

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

Revisions to Part 116

Assessment of Public Comment

Part 118 – Definitions

True Party of Interest (TPI)

COMMENT: There were varying comments submitted by individuals and organizations seeking revisions to the definition of “true party of interest (TPI).” Some commenters believe that most cannabis businesses that are currently licensed as CAURD dispensaries and those that will be licensed under the adult-use program are generally smaller companies and that certain employees being subjected to TPI provisions may put them at a disadvantage compared to larger corporations. Additionally, some commenters believe that certain relationships should be excluded from the definition, such as the one that exists between adult-use conditional processors (AUCPs) and adult-use conditional cultivators (AUCCs) and arm’s length transactions, other than transactions that exceed \$250,000. Other commenters sought to limit what is subject to TPI through suggested amendments, like the removal of entire provisions, such as the removal of persons that make up the ownership structure of each level of ownership for an applicant or licensee that has a multilevel ownership structure, and information related to spouses. Further, some commenters stated that they believe that the “TPI” definition could prevent investment in the state’s cannabis supply chain and disfavors capital formation.

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

Flavored

COMMENT: Comments submitted by individuals and organizations sought clarification on the definition of “flavored,” as some commenters perceive such definition to exempt any flavoring that may be related to that of the taste or scent of cannabis. Commenters primarily suggested amendments in section 123.6 of the revised proposed adult-use regulations.

RESPONSE: The purpose of the definition of “flavored” and its corresponding language in section 123.6 of the revised proposed regulations is to ensure cannabis products are not made attractive to individuals under twenty-one. The Office acknowledges the concerns that were made and may consider including clarifying language in future guidance and rulemaking. No changes were made to the revised proposed regulations as a result of this comment.

Craft Product

COMMENT: There were varying comments on the revised definition of “craft product.” Some commenters believe that the definition should not be tied to canopy size. Additionally, some commenters believe that the definition should be expanded to specifically include cannabis products besides flower or pre-roll products. Finally, some commenters stated they believe that licensed cooperatives should be included and/or allowed to participate in the “craft product” designation.

RESPONSE: The definition of “craft product” was amended in the revised proposed regulations to allow Office to issue guidance and documents that will provide direction to licensees on which flower, pre-roll cannabis product, or any cannabis product that the meets the Office’s “craft designation.” The Office will continue to work with licensees and stakeholders to ensure products

that are appropriately produced and processed as a “craft product,” accordingly and pursuant to the regulations, are designated as such. The Office may consider including clarifying language in future rulemaking. No changes were made to the revised proposed regulations as a result of this comment.

Passive Investor

COMMENT: There were wide-ranging comments that including those seeking additional clarification on this definition, suggesting entire removal of “passive investor” from the regulations, or recommending significant amendments. Some commenters suggested the definition be modified to clearly specify thresholds established within to not unexpectedly change the status of an investor if revenues exceed or fall short of projections. Additionally, commenters requested additional information from the Office, including what documentation will be required, in what form, and the time period.

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

Immature Cannabis Plant

COMMENT: Comments were made by organizations and individuals thanking the Board and Office for editing the original definition which contained references to plant height and size. One commenter suggested that this definition continue to include reference to size for purposes of seedlings and small clone stage cannabis plants.

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

Cannabis Merchandise

COMMENT: There were comments where individuals and organizations made requests for additional clarification on the definition of “cannabis merchandise.” A commenter believes that the definition is limiting and restrictive, and as a result, licensees may inadvertently violate the regulations. Another commenter requested the regulations in relation to this definition be amended to authorize brands and/or dispensaries to provide “non-infused products” to potential customers for sampling purposes.

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

Public Convenience and Advantage Standards

COMMENT: Some commenters stated they believe that the definition of “public convenience and advantage standards” is subjective and arbitrary and is against the right to fair competition. Commenters believed the definition and the standards should be removed from the revised proposed regulations.

