

116.1 – Definitions

COMMENT: Comments were received regarding the definition of “financier.” Commenters expressed concern that—although financiers are not defined as true parties of interest—the restrictions on financiers would preclude many small businesses from obtaining funds quickly or easily because they would be required to obtain the Office’s approval to enter into many common financier agreements. Specifically, commenters suggested the following circumstances be included in the definition of financier and, thus, not require the Office’s prior approval:

- Landlords who provide tenant improvements to location build out and are paid back by the tenant over a period of time via rent payments;
- Mezzanine financing agreements which provide debt-to-equity conversions in the event of debtor default; and
- Lenders who structure their repayment schedules based on monthly revenue (i.e. That 2% of monthly revenues until debt repaid).

These commenters also suggested that a time limit (e.g. 30 days) be added to this section. The commenters stated that this broader definition of financier would best fit “market realities.”

RESPONSE: The Board and Office acknowledge this comment and will continue to clarify the reporting requirements for true parties of interest in further regulations and guidance. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters recommended the definition of “fund” be altered to explicitly include: the cost of the application fee for social equity applicants, assisting with the business costs after sales begin, and community investments like social services. Commenters stated that

many businesses operate at a loss for the first few years of operation, and they believed support during this period would help these licensees be successful.

RESPONSE: CAURD licensees will be eligible to receive support from the New York Social Equity Cannabis Investment Fund in the establishment, development, leasing, and initial build out of storefront conditional adult-use retail cannabis dispensaries. In addition to this, Section 87 of Cannabis Law requires the Board, in consultation with the Cannabis Advisory Board and Chief Equity Officer, to create an incubator program that shall provide direct support to social and economic equity adult-use cannabis licensees. This incubator program has not yet been created. When it is created, this incubator program will provide support to adult-use cannabis licensees that are social and economic equity licensees. The Board and Office will continue to clarify the support offered to social and economic equity licensees in further regulations and guidance. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters remarked on the definition of “marihuana-related offense.”

- Commenters requested clarification on the words “any offense identified by the Office to be a marihuana-related offense.”
- Commenters suggested that the definition be clarified in terms of offenses that do not state marihuana in the title but are predicated on marihuana being illegal.
- Commenters specifically requested “disorderly conduct” be considered a marihuana-related offense. Commenters referenced publications suggesting as many as 20% of cannabis arrests in New York City result in a disorderly conduct conviction.

- Commenters suggested heroin or other drug charges be included in the proposed definition. Commenters stated that these other drug charges frequently included marihuana in the circumstances of the crime.
- Commenters suggested the Office identify additional marihuana-related offenses. Commenters suggested the Office consider arrests for marihuana-related offenses which resulted in a conviction of a non-marihuana-related offense and arrests for marihuana-related offenses that resulted in consequences like deportation, loss of income, loss of child custody, or loss of housing.

RESPONSE: The proposed definition of “marihuana-related offense” gives the Office the authority to identify marihuana-related offenses beyond those listed in the definition. There may be marihuana-related offenses the Office deems beyond those listed in the proposed rules that it may identify and amend from time to time. The Office will continue to make information about the definition of “marihuana-related offense” available in the online application and on the Office’s website. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested the definition of “person” be changed to be defined only as an individual.

RESPONSE: The Board and Office acknowledge this comment. Given the variety of corporate structures necessary to start cannabis businesses, it is not feasible to only allow individuals to apply for a license. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters recommended changing the definition of “passive investor” to include non-publicly traded companies. Commenters stated that requiring minority interests in

the business to be listed on the application was overly burdensome for minority applicants and would prevent them from raising sufficient capital.

RESPONSE: The Board and Office acknowledge this comment and will continue to clarify the reporting and disclosure requirements for true parties of interest in further regulations and guidance. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested that the definition of True Party of Interest exclude entities involved in percentage-based contractual agreements, like landlord-tenant arrangements and management service agreements. Commenters also suggested the definition remove the words “or deferred.” Commenters believed that these changes would maximize the odds a low-income person would be able to obtain financing for their business.

RESPONSE: The Board and Office acknowledge this comment and notes that landlords and other financial intermediaries such as financiers are already excluded from the definition of True Party of Interest. The Office will continue to clarify the reporting requirements for true parties of interest in further regulations and guidance. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested the definition of True Parties of Interest be changed to exclude spouses. Commenters stated that not all people would want to be connected to their spouse’s cannabis business.

RESPONSE: The Board and Office acknowledge this comment. In order to ensure that no married individuals are able to own multiple licenses it is common in alcohol regulations in two-tiered states to have married couples treated as one economic entity. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters recommended adding a definition of “Indian Nation or Tribe” to the proposed rule. Commenters recommended this definition match the existing definition in New York State Indian Law.

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

116.2 – Application

COMMENT: Commenters remarked on the list of Information Required to be Disclosed on Application in part 116.2(a). Commenters urged the Office to make all parts of the application straightforward and clear for applicants. Commenters requested the Office continue to clarify what information applicants will be required to submit and what documentation is acceptable to substantiate their application. Commenters suggested the Office provide ample support so that applicants did not feel forced to pay outside consultants or attorneys for assistance in completing the application or pay for template documents.

RESPONSE: The Board and Office intend for all application forms to be straightforward and clear for applicants. The Office will make information available to applicants—both within the online application and on the Office’s website— with guidance on how to complete application forms. The Office will make resources available to answer applicant questions about eligibility and acceptable documentation. The Office will work with community groups, local governments, and other stakeholders to ensure potential applicants are aware of available resources. Applicants will not be required to utilize consultants or attorneys to complete their application, although some applicants may still choose to do so. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters requested clarification on what would be included in the personal history disclosure. Commenters urged the Office to ensure that this form does not duplicate other fields in the application.

RESPONSE: The Board and Office intend for all application forms to be straightforward and clear for applicants. The Office will make information available to applicants—both within the online application and on the Office’s website—on how to complete application forms. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters requested other methods than fingerprinting be used to obtain a criminal history report.

RESPONSE: Section 138 of Cannabis Law authorizes the Board to request, receive and review criminal history information through the Division of Criminal Justice Services by submitting fingerprints to the Division. Cannabis Law does not consider other avenues through which the Board can obtain an applicant’s criminal history information from the Division of Criminal Justice Services. The Board and Office will allow applicants an opportunity to provide the Office with information regarding their criminal history reports. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters requested clarification on the definition of “affiliates” in subsection 116.2(a)(9).

