

Pursuant to the authority vested in the Cannabis Control Board by Sections 13, 81 and 86 of the Cannabis Law, Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, and a new Part 128 and Part 129 are added, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

## Part 128

Part 128 - Adult-Use Packaging and Labeling

**§ 128.1 Definitions.**

**§ 128.2 Cannabis Product Retail Packaging Minimum Standards.**

**§ 128.3 Cannabis Product Packaging Prohibitions.**

**§ 128.4 Retail Packaging Sustainability Program.**

**§ 128.5 Cannabis Product Labeling Minimum Standards.**

**§ 128.6 Cannabis Product Labeling Prohibitions.**

**§ 128.7 Retail Packaging and Labeling Violations and Penalties.**

**§ 128.8 Severability.**

**§ 128.9 Referenced Material.**

**§ 128.1 Definitions.**

For purposes of Part 128 and Part 129 of this Title, the following terms shall have the following meanings:

(a) *Advertising* means the process of disseminating advertisements in any manner or by any means.

(b) *Advertisement* means any publication, video, use of a brand representative, or any other form of media for the purpose of causing, directly or indirectly, the purchase or use of a brand or cannabis product including, but not limited to: websites, social media, print media, broadcast media, TV, radio, streaming media, out of home media, outdoor signs, merchandise, event sponsorship, street art, murals, and digital communications.

(c) *Attractive to individuals under twenty-one* means labeling, packaging, advertising and marketing that is pleasing or appealing to persons under the age of twenty-one by using or including, among other things:

(1) Cartoons;

(2) Bubble-type or other cartoon-like font;

(3) Bright colors that are "neon" in appearance;

(4) Similarities to products, or words that refer to products that are commonly associated with, or marketed in a manner so as to be attractive to, individuals under twenty-one, including

but not limited to, any imitation of food, candy, soda, drinks, cookies, or cereal (with the exception of using the name of a cultivar or licensee, including the licensee's doing business as name), in labeling, packaging, advertising, or marketing;

(5) Terms "candy" or "candies" or variants in spelling such as "kandy" or "kandeez" (with the exception of cultivar names or a licensee's name, entity name, or doing business as name);

(6) Symbols, images, characters, public figures, phrases, toys, or games that are commonly used to market products to individuals under the age of twenty-one; or

(7) Images of individuals who could reasonably appear to be under the age of twenty-one, unless the individual is at least twenty-five years of age.

(d) *Board* means the Cannabis Control Board of New York State as established by Article 2 of the Cannabis Law.

(e) *Brand or Branding* means the name, entity name, or doing business as name, registered trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other identifiable marker that identifies one adult-use cannabis licensee or adult-use cannabis licensee's cannabis products as distinct from those cannabis products of other adult-use cannabis licensees and is used in, among other things, any packaging, labeling, advertising or marketing.

(f) *Certificate of analysis* means a certified report from a cannabis laboratory that meets the requirements of Part 130 of this Title.

(g) *Child-resistant* means special packaging for sale to a consumer that is:

(1) designed or constructed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly as defined by Title 16, as it relates to Commercial Practices, of the Codes of Federal Regulations section 1700.15 for Poison Prevention Packaging Standards and Title 16, as it relates to Commercial Practices, of the Codes of Federal Regulations section 1700.20 for Testing Procedure for Special Packaging, as amended from time to time, and

(2) follows the packaging standards set forth in Title 16, as it relates to Commercial Practices, of the Codes of Federal Regulations Section 1700.15 and the testing procedure set forth in Title 16, as it relates to Commercial Practices, of the Codes of Federal Regulations section 1700.20.

(h) *Date of expiration* means the date prior to which an unopened cannabis product meets applicable standards of identity, potency, and quality at the time of use, as determined by appropriate data, subject to any storage conditions stated on the labeling.

(i) *Edible* means a product, containing either cannabis or concentrated cannabis and other ingredients, intended for use or consumption through ingestion, including sublingual or oral absorption.

(j) *Exit package* means a receptacle into which cannabis products within a retail package are placed at the retail point of sale. The exit package is optional.

(k) *Health claim* means any claim on the retail package or marketing layer or in the marketing or advertising of a cannabis product, that expressly or by implication, including, but not limited to, by "third party" references, written statements (e.g., a brand name including a term such as "heart"), symbols (e.g., a heart symbol), or branding, characterizes the relationship of any cannabis product to a disease or health-related condition or symptom. Implied health claims include those statements, symbols, branding, advertisements, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between the presence or level of a substance in the cannabis product to a disease or health-related condition or symptom.

