alcohol Beverage Control Law, the public convenience and advantage standard is meant to assess the public interest in the granting of an adult-use retail dispensary or adult-use on-site consumption license. If there is sufficient demand for such license, it may be granted within the buffer zones provided in Part 119.1 of the proposed regulations. The proposed regulations have been revised as a result of these comments.



Control or Controlling Interest

COMMENT: Numerous commenters suggested that the definition of control is too broad, and seems to include all employees, and specifically those employees who can purchase minimal assets of the organization, including by use of a public credit card. One commenter asked that this be clarified by replacing the word “person” with applicant, licensee or entity.

RESPONSE: The proposed regulation has been revised and the definition has been amended to clarify that persons who are in “control” or are a “controlling interest” not only maintain control of the books and financial records, but they also must have the ability and power to co-sign on banking accounts and to authorize capital outlays and spending.

Processing

COMMENT: Some commenters asked that the definition of processing be amended or clarified. One commenter asked for a clarification of what is considered branding, while another asked for clarification between the actions a cultivator can take, and those that a processor can take.

RESPONSE: The Office acknowledges these comments but notes that the definition of branding can be found in Part 128, which has already been adopted. While the delineation between processing and cultivation is broadly apparent from the definitions, even if the activities a licensed processor and a licensed cultivator are authorized to perform may intersect when it comes to minimal processing activities. No changes were made to the regulations as a result of these comments.

Social and Economic Equity Applicant

COMMENT: The Office received a number of comments asking for the definition of social and economic equity to include justice involved individuals, given that the Cannabis Board is specifically tasked with achieving goals related to “restorative justice.” One commenter specifically noted that prioritizing women owned businesses counters the goals of restorative justice, given that more men than women were arrested for cannabis related offenses.

RESPONSE: The Office acknowledges these comments but one of the primary goals of the MRTA and the New York cannabis program is to promote opportunities for citizens who do not have equal opportunity or access to programs or funding. No changes were made to the regulations as a result of these comments.

Social and Economic Equity Licensee

COMMENT: Commenters noted the section numbering in the draft regulations was incorrect and this definition was numbered the same as the definition for “sole control.”



RESPONSE: The proposed regulations were revised and a technical change was made to this definition as a result of comments submitted.

Management Services Provider

COMMENT: A number of commenters asked that the definition of management services agreement be clarified or altered. Specifically, one commenter recommended the removal of management services agreements as a separate category from non-exempt agreements, as they argue that the line between the two types of agreements is not well defined in the regulations.

RESPONSE: The proposed regulations have been revised to clarify the role of a management service provider as a result of these comments is directing or ordering a license, and therefore has control of that license; therefore, management services providers are no longer considered a goods and services providers, but rather true parties of interest with financial or controlling interest over a license.

Sole Control

COMMENT: Numerous commenters asked that this provision be clarified, as very few businesses are “independently owned, operated and controlled” by a single person, as the definition seems to imply is necessary for sole control to be met.

RESPONSE: The proposed regulations were revised and changes were made to the regulations due to these comments to clarify that a business does not have to be independently owned, operated, and controlled. There were other clarifying revisions made as well.

Attractive to Individuals Under Twenty-One

COMMENT: A number of commenters asked that the definition of attractive to persons under 21 be amended. Two asked for specific language to be included in this regulation package that further details the definition, and one requested a grammatical edit.

RESPONSE: The proposed regulations have been revised to reflect the requested grammatical edit. The requested revision to the definition for attractive to persons under 21 is out of scope as the definition resides in Part 128, which has been adopted, the definition will not be included here. Specific examples of attractive to persons under 21 have been further delineated in guidance, and the Office may further clarify in the future.

School Grounds



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COMMENT: Multiple commenters asked for clarification on the definition of school grounds, and specifically whether pre-schools, nurseries and colleges are considered schools; one commenter notes that the definition seems to deviate from New York State Alcohol and Beverage Law.

RESPONSE: The MRTA requires the use of the Education Law’s definition for school grounds which is defined as any building, structure and surrounding outdoor grounds, including entrances or exits, contained within a public or private pre-school, nursery school, elementary or secondary school's legally defined property boundaries as registered in a county clerk’s office. No changes have been made to the proposed regulations as a result of this comment.

Registered Organization with Dispensing (ROD)

COMMENT: Multiple commenters asked for the definition of Registered Organization with Dispensing (ROD) to be clarified or changed. One commenter specifically asked that the Office create a new ROD license specifically for social and economic equity licenses who do not meet the small business requirements of section 121 of the regulations.

RESPONSE: An ROD is a registered organization with adult-use dispensing capabilities. The path to a ROD is to first be a RO in our medical program, and currently there is no social equity designation in the medical program. Additionally, the benefits the Board and Office provides social and economic equity licensees, such as lower fees, are meant to reduce the barrier to entry in the adult-use market. An entity that is applying to become an RO is well capitalized and does not face the same economic realities. The Office acknowledges this comment; however, no changes were made to the proposed regulations as a result of this comment.

Goods and Services Agreement

COMMENT: Numerous commenters asked that the office clearly define “Goods and Services” or “Goods and Services Agreement,” as the terms are used broadly in the regulations, but there is no clear definition of the terms.

RESPONSE: Goods and services agreements refer to any non-employee agreements resulting in compensation between a licensee and a person other than that licensee. Beyond that, the provisions of Part 124 act a safe harbor for any person being compensated by a licensee to understand where they have a financial or controlling interest in a licensee or are unduly influencing across the tiers. The Office acknowledges this comment; however, no changes were made to the proposed regulations as a result of this comment.



Marihuana-Related Offense

COMMENT: Two commenters asked for changes to the definition of Marihuana-related offense. One asked for the definition to consider federal convictions, while the other asked for further clarification on the differences between: “Marihuana,” “Hemp,” “Marijuana,” “Cannabis” and other similar terms.

RESPONSE: The Office acknowledges these comments, however, under the Criminal Procedure Law only certain former marihuana offenses are eligible for expungement or criminal record sealing, and the Office is only authorized to determine what other offenses may be similar to such former New York marihuana offenses. Because cannabis/marihuana is still classified as a controlled substance at the federal level, the Office is unable to recognize such offenses and the State of New York is unable to act upon them with any authority. Finally, it should be noted that the MRTA defined marihuana and cannabis as interchangeable terms. No changes have been made to the proposed regulations as a result of these comments.

Registered Organization Non-Dispensing (ROND)

COMMENT: Two commenters asked for the Office to clarify the definition of Registered Organization Non-Dispensing (ROND), and specifically how it differs from a Registered Organization Dispensing (ROD).

RESPONSE: The Office acknowledges these comments, and notes that the difference between the two is that a ROND is not operating a co-located (adult use and medical) dispensing site, while a ROD is operating at least one co-located dispensing site. The law clarifies this distinction, and as a result, no changes have been made to the proposed regulations as a result of this comment.

Artificially Derived Phytocannabinoid

COMMENT: Some commenters took exception with the definition of artificially derived phytocannabinoid. One pointed out that “phyto-” comes from the Ancient Greek word for “plant,” and therefore it is an oxymoron to combine the word “artificial” with the word “phytocannabinoid,” and the phrase should be changed to “artificial cannabinoid.” One commenter stated that cannabis is decarboxylated when it goes through hydrocarbon extraction, and therefore the definition appears to incorrectly label all hydrocarbon extracted cannabinoids as artificially derived phytocannabinoids; another simply asked for the definition to be clarified, and examples be provided.

RESPONSE: The Office acknowledges these comments and notes that although the root of the term “artificially derived phytocannabinoid” may appear to be an oxymoron, it is still important to distinguish and affirm in regulation as well as to clearly delineate such substances from those that are considered



synthetic tetrahydrocannabinols prohibited in the state controlled substances list. No changes have been made to the proposed regulations as a result of these comments.

Debarment

COMMENT: A comment was made about the definition for “debarment” under Part 133, which was not included with the adult-use regulatory package and another comment was about moving the definition of “debarment” under Part 118 because of the potential sweeping implications and since Part 118 is one of the first sections to be reviewed by applicants, it should be included in that section.

RESPONSE: The Office acknowledges these comments, however, no changes have been made to the proposed regulations as a result of these comments because there is a cross-reference for this definition to the same definition in Part 133.

Cannabis Merchandise

COMMENT: Two commenters asked for a change in the definition of cannabis merchandise. One asked that the definition be clarified that sales of merchandise are allowed, and the other asked for the addition of a number of items, including candles, music, books, magazines, furniture, pillows, cooking materials to create edibles, wellness accessories, garden and planting accessories and garden plants to the definition of merchandise.

RESPONSE: The Office acknowledges this comment and may consider including the definition in future guidance and rulemaking to provide licensees direction on what would and would not be allowed. No changes were made to the proposed regulations as a result of this comment.

Advertising

COMMENT: One commenter noted that the definition for advertising refers to Part 128, which is not in this set of regulations.

RESPONSE: As Part 128 has already been adopted, this comment is out of scope. No changes were made to the proposed regulations as a result of this comment.

Edible

COMMENT: One commenter noted that by including “and other ingredients” in the definition of “edible,” a pure concentrated product that contained a syringe or dropper would not be considered an edible product while a tincture is.



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RESPONSE: The Office acknowledges and notes that the definition of edible is the same as in the Cannabis Law; as a result, no changes have been made to the proposed regulations as a result of this comment.

Processor

COMMENT: One commenter noted that the definition of “processor” is not aligned with the definition of “process,” and proposed an aligned definition.

RESPONSE: The proposed regulations have been revised to better reflect the definition in the Cannabis Law.

Serious Adverse Event

COMMENT: One commenter noted that the serious adverse event definition refers to Part 113, which is not in these proposed regulations.

RESPONSE: As Part 113 has already been adopted, this comment is out of scope. No changes were made to the proposed regulations as a result of this comment.

Non-Exempt Services

COMMENT: One commenter asked that the non-exempt services definition be amended to include all services currently being considered managed services, and to eliminate managed services as a construct from the regulations.

RESPONSE: The Office acknowledges these comments but notes that Cannabis Law specifically prohibits a person providing management services on one tier from doing so on another. As a result, no changes were made to the proposed regulations as a result of this comment.

TPI, Control, Undue Influence

COMMENT: One commenter asked that in any place that the regulations describe a way a person could become a controlling interest or true party of interest by way of an agreement with a licensee, that the Office provide examples of conduct that would and would not be considered a violation.

RESPONSE: The Office acknowledges this comment, and notes that it intends to provide examples like this in future guidance documents, as it has with past guidance. No changes were made to the proposed regulations as a result of this comment.

Corrective Action



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COMMENT: One commenter noted that the definition of corrective action plan refers to Part 133, which is not part of this set of regulations.

RESPONSE: As Part 133 has already been adopted, this comment is out of scope. No changes were made to the proposed regulations as a result of this comment.

Exit Package

COMMENT: One commenter noted that exit package refers to Part 128, which is not included in this set of regulations, and therefore should be defined in Part 118 as well.

RESPONSE: As Part 128 has already been adopted, this comment is out of scope. No changes were made to the proposed regulations as a result of this comment.

Greenhouse

COMMENT: One commenter noted that the definition of greenhouse in this subdivision is at odds with the New York City Building Code and could cause problems for licensees. The commenter asked that greenhouse be redefined to include the definition provided by the NYC Building Code.

RESPONSE: While the Office has determined there is no direct conflict between the NYC Building Code and these proposed regulations, the licensee is expected to comply with both. No changes have been made to the proposed regulation as a result of this comment.

Financial Arrangements

COMMENT: One commenter recommended that restrictions on financial arrangements create inequity in risk undertaken and should be adjusted or limited to allow for protections. Without the ability to have recourse, it will not make sense to make financial agreements of any sort without very little levels of risk of default. This will limit the ability of small business owners to enter into common business arrangements. Additionally, as mentioned earlier, control in business operations is also not currently available as recourse, making it very difficult to find pathways to fair agreements and without modification, this will severely limit the pool of people willing to do business with cannabis licensees.

RESPONSE: The proposed regulations have been revised to make changes to the regulations have been made to allow for personal guarantees on loans to licensees.

Retail Package

COMMENT: One commenter noted that retail package refers to Part 128 of this Title, which is not part of this regulation package, and therefore should be defined.



RESPONSE: As Part 128 has already been adopted, this comment is out of scope. No changes to the proposed regulation have been made as a result of this comment.

Certificate of Analysis

COMMENT: One Commenter noted that the definition for Certificate of Analysis refers to Part 130 of this title, which is not included in the proposed regulations.

RESPONSE: As Part 130 has already been adopted, this comment is out of scope. No changes to the proposed regulation have been made as a result of this comment.

Cash

COMMENT: One commentor asked that the definition of “cash” include foreign and digital currencies.

RESPONSE: The definition of cash intentionally excluded foreign and digital currencies, neither of which is US legal tender. No changes to the proposed regulations have been made as a result of this comment.

Financial Institution

COMMENT: Commenter sought clarity on whom the regulating entities under the definition of “financial institutions” was referring.

RESPONSE: The proposed regulations were revised as a result of this comment to clarify that this term is intended to relate to those financial institutions regulated by the New York Department of Financial Services.

Phytocannabinoids

COMMENT: One commenter asked that flavonoids be excluded from the definition of phytocannabinoids

RESPONSE: The Office is in the process of assessing the health and safety impact that exempting flavonoids from the definition of phytocannabinoid. The provision allows the Office to exclude additional compounds in guidance from the definition, and as a result, no changes have been made to the regulations.

Use By Date

COMMENT: One commenter noted that use by date refers to Part 128, which is not included in the proposed regulations.

RESPONSE: As Part 128 has already been adopted, this comment is out of scope. No changes to the proposed regulation have been made as a result of this comment.



Lot Unique Identifier

COMMENT: Commenter requested QR codes as an alternative to a printed “lot unique identifier” number, citing the technological efficiencies since bar code development.

RESPONSE: The Office requires “lot unique identifiers” that are not scannable QR codes for purposes of public safety and efficiency in the product recall process. No changes to the proposed regulation have been made as a result of this comment.

Brand or Branding

COMMENT: Commenter asked the Office to align “non-consumer package” with Part 128.

RESPONSE: As Part 128 has already been adopted, this comment is out of scope. No changes to the proposed regulation have been made as a result of this comment.

Non-Consumer Package

COMMENT: Commenter asked Office to align “non-consumer package” with Part 128.

RESPONSE: As Part 128 has already been adopted, this comment is out of scope. No changes to the proposed regulation have been made as a result of this comment.

Working Stock

COMMENT: There was one comment on the definition “working stock” seeking clarification around the temporal factors used to define “working stock.”

RESPONSE: The Office acknowledges this comment and may consider including the definition of working stock in guidance to reflect the performance of New York’s market and operators. in future guidance and rulemaking. No changes were made to the proposed regulations as a result of this comment.

Adding Definitions to Part 118:

Add: Outdoor Mixed Light

COMMENT: Comments were received that requested the definition should be split into two categories. OCM and the CCB have continually touted New York’s program as the most environmentally forward leaning in the country. The MRTA calls for regenerative practices to be used in cultivation. Its stated intent is to improve climate resiliency, protect the environment, and support the health and safety of the people of New York. In furtherance of these goals, OCM and the CCB have initiated the New York cannabis adult-use market with entirely sun grown products. To now equate mixed light whether grown in a low carbon environment or a high carbon, climate-controlled environment is antithetical to the intent and goals of the



MRTA; New York’s own climate initiative; and already established cultivation practices in the state. Best practices dictate delineation of carbon output between these two methods given the NYS financial and programmatic commitment to carbon reduction and climate mitigation. In addition, there are cultivators who merely want to supplement lights during the last few weeks of flowering stage and to confine them to the same canopy square footage of a mixed light, fully climate-controlled greenhouse will deter most growers from growing in natural conditions under small canopies.

RESPONSE: The Office acknowledges this comment, but this definition was not added or amended, but changes will be reflected elsewhere in the regulations to provide licensees with certain accommodations.

Add: Bona Fide Buildings and Construction Trade Association

COMMENT: One comment was made to include a definition for bona fide building and construction trade association as used in Section 120.7.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment as this is a commonly used term among building and construction trade associations and does not require further explanation.

Add: Extra Priority

COMMENT: One commenter recommended that the term “extra priority” be added to the definitions because while the term “extra priority” is used for Social and Economic Equity Applicants, the regulations do not specify what constitutes extra priority.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

Add: Well Established Worker-Cooperative

COMMENT: One commenter asked for a definition of well established worker-cooperative, as is used in Section 120.3.

RESPONSE: The Office acknowledges this comment and may consider including the definition in future guidance and rulemaking. No changes were made to the proposed regulations as a result of this comment.

Add: Distressed Farmer

COMMENT: Commenters suggested the inclusion of the definition for “Distressed Farmer” as it has been mentioned eleven times in the regulations and is used as a criterion to be considered for a Social and Economic Equity applicant. Additionally, one commenter requested that participants in the Adult-Use



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Cannabis Cultivators (AUCC) Cannabis Compliance Training and Mentorship Program (CCTM) to qualify as distressed farmers if they're members of a group historically underrepresented in farm ownership. The CCTM had an explicit goal to grow and diversify the pipeline of farmers, so participants from marginalized groups should also be eligible to score an additional point on their application as distressed farmers.

RESPONSE: The Cannabis Law provides a definition of distressed farmer. Regulations elaborate on the documentation necessary for an applicant to demonstrate that they are a distressed farmer. AUCCs and participants in CCTM are able to submit applications to be considered as social and economic equity in the same way as any other applicant. No changes were made to the proposed regulations as a result of this comment.

Add: Exempt Goods and Service Provider/Exempt Goods and Services

COMMENT: One Commenter stated that the terms “exempt goods and services provider” and “exempt goods and services” definitions should be added which would treat such services as truly exempt whether or not the service provider exceeds the 10%/50%/\$100,000 thresholds. As a result, there should be a similar carveout in the definition of “financial interests” and revisions made to Section 124.3(e) (see comments to those sections below). While commenters say they understand the Office’s concern that service providers who receive significant fees from licensees may be employing workarounds to avoid other restrictions or otherwise exert undue influence over a licensee, they believe that the risk of such unscrupulous behavior should be outweighed by the need for certain essential services and the mitigation of such risk by the professional licensing regulation which is applicable to many of these exempt services. They believe a clarification would avoid the need to analyze individual agreements and corresponding fees and limit instances where, for example, accounting and law firms are deemed to be TPIs because customary fees exceed applicable thresholds. Commenters say they understand that this was not the intent of the proposed regulations. They believe such a definition would include such goods and services as: accounting, record-keeping, non-cannabis materials and goods from unlicensed persons, office supplies, leasing equipment, architect services, construction, heating, ventilating, air conditioning, refrigeration, plumbing, cleaning and janitorial, lighting, security, legal services, government relations (registered lobbyist), and license application preparation and regulatory compliance, and any other services of a similar nature, including those contemplated by and set forth in Section 124.3.”

RESPONSE: The Office acknowledges these comments; however, no changes were made to the proposed regulations as a result of these comments as any relevant provisions that contain issues related to exempt goods and services are in Part 124.3.



Add: Undue Influence

COMMENT: One commenter wanted to add a definition for “undue influence” to distinguish between the kind of influence that is imposed by ordinary business interactions, like consulting which may be present at every level of an organization. The commenter argued that some outsourced positions make important and influential decisions and are hired to do so.

RESPONSE: The proposed regulations outline the parameters contemplated for “undue influence” under Section 124.1. No changes were made to the revised regulation as a result of this comment.

Add: Farm Operator

COMMENT: One commenter asked that the regulations include a definition for Farm Operator, and that the definition be utilized in the definition of a distressed farmer.

RESPONSE: No changes to the proposed regulation were made as a result of this comment; however, revisions were made to Part 121.1 to include provisions related to farm operators.

Add: White Labeling and Private Labeling

COMMENT: One commenter asked that the terms “white labeling” and “private labeling” be defined.

RESPONSE: The Office acknowledges these comments; however, no changes were made to the proposed regulations as a result of these comments.

Add: Good Moral Character

COMMENT: One commenter asked that the regulations include a definition of “good moral character.”

RESPONSE: The term “good moral character” is taken directly from Cannabis Law and is a regularly used term throughout New York’s laws; as a result, no changes have been made to the proposed regulations.

Add: Goods and Services

COMMENT: One commenter asked for the regulations to include a definition of “goods and services.”

RESPONSE: The Office acknowledges this comment; however, no changes were made to the proposed regulations as a result of this comment, as the bulk of this term would be covered by the term “goods and services agreement.”

Add: Secondary School

COMMENT: One commenter stated that the definition of “secondary school” is too broad, and that it be clarified to only include schools that exist for the purpose of conferring diplomas.



RESPONSE: MRTA requires the use of Educational Law’s definition for school grounds, where secondary school language exists. For consistency and in adhering to the MRTA, the definition for secondary school in New York State Education Law was used to qualify school grounds. No changes have been made to the proposed regulations.

Add: Inventory Tracking System

COMMENT: One commenter asked for a definition of inventory management system.

RESPONSE: Section 125 specifies all the requirements of an inventory tracking system, and therefore a definition would potentially limit licensees from using innovative inventory tracking solutions that would be compliant with these regulations. No changes have been made to the proposed regulations due to this comment.

Add: Legacy Operator

COMMENT: One commenter asked for “legacy operators” to be defined and identified as a group for prioritization.

RESPONSE: The Office acknowledges this comment; however, no changes were made to the proposed regulations as a result of this comment.

Add: Shared Cultivation Facility

COMMENT: One commenter asked for “Shared cultivation facility” to be defined in the regulations, which would allow an operator to obtain a specific “S” type license to cultivate in such a facility.

RESPONSE: The regulations do not prohibit a cultivator from co-locating their space with another cultivator, or applying for a co-op license, which would allow the co-op members to share services. As a result, no changes have been made to the proposed regulations.

Add: Gross Income, Net Profit & Calendar Year

COMMENT: One commenter asked that “net profit” be defined as “net income” according to Generally Accepted Accounting Principles (GAAP).

RESPONSE: The proposed regulations were revised as a result of this comment to clarify that “net profit” means “net income” according to GAAP.

Add: Five Percent Investor



COMMENT: One commenter asked that passive investors be exempted from true party of interest requirements.

RESPONSE: The Cannabis Law is clear that no person with a direct or indirect interest, including by stock ownership, can have an interest across the tiers; this includes de minimis investments. As a result, no changes have been made to the proposed regulations.

