

NEW YORK PROPOSES ADULT-USE RULES

The New York Cannabis Control Board (“CCB”) held a momentous [meeting](#) on November 21, 2022 wherein it continued to issue more conditional cultivation, processing, and dispensing licenses, but, perhaps more importantly, proposed for issuance the first set of adult-use cannabis regulations that will govern all of the non-conditional licenses issued to date.

New York, both through the CCB and the Office of Cannabis Management (“OCM”), has created a marketplace that is certainly not free of complexity. Indeed, CCB had initially issued hundreds of cultivation licenses without any regulatory guidance, only to issue [written guidance](#) (not formally promulgated regulations), halfway through the cultivation season that included strict rules regarding cross-ownership and lending opportunities for those with direct and indirect interests in licenses, i.e., what New York refers to as true parties of interest. The same can be said for the Conditional Adult-Use Retail Dispensary (“CAURD”) application process (with 36 CAURD applicants receiving approval at the 11/21/22 meeting), which, despite having [regulations](#) formally developed by OCM and adopted by the CCB, still oftentimes saw drastic changes to guidance issued by OCM related to material aspects of the application. For instance, *after* the application period for CAURD applicants closed, OCM issued *renewed* [guidance](#) identifying, among other things, that no prospective owner or TPI of a CAURD applicant can hold an interest in any cultivation/processing license *anywhere* in the world (including outside of New York state). In short, New York’s rules are complicated, winding, at times contradictory, and complex.

We provide the below referenced summary and preceding snippet of the New York Adult-Use Experience to identify the importance of not only reading the regulations, but understanding those rules in light of the ever shifting landscape of related OCM guidance that at times modifies, limits, and/or expands the information contained within the rules.

The biggest takeaways from the proposed rules are as follows:

1. **Registered Organizations (“ROs”), i.e., the ten (10) medical vertically integrated operators, have either a delayed or impossible path to adult-use retail.**
 - a. The ROs route to adult-use conversion goes through two paths: (1) RO with no Dispensaries (“ROND”); or (2) ROs with dispensaries (“ROD”).
 - b. RODs are prohibited from engaging in any adult-use sales until three (3) years after the first recreational sale occurs in New York (which has yet to occur).
 - c. Another regulatory provision identifies that where the ownership of an RO holds a non-retail license *anywhere*, including outside of New York state, they are prohibited from even applying to operate as a ROD.
2. **The application process, in contrast with the conditional adult-use cultivation and conditional adult-use processing rounds that constituted relatively lower bars to entry, will be competitive in one form or another.**
 - a. The rules identify that OCM may use application evaluation mechanisms including scoring, compliance, qualified lotteries, and a randomized selection process, or any combination thereof.
 - b. The rules discuss *scored* narratives in the form of community impact and energy and environmental plans that contain robust regulatory criteria, i.e., a process designed to create separation between those that present creative and effective plans and those that do not.
 - c. The rules discuss not only priority, but even instances of *extra* priority, afforded to groups whose ownership are either majority comprised and/or entirely comprised of groups meeting the social equity definitions identified under MRTA and/or the recently promulgated regulations.
 - d. The rules *require* higher standards for site control, i.e., information on landlords, architectural drawings showing the interior or exterior of the premises, floor plans, statement of compliance with local codes, municipal notice, a copy of the certificate of occupancy, and lease/deeds/rental agreements/option contracts.

3. Site Selection and Municipal Approval are Critical.

- a. While MRTA identified that municipalities may opt-in/opt-out of retail and on-site consumption, the question remained what additional municipal oversight would apply to the licensing process.
- b. The proposed regulations preempt municipalities from imposing certain taxes and fees (or in other instances, fees out of whack with state liquor authority rules).
- c. The rules identify distance requirements *between* licenses, i.e., in a city, town, or village having a population of 20,000 or more, no less than 1,000 feet from another license of the same type; or, in a village of 20,000 or less, no less than 2,000 feet from the premises of a license of the same type.
- d. The rules identify mandatory distances from other sensitive uses, including:
 - i. On the same road and within 500 feet between a retailer and school grounds.
 - ii. On the same road and within 200 feet between a retailer and house of worship.
 - iii. On the same road and within 500 feet from a retailer and a community facility.
- e. Municipalities may adopt reasonable time, place, and manner regulations, provided such rules do not make the operation of retailers or on-site consumption sites unreasonably impracticable.
- f. Applicants must notify municipalities of their intention to file an application with OCM, and municipalities may express an opinion either for or against that application.

Regulations Addressing Licenses:

Overview of License Types

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

Term/Transferability/Change of Location

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

Rights and Limitations by License Type

- **Nursery**
 - Rights
 - A nursery may hold only 1 nursery license but may cultivate at multiple premises. A nursery’s true parties in interest are not

restricted in the number of nursery licenses they can have an interest in. § 123.1(d).

- A nursery may produce and sell clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, and cannabis seed only to a licensed nursery, cultivator, cooperative, microbusiness, ROND or ROD, retail dispensary, or registered organization in New York State. A nursery may propagate mature cannabis plant solely for production of those other products or for sale to other nurseries for the same purposes. § 123.1(b).

- Limitations

- A nursery shall sell seeds, seedlings, clones, and immature cannabis plants, or cannabis plants in the vegetative stage under 2-feet tall. § 123.2(a)(1).
- A nursery shall use plants in a flowering stage only for seed production and must destroy or compost plants after such use. § 123.2(a)(2).
- A nursery may not sell cannabis plants in the flowering stage. § 123.2(b)(1).
- A nursery may not cultivate cannabis in a canopy area larger than provided under § 120.3. § 123.2(b)(2).
 - Outdoor nursery: up to 100,000 square feet
 - Mixed-light nursery: up to 10,000 square feet
 - Indoor nursery: up to 10,000 square feet
- Nurseries may not sell or transfer any cannabis, cannabis seeds, or immature cannabis plants to any consumer. § 123.2(b)(3).
- A nursery is prohibited from holding a retail dispensary, on-site consumption, or delivery license, but a nursery may also hold a cultivator, cooperative, microbusiness, registered organization, ROND, or ROD license. § 123.1(a).