(l) *Licensee* means an individual or an entity who has been granted a license for any activity under Article 4 of the Cannabis Law.

(m) *Lot unique identifier or lot number or bar code* means any distinctive combination of letters, numbers, or symbols, or any combination of them, from which the complete history of cultivation, manufacturing, processing, testing, custody, distribution or recall of a lot of cannabis or a cannabis product can be determined.

(n) *Marketing* means the process of identifying consumers' needs and addressing such needs

through advertisements.

(o) *Marketing layer* means packaging in addition to the retail packaging that is the outermost layer visible to the consumer at the point of sale. The marketing layer is optional, but if used it shall be labeled according to the requirements in this Part.

(p) *Non-consumer package* means any container or wrapping used solely for the transport of cannabis or cannabis products in bulk between licensees and, particularly, a package intended solely for wholesale distribution and not final retail sale.

(q) *Office* means the Office of Cannabis Management as established by Article 2 of the Cannabis Law.

(r) *Phytocannabinoid* means any of the chemical compounds, excluding terpenes or any other compounds set forth by the Office, that are the active principles of cannabis sativa, including, but not limited to, tetrahydrocannabinol (THC) and cannabidiol (CBD), and does not include synthetic cannabinoids as that term is defined in subdivision (g) of schedule I of section thirty-three hundred six of the Public Health Law.

(s) *Plastic* means a synthetic material that is made from linking monomers through a chemical reaction to create a polymer chain that can be molded or extruded at high heat into various solid forms that retain their defined shapes during their life cycle and after disposal.

(t) *Post-consumer recycled content* means new material produced using material resulting from the recovery, separation, collection and reprocessing of material that would otherwise be disposed of or processed as waste and that was originally sold for consumption. It does not include post-industrial material, or material generated by means of combustion, incineration, pyrolysis, gasification, solvolysis, chemical recycling, and any high-heat or conversion process.

(u) *Principal packaging display panel* means the panel of the retail package or the marketing layer that the processor intends to be displayed at retail.

(v) *Resealable* means a package that maintains its child-resistant effectiveness, as well as preserving the integrity of cannabis products contained within, for multiple servings.

(w) *Retail package* means a sealed, hard or soft-bodied, child-resistant receptacle in which the cannabis product shall be placed before retail sale. Retail package does not mean: (1) inner wrapping or lining; (2) an exit package; or (3) a non-consumer package used to transfer cannabis from one licensee to another.

(x) *Reusable packaging* is packaging made from durable material that is designed to be used repeatedly for a number of use cycles, is safe for washing and sanitizing, and is capable of being recycled at the end of use, with the exception of ceramic products.

(y) *Special branding material* means a visual or audio element which shall only be for use in packaging, labeling, marketing, and advertising by certain licensees or on certain cannabis

products including, but not limited to, a designation that a licensee is a social and economic equity licensee. All special branding materials and the brands or products authorized to use such materials shall be defined, made available, and designated for use in guidance.

(z) *Tamper-evident* means, with respect to a device or process, bearing a seal, a label or a marking that makes unauthorized access to or tampering with a package, product or container easily detectable.

(aa) *Total THC* means the sum of the percentage by weight or volume measurement of tetrahydrocannabinolic acid multiplied by 0.877, plus, the percentage by weight or volume measurement of THC.

(ab) *Use by date* means the date prior to which an opened cannabis product meets applicable standards of identity, potency, and quality at the time of use, as determined by appropriate data , subject to any storage conditions stated on the labeling.

(ac) *Universal symbol* means an image developed by the Office, and made available to licensees, that indicates that a retail package or product contains cannabis.

### **§128.2 Cannabis Product Retail Packaging Minimum Standards.**

(a) A retail package shall:

(1) be child-resistant;



- (2) be tamper-evident;
  - (3) be resealable, if it contains more than one serving;
  - (4) fully enclose the product, minimize oxygen exposure and prevent the contamination and/or degradation of the cannabis product; and
  - (5) not impart any toxic or deleterious substance onto the cannabis product.
- (b) A licensee shall maintain a copy of the certificate showing that each retail package into which the licensee places cannabis or cannabis products is child-resistant and complies with the requirements of Title 16, as it relates to Commercial Practices, of the Codes of Federal Regulations section 1700.15 for Poison Prevention Packaging Standards and Title 16, as it relates to Commercial Practices, of the Codes of Federal Regulations section 1700.20 for Testing Procedure for Special Packaging, as amended from time to time.
- (c) The exit package is optional, is not required to be labeled, and may—at a maximum—only include the retail dispensary’s name, its logo, and any special branding materials, providing such that name or logo complies with the provision of section 128.6 of this Part.