Add: Prioritize

COMMENT: One commenter asked for the term “prioritize,” as is used in 120.7, to be defined.

RESPONSE: The term prioritize is derived from Cannabis Law, where it is used to describe the tools the Office can use to achieve the goal of 50% of licenses being awarded to social and economic equity applicants. No changes have been made to the regulations due to this comment.

Add: Financial Arrangements

COMMENT: Commenter suggests adding “financial arrangements” as a non-collateralized, non-recourse agreement.

RESPONSE: The Office would consider these arrangements under the definition of “financier,” therefore, no changes have been made to the proposed regulations as a result of these comments.

Add: Bona Fide Labor Organization

COMMENT: A commenter notes that Part 116, where Bona Fide Labor Organization is defined, is not included in the proposed regulations.

RESPONSE: As Part 116 has already been adopted, this comment is out of scope. No changes to the proposed regulation have been made as a result of this comment.

Add: Manufacturing Production Batch

COMMENT: Commenter proposed a definition for “manufacturing production batch,” which would be used to identify a grouping of cannabis or cannabis extract along each stage of transformation into a cannabis product.

RESPONSE: The Office provide flexibility to producers in determining batch size for the purposes of testing and sampling cannabis and cannabis products. This reallocates the choice and risk to the producer in determining how large of a batch to submit for testing. Therefore, no changes to the proposed regulation have been made as a result of this comment.



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Add: Qualified Third-Party GMP Audit

COMMENT: Commenter requested a definition for “qualified third-party GMP audit.”

RESPONSE: The Office acknowledges this comment and may consider including identifying qualified third-party GMP auditors or recognized GMP criteria in future guidance and rulemaking. No changes were made to the proposed regulations as a result of this comment.

Add: Exempt Goods and Services Provider

COMMENT: Commenter sought a definition on “exempt goods and services providers,” in addition to the description put forth in Part 124, as well as carve out exempt goods and services provider from being subject to financial interest regulations.

RESPONSE: The Office is not carving exempt goods and services provider from ever acquiring a financial interest in a license. Further, the definition of an exempt goods and services provider is clarified in section 124. No changes were made to the proposed regulations as a result of this comment.

Add: Real-Time

COMMENT: A commenter proposed defining “real-time” to mean any change that would impact information or status updates in the Office’s ITS system and applies this comment to the GPS requirement in delivery regulations in Part 125.

RESPONSE: The Office accounts for its event-based notification requirements for compliance purposes in the proposed regulations. Further, the Office does not receive real-time GPS tracking from licensees but can request access to this information. No changes were made to the proposed regulations as a result of this comment.

Add: Energy Report

COMMENT: Commenter wanted “energy report” to include more details around what would be expected of the licensee.

RESPONSE: The Office acknowledges this comment; however, no changes to the proposed regulation have been made as a result of this comment, but there are provisions related to energy and sustainability in Part 125.

Add: Electronic Signature



COMMENT: There was one comment on “electronic signature.” The commenter suggested the Office remove the definition of from Part 120 and put it into Part 118.

RESPONSE: The proposed regulations were revised as a result of this comment to include a definition of “electronic signature” in Part 118.

Part 119 –Municipal Rulemaking

COMMENT: Commenters recommended changes to the proposed regulations for the purposes of readability.

RESPONSE: Changes were made to the proposed regulations by removing have grammatical errors as a result of these comments.

COMMENT: A commenter made a general comment about the timing of the proposed regulations as it relates to CAURD locations.

RESPONSE: This comment is outside the scope of the proposed regulations. No changes have been made to the proposed regulations as a result of this comment.

Section 119.1 - Preemption and Prohibitions on Municipality Rulemaking

COMMENT: Commenters suggested that municipalities be granted the authority to determine distance requirements between adult-use cannabis retail dispensaries and on-site consumption sites from other premises for which a license of the same type has been issued.

RESPONSE: No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested reducing the 1,000-2,000-foot radius between adult-use cannabis retail dispensaries and on-site consumption sites from other premises for which a license of the same type has been issued. Other commenters suggested the distance requirement be removed all together. A few commenters suggested expanding the distance requirement. One commenter agreed with the proposed regulations as set forth by the Board.

RESPONSE: The proposed regulations were revised as a result of this comment by expanding the category of licenses that must be factored in for distancing and measurements requirements.



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COMMENT: Commenters proposed establishing a distance requirement from locations such as, harm reduction facilities, libraries, playgrounds, fast food establishments, parks, recreational facilities, establishments that sell liquor, hospitals, residential neighborhoods, among others.

RESPONSE: Changes were made to the proposed regulations as a result of this comment by further clarifying that the definition applies to facilities with the primary population of which is reasonably expected to be seventeen years of age or younger. In addition, the definition by removing the word “community” and replacing it with the word “youth”.

COMMENT: Commenters suggested that the Board be given the ability to grant a license within the 1,000-foot radius in city, town, or village with a population of 20,000 or more if it is determined that it would serve the public interest.

RESPONSE: The changes were made to the proposed regulations to reflect a consistent standard for granting a license within the 1,000 or 2,000-foot radius, provided that, the need is based on public convenience.

COMMENT: Commenters stated the 1,000-2,000-foot radius between adult-use cannabis retail dispensaries and on-site consumption sites from other premises for which a license of the same type has been issued, may be too limiting in smaller municipalities around New York State. Commenters requested that a process be implemented for those municipalities that would like to waive the 1,000-2,000-foot restriction.

RESPONSE: A municipality, and community boards within New York City, may express an opinion for or against the granting of a license. In that opinion, they may express their desire to have licensed premises within that radius. However, the Board maintains the authority to determine whether there is a public convenience justification for additional licensed premises within a municipality. No changes were made to the regulation as a result of these comments.

COMMENT: Commenters suggested that the distance requirement for a house of worship be greater than 200 feet.

RESPONSE: Sections 72 and 77 of the Cannabis Law set forth a 200-foot distance requirement from a house of worship and a 500-foot distance requirement from school grounds as defined in Education Law. No changes were made to the proposed regulations as a result of this comment.



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COMMENT: A commenter pointed out that the 1,000-2,000-foot distance requirement is not contemplated in the Cannabis Law.

RESPONSE: No changes were made to the proposed regulations as a result of this comment, as the Cannabis Law empowers the Board to determine appropriate geographic requirements.

COMMENT: A commenter recommended applying the 1,000-2,000-foot distance requirement only to adult-use retail dispensaries.

RESPONSE: No changes were made to the proposed regulations as a result of this comment, as the Cannabis Law empowers the Board to determine appropriate geographic requirements.

COMMENT: A commenter recommended removing the exclusive use parameter from houses of worship and school grounds.

RESPONSE: The Office acknowledges this comment; however, no changes were made to the proposed regulations as a result of this comment, as such exclusive use is a requirement of the Cannabis Law.

COMMENT: A commenter recommended that exclusive use parameter be applied to community facilities.

RESPONSE: The Office acknowledges this comment; however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter recommended that an exemption be given to New York City from state rulemaking thus allowing the Mayor or City Council to name designated local agencies to support the Office.

RESPONSE: The Office acknowledges this comment; however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter suggested that municipalities and in New York City, community boards, be granted the authority to require applicants to advertise their hearings publicly as community boards do not have a sufficient budget to conduct such outreach on their own.

RESPONSE: The Office acknowledges this comment; however, no changes were made to the proposed regulations as a result of this comment.



COMMENT: A commenter points out that community facility is defined differently in the NYC Construction Code.

RESPONSE: The Office acknowledges this comment; however, no changes were made to the proposed regulations as a result of this comment. Further, “community facility” is removed following this comment period and replaced with the term “public youth facility.”

COMMENT: A commenter recommended that schools should not be able to open within 500-feet of an already established licensed dispensary.

RESPONSE: This comment is out the scope of the proposed regulations. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: A commenter suggested that allowing usual and customary fees associated with similarly situated businesses may be problematic. The commenter points out that the New York City excise tax on licensed tobacco products could inflate the price of cannabis.

RESPONSE: This comment is out of scope as tobacco products and cannabis products are not equivalent. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter recommended clarification on whether a local municipality are preempted from imposing fees on medical sales or sales from RODs.

RESPONSE: The Board has preemption authority pursuant to the Cannabis Law. No changes were made to the proposed regulations as a result of this comment.

Part 119.2 - Authorizations for Municipality Rulemaking

COMMENT: Commenters suggested more flexibility in the regards to the permissible hours of operation. Recommendations include increasing the minimum threshold from 70 hours to 112 hours, 126 hours, permitting operations until 4am, or permitting operations 24 hours per day. One commenter suggested restricting hours of operation from midnight through 8:00 A.M.

RESPONSE: The proposed regulations were revised as a result of this comment to allow for flexibility in operating hours while still allowing local municipalities to adopt local laws and regulations to govern such hours.



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COMMENT: Commenters suggested that municipalities and in New York City, community boards, be authorized to negotiate stipulations with applicants in order to better suit the area in which they are operating.

RESPONSE: No changes have been made to the proposed regulations as a result of these comments.

COMMENT: Commenters suggested that community facilities be removed from the proposed regulations, as it is not contemplated by the Cannabis Law. Other commenters requested that a definitive distance requirement be set. Other commenters requested that the distance requirement be increased for smaller municipalities.

RESPONSE: The proposed regulations were revised to provide clarity for licensees, municipalities, and the public.

COMMENT: A commenter requested further clarification on municipal rulemaking in historical districts.

RESPONSE: The proposed regulations were revised as a result of this comment to provide clarity on where and how municipalities may enact local laws and regulations in historical districts.

COMMENT: A commenter recommended removing the community facility exemption for CAURD licensees.

RESPONSE: This comment is out the scope of the proposed regulations. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter suggested that a municipality should be granted the authority to opt-out of adult-use retail and adult-use on-site consumption if they determine that it is in the interest of the health, welfare, and safety of their community.

RESPONSE: Section 131 of the Cannabis Law granted towns, cities and villages the ability to opt-out of adult-use retail or adult-use on-site consumption licenses, so long as they did so by December 31, 2021. Furthermore, Section 131 of the Cannabis Law prohibits any local law from being adopted after that date. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter suggested that a licensee should be required to collect data over time and report it to the municipality and community board. The commenter says this data would build trust between



the community and cannabis establishment, help to identify, and resolve conflicts, and help the municipality or community board understand the impact of cannabis establishments on the community.

RESPONSE: This comment is out the scope of the proposed regulations. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter suggested that New York City community boards be granted the authority to define community facilities in their own districts.

RESPONSE: The Cannabis Law explicitly grants time, place, and manner to towns, cities, and villages. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter suggested municipalities be authorized to pass local laws and regulations on second-hand smoke.

RESPONSE: Municipalities are authorized to regulate odor, which includes second-hand smoke. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter suggested that municipalities be authorized to pass local laws and regulations to protect public safety.

RESPONSE: The Legislature has the authority to amend statute or to authorize municipalities to additionally pass more stringent local laws related to public safety. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter suggested that the Office provide more guidance to local municipalities on their full powers to review applications.

RESPONSE: Guidance for local municipalities is available on the Office's website. No changes were made to the proposed regulations as a result of this comment.

Part 119.3 - Notifications to Municipalities

COMMENT: Commenters suggested that thirty days is too short of a time frame for municipalities and in New York City, community, to provide an opinion to the Board.

RESPONSE: The proposed regulations have been revised to increase the timeframe for municipalities and in New York City, community boards, to provide an opinion to the Board.



COMMENT: Commenters suggested that more information should be included in the “Notification to Municipalities” form.

RESPONSE: Section 76 of the Cannabis Law outlines the information that is required in the notification. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested that a municipality and in New York City, a community board, been granted the same opportunity to provide an opinion on renewals and alterations of a license as they do of a new license.

RESPONSE: Section 76 of the Cannabis Law states that the notification is to include a statement indicating where the application is for a new establishment, a transfer of an existing licensed business, a renewal of an existing license, or an alteration of an existing licensed premises. No changes were made to the proposed regulation as a result of these comments.

COMMENT: Commenters recommended that applicants applying for the adult-use retail dispensary and on-site consumption licenses be required to notify the municipality and in New York City, the community board. Other commenters recommended that Conditional Adult-Use Retail Dispensary (CAURD) applicants be required to notify as well.

RESPONSE: Section 76 of the Cannabis Law requires those applying for adult-use retail dispensary, registered organization adult-use cultivator processor distributor retail dispensary, or on-site consumption licenses to notify the municipality in which the premises is located of such applicant’s intent to file such an application. The notification process already applies to CAURD applicants as well. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter suggested that the Office should retain its licensing authority regardless of whether a local municipality and in New York City, a community board as expressed an opinion.

RESPONSE: Section 131 of the Cannabis Law preempts local municipalities from licensing applicants. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested that more guidance be provided on how municipalities should provide their opinion to the office. Another commenter suggested that an Office email address be provided in the Notice to Municipalities.

RESPONSE: Instructions on where a municipality or in New York City, a community board, should send their opinion can be found on the Notification to Municipality form. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter recommended that the Office be required to provide municipalities and community boards with notice of the granting of licenses and the terms of those licenses. Another commenter requested that municipalities and community boards be given factors to consider when making determinations.

RESPONSE: This information is publicly available on the Office website. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: A commenter recommended removing the ability for a municipality and in New York City, a community board, to request an extension beyond the 30-day window to submit an opinion. Stating that similar processes in other states leads to licensing delays.

RESPONSE: The proposed regulations have been revised to clarify the timeframe.

COMMENT: A commenter recommended that the municipality or in New York City, the community board, be automatically granted an extension if the applicant notifies them within 60-days of filing an application.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter requested that in New York City, the Notification to Municipality form be required to be given to the community board and to the local social services department.

RESPONSE: Section 131 of the Cannabis Law requires notification to the clerk of the town, village, or city and in New York City, the community board. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter suggested that if an extension is granted to a municipality or in New York City, a community board, that the municipality or community be required to inform the applicant of that extension.

RESPONSE: The proposed regulations have been revised as a result of these comments to provide for such notification.



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COMMENT: A commenter suggested that municipalities and in New York City, community boards, be notified if temporary pop-up licenses are permitted.

RESPONSE: Currently, there is no temporary pop-up license. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter suggested that a process is needed for the Board to respond to opinions provided by municipalities and in New York City, community boards.

RESPONSE: Section 76 of the Cannabis Law establishes the process for the Board to respond to opinions expressed by the local municipalities or community boards, which include, adding the opinion to the record, and responding with an explanation of how the opinion was considered. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter recommended including language from the Cannabis Law to express how a municipality and in New York City, a community board, provide their opinion to the Office.

RESPONSE: Section 76 of the Cannabis Law is referring to how the applicant notifies the municipality and in New York City, the community board. The Office's contact information can be found within the Notice to Municipality form. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter recommended that the Office define alteration as it relates to the notice to municipalities, stating that an alteration should be structural and not be applied to minor, non-structural changes.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment

COMMENT: A commenter suggested that community boards be given an advisory role in reviewing other aspects of a licensee's business, giving an example of community board review of the exterior signage.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment



COMMENT: A commenter suggested that applicants must be required as a condition of licensure to engage with the New York City community board (if applicable), in an on-going, good faith manner.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment

COMMENT: A commenter suggested that any community board member who has any financial interest in an applicant before them, be required to recuse themselves from participating in the determination of the opinion.

RESPONSE: This comment is out the scope of the proposed regulations. No changes were made to the proposed regulations as a result of this comment.

Part 119.4 - Measurement of Distance from School Grounds, Houses of Worship, Community Facilities and Between Adult-Use Retail Dispensaries and On-Site Consumption Sites

COMMENT: Commenters recommended that the measurement of distance from an adult-use retail dispensary or an on-site consumption site be taken from the entrance of the licensed premises to the entrance of the school.

RESPONSE: Section 72 of the Cannabis Law prohibits a dispensary from being within 500 feet of school grounds as defined by Education Law. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested that an exception to the 200-foot distance requirement from a house of worship be created for houses of worship that utilize cannabis sacramentally and ceremonially.

RESPONSE: Sections 72 and 77 of the Cannabis Law require a 200-foot distance requirement from a house of worship. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters recommended a variety of methodologies for measuring distance between adult-use retail dispensaries and on-site consumption sites to houses of worship, school grounds, and community facilities. These include, a purely radius-based method, only measuring locations with an address on the same street, removing the “on the same road” stipulation, a combination of straight-line distance and radii, and from property line to property line.

RESPONSE: The proposed regulations have been revised regarding the measurement requirements.



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COMMENT: Commenters suggested that community facilities adhere to the same “on the same road and within” stipulation that applies to houses of worship and school grounds.

RESPONSE: The proposed regulations have been revised to uniformly apply this stipulation to houses of worship, school grounds, and instead of “community facilities,” what is now termed as a “public youth facility.”

COMMENT: Commenters suggested that there be a distance requirement from an adult-use retail dispensary and a medical dispensary.

RESPONSE: The proposed regulations have been revised to implement a distance requirement between an adult-use retail dispensary and a medical dispensary.

COMMENT: A commenter points out the distance requirements from school grounds, houses of worship, community facilities, and between adult-use retail dispensaries and on-site consumption sites are reflective of the Board and not the unique circumstances of individual municipalities

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter recommended that houses of worship should be able to opt-out of the 200-foot distance restriction.

RESPONSE: Section 72 and Section 77 of the Cannabis Law require a 200-foot distance requirement from a house of worship. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter recommended that further restrictions be added to incidental uses that houses of worship encounter.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment

COMMENT: A commenter recommended that community facility be a mandatory distance requirement across the state.

RESPONSE: The Office acknowledges this comment and may consider including the definition in future guidance and rulemaking. No changes were made to the proposed regulations as a result of this comment



COMMENT: A commenter recommended that medical dispensaries be carved out from distance restrictions with the ability to co-locate.

RESPONSE: The Office acknowledges this comment and may consider including the definition in future guidance and rulemaking. No changes were made to the proposed regulations as a result of this comment

Part 119.5 - Unreasonably Impracticable; Review and Determination

COMMENT: Commenters suggested that the municipality should be allowed to provide evidence regarding the necessity of the local law prior to a determination of nullification being issued by the Board.

RESPONSE: The statutory authority to determine if a local law or ordinance is unreasonably impracticable is placed with the Board so that the Board can assess, under the totality of the circumstances, whether the local ordinance creates an unreasonably barrier to the cannabis market. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter expressed concern with the overall breadth of the unreasonably impracticable provisions.

RESPONSE: The statutory authority to preempt local law and determine if a local law or ordinance is unreasonably impracticable is placed with the Board so that the Board can assess, under the totality of the circumstances, whether the local ordinance creates an unreasonable barrier to the cannabis market. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter stated that unreasonably impracticable claims should be brought before an impartial third party, as it creates a conflict of interest.

RESPONSE: Section 131 of the Cannabis Law grants the Board the ability to determine if a local law or ordinance is unreasonably impracticable. No changes were made to the proposed regulations as a result of this comment.

Part 119.6 - Severability

COMMENT: A commenter agreed with the language in this section.

RESPONSE: The Office acknowledges this comment.

Part 120 – Application and Licensure Section



120.1- General Application Authorization and Requirements

COMMENT: A commenter sought clarification as to the format of the regulations.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the to the proposed regulations.

COMMENT: Comments were received seeking clarification to the term “continuous rolling basis.”

RESPONSE: Changes were made to the proposed regulations by clarifying the manner applications are processed.

COMMENT: A commenter asked that the proposed regulations further describe limitations that the Office may impose on accepting license applications.

RESPONSE: The extent to which the Office imposes any limitations on how applications are accepted will be consistent with the Cannabis Law, and applicable regulations. No changes to the proposed regulations were made as a result of this comment.

COMMENT: One commenter recommends providing financial support to conditional adult use retail (CAURD) applicants.

RESPONSE: This comment is out the scope of the proposed regulations. Part 116 governs CAURD application and CAURD license. No changes to the proposed regulations were made as a result of this comment.

COMMENT: A comment was received that sought clarification electronic signature.

RESPONSE: Changes were made to the proposed regulations as a result of this comment. A definition of “electronic signature” has been established in Part 118 and clarifying language has been made in 120.1(e).

COMMENT: One commenter asked that the term “Office” be included in the definition section to require applicants to disclose any conflicts of interest with the Office related to these provisions.

RESPONSE: The proposed regulations were revised as a result of this comment to ensure conflicts of interest with the Office, Cannabis Control Board, and Cannabis Advisory Board are required to be disclosed in licensing requirements.



COMMENT: A commenter suggested that proposed regulations should be revised to include local authorities who are reviewing the application as another party for which applicants are required to identify any conflicts of interest.

RESPONSE: The current language in the proposed regulations contemplate the circumstances when licensees have duties to report/ disclose certain relationship. In addition, local law addresses these matters. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter recommends excluding the registered organization with dispensing from the adult use market.

RESPONSE: Pursuant to Cannabis law, which established the license types, affords an opportunity to such applicants to submit applications for licensure under the relevant license type. Consistent with conditions and application criteria established by the Board through the proposed regulations, applicants that satisfy such requirements will give pathway to licensure. As such, this recommendation exceeds the Board's rulemaking authority. No changes to the proposed regulations were made as a result of this comment.

COMMENT: A commenter recommended adding a definition for "on-site use."

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: One commenter recommended that there be an adult use conditional cultivation licensee pathway to operate an indoor canopy.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

Section 120.2- Application for an Adult-Use Cannabis License

COMMENT: A commenter recommends removing the good moral character language because this already exist under Section 137 of the Cannabis Law. The commenter also recommends clarifying which offenses are applicable.

RESPONSE: Section 137 of the Cannabis Law is superseded by the Article 23-A of Corrections Law, which further outlines the process state agencies must use when making licensing and employment determinations base in part on good moral character analyses. The proposed regulation complies with such provisions. No changes to the proposed regulation were made as a result of this comment.



COMMENT: One commenter recommended that the Office not use accusatory instruments and instead use evidence related to a conviction. The use of an accusatory instrument does not indicate whether the person committed the act listed. Conviction provides a better standard that relies on evidence rather than accusation.

RESPONSE: The Office, like all state agencies, is required to comply with all requirements of Article 23-A of the Corrections Law when making licensing and employment determinations, regardless of whether a person has been accused of or previously convicted of an offense. The Office acknowledges this comment however, no changes to the proposed regulations were made.