- **Cultivator**

- Rights

- There are four different license types for cultivation:
 - Outdoor;
 - Mixed light;
 - Combination of outdoor with mixed light;
 - Indoor.
- A cultivator may only have 1 cultivator license which will authorize the cultivator to cultivate within a specified type and canopy tier. § 120.3(b)(1).
- A cultivator may:

- acquire, possess, cultivate, trim, harvest, dry, and cure cannabis;
 - sell cannabis only to an entity licensed to process cannabis (e.g., processor, microbusiness, cooperative, ROD, ROND, or cannabis research licensee);
 - send cannabis to a processor for processing without relinquishing ownership of that cannabis; and
 - if such cultivator also holds a processor license, may purchase cannabis from another cultivator for processing. § 123.3(a).
 - A cultivator may acquire cuttings, seedlings, seeds and clones from any licensed nursery. § 123.4(a).
 - A cultivator that has a processor license may apply for and obtain 1 distributor license. § 123.3(b).
 - A conditional cultivator licensee may transition to a full license in one of the following cultivator licensing tiers:
 - Tier 4 outdoor license; or
 - Tier 2 combination license. § 123.3(g).
 - A conditional cultivator shall be given priority in the review of its application for a full cultivator, processor, or distributor license. § 123.3(h).
- Limitations
- Canopy tiers for indoor, mixed-light, and outdoor cultivators (§ 120.3(b)(2)):
 - Tier I: up to 5,000 square feet
 - Tier II: 5,000 to 12,500 square feet
 - Tier III: 12,500 to 25,000 square feet
 - Tier IV: 25,000 to 50,000 square feet
 - Tier V: 50,000 to 100,000 square feet
 - Canopy tiers for cultivators authorized to cultivate outdoors with mixed light (§ 120.3(b)(3)):
 - Tier I Combination Cultivator: up to 5,000 square feet of outdoor and 2,500 square feet of mixed light
 - Tier II Combination Cultivator: 5,000 to 12,500 square feet of outdoor, and 2,500 to 6,250 square feet of mixed light
 - Tier III Combination Cultivator: 12,500 to 25,000 square feet of outdoor, and 6,250 to 12,500 square feet of mixed light
 - Tier IV Combination Cultivator: 25,000 to 50,000 square feet of outdoor, and 10,000 to 15,000 square feet of mixed light
 - Tier V Combination Cultivator: 50,000 to 100,000 square feet of outdoor, and 15,000 to 30,000 square feet of mixed light

- are in the shape of, or imprinted with the shape, either realistic or caricature, of a human being, animal, insect, or fruit, or is otherwise attractive to individuals under the age of 21; or
 - are in the form of an injectable, inhaler, suppository, transdermal formulations, or any other disallowed form, as determined by the Office. § 123.6(e).
 - In general, all cannabis products processed for retail sale as an orally ingested product must conform to the product potency limit of 10 mg total THC per serving, and 100 mg total THC per package, with the exception of tinctures, which shall conform to the product potency limit of 10 mg total THC per serving, and 1,000 mg total THC per package. § 123.6(f)(1).
- **Distributor**
 - Rights
 - A distributor may acquire, possess, distribute, and sell cannabis products. § 123.7(a).
 - A distributor may acquire cannabis products from any licensed processor or distributor, including a microbusiness, cooperative, ROD, or ROND. § 123.7(b).
 - A distributor may sell cannabis products to another licensed adult-use distributor, or to a retail dispensary, including a ROD or on-site consumption premises. § 123.7(c) (but see below for prohibition on selling cannabis products to a distributor holding a cultivation or processing license).
 - Limitations
 - A distributor may not sell cannabis products to a distributor that also holds a cultivation or processing license. § 123.7(c).
 - A distributor shall only transport cannabis products between adult-use cannabis licensees and between the licensed premises of an adult-use cannabis facility for purposes of distributing the cannabis products. § 123.8(a)(2).
- **Retail Dispensary**
 - Rights
 - A retail dispensary may acquire cannabis products from any licensed distributor of such products. § 123.9(a).
 - A retail dispensary may acquire seedlings and immature plants from any licensed nursery once adult-use home cultivation is authorized by the Board. § 123.9(b).

- A retail dispensary may possess, sell, and deliver cannabis products and cannabis paraphernalia. § 123.9(c).
- A retail dispensary may sell cannabis products and cannabis paraphernalia to cannabis consumers. § 123.9(d).
- A retail dispensary may operate an adjoining premises for the consumption of adult-use cannabis products sold by such retail dispensary pursuant to approval by the Board. § 123.9(e).
- A retail dispensary shall be a physical brick and mortar store in New York State to be authorized to sell cannabis products and related items by in-person sale, over the internet or via a digital application. § 123.10(a).
- A retail dispensary may operate a drive-thru service window and pre-order customer pick-up lanes with prior written approval from the Office and consistent with all applicable state and local laws, rules, regulations, and guidance. § 123.10(b).
- Limitations
 - No employee shall be the employee in charge of more than 1 retail dispensary at the same time. § 123.10(c)(1).
 - A retail dispensary may not acquire or record cannabis consumer personal information without consent, unless this information is typically acquired in a sales transaction, which can include the cannabis consumer's age. § 123.10(d)(5).
 - A retail dispensary shall dedicate a minimum of 40% of shelf-space available for cannabis products cultivated or processed by cultivators and processors that are not RODs for a period of five years from the first retail sale in New York. § 123.10(e)(2)(viii).
 - A retail dispensary shall comply with the distance requirements contained in § 119.4. § 123.10(g)(1).
 - House of worship: cannot be on same road and within 200 feet
 - School grounds: cannot be on same road and within 500 feet
 - Community facility: cannot be on same road (if municipality has enacted corresponding ordinance under § 119.2)
 - City, town, or village with population of 20,000 or more: cannot be within 1,000-foot radius of another premises holding a license of the same type
 - City, town, or village with population of 20,000 or less: cannot be within a 2,000-foot radius of another premises holding a license of the same type
 - A retail dispensary shall not (§ 123.10(g)):