**§ 128.3 Cannabis Product Packaging Prohibitions.**

- (a) Cannabis product packaging shall not:

- (1) contain any features that emit scent or sound;
- (2) contain any features that change or alter a package's appearance through technology, other than for anti-counterfeiting purposes;
- (3) be made attractive to individuals under twenty-one;
- (4) be made of plastic, unless containing a minimum 25% post-consumer recycled content; and
- (5) violate any additional requirements as set out by the Office or more stringent packaging requirements established in any New York State law or regulation.

**§ 128.4 Retail Packaging Sustainability Program.**

(a) A licensee shall submit an environmental sustainability program for cannabis product packaging as part of the application process, if applicable for the license type. Such programs may include, but are not limited to, reuse strategies collecting reusable cannabis packaging components to be sanitized and refilled or reused as cannabis packaging or sustainable packaging strategies that use non-plastic, compostable or recyclable materials, or packaging materials exceeding 25% post-consumer recycled content. Within two years of issuance of the license, the licensee shall submit to the Board or Office a revised environmental sustainability product packaging plan that reduces use of plastics in packaging.

(b) Retail packages can be reused after appropriate sanitation if, based on visual inspection, the retail package is in good working order and does not appear to pose a risk of unintended exposure or ingestion of cannabis products. The retail packages shall be sanitized and disinfected either by a licensee or by a third-party to ensure that they do not contain any harmful residue or contaminants. The visual inspection shall ensure such retail packages are not brittle or have chips, cracks, or other imperfections that could compromise the child-resistant properties of the retail package or otherwise pose a threat of harm to any individual.

(c) Claims about recyclable or recycled content packaging shall comply with Title 16, as it relates to Commercial Practices, of the Codes of Federal Regulations section Part 260 regarding Guides for the Use of Environmental Marketing Claims.

(d) A licensee who packages cannabis products for retail sale shall annually report to the Office key metrics including, but not limited to:

(1) the total amount, by weight, of packaging material sold, offered for sale, or distributed into the state by the licensee in the prior calendar year;

(2) the total number of cannabis products sold in reusable packages and the number of reusable packages that the licensee refilled;

- (3) the total cost of packaging material; and
- (4) any additional information as set out by the Office.

**§ 128.5 Cannabis Product Labeling Minimum Standards.**

- (a) The principal packaging display panel shall contain the following information:
  - (1) in **bold**, milligrams per single serving of total THC (THC + [THCA x 0.877]), total CBD (CBD + [CBDA x 0.877]) content, and any other marketed phytocannabinoids;
  - (2) if terpenes are marketed, a terpene profile;
  - (3) in **bold**, milligrams per package of total THC (THC + [THCA x 0.877]) and total CBD (CBD + [CBDA x 0.877]) content;
  - (4) the amount of total THC (THC + [THCA x 0.877]) and any other marketed phytocannabinoids as a percentage of volume, except if the cannabis product is in the form of an edible;
  - (5) number of servings per package and, if applicable, the recommended size of a serving, except for cannabis flower and other forms of cannabis for vaporization; and

(6) weight of cannabis product.

(b) The retail package or, if it is used, the marketing layer shall contain the following information:

(1) a list of all ingredients in descending order of predominance by weight in the cannabis product – both active and inactive. The ingredient list shall include and separately list, in **bold**, any major allergens set forth in the Food Allergen Labeling and Consumer Protection Act of 2004, Title 21, as it relates to Food and Drugs, of the U.S. Code section 343, for misbranded food;

(i) Edibles shall include a nutritional label pursuant to Title 21, as it relates Food and Drugs, of the Codes of Federal Regulations section 101.9(c) for nutrition labeling of food, as amended from time to time; and

(ii) Cannabis products marketed as dietary supplements shall include a supplement fact panel pursuant to Title 21, as it relates to Food and Drugs, of the Codes of Federal Regulations section 101.36 for nutrition labeling of dietary supplements, as amended from time to time;