COMMENT: A commenter recommended adding the term “domestic partner.”

RESPONSE: Changes were made to the proposed regulations to add “domestic partner” to individuals that should be named in an application.

COMMENT: A comment received recommended changes to require the applicants to supply the Office with an active email address.

RESPONSE: The Office acknowledges this comment however, no changes to the proposed regulations were made as a result of this comment as this may be seen as an undue burden on the applicant.

COMMENT: A commenter recommended clarifying which offenses are applicable.

RESPONSE: Section 137 of the Cannabis Law is superseded by the Article 23-A of Corrections Law, which further outlines the process State Agency must use when making licensing and employment determinations base in part on good moral character analysis. The proposed regulation complies with the provisions of section 137 which is subject to the provision of Article 23-A of the Correction Law. No changes were made to the proposed regulations.

COMMENT: A commenter recommend changing the lookback period from ten years to three years.

RESPONSE: The Office acknowledges this comment however no changes to the regulation were made as a result of this comment.

Section 120.3 License Specific Tiers and Options

120.3(a) Nurse



COMMENT: Some commenters expressed the need to purchase clones, and sought clarifications as to the canopy size, and suggest an expansion of the canopy sizes and limits.

RESPONSE: The Office acknowledges this comment, however, no revisions to the proposed regulations were made as a result of the comment.

COMMENT: Some commenters recommend removing the nursery license type entirely purporting that it only serves those who own land.

RESPONSE: The nursery license is a statutorily created license. This comment contains a recommendation that exceeds the Board's rulemaking authority. No changes to the proposed regulations were made as result of this comment.

COMMENT (CY1): The Office received numerous comments requesting that the proposed regulation remove the requirement that growers certificate granted by the New York State Department of Agriculture and Markets before nursey license applicants submit applicants to the Office.

RESPONSE: Changes were made to the proposed regulations as a result of this comment.

120.3(b) Cultivation

COMMENT: One comment suggests offering a shared cultivation facility through offering special use permits.

RESPONSE: The Office acknowledges this comment, however, no changes to the proposed were made to the proposed regulation.

COMMENT: Many commenters sought to limit the available tiers to three tiers and should not exceed 50,000 square feet. Commenters also expressed concern about the ability of the Board to reduce the tiers base of the cultivators' operational capabilities calculated from the previous six months. Other commenters requested more combinations tiers with indoor and outdoor functions.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations.

COMMENT: Some commenters suggested technical and other clarifications to the proposed regulations, such has removing overlap between a few of cultivation tiers.

RESPONSE: Changes were made to the proposed regulations to ensure there is clarity between the tiers.



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COMMENT: A commenter requested that an adult use conditional cultivation license holder have additional conversion tier options.

RESPONSE: Changes were made to the proposed regulations by allowing the conditional cultivation to maintain their existing outdoor tier canopy size.

COMMENT: Commenters recommend that the proposed regulations clarify the process for adult-use conditional cultivators holders seeking to apply for the general adult use cultivation license.

RESPONSE: Such licensees will use the same method as any other applicant seeking to apply for a cultivation licensee or any other license type. No changes to the proposed regulation were made as a result of this comment.

COMMENT: One commenter suggested that Office should decline issuing any more outdoor, mixed-light and combination canopy license, and only issue indoor canopy licenses.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

120.3(c) Microbusiness

COMMENT: Commenters recommend amending the proposed regulations to increase the canopy sizes for: indoor, outdoor, and mixed light to make this license type more competitive. Other commenters have expressed concern that microbusiness model will not be economically viable in comparisons to the other license types with cultivations functions. Comments emphasized the financial capital needed to operationalize warrants an expansion of the canopy to be profitable and product and brand development. Other commenters suggest that creating a combination tier such as indoor combined with mixed-light or designing a tier that expands the canopy size to approximately 10,000 square feet for each cultivation activity. Numerous commenters purported that they would be able to produce diverse and high-quality product if given combinations tiers were made available.

RESPONSE: The proposed regulations were revised to create a new canopy size which combines outdoor and mixed-light activities, as a result of this comment. The proposed regulations tier and canopy structure aligns with other states with adult-use markets.

COMMENT: Commenters also recommended allowing microbusinesses to form cooperatives to use a combination of license types to encourage low carbon operation and long-term economic sustainability of

the license type. Commenters also recommended to allow microbusiness licensees to operate similar to other license types that are vertically integrated.

RESPONSE: Pursuant to the Cannabis Law, a cooperative license in part functions differently than microbusiness. As such, this comment is outside the scope of the Board’s rulemaking authority. No changes to the proposed regulation were made as a result of this comment.

COMMENT: One commenter stated that microbusiness should be allowed to grow at their private residence. The commenter also expressed disappointment that the proposed regulations restrict cultivation function to cannabis grown by the licensee.

RESPONSE: The functional limitation of the microbusiness license is within scope of the Cannabis law. No changes to the proposed regulations were made as a result of this comment.

120.3(d) Processors

COMMENT: A commenter suggested the creation of a non-license registration for brands.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters sought clarity concerning processor license e ability to engage in white labeling or enter into white labeling agreements with the TPI.

RESPONSE: To the extent allowed by law or regulations the licensee and its TPI may enter into white labeling agreements and not be in violation of the true party of interest restrictions. No changes to the proposed regulation were made as result of this comment.

COMMENT: Commenters expressed admiration for the cooperative license type.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarity about what it means to be a “well-established” worker-cooperative.

RESPONSE: Changes were made to the proposed regulations to clarify the application process for applicants applying through satisfying this condition as a result of these comments.



COMMENT: One commenter recommended establishing a shared cultivation facility as an option for a cooperative license.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggest that the proposed regulation remove the certified public account requirement and replace with “accountant “so that the cost is not increased unnecessarily.

RESPONSE: Changes were made to the proposed regulations as a result of these comments to remove the accountancy review and opinion.

COMMENT: A commenter discussed creating a new tier which combines food farmer/cultivations with cannabis cultivation. Farmers would be incentivized to grow food in addition to cannabis.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

Section 120.4 Fees

COMMENT: Many commenters recommended restructuring the fee schedule and framework for registered organizations who enter the adult-use market as applicants for a license under Article 4 of the Cannabis Law. Some commenters further claimed that the proposed fee is inconsistent with the Cannabis Law. While other commenters expressed support for the fee structure outlined in the proposed regulations.

RESPONSE: There is a distinction between the fees the Board can impose under Cannabis Law 63(1) and the special fee set forth under 63(1-a). The Board has the authority to impose fees for "any other factors deemed reasonable and appropriate by the Board to achieve the policy and purpose of this chapter (MRTA)". The ROND and ROD are Article 4 license types and the proposal fee structure is consistent with the Cannabis Law. Also, the “special fee” imposed on RODs, is consistent with and is supported by Sections 63 and 61 of Cannabis Law. The Board determined that these fee schedules are reasonable for the size and scope of the registered organization operations in New York State existing market and projections for such licensees operating in the adult-use market. The proposed regulations are designed in a manner that facilitates fair competition amongst all operators. Further existing operators. However, changes were made to the proposed regulations fee schedule.

COMMENT: Some commenters sought general clarifications regarding the fee structure proposed to be imposed across all license types.



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RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: One commenter asked the Office for more clarity surrounding the canopy size and the associated fees.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: Some commenters expressed either support or dissent regarding the application license fees.

RESPONSE: While social equity applicants do receive reduced fees, the staffing burden associated with reviewing applications is exorbitant to allow the Office to make the fee refundable or removed the fees entirely, for those same applicants. No changes to the proposed regulations were made as a result of this comment.

COMMENT: Some commenters were inquired as to when the application fee needed to be submitted to the Office.

RESPONSE: The application fee and the licensing fees are separate fees which are imposed on the applicant during different periods of the application process. Changes were made to the proposed regulations to clarify when the applicant is required to submit these fees, as a result of these comments.

COMMENT: The Office received numerous comments offering a recommendation to adjust the licensing fees to reflect the tier model, and to reduce the cultivation tiers to a three-tier framework, with the largest tier being 50,000 square feet or less.

RESPONSE: The tier structure for the cultivation tiers will not be reduced to a three-tier model, as recommend by commenters. Revisions were made to the microbusiness tier framework by creating a combination tier in accordance with of the proposed regulations. No changes to the proposed regulations were made as a result of this comment.

COMMENT: Some commenters suggested that cooperative license tier should be given a reduce tier fee.

RESPONSE: Changes were made to the proposed regulations were revised as a result of these comments.



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COMMENT: Commenters asked for clarification as to whether a processor can hold distributor license and the associated fee for such combination.

RESPONSE: A processor may hold only one distributor license to distribute its own product, and the fee for the combined license is the same as the if the licenses were held independent of one another, as detailed in the proposed regulations. No changes to the proposed regulations were made as result of this comment.

COMMENT: Commenters requested that the application fee for a social equity applicant be refundable instead of non-refundable, as charging social equity entrepreneurs a fee for applying goes against the spirit of the MRTA.

RESPONSE: While social equity applicants do receive reduced fees, the staffing burden associated with reviewing applications is exorbitant to allow the Office to make the fee refundable or removed the fees entirely, for those same applicants. No changes to the proposed regulations were made as a result of this comment.

COMMENT: Some commenters claimed that the \$2,000 non-refundable application fee is too expensive.

RESPONSE: The Office faces an administrative and staffing duty associated with reviewing all applications that are submitted, whether such applications are approved, disapproved, or withdrawn by the applicant. It should be noted that social equity applicants do receive reduced application fees. No changes to the proposed regulations were made as a result of this comment.

COMMENT: Some commenters recommended removing the certified public accountant as one of the conditions used to qualify as a cooperative and remove the fee associated with it.

RESPONSE: The proposed regulations do not impose a certified public account fee on the applicant. However, changes were made to the proposed regulations by removing the certified public account condition.

Section 120.6 Processing of an Application

COMMENT: A commenter believes that more information should be provided to the applicant before applicants are processed to avoid resubmission or additional costs.

RESPONSE: The Office regularly publishes general information on its website related to each license type and the general parameters for licensure, including, but not limited to, facts, answers, questions, and guidance documents. The Office also has dedicated support staff who interface with applicants on an ongoing basis. No changes to proposed regulations were made as a result of this comment.



Section 120.7 Application Eligibility and Evaluation

COMMENT: Some commenters expressed concern about the general clarification of the provision in section 120.7 of the proposed regulations. Such concerns include but are not limited to: information concerning the final application window; clarification concerning minority-woman-owned businesses; and technical changes in general.

RESPONSE: Changes were made to the proposed regulation were made throughout, in an effort to clarify such provisions.

COMMENT: Commenters suggested clarifying the selection process applicants are reviewed under.

RESPONSE: Changes were made to the proposed regulations to clarify how the Board reviews and processes applications, as a result of these comments.

COMMENT: A commenter recommend the state clarify whether the four medical dispensing sites required for a registered organization non-dispensing and registered organization with dispensing license can be anywhere, or whether each dispensing site much be located in in New York.

RESPONSE: Changes were made to the proposed regulations to clarify that any registered organization, as defined in the Cannabis Law and its corresponding regulations, applying to be a registered organization with dispensing or registered organization non-dispensing must have four medical dispensaries each of which are located in New York State.

COMMENT: Commenters recommend changes that would allow applicants to participate in training programs and other course offerings, except those offered by the Office.

RESPONSE: The Office needs to ensure the validity of the course that may provide directly or through its partners. As such, expanding the course offering to include other entity who have not been vetted by the Office could pose risks to the training program. The proposed regulations provide flexibility as to who may provide these courses or programs, to the extent that the Office maintain its oversight of such course offering and structure. No changes to the proposed regulations were made as a result of this comment.

COMMENT: The Office received comments seeking clarifications of the term “bona-fide building and construction trades organization.”

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment as this term is a commonly used term.



COMMENT: Commenters sought clarification on how the applications are to be prioritized.

RESPONSE: Changes were made to this section clarifying what measures the Board may use when prioritizing licenses classifications. No changes to the proposed regulation were made to the proposed regulations

COMMENT: A commenter suggest aligning the distress farmers group to the compositions described by section 87 of the Cannabis Law.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: Some commenters recommend applying the social equity criteria governed by Section 87 of Cannabis law to the CAURD program and CAURD license applicants or other justice-involved individuals to the evaluation criteria.

RESPONSE: Section 87 of the Cannabis Law governs the criteria for the groups outlined therein. The provisions of Section 87 apply to Article 4 license types, which the CAURD license is not. No changes to the proposed regulations were made as result of this comment.

COMMENT: Some comments expressed admiration for the explicit inclusion of Cannabis Law section 87 criteria in the proposed regulations.

RESPONSE: The Office acknowledges this comment.

COMMENT: Commenters recommend adding members of the LBGTQ+ community to the enumerated groups found in section 87 of the Cannabis Law, and criteria for such groups.

RESPONSE: Section 87 of the Cannabis Law has specified groups for which prioritization of licensure is explicitly required. Creating new groups under the enumerated list in section 87 would exceed the Board's ruling making authority granted to it by the Cannabis Law. No changes to the proposed regulations were made as a result of this comment.

COMMENT: A commenter expressed support for the equitable workplace framework requirements found in the proposed regulations.

RESPONSE: No changes to the proposed regulations were made as a result of this comment.



COMMENT: Commenters expressed concern about the provisional license structure, stating that language should provide details as what are and are not permitted activities. These commenters also recommend clarifying the criteria necessary to secure a provisional license.

RESPONSE: Changes were made to the proposed regulations by adding a definition for provisional license and clarifying general activities that are permitted for that particular license type.

COMMENT: One commenter recommended including a definition specific to cooperative license concerning worker ownership and control.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment

COMMENT: One commenter recommended that clarifying ownership of the license in the event of death or incapacity of the license holder.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

Section 120.8 Application for an Additional License or License Type

COMMENT: Some comments recommend changing the proposed regulations to require applicants currently holding a license who would be in violation of the Cannabis Law, if held concurrently with a new license not permitted by Cannabis Law, to submit written notice to the Office prior the issuance of the license.

RESPONSE: Changes were made to the proposed regulations to clarify the proposed regulations.

COMMENT: The Office received a comment recommending that the proposed regulations reduce licensing fees for individuals holding multiple licenses.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: One commenter expressed support for the language in section 120.8(c) of the proposed regulations.

RESPONSE: The Office acknowledges this comment.



COMMENT: One commenter suggested clarifying the process for applicants that submitted several applicants for different types of licenses at once.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: One commenter asked for clarification as to the prioritization methods that will be used for reviewing applications for additional licensure.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

Section 120.9 Issuance of a License

COMMENT: Commenters recommended removing or clarifying the good moral character language because this already exists under section 137 of the Cannabis Law. The commenter also recommends clarifying which offenses are applicable.

RESPONSE: Section 137 of the Cannabis Law is superseded by the Article 23-A of Corrections Law, which further outlines the process state agencies must use when making licensing and employment determinations based in part on good moral character analysis. The proposed regulation must comply with the provisions of Cannabis Law section 137 which is subject to the provision of Article 23-A of the Correction Law. No changes to the regulation were made as a result of this comment.

COMMENT: Some commenters proposed technical changes to the proposed regulations.

RESPONSE: Technical changes were made to the proposed regulations by renumbering the sections and revising the languages for clarity.

Section 120.10 License Duration

COMMENT: One commenter suggests expanding the licensure effective period beyond the standard two years.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: One commenter asked questions regarding issuing licenses multiple times.

RESPONSE: The Office acknowledges this comment, however, to the proposed regulations were made as a result of this comment.

Section 120.11 license Renewal

COMMENT: One commenter expressed support for the standards set forth under this section of the proposed regulations.

RESPONSE: No revisions to the proposed regulations were made as a result of this comment.

COMMENT: Some commenters recommend technical changes to the proposed regulations.

RESPONSE: Technical changes were made to the proposed regulations by renumbering different provisions and subparagraphs of the regulations.

COMMENT: A commenter recommends that the Office clarify whether or not applicants are required to comply with local rules and ordinances.

RESPONSE: Clarifying changes were made to the proposed regulations were made as result of this comment that applicants and licensees are required to comply with all laws and ordinances.

COMMENT: The Office received a comment which expressed general concern about inabilities of some applicants complying with licensing renewal requirements.

RESPONSE: These requirements may not be applicable under every circumstances. However, the proposed regulations and therein ensure that operators reflect the goals and mission set forth by the Cannabis Law. No changes to the proposed regulations were made as a result of this comment.

COMMENT: One commenter posed general inquiries about the issuance of licenses.

RESPONSE: The proposed regulations give further insights into how the Board will make licensing decisions using criteria specific to the license type. Further, the Office's website provides information on licensing and licenses. No changes to the proposed regulation were made as a result.

COMMENT: Commenters recommend changes to the proposed regulations by clarifying the ambiguity concerning the application submission deadline for license renewal.

RESPONSE: Changes were made to the proposed regulations to clarify when renewal applications must be submitted to the Office.



Section 120.12 License Denials

COMMENT: Commenters recommend removing the good moral character language because this already exist under section 137 of the Cannabis Law. The commenter also recommends clarifying which offenses are applicable.

RESPONSE: Section 137 of the Cannabis Law is superseded by the Article 23-A of Corrections Law, which further outlines the process state agencies must use when making licensing and employment determinations based in part on good moral character analyses. The proposed regulation must comply with the provisions of section 137 of the Cannabis Law which is subject to the provisions of Article 23-A of the Correction Law. No changes to were made to the proposed regulation.

COMMENT: Commenters sought clarification as to the applicability of local, state, and federal law, or respective regulations.

RESPONSE: Changes were made to the proposed regulations to clarify that applicant is subject to all applicable state and federal laws, and under certain circumstances, the Controlled Substances Act.

COMMENT: The Office received a series comment on section 120.12 of the proposed regulations seeking technical changes for the purpose of readability.

RESPONSE: Changes were made to the proposed regulations as a result of these comments.

COMMENT: A commenters recommended adding clarifying language that would require a license to comply with building and fire codes.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as it is clear in the proposed regulations that all licensees are subject to all building and fire codes in the state and in the locality they would be located in.

COMMENT: Many commenters requested that tracking software me made available to social equity applicants free of charge and offer a reduced amount for all other general applicants.

RESPONSE: Pursuant to section 87 of the Cannabis Law, the Office, in coordination with the Cannabis Control Board and the Cannabis Advisory Board, is developing the Social Economic Equity plan. No changes to the proposed regulation were made as result of this comment.

COMMENT: Some commenters recommend narrowing the language in the proposed regulations to a licensee knowledge or sales by itself or TPIs or affiliates of the licensee.



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RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter recommends changing the proposed regulation by adding language that would impose requirements on the Office concerning the licensee time to cure the defect.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: Some commenters wanted to shift the burden of proof on the Office to prove that the applicant has sold or gifted illicit cannabis. Also, clarify what the appeal process is for this determination.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: Some commenters looked to qualify the language concerning the applicant /licensee's knowledge of illicit sales of cannabis to the actions of the licensee, agents of the licensee, and its TPIs.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter wanted clarification on how subsequent inspections will be requested and asked that social equity applicants be rescheduled automatically.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters sought clarifications as to the basis of denying and application for licensure, including pre-inspection of the premises.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: One commenter recommended that the Office provide licensing pathways for illicit cannabis stores.

RESPONSE: Any person operating illicit cannabis stores will be disqualified from applying for an adult use license. No changes were made to the proposed regulations as a result of this comment.



COMMENT: A commenter requested that the proposed regulations be changed to allow provisional licensee no more six months to secure retail space. The commenter stated it will be difficult for applicants to secure leases if not given more time.

RESPONSE: Changes were made to the proposed regulations.

COMMENT: A commenter recommends changing the condition requiring the applicant to enter into a bona-fide labor agreement by allowing the applicant to present a notarized form as evidence they will agree to secure a relationship with such an organization.

RESPONSE: The applicant will be given time to demonstrate that have secured or currently has an agreement with such organizations. No changes were made to the proposed regulations.

Section 120.13 Reapplication after License Denials

COMMENT: Commenters suggested technical changes to the proposed regulation by renumbering the paragraph in sequential order and adding a new language that removes the one-year requirement to reapply for licensure.

RESPONSE: Changes were made to the proposed regulations.

COMMENT: Some commenters suggested allowing a social equity applicant to enroll in the incubator program despite needing to reapply a year after the initial application. Other comments suggest an expanding the design of the incubator program. While other commenters expressed admiration for the incubator program.

RESPONSE: Pursuant to section 87 of the Cannabis Law, the Office, in coordination with the Board and the Cannabis Advisory Board, is developing the Social Economic Equity plan. No changes were made to the proposed regulation.

COMMENT: A commenter sought clarification on what constitutes “good cause,” and how an applicant good request a subsequent inspection upon initial failure.

RESPONSE: At the Office's discretion, it will determine if and when a subsequent inspection will occur. No changes were made to the proposed regulation.

Section 120.15 Withdrawal of an Application



COMMENT: Some commenters sought clarification and the reason for the restriction on application withdrawals and the one-year resubmission rule.

RESPONSE: To the extent allowed by the Cannabis Law or the proposed regulations, applicants are given the option to amend or cure their applicants within a certain period. No changes were made to the proposed regulations.

COMMENT: One commenter believed that the applicants should be given a refund if the application is withdrawn.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment. The Office faces an administrative and staffing duty associated with reviewing all applications that are submitted, whether such applications are approved, disapproved, or withdrawn by the applicant.

Section 120.16 Standard of Review Disqualified Offenses

COMMENT: A commenter recommends revising the proposed regulations to add "...the most recent release of incarceration related to the disposition." Early release on supervision where there is a subsequent reincarceration may cause issues in determining the lookback period.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations.

COMMENT: Some commenters seek to understand if juvenile offense would be given priority review as SEE applicants. Some commenters also believe that juvenile offenses should be considered as a part of SEE plan.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter believes the language allowing the Office to use or request an applicant to provide any other information to determine is too broad.

RESPONSE: This list is not exhaustive and there may be other helpful information the applicant may use as supportive evidence for such application. No changes to the proposed regulations were made as result of this comment.



Section 120.18 Notification and Reporting of Business Changes and Amendment of Licensees

COMMENT: The commenter recommends changes requiring notification to the Office within ten business days.

RESPONSE: Changes were made to subdivision (e) by modifying the ten days to now allow for “ten business days”.