- conduct or transact business at a retail dispensary under a name containing “drugs”, “medicines”, “drug store”, “apothecary”, “pharmacy”, or similar terms, or in any manner by advertisement, circular, poster, sign or otherwise describe or refer to the licensed premises, or describe the type of service or class of products sold by the retail dispensary, by the terms “drugs”, “medicine”, “drug store”, “apothecary”, or “pharmacy”;
- display cannabis products or cannabis paraphernalia in an area that is visible from the exterior of the physical structure of the retail dispensary;
- sell or otherwise dispense any cannabis product later than the product date of expiration or use by date marked on the label (except for the secure segregation and holding of such product for disposal);
- dispense or otherwise sell cannabis products from a vending machine or allow such a vending machine to be installed at the interior or exterior of the premises of the retail dispensary;
- abandon the licensed premises without surrendering the license to the Board and making appropriate arrangements for the disposal of cannabis products;
- sell cannabis products obtained through the use of, or accept a sale of cannabis products from any unlicensed business;
- provide cannabis samples to a cannabis consumer, other than to allow inspection of the product prior to purchase;
- allow employees under 21 years of age to have direct interaction with cannabis customers inside a licensed retail dispensary;
- engage in cannabis processing, manufacturing, or compounding at the retail dispensary;
- knowingly sell, deliver, or give away to a cannabis consumer:
 - any amount of cannabis product which they know would cause the cannabis consumer to be in violation of the cannabis law or possession limits;
 - any cannabis product, cannabis paraphernalia, or cannabis merchandise if the cannabis consumer is unable to produce valid proof of government-issued ID and age confirming that they are 21 years of age or older;

- cannabis products if, in the opinion of the retail dispensary employee based on the information available to them at that time, the cannabis consumer or the public would be placed at risk (e.g., the cannabis consumer engaging in daily transactions that exceed the legal possession limits or that create a risk of diversion);
 - food, beverage, or personal care item that is not a cannabis product;
 - any product that contains nicotine; and
 - alcohol;
- make recommendations to a cannabis consumer who is also a medical cannabis patient if the patient's dosing recommendation is "Per Pharmacist Consultation" and that patient presents their patient certification at the retail dispensary, without disclosing to the cannabis consumer that they are not a pharmacist;
- solicit or receive an order for, keep or expose for sale, or keep with intent to sell any cannabis product or cannabinoid hemp product to a cannabis consumer by means of any vehicle or wheeled frame used for transporting objects, for carrying goods and materials;
- place back into stock of any retail dispensary or re-dispense cannabis product which is returned by a cannabis consumer;
- sell any form or type of cannabis product not permitted by this Chapter;
- sell any cannabis product that has not passed quality assurance laboratory testing pursuant to Part 130;
- sell any cannabis product for which the required tax has not been paid;
- sell any cannabis product that does not meet the packaging and labeling requirements;
- advertise or market any cannabis or cannabis products not in compliance with Part 129;
- allow the consumption of any cannabis product by employees, individuals or cannabis consumers inside the premises of the retail dispensary, without prior approval from the Office;
- market its cannabis products through an online platform that is operated by a third-party; or

- fulfill any order referred to it by a third-party platform.
 - A retail dispensary shall provide consumer education materials to each consumer at the time of sale that include messages about safe consumption of cannabis products, public health, and other educational messages; consumer education materials may never make health claims regarding cannabis or cannabis products. § 123.10(i)(1)–(2).
 - **Microbusiness**
 - Rights
 - A microbusiness shall engage in cultivation and at least one of the following additional activities authorized by the Cannabis Law for a microbusiness: (1) processing, (2) distribution, or (3) retail sale. § 123.11(a).
 - If authorized through the application process, a microbusiness may:
 - sell cannabis to a processor;
 - sell cannabis products to a distributor;
 - sell cannabis products it has cultivated or processed to consumers;
 - sell cannabis products via delivery to consumers; and
 - send cannabis or cannabis products to a processor for processing without relinquishing ownership of that cannabis or cannabis product. § 123.11(b).
 - A microbusiness may have its retail dispensary premises in a location separate from the premises where it is cultivating or processing cannabis, provided that:
 - the retail dispensary complies with all other zoning and operational requirements for retail dispensary licensees;
 - for licensees in a city with over 1 million persons, the retail dispensary premises is located in the same county as the cultivation and if applicable processing premises; and
 - for licensees outside of a city with over 1 million persons, the retail dispensary premises is located within 25 miles of the cultivation and, if applicable, processing premise. § 123.12(a)(7).
 - A microbusiness may, pursuant to approval by the Board, be authorized for on-site use of adult-use cannabis products. § 123.12(b).
 - Limitations