RESPONSE: An example of an affiliate to an applicant would be a separate entity that shares a parent organization with the applicant. The Board and Office will continue to clarify the scope of definitions and of permissible financial relationships in further regulations and guidance. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters noted that some of the information in this section, such as information about bonds, loans, and mortgages in 116.2(a)(16) or 116.2(a)(18), would change between application and licensure and requested clarification from the Office on how to account for these changes.

RESPONSE: Pursuant to proposed 116.2(b)(4) and 116.2(c), applicants have a continuing duty to disclose material changes in the information provided to the Office. This duty of ongoing disclosure shall continue throughout the licensed period if the applicant is selected for licensure. The Board and Office will continue to clarify reporting requirements in guidance. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters stated that requiring “audited financial statements” from all applicants which were not formed within the year preceding the application for licensure would be a barrier for many applicants. Commenters stated that obtaining audited financial statements can cost \$50,000 or more for an organization. Commenters recommended “reviewed financials” be acceptable instead.

RESPONSE: Section 62 of Cannabis Law authorizes the Board to include financial statements on applications for adult-use cannabis licensure. The Board acknowledges that obtaining audited financial statements may be costly for some applicants. Some applicants may choose to provide audited or certified financial statements in their initial application, depending on when the applying entity was formed, but applicants will not be required to provide such financial statements unless an applicant is selected for provisional licensure. This means applicants will not be required to incur the cost of obtaining such financial statements unless they are likely to receive a final license. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters requested clarification on the difference between “certified financial statements” and “audited financial statements”; commenters asked if the Office meant “compiled”, “reviewed”, or “audited” instead of “certified.”

RESPONSE: Certified financial statements are financial statements that have been compiled by an accountant but have not been audited by that accountant. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters requested clarification on what entity they are required to provide financial statements for. Commenters stated they intended to raise funds after receiving a license and asked what statements they were required to provide if the applicant entity does not have any activity at the time of application.

RESPONSE: Applicants will be required to provide financial statements for the entity that will be the licensee. Applicants that were formed within the year preceding the application for license will be required to submit certified financial statements and any pro forma financials used for business planning purposes pursuant to proposed subsection 116.2(a)(17). Applicants that do not have any financial activity at the time of application will not need to submit any audited or certified financial statements. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested the Office specify a time frame for items like (19), (24), and (25) which currently ask for all such documents. Commenters specifically suggested that applicants not be required to disclosed bankruptcies if they have been discharged. Commenters expressed concern that applicants could be denied a license for a negative financial event that occurred far in the past and which the applicant has recovered from.

RESPONSE: The Board is interested in this information over the entire lifespan of the applicant and, where applicable, all true parties of interest. Bankruptcies are not a reason for denial listed in Section 116.5. Provided the circumstances of the bankruptcy do not result in a violation of proposed Section 116.5, eligible applicants that disclose bankruptcies may be selected to be recommended to the Board for licensure. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested that a period of time be defined for the information in subsection 116.2(a)(19)(i) to be consistent with the time periods defined in Section 137 of Cannabis Law.

RESPONSE: The proposed rule is consistent with Section 137 of Cannabis Law. The proposed rules do not require that the disclosures in subsection 116.2(a)(19)(i) would result in an applicant's automatic denial. The Board will only use information that pertains to the provisions of Section 137 of Cannabis Law to make determinations pursuant to that section of Cannabis Law and subsection 116.5(a)(4) of the proposed rule. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Two commenters asked for clarification on "information relating to a business continuity plan" and whether the Office would assist applicants in creating this document.

RESPONSE: A business continuity plan is a document which delineates a plan to continue operations in the event the applicant, owners, or True Parties of Interest decide to leave the business, there is a material change in the applicant's ability to operate the business, or the business is otherwise unable to be operated. The Board and Office intends for all application forms to be straightforward and clear for applicants. The Office will make information available

to applicants—both within the online application and on the Office’s website—on how to complete application forms. Applicants will not be required to provide information relating to a business continuity plan unless they are selected for provisional licensure. This means applicants will not be required to create this plan unless they are likely to receive a final license. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters asked for clarification on what a “certificate of status or good standing” entails.

RESPONSE: A Certificate of Status (also called a Certificate of Good Standing or Certificate of Existence) is a document issued by the New York State Department of State pursuant to Section 96 of Executive Law that evidences the existence of a corporation or other business entity. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested subsection 116.2(a)(22)(iii) be amended to require a statement if any sanctions were related to the sale or advertising of marijuana to people under 21.

RESPONSE: A statement or other acceptable documentation is required of applicants if subsection 116.2(a)(22)(iii) applies. Licensees found to have advertised cannabis to audiences that are predominantly comprised of individuals under 21, or in a manner that appeals to individuals under 21 may face fees or fines, license suspension, or even revocation. No changes were made to the proposed regulations as a result of this comment .

COMMENT: Commenters asked for clarification on whether vendor agreements, as required by 116.2(a)(24), would have to be signed by the time of application.

RESPONSE: Applicants shall provide a list of such vendors which the applicant has entered into an agreement, as enumerated by the proposed rules, and therefore the agreement would have to be executed. The proposed rules do not require applicants to provide copies of agreements. Pursuant to proposed section 116.2(b)(4), if—after submission of this list—there is a material change to the nature of these vendor agreements prior to the issuance of a license that results in a change to the applicant’s True Parties of Interest, then the applicant has a duty to amend this information. Applicants are not required to provide a list of such vendors unless they are selected for provisional licensure. This means applicants will not be required to provide this list unless they are likely to receive a final license. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters asked what documentation would be required to substantiate the information in subsection 116.2(a)(28).

RESPONSE: The Office will make information available to applicants—both within the online application and on the Office’s website—on how to complete application forms. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters asked how newly created entities would show they will be able to obtain sufficient indemnification insurance. Commenter suggested that applicants be required to demonstrate an “attempt to require” this insurance instead of being required to obtain the insurance. Commenters expressed concern that this requirement is a barrier to entry for applicants.

RESPONSE: Applicants will not be required to provide documentation that the applicant will be able to obtain insurance sufficient to indemnify and hold harmless the state and its officers and

employees unless they are selected for provisional licensure. This means applicants will not be required to obtain this document unless they are likely to receive a final license. The Office will issue guidance for applicants on acceptable insurance types and limits. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters suggested subsection 116.2(a)(31) read “employees of the Office of Cannabis Management and members of the Cannabis Board” instead of “employees of the Office and members of the Board.”