COMMENT: The commenter recommended changing from three business days to ten.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter asked why the Office would require notification of a change to the business impacting regulations.

RESPONSE: This is meant to ensure the Office maintains its regulatory oversight. The Office added language to clarify that reportable changes are either identified in regulations or in future guidance and pointing to changes that are material as those requiring notification. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter asked that this section include a clarification that reporting changes in extraction method only applied to processors.

RESPONSE: The Office acknowledges the comment, however, changes were made to the proposed regulations.

COMMENT: Commenter suggested simplifying disclosure and reporting requirements and being clear on timelines required to make sure notifications.

RESPONSE: Changes were made to the proposed regulations as a result of this comment to bring clarity to such requirements.

COMMENT: A commenter wanted to change the disclosure requirements for individuals providing 10% lending capital to those lending assets.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment



COMMENT: One commenter suggested alignment in the amount days to report a change and to clarify that days are referring to business days.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations.

COMMENT: One commenter suggested that the Office change notification to the within three days of a change occurring.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations.

COMMENT: The commenter requested longer time periods to inform the Office after a fire at their premises.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter believed that this section is a redundant requirement to the 120.18(c) requirements to get board approval.

RESPONSE: The requirement to notify the Board ensures that no changes take place without the Board's knowledge and approval. No changes to the proposed regulations were made as a result of this comment

COMMENT: One commenter asked that the Office align notification requirements and expand the language to reflect the diverse types of entity structures that would need to be accounted for under this section.

RESPONSE: Changes were made to proposed regulations as a result of this comment.

COMMENT: One commenter asked that the Office simplify the process to remove a passive investor from a license.

RESPONSE: The proposed regulations were revised as a result of this comment.

Section 120.19 (formerly) Opportunity to Cure

COMMENT: Commenters recommend a change to the proposed regulations to allow for applicants to have additional time to cure application deficiencies.



RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations.

COMMENT: One commenter believed that vague nature of the provisions of the section could be considered discriminatory.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations.

Part 121 – Social and Economic Equity Rules

§ Part 121.1 – Qualifications for a Social and Economic Equity Applicant

COMMENT: The majority of commenters responded to section 121.1- Qualification for a Social Equity and Economic Equity Applicant. Comments included concerns on qualifications for distressed farmers and for producers/operators that don't own land to have the opportunity obtain the distressed farmer designation. Other comments included potential additions to the social and economic equity (SEE) categories, including LGBTQIA and formerly incarcerated individuals. Some commenters wanted race stated explicitly in the regulations, such as Native American. Specifically, in section 121.1(k) commenters would like to see a definition/explanation of “extra priority” included in the regulations. Commenters expressed the need for veteran representation within the Office and concerns about service-disabled veterans owned business (SDVOB) being able to self-certify to obtain conditional certification. Commenters expressed the need for more stringent residency requirements for the Community Disproportionately Impacted category.

RESPONSE: The proposed regulation was revised as a result of these comments. Adjustments were made to the qualifications for a distressed farmers that the Office believes includes a more accurate interpretation of the Cannabis Law. Social and economic applicants can demonstrate their qualification as a distressed farmer by showing proof that they are a small farm producer or a small farm owner. The Office declined to create additions to the SEE categories. The Office declined to discuss the composition of its staff in regulations. The conditional certification for SDVOB allows SEE applicants to qualify as SDVOB temporarily while they are away their full certification from New York State Office of General Services Division of Service-Disabled Veterans' Business Development. The Office increased the residency requirements for the SEE applicants seeking to qualify as an individual from a community disproportionately impacted.



§ 121.2 Ownership and Sole Control Minimums

COMMENT: Commenters expressed concerns about the different levels of proof required for applicants to qualify as SEE applicants. Some comments included that requiring payroll records as proof for SEE qualification can be a burden to newer small businesses and businesses that don't use payroll. Commenters requested an extension from 30 days to 60 days to submit proof of established cooperate governance policies. Commenters urged OCM to be flexible in allowing passive investors for social equity applicants because of the potential need for start-up capital. Comments also supported the inclusion of strong penalties for violations of the sole control requirements.

RESPONSE: SEE applicants are given flexibility in the documentation they can provide to provide their qualification. The option to submit proof of established cooperate governance policies within 30 days provides an alternative. The regulations also allow SEE applicants to provide payroll records as well as other documentation to prove their SEE qualifications. SEE applicants and SEE licenses are permitted to have passive investor. Violations of the sole control requirement may result in revocation or suspension, at the Office's discretion. No changes were made to the proposed regulations as a result of this comment.

§121.3 Continuing Duty to Disclose and Failure to Disclose Notification

COMMENT: Commenters suggested "the sole" be removed in section 121.3(c) to avoid possible interpretation that failure to notify would constitute the ONLY grounds for revocation suspension or denial of a license. Commenters also suggested to include a timeline of when notifications would be required.

RESPONSE: In order to avoid such an interpretation, 121.3(c) now reads "Failure to notify the Office of any material change in the information provided may provide sufficient grounds for enforcement action against the licensee including, but not limited to, suspension, revocation, or denial of any license."

§ 121.4 Commitment to Social and Economic Equity

COMMENT: Comments were made regarding the commitment to social and economic equity, most of which refer to 121.4(a), which details the requirement that applicants must demonstrate their commitment through the design and implementation of a community impact plan. Commenters suggested that applicants should demonstrate a partnership or relationship with a community-based organization or other association by providing a *written agreement* with the community organization they plan to partner with. The reasoning being that requiring a written agreement would strengthen the Office's ability to evaluate and enforce the provisions laid out in the MRTA, which aim to invest in the communities most impacted by cannabis prohibition. There were also comments asking for confirmation on whether SEE applicants would be



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required to submit an impact plan, as well as suggestions that SEE applicants be allotted an additional 18 months to submit their impact plan if they were required to do so.

RESPONSE: Applicants and licensees that wish to demonstrate their commitment to SEE by partnering with a community organization must show they entered into a written agreement with such community organization amongst other things. The requirement of a written agreement adds a degree of formality to the relationship. The community impact plan is required for specific license types; there is no exception for SEE. At the time the community impact plan is required for an application, implementation of that plan is not also requirement at the same time.

General and Miscellaneous Comments

COMMENT: General comments and questions regarding section 121 were made but were unspecific regarding suggestions for revision of sections. Many of the general comments made stressed the importance of a pathway for legacy operators to participate within the legal framework, specifically referencing high legal consulting cost, high taxes and compliance cost as examples currently restricting entry for legacy entrepreneurs. Commenters also suggested that the creation of a pathway for legacy operators would be an effective way to reduce dominance of the illicit cannabis market over time. Commitment to legacy operators, according to commenters, displays a better commitment by Office to the SEE priorities detailed in the MRTA. It would also promote small business competition and make market dominance by a few well-funded corporations more difficult. One commenter suggested several solutions to improve the relationship between OCM and legacy operators including: 1) development of a “Legacy to Leadership” post-licensure education program, 2) finalization of definition of Legacy Operator, 3) revising future application rounds to ensure the inclusion of legacy operators significantly harmed by cannabis criminalization.

RESPONSE: This comment is beyond the scope of these proposed regulations. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Some comments were general questions and clarifications on the particulars surrounding license prerequisites, future viability of current grey market business structures and allotted activities for certain license types. One commenter asked for clarity on whether future license types would require applicants to have a prior marijuana conviction. Another commenter inquired about the legal status of non-medical, non-CAURD dispensaries currently in operation and whether their business models of sales under a “donation-to complimentary gift” structure would be legal under the new regulations. They also sought further clarification about the status of CAURD, ROD, ROND once the Cannabis Law Article 4 adult-use



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dispensary license types are made available. Commenters also were concerned that prospective cultivators would be “pushed out” by processors that would influence the cultivators’ brand and distribution of product. They say cultivators should have the right to seek distribution and processing/manufacturing licenses as well.

RESPONSE: This comment is beyond the scope of these proposed regulations. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters were concerned that application and input cost to build an official business would be a costly standard to meet. One commenter suggested that before opening second and future rounds of applications, SEE applicants denied on their initial applications would be enabled to work with potential general applicants. They claim that simply denying and removing applications into the SEE program and licensing general businesses would be a detriment to the success of the SEE program. Additionally, commenters are worried that even licensed SEE entities, after substantial personal investment into the business and license process, would be restricted by canopy tiers for license types detailed in the regulations. Furthermore, there is concern that the regulations would affect small businesses and multi-state operators differently as the MSOs path to the maximum canopy tier is expectedly easier due to their capitalization to pay the required fee. They expect MSOs would be enabled to enter the market with minimal proof of success for operating the maximum canopy state, while new small and medium size entrants as well as conditional cultivators would be bound to the cultivation size they initially are approved for.

RESPONSE: As set forth in the Cannabis Law, the Board is currently developing the SEE plan. No changes to the proposed regulation were made as result of this comment.

COMMENT: Commenters were concerned that a three-year delay for medical operators to enter the adult use market would adversely affect the employment status of unionized cannabis workers in the medical industry. Commenters also stressed that many of the medical operators are staffed by people from the local community and that there should be space for both SEE entrepreneurs and medical operators in the adult-use market. Commenters had general suggestions for regulating microbusinesses activities, specifically regarding how canopy sizes are regulated. Tissue cultures, mother plants, drying, cloning and plants in vegetation should not be counted toward flowering canopy spaces. Additionally, a twelve-inch requirement for “immature plants” is too constraining especially considering most mothers plants would grow to be greater than twelve inches and could still be considered immature. Commenters recommend prioritizing CAURD applicants for the microbusiness license type. They suggest economic incentives around recycled



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growing mediums and other renewable consumption methods on water and energy use to incentivize operators to be more sustainability minded. They also suggest microbusinesses be able to sell products from other microbusinesses.

RESPONSE: Changes were made the proposed regulation by revising the twelve-inch requirement for “immature plants” as result of this comment.

COMMENT: Some commenters concern that the regulations did not address caregivers. Other commenters pointed to language that significantly limits or does not protect those living in public/federally subsidized housing, those who are housing insecure, and those who may be living with people under 21 years of age. They suggest changing the language around “home cultivation” specifically where “private residence” is referenced and expanding home cultivation to include “personal cultivation facilities.” On distressed farmers, commenters suggested adopting the “socially disadvantaged” term used by the USDA when defining who qualifies as a distressed farmer because there is not an agreed upon definition of the term “historically disadvantaged.”

RESPONSE: Home cultivation is outside the of scope of the proposed adult use regulations. The Office declines the use of the term “socially disadvantaged” and instead utilizes the term used by other New York State agencies. No changes the proposed regulations were made as a result of this comment.

COMMENT: Commenters expressed admiration for the manner OCM contemplates implementing the SEE provisions of the Cannabis Law and goals through its proposed regulations.

RESPONSE: The Office acknowledges these comments.

COMMENT: Commenters offered ideas to improve the capital raising abilities of SEE entrepreneurs. First, they request that any business that have taken the initiative to save and borrow against their own assets to establish the business should not be penalized for doing so by de-prioritization for grant funds that may be available. Additionally, commenters suggest removing the 51% requirement for SEE license holders would enable licensees to leverage equity to attract investor capital. They also suggested the creation of a tax benefit and or fee waivers for existing SEE cultivators, the creation of a cannabis-based research license, and prioritizing minority- and women-owned business cultivators access to market. Commenters further recommend pairing SEE cultivators with retail and processor partners, committing to MWBE prioritization in vendor/distribution agreements and a broadening of capital assistance to include cultivator and processor license types, not only retail.



RESPONSE: Some of these comments are beyond the scope of these regulations or the Board’s rulemaking authority. Rather than setting a 51% requirement for SEE license holders, the regulation set the sole control requirement. Sole control does not fixate on a percentage amount but, instead, seeks to ensure that the SEE individual maintains control over the applicant/license. No changes to the proposed regulation were made as a result of this comment.

Part 123 – License Specific Authorizations, Requirements and Prohibitions

COMMENT: Commenters suggested changes to multiple license types which would allow a true party of interest or a passive investor in a license to have more financial relationships with other licensees, their true parties of interest, and their passive investors. Commenters specifically suggested allowing fewer restrictions, or no restrictions, on the interests passive investors could hold. Commenters stated that, because passive investors do not have “influence or control” over the license, that these people should not be limited.

RESPONSE: The suggested amendments could risk undue influence between licensees, and the proposed regulations are, generally, consistent with the ways in which the Cannabis Law limits the interests which certain persons may hold. No changes to the proposed regulation were made as a result of this comment.

§ 123.1 Nursery Ownership, Interests, and Business Authorizations and Prohibitions.

COMMENT: Commenters stated that the nursery license should be “remove[d]” from the proposed regulations and that the Board should encourage the legislature to remove the license type from the Cannabis Law. Commenters stated that “cultivator, micro license[sic], and coop licenses should be able to get their genetics from anywhere in the world.” Commenters expressed a strong desire for cultivators to “be able to source [genetics] globally and did not support that the nursery license would “favor landowners.”

RESPONSE: The proposed regulations do not require a cultivator acquire cuttings, seedlings, seeds and clones from a licensee authorized as a nursery and would not prohibit a licensee from acquiring these things from other persons, so long as the product being acquired, and the method of acquisition, did not violate applicable laws, regulations, and other requirement outside of the proposed regulations. The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters asked what the definition of the term “nursery” is in the proposed regulations and if the definition used in Agriculture and Markets Law should be used. Commenters applied this



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Agriculture and Markets Law definition to provisions in the proposed regulations and asked questions about how this application would be feasible.

RESPONSE: The term “nursery” is used in the proposed regulations as such term is defined in section 3 of the Cannabis Law; the term “nursery” is used differently in the Cannabis Law than in the Agriculture and Markets Law. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested that ROD and ROND licenses be authorized to conduct the activities authorized under a nursery license without having to apply for a separate nursery license.

RESPONSE: The nursery license has additional requirements that the ROD and ROND licenses do not have which are required to reduce the risk of spreading plant-borne diseases. Merging these licensure processes would create an additional administrative burden for both applicants and the Office. The proposed regulations allow a ROD or ROND licensee to apply for a nursery license on either their initial application or an amended application. The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters suggested that nurseries be authorized to sell seeds, cuttings, seedlings, clones, and immature cannabis plants directly to consumers.

RESPONSE: The proposed regulations authorize nursery licensees to distribute these items to retail dispensaries for retail sale to consumers. The proposed regulations have been revised as a result of this comment to clarify when requirements in the proposed regulations only apply to products being distributed for retail sale.

COMMENT: Commenters stated that, because section 75 of the Cannabis Law does not specifically state that a nursery licensee may not hold an interest in a retail dispensary, that a nursery licensee should be allowed to do so and suggested the prohibition on this be removed from the proposed regulations.

RESPONSE: Section 75 of the Cannabis Law directs the Office to make recommendations to the Board regarding the nursery license, including recommendations on the license criteria. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters asked why someone who holds both a microbusiness and nursery license would not be allowed to also hold an on-site consumption license. Commenters suggested that a person be allowed to hold all three of these license types simultaneously.



RESPONSE: Section 77 of the Cannabis Law prevents a person from holding both an on-site consumption license and a microbusiness license. However, the proposed regulations have been amended to clarify that a microbusiness licensee may be authorized to operate a consumption facility.

COMMENT: Commenters suggested that nurseries also be allowed to hold processor or distributor licenses.

RESPONSE: The proposed regulations allow for a person to hold nursery, cultivator, processor, and distributor licenses simultaneously. Additionally, the proposed regulations have been amended to clarify that nursery licensees are authorized to package, label, and distribute for retail sale clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture and cannabis seeds.

COMMENT: Commenters stated that the proposed regulations should be changed to clarify that nurseries do not “produce” clones, seedlings, etc. but instead, that they “cultivate” it. Commenters stated this term is more accurate.

RESPONSE: The chosen language conforms with the Cannabis Law. The proposed regulations have been revised as a result of this comment to remove instances to better clarify this.

COMMENT: Commenters suggested that each item a nursery can sell be defined in the proposed regulations.

RESPONSE: The definition used for these terms is the commonly accepted definition. No changes to the proposed regulation were made as a result of this comment.

§ 123.2 Nursery Operations.

COMMENT: Commenters expressed concern that the nursery license would too greatly limit the ability of a nursery to produce high-quality seeds, seedlings, clones, and other immature cannabis. Commenters suggested amendments to allow cannabis to flower in a nursery for purposes of determining the plants genetics.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters stated that the proposed regulations would only allow a nursery to sell products to a cultivator with a canopy of the same type (e.g., indoor, mixed light, outdoor, or a combination of mixed light and outdoor). Commenters suggested that this be changed.



RESPONSE: The proposed regulations to not prohibit nurseries from selling a product to a cultivator that cultivates in a different canopy type. For example, the proposed regulations would allow a nursery licensee with an outdoor nursery area to sell clones to cultivators approved to cultivate in all settings, regardless of whether the cultivator’s canopy is in an indoor, outdoor, mixed light, or combination setting. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters remarked that the proposed regulations too greatly limited the products a nursery could sell to other licensees. Commenters suggested that nurseries be authorized to sell cannabis to cultivators and processors in certain situations, such as selling a mother plant to a cultivator or selling mature plants used for seed production to a processor after the seeds have been removed. Commenters stated that the height restrictions on plants in the proposed regulations were arbitrary and too limiting.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters remarked that the labeling requirements for products sold by a nursery would not be feasible for many small nurseries to implement.

RESPONSE: The requirements in the proposed regulations are intended to apply to products distributed for retail sale, and the proposed regulations have been revised as a result of this comment.

COMMENT: Commenters stated that it may not be realistic to label products sold by a nursery with its potency as confirmed by testing the parent plant.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters suggested that, instead of requiring a written guarantee, that the regulations require a nursery provide evidence that plants do not harbor diseases or pests, that the nursery be required to provide evidence of this, such as a certificate of analysis.

RESPONSE: The proposed regulations would not prevent a nursery from choosing to provide evidence, such as a certificate of analysis, to substantiate that its products do not harbor diseases or pests. No changes to the proposed regulation were made as a result of this comment.

§ 123.3 Cultivator Ownership, Interests, Business Authorizations, and Prohibitions.

COMMENT: Commenters, many of which were currently licensed adult-use conditional cultivators, expressed dissatisfaction at the proposed license types and tiers to which the proposed regulations would



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authorize these licensees would be authorized to transition. Commenters suggested a number of alternative licenses to which they would like to transition, including cooperative and microbusiness licenses or cultivator licenses authorized to cultivate in mixed-light settings or in different tiers from those in the proposed regulations.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters suggested the proposed regulations allow for cultivators to cultivate in a combination of indoor and mixed light.

RESPONSE: No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested amendments to the proposed regulations that would allow a cultivator to engage in some processing or distribution activities.

RESPONSE: The proposed regulations allow a person to hold cultivator, processor, and distribution licenses simultaneously. The proposed regulations have been revised as a result of this comment to clarify minimal processing which a cultivator may conduct.

COMMENT: Commenters asked if the proposed regulations would allow a cultivator to purchase “stock” from another cultivator and, if so, if there were limits on this transaction.

RESPONSE: The proposed regulations have been revised as a result of this comment to clarify the authorized activities of a cultivator.

COMMENT: Commenters expressed concern that the proposed regulations give “priority” to conditional cultivators applying for a cultivator, processor, or distributor license. Commenters expressed concern that this priority would unfairly displace equity applicants, such as individuals participating in the Cannabis Compliance Training and Mentorship Program, in a manner that they believed was inconsistent with the intent of the Cannabis Law. Commenters suggested language giving these persons priority be removed from the proposed regulations or that the proposed regulations better define what this “priority” will be.

RESPONSE: No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters asked why a “cannabis research licensee” is referenced in the proposed regulations and suggested this be clarified.



RESPONSE: Separate regulations have been proposed by the Board pertaining to the cannabis research license, and that license is what the proposed regulations are referring to. No changes to the proposed regulation were made as a result of this comment.

§ 123.4 Cultivator Operations.

COMMENT: Commenters asked if there were any limits on the types of cannabis a cultivator may grow, such as a prohibition on growing cannabis with a certain potency level.

RESPONSE: The proposed regulations do not prohibit cultivators from growing certain types of cannabis, certain cultivars, or cannabis with any other specific characteristics related to their potency. The proposed regulations do limit potency for edible products, but, because potency testing is already required on finished products, the proposed regulations do this by limiting the potency of the finished product and not the cannabis as it is being grown. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters expressed concern that the proposed regulations would require a cultivator only obtain seeds from nursery licensees. Commenters cautioned against such a policy because commenters stated it would be federally legal to ship cannabis seeds across state lines. Commenters worried that limiting the genetics available to cultivators could impact the strength of the market and the ability of the state's cannabis crop to resist disease.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters requested additional clarification on acceptable plant tags for immature cannabis, and commenters suggested that immature cannabis lots be allowed to be larger than 100 plants to reduce the amount of labeling required. Commenters stated that other states have similar policies because of limitations of the state's seed-to-sale system but that, because commenters believed New York would not use a system with such limitations that the 100-plant limitation would be unnecessary.

RESPONSE: The suggested change may create operational difficulties in tracking inventory, but the Office may explore this suggestion and consider it for the future. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested that the proposed regulations be altered to allow mature cannabis plants to be labeled in alternative methods. Commenters stated that mature cannabis may be large enough



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that a tag at the main stem of the base of the plant could never be visible to an individual standing next to the plant.

RESPONSE: It is necessary to standardize the placement of plant tags to ensure compliance, and the Office may consider this comment in the future. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested additional examples of regenerative agriculture practices be added to the proposed regulations.

RESPONSE: The proposed regulations would not prohibit a licensee from engaging in regenerative agriculture practices outside of those listed in the proposed regulations.

COMMENT: Commenters suggested that cultivators be required to implement organic farming practices.

RESPONSE: Setting such a requirement may create additional costs in determining compliance. The proposed regulations do not prohibit a licensee from choosing to implement organic farming practices. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that cultivators be required to restrict the use of pesticides “to the greatest extent practicable.”

RESPONSE: This requirement would be unfeasible to determine compliance with. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested additional clarification on pesticide application. Commenters stated that they believe pesticide application requires a DEC certification. Commenters asked how the proposed regulations were intended to apply to pesticide application.

RESPONSE: The proposed regulations have been revised as a result of this comment to better clarify pesticide application.