- A microbusiness shall cultivate with 1 type of cultivation—outdoor, mixed light, or indoor—as approved in its application. § 123.12(a)(3).
 - Canopy tiers based on size of cultivation canopy and type of cultivation:
 - Indoor canopy: up to 3,500 square feet;
 - Mixed light canopy: up to 5,000 square feet;
 - Outdoor canopy: up to 10,000 square feet.
 - A microbusiness shall not purchase cannabis cultivated by another cultivator unless the microbusiness suffered a significant crop failure and received prior written approval of the Office. § 123.11(c).
 - If authorized to process biomass, a microbusiness shall process no more than 1,700 pounds of biomass per year, unless the biomass is cultivated solely by the microbusiness exclusively at its licensed premises. § 123.12(a)(4).
 - If authorized to distribute, a microbusiness shall distribute only their own cannabis products to retail dispensaries or on-site consumption sites. § 123.12(a)(5).
 - If authorized to conduct retail sales, a microbusiness shall sell only their own cannabis products to consumers. § 123.12(a)(6).
- **Cooperative**
 - Rights
 - An applicant seeking to qualify for a cooperative license shall be formed as a cannabis cooperative:
 - under the Cooperative Corporations Law; or
 - by approval from the Office based on either:
 - certification and recommendation by a national and well-established coker-cooperative trade association (or a local chapter thereof); or
 - by an opinion rendered by an independent CPA or other similarly credentialed professional that the application would meet the criteria to qualify under 26 U.S.C. Subchapter T, as per the United States Internal Revenue Service. § 123.3(e)(1).
 - A cooperative licensed under this Chapter shall be organized as either a Traditional Cooperative or a Cooperative Association. § 123.13(f).
 - A Traditional Cooperative shall have all voting rights held exclusively by members that contribute to the collective primarily with labor, and its profits, earnings, and losses

distributed to members based on labor and not based on capital investment. Such members shall:

- each have one vote;
 - comprise no less than a two-thirds majority of the governing body;
 - maintain a controlling interest of the Traditional Cooperative at all times;
 - own no less than 51% of the equity of the Traditional Cooperative at all times;
 - not have their capital or interest subordinated to the capital or interest of any other member group or shareholders; and
 - own and control the cooperative. § 123.13(g).
- A Cooperative Association shall:
 - have 51% of its voting rights in the aggregate held by members who contribute to the cooperative primarily with labor;
 - permit member contributions to consist of tangible or intangible personal property, or any other benefit to the cooperative, unless otherwise provided by the cooperative's internal rules;
 - permit, before determining the amount of profits, its governing body to set aside a portion of profits to create or accumulate: a capital reserve; reasonable reserves for specific purposes, such as expansion or replacement of capital assets; or education, training, and information;
 - permit distributions to be made in any form;
 - permit distributions to shareholders to be based on their capital contributions; and
 - generate returns for members and shareholders based on profitability, distributions on profitable asset sales, refinancing, or through a liquidity event. § 123.13(h).
 - A cooperative is not limited in the number of cultivation premises it may operate (but additional application and licensing fees may apply for each premises over 6 premises). § 123.13(b)(2).

- Limitations
 - Square feet (000s) per Number of Members in the Cooperative (§ 123.3(e)(3)):

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

- A cooperative may conduct processor activities at up to 2 premises. § 123.13(b)(1).
- A member in the cooperative shall not be a member of more than 1 cooperative. § 123.13(c).
- A cooperative shall have no fewer than 5 members that contribute primarily with labor. § 123.13(i).
- **Registered Organization Cultivator, Processor, and Distributor (Non-Dispensing) (“ROND”)**
 - Limitations
 - A ROND shall not (§ 123.16(b)):
 - have more than 100,000 square feet of canopy, unless otherwise authorized by the Board in writing;
 - begin new construction or major renovations on any indoor cultivation area or facility, unless authorized by the Board in writing;
 - process more than 55,000 pounds of biomass, or the equivalent amount of cannabis extract or cannabis product, per year, if the ROND has purchased any cannabis or cannabis product from another licensee in that calendar year;
 - contract with a laboratory permitted pursuant to Part 130 for voluntary testing services, unless otherwise authorized by the Office; and

- substitute adult-use cannabis product, should the licensee experience an unexpected shortage of medical cannabis products.
- **Registered Organization Adult-Use Cultivator, Processor, and Distributor Retail Dispensary (“ROD”)**
 - Limitations
 - A ROD shall dedicate a minimum of 40% of shelf-space available for adult-use product cultivated and processed by licensees that are not RODs. § 123.18(a)(2).
 - A ROD shall co-locate its medical and adult-use dispensaries. § 123.18(a)(3).
 - If co-locating more than one dispensing site, a ROD shall have at least one co-located dispensing site outside of New York, Kings, Bronx, Queens, Richmond, Nassau, Suffolk, and Westchester counties. § 123.18(a)(4).
 - A ROD shall maintain enough medical cannabis product at each co-located retail dispensary to support the greater of:
 - the highest sales volume generated by that dispensary in the last 12 months; or
 - a minimum threshold set annually by the Board, based on the anticipated medical demand for that year and the number of registered dispensing sites in operation. § 123.18(a)(6).
 - A ROD shall not (§ 123.18(b)):
 - have more than 100,000 square feet of canopy, unless otherwise authorized by the Board in writing;
 - begin new construction or major renovations on any indoor cultivation area or facility unless authorized by the Board in writing;
 - process more than 55,000 pounds of biomass, or the equivalent amount of cannabis extract or cannabis product, per year, if the ROD has purchased any cannabis or cannabis product from another licensee in that calendar year;
 - contract with a laboratory permitted pursuant to Part 130 for voluntary testing services, unless otherwise authorized by the Office;
 - substitute adult-use cannabis product, should the licensee experience an unexpected shortage of medical cannabis products;
 - have more than 3 co-located dispensaries;

- have more than 1 co-located facility in the same county or borough as any of its other licensed or registered dispensing sites;
 - locate any co-located adult-use dispensary premises in a prohibited location; or
 - be granted authorization to apply for adult-use retail before three years from the first date of a retail adult-use cannabis sale by a licensee authorized under the Cannabis Law.
 - No ROD, or its TPIs, is permitted to hold a direct or indirect interest (including as passive investors, landlord, financier, management services provider or any other means) in a cultivation, processing, distributing, cooperative, microbusiness retail dispensary, on-site consumption, delivery, ROND, registered organization, or cannabis laboratory license, including if licensed to do so outside of New York State.
- **Delivery**
 - Not discussed in the regulations themselves, but discussed in separate guidance related to CAURDs.