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

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

Aggregate Ownership Interest

COMMENT: Commenters stated that the definition of “aggregate ownership interest” should not include the ownership by an individual’s family members, and it should utilize the definitions used by the United States Securities and Exchange Commission (SEC) instead.

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

Exception Area

COMMENT: Commenters pointed out a grammatical error in the definition of “exception area” where the inclusion of the word “of” is needed between the words “consumption” and “cannabis.”

RESPONSE: The revised proposed regulations were amended as a result of this comment to correct the missing word.

School Grounds

COMMENT: Commenters requested that the definition of “school grounds” be amended to not include preschools or nursery schools. Additionally, commenters stated that the specific term of “grounds” is broader than what was utilized previously for medical-only dispensaries. Further, some commenters requested that the definition of “school grounds” should be based on similar definitions found elsewhere in New York statute.

RESPONSE: “School grounds” is required to be defined by Education Law, pursuant to sections 72 and 77 of the Cannabis Law. No changes to the revised proposed regulation were made as a result of this comment.

Local Law

COMMENT: Commenters concerned about the impacts of the siting of proposed dispensaries believe that under the definition of “local law,” the term “unreasonably impracticable” is overly vague and could potentially be left too wide open to interpretation by the Board.

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

Public Youth Facility

COMMENT: Some commenters are concerned that this definition, which was initially “community facility,” and now “public youth facility” under the revised proposed regulations, is too narrow and potentially allows the siting of licensed cannabis businesses near facilities that serve a social service or substance use function. Such commenters believe that locating a licensed cannabis business near such a facility that assists individuals with substance use treatment or other addiction issues could potentially worsen their condition. Additionally, the commenters requested

the definition be changed so that the age requirement be changed from age seventeen to age twenty-one.

RESPONSE: The Office conducted a literature review to better understand existing evidence to suggest specific public health and safety considerations related to the proximity of a retail cannabis dispensary with addiction service providers. Findings did not indicate a correlation between negative treatment outcomes and access to retail adult-use cannabis. No changes to the revised proposed regulation were made as a result of this comment.

Photosynthetic Photon Efficacy (PPE)

COMMENT: Commenters suggested removing the acronym “PPE” from the definition of “photosynthetic photon efficacy (PPE)” due to another commonly other known meaning, “personal protective equipment” to ensure clarity throughout the state’s cannabis industry.

RESPONSE: Although some may perceive confusion between various commonly used acronyms, within the energy industry PPE is a commonly accepted and used acronym for photosynthetic photon efficacy and it is utilized in other jurisdictions where cannabis is cultivated. It should be further noted that where “photosynthetic photon efficacy (PPE)” is used within the context of lighting, it creates a natural separation from personal protective equipment. No changes to the revised proposed regulation were made as a result of this comment.

Canopy or Cultivation Canopy or Canopy Area

COMMENT: Commenters requested further clarification on the definition of “canopy or cultivation canopy or canopy area,” as the definition as proposed utilizes the terminology of the “...including the space(s) within the boundaries.” Commenters state that this definition is different

than what is provided for AUCCs and that this definition could capture unusable canopy space that cannot be cultivated, such as walkways.

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

Tincture

COMMENT: Commenters believe that the term “non-potable” should be replaced with “potable” in the definition of “tincture.”

RESPONSE: Within the definition of “tincture,” it is established that it is a “edible cannabis product” which is “dissolved in alcohol, glycerin, or plant-based oil.” Potability relates to a liquid that is drinkable. Cannabis tinctures are not intended for pure drinking purposes such as a bottle of water would be – they are highly-potent and concentrated edible cannabis products. No changes were made to the revised proposed regulations as a result of this comment.

Sole Control

COMMENT: Commenters sought clarification on the definition of “sole control” and some of the terms within it. Specifically, commenters requested clarification on what “continuing” means in subparagraph (i).

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

Social and Economic Equity Licensee

COMMENT: Commenters believe that in the revised proposed regulations that a reference to Part 121 was left out of revisions in subparagraph (ii) of the definition of “social and economic equity licensee.”