COMMENT: Commenters stated that energy and equipment specifications should be made clear in the regulations, and not established at a later date. Commenters expressed fear that they would be required to retrofit facilities after beginning operations.

RESPONSE: The proposed regulations have been revised as a result of this comment to better clarify the energy and environmental standards to which licensees will be held.



COMMENT: Commenters stated that outdoor cultivation would not be feasible if testing limits did not allow the presence of aspergillus.

RESPONSE: The proposed regulations do not set testing limits and other regulations which pertain to cannabis laboratories give the Office the authority to determine acceptable limits for contaminants and analytes. Current testing limits, which would not allow for a cannabis product which contained detectable levels of certain species of aspergillus to be sold, are sufficient for the currently licensed adult-use conditional cultivators which cultivate cannabis in an outdoor canopy area. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested requiring waste and water benchmarking, in addition to other metrics.

RESPONSE: The proposed regulations have been amended to better clarify the requirement to track water consumption and waste generation as it pertains to cultivators.

§ 123.5 Processor Ownership, Interests, Business Authorizations and Prohibitions.

COMMENT: Commenters requested clarification on the definition used of “white label” and suggested the term be defined in the regulations.

RESPONSE: “White label” is a common term in business and the meaning of this term in the proposed regulations does not differ from its commonly accepted meaning. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters asked if the proposed regulations would limit the number of processing facilities that a licensee could operate and whether the Office would require notification of processing locations.

RESPONSE: The proposed regulations do not limit the number of processing facilities a licensee may operate but would require that the licensee submit information regarding all premises at which licensed activity occurs and the proposed regulations would require a licensee report all material changes to the business, including a change in address, to the Office. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarity on how a processor would track cannabis sent for processing to a processor by a cultivator.



RESPONSE: The proposed regulations set requirements for inventory tracking and for transport of cannabis and cannabis products, including the creation of records such as a shipping manifest. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters expressed dissatisfaction that the proposed regulations would only allow a processor to enter into a branding or white label agreement with the licensee’s true parties of interest or with other licensees. Commenters stated that this would restrict celebrities or other public figures from sponsoring cannabis brands and would limit processor business opportunities.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

§ 123.6 Processor License Facility Operations.

COMMENT: Commenters suggested the proposed regulations be amended to include standards for vaporizers. These commenters expressed concern that certain materials of the vaporizer could transfer from the vaporizer itself into the product’s oil and then be inhaled by the consumer.

RESPONSE: The proposed regulations included standards for vaporization devices that are part of cannabis products. The proposed regulations were revised as a result of this comment to better clarify the use of vaporization devices in processing.

COMMENT: Commenters remarked on the limit in the proposed regulations on the amount of THC allowed in cannabis products. Some commenters suggested changes to the proposed to allow higher potency for all products, or only for certain forms. One such commenter stated that their pressed tablets would be an alternative for medical patients that relied on higher-dosage tinctures. Commenters suggested that if the limit could not be changed for certain product forms, then an approval mechanism should be added to the regulations that would allow the Board to approve products more potent than the regulatory limit. Commenters complained that “low potency” products are inconvenient and could require individuals with higher tolerances to consume more than one serving to feel high. Other commenters cautioned the Board and Office about the dangers of high-potency products and encouraged the Board to limit the amount of THC in cannabis products. Commenters expressed concern about the perceived relationship between the amount of THC in a product and complications like addiction, psychosis, and cannabinoid hyperemesis syndrome.

RESPONSE: To protect public health and safety, the proposed regulations limit the potency of orally ingested cannabis products. The different potency limit for tinctures is due to fewer public health and safety



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risks associated with the product as compared to other orally ingested products. Medical cannabis products are not in scope of the proposed regulations and proposed medical cannabis regulations already include a mechanism to authorize certain medical cannabis products to exceed potency limits for medical cannabis products. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on how the State will know the amount of THC in products sold for retail sale and, if this information would be obtained through sampling, how often products would be sampled.

RESPONSE: All cannabis products are required to be tested for factors including potency prior to distribution. Regulations other than the proposed regulations set requirements pertaining to permitted laboratories and sampling firms and their operations, and these regulations are available on the Office's website. No changes were made to the proposed regulation as a result of this comment.

COMMENT: Commenters suggested that licensees be allowed to remediate products for reasons other than what would be allowed by the proposed regulations or product forms that the proposed regulations would not allow to be remediated. Commenters suggested that products that have been remediated have additional consumer labeling requirements.

RESPONSE: The Office continues to evaluate the potential health and safety ramifications of remediation. No changes have been made to the proposed regulations due to these comments.

COMMENT: Commenters suggested that the proposed regulations allow medical cannabis to be sold in its existing packaging and labeling.

RESPONSE: As Part 128 has already been adopted, this comment is out of scope. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested that the proposed regulations require a licensee submit a photograph of their packaging and labeling and receive approval prior to producing any products.

RESPONSE: The suggested change would create an undue burden on licensees and the Office. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters asked if a specific monitoring system or tracking system would be required to satisfy the requirement in the proposed regulations that extraction processes have "ongoing equipment monitoring."



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RESPONSE: The proposed regulations would require a licensee monitor the equipment used in extraction to ensure that the equipment is in good working order and not in need of maintenance. Generally, this should be conducted in accordance with the manufacturer's specifications. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested the proposed regulations allow greater flexibility in the relationship between the concentration of total THC, CBD, or any other phytocannabinoid on the product's label and its testing results. Commenters suggested the +/- 10% range stated in the proposed regulations be changed to be +/- 15% or +/- 20%.

RESPONSE: The proposed regulations were revised as a result of this comment.

COMMENT: Commenters asked about certain types of packaging and resealable mechanisms and asked if these would be permissible. Other commenters suggested adding language related to packaging and labeling standards to the proposed regulations.

RESPONSE: Other regulations pertaining to the packaging and labeling of adult-use cannabis products. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters asked what type of ventilation proper ventilation would be.

RESPONSE: Proper ventilation would be ventilation necessary to protect persons in the facility from the impacts of such equipment. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested changing or removing the requirements for how the number of servings in a cannabis product be displayed. Some commenters suggested requiring additional clarity related to the size of a serving and suggested that it not be permissible for cannabis products in solid forms to be scored. Other commenters suggested exempting certain product forms, like capsules, from the requirement to clearly delineate a single serving. Additionally, commenters requested that a beverage product be allowed to contain multiple servings in a single package. Other commenters asked how this requirement would apply to topicals, such as balms.

RESPONSE: The requirement being discussed by these commenters is necessary to protect consumers from overconsuming cannabis and ensure consumers have the information necessary to control the amount of THC they consume. The requirement in the proposed regulations that certain products clearly delineate individual servings in certain ways only applies to products intended for oral ingestion and does not apply to topical products. No changes to the proposed regulation were made as a result of this comment.



COMMENT: Commenters requested additional forms be allowable as adult-use products. Specifically, commenters recommended that transdermal patches and vaginal suppositories be allowable as adult-use products. Commenters stated that these product forms would not be attractive to youth and would have medical benefits to people who use them.

RESPONSE: It is not clear that these forms could be made without a licensee making health claims or that they would be suitable as adult-use cannabis products at this time. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters stated that it was unfair to limit cannabis products to 10% terpenes and requested that the proposed regulations be changed to allow the Office to approve products with greater concentrations of terpenes.

RESPONSE: There may be public health and safety risks associated with inhaled products that contain high concentrations of terpenes, and it is necessary to limit the concentration of these substances in inhaled cannabis products to protect consumers. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested that the proposed regulations be changed to allow inhaled products to contain synthetic terpenes.

RESPONSE: There may be public health and safety risks associated with inhaled products that contain synthetic terpenes, and it is necessary to limit the use of these substances in inhaled cannabis products to protect consumers. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested additional ingredients be prohibited in vaporized or inhaled cannabis products, such as “any of the nine major allergens,” certain terpenes (such as pinene), or certain flavor combinations. Other commenters suggested the regulations allow the Office to maintain and update a list that is changed over time.

RESPONSE: The proposed regulations have been revised as a result of this comment to clarify the ways in which vaporized or inhaled cannabis products may be flavored.

COMMENT: Commenters expressed concern that the proposed regulations would require a processor maintain too many samples from each lot of products. Commenters stated that it would be unnecessary to



maintain a subset of each lot to allow the product to be tested twice and suggested the requirement be removed or changed to only allow the product be tested once.

RESPONSE: The Office continues to evaluate the potential health and safety ramifications of this change. No changes have been made to the proposed regulations due to these comments.

§ 123.7 Distributor Ownership, Interests, Business Authorizations and Prohibitions.

COMMENT: Commenters expressed concern that the proposed regulations do not adequately consider distribution arrangements where the distributor does not take possession or title of the product and only transports it. Commenters stated distributors typically utilize third-party platforms to facilitate purchasing between producers, retailers, and other related logistics where they are responsible for handling and transporting the product from the cultivator or processor to the retailer and would not take possession or title of the product.

RESPONSE: The proposed regulations were revised as a result of this comment.

COMMENT: Commenters expressed concern that the proposed regulations will impact entities that offer nominal equity to employees as a benefit. Commenters stated there is conflict with how “true parties of interest (TPI),” “passive investors” and “owners” are defined. Commenters stated it is unclear whether “TPI” includes all stockholders and/or their spouses. Commenters suggested allowing licensees to have passive investors that invest in both license “tiers” as they will be non-controlling in nature.

RESPONSE: The Office acknowledges the concerns of these commenters and may take these concerns into consideration in the future. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested changes to the proposed regulations that would allow distributors to repurchase products from retailers, including those that go out of business. Commenters stated this would facilitate more efficient operations of the marketplace and reduce supply bottlenecks.

RESPONSE: The Office acknowledges the concerns of these commenters and may take these concerns into consideration in the future. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on whether a distributor can sell to a microbusiness and vice versa. Commenters stated microbusinesses should be able to offer more products than “only the limited



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amount involved in cultivation.” Commenters suggested microbusinesses should be able to focus on making premium flower and be allowed to offer products allocated from other businesses.

RESPONSE: Due to the risk of undue influence, the proposed regulations do not allow distributors to sell to a microbusiness. The proposed regulations allow microbusinesses to offer products from other licensees such as processors and cultivators. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters recommended changing the proposed regulations to permit distributor-to-distributor transactions and allow distributors with a cultivator and/or processor license to sell their products to other distributors. Commenters suggested clear guidance on distributor-to-distributor transactions and stated that greater flexibility in these transactions would reduce the risk that distributors would “shut out” small operators or equity brands.

RESPONSE: The Office acknowledges the concerns of these commenters and the perspectives they bring. The proposed regulations allow transactions between processors and between distributors and processors. Processors would be allowed to sell to other licensees without a distribution license. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated the proposed regulations allows distributors, processors, cultivators and their true parties of interest to be true parties of interest in a nursery and permits a nursery or its true parties of interest to be a true party of interest in a distributor, processor, or cultivator. Commenters stated this can only work if the right to be a true party of interest is reciprocal among these licensees.

RESPONSE: The proposed regulations allow reciprocal relationships between distributors, processors, cultivators and their true parties of interest, in a nursery. The proposed regulations also allow reciprocal relationships between nurseries and their true parties of interest to be a true party of interest in a distributor, processor, or cultivator. No changes have been made to the proposed regulations as a result of this comment.

§ 123.8 Distributor Operations.

COMMENT: Commenters expressed concern that the proposed regulations create a loophole wherein independent contractors can possess or transport cannabis for a distributor. Commenters stated independent contractors may not have proper training on security and safety protocols. Commenters suggested removing language to ensure only employees of the licensee with proper training should be able to transport cannabis on behalf of the distributor.



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RESPONSE: The proposed regulations have been revised to clarify that only licensees or permittees may be authorized to transport cannabis and cannabis products.

COMMENT: Commenters requested clarity on transporting cannabis products with other goods. Commenters stated that not allowing mix-product deliveries will increase distribution costs and get products on shelves slower. Commenters suggested the proposed regulation be amended to avoid issues with RONDs that transport medical products. Commenters made suggestions like how hemp product deliveries operate with non-cannabis products, e.g., requirements for locked cages, additional security in the truck, and strict segregation between non-cannabis and cannabis goods.

RESPONSE: The proposed regulations would not preclude the transportation of cannabis products with other products however, extraneous stops would not be allowed while cannabis products are in possession within the delivery vehicle. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated the proposed regulations lack guidance on distribution from cultivator to processor.

RESPONSE: The proposed regulations outline requirements for the transport of cannabis and cannabis products. A distributor would not be required for transport of cannabis between a cultivator and processor. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated the proposed regulations created too many restrictions on transporting free samples, such as requiring a secured transport and that transport be conducted only by individuals employed by the distributor. Commenters stated this would make it difficult for smaller brands to get samples in the hands of prospective retailers. Commenters suggested adopting a model that would allow distributors to employ part-time or full-time individuals under “solicitor’s permit” rather than the under the license directly. Commenters explained the permit would allow a solicitor to accept orders for cannabis products, at the licensed premises of their employer or at the licensed retailer, allow brands to use a third-party distributor for logistics, allow permit holders to be employed by multiple licensed adult-use distributors, to offer for sale and solicit orders for adult-use cannabis products.

RESPONSE: Regardless of whether such a suggestion were to be implemented, the regulations would still require that all transport of cannabis and cannabis products occur in compliance with requirements that pertain to this transport. In line with other requirements which allow the Office to monitor the movement of cannabis products from seed to sale, it is necessary for all transport of cannabis products to be conducted



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only by individuals authorized by the Cannabis Law and in a manner that secures the products and maintains their quality.

COMMENT: Commenters stated the proposed regulations are extremely prohibitive as it prevents distributors from providing interior marketing and signage to any licensee. Commenters recommended that proposed regulations be amended to allow distributors to provide licensees with compliant exterior or interior signs or displays, printed, painted, digital or otherwise, unless such signs or displays are less than or equal to \$300 in value, like allowances in New York’s alcohol industry.

RESPONSE: Section 85 of the Cannabis Law allows retailers to use brand advertising signs, with the permission of the Board. As of now, the Board has only given permission for retailers to use certain outdoor signs which advertise their own brands. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated the first sentence of subparagraph 123.8(a)(3) appears incomplete and requested clarification on this section.

RESPONSE: The proposed regulations have been revised as a result of this comment to fix this drafting error.

COMMENT: Commenters suggested for proposed regulations to allow co-mingling of cannabis and other products during delivery, and to allow distributors to warehouse cannabis product for consolidation and efficiency of delivery route. Commenters suggested allowing distributors to correct erroneous labeling products at warehouses. Commenters recommended no cap prohibitions on deliveries which includes number of stops and maximum dollar value per delivery vehicle, and balance with transporting security requirements and distribution efficiency. Commenters recommended a retail credit calendar like that enforced by the SLA, full prohibition on slotting fees, and ban or limit on samples, gifts of services, and POS which can lead to “pay to play.”

RESPONSE: The Office will take the recommendation that distributors be permitted to package and label products into consideration.

COMMENT: Commenters suggested removing language from the proposed regulations that states the absence of invoices and manifests is evidence of a failure to pay necessary taxes.

RESPONSE: The Board and Office acknowledge this comment. No changes have been made to the proposed regulations as a result of this comment.



COMMENT: Commenters recommended amendments to the proposed regulations which would permit an operator to produce annual financial statements, such as tax returns, to demonstrate a distributor’s actual cost of doing business. Commenters recommend language to be included which requires financial records to be maintained. Commenters also suggested the proposed regulations should allow offsite storage of records.

RESPONSE: Section 84 of the Cannabis Law requires distributors keep and maintain adequate books and records of all transactions involving the business, upon the licensed premises. Tax returns would not be an acceptable record to determine cost of business. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters recommended that proposed regulations include specifics on how distributors will be monitored in terms of ensuring they are selling cannabis product to licensed retailers and how these rules will be enforced.

RESPONSE: The proposed regulations require licensees use an inventory tracking system, and this system will facilitate the Office’s ability to track cannabis products throughout their life cycle, including during distribution. The Office may take action for any violations or instances of noncompliance, and any enforcement actions will vary depending on the specifics of the situation and the licensee’s corrective action. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested definition “maximum margins” and the rationale behind maximum margins.

RESPONSE: Section 84 of the Cannabis Law authorizes the Board to promulgate regulations establishing a maximum margin for which a distributor may mark up a cannabis product for sale to a retail dispensary. The proposed regulations do not establish a maximum margin. No changes have been made to the proposed regulations as a result of this comment.

§ 123.09 Retail Dispensary Ownership, Interests, Business Authorizations and Prohibitions.

COMMENT: Commenters requested additional information related to the on-site consumption that may be permissible at a retail dispensary. Commenters stated that entrepreneurs wish to open a number of different type of establishments that would allow people to use cannabis products and requested that the proposed regulations not limit the creativity of these entrepreneurs. Commenters requested additional clarification on the meaning of an “adjoining premises.”



RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters expressed concern that the restrictions on retail dispensaries and their true parties of interest from also holding interests in certain businesses outside of New York State.

RESPONSE: The requirement is necessary to protect the two-tier market from undue influence by out of state persons. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters had questions regarding a retail dispensary purchasing items from a nursery. Some commenters asked if the nursery would require a distribution license, and other commenters suggested that a distributor should be required in this scenario. Other commenters discouraged the requirement of a distributor license in this scenario. Commenters encouraged the Board to promulgate home cultivation regulations in order to allow retail dispensaries to sell these products.

RESPONSE: The Cannabis Law authorizes a nursery license to distribute the items it produces to a retail dispensary and a distributor license would not be required in this scenario. No changes have been made to the proposed regulations as a result of this comment.

§ 123.10 Retail Dispensary Operations.

COMMENT: Commenters requested clarification on the physical space requirements for CAURD licensees. Commenters specifically asked if there were requirements for ADA accessibility or bathrooms.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the regulations due to these comments.

COMMENT: Commenters suggested prohibiting retail and on-site consumption establishments offering cannabis from also serving any food or alcohol.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the regulations due to these comments.

COMMENT: Commenters recommended requiring all cannabis retail establishments to always have ID scanners on premises.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the regulations due to these comments.



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COMMENT: Commenters suggested allowing retail dispensaries to engage in limited white-labeling within their stores (10%), which would allow retailers to further develop brand identity.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the regulations due to these comments.

COMMENT: Commenters recommended prohibiting online retail sales of cannabis and cannabis products. Commenters also recommended prohibiting home delivery services of cannabis and cannabis products.

RESPONSE: The Cannabis Law allows for the delivery of cannabis products. It is important for retail dispensaries to be convenient to consumers in order to build a strong, regulated adult-use cannabis market. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated the minimum square footage requirement in the proposed regulations need to be clarified to include a specific number listed for proper guidance. Commenters also suggested removing the minimum square footage entirely as retail concepts can exist in small spaces.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters suggested removing the requirement that, retail dispensaries may operate a drive-thru service window and pre-order customer pick-up lanes with prior written approval from the Office and in compliance with all applicable state and local laws, rules, and regulations. Commenters state this allowance of retail dispensaries with drive-thru service window and pre-order customer pick-up lanes should be left to the regulatory review of the local municipality or town, with considerations for pedestrian traffic, vehicular traffic, noise, etc.

RESPONSE: The proposed regulations require that these sales be conducted in accordance with relevant municipal rules. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated that the allowance for retail dispensaries to operate a drive-thru service window and pre-order customer pick-up lanes with prior written approval from the Office and in compliance with all applicable state and local laws, rules, and regulations lacks reasoning and purpose.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters recommend not allowing retail sale of cannabis via “drive-thru” windows because it creates mechanisms that excessively facilitate impulse purchases.



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RESPONSE: The Office acknowledges this comment, however, no changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters recommend clarifying the prohibition of consumption in private vehicles in the proposed regulations, to prevent youth exposure.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated that RONDs who engage in delivery services need clarification on the retail dispensary supervision and staffing requirement which prohibits an “employee in charge” of more than one retail dispensary at the same time.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters proposed eliminating the provision prohibiting an “employee in charge” of more than one retail dispensary at the same time and instead clarifying that a licensee’s business plan must clearly set forth the roles and responsibilities for a designated “employee in charge,” including their responsibility and ability to manage multiple retail locations, as applicable.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated the proposed regulations should be revised to include an explanation or definition of “proper conduct” of retail dispensary employees.

RESPONSE: Conduct that violated applicable law, regulation or other applicable requirements or otherwise endangered public health and safety would not be proper conduct. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters recommended amending the proposed regulations that require staffing plans updated with changes in employment status of retail dispensaries employees within five business days to 30 business days.

RESPONSE: The proposed regulations have been revised as a result of this comment.



COMMENT: Commenters requested removing the terms “actually or seemingly” from the proposed regulations that prohibit dispensaries from selling to individuals actually or seemingly under the age of 21 years of age or any visibly intoxicated individual. Commenters stated the phrase can be interpreted as, if someone looks under 21 years old even with valid ID the dispensary cannot sell to them. Commenters recommended using alcohol guidelines to be safer by requesting ID for anyone who appears to be under 30 years old. Commenters also requested clarity on what “intoxicated” is defined as, if limited to cannabis intoxication only.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters remarked that the proposed regulations could prevent an individual under 21 years old from accompanying an individual 21 years or older when entering a dispensary to make a purchase which includes prohibiting a parent from bringing a child with them into a dispensary, potentially requiring the parent to leave their child either in a vehicle, or outside unattended while they are in a dispensary. Commenters stated the proposed regulations are unclear whether “intoxicated” includes cannabis intoxication, intoxication by alcohol, or intoxication by other substances.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern over the security and privacy of consumer information. Commenters suggested the verification of identification of the person receiving a cannabis purchase on behalf of a purchaser during a curbside pickup can be achieved with a physical signature, or name and age only, without digital storage of identification. Commenter recommended the proposed regulations include how dispensaries protect customer information and should include state privacy laws that limit the amount of information that can be stored and used.

RESPONSE: The proposed regulations would not allow a licensee to store or use customer information in a manner that violated applicable laws, including privacy laws.

COMMENT: Commenters are concerned about the safety of delivery employees when obtaining verification of identity and age at the delivery location. Commenters suggested that delivery customers must be required to sign up with the store and, provide name, address, cell phone number, copy of valid ID, and full payment prior to orders being delivered to a specific address. Commenters recommended a two-



step verification process for delivery, with deliveries handed directly to the person who opens the door from the inside, and no curbside pick-up allowed outside a residence or office building.