RESPONSE: Section 116.1 defines “Board” to refer to the Cannabis Control Board and “Office” to refer to the Office of Cannabis Management. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on whether an individual who is justice involved due to a family member’s conviction needs to provide evidence of their own address or of their family member’s address.

RESPONSE: Pursuant to section 116.4(a)(2)(ii), in this scenario where the individual is justice involved due to a family member’s conviction, the applicant must provide evidence of the address of the parent, legal guardian, child, spouse, or dependent at the time of the parent, legal guardian, child, spouse, or dependent’s conviction. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated the requirement to provide documentation of a conviction was burdensome for applicants. Commenters suggested that the Office verify individuals arrest data with other State agencies instead of requiring applicants to submit documentation verifying the

conviction of a marijuana-related offense. Commenters requested further clarification on what documentation is acceptable to prove justice involvement.

RESPONSE: In order to provide the applicants with as much opportunity to evidence marijuana-related convictions, in addition to providing the Office with fingerprints, applicants may also evidence their justice involvement by requesting a certificate of disposition from the court where the case was decided. The Office will make information available to applicants—both within the online application and on the Office’s website—regarding other acceptable documentation to prove justice involvement. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Commenters remarked on the \$2,000 application fee. Commenters stated the fee appeared to create barriers to “social equity” applicants. Commenters suggested offering a fee waiver for applicants. Commenter stated that eligible applicants who are not selected for CAURD should not have to pay an application fee to apply for an adult-use retail dispensary license again at a later date.

RESPONSE: The \$2,000 licensing and application fee is necessary to cover the costs associated with the creation and implementation of the licensing application and selection process, as well as other provisions. No changes were made to the proposed regulations as a result of this comment.

116.3 – Attestations

COMMENT: Commenters requested clarification on what the Office considers “good moral character.” Commenters requested clarification on whether this clause would bar legacy

operators. Commenters asked if references from the community would be required to show good moral character.

RESPONSE: The Office acknowledges these comments and plans to clarify in guidance. The Board does not intend the phrase “good moral character” to preclude legacy marijuana business operators from licensure if they are eligible applicants and selected by the Board for licensure. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested an amendment to subsection 116.3(a)(6) which would allow adult-use retail dispensaries to acquire cannabis products from entities licensed by Indian nations or tribes.

PRODUCT: Section 10 of Cannabis Law gives the Cannabis Control Board the authority to enter into tribal-state compacts with the New York state Indian nations and tribes, as defined by section two of the Indian law. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Comments were received in regards to the requirement that applicants attest to having entered into a labor peace agreement with a bona fide labor organization.

- Commenters requested clarification on when this agreement would be required to take effect.
- Commenters suggested adding language requiring licensees to “make a good faith effort” to enter a collective bargaining agreement within a reasonable amount of time if their workers choose to be represented by a bona fide labor organization.
- Commenters suggested amending this attestation to match language in section 64 of Cannabis Law. Commenters stated that the proposed rule, which may require applicants

to enter into a labor peace agreement before they have employees, could potentially bind a licensee’s employees to unfavorable terms, such as a waiver of rights for certain NLRB proceedings. Commenters noted that other states do not require licensees enter into a labor peace agreement at time of application.

RESPONSE: The proposed rules require applicants attest to entering into a labor peace agreement with a bona fide labor organization. Applicants will not be required to complete this attestation unless they are selected for provisional licensure. This means applicants will not be required to enter into a labor peace agreement unless they are likely to receive a final license. No changes have been made to the proposed regulations as a result of these comments.

116.4 – Eligibility & Evaluation

COMMENT: Commenters stated that this section was “*difficult to follow*” because of “*hanging ‘or’ conjunctions indicating alternatives where none follow, and confusing use of conjunctions ‘and’ and ‘or’ between a number of subsections.*” Commenters also stated the section was “*difficult to follow what information applies to all applicants, what applies only to individuals and groups, and what applies only to nonprofit organizations because of the way the sections are organized.*”

RESPONSE: The Office will make information available to applicants—both within the online application and on the Office’s website—on how to complete application forms. The Office will have staff available to answer applicant questions about eligibility and acceptable documentation. The Office will work with community groups, local governments, and other stakeholders to ensure potential applicants are aware of these resources. No changes were made to the proposed regulations as a result of this comment.

116.4(a) Eligibility

COMMENT: Commenters suggested the eligibility criteria be altered so some or all groups identified in Section 87(2) of Cannabis Law are defined as eligible applicants. Some commenters assumed all groups identified in Section 87(2) would be eligible applicants and suggested additional groups be added. Commenters generally confused conditional adult-use retail dispensary licenses with the Social and Economic Equity Plan and incubator program described in Section 87 of Cannabis Law.

RESPONSE: The proposed regulations ensure successful entrepreneurs who have personally been affected by the disproportionate impact of the enforcement of cannabis prohibition through marijuana-related convictions, and nonprofits organizations that have served justice involved individuals, will own and control the first adult-use retail dispensaries in New York State. While the New York Social Equity Cannabis Investment Fund is preparing to direct substantial public and private resources towards supporting these businesses, no business can be guaranteed success. These entrepreneurs and organizations will be most likely to build successful businesses in a new market. Successful conditional adult-use retail dispensaries—and the tax revenue they will generate—will be necessary to robustly implement a Social and Economic Equity Plan. Later this year, the Board will promulgate rules and regulations pertaining to other adult-use retail dispensary licenses with all groups identified in Section 87 of the Cannabis Law. As a result, additional licensing opportunities will arise for individuals pursuant to Section 87 of the Cannabis Law. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested changes to the eligibility requirement that applicants must show a significant presence in New York State. Commenters desired to bar large multi-state

corporations from being the first to obtain licensure and made suggestions to further restrict the applicant pool.

- Commenters suggested increasing the number of days a person must be physically present in the state for this requirement.
- Commenters suggested requiring applicants have lived in the state during the “War on Drugs.”
- Commenters stated that residency requirements should not be satisfied by applicants having a principal corporate location in the State.
- Commenters suggested that, if applicants demonstrate New York State presence by incorporating their business in New York State, the applicant must also show a majority of owners have been physically present in New York State for a certain number of days.
- Commenters suggested that applicants in an Indian nation or tribe within New York State meet the residency requirement.