(2) a list of any solvent used to produce the cannabis product, if applicable;

(3) date of expiration of the unopened cannabis product;

- (4) use by date;
- (5) proper storage conditions;
- (6) name, location (at a minimum, city or zip code) license number, and direct contact information of the processor;
- (7) any one of the following three universal symbols at a minimum size of 1.25 inch in height for the square symbol, 0.5 inch in width for the vertical symbol, and 0.5 inch in height for the horizontal symbol. The symbol and its colors cannot be altered unless authorized by the Board and it shall be made conspicuous by printing the symbol on, or outlining the symbol with, a contrasting color;



- (8) clear usage instructions;
- (9) lot unique identifier or lot number or bar code;
- (10) a scannable bar code or QR code linked to a downloadable certificate of analysis or linked to a website where the certificate of analysis can be downloaded; and

- (11) any other information required by the Board.
- (c) Required labeling shall be no smaller than 6-point font size. Labeling text shall be clearly written or printed and in the English language. In addition to the required labeling in English, licensees may include accurate foreign language translation(s) of the labeling text, provided such translation otherwise complies with this Part.
- (d) The marketing layer is optional, but if used by a licensee in addition to the required packaging, it shall be labeled according to the requirements in Section 128.6 of this Part.
- (e) The information required pursuant to Section 128.5(a) of this Part shall be unobstructed and conspicuous. A licensee may include the information required pursuant to Section 128.5(a) of this Part by printing it directly onto the retail package or by affixing multiple labels with the information to the retail package, provided that none of the information is obstructed.
- (f) The retail packaging or, if it is used, the marketing layer shall contain the following warnings, provided however, if the word “warning” is clearly associated with all warnings as a header then the word “warning” does not need to be included in the individual warnings where specifically indicated below:
- (1) “This product contains cannabis and THC”;

- (2) “KEEP OUT OF REACH OF CHILDREN AND PETS. For use only by persons 21 years and older”;
- (3) “Warning: Do not use if pregnant or nursing”;
- (4) “Poison Center 1-800-222-1222”;
- (5) For cannabis products intended to be smoked, inhaled, or vaporized: “Warning: Smoking or vaping is hazardous to health”;
- (6) For cannabis products intended to be ingested orally: “Warning: Effects of this product may be delayed by 4 or more hours”;
- (7) For topical products: “Warning: For topical use only. Do not eat or smoke”; and
- (8) Any other warning required by the Board.
- (g) The warnings required pursuant to Section 128.5(f) of this Part shall be displayed:
  - (1) in the English language;
  - (2) in Times New Roman, Calibri, Arial, or Helvetica;



(3) in text no smaller than size six (6) font; and

(4) **bolded.**

(h) In addition to the required warnings in Section 128.5(f) of this Part, the retail packaging or marketing layer shall include any rotating health warnings as determined by the Office.

(i) To allow for labeling on small packaging, the information required pursuant to sections 128.5(b), (f), and (h) of this Part may appear on labels that are, not by means of limitation: accordion, booklet, dry release, expandable, extendable, or peel-and-reseal. This allowance does not apply to:

(1) The principal packaging display panel minimum standards specified in section 128.5(a) of this Part;

(2) the universal symbol specified in Section 128.5(b)(7) of this Part; and

(3) the following two required warnings:

(i) “This product contains cannabis and THC”; and

(ii) In all capital letters as indicated: “KEEP OUT OF REACH OF CHILDREN AND PETS. For use only by persons 21 years and older”.

(j) Any research licensee conducting research approved by the Office involving human subjects shall comply with all packaging and labeling requirements, unless the licensee receives prior written approval for a waiver of specific packaging or labeling requirements in connection with any research approved by the Office. The waiver may extend to a licensee providing

cannabis products for an approved research study.