RESPONSE: The proposed regulations have been revised as a result of this comment to further clarify delivery procedures.

COMMENT: Commenters noted the importance of consumers recognizing a licensed retail dispensary before entering the premises. Commenters suggested stating explicitly in the proposed regulations the requirement to post the license or the licensed cannabis dispensary verification QR code in a conspicuous location visible to consumers entering the premises.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters stated New York needs to release onsite consumption license regulations as soon as possible for retailers and microbusinesses.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters stated the proposed regulations arbitrarily singles out and disadvantages ROD licensees from supply opportunities. Commenters explained shelf space thresholds will result in retail dispensaries with supply deficits due to lack of lab-tested and state-approved products from non-ROD licensees and frustrated consumers who are likely to return to illicit and unregulated sources.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters remarked that the minimum square footage requirement limits the options of opportunities that are currently available, specifically in New York City, but also restricts individuals that can't afford to operate in a massive location. Commenters suggested these limits be changed and approved on a case-by-case basis.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters requested allowing the sale of merchandise and paraphernalia with branding other than the licensee branding and merchandise from third parties to build brand recognition and presence within the retail market.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the proposed regulations as a result of this comment.



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COMMENT: Commenters suggested that by providing a list of products that can be offered for retail sale in the proposed regulations including, cannabis products, cannabis paraphernalia intended for the storage or use of cannabis products, branded merchandise of the licensee, or any other items as determined by the Office, is counterintuitive in preventing illicit retailers. Commenters stated banned items will result in a 100% capture rate by the illicit market and there should be transparency on how permitted products are approved.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters recommended a grant-funded program be established where lockable, scent-proof bags are provided to community members free of charge, similar to one established in Monroe County, Michigan. Commenters suggested making this program available so that community-based organizations, CAURD licensees, and county and city health departments can apply for funding to access and distribute lock-bags for safe storage.

RESPONSE: The Office may take this into consideration in future activities. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters recommended prohibiting cannabis retailers from selling branded clothing and merchandise. Commenters noted research on alcohol and tobacco marketing, and a recent study on cannabis in legalized states shows youth who reported owning branded merchandise showed higher rates of use.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters remarked on the requirement in the proposed regulations that a retail dispensary dedicate a minimum of 40% of its shelf-space for certain products. Overall, commenters had a number of questions and suggestions regarding the implementation and expected impacts of such a requirement. Commenters were concerned that the 40% shelf-space does not also exclude RONDs and both RONDs and RODs can therefore occupy 100% of a dispensary's shelf-space. Commenters recommended that RONDs be excluded from supplying dispensaries with cannabis for three years and after three years, allow RONDs to share 60% of shelf-space with RODs for five years, leaving 40% exclusively for cannabis product from social equity and non-ROD & non-ROND cultivators and processors. Commenters also suggested delaying RODs from selling their cannabis products to dispensaries for three years and after three years, allow RODs to occupy no more than 60% of dispensary shelf-space for five years to give society equity licensees



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opportunity to be competitive and sustainable. Commenters stated “processed by cultivators” should be “processed by cultivators.” and recommended the proposed regulations be amended to include the date of the first retail sale in New York since that information is now available. Commenters are concerned that the reserved 40% shelf-space is close to slotting allowances which may be an issue regarding antitrust law. Commenters stated shelf-space is a difficult standard to measure and suggested that a more calculable standard would be a percentage of products offered for sale or SKUs.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters recommended that employees of a retail dispensary should not be under the age of eighteen years like the alcohol industry where bartenders can be eighteen or older and consumers are 21 or older. Commenters suggested lowering the age of direct interaction in retail dispensaries to eighteen and clarifying the prohibition of employment for individuals under the age of eighteen. Commenters are concerned youth will miss educational and work experience opportunities that the legal market can provide.

RESPONSE: The Cannabis Law requires certain employees in a retail dispensary be at least 21 years of age. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on what public convenience means in terms of location and why this decision is left to the Board to determine. Commenter stated there should be an objective standard clarifies what locations satisfy this requirement.

RESPONSE: No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern about employee’s full names being included on the receipt provided to customers. Commenters explained this may expose workers to privacy and security concerns. Commenters suggested instead using the retail practice of providing only first name and last initial on receipts.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters expressed concern that prohibiting adult use retail dispensaries from advertising and selling product availability via third party online services deprives dispensary owners of an important marketing tool, especially in terms of prospective customers who are new to an area. Commenters requested reason for this prohibition given consumer familiarity with such tools and stated children are unlikely to see such advertising. Commenters requested clarity and definition of third-party.



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RESPONSE: The proposed regulations do not prohibit licensees from marketing or advertising. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated the Board should reconsider the proposed regulation which prohibits retail dispensaries from displaying cannabis products or cannabis paraphernalia in an area that is visible from the exterior of the physical structure of the retail dispensary. Commenters suggested the only way to comply with this prohibition is to completely cover or block the facility's windows and historically, the blocking of windows has led to an increase in armed robberies of dispensaries.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters requested clarity on whether retail dispensaries can participate in street fairs, grand opening and other public activities.

RESPONSE: The proposed regulations would not participate a retail dispensary from marketing or advertising at such event in a manner that complies with currently enacted regulations related to the marketing and advertising of cannabis products which are available on the Office's website at www.cannabis.ny.gov/regulations. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern that the proposed regulations place the obligation to prevent risk during sales on retail dispensary employees. Commenters stated this is unfair since employees do not have the control over the operations of the company and are under the direction of management or supervisors. Commenters stated this is not standard in retail markets and does not align with the Cannabis Law in relation to consumer safety. A commenter also recommended changing the regulation to hold the company accountable.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters stated prohibiting the sale of non-cannabis, non-nicotine, and non-alcoholic beverages or food does not serve any purpose and should be removed from the proposed regulations.

RESPONSE: No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that adult-use products should clearly state that they are not tested in accordance with the same standards as those in medical dispensaries. Commenters recommended



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additional labeling requirements for products that are not tested in accordance with the same standards as medical products.

RESPONSE: The Office may consider these suggestions in future amendments to regulations pertaining to the labeling of cannabis products, which are distinct from the proposed regulations and available on the Office’s website. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on the proposed regulations. Commenters stated the proposed regulations would require a determination during customer interactions if the consumer is at the dispensary for medicinal purposes or recreational use, which creates an issue as to delineation between medical and recreational use.

RESPONSE: The proposed regulations do not require this determination be made. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters do not agree with the ban on the use of terms “apothecary,” “medicines,” or similar terms used to advertise retail dispensaries. Commenters stated the word apothecary is not a common modern name for a pharmacy, and prohibiting these terms seems subjective and does not serve any government purpose or interest.

RESPONSE: The Cannabis Law prohibits false and misleading advertising. The stated requirement is necessary to ensure businesses to not mislead consumers to believe that an adult-use cannabis dispensary is a medical dispensing site. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters recommended that the adult-use and medical cannabis program be maintained with distinction in purpose and regulatory framework to assure that there are no implied therapeutic health benefits associated with recreational cannabis use. Commenters suggested terms like “wellness” or “health” should not apply to the adult-use program, and that product should not be promoted as a general “wellness product.”

RESPONSE: The Office acknowledges this comment and may take it into consideration in developing future guidance and regulation, however such an approach may too greatly limit the ability of licensees to clearly explain to consumers the general effects of consuming cannabis products. No changes have been made to the proposed regulations as a result of this comment.



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COMMENT: Commenters are concerned that allowing no more than 25 employees providing full-time paid delivery services per week to cannabis customers will not be enough to meet the needs of consumers, specifically in areas such as Manhattan, Brooklyn, and Queens. Commenters recommended implementing a limit based on a percentage of total employees, or a limitation on deliveries per day to help promote a safe and fair working environment for delivery employees. Commenters also suggested that cannabis should be more accessible to those who need it including underserved areas.

RESPONSE: The requirement is in alignment with Section 77 of the Cannabis Law. If a licensee cannot fulfill delivery orders with its own employees, the proposed regulations would not prohibit a retail dispensary from using delivery licensees to fulfill delivery orders. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern that the proposed regulations do not prevent a retail dispensary from selling supplements and other herbs that are not approved food additives or Generally Regarded As Safe (GRAS) in its prohibitions. Commenters recommend that the regulations are broadened to prohibit any smoking or vaping product that does not include cannabis or is not a cannabis product, as there are smoking and vaping products that do not include nicotine.

RESPONSE: The proposed regulations would prohibit a retail dispensary from selling food, beverage, or personal care items that are not cannabis products. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters recommended that the proposed regulations should further clarify the definition of “consumption” used in the proposed regulations.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters recommended that retail dispensaries should have the ability to utilize vending machines and customers should have the freedom of choice to shop for products out of a vending machine using a credit card once age and ID is verified.

RESPONSE: The risks to public health and safety are too great to permit the vending of cannabis products. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated that customers should have the opportunity to sample products or retailers should be allowed to have a sampling station that would allow customers to smell the product.



Office of Cannabis Management

Commenters noted sampling will help retailers educate their customers on new products or new product developments.

RESPONSE: The proposed regulations allow consumers to inspect samples within a retail dispensary. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated that the proposed regulations are overreaching by setting up fences around towns that have opted out of retail and consumption spaces. Commenters are concerned about how municipalities will be made aware that deliveries were being made in their jurisdictions and about stop-and-frisk type and targeted enforcement by police in those municipalities. A commenter stated that the delivery cutoff time is unclear and requested clarity.

RESPONSE: The proposed regulations have been revised as a result of this comment to better clarify delivery operations.

COMMENT: Commenters recommended that licensees are provided template and sample language for educational materials from OCM in multiple languages for consistent, accurate, and compliant information across the industry. Commenters recommended that any education materials created or sourced from third party sources be submitted for review by OCM annually and cannot make health claims. This will ensure, as mentioned above, that the shared information is accurate and follows the law. Commenters suggested OCM work with DOH to create materials on key health warnings and require these materials provided to every customer.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters stated that additional secure storage of unsold products at store closing has been proven to help prevent contamination and theft of products.

RESPONSE: The Office acknowledges this comment, but no changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters recommended for the avoidance of doubt or ambiguity, the proposed regulations should explicitly state that the only products a dispensary may deliver to customers are those products carried by the dispensary, and the delivery of other types of products are prohibited.

RESPONSE: The proposed regulations have been revised as a result of this comment to better clarify delivery operations.



Office of Cannabis Management

COMMENT: Commenters recommended that delivery only be allowed to residences, and not to workplaces, schools, dormitories, public places such as parks or beaches.

RESPONSE: The proposed regulations have been revised as a result of this comment to better clarify delivery operations.

COMMENT: A commenter states it is unclear whether a delivery that begins within normal business hours but is received after the close of the dispensary's hours of operation would render an operator out of compliance with the proposed regulations. Examples of this would include instances of unavoidable delays, like unexpected traffic. The commenter proposed that licensees would still be allowed to complete deliveries within a reasonable time outside of the normal hours of dispensary operations.

RESPONSE: The proposed regulations have been revised as a result of this comment to better clarify delivery operations.

COMMENT: Commenters recommended the proposed regulations prohibit discounts, coupons, multipack reductions or other promotions reducing the listed price.

RESPONSE: Requirements for the marketing and advertising of cannabis products are set in separate already-enacted regulations pertaining to the packaging, labeling, marketing, and advertising of cannabis products, which are available on the Office's website. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the most visible shelf price should reflect the price inclusive of the THC adjusted tax rate that will be paid. Commenters stated that the purpose of the THC based tax is to discourage consumption of higher potency products and will work best if it is clearly and prominently visible to consumers before they make their purchasing decisions.

RESPONSE: The excise tax that is based on a cannabis product's total THC is not imposed on the consumer and is imposed on the distributor of the product. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated that it is unfair to hemp retailers that the proposed regulations allow adult-use retail dispensaries to sell cannabinoid hemp products including cannabinoid hemp flower products clearly labeled or advertised for the purpose of smoking, or in the form of a cigarette, cigar, or pre-roll, or packaged or combined with other items to facilitate smoking, with a cannabinoid hemp retail license but prevent cannabinoid hemp retailers from selling these products.



Office of Cannabis Management

RESPONSE: The operations of cannabinoid hemp retailers are out of scope of the proposed regulations, and the Office may consider this suggestion in future amendments to the regulations which set requirements for these retailers. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters recommended that a retail dispensary license should by default include the sale of cannabinoid hemp products without the burden of applying for and attaining a separate license.

RESPONSE: Section 93 of the Cannabis Law requires a person selling cannabinoid hemp in its final form to consumers obtain a cannabinoid hemp retailer license. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested adding a provision to the dispensary operations rules, to allow dispensary operators or a licensed hemp or CBD vendor to provide in-store customer education and samples provided the products are fully compliant with state cannabinoid hemp regulations.

RESPONSE: The Office acknowledges this comment and may consider it in future guidance and rulemaking. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated that it was contradictory for the regulations to prohibit tobacco products from being sold in a dispensary but allow cannabis and cannabinoid hemp products to appear in forms similar to tobacco products, like in ways that resemble cigarettes.

RESPONSE: No changes have been made to the proposed regulations as a result of this comment.

§ 123.11 Microbusiness Ownership, Interests, Business Authorizations and Prohibitions.

COMMENT: Commenters requested that microbusinesses be authorized to allow adult-use on-site consumption premises.

RESPONSE: The proposed regulations have been revised as a result of this comment to clarify that a microbusiness may request an authorization to operate an on-site consumption facility.

COMMENT: Commenters requested that microbusinesses be authorized to form a “cannabis collective.”

RESPONSE: Allowing microbusinesses to collaborate in this manner may allow microbusinesses to enact undue influence on other licensees. The Board may take this comment into consideration for future rulemaking.



COMMENT: Commenters requested that microbusinesses be authorized to buy or sell cannabis, biomass, or cannabis products between other licensees in instances other than a crop failure. Commenters expressed concern that this limit on interactions between microbusinesses would prohibit the ability of microbusinesses to compete with other licensees. Some commenters suggested changes that would allow microbusinesses to engage in this activity in all scenarios, whereas other commenters suggested only allowing microbusinesses to engage in buying or selling cannabis in their first year of operation or allowing a microbusiness to purchase a certain amount of cannabis.

RESPONSE: The proposed regulations have been revised as a result of this comment to allow a microbusiness to purchase 500 pounds of cannabis biomass or distillate equivalent without requiring a significant crop failure or prior written approval.

COMMENT: Commenters requested that the proposed regulations include a definition of “significant crop failure.”

RESPONSE: The proposed regulations give the Office the authority to determine when a microbusiness has suffered a significant crop failure. This determination may be fact-specific and rely upon environmental and market factors that make a blanket definition unfeasible. The Office acknowledges this comment and may consider including the definition in future guidance and rulemaking. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the microbusiness license be available to houses of worship which use cannabis ceremonially to allow these entities to provide cannabis products during ceremonies and for other religious uses. Commenters stated that communities that use cannabis sacramentally and ceremonially have “United Nations[...]protections” and noted that, because the purity of cannabis is sometimes part of the religious uses of cannabis, that these communities would benefit from the quality assurances provided by the regulated market. Commenters suggested that, if this goal could not be achieved by the proposed regulations, that solutions be considered in future home cultivation regulations.

RESPONSE: The proposed regulations and Cannabis Law would not prohibit an entity that operates a house of worship from holding a license. However, the Cannabis Law would limit where a retail dispensary or adult-use on-site consumption premises, including such premises operated by a microbusiness, could be sited in relation to any house of worship, including those operated by the entity in question. The Office may consider this comment in future guidance and rulemaking, but no changes were made to the proposed regulations as a result of this comment.



COMMENT: Commenters asked if a microbusiness could also hold a nursery license.

RESPONSE: The proposed regulations allow a person to hold a microbusiness and a nursery license simultaneously. No changes were made to the proposed regulations as a result of this comment.

§ 123.12 Microbusiness Operations.

COMMENT: Commenters suggested changes to the requirement that, unless it is in a city with a population over one million, a microbusiness must locate its dispensary, if it has one, within 25 miles of its cultivation site. Commenters expressed concern that this would be unrealistic for many businesses, particularly those located in areas with many municipalities that have opted-out of allowing dispensaries. Commenters asked what address would be used to determine whether the licensee was in a city with over one million persons or not.

RESPONSE: The proposed regulations would not require the microbusiness' retail dispensary premises be a separate premises from its cultivation (and, if applicable, processing) premises. Additionally, the proposed regulations do not require microbusinesses operate a retail dispensary, if a suitable location within 25 miles of the cultivation (and, if applicable, processing) premises cannot be found, and would still permit a microbusiness to distribute its products to other licensees without selling directly to consumers. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested a microbusiness be permitted to cultivate within a combination canopy.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters suggested a microbusiness be allowed to distribute other microbusinesses' cannabis products.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters asked if microbusinesses authorized to cultivate but not process would be permitted to minimally process cannabis products and suggested that, if so, the microbusiness not be required to obtain good manufacturing practice (GMP) certification for their minimal processing activities or facilities.

RESPONSE: The proposed regulations have been revised as a result of this comment.



COMMENT: Commenters asked if biomass restrictions referenced in the proposed regulations were using a wet weight or a dry weight.

RESPONSE: The proposed regulations are intended to refer to a dry weight and have been amended as a result of this comment.

COMMENT: Commenters requested that microbusinesses be permitted to be larger. Commenters suggested amendments to the proposed regulations that would allow microbusinesses to cultivate a larger canopy, to process a greater quantity of cannabis, or to sell products at retail in a manner that the proposed regulations would not allow. Commenters suggested microbusinesses be allowed to sell products other than their own, and some commenters suggested a minimum shelf-space requirement for a microbusiness's own products. Commenters asked for a definition of what products were a microbusiness's own, and stated that, unless a definition was offered, that it would create too much uncertainty for microbusinesses and limit their ability to generate enough revenue to sustain their business.

RESPONSE: The size, scope and eligibility criteria of a microbusiness were developed in a manner as directed by section 73 of the Cannabis Law. No changes have been made to the proposed regulations as a result of this comment.

§ 123.13 Cooperative Ownership, Interests, Business Authorizations and Prohibitions.

COMMENT:

Commenters expressed wanting cooperatives to be able to have more than one type of cultivator and expand cultivator options to include all outdoor, greenhouse, and indoor cultivators. Commentors suggest that the Office allow for cooperatives to be composed of both independently licensed members and members who are organized under a cooperative license. Commentors also encouraged the Office to use cooperative licenses as an opportunity to support legacy operators and guarantee their long-term success. Numerous commentors mentioned that the Office should allow for microbusinesses to be considered for cooperative licensure. Finally, commentors encouraged the office to adjust regulatory language so that cooperative members that put in majority of the labor can be guaranteed majority of the profits.

RESPONSE: Two licenses cannot be combined, therefore licensees cannot possess both a cooperative license and a microbusiness license. No changes to the proposed regulation were made as a result of this comment.



Office of Cannabis Management

COMMENT: Commenters asked how the term “labor” was being defined in relation to the required organizational structure of a cooperative. Commenters said that labor typically refers to physical labor and asked if the language in the proposed regulations would account for members who contribute with skilled knowledge instead of conducting manual labor. Commenters suggested changes to the proposed regulations that would remove the term labor to instead state that a cooperatives structure, ownership, and distributions should not be based on financial contributions. Overall, commenters expressed a desire for cooperatives to prohibit individuals from acquiring ownership rights or receiving contributions if they do not contribute to the cooperative’s activities.

RESPONSE: The proposed regulations do not define labor, and the commonly accepted definition of the word “labor” within this context would be used. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters asked if multiple licensees or multiple applicants could work together towards a cooperative. Commenters specifically asked if multiple SEE applicants could form a cooperative and suggested the regulations include more flexible cooperative structures and “allow social equity legacy operators the opportunity to pool resources and increase their changes for long term success.”

RESPONSE: The proposed regulations prohibit persons who hold certain license types from holding a cooperative license. The proposed regulations would not prohibit Social and Economic Equity applicants from seeking the cooperative license. The Board will continue to explore options to incentivize the use and licensure of cooperatives for all applicants—including SEE applicants—as directed by Section 77 of the Cannabis Law. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested that language regarding the number of cultivation premises a cooperative can operate be clarified to state that cooperatives cannot exceed their maximum canopy size for their tier.

RESPONSE: The proposed regulations were revised as a result of this comment.

COMMENT: Commenters suggested the proposed regulations be amended to clarify members in a cooperative cannot be a member of other cannabis collectives, instead of referring to all cooperatives, including those that are not cannabis businesses.

RESPONSE: The proposed regulations were revised as a result of this comment.



COMMENT: Commenters suggested that the proposed regulations be amended to ensure that cooperative members that contribute primarily with labor comprise a majority of the cooperative governing body, receive a majority of the profits, and hold a majority of the equity in the cooperative.

RESPONSE: The proposed regulations were revised as a result of this comment.

COMMENT: Commenters suggested using the term “cannabis collective” throughout to conform with the proposed regulations.

RESPONSE: The proposed regulations were revised as a result of this comment.

§ 123.15 Registered Organization Adult-Use Cultivator Processor Distributor Ownership, Interests, Business Authorizations, and Prohibitions.

Note: Comments which refer to requirements which similarly pertain to both ROND (§ 123.15) and ROD licensees (§ 123.17) have been aggregated under this header.

COMMENT: Commenters remarked on the authorizations and prohibitions set in the proposed regulations related to the interests ROND and ROD licensees hold in other licensees. Some commenters suggested alterations to these sections that would allow a ROD or ROND licensee to invest in other licensees more greatly. These commenters said the proposed regulations would unfairly limit the ability of registered organizations to participate in the adult-use market. Commenters worried the proposed regulations did not consider the “realities of investment in the cannabis sector.” These commenters specifically requested that ROND licensees be allowed to be passive investors in ROD licensees and generally expressed a desire for registered organizations to have greater ability to hold interests in other adult-use licensees. Other commenters suggested alterations to these sections that would more greatly limit the interests that ROD and ROND licensees could hold in other license types. These commenters expressed concern about the undue influence that registered organizations may exercise upon adult-use licensees that are not ROD or ROND licensees. Commenters stated that limiting these licensee’s influence was necessary to create an even playing field. Generally, these commenters suggested changes that would more greatly limit a ROND licensee’s ability to hold an interest in other licensees and supported the limitations in the proposed regulations related to a ROD licensee’s business interests.