RESPONSE: The proposed requirement that an applicant demonstrate New York State presence is intended to ensure all applicants are sufficiently invested in New York by living in the state or by being significantly involved in the state’s economy. This proposed requirement is not intended to curtail commerce or to only allow individuals whose primary residence is in New York State to be eligible applicants. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Comments were received regarding the proposed definition of justice involved.

- Commenters suggested removing the requirement that all applicants must include one justice involved individual as a majority owner. Some of these commenters stated it was unfair to reward “criminal behavior.”
- Commenters recommended that certain types of businesses, like licensed CBD retailers or MWBEs, be exempt from the requirement to include a justice involved individual.

RESPONSE: In line with the legislative intent to address the collateral consequences of criminalization and mass incarceration and other complex generational trauma associated with the attempt to curb or reduce marihuana use, this regulation intends to focus on those justice involved individuals who have been impacted by the effects of being convicted of a marihuana-related offense themselves or in their relationship with others. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Comments were received regarding the definition for justice involved individuals where the marihuana-related offense must result in a conviction.

- Commenters suggested the word “conviction” be changed to “arrest.” Commenters noted that many marihuana-related arrests end in plea deals and convictions of a lesser charge, such as disorderly conduct. Commenters stated that individuals who have spent even a night in jail have still been impacted by the criminalization of cannabis and should be considered eligible – even if they have not been convicted of a crime. Commenter noted the time and money individuals spend going to court over an arrest, even if the charge is dismissed. Commenters noted that requiring a conviction leaves out those who have spent considerable time held on bail for charges that were ultimately dismissed or a case that was won.

- Commenters suggested that felony convictions be prioritized over misdemeanor convictions. Commenters stated that felony convictions are much more impactful on a person’s life than misdemeanor convictions.
- Commenters suggested that individuals with multiple convictions of marihuana-related offenses be prioritized over those with a single conviction.
- Commenters suggested broadening the definition of justice involved to also include individuals who have not been convicted of a marihuana-related offense but have lived in “overpolice[d]” places or communities impacted by the War on Drugs. One commenter specifically recommended including individuals who have lived in neighborhoods targeted by stop and frisk.

RESPONSE: Individuals who have been convicted of a marihuana-related offense will face barriers to housing, employment, and financial security that individuals who have not been convicted of a marihuana-related offense will not face. The proposed rule gives the Office the authority to identify marihuana-related offenses and to analyze all information provided for the Office to make its licensing recommendations to the Board. This would include an evaluation of all marihuana-related offenses that the applicant offers in their application. The Office will continue to make information about the definition of “marihuana-related offense” available in the online application and on the Office’s website. No changes to the proposed regulation were made as a result of this comment.

COMMENT: Comments were received regarding the definition for justice involved individuals where the marihuana-related offense must result in a conviction that occurred in New York State.

- Commenters recommended the definition be changed to include individuals who were convicted of a marihuana-related offense in another state while a New York State resident.
- Commenters recommended the definition be clarified in regards to individuals who were convicted of a marihuana-related offense in New York while a resident of another state.
- Commenters suggested removing “in New York State” from the definition of justice involved. Commenters stated that this requirement was discriminatory towards out of state residents who wished to apply for licensure
- Commenters requested clarification on whether the words “in New York State” included convictions of federal marihuana-related offenses. Some commenters requested further clarification on if those federal convictions would be included if they resulted in imprisonment outside New York State.

RESPONSE: Individuals who have been convicted of a marihuana-related offense will be less likely to be able to obtain loans or persuade investors than individuals who have not been convicted and, thus, are a more appropriate group to target New York Social Equity Cannabis Investment Fund support towards. By requiring these convictions occurred in New York State, the proposed regulations maximize the likelihood that assistance from the Fund to licensees will begin to right the wrongs of marihuana criminalization in New York State. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Comments were received regarding the definition for justice involved individuals where the marihuana-related offense must result in a conviction that may be other family members not listed.

- Commenters recommended expanding 116.4(a)(2)(i)(b) to include the word “sibling.” Some of these commenters also included “half-siblings” in their recommendation. As proposed, individuals are justice involved if their sibling or half-sibling was convicted of marihuana-related offense while the individual was a dependent of their sibling or half-sibling. One commenter stated that, even if a person is not a dependent of their convicted sibling, people whose siblings are convicted of marihuana-related offenses often feel “direct, negative” impacts from this conviction.
- Commenters recommended expanding 116.4(a)(2)(i)(b) to include the word “grandparents.”
- Commenters recommended the definition be expanded to include all family members who resided with the convicted person, regardless of the relationship. As proposed, individuals are justice involved if their parent, child, spouse, dependent, or legal guardian is convicted of a marihuana-related offense. Commenters stated that cannabis prohibition impacted whole households and these impacts should be considered in eligibility. Commenters suggested family members outside of those listed in the proposed regulations be included in situations where the applicant could prove a financial commitment between members of the household.

RESPONSE: Cannabis Law outlines the parameters of a marihuana-related offense and to whom it should be associated. The proposed rule conforms with that list. The Office will make information available to applicants—both within the online application and on the Office’s website—on how to complete application forms, including what documentation is acceptable to substantiate a dependent relationship. No changes have been made to the proposed regulations as a result of these comments.

COMMENT: Commenters requested clarification on the word “conviction” in the definition of justice involved. Commenters asked if convictions for a marihuana-related offense in New York State can make an individual justice involved if those convictions resulted in a conditional discharge or conditional sealing.

RESPONSE: All convictions of marihuana-related offenses in New York State can make an individual justice involved. Convictions that were conditionally discharged or sealed can still mean an individual is justice involved. No changes have been made to the proposed regulations as a result of these comments.

COMMENT: Commenters requested the Office clarify whether an arrest that ended in an adjournment in contemplation of dismissal (called an ACD or ACoD) would be considered a conviction.

RESPONSE: The proposed definition of justice-involved requires a conviction. If the action is no a conviction of a marihuana-related offense, it would not qualify the individual as justice involved. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Comments were received regarding the requirement that all applicants have qualifying business experience. In general, commenters felt the requirement was too restrictive.

- Commenters suggested that this requirement be removed. Commenters believed this requirement was too limiting to the applicant pool. Commenters stated that many people who have criminal convictions face barriers to acquiring the capital necessary to start a business. Commenters remarked that this requirement favors the wealthy and not those who have been financially harmed by their conviction. Commenters stated that although

business ownership may be a helpful factor in selecting licensees, that it should not be required for eligibility.