**§ 128.6 Cannabis Product Labeling Prohibitions.**

(a) No cannabis product package, including an exit package, shall display any content or be labeled in any manner that:

- (1) is attractive to individuals under twenty-one as defined in 128.1(c) of this Part;
- (2) includes any false or misleading statements, images, or other content including, but not limited to, any health claims;
- (3) includes the term “organic” unless describing the product’s ingredients and in compliance with Title 7, as it relates to Agriculture, of the Codes of Federal Regulations sections 205.600 to 205.607 (sections 205.608-205.619 [Reserved]), regarding the USDA National list of Allowed and Prohibited Substances such that the product contains at least 70 percent certified organic ingredients (not including salt or water);
- (4) includes the term “craft” unless the processor is designated by the Office as processing craft products;
- (5) includes the term “gluten-free” unless the product meets the term as defined in Title 21, as it relates to Food and Drugs, of the Codes of Federal Regulations section 101.91;

- (6) includes the term “vegan” unless the product contains no animal products;
- (7) includes the term “kosher” unless the product is packaged and labeled in compliance with section 201-a of the Agriculture and Markets Law;
- (8) causes a reasonable consumer confusion as to whether the cannabis product is trademarked, marked or labeled in a manner that violates any federal trademark law or regulation;
- (9) portrays cannabis or cannabis products as being authorized under or part of Article 3 or Article 5 of the Cannabis Law;
- (10) depicts cannabis products or paraphernalia;
- (11) promotes overconsumption;
- (12) promotes price, price reductions, or any other discount, customer loyalty program, or coupon, except as part of an environmental sustainability program pursuant to Section 128.4(a) of this Title or otherwise approved by the Office;
- (13) includes a special branding material, unless the use of such special branding material is authorized and complies with this Part; or

(14) violates any other prohibitions as set out by the Office.

**§ 128.7 Retail Packaging and Labeling Violations and Penalties.**

(a) The Board may suspend, cancel, or revoke a license and impose any other penalties as authorized by Subchapter J of this Title and the Cannabis Law for the following violations:

(1) failing to comply with this Part; and

(2) transferring, selling, or offering to sell a cannabis product to another licensee that is not packaged or labeled in accordance with this Part.

(b) If a licensee authorized to sell cannabis products to consumers receives a cannabis product that is not packaged or labeled in accordance with this Part and the licensee receives appropriate notification of the noncompliance from the Office, a consumer, or the licensee which processed or distributed the cannabis product, then the licensee shall immediately notify the Office and return the cannabis product to the licensee who transferred the product to the licensee. In the event the cannabis product is packaged according to this Part but is not labeled according to Part 128, the processor may correct the labeling by adding only the information required to make the labeling compliant.

(c) If a licensee returns a cannabis product to the licensee who transferred the product, the licensee initiating the return shall document the return and the reason for the return in the inventory tracking system.

**§ 128.8 Severability.**

If any provision of this Part or its application to any particular person or circumstance is held invalid, the remainder of this Part and its application to other persons and circumstances shall not be affected thereby.

**§ 128.9 Referenced Material.**

Regulations included in Part 128 of this Title contain references to documents for information as to the standards to be met or guidelines and methodologies to be used in meeting the requirements of specific regulations. In addition, copies of referenced materials are available for public inspection and copying at the Albany office of the New York State Department of State.

**Table 1**

<b>Regulation</b>	<b>Referenced Material</b>	<b>Availability</b>
<b>9 NYCRR Part/sec./etc.</b>	<b>CFR (Code of Federal Regulations) or other</b>	
128.1(g)(1)	Title 16 §§ 1700.15 and 1700.20 (January 1, 2021)	*
128.2(b)	Title 16 §§ 1700.15 and 1700.20 (January 1, 2021)	*
128.4(c)	Title 16 Part 260 (January 1, 2021)	*
128.5(b)(1)	21 U.S.C. Part 343 (January 1, 2021)	*
128.5(b)(1)(i)	Title 21 § 101.9(c) (January 1, 2021)	*
128.5(b)(1)(ii)	Title 21 § 101.36 (January 1, 2021)	*

128.6(a)(3)	Title 7 §§ 205.600 – 205.619 (January 1, 2021)	*
128.6(a)(5)	Title 21 § 101.91 (January 1, 2021)	*

\* Any printed editions of the *Code of Federal Regulations* (CFR) can be obtained by calling the Superintendent of Documents, U.S. Government Printing Office, at (202) 512-1800. Electronic copies of CFR sections may also be obtained at Government Printing Office (GPO) which contains the most recent revisions, can be searched directly at: <https://www.ecfr.gov/>

\*\* Any printed editions of the *Annual Book of American Society for Testing and Materials* can be purchased by calling the Society at (610) 832-9500. Electronic copies of ASTM sections may be purchased online at: <https://www.astm.org/>

Part 129

Part 129 - Adult-Use Marketing and Advertising

**§ 129.1 Definitions.**

**§ 129.2 Adult-Use Marketing and Advertising General Requirements.**

**§ 129.3 Adult-Use Marketing and Advertising Prohibitions.**

**§ 129.4 Outdoor Signs.**

**§ 129.5 Adult-Use Marketing and Advertising Violations and Penalties.**

**§ 129.6 Severability.**

**§129.7 Referenced Materials.**

### **§ 129.1 Definitions.**

For purposes of this Part, the terms used herein shall have the meanings ascribed to them in Section 128.1 of this Title.