Ownership Restrictions

- True Party of Interest (TPI) and Limitations.
 - TPI includes, but is not limited to:
 - owners, officers, managers, directors, trustees, board members (or equivalent titles);
 - each person that makes up the ownership structure of each level of ownership for an applicant or licensee that has a multilevel ownership structure including, but not limited to, subsidiaries, affiliates, parents, shells, and holding companies
 - person with a right to receive aggregate payments in a calendar year, as part of a risk sharing or services agreement, that exceeds the greater of: 1) 10% of gross revenue, 2) 50% of net profit of a licensee, 3) \$100,000 from the licensee in a calendar year;

- person with a financial interest¹ in the applicant or licensee;
 - person that has authority to or exercises control over the applicant or licensee;
 - person that assumes responsibility for the debts of the applicant or licensee; or
 - spouse of any owners, officers, managers, directors, board members (or equivalent titles)
- EXCLUDES:
- landlords who receive payment for rent on a fixed basis under a lease or rental agreement relating to applicant or licensee²;
 - persons who receive a bonus or sales commission based on the individual's sale, so long as the commission does not exceed 10% of sales of the applicant or licensee in any given bonus or commission period;
 - contracts with the applicant or licensee to receive a commission for the sale of the business or real property;
 - consultants receiving a flat or hourly rate of compensation under a contractual agreement, unless such compensation exceeds \$100,000 in calendar year;
 - Goods or services contractors so long as applicant or licensee retains the right to and controls business;
 - Financial institutions – any bank, credit union, or other lending institution under DFS jurisdiction;
 - Financiers; or
 - Others as may be determined by OCM

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

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

- Financiers. Any person, other than a financial institution, or government or governmental subdivision or agency, that gifts, grants, or loans capital pursuant to a secured or unsecured financing agreement.
 - Agreements will be assessed based on current and future right to ownership or interest on the licensee including but not limited to, interest in the event of default, bankruptcy, or reorganization.
 - May not receive ownership interest, control of the business, or a share of revenue in excess of (i) 10% of gross revenue, (ii) 50% of net profit, or (iii) \$100,000 gross or net profits, a profit-sharing interest, or percentage of profits in exchange for a gift, grant, or loan.
 - Landlords, financiers, and financial institutions may be landlords, financiers and financial institutions across multiple licenses. If the financier, financial institution or landlord becomes a true party of interest in a license, they are subject to the prohibitions of true parties of interest for that license types. Cross ownership restrictions also apply to landlords and financiers (i.e. cannot be a financier or landlord to both a retail licensee and cultivation licensee as described further below).
 - Principal repayment is excluded from any calculation off fees paid to a financier or a financial institution in a calendar year.

- Passive Investors.
 - Defined as a person that is a true party of interest of a licensee with an aggregate ownership interest of no more than 5% of outstanding shares of publicly traded licensee/applicant OR 20% of outstanding shares or interest of any other entity, whether such shares or interest are current voting shares, future voting shares, current equity shares or future equity share of the applicant or licensee, and does not otherwise have any control or influence over applicant/licensee.

 - A person can be a passive investor in (subject to cross-ownership restrictions):
 - More than one cultivator.
 - More than three retailers.
 - More than one microbusiness.

- More than one ROND or ROD.
- Undue Influence and Incentives – no person may enter into an agreement which causes “undue” influence over a licensee
 - Does not prohibit the placing the accepting of orders for the purchase and delivery of cannabis or cannabis products that are made in accordance with usual and common business practices.
 - No distributor, microbusiness, cooperative, ROD, or ROND may advance money or a benefit such as gifts, discounts (except not in excess of one per centum for payment on or before ten days from date of shipment of such cannabis), customer loyalty programs, loans of money, premiums, rebates, royalties, free cannabis product of any kind, preferential shelf space of displays, and treats or services of any nature whatsoever.
 - Licensees are prohibited from requiring the purchase of other products or services by other licensees as a condition of a transaction of cannabis or cannabis products.
- Goods and Services Agreements
 - Exempt agreements (agreements not presumed to create undue influence) including but not limited to: general goods and services providers, accounting, recordkeeping, non-cannabis materials and goods from unlicensed persons, office supplies, leasing equipment, architect services, construction, HVAC, plumbing, legal services, government relations, license application preparation, landlords, financiers, financial institutions.
 - Non-exempt agreements (agreements for consulting, advisory, or strategic services related to the licensed activities) – any person providing a non-exempt services that is not based on a flat fee (i.e. based on business performance, revenues, royalties, or profits) is prohibited from having any goods or services agreement with licenses in a separate licensing tier.
- Management Services Agreements
 - Cannot operate MSAs across licensing tiers, regardless of TPI status
 - A person providing management services not based on a flat fee (including but not limited to business performance, revenues, royalties or profits) are considered a TPI in the licensee receiving the services

- MSA providers must adhere to the licensee’s LPA and are jointly liable for any workforce related violations
- All MSAS must retain the licensee’s right to audit, or use a third-party to audit the MSA provider’s records relating to its performance under the agreement.
- A person providing goods and services will be deemed a TPI if, over the course of a calendar year, they receive the right to or actual payment from the licensee, exceeding the greatest of: 1)10% of a licensee’s gross revenue, 2) 50% of a licensee’s net profits; 3) \$100,000, or if otherwise qualify as a TPI.
- Stacking Agreements – value of multiple goods and services agreements with a licensee will be combined and the combined agreement will be held to the strictest prohibitions of each of those individual agreements
- Agreements Creating a Financial or Controlling Interest
 - A third party will be deemed a TPI with a financial or controlling interest where such agreement: 1) compels a licensee not to purchase or sell cannabis, products, services, or materials to specifically identified licensees, 2) imposes penalty that requires surrender of personal assets, 3) is not bargained for between the parties in an arms-length transaction, 4) does not include the ability for either party to terminate with due notice, or 5) creates an employee-employer relationship under NYS labor law
- Contracting Limitations:
 - Licensees are prohibited from contracting or subcontracting with a person or entity performing any function or activity directly involving the licensed activities authorized for that license type (including but not limited to cultivating, processing, manufacturing, distributing, or selling cannabis or cannabis products).
 - Adult-use licensees may contract with a person or entity performing a function or activity ancillary to the licensee’s licensed activities, including but not limited to, accounting, recordkeeping, architectural services, construction, heating, ventilating, air conditioning, refrigeration, plumbing, cleaning and janitorial, lighting, security, and legal services.

c. Rights to Participate in Difference License Classes.