- Commenters suggested changing the requirement to allow other educational or business experiences to qualify in addition to ownership. Commenters noted that individuals who have been convicted of a marijuana-related offense face often insurmountable barriers to starting business, particularly in obtaining funding. Commenters expressed concern that this requirement would prevent the individuals most impacted by criminalization from applying. In aggregate, these commenters suggested adding the following as pathways to eligibility:
 - significant business experience;
 - earning a college degree or other educational experience;
 - completing a business workshop or training program deemed appropriate by the Office;
 - managing or administrating a retail business (or other relevant entity);
 - maintaining professional licensure;
 - experience supervising employees;
 - recommendations from valued community members;
 - experience in undervalued sectors like household management;
 - being an essential worker during the COVID-19 pandemic;
- Commenters requested clarification on the words “net profit” in 116.4(a)(2)(iii). Some of these commenters further suggested removing the requirement that the qualifying business have two years of profit. Many commenters stated that the individuals most

impacted by a marijuana related conviction would be those least likely to own a profitable business.

- Commenters requested clarification on whether the qualifying business had to have been in New York State.

RESPONSE: The eligibility requirements are intended to help demonstrated entrepreneurs who have been impacted by cannabis prohibition establish a solid foundation to a successful cannabis retail industry as the first round of adult-use cannabis dispensaries in New York State. Starting a business requires a wide range of interdisciplinary knowledge, skills, and abilities, and operating an adult-use retail dispensary will be a complex process requiring the management of staff and perishable inventory in a regulated market. The proposed regulations' requirement that applicants have owned a qualifying business will help ensure the success of applicants who have been harmed by cannabis prohibition, however this proposed eligibility requirement only pertains to the conditional adult-use retail dispensary license. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification from the Office on various details of the qualifying business.

- Commenters requested clarification on whether a sole proprietorship or work completed as an independent contractor could satisfy the qualifying business requirement if the applicant could demonstrate their profit via tax documents.
- Commenters who stated they are justice involved and had qualifying business experience expressed concern that they may not be able to obtain documents substantiating their profitable business. One commenter stated that, because they owned the business 28

years ago, the IRS no longer maintained their tax records. Commenters stated that the eligibility requirement would bar many deserving individuals.

- Commenters asked if the two years of profit had to be the most recent years of operation;
- Commenters asked when the applicant must have had “control” over the qualifying business;
- Commenters asked how “net profit” can be substantiated and will be calculated, particularly in regards to depreciation, interest, taxes, amortization expenses, and emergency or pandemic-related assistance;

RESPONSE: Applicants will be asked to submit documentation of the qualifying business’ two years of profit when completing their application. The Office will make information available to applicants—both within the online application and on the Office’s website—on how to complete application forms, including what documentation is acceptable to substantiate a qualifying business. In the event an applicant cannot obtain tax returns for their qualifying business, the Office will accept other financial documentation about the qualifying business. The proposed regulations do not require the qualifying business’s profit to be the most recent years in which the qualifying business operated. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters remarked on legacy marijuana businesses and the requirement that applicants have qualifying business experience. Commenters requested clarification on whether these businesses would fulfill the qualifying business experience requirement, whereas other commenters suggested that these businesses be explicitly included. Commenters recommended that legacy businesses be explicitly included, provided they can offer “proof of bookkeeping records and payment of back taxes.” Commenters also suggested legacy business applicants who

enter the market this way be guaranteed “amnesty” for any state charges. Commenters stated the qualifying business requirement was “impractical” for incentivizing legacy operators to transition into the regulated market.

RESPONSE: The Board does not intend to bar legacy marijuana business operators from being eligible applicants. Applicants must be able to demonstrate they are eligible, including demonstrating the profitability of their qualified business. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated that the requirement applicants provide evidence of the primary residence of the justice involved individual at time of arrest or conviction would be a barrier for legacy business operators. Commenters noted that many legacy operators intentionally obfuscated their address to avoid detection and may not be able to provide sufficient documentation.

RESPONSE: In the event an applicant submits information that the Office believes to be incomplete or inaccurate, the Office may request additional information from the applicant. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on the qualifying business requirement and whether this requirement prohibits newly formed companies from applying.

RESPONSE: Under the proposed rules, newly formed entities are eligible to apply, provided the ownership group meets all eligibility requirements. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on the requirement that applicants eligible under qualifying nonprofit criteria be a 501(c)(3) organization. These commenters stated that

organizations could not fulfill this requirement without jeopardizing their tax-exempt status with the IRS.

RESPONSE: Although the qualifying nonprofit must be a 501(c)(3) organization, the licensee may be a separate entity that is owned and controlled, in the majority, by the nonprofit. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested the eligibility requirements be changed so that entities which are incorporated under Article 17 of Business Corporation Law as Benefit Corporations be eligible to apply under the same requirements as 501(c)(3) organizations. These commenters stated that many social enterprises are operated by benefit corporations.

RESPONSE: Benefit corporations may be eligible applicants pursuant to the eligibility criteria in proposed subsection 116.4(a)(2). No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on the requirement that applicants have five full-time employees. Commenters stated that it is burdensome to organizations to have five full-time employees “prior to winning a license, [and] prior to producing revenue.”

RESPONSE: Only applicants eligible under the qualifying nonprofit criteria are required to have five full-time employees at the time of application, and this requirement pertains to the nonprofit organization. Because applicants eligible under the qualifying nonprofit criteria are also required to operate a social enterprise for two years prior to application, the Office does not anticipate these applicants will be overly burdened by this requirement. No changes have been made to the proposed regulations as a result of this comment.

116.4(b) Ownership/Control Minimums

COMMENT: Commenters requested clarification on ownership requirements. These commenters asked specifically if applicants must satisfy both proposed 116.4(b)(1) and 116.4(b)(2), or if only one subsection is required. Commenters suggested this subsection be changed so justice involved individuals could “partner” with individuals with qualifying business experience, rather than requiring one individual meet both requirements. Commenters asked if all ownership partners must be justice involved. Commenters expressed concern that very few people would meet both criteria.

RESPONSE: Applicants must satisfy both 116.4(b)(1) and 116.4(b)(2). One justice involved individual who also has owned at least ten percent (10%) of, and controlled, a qualifying business must own at least thirty percent (30%) of the applicant and have sole control of the applicant. Other justice involved individuals who did not own and control a qualifying business may also be a part of the ownership group. All justice involved individuals combined must own at least fifty-one percent (51%) of the applicant. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated that the regulations should include a time period for applicants to resubmit their applications after being notified of deficiency.