### **§ 129.2 Adult-Use Marketing and Advertising General Requirements.**

(a) A licensee may use its brand on labeling, signs, advertisements, and other material subject to Parts 128 and this Part of this Title.

(b) A licensee may engage in reasonable marketing and advertising practices that are not otherwise prohibited in this Part, provided the marketing, advertising, and any advertisements do not jeopardize public health or safety, promote youth use, or be attractive to individuals under twenty-one.

(c) Any advertisement shall, unless otherwise approved by the Office, include a required warning that depends on that advertisement's form:

(1) if the advertisement contains only visual elements or a combination of audio and visual elements, then the following statements shall be included in a conspicuous manner on the face of the advertisement or clearly read aloud at the same volume and pace and in the same language as the rest of the advertisement:



“For use only by adults 21 years of age and older. Keep out of reach of children and pets. In case of accidental ingestion or overconsumption, contact the Poison Center at 1-800-222-1222 or call 9-1-1. Please consume responsibly.”; or

(2) if the advertisement contains only auditory elements, then the following statements shall be clearly read aloud at the same volume and pace and in the same language as the rest of the advertisement:

“For use only by adults 21 and older. Keep out of reach of children and pets. In case of accidental ingestion or overconsumption, contact the Poison Center. Consume responsibly.”

(d) Any advertisement, unless otherwise approved by the Office, shall include one of the following warnings in a rotating manner as directed by the Office, in their entirety in a conspicuous manner on the face of the advertisement or clearly read aloud at the same volume and pace and in the same language as the rest of the advertisement:

(1) "Cannabis can be addictive.";

(2) “Cannabis can impair concentration and coordination. Do not operate a vehicle or machinery under the influence of cannabis.”;

(3) "There may be health risks associated with consumption of this product.";

(4) "Cannabis is not recommended for use by persons who are pregnant or nursing."; or

(5) Other warnings as determined by the Office.

(e) Warnings pursuant to sections 129.2(c) and 129.2(d) of this Part shall be displayed as follows if printed or otherwise written on the advertisement:

(1) in the same language as the advertisement;

(2) in Times New Roman, Calibri, Arial, or Helvetica;

(3) in text no smaller than size 6 font;

(4) bolded;

(5) be legible, unobscured, and visible to the consumer; and

(6) in a bright yellow text box so as to stand out from the surrounding advertisement. The use of a bright yellow color for the warning shall not render the advertisement attractive to individuals under twenty-one as prohibited by Section 129.3 of this Part. If the surrounding advertisement is yellow in color, the text box shall be offset with a distinctive border so as to differentiate it from the surrounding advertisement.

(f) A licensee shall include the New York State HOPEline phone number, text number, and website or QR code on any advertisement, or other future iteration of New York State's gambling and substance use disorder resource helpline, unless otherwise approved by the Office.

(g) A licensee shall only advertise by means of television, radio, print, internet, mobile applications, social media, other electronic communication, or other print publication, unless the advertisement is an outdoor sign pursuant to Section 129.4(a) of this Part, if the licensee has reliable evidence that at least 90%, unless otherwise determined by the Office, of the audience for the advertisement is reasonably expected to be twenty-one years of age or older. The burden of proof of the audience composition lies with the licensee.

(h) A licensee shall maintain records and documentation to establish that its advertising and marketing meet the requirements of this Part.