1. Nursery

- a. May not hold: retail dispensary, on-site consumption, or delivery license
- b. May hold: cultivator, cooperative, microbusiness, registered organization, ROND, or ROD license
- c. A nursery can only hold one nursery license, but may cultivate at multiple premises
- d. True parties of interest in nursery license are not restricted in the number of nursery licenses they can have an interest in.
- e. Nursery or its true party of interest may be a landlord, financier or goods and services provider to an adult-use cultivator, processor, distributor, cooperative, microbusiness, an ROND license, subject to the limitations and other ownership, control, and interest requirements and prohibitions of the Cannabis Law and adult-use regulations.
- f. No Nursery licensee or its true party of interest may hold a direct or indirect interest in, or be a true party of interest, passive investor, landlord, financier, or management services provider or by any other means to, a retail dispensary, on-site consumption, delivery, RO, or cannabis laboratory licensee.

2. Cultivator

- a. No person (other than a passive investor) can be a true party of interest in more than one cultivator.
- b. A passive investor may be a passive investor in more than one cultivator if such passive investor complies with all other ownership, control and interest requirements, and prohibitions of the Cannabis Law and regulations.
- c. Cultivator or its true party of interest may be a true party of interest in a processor, distributor, cooperative, microbusiness, or ROND license.
- d. Cultivator or its true party of interest may be a landlord, financier, or a good and services provider to an adult-use cultivator, processor, distributor, cooperative, microbusiness, or ROND license, subject to all restrictions governing such relationships, including, but not limited to, undue influence, control and true party of interest requirements.

- e. No cultivator or its true party of interest may hold a direct or indirect interest in, or be a true party of interest, passive investor, landlord, financier, or management services provider to, a retail dispensary, on-site consumption, delivery, ROD, RO, or cannabis laboratory licensee.

3. Processor

- a. A processor may only enter into a branding or white labeling agreement with its true parties of interest or another licensee.
- b. A processor may hold one distributor license.
- c. Processor or its true party of interest may be a true party of interest in a cultivator, distributor, cooperative, microbusiness, or ROND license.
- d. Processor or its true party of interest may be a landlord, financier, or a good and services provider to an adult-use cultivator, processor, distributor, cooperative, microbusiness, or ROND license, subject to all restrictions governing such relationships, including, but not limited to, undue influence, control and true party of interest requirements.
- e. No processor or its true party of interest may hold a direct or indirect interest in, or be a true party of interest, passive investor, landlord, financier, or management services provider to, a retail dispensary, on-site consumption, delivery, ROD, RO, or cannabis laboratory licensee.

4. Distributor

- a. A distributor or its true party of interest may be a true party of interest in a cultivator, processor, cooperative, microbusiness, or ROND license.
- b. Distributor or its true party of interest may be a landlord, financier, or a goods and services provider to an adult-use cultivator, processor, distributor, cooperative, microbusiness, or ROND license, subject to all restrictions governing such relationships, including, but not limited to, undue influence, control and true party of interest requirements.
- c. No distributor or its true party of interest may hold a direct or indirect interest in, or be a true party of interest, passive investor, landlord,

financier, or management services provider to, a retail dispensary, on-site consumption, delivery, ROD, RO, or cannabis laboratory licensee.

5. Retail Dispensary

- a. No person, other than a passive investor in a retail dispensary license, may be a true party of interest in more than three dispensary licenses.
- b. A retail dispensary or its true party of interest may also be true parties of interest in a delivery license.
- c. A retail dispensary or its true party of interest may be a landlord, financier, or goods and services provider to an on-site consumption or delivery licensee, provided the retail dispensary or its true parties of interest do not exceed authorized true party of interest ownership limits.
- d. No retail dispensary or its true party of interest may hold a direct or indirect interest in, be a true party of interest, passive investor, landlord, financier, or management services provider, or by any other means, to a cultivator, processor, distributor, cooperative, microbusiness, ROD, ROND, RO, or cannabis lab or any person licensed outside of New York state who are licensed to function as any of the aforementioned licenses.

6. Microbusiness

- a. A microbusiness or true party of interest in a microbusiness may be a TPI in a cultivator, processor, distributor, cooperative, or ROND license.
- b. No person (other than a passive investor) may be a true party of interest in more than one microbusiness.
- c. A passive investor may be a passive investor in more than one microbusiness if such passive investor complies with all other ownership, control, and interest requirements and prohibitions of the Cannabis Law and regulations.
- d. A microbusiness or its true party of interest may be a landlord, financier, or a goods and services provider to an adult-use cultivator, processor, distributor, cooperative, microbusiness, or ROND license, subject to all restrictions governing such relationships, including, but not limited to, undue influence, control and true party of interest requirements.