RESPONSE: The regulations state that applicants have thirty days from the date the deficiency notice is sent to resubmit the application in its entirety. No changes have been made to the proposed regulations as a result of this comment.

116.4(c) Evaluation

COMMENT: Commenters requested specific clarification on how applications would be scored and evaluated. Commenters asked if applicants can submit additional supporting documentation beyond what is required to complete the application—such as evidence of work in the cannabis industry or a social equity plan for their dispensary—to increase their likelihood of selection.

RESPONSE: Applications will not receive a more favorable evaluation for providing information that is not requested in the application or by the Office. The Office will provide more information on the evaluation of CAURD applications through guidance and the online application itself. No changes are made to the proposed regulations as a result of this comment.

COMMENT: Commenters recommended the Office utilize a “compliance-based” selection model instead of scoring applications. Commenters stated they believed that scoring applications would yield an inconsistent or inequitable result. Commenters additionally stated that they believed, if the Office must use a merit-based selection process, that the process should be developed in conjunction with a Chief Equity Officer, Social and Economic Equity Plan, and Cannabis Advisory Board.

RESPONSE: The Board and Office acknowledge these comments and may consider them in future guidance and rulemaking. No changes are made to the proposed regulations as a result of this comment.

COMMENT: Commenters asked what the Office considers “communities with historically high rates of arrest, conviction, and incarceration of marihuana.”

RESPONSE: The Office will provide more information on the evaluation of CAURD applications through guidance and the online application itself. No changes are made to the proposed regulations as a result of this comment.

COMMENT: Commenters asked for clarification on if the applicant having a cannabis license in another state will be favorable or not.

RESPONSE: The Office will provide more information on the evaluation of CAURD applications through guidance and the online application itself. No changes are made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested applicants be prioritized if they can provide evidence of community ties to the neighborhood or other geographic area(s) they plan to open a dispensary in. Commenters further stated that the Office should create a mechanism that prevents applicants who do not live in an area from being awarded licenses to operate in that area until licensees with community ties have begun sales.

RESPONSE: The Board and Office acknowledge these comments and may consider them in future guidance and rulemaking. No changes are made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on the award of licenses. Specifically, commenters requested the Office “outline a clear tie-breaking process” if applicants have identical scores. Commenters noted that states which have not outlined clear tie-break processes have faced legal delays in opening their cannabis markets.

RESPONSE: Section 116.4(d) explains that the Office is authorized to use a random selection process to identify the final applicants should there be a tie between 2 or more candidates. The

Office will provide more information on the evaluation of CAURD applications through guidance and the online application itself. No changes are made to the proposed regulations as a result of this comment.

116.4(d) Geographic Preferences

COMMENT: Commenters expressed concern that applicants would be assigned locations that are far from where they live and have community ties. Commenters suggested adding language to the regulations that would require the justice involved owner of the dispensary to live near it. Commenters requested clarification on what the geographic zones were and whether applicants will be provided additional support or resources from the Office if they are assigned locations far from where they live.

RESPONSE: Applicants will be asked to indicate their preference of regional geographic zones for their adult-use retail dispensary. When possible, licensees will be assigned to locations that match their preferences, including locations from the New York Social Equity Cannabis Investment Fund. The Board and Office are working with the New York Social Equity Cannabis Investment Fund to ensure that the location assignments are a benefit to all applicants to ensure their success. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on what method would be used to determine the maximum number of licensees in each region.

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

COMMENT: Commenters suggested the number of adult-use retail dispensaries in a geographic area be limited. Commenters suggested that local governments be given input in the number of licenses awarded within their jurisdiction.

RESPONSE: The number of non-CAURD dispensaries in a region is beyond the scope of the proposed regulations. The Board and Office acknowledges these comments and may consider them in future guidance and rulemaking. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on the word “Board” and role of the “Advisory Board” in subsection 116.4(d). Commenters then include the description of the Cannabis Advisory Board from Section 14 of Cannabis Law.

RESPONSE: These regulations define ‘Board’ as the Cannabis Control Board under the definitions section 116.1(d). No changes were made to the proposed regulations as a result of this comment.

116.5 – Denials

COMMENT: Commenters suggested the Office clarify how many years of tax returns must be provided with the application. Commenters stated this clarification would allow applicants to focus on these years and ensure that they were not delinquent in filing required tax returns or paying owed taxes for those years.

RESPONSE: Applications shall be denied if the applicant or any true party of interest of the applicant is delinquent in filing any required tax returns or paying any amount owed to any local, state or federal government. Denials issued for this reason will not be limited to the tax returns

provided by the applicant or to the years that the qualifying business was profitable. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on what rights applicants have to notice and appeal if their application is denied. Commenters suggested the proposed regulations be changed to ensure applicants are aware of their rights of notice and appeal guaranteed to them in Cannabis Law.

RESPONSE: All applicants that are denied will have any and all rights granted to them pursuant to Cannabis Law. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on what constitutes “demonstrat[ing] prior business practices and financial arrangements that may not comply with state and local laws incidental to the cannabis industry”?

RESPONSE: An example of such business practices and financial arrangements that would not comply with state and local laws would be fraudulent business activities. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested applicants be given an opportunity to explain the circumstances before a denial is issued due to the reasons in subsections 116.5(a)(6) or 116.5(a)(8).

RESPONSE: It is in the state’s interest to regulate cannabis and to do so all applicants must be able to sufficiently establish, own and operate the adult-use cannabis retail dispensary by working within the confines of the law and with other local, state or federal government. No changes were made to the proposed regulations as a result of this comment.

116.6 - Renewal/Transition

COMMENT: Comments were received regarding the conditional nature of the license.

Commenters suggested that—to avoid a licensee having “a permanently conditional license”—provisions to renew conditional licenses be removed from the proposed rules. Commenters requested clarification on if licensees will be required to submit a “full application” for an adult-use retail dispensary license or if the application will be shortened for conditional licensees transitioning to an adult-use retail dispensary license.

RESPONSE: As defined in the proposed rule, the conditional period will end four years from the date the license was granted and transition into an adult-use retail dispensary when certain steps are taken. The Office intends for the transition to a non-conditional license to be an administratively simple process for conditional licensees. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on the length of the conditional period and the point at which renewal will occur. Commenters asked if renewal occurs after the conditional period or during the conditional period.