RESPONSE: The proposed regulations have been revised as a result of this comment.



COMMENT: Commenters asked if language which prohibited a ROND from holding an interest in a registered organization would prohibit a ROND from operating its existing medical cannabis dispensing sites.

RESPONSE: The proposed regulations would not require a ROND cease operations of its existing medical cannabis dispensing sites. No changes to the proposed regulation were made as a result of this comment.

§ 123.16 Registered Organization Adult-Use Cultivator Processor Distributor Operations.

Note: Comments which refer to operational requirements which similarly pertain to both ROND (§ 123.16) and ROD licensees (§ 123.18) have been aggregated under this header when appropriate.

COMMENT: Commenters suggested changes to the frequency with which a ROND must submit its medical patient prioritization plan. Commenters suggested that this plan only be submitted on license renewal instead of every six months. Commenters asked if this plan was intended to be required for RONDs, since the proposed regulations did not authorize RONDs to operate an adult-use retail dispensary.

RESPONSE: RONDs are intended to maintain a medical patient prioritization plan. Both ROD and ROND licensees must devote adequate resources to their existing medical cannabis operations, and, thus, this plan is necessary for both licensees to maintain. The proposed regulations have been revised as a result of this comment to better clarify submission requirements related to this plan.

COMMENT: Commenters remarked on the limit placed on the amount of biomass a ROND or ROD could process if it had purchased cannabis or cannabis products from another licensee in that year. Commenters expressed concern that the proposed 55,000-pound limit would be difficult to implement for licensees and stated it was unclear exactly what transactions would trigger this limit. Commenters expressed concern that, if the ability of ROND and RODs to process cannabis were too greatly limited, that it would impact the adult-use cannabis market and retail dispensaries negatively. Commenters suggested that this rule was unnecessary because there were already limits in the proposed regulations that limit the influence of large licensees on the market.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters expressed concern that requirements placed on RODs and RONDs would be disregarded. Specifically, commenters remarked on the requirement that adult-use cannabis not be substituted for medical cannabis products and the requirement RONDs or RODs to attest to having products



in different concentrations and dosage forms available to certified patients at all times. Commenters felt these policies alone would be insufficient to ensure an adequate supply of medical cannabis for certified patients. Commenters stated that co-located dispensaries in other states with similar policies disregard these policies and, instead, choose to pay any fines associated with continued noncompliance. Commenters asked why adult-use products could not be substituted for medical cannabis ones in the event of a supply shortage and suggested that licensees be allowed to make this substitution.

RESPONSE: Applicable laws and regulation, including the proposed regulations, provide the Board and Office a number of tools beyond fines to address instances of noncompliance, including the ability to require a licensee submit and implement a corrective action plan. Medical cannabis products are manufactured under different conditions and with different standards than adult-use cannabis products and allowing this substitution to occur would not be appropriate as it may risk the health and safety of certified patients. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters expressed concern that it would be unfeasible to require board approval prior to a ROD or ROND building certain facilities. Commenters requested greater clarity on how this approval would impact construction projects underway at time of application for a ROD or ROND license.

RESPONSE: The requirement that these commenters are referring to would apply to construction or major renovations begun by a ROND or ROD and would not apply to construction or renovations begun by entities that these requirements do not apply to. No changes to the proposed regulation were made as a result of this comment.

§ 123.17 Registered Organization Adult-Use Cultivator Processor Distributor Retail Dispensary Ownership, Interests, Business Authorizations and Prohibitions.

Note: Comments which refer to requirements which similarly pertain to both ROND (§ 123.15) and ROD licensees (§ 123.17) have been aggregated under the § 123.15 header.

COMMENT: Commenters suggested removing language which would prohibit a ROD from holding an interest in certain businesses outside of New York State. Commenters questioned the Board's authority to implement such a policy and expressed serious concern that the proposed rule would make it unfeasible for existing registered organizations to become ROD licensees. Commenters remarked on clarifications made at a Cannabis Advisory Board meeting that this would not prohibit a ROD from being vertically integrated in another state and asked for additional clarification on how this would be implemented and the impacts on a ROs true parties of interest and passive investors.



RESPONSE: The proposed regulations have been revised as a result of this comment.

**§ 123.18 Registered Organization Adult-Use Cultivator Processor Distributor Retail
Dispensary Operations.**

Note: Comments which refer to requirements which similarly pertain to both ROND (§ 123.16) and ROD licensees (§ 123.18) have been aggregated under the § 123.16 header when appropriate.

COMMENT: Commenters remarked on the requirement that ROD dispensaries dedicate a minimum of 40% of available shelf-space for products cultivated and processed by licensees that are not RODs. Commenters requested additional clarity on what was meant by “40% of available shelf-space.” Commenters generally encouraged the spirit of this policy, and some commenters suggested the value be raised to 49%. Commenters suggested that RODs also be required to rotating or otherwise change the products on a regular basis to further promote competition in the market.

RESPONSE: The Office acknowledges this comment, however, no changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested removing language that would require a ROD locate certain co-located dispensing sites outside of certain counties.

RESPONSE: This requirement is necessary to ensure adequate spread of co-located dispensing sites. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters expressed concern that the proposed requirements for RODs to maintain certain numbers of medical cannabis products based on prior sales or meet an annual threshold set by the Board were inadequate. Commenters expressed concern that this requirement would be inadequate and would not allow the Board the flexibility it will need to quickly correct instances of inadequate medical cannabis supply. Commenters worried that patients would be required to wait “many months, up to just shy of a year,” if a specific type of medical cannabis product that they required was unavailable. Commenters suggested the proposed regulations be amended to allow the Board to set thresholds as often as necessary.

RESPONSE: The proposed regulations have been revised as a result of this comment to clarify that the requirement would pertain to the sales volume generated by the facility, regardless of whether it is the facility was a dispensing site or co-located facility at the time the sales volume was generated.



COMMENT: Commenters that represent registered organizations stated that the proposed regulations should not require a ROD to offer seeds and immature plants for medical home cultivation at its medical cannabis dispensing sites. Commenters stated that participation in the home cultivation program is optional.

RESPONSE: Participation in the home cultivation program is optional to maintain a registration as a registered organization. However, the proposed regulations require RODs submit a medical patient prioritization plan as a requirement of the ROD license, which has separate and distinct requirements from those of maintaining a registration as a registered organization. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested the proposed regulations be amended to allow RODs to sell adult-use cannabis at an earlier date. Commenters expressed significant dissatisfaction with this date, and they expressed concern that delaying the ability of ROD licensees to sell adult-use cannabis would have serious impacts on the cannabis industry, including its workforce and the tax revenue generated by the industry. Commenters believed this requirement was too onerous when considered alongside the other restrictions on undue influence that exist elsewhere in the proposed regulations.

RESPONSE: The proposed regulations have been revised as a result of this comment.

§ 123.19 Delivery Operation.

COMMENT: Commenters requested the delivery license allow the licensee to operate independently of brick-and-mortar dispensaries. Commenters stated that rising rents and other factors would mean that some small businesses—particularly those owned by low-income individuals—would be barred from participating as delivery licensees if this license requires owning a retail store front. Commenters urged the Board to consider the delivery license as a license with a lower cost of entry than the retail dispensary license.

RESPONSE: The Board intends for the delivery license to be a viable option for businesses that do not have the capital to operate a brick-and-mortar dispensary. The proposed regulations have been revised to include provisions related to delivery operations.

Part 124 – General Business Requirements and Prohibitions

124.1 Undue Influence and Incentives



Office of Cannabis Management

COMMENT: Some commenters requested that any cultivator, processor or distributor should be allowed to provide product samples to a retail dispensary for purposes of negotiating a sale, regardless of whether that retailer already carries that brand, type or form of cannabis product.

RESPONSE: Changes were made the proposed regulations were as a result of this comment.

COMMENT: A commenter remarked that delivery licensees be added to the list of licensees able to receive samples as part of a negotiation.

RESPONSE: The Office acknowledges these comments; however, no changes were made to the proposed regulation.

COMMENT: Commenters suggested that licensees be permitted to provide a nominal amount of “advertising specialties,” such as branded or unbranded paraphernalia to cannabis consumers over the age of 21, matching the State Liquor Authority policy.

RESPONSE: Recognizing the need for smaller producers to have the ability to build brand awareness, the Office has amended the regulations to align with the State Liquor Authority and will allow for each brand to provide up to \$200 per year of advertising specialties to each retail dispensary.

COMMENT: Commenters asked that licensees be allowed to provide loyalty programs to consumers and other licensees.

RESPONSE: The requirements for how licensees market and advertise their products to consumers are set in the packaging, labeling, marketing, and advertising regulations, which are distinct from these proposed regulations. As the packaging, labeling, marketing, and advertising regulations have already been adopted, this comment is out of scope. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested that distributors be permitted to provide wholesale discounts to retailers, based on volume or business need.

RESPONSE: The regulations have been amended to clarify that distributors are permitted to provide discounts to retailer dispensaries, provided that the discounts are offered uniformly to all potential purchasers.

COMMENT: Commenters cautioned that prohibiting distributors from discriminating against a retail dispensary licensee willing to pay the desired terms for a cannabis product will disrupt business operations, especially during a time of hardship.



Office of Cannabis Management

RESPONSE: The Office acknowledges this comment, and notes that the proposed regulations do not prohibit a distributor from accepting or declining a retail dispensary licensee’s offer to buy a portion, or all, the cannabis products offered for sale by that distributor. No changes to the regulations have been made due to this comment.

COMMENT: Commenters asked that the Office establish regulatory safe harbors, modeled after the same policies adopted by the New York State Liquor Authority (SLA), allowing for those licensees authorized for activities as cultivators, processors or distributors to provide gifts and services to licensees in the retail tier.

RESPONSE: The Office has made changes to the proposed regulations to align them with the SLA standards.

COMMENT: Commenters pointed out that it is contradictory to allow licensees to give away or distribute promotional non-infused cannabis product samples of edible or topical products when licensees are prohibited from distributing branded material to consumers.

RESPONSE: The proposed regulations were revised as a result of this comment.

COMMENT: Commenters asked that licensees be required to use a delivery/pay system to ensure compliance with the regulations.

RESPONSE: The Office acknowledges this comment but notes that seed-to-sale system is sufficient to enforce these regulations. No changes were made to the proposed regulations as a result of this comment.

124.2 Terms of Sale.

COMMENT: Commenters had conflicting views on the length of time over which retail dispensaries should be allowed to secure credit on purchases of cannabis products, with some asking the Office to strike the time restriction entirely, and the majority asking for an allowance of between 30 and 90 days. Commenters also noted that the regulations do not align with current retail dispensary guidance, which allow retail dispensaries the ability to negotiate payment terms of up to 90 days.

RESPONSE: The Office acknowledges the complexities associated with regulating the terms of contracts, but also recognizes the potential risks with allowing uncapped payment terms. As a result, the proposed regulations have been revised to give the Board the ability to change or suspend that limit.



COMMENT: A commenter asked the Office to require all contracts between licensees be written.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters believe the Office is meddling in the affairs of private businesses with several of the provisions in this section.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the proposed regulations as a result of this comment.

124.3 Goods and Services Agreements.

COMMENT: Commenters asked that exempt service providers be exempted from rules related to becoming a true party of interest as a result of exceeding the true party of interest compensation thresholds, as, by definition, exempt services do not confer undue influence.

RESPONSE: The true party of interest compensation thresholds exist to establish a safe harbor under which a goods and services provider can stay, absent any other elements of control, that any payments under the threshold received from a licensee for services provided do not confer control. However, any person, service provider or otherwise, can gain a controlling interest by receiving such a large percentage of a licensee's revenue or profit that in excess of these limits, the Office presumes that the threshold for a financial or controlling interest has been breached. Therefore, no changes to the regulations have been made.

COMMENT: Commenters asked that true party of interest compensation thresholds be raised from the greater of 10% of revenue, 50% of net profit and \$100,000 to the greater of 33% of revenue, 66% of net profit and \$250,000.

RESPONSE: The proposed regulations were revised as a result of these comments, to increase the \$100,000 limit to \$250,000.

COMMENT: Commenters asked that payments received as part of a loan agreement, inclusive of interest and late fees, be excluded from the true party of interest compensation calculation, cautioning that if this change is not made, licensees will have trouble getting financing.

RESPONSE: The Office acknowledges this comment, however, no changes have been made to the proposed regulations as a result of this comment.



Office of Cannabis Management

COMMENT: Commenters asked that “flat-fee agreements” include compensation agreements base on an hourly rate.

RESPONSE: A flat-fee agreement refers to any agreement that is not tied to the underlying performance of a business. As a result, an hourly rate would be considered a flat fee. No changes have been made to the regulations as a result of this comment.

COMMENT: Numerous commenters expressed support for provisions restricting management services agreements, specifically the provision requiring that all management services agreements shall state that the services provider, its owners, principals, and staff involved in professional services or consulting on behalf of the cannabis business, are supervised and compensated by the licensee.

RESPONSE: The Office acknowledges these comments, however, no changes were made to the proposed regulations as a result.

COMMENT: A commenter asked that the term “net profit” be defined to mean GAAP net profit.

RESPONSE: The proposed regulations was revised as a result of this comment.

124.4 Agreements Creating Financial or Controlling Interest.

COMMENT: Commenters asked that the Office remove the language prohibiting a financing agreement to impose a penalty that requires the surrender of personal assets of the licensee for non-compliance with the agreement, arguing that it will be impossible for many businesses to obtain financing without personal guarantees.

RESPONSE: The proposed regulations have been amended to remove this prohibition.

124.5 Contracting Limitations.

COMMENT: Commenters cautioned that prohibiting licensees from using contracted labor for licensed activities will disproportionately impact outdoor farmers, who would be forced to hire full-time employees to perform tasks over just a few months.

RESPONSE: Changes were made to the proposed regulations to clarify certain activities are permitted to be contract out for cannabis licensees but retained the prohibition on using third-party entity for plant touching licensed activities.



COMMENT: Commenters asked that licensees be permitted to use temporary labor for up to six months for training purposes.

RESPONSE: The Office acknowledges these comments, however, no changes have been made to the regulations as a result.

COMMENT: Several commenters expressed support for the provisions limiting licensees from using contracted labor for licensed activities.

RESPONSE: The Office acknowledges these comments, however, no changes have been made to the regulations as a result of these comments.

Part 125 – General Operating Requirements and Prohibitions

§ 125.1 Site, Operating, and Environmental Plans.

COMMENT: Commenters stated that the energy and environmental plan was confusing and difficult to follow. Commenters requested greater clarity on precisely what the requirements were and to which license types requirements' applied. Commenters asked if there were specific energy consumption thresholds a licensee must meet before relevant standards apply. Commenters expressed concern that the proposed requirements, particularly those pertaining to lighting, may be prohibitively expensive for small businesses or for small facilities.

RESPONSE: The proposed regulations have been revised as a result of this comment to better clarify the energy and environmental standards to which specific activities shall be held and the exact information which applicants and licensees may be requested to submit related to these standards.

COMMENT: Commenters suggested that the Office set standards to designate businesses that are “beyond compliance” in terms of environmentally friendly business practices.

RESPONSE: The Office may take this comment into consideration when developing future “special branding materials,” as such term is defined in Part 128. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters asked for clarification on the phrasing “not including composting areas” within the description of the site plan. Commenters asked if this meant that compost did not need to be secured or if composting areas did not need to be included in the site plan.



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RESPONSE: The proposed regulations require a site plan clearly delineate any on-site composting area and secure cannabis waste storage areas. The parenthetical quoted by this commenter is intended to clarify that cannabis waste that is required to be secured could not be kept in a compost pile. As stated in section 125.10 of the proposed regulations, only certain types of cannabis waste are required to be secured prior to being rendered unusable, and cannabis waste that has been rendered unusable is not required to be secure. The proposed regulations have been revised as a result of this comment to remove the parenthetical.

COMMENT: Commenters suggested the regulations be amended to require that outdoor signs be on a licensee's site plan.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters suggested the regulations be amended to require a licensee open and maintain a bank account, report all accounts to the Office, and that the regulations require a licensee use their bank account(s) in certain ways, like making all payments to other licensees electronically instead of through cash.

RESPONSE: The proposed regulations require a licensee develop procedures to safely handle cash. Because there are several practical difficulties regarding banking for cannabis businesses, this comment's suggestions would not be practical to implement at this time. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested the proposed regulations require licensees be in compliance with ASHRAE standards instead of the standards in the proposed regulations.

RESPONSE: The Office acknowledges these comments, however, no changes have been made to the regulations as a result of these comments.

COMMENT: Commenters suggested that other state agencies review or approve the proposed regulations and future energy and environmental requirements. that the Board develop a group of "experienced cultivators and professionals" to educate stakeholders on energy efficient technologies.

RESPONSE: The proposed regulations have received feedback from many parties, including the state agencies represented on the Cannabis Advisory Board. The proposed regulations have received feedback from a number of experienced cultivators and professionals, and the Board will continue to incorporate feedback received into future policies. No changes have been made to the proposed regulations as a result of this comment.



COMMENT: Commenters suggested that the proposed regulations be amended to remove the requirement to use interval meters in every grow room. Commenters expressed concern that this would not capture useful data and would be logistically challenging to implement.

RESPONSE: The proposed regulations have been revised as a result of this comment to require only the number of interval meter(s) necessary to capture the energy usage of all grow rooms instead of one meter in each grow room.

COMMENT: Commenters believe it is unnecessary to require grower to track water conservation for indoor growers that recycle wastewater from air conditioners, dehumidifiers, or other equipment. Commenters suggested that this requirement be altered for these cultivators.

RESPONSE: Changes were made to the proposed regulations to clarify energy and environmental standards for water.

COMMENT: Commenters suggested that the term “sustainability” be defined to better clarify the goals which a licensee’s energy and environmental plan should focus upon. Commenters suggested the definition be connected to “the regulations related to reducing carbon footprint” and focus on factors like “resource optimization, waste reduction, energy efficiency, ecological conservation, and carbon reduction.”

RESPONSE: No changes to the proposed regulations were necessary as result of this comment.

COMMENT: Comments were received on the proposed Energy Use and Conservation Plan. Commenters stated that licensees would need additional guidance from the Office to engage in greenhouse gas accounting and that licensees may not have the technical expertise to determine a premises’ energy impact. Commenters did not understand precisely what technologies or goals this plan would be required to achieve and asked what license types would be required to submit this plan.

RESPONSE: Changes were made proposed regulations as a result of these comments.

COMMENT: Commenters stated that the proposed regulations incorrectly use the term “benchmarking” in regard to a licensee’s first annual energy report.

RESPONSE: Changes were made to the proposed regulations as a result of this comment.



COMMENT: Commenters stated that the proposed regulations had different lighting requirements than the adult-use conditional cultivator (AUCC) license and recommended that AUCC licensees be given a transition period.

RESPONSE: Changes were made to the proposed regulations as a result of this comment to clarify lighting standards.

COMMENT: Commenters suggested that the proposed regulations be amended to only require lighting equipment meet the minimum PPE standards identified in the proposed regulations and not also require lighting equipment be listed on an approved products list. Commenters believed PPE-based standards would enable easier compliance for growers.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters expressed concern that language in the proposed regulations which encouraged equipment that was “oriented towards a net zero emissions target” was too burdensome and technically complex for many cultivators to easily comply with. Commenters requested examples of transition plans that would be acceptable. Commenters stated that, because the Horticultural QPL only contains products with a PPE of 2.3 umol/j and greater, that the minimum PPE established by the proposed regulations would not actually be 1.9 umol/j.

RESPONSE: Changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the minimum PPE be raised to 2.4 umol/j because “many of the top” companies could already meet this threshold.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment

COMMENT: Commenters requested the proposed regulations be amended to change the requirement that the energy and environmental plan include proof a licensee has contact their local utility. Commenters understood it was important that licensees did not impact local energy grids, but felt the requirement was logistically unfeasible as written and made suggestions to change the requirement by either allowing alternative parties, like a landlord, to submit the notification instead of the licensee or requiring alternative parties, like an architect, to confirm the energy draw.

RESPONSE: The proposed regulations have been revised as a result of this comment.



COMMENT: Commenters expressed concern that implementing staggered peaks would be inefficient in mixed light settings. Commenters requested greater clarity around this requirement.

RESPONSE: The proposed regulations have been revised as a result of this comment.

COMMENT: Commenters stated that it would not be feasible to require cultivators participate in load shedding or other demand response programs. Commenters stated that requiring load shedding this would risk cannabis quality and yield for cultivators. Commenters suggested that “load shifting” programs may be more appropriate but acknowledged that these programs may not be available for all licensees.

RESPONSE: Changes were made to the proposed regulations as result of this comment to remove this requirement.

COMMENT: Commenters suggested that licensees be prohibited from purchasing energy offsets such as renewable energy credits or carbon credits as greenhouse gas emission reduction measures.

RESPONSE: The Office acknowledges this comment however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that licensees be required to conduct 50% of all transportation of cannabis products, by miles, in electric vehicles.

RESPONSE: No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on whether the requirement to mitigate the impact of carbon dioxide used in cultivation and production was referring to mitigating the amount of carbon dioxide a facility produces in the course of operations or mitigating the impact of carbon dioxide on a grow.

RESPONSE: Changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that programs that encourage renewable energy sources - such as tax credits, low-cost financing, sale of renewable energy credits - are extended to cannabis cultivators.

RESPONSE: No changes have been made to the proposed regulations as a result of this comment.

§ 125.2 Security and Storage of Cannabis.

COMMENT: Commenters suggested that the requirements for security systems “required for a nursery or microbusiness growing clones or seedlings” were too high considered the commenters’ anticipated business was very small.



RESPONSE: Many of the security requirements in the proposed regulations, such as requirements to use video cameras, will scale in cost based on facility size and will be less expensive for small licensees to implement. Additionally, licensees will not be required to implement requirements that do not pertain to activities they do not engage in. No changes have been made to the proposed regulations as a result of this comment.

COMMENT (NYPD): Commenters suggested additional security measures be required, such as: ensuring that everyone entering the establishment removes any face mask, at least temporarily, for purposes of identification; maintaining security camera records for at least 90 days instead of 60 days; capturing the identification that consumers provide as proof of age; requiring that customers do not loiter “after purchase[-ing]” at a dispensary; and requiring that video surveillance be stored on the cloud.