- e. No microbusiness or its true party of interest may hold a direct or indirect interest in, or be a true party of interest, passive investor, landlord, financier, or management services provider to, a retail dispensary, on-site consumption, delivery, ROD, RO, or cannabis laboratory licensee.
7. Cooperative (“Cannabis Collective”)
- a. A member in a cooperative may not be a member of more than one cooperative.
 - b. A member in a cooperative is a true party of interest of the cooperative.
 - c. No cooperative or its true party of interest may hold a direct or indirect interest in, or be a true party of interest, passive investor, landlord, financier, or management services provider to, a retail dispensary, on-site consumption, delivery licensee.
8. Registered Organization Cultivator Processor Distributor (“ROND”)
- a. No person (other than a passive investor) can be a true party of interest in more than one ROND.
 - b. A passive investor may be a passive investor in more than one ROND if such passive investor complies with all other ownership, control, and interest requirements and prohibitions of the Cannabis Law and regulations.
 - c. ROND or its true party of interest may be a passive investor in a cultivator, processor, distributor, cooperative, or microbusiness license.
 - d. A ROND or its true party of interest may be a landlord, financier, or management services provider to an adult-use cultivator, processor, distributor, cooperative, microbusiness, and ROND license, provided the ROND and its true parties of interest do not exceed authorized true party of interest limits.
 - e. No ROND or its true party of interest may hold a direct or indirect interest in, or be a true party of interest, passive investor, landlord, financier, or management services provider, or by any other means, to a retail dispensary, on-site consumption, delivery, ROD, RO, or cannabis laboratory licensee.

9. Registered Organization Cultivator Processor Distributor Retail Dispensary (“ROD”)
 - a. No person (other than a passive investor) may be a true party of interest in more than one ROD.
 - b. A passive investor may be a passive investor in more than one ROD if such passive investor complies with all other ownership, control, and interest requirements and prohibitions of the Cannabis Law and regulations.
 - c. ROD or its true party of interest may be a landlord, financier, or management services provider to another ROD, provided that such ROD and its true parties of interest do not exceed authorized true party of interest limits set forth in the Cannabis Law and regulations.
 - d. No ROD or its true party of interest may hold a direct or indirect interest in, or be a true party of interest, passive investor, landlord, financier, or management services provider, or by any other means, to an adult-use cultivator, processor, distributor, cooperative, microbusiness, retail dispensary, on-site consumption, delivery, ROND, RO, or cannabis laboratory licensee or any person licensed outside of New York State who are licensed to function as any of the aforementioned licensees.

Social and Economic Equity

- Qualifications – sole control³ of the applicant must be held by:
 - An individual from a community disproportionality impacted by the enforcement of cannabis prohibition (“CDI”)
 - CDIs to be determined by the OCM
 - Must provide proof that one or more members have resided in a CDI for an aggregate of three of the first 18 years of their life or aggregate of 5 of the 10 years preceding the timeframe designated for a CDI, provided that the CDI was designated a CDI for the majority of those years
 - Minority owned business
 - Must provide proof of state MWBE certification or sworn declaration attesting to MWBE status
 - Woman-owned business
 - Must provide proof of state MWBE certification or sworn declaration attesting to MWBE status
 - Distressed farmer
 - Must provide proof that applicant 1) meets the Economic Research Service of US Dept of Agriculture small farm classification, 2) filed a Schedule F tax return, and 3) filed other tax forms demonstrating revenues below the qualifying threshold established therein

³ Sole control means:

- (i) is independently owned, operated and controlled;
- (ii) has real, substantial, and continuing ownership;
- (iii) exercises the authority to independently materially influence the day-to-day business decisions, operations, strategic priorities, capital allocations, acquisitions and divestments;
- (iv) has an ability to direct decisions, voting or otherwise, and an interest in the capital, assets, and profits and losses of the business, at least proportionate to percentage of ownership;
- (v) has the right to execute significant (in aggregate of \$10,000 or greater) or exclusive contracts;
- (vi) that there are no timed or triggered recusal provisions related to the individual with sole control; and
- (vii) that there are no other person or persons in the aggregate who may exercise or have the ability to control the majority of voting rights or appoint or remove the majority of director seats or their equivalent or corporate officers or their equivalent on the governing body.

- Must also provide proof of operating losses during the last three years OR proof of membership in a group historically underrepresented in farm ownership by a sworn declaration
- Service-disabled veteran owned business
 - Must provide proof of certification from the NYS Office of General Services Division of Service-Disabled Veterans' Business Development (DSDVBD)
 - Can submit DD214 or NG214 with line of duty report from USVA as conditional certification
- Minority and woman owned businesses must also submit proof it is a small business
 - If operational for 3 years or more – quarterly payroll reports from the last 3 years
 - If operational for less than 3 years – may submit a sworn declaration, gross quarterly receipts, by-laws, proof the business has no more than and will not exceed 100 employees
- CCB may prioritize application review, selection, and issuance based on SE status.
- Extra Priority application review, selection, and issuance given to individuals from CDI + income lower than 80% of the median income in the county in which the applicant resides + convicted of a cannabis related offense or had a parent, guardian, child, spouse or dependent, or was a dependent of someone convicted of a cannabis related offense prior to 3/31/21
- Application and license fees may be 50% reduced, waived, or deferred for SE applicants

Application Process

- Timing – up to the discretion of OCM/CCB.
 - Rules identify that they “may be accepted from time to time as may be deemed appropriate and necessary.”

- Not started and finished in a RFA/RFP type basis, but rather, will be accepted and reviewed on a “continuous rolling basis.”
- License Limitations.
 - No strict cap by regulation.
 - Limitations may be imposed at the time of application acceptance, including for:
 - Total number of licenses.
 - Location or authorized regions.
 - Size of operation or output.
 - Operating conditions, dependent on:
 - Sustainability.
 - Public health and safety.
 - Social and economic equity factors.
- Application Contents/Form.
 - Required information.
 - Identification of TPIs.
 - For entities: identification of each individual partner, member, member-manager, nonmember-manager, director, officer, trustee, certain shareholder, and each individual true party of interest of the applicant and of each level of ownership of the applicant.
 - Personal history or entity history disclosure forms.
 - All contracts, term sheets, agreements, or side letters between the applicants or its TPIs and any goods and services providers.
 - Org chart.
 - Description of licenses in any other state or jurisdiction.