RESPONSE: As defined in the proposed rule, the conditional period will end four years from the date the license was granted and transition into an adult-use retail dispensary when certain steps are taken. The first renewal date is the date 2 years from the date the license is granted. Licensees must apply to transition to a non-conditional license before the end of the conditional period in order to transition into operating as an adult-use retail dispensary. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters recommended clarifying the earliest point at which licensees can notify the Office of their intent to continue operating after the conditional period and transition to an adult-use retail dispensary license. The commenter stated the proposed regulation require licensees to notify the Office exactly 120 calendar days prior to the expiration of the conditional period.

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

116.7 - Requirements/Prohibitions

COMMENT: Commenters requested clarification on whether Conditional Adult-Use Retail Dispensaries would be permitted to deliver cannabis to their customers and, if so, the guidelines for delivery. The commenters asked if delivery would require a separate license, if delivery would require dispensaries to use a third-party vendor, if dispensaries would be limited to 25 delivery workers, and if dispensaries would be limited to a certain geographic area.

RESPONSE: Every adult-use retail dispensary must comply with Section 72 of Cannabis Law which specifically authorizes the delivery of cannabis from licensed retail dispensary premises, which is separate from a delivery license as described in Section 74 of the Cannabis Law. The Office plans to clarify the parameters around delivery from conditional adult-use retail license premises in guidance. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested conditional adult-use retail dispensaries be authorized to perform limited processing, such as “house pre-rolls,” on-site to allow for higher profit margins for licensees.

RESPONSE: Section 72 of Cannabis Law limits the activities of a retail dispensary to acquisition, possession, sale and delivery of cannabis from the retail dispensary licensed premises. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on whether a person with interest in a CAURD business can also have interest in another adult-use retail dispensary. Commenters requested clarification on whether subsection 116.7(c)(10) meant licensees could ultimately have a direct or indirect interest in three conditional adult-use retail dispensaries in addition to three adult-use retail dispensaries. Commenters requested clarification on whether they would have to apply three times to open three dispensaries, or if one application could result in three licenses.

RESPONSE: Section 72 of Cannabis Law prohibits a person from holding a direct or indirect interest in more than three adult-use retail dispensary licenses, and this prohibition would include such adult-use retail dispensary licenses issued for a conditional period. Section 72 does not consider whether the licenses are conditional and states adult-use retail dispensary licenses authorize activities at a single premises. A person who wished to hold a direct or indirect interest in three adult-use retail dispensary licenses, as allowed by Section 72, would have to apply and be selected for three separate licenses. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on whether an employee of a registered organization can apply for an adult-use retail dispensary license.

RESPONSE: As long as the employees of registered organizations are not a licensee or any true party of interest who are interested, directly or indirectly, in a registered organization pursuant to article three of the Cannabis Law, those employees may apply for a conditional adult-use retail

dispensary license. No changes were made to the proposed regulations as a result of these comments.

COMMENT: Commenters requested clarification from the Office on the nature of agreements which applicants would be required to enter into as described in section 116.7(c)(6) of the proposed rules. Commenters requested clarification on what support would be offered by the New York Social Equity Cannabis Investment Fund and the specifics of that support, such as disbursement schedule, repayment rate, acceptable expenses, and tax repercussions of accepting support. Commenters noted that “financing with favorable terms” is difficult for cannabis businesses to secure and expressed a desire to obtain support from the Fund for costs beyond build-out of the dispensary. Commenters stated it was unclear what level of control the state would have over their business as a result of accepting this support. Commenters were concerned that the terms of agreements with the Fund would be unfavorable and that licensees would be trapped in predatory arrangements. Commenters expressed a desire to apply for licensure without receiving location assistance from the Fund. Commenters suggested that, before approving any agreements between licensees and the fund, the Board consult with the Chief Equity Officer and Cannabis Advisory Board to ensure the terms and conditions of the agreements promote equity.

RESPONSE: The proposed rules only require licensees to enter into agreements which have been approved by the Board and been made available by the Office. The Office is working with the Fund to ensure that the location assignments and support services are a benefit to all applicants to ensure their success. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification on how distance would be measured when implementing Section 72 of Cannabis Law.

RESPONSE: The Office will make information available to applicants—both within the online application and on the Office’s website— with guidance on how distance would be measured.

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

116.8 - Suspension, Revocation, Surrender

COMMENT: Commenters suggested an exception for emergencies be added to subsection 116.8(b). Commenters stated that there may be instances, such as a natural disaster, in which a licensee elects to cease operations of all licensed activities for a short period of time but would be unable to notify the Office at least 30 calendar days prior to the cessation of operations.

RESPONSE: The Board and Office acknowledge this comment and may consider it in future guidance and rulemaking. No changes were made to the proposed regulations as a result of these comments.

COMMENT: Commenter requested clarification on how section 116.8 interacts with Section 135 of Cannabis Law. Commenters stated that Cannabis Law guarantees licensees a hearing with “an opportunity to be heard” when their adult-use license is revoked, cancelled, or suspended. Commenters stated Cannabis Law explicitly guarantees licensees the right to appeal these Cannabis Control Board decisions to the New York Supreme Court. Commenters noted that the proposed regulations do not mention a hearing or right to appeal in instances when licenses are surrendered.

RESPONSE: Section 116.8 discusses activities that were brought on because of the licensees’ decision, not the Board. CAN Law Section 135 triggers judicial review at the prescribed activities brought upon by the Board’s decision. No changes were made to the proposed regulations as a result of these comments.

116.9 – Severability

no comments were received on this section

OUT OF SCOPE

COMMENT: Commenters requested the Board clarify how it arrived at the eligibility criteria. Commenters specifically requested the Board make publicly available data indicating how many individuals meet the eligibility criteria.

RESPONSE: This comment is outside of the scope of the proposed regulations. The eligibility requirements for CAURD ensure that only the applicants most likely to operate successful dispensaries are eligible to apply. While the requirement that applicants be justice involved ensures that those impacted by criminalization are first to enter the adult-use retail market, the requirement that applicants have qualifying business experience increases the likelihood these initial adult-use retail dispensary businesses will succeed long-term. The eligibility criteria in the proposed regulations only pertain to conditional adult-use retail dispensary licenses. The Board and Office acknowledge the proposed eligibility requirements for the conditional adult-use retail dispensary license may bar many individuals from being eligible applicants. The conditional adult-use retail dispensary license is not intended to be the social and economic equity plan or incubator program described in Section 87 of Cannabis Law. Later this year, the Board will promulgate rules and regulations pertaining to other adult-use retail dispensary licenses. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated concern that Section 116.2(a)(18) would exclude legacy operators or even require legacy operators to self-incriminate. Commenters suggested including a tax amnesty clause in this section or a clause guaranteeing the Office would not refer

incriminating evidence to law enforcement. Commenters stated concern that justice involved individuals may have historically been excluded from access to conventional financial institutions and would not have this documentation.