(i) A licensee may sponsor a charitable, sports, or similar event provided however, a licensee shall not advertise at, or in connection with, such an event unless:

(1) any advertisements consist only, at a maximum, of the licensee's logo and the following text:

(i) the licensee's name, entity name, or doing business as name;

(ii) the licensee's website URL, email address, and phone number;

- (iii) the nature of the business; and
  - (iv) if the licensee is authorized to conduct retail sales, the retail dispensary's location; and
- (2) advertising and marketing at eligible events shall comply with this Part.
- (j) A licensee shall limit the apparel displaying its brand and trademark used in connection with the sale of apparel displaying its brand to only adult sizes. Such apparel shall only be sold by the licensee at its own licensed premises. The universal symbol as determined in Part 128.5(b)(7) of this Title cannot be used in branded apparel.
  - (k) A licensee shall accurately and legibly include its name and license number in all advertisements for its products, unless the form of the advertisement has been exempted from this requirement by the Office.
  - (l) A licensee who advertises via a website or digital application shall have a mechanism designed to keep those under the age of twenty-one from visiting the website or digital application.
  - (m) A licensee who has entered into an intellectual property licensing agreement, marketing or advertising agreement or any other agreement in which a licensee authorizes the use of its intellectual property, or allows a third party to market or advertise on its behalf, the licensee is

responsible to ensure that such agreement, intellectual property use, marketing or advertising shall comply with Part 128 and this Part of this Title.

(n) Licensees shall comply with additional requirements as set out by the Office.

**§ 129.3 Adult-Use Marketing and Advertising Prohibitions.**

(a) No marketing, advertising, or advertisement shall:

(1) depict cannabis products not compliant with Part 128 of this Title;

(2) use or display images designed in any manner to be attractive to individuals under twenty-one (21);

(3) use audio that may be attractive to individuals under twenty-one, including but not limited to using children's voices or cartoon voices;

(4) be on or in the form of a billboard, unless otherwise allowed pursuant to Section 129.4 of this Part;

(5) use or display colloquial references to cannabis or depictions of cannabis, cannabis products, paraphernalia, or the imagery or action of smoking or vaping, including but not limited to the words "stoner", "chronic", "weed", "pot", or "sticky buds," unless such reference is used in the licensee's name, entity name, doing business as name, or logo;

- (6) be false or misleading, including making any health claims or a representation that use of cannabis has curative or therapeutic effects;
- (7) promote overconsumption or rapid consumption;
- (8) promote product potency or THC concentration;
- (9) promote price, price reductions, or any other discount, customer loyalty program, or coupon, except as part of an environmental sustainability program pursuant to Section 128.4(a) of this Title or otherwise approved by the Office;
- (10) falsely portray cannabis or cannabis products as being in compliance with Article 3 and Article 5 of the Cannabis Law;
- (11) assert that cannabis or cannabis products are safe because they are regulated by the Board or Office;
- (12) use the term “organic” unless describing a cannabis product’s ingredients and in compliance with Title 7, as it relates to Agriculture, of the Codes of Federal Regulations sections 205.600 to 205.607 (sections 205.608-205.619 [Reserved]), regarding the USDA National list of Allowed and Prohibited Substances, such that the product contains at least 70 percent certified organic ingredients (not including salt or water);

- (13) use the term “craft” unless describing a cannabis product made by a processor designated by the Office as processing craft products;
- (14) use the term “gluten-free” unless the product meets the term as defined in Title 21, as it relates to Food and Drugs, of the Codes of Federal Regulations section §101.91;
- (15) use the term “vegan” unless describing a cannabis product containing no animal products;
- (16) use the term “kosher” unless describing a cannabis product packaged and labeled in compliance with section 201-a of the Agriculture and Markets Law;
- (17) contain any obscene or indecent statement, design, or representation, picture, or illustration;
- (18) be within or be readily observed within 500 feet of an elementary or secondary school grounds as defined in Education Law, recreation center or facility, childcare center, playground, public park, or library;
- (19) disparage the cannabis or cannabis products of another business;
- (20) encourage the transportation of cannabis across state lines or otherwise encourage illegal activity;

(21) be on or through handbills that are passed out in public areas including, but not limited to, parking lots and publicly owned property;

(22) include medical symbols that might reasonably lead a consumer to think the product is a medical product;

(23) utilize unsolicited pop-up or banner advertising on the internet other than on age-restricted websites for people twenty-one and over who consent to view cannabis-related material;

(24) produce any items for sale or promotional gifts, such as T-shirts or novelty items, bearing a symbol of or references to cannabis. This prohibition shall not pertain to cannabis paraphernalia sold to consumers;

(25) advertise through free promotional items including, but not limited to, gifts, giveaways, discounts, points-based reward systems, customer loyalty programs, coupons, and "free" or "donated" cannabis products, except for: the provision of branded exit packages by a licensee for the benefit of customers after a retail purchase is completed, the provision of free promotional items as part of an environmental sustainability program pursuant to Section 128.4(a) of this Title, or otherwise approved by the Office;

(26) use a commercial mascot;



(27) include a special branding material, unless use of that special branding material is authorized and complies with this Part; or

(28) violate additional prohibitions determined by the Board or Office.