RESPONSE: The proposed regulations were developed with the tradeoffs between cost and benefit in mind. The proposed regulations require many security measures, and there is insufficient evidence to determine the proposed security measures would be worth the cost of the technology that licensees would need to obtain to implement them. The proposed regulations do not prohibit a licensee from implementing security measures above and beyond the minimum requirements, and the Board and Office encourage licensees to do so as they feel necessary. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern that requirements to have lights near cultivation areas would create light pollution and impact flowering. Commenters suggested that even allowing the required motion activated flood lights to face away from a canopy would be insufficient and requested that other motion-activated “security measures” be allowed instead.

RESPONSE: The proposed regulations were revised as a result of this comment.

COMMENT: Commenters noted that the requirement to have a fence of “at least eight feet” near cultivation areas during periods preceding harvest and during drying, curing, storing, or disposing of cannabis may conflict with New York City zoning rules which the commenters stated “would limit [a] fence” to eight feet.

RESPONSE: The proposed regulations would not conflict with a rule that limited fencing to eight feet, such as one described by these commenters, because the proposed regulations and described rule would both allow a fence of exactly eight feet.



COMMENT: Commenters asked for additional clarification on what a fence that used “similarly secure materials” to metal would be and asked if certain other materials, such as an earth-based HESCO barrier, would be sufficient for the fencing that is required near certain outdoor cultivation areas during periods preceding harvest and during drying, curing, storing, or disposing of cannabis.

RESPONSE: The proposed regulations allow this fencing to be made of “metal or another similarly secure material.” Whether the barrier in question would be sufficiently like metal would depend on the specifics of the barrier being used. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters recommended that employee badges not require an employee’s “legal name” because some individuals may use a name other than their legal name.

RESPONSE: The proposed regulations do not require an employee badge list the employees “legal name.” The Board and Office agree with commenters and believe commenters misinterpreted the requirement that the badge list the legal name of the business which is the licensee. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested the proposed regulations be changed to add “police officers and peace officers conducting inspections” to the list of persons in subparagraph 125.2(b)(6).

RESPONSE: In the event that a person is conducting an investigation in accordance with Cannabis Law and the proposed regulations, then that person would be an authorized to access the areas in question. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters asked if the proposed regulations would require video surveillance in areas where cannabis waste is processed.

RESPONSE: The proposed regulations require a licensee have video camera surveillance in all areas of all facilities operated by licensees where cannabis products are stored or handled. No changes to the proposed regulation were made as a result of this comment.

§ 125.3 Employee Requirements and Obligations.

COMMENT: Commenters suggested that the proposed regulations be altered to allow individuals between eighteen and 21 years of age to directly interact with customers in a retail dispensary.



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RESPONSE: Section 125 of the Cannabis Law would prohibit employees between eighteen and 21 years of age from having “direct interaction with customers” in a dispensary. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that licensees also be required to maintain documentation that employees possess the necessary education and training for the duties they will be assigned.

RESPONSE: The suggested change would create an undue administrative burden for licensees. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested changing “scope of their employment or position” to “within the scope and course of employment” in subsection 125.3(b) to better clarify what behavior the proposed regulations applied to.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment

§ 125.4 Responsible Vendor Training.

COMMENT: Commenters encouraged the Office to have greater oversight over the content and delivery of responsible vendor training. Some commenters suggested the Office train licensees directly and other commenters suggested the Office review and approve curriculum submitted by third parties to create an “approved list” of third-party training providers from which licensees must choose. Commenters suggested that certain types of business, such as companies incorporated in New York State or woman-owned businesses, be given preference if a licensee contracts with a third party for its employee training and education.

RESPONSE: No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters linked cannabis workforce training projects that were accessible for free and stated that, because training was available for free on specific topics, that these topics should not be required to be included in an employee training manual.

RESPONSE: The proposed regulations do not require that the entirety of the required training be provided by the same source. The proposed regulations would allow a licensee to compile training materials from multiple sources, so long as the final curriculum and materials meet the minimum core curriculum standards



outlined in the proposed regulations. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters asked for additional clarification on what security and safety-related topics must be included in the training manual described in the proposed regulations. Commenters stated that it was difficult to understand what should be included under headings like “privacy and confidentiality” and “security procedures” without additional information and requested clarification.

RESPONSE: Changes were made to the proposed regulations were revised as a result of this comment.

COMMENT: Commenters suggested that only licensees who cultivate or process be required include information on how cannabis is cultivated or processed in their training manual or for their workforce.

RESPONSE: To protect consumer health and safety and prevent the spread of false or misleading information, it is necessary for all individuals involved in the vending of cannabis products to possess knowledge of each step of a product’s lifecycle, from seed to sale. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters asked for additional clarification about the “core curriculum” mentioned in the Responsible Vendor Training section. Commenters asked if this curriculum was the list of topics that must be in the training manual or if it was different.

REPSONSE: The proposed regulations were revised as a result of this comment.

COMMENT: Commenters suggested that the employee training manual should be required to include a “report of injury and illness of persons under 21 years of age.” Commenters stated that this report should include injuries and illness due to improper storage and due to “dispensary illegal sale.”

RESPONSE: No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested removing the requirement in subparagraph 125.4(e)(4) that licensees identify ongoing training needs. Commenters stated that this was overkill and would be too rigid and would be unnecessary because the proposed regulations already require specific training requirements and that employees sign and date to completing trainings.



RESPONSE: It is necessary to protect public health and safety for licensees to continue to train their workforce in the safe vending of cannabis products. The proposed regulations have been revised as a result of this comment to better clarify ongoing training requirements.

COMMENT: Commenters asked if the Office would be verifying the policies and procedures in a licensee’s employee training manual, such as those for waste disposal, comply with applicable laws and regulations.

RESPONSE: It is a licensee’s responsibility to develop their own policies and procedures. The Office will continue to make resources available to licensees to assist in developing their own policies and procedures but does not have the staffing capacity to pre-approve employee training manuals for all licensees. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the requirement that licensees “ensure all staff has demonstrated capability in the activities for which they are responsible” be removed. Commenters expressed concern that this requirement would be used to facilitate internal bias or preclude certain individuals from employment and stated that the other requirements related to training and education would be sufficient to ensure that licensee’s staff were qualified.

RESPONSE: Training and education are one way in which an individual could substantiate that they have demonstrated capability in the activities for which they are responsible. No changes to the proposed regulations were made as a result of this comment.

§ 125.5 Worker Health and Safety Standards.

COMMENT: Commenters suggested that the proposed regulations explicitly state that workers compensation insurance is required “when there are more than XX employees.”

RESPONSE: The proposed regulations require licensees comply with all applicable federal, state, and local laws and regulations related to worker training, safety, health, and pay, which would include a licensee’s compliance with Workers Compensation Law as it applies to employers. No changes have been made to the proposed regulations as a result of this comment.

§ 125.6 Sanitary Facility; Equipment and Handling Standards.

COMMENT: Commenters suggested that the proposed regulations specify that licensees may not apply pesticides without a license to do so.



RESPONSE: The proposed regulations were revised as a result of this comment.

COMMENT: Commenters stated that “plumbing is under city and state laws.”

RESPONSE: No changes have been made to the proposed regulations as a result of this comment.

§ 125.7 Inventory and Tracking.

COMMENT: Commenters stated that the inventory tracking requirements would be too costly to implement. Commenters stated that, unless technical or financial assistance was provided to retailers, that small businesses would not be able to comply with the requirement. Commenters suggested that the Office provide inventory tracking “software and hardware” for free to all social equity applicants.

RESPONSE: Inventory tracking is necessary to prevent against diversion, to facilitate product recalls, and to ensure compliance with relevant laws and regulations. The Office understands the cost associated with such technology and will continue to work with licensees to minimize the cost of acquiring relevant technology and to build technical expertise amongst licensees, particularly amongst social and economic equity licensees. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters asked if licensees would be required to use a specific brand of inventory tracking system or if licensees were permitted to use any inventory tracking system that met the requirements and was “capable of integrating with the Office’s seed-to-sale inventory system.”

RESPONSE: The proposed regulations require licensees track all physical inventory of cannabis in an electronic real-time inventory tracking system as determined by the Office. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested that the proposed regulations be altered so as not to require a processor enter “additives or ingredients used” into their inventory tracking system. Commenters stated that this information may result in trade secrets being released to the public if an inventory tracking system is hacked.

RESPONSE: It is necessary to require licensees report the ingredients used in cannabis products to ensure that products do not risk public health and safety. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters remarked on the requirement in subsection 125.7(a)(4) which would require a licensee “physically tag or label” various things. Commenters asked if this requirement meant each



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individual plant or thing needed to be tagged or labeled and pointed out that other areas of the proposed regulations allowed for certain things, like immature cannabis plants, to be tagged as a group and not individually.

RESPONSE: The requirement to physically tag or label would allow for the items in question to be tagged or labeled in a manner compliant with the regulations so long as the tag or label matched the corresponding identifier in the licensee's inventory tracking system. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters stated that some scales used in the cannabis industry may not be approved by the Department of Agriculture and Markets and suggested the proposed regulations be amended to allow the Office to certify additional scales.

RESPONSE: The Office would not have the authority to approve scales in this manner and will continue to work with the Department of Agriculture and Markets to ensure that the list of scales approved for commercial use fits the needs of the cannabis industry. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters asked how quickly activities were required to be entered into the inventory tracking system after they occurred.

RESPONSE: This will differ based on the activity or information being entered. The proposed regulations require certain activities be recorded in a licensee's inventory tracking system within a certain time period of the activity occurring. The proposed regulations also require certain information be maintained in "real-time" in the inventory tracking system. A licensee must comply with the standard that applies to the activity or information being entered. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested that licensee should not be required to record the wet weight of each harvested plant in their inventory tracking system. Commenters stated that similar requirements in California had been removed. Commenters suggested that either the wet weight of the harvest batch or the dry weight of the harvest batch, after bucking, be required instead.

RESPONSE: Changes were made to the proposed regulations were revised as a result of this comment.

COMMENT: Commenters suggested that the proposed regulations allow a licensee to transfer cannabis product with the Office's permission in the event of loss of access to the licensee's inventory tracking



system. Commenters stated that there may be instances in which more than one licensee loses access to the inventory tracking system that could make this necessary.

RESPONSE: Changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated that the requirement for an employee signature to be included in inventory audit records would require licensees to have a touch screen that was capable of entering the signature into the inventory tracking system. Commenters suggested that the proposed regulations be clarified to specify that a digital signature is permissible.

RESPONSE: Changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated that the proposed regulations handled inventory discrepancies unrealistically. Commenters stated that it would be too much of a burden to notify the Office in the event of minor discrepancies and that such discrepancies (such as a single cannabis product missing) are the result of human error and not fraud or diversion and do not need to trigger the same reporting to the Office as a major discrepancy. Similarly, commenters suggested that when the Office must be made aware of an inventory discrepancy that a licensee be given 48 hours to notify the Office instead of the 24 hours allotted in the proposed regulations.

RESPONSE: Changes were made to the proposed regulations as a result of this comment.

§ 125.8 Quarantine, Remediation and Recalls.

COMMENT: Commenters asked whether the proposed regulations would require a licensee’s written procedures for recalling a cannabis product to include specific notification to the public, such as an ad in the newspaper.

RESPONSE: The proposed regulations require that a licensee’s written procedures for recalling a cannabis product include instructions for how individuals can return or destroy the product, but the proposed regulations only require a licensee notify its supply and distribution chain and do not require a certain level of notification to the public. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters asked what it means for a licensee to hold product(s) “in quarantine”

RESPONSE: The commonly accepted definition of “quarantine” is being used. No changes have been made to the proposed regulations as a result of this comment.



COMMENT: Commenters suggested that licensees should be subject to an administrative hearing, fines, or closure if multiple expired products are found at a licensee.

RESPONSE: The Office may take action for any violations or instances of noncompliance, and any enforcement actions will vary depending on the specifics of the situation and the licensee's corrective action. No changes have been made to the proposed regulations as a result of this comment.

§ 125.9 Transport of Cannabis and Cannabis Products.

COMMENT: Commenters stated that it would be wasteful to require paper copies of certificate of analysis, invoices, and manifests to be included in the transport of cannabis products. Commenters suggested that a licensee be allowed to digitally transfer the certificates of analysis for cannabis products that are being transported and to allow distributors to utilize digital copies of invoices and manifests that they can retrieve and access electronically via phones, tablets, and other digital devices.

RESPONSE: The proposed regulations were revised as a result of this comment.

COMMENT: Commenters suggested that transport requirements differ for certain products, such as seeds, seedlings, or clones.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that individuals between eighteen and 21 years of age be allowed to transport cannabis products.

RESPONSE: The Office acknowledges this comment, however, no changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that licensees be allowed to use vehicles that are leased by the licensee or owned by other individuals to be used in the transport of cannabis products.

RESPONSE: Section 126 of the Cannabis Law would prevent a licensee from transporting cannabis products in a vehicle that is not operated by a person authorized to do so by the Board. No changes have been made to the proposed regulations as a result of this comment.



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COMMENT: Commenters suggested that vehicles used in transport be allowed to have imagery or branding. Some commenters stated that other laws and regulations would require a licensee to put their name on the vehicle, which could make the proposed regulations unfeasible.

RESPONSE: The proposed regulations have been amended as a result of this comment to allow for markings required by law or regulation that would indicate cannabis or cannabis products are being transported.

COMMENT: Commenters suggested that unmanned transport, such as drones, should be permissible way to transport cannabis products for delivery to consumers.

RESPONSE: There is not a desire to permit unmanned transport of cannabis products at this time. No changes have been made to the regulations as a result of this comment.

COMMENT: Commenters stated that it may be unrealistic to require a licensee submit a shipping manifest to the Office prior to transport. Commenters also stated that this would not allow for transport in the event that there was a loss of access to the inventory tracking system and suggested an alternative process be developed.

RESPONSE: The proposed regulations would not allow a licensee to transport any cannabis products if they have lost access to their inventory tracking system. The requirement to transmit a shipping manifest to the Office is necessary for the Office to monitor the transportation of cannabis and cannabis products. No changes to the proposed regulations were necessary as a result of this comment.

COMMENT: Commenters suggested that the proposed regulations be changed to require an employee ID number on the shipping manifest instead of the employee's driver license number. Commenters stated that requiring the employee's driver license number may result in this personal information being compromised because the shipping manifest is transferred to other licensees and authorized parties.

RESPONSE: No changes have been made to the regulations as a result of this comment.

COMMENT: Commenters expressed concern that the language in subsections 125.9(g)(4) and (5) would not allow for human error or unexpected circumstances.

RESPONSE: Changes were made to the proposed regulations were made as a result of this comment.

COMMENT: Commenters suggested that the regulations allow security personnel to be present in vehicles while cannabis, cannabis products, and invoices containing sensitive and private information are being



transported and, commenters are concerned about transport security and safety measures and how distributors should address the potential risks.

RESPONSE: The proposed regulations require that a licensee or a licensee’s authorized employee conduct transport but would not preclude a licensee or their authorized employee from permitting security personnel into the vehicle as part of conducting transport.

§ 125.10 Management of Cannabis and Other Waste.

COMMENT: Commenters stated that the proposed regulations do not properly account for cannabis waste that may contain lithium-ion batteries.

RESPONSE: Changes were made to the proposed regulation as a result of this comment to further clarify disposal of cannabis products that contain batteries.

COMMENT: Commenters suggested that licensees should be required to incinerate cannabis waste because it is the most cost-effective way to dispose of waste.

RESPONSE: The proposed regulations set requirements for a licensee’s management of waste and allow licensees to dispose of waste in a variety of manners as approved by the New York State Department of Environmental Conservation (NYSDEC), including incineration. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated that the proposed regulations had too extensive requirements for waste handling and disposal. Commenters suggested that the Board “work with the NYSDEC to clarify its requirements pertinent to cannabis.”

RESPONSE: The proposed regulations, including rules regarding waste management, have been reviewed by a number of state agencies, including the NYSDEC. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated that they operate cannabis waste management companies in other states and asked what the “rules for cannabis waste management” were.

RESPONSE: The proposed regulations include rules pertaining to cannabis waste management. No changes have been made to the proposed regulations as a result of this comment.



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COMMENT: Commenters stated that the proposed requirement to render cannabis waste unusable by mixing it with at least 50% non-cannabis waste would be too labor intensive to be worth the effort and would make it difficult for a licensee to “achieve circularity in operations.”

RESPONSE: It is unclear how commenters define “circularity”, but the proposed regulations do not mandate a specific material be mixed with the cannabis waste and only require that licensees dispose of waste in a manner that complies with existing law. The requirement to render waste unusable prior to disposal does not require a licensee render their own waste unusable and would allow licensees to perform this service for other licensees in a manner that complies with Part 124 of the proposed regulations.

COMMENT: Commenters suggested that the requirement for waste to be weighed, recorded, and entered into the inventory tracking system both “prior to, and after, mixing and disposal” be changed. Commenters stated that it was unnecessary to weigh waste after mixing and disposal and that requiring this may increase costs and require licensees to have two separate weighing areas and two separate scales. Commenters asked how they could weigh waste after it had already been disposed.

RESPONSE: Changes were made to the proposed regulations have been amended as a result of this comment to remove the requirement for waste to be weighed after mixing and disposal.

COMMENT: Commenters suggested that all non-contaminated cannabis waste should be composted and stated that the proposed regulations should prohibit all licensees from landfilling or combusting cannabis waste, instead of only licensees who produce more than half a ton of non-contaminated waste and are within 25 miles of an organic recycling facility.

RESPONSE: While the proposed regulations encourage sustainable practices in all licensee operations, there may be financial or logistical challenges which make it challenging for a licensee to dispose of non-contaminated waste in methods other than landfill or combustion. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the proposed regulations distinguish between different types of contaminated waste, because some contaminated waste may be acceptable to “use downstream in other products.”

RESPONSE: The proposed regulations do not prohibit a licensee from using any cannabis waste that is not required to be rendered unusable, including contaminated waste, as an input by the licensee or a third party in the manufacture of other products. No changes have been made to the proposed regulations as a result of this comment.



COMMENT: Commenters stated that licensees other than those who produce more than half a ton of non-contaminated waste and are within 25 miles of an organic recycling facility should be allowed to use “sustainable methods” to dispose of their cannabis waste. Commenters asked how licensees would determine if, and when, this requirement applied to them, because they could generate more than half ton of waste in one week but not dispose of it until the next and requested additional clarification. Additionally, commenters suggested that licensees be given an opportunity not to comply with this requirement if they could justify why compliance is infeasible.

RESPONSE: The proposed regulations do not limit composting or other sustainable waste disposal strategies only to certain licensees and the Board and Office encourage all licensees to dispose of waste in the most sustainable manner possible. The proposed regulations intend to set additional requirements related to disposal only for persons who generate large amounts of cannabis waste and are near composting facilities. Changes were made to the proposed regulations as a result of this comment to better clarify the licensees to which these requirements pertain.

§ 125.11 Inspections and Audits.

COMMENT: Commenters suggested that corrective action plans be used instead of fines where possible. Commenters suggested that fines could be absorbed by large businesses but that corrective action plans would be more successful in driving compliance.

RESPONSE: The proposed regulations would allow for use of both corrective action plans and fines to be used in instances of noncompliance, and the proposed regulations include a requirement that a licensee submit a written plan of correction if deficiencies are identified during an inspection. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that this section explicit state that records indicated the source of cannabis product are subject to inspections and audits.

RESPONSE: The proposed regulations subject all records to inspection, including the licensee’s inventory tracking system. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that, if a corrective action plan is generated based on an inspection completed by an entity other than the Office, that the entity that completed the inspection also receive an “opportunity to weigh in” on the plan.



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RESPONSE: The Office communicates with other regulatory and enforcement agencies as necessary to ensure licensee compliance with the Cannabis Law and other applicable laws and regulations and will continue to do this as appropriate. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested the proposed regulations be amended to require the Office provide proof of their credentials to a licensee prior to an inspection. Commenters stated that other states have established a hotline that licensees may use to verify the authenticity of an inspection and suggested this be implemented in New York.

RESPONSE: The Office communicates with licensees regarding required inspections and will take this comment into consideration in future communications to licensees regarding inspections. Changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the proposed regulations clarify the frequency of inspections and define the term “law enforcement officer”. Commenters expressed concern that if limitations were not placed on the frequency with which inspections occurred could overwhelm licensees or be used to target certain businesses.

RESPONSES: Changes were made to the proposed regulations as a result of this comment to conform with Section 85 of Cannabis Law and the term “law enforcement office” has been changed to “police officer.” Additionally, the proposed regulations have been amended as a result of this comment to clarify that the authorization extends to police officers acting with cause or in accordance with an active investigation of a crime.

COMMENT: Commenters that were government agencies which determine compliance with applicable local building/fire/health/safety codes expressed concern that the proposed regulations would require the Office make determinations regarding codes which these agencies are authorized to make determinations regarding. Commenters suggested the proposed rules be amended to ensure that if such agencies identified immediately hazardous violations, that the Office would not prevent them from making that determination.

RESPONSE: Changes were made to the proposed regulations have been amended as a result of this comment.

§ 125.12 General Record Keeping Requirements.



COMMENT: Commenters recommended that records indicating the source of cannabis products be specifically mentioned in this section.

RESPONSE: The proposed regulations require licensees' records account for all activities of the licensee. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated that generally acceptable accounting principles refer to financial reporting and not to financial recordkeeping.

RESPONSE: Changes were made to the proposed regulations as a result of this comment to clarify that the recordkeeping requirements apply to all financial records, regardless of whether or not they are reports generated in accordance with generally acceptable accounting principles.

§ 125.13 Processing Samples for Internal Quality Control.

COMMENT: Commenters suggested that the proposed regulations be amended to allow processing samples to be provided to other entities, such as the general public for product research or to retail dispensaries to promote distribution of the processor's product.

RESPONSE: The proposed regulations would already permit certain licensees to provide free samples of cannabis products to negotiate a sale to a retail dispensary or on-site consumption premises that does not currently carry such product. The proposed regulations have been amended as a result of this comment to add that nursery, cultivator, and processor licensees may also provide samples of cannabis products to negotiate a sale.

COMMENT: Commenters requested clarification on whether processing samples could be concentrates.

RESPONSE: Changes have been made to the proposed regulations to clarify that samples may only be cannabis or cannabis flower products at this time.