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

COMMENT: Commenters (209J,) suggested reasons for denial in subsections 116.5(a)(5), (7), and (10)—which they interpreted as barring legacy operators from licensure—be amended to include exceptions for legacy operators trying to enter the regulated market.

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

COMMENT: Commenters provided the Office with information about their business and requested to do business with future licensees or the Office directly.

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

COMMENT: Commenters asked if they were eligible applicants as defined in the proposed rule.

RESPONSE: This comment is outside of the scope of the proposed regulations. After the proposed regulations have been adopted, the Office will sponsor workshops for potential applicants. At these workshops, potential applicants can inquire about their eligibility. No changes have been made to the proposed regulations as a result of these comments.

COMMENT: Commenters asked about the application process for other license types, such as when applications would open to the public, who would be eligible to apply, what authorizations those licenses would have, what they would need to apply, or when licenses would be awarded.

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

COMMENT: Commenters remarked that cannabis prices vary between states with adult-use sales. The commenter suggested New York State choose to keep prices low so that sales are not diverted to untaxed legacy operators.

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

COMMENT: Commenters stated that the legalization of marihuana is incomplete because people in certain occupations are still drug tested as part of their job.

RESPONSE: This comment is outside of the scope of the proposed regulations. Cannabis Law does not limit the authority of any employer to enact and enforce policies pertaining to cannabis in the workplace. No changes have been made to the proposed regulations as a result of these comments.

COMMENT: Commenters asked for clarification on whether involvement in the cannabis industry would impact an application for citizenship.

RESPONSE: This comment is outside of the scope of the proposed regulations. Section 137 of Cannabis Law forbids corporations or partnerships from trafficking cannabis unless each member of the partnership, or at least half of the directors and all of the principal officers of the

corporation, is a citizen of the United States or a person lawfully admitted for permanent residence in the United States. No changes were made to the proposed regulations as a result of these comments.

COMMENT: Commenters suggested the Office create a conditional micro-business license which would allow distressed farmers to cultivate adult-use cannabis indoors. The commenter notes the Office’s Conditional Adult-Use Cultivator licenses allow hemp farms to grow adult-use cannabis and believes creating a license for other farms would allow farms like theirs to help the State’s conditional adult-use retail dispensaries succeed.

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

COMMENT: Commenter requested clarification on whether they would need a separate room to sell cannabis at their convenience store alongside soda, beer, lottery, and tobacco or if a separate counter would be sufficient.

RESPONSE: Sections 85(3) and 85(10) of Cannabis Law prohibit any licensed adult-use retail dispensaries from selling alcoholic beverages or offering any gambling on the licensed premises. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters inquired about whether the Office plans to issue guidance on security at retail dispensaries.

RESPONSE: The Board and Office acknowledge these comments and will take them under consideration when developing guidance for adult-use retail dispensaries. No changes were made to the proposed regulations.

COMMENT: Commenters urged the Office to ensure adult-use cannabis is not marketed to children.

RESPONSE: This comment is outside of the scope of the proposed regulations however, Section 86 of Cannabis Law prohibits all marketing strategies designed to appeal to people under 21, and Section 72 requires that adult-use retail dispensaries are at least 500 feet from school grounds. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenter recommended adult-use cannabis packaging be required to include consumer warnings, such as recommendations not to overconsume cannabis or mix cannabis with other substances.

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

COMMENT: Commenters wrote to complain about the legalization of marihuana in New York State.

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

COMMENT: Commenters requested clarification for local governments as they draft local legislation pertaining to the zoning, tax collection, fire inspection, and other aspects of retail adult-use dispensaries.

RESPONSE: While this comment is out of scope of the proposed regulations, the Board and Office acknowledges this comment and will continue to work with local governments to ensure

they are active participants in implementing Cannabis law. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested that applicants formed under Tribal Law be allowed to supply CAURD dispensaries. Commenters suggested the Office assure Indian Nations that it will not interfere with tribal routes of trade.

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

COMMENT: Commenters requested the words “dispense” and “dispensary” be removed from the proposed regulations. Commenters stated that the term was inaccurate and misleading because the terms only apply to medical cannabis sales.

RESPONSE: The reference conforms with Cannabis Law. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested the Board not “arbitrarily” limit the number of adult-use licenses issued in New York.

RESPONSE: Cannabis Law governs the way in which the Board uses its sole discretion to determine the number of licenses within the state. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters encouraged the Office to prevent unregulated cannabis vendors from operating in New York.

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

COMMENT: Commenters stated they were not eligible applicants and had property they wished to use for a retail adult-use dispensary. Commenters expressed concern that they would not be able to apply for licensure when they are eligible and use their existing location if the Office located a conditional dispensary too closely to their property.

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

COMMENT: Commenters expressed concern that Office-licensed cultivators would not be able to grow sufficient cannabis to supply conditional adult-use retail dispensaries unless cultivators are authorized to use lights.

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

COMMENT: Commenters asked if there was a restriction on the distance between a licensed adult-use retail dispensary and a public park.

RESPONSE: Unless the public park is a part of a school ground, Section 72 of Cannabis Law does not contemplate public parks in restrictions on distance. This comment is out of scope of the proposed regulations. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Commenters requested the Office create a training similar to the State Liquor Authority's Alcohol Training Awareness Program to educate licensees and their employees.

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

COMMENT: Commenters requested the Office add language to the attestations explaining how the applicant will enforce restrictions on sale to under-age individuals, sale of disallowed marihuana products, and the gifting of marihuana products.

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

COMMENT: Commenters stated that tax revenue from marihuana sales should be redirected to communities in need and not to the “state general fund.”

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

COMMENT: Commenters stated the importance of including racial and ethnic minorities in the Cannabis Advisory Board and implementing the Board and Office’s commitment to social equity. Commenters urged the Board to ensure “there is not just oversight by those effected [by marihuana criminalization], but a voice in the larger conversation.”

RESPONSE: This comment is outside of the scope of the proposed regulations. The Board and Office acknowledge this comment and looks forward to working with these commenters and other stakeholders in continuing to build an equitable marihuana industry in New York. No changes were made to the proposed regulations as a result of this comment.