(b) A licensee shall not permit the use of their trademarks, brands, names, locations, or other distinguishing characteristics for third-party use on advertising in a manner that does not comply with this Part or any other statute, rule or regulation.

#### **§ 129.4 Outdoor Signs.**

(a) Only licensees authorized to conduct retail sales or delivery to consumers may advertise outdoors using signs provided such signs:

(1) are for the purpose of alerting individuals to the location of a retail dispensary authorized to sell cannabis products to consumers;

(2) are limited to, at a maximum, the following information:

(i) licensee's name, entity name, or doing business as name;

(ii) dispensary address, phone number, email address, and website URL; and

(iii) the nature of the business;

(3) are affixed to a building or permanent structure;

(4) are not on vehicles; and

(5) do not total more than two in number per licensed premises.

(b) Marketing or advertising is prohibited on any signs and placards, regardless of their size or purpose, in arenas, stadiums, other sport venues, shopping malls (unless alerting individuals to the location of a retail dispensary located within that mall), fairs that receive state allocations, and video game arcades, regardless of whether any of the foregoing are open air or enclosed, but this does not include any such sign or placard located at an adult-only facility or as further set out by the Office in guidance.

(c) A licensee shall remove the outdoor sign if the Office determines the outdoor sign violates the provisions of Cannabis Law and this Part or if the licensee fails to provide records to the Office upon request that establishes the outdoor sign meets the requirements of Cannabis Law and this Part.

(d) Outdoor signs shall comply with Part 119 of this Title and any additional requirements as set out by the Office.

### **§ 129.5 Adult-Use Marketing and Advertising Violations and Penalties.**

(a) A licensee shall immediately remove or discontinue advertisements if the Board determines the marketing or advertising violates the provisions of Cannabis Law and this Part or if the licensee fails to provide records to the Office upon request that establishes the marketing or advertising meets the requirements of Cannabis Law and this Part.

(b) In the event a third-party has used a licensee's trademarks, brands, names, locations, or other distinguishing characteristics in a way that does not comply with this Part or any other statute, rule or regulation, the licensee shall immediately notify the Office and issue a cease-and-desist notification to the third-party.

(c) The Office may take any action against any licensee who fails to comply with this Part, including but not limited to recommendations to the Board for suspension, cancellation, or revocation of a license, imposition of any fees or fines, requiring a licensee to cease by a date determined by the Office the non-compliant marketing and advertising and requiring removal by a date determined by the Office of any advertisement still being published or displayed, and any other penalties set forth in Cannabis Law and Part 133 of this Title.

### **§ 129.6 Severability**

If any provision of this Part or its application to any particular person or circumstance is held invalid, the remainder of this Part and its application to other persons and circumstances shall not be affected thereby.

## § 129.7 Referenced Material

Regulations included in Part 129 of this Title contain references to documents for information as to the standards to be met or guidelines and methodologies to be used in meeting the requirements of specific regulations. In addition, copies of referenced materials are available for public inspection and copying at the Albany office of the New York State Department of State.

**Table 1**

<b>Regulation</b>	<b>Referenced Material</b>	<b>Availability</b>
<b>9 NYCRR Part/sec./etc.</b>	<b>CFR (Code of Federal Regulations) or other</b>	
129.3(a)(12)	Title 7 §§ 205.600 – 205.619 (January 1, 2021)	*
129.3(a)(14)	Title 21 § 101.91 (January 1, 2021)	*

\* Any printed editions of the *Code of Federal Regulations* (CFR) can be obtained by calling the Superintendent of Documents, U.S. Government Printing Office, at (202) 512-1800. Electronic copies of CFR sections may also be obtained at Government Printing Office (GPO) which contains the most recent revisions, can be searched directly at: <https://www.ecfr.gov/>

\*\* Any printed editions of the *Annual Book of American Society for Testing and Materials* can be purchased by calling the Society at (610) 832-9500. Electronic copies of ASTM sections may be purchased online at: <https://www.astm.org/>