- List of any charitable contributions by the applicant in the last five (5) years.
- FOIL exemptions to disclosure.
- Labor peace agreement with a bona fide labor organization.
- Criminal history and legal proceedings.
- Premises description, including:
 - Identification of landlord.
 - Street name and number, photographs, GPS coordinates, architectural drawings, or other items related to the appearance of the interior or exterior of such premises, and floor plans of the interior of any structures being utilized on the premises.
 - Identification of compliance with sensitive use distances.
 - Municipal notification.
 - Certificate of occupancy.
 - Copy of lease agreement.
- Documentation that the applicant will be able to obtain insurance.
- Selection/Amendment/Reduction of canopy tier.
 - An applicant is required to select a tier as part of its application submission.
 - A cultivator can expand or reduce its canopy outside the bounds of its licensed cultivation tier if it applies to OCM and receives approval to do so. In approving, OCM looks to:
 - Cultivation history, including whether the licensee sold more than 85% of the cannabis it harvested in the preceding six months.
 - Whether the licensee's plants or inventory suffered a catastrophic event during the licensing period.
 - Cannabis transfers and sales history.

- Existing inventory and a licensee's inventory history.
- Adherence to any plan required in this chapter, including, but not limited to, the licensee's operating plan, environmental plan, and community impact plan.
- OCM may *reduce* a licensee's canopy at the time or renewal if a cultivator sold less than 50% of what it harvested in the previous six months.
- Application fees:
 - Regular Application fee - \$1,000.
 - ROD and ROND application fee - \$10,000.
- Evaluation.
 - Selection criteria detailed in Article 4, Section 64 of the Cannabis Law.
 - Community impact plan highlighting the applicant's proposed strategy for community engagement.
 - Energy and environmental plan demonstrating compliance with standards and regulations, and highlighting technologies, techniques, and strategies to protect the surrounding environment, limit carbon footprint, and leverage sustainable energy sources.
 - Completion of any workforce or training programs offered by the Office and completed by the applicant.
 - History in creating or maintaining an equitable workplace environment through the review of previous business and management practices, including, but not limited to:
 - Wages, including:
 - Starting hourly rates for hourly workers.
 - Starting salary for salaried workers.
 - Average annual wage percent increase in the last three years by classification of employee.
 - Benefits, including but not limited to:

- Number of hourly employees with 100% employer paid medical premiums
- Number of hourly employees receiving Family, Single +1 coverage
- Number of hourly employees with employee co-contributions for medical coverage; or
- Employer paid retirement benefits such as 401K match or direct contributions
- Training, including, but not limited to:
 - Health and safety training
 - Retention rates
 - Diversity in hiring and promotion
- History in creating or delivering culturally and linguistically competent services and underserved populations, including but not limited to:
 - Training programs
 - Multilingual services
 - Published materials and curricula
 - Community outreach
 - Administrative and organizational accommodations
 - Any other qualifications deemed necessary by the Office
- Serving in community leadership roles within established and licensed businesses, nonprofits, religious organizations, educational institutions, philanthropic organizations, community clubs, neighborhood associations and any other qualifications deemed sufficient by the Office
- Supporting evidence that demonstrates the applicant’s ability, capacity, and any initial steps taken to meet the Board’s standards for the plans in paragraphs (2) and (3) of this subdivision

- The relative performance of applicants based on such criteria
- For applications from entities with twenty-five or more employees, the Office shall give consideration to whether applicants have entered into an agreement with a statewide or local bona-fide building and construction trades organization for construction work on its licensed facilities
- Any other information requested by the Office
- Selection – OCM may use evaluation mechanisms, including scoring, compliance, qualified lotteries, and a randomized selection process or any combination thereof.
 - The Board will determine the eligibility criteria for each license type
 - The Board may prioritize application submission, review, selection and issuance by, including, but not limited to, region, license type, and social and economic equity status.
 - Application submission, review, selection, and issuance may be prioritized by groupings consistent with Section 87 of the Cannabis Law, such as:
 - A group consisting only of applications that demonstrate the applicant is eligible for extra priority as defined in Section 121.2 of this Chapter provided the applicant is seeking to qualify as a social and economic equity licensee and
 - Is a member of a community disproportionately impacted by the enforcement of cannabis prohibition,
 - Has an income lower than 80% of the median income of the county in which the applicant resides, and
 - Was convicted of a marijuana-related offense prior to the effective date of the Act, or had a parent, guardian, child, spouse, or dependent, or was a dependent of an individual who, prior to the effective date of the Act, was convicted of a marijuana-related offense
 - A group consisting only of applications that meet the definition of distressed farmer as described in paragraph (3) of subdivision (h) of Section 121.1 of this Chapter

- A group consisting only of applications that meet the definition of service-disabled veteran as described in subdivision (i) of Section 121.1 of this Chapter
- A group consisting only of applications that demonstrate the applicant is from a community disproportionately impacted by the enforcement of cannabis prohibition as described in subdivision (d) of Section 121.1; and
- Applications may be considered in multiple groups pursuant to their eligibility for such groups
- If approved, applicants receive a provisional license, subject to whatever provisional process CCB approves.
- After receiving provisional approval, the applicant must fulfill any outstanding items requested by the CCB within twelve (12) months.
- Bases for denial of application.
 - Failure to meet eligibility of rules.
 - Applicant or TPI has a history of violations relating to its operation of owning or operating a business.
 - Source of funds is questionable, unverifiable, or gained in a manner which violates the law.
 - Failure to supplement application during cure period.
 - False representations.
 - Bad moral character.
 - Outstanding violations, fines, fees, payments, or other indebtedness assessed against them by state, federal, or local authorities.
 - History of illicit sales, including through “membership clubs.”
 - Premises in a prohibited location.
 - Pattern of deficiencies.