RESPONSE: The Office acknowledges this comment; however, the Office maintains that there is a clear distinction between subparagraphs (i) and (ii) in the definition. Subparagraph (i) references the qualifications of social and economic equity and subparagraph (ii) references the license. The license is granted subject to Part 120. A social and economic equity licensee qualifies as social and economic equity and has an adult-use license. No changes were made to the revised proposed regulations as a result of this comment.

Financial Interest

COMMENT: Commenters believe that the definition of “financial interest” will limit financial support and investment in the adult-use cannabis industry in New York, and as a result may hamper the industry in the state.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment and may consider including the changes to the definition in future guidance and rulemaking. No changes were made to the revised proposed regulations as a result of this comment.

Consumption Facility

COMMENT: Some commenters requested the Office to clarify the definitions of “consumption facility” and “adult-use on-site consumption premises,” or create more distinctive terms so that persons unfamiliar with the regulations can readily determine which facility is licensed to sell adult-use cannabis and those that are “exception areas.”

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

Adult-use On-site Consumption Premises

COMMENT: Some commenters request the Office clarify the definitions of “consumption facility” and “adult-use on-site consumption premises,” or create more distinctive terms so that persons unfamiliar with the regulations can readily determine which facility is licensed to sell adult-use cannabis and those that are “exception areas.” Additionally, commenters suggest that “adult-use on-site consumption premises” should include a separation of smoking and focus on food and/or beverages to be consumed, such as restaurants.

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

Indoor or Indoors

COMMENT: Commenters request that the definition of “indoor or indoors” be amended to specifically include the New York City Construction Codes to ensure all applicable building codes

are adhered to. Additionally, commenters requested the use of the New York Uniform Codes for the entire set of building codes outside of the City of New York.

RESPONSE: As written, the definition states that an area must comply “with all applicable Building Code and Fire Code requirements...”, which would include the New York Uniform Code New York City Construction Codes. These revised proposed regulations cover all jurisdictions of the state. The Office may consider including the changes to the definition in future rulemaking. No changes were made to the revised proposed regulations as a result of this comment.

Integrated Pest Management (IPM) Principles

COMMENT: Commenters recommended that an emphasis should be placed on the avoidance of use of pesticides and seek to first and primarily eliminate any conditions that may be beneficial to pests within the definition.

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

Harvest Batch

COMMENT: Commenters suggest that the revised definition of “harvest batch” may be too limited and should be expanded to provide for units of cannabis that are the same variety, planted at the same time, using the same techniques, and harvested on the same date. Such commenters believe that the term “similar conditions” utilized in the definition could be limiting and may prevent traceability within the supply chain.

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

Financier

COMMENT: Commenters believe that this definition, similar to that of “financial interest,” will limit financial support and investment in adult-use cannabis in New York, and as a result may hamper the industry in the state. They believe the definition should be amended to clarify that any restrictions do not apply to existing financial relationships established by the Office.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment and may consider including the changes to the definition in future guidance and rulemaking. No changes were made to the revised proposed regulations as a result of this comment.

Adding Definitions to Part 118

Add: Orally-consumed Concentrate

COMMENT: A commenter suggested the addition of a definition for “orally-consumed concentrate.” They believe that currently the revised proposed regulations do not cover products that have a higher THC potency limit, such as consumable tinctures, capsules, and tablets. The commenter believes it is necessary to differentiate these products from other edible products on the market that have a lower THC potency limit.

RESPONSE: It should be noted that in 9 NYCRR 128.5 that all cannabis products sold from a licensed dispensary must contain the total THC in the package, the total THC per milligram per serving, the number of servings per package, as well as other pertinent consumer information. The Office acknowledges these concerns and this comment and may consider including the changes to the definition in future guidance and rulemaking. No changes were made to the revised proposed regulations as a result of this comment.

Add: Tablet

COMMENT: Similar to the proposed definition of “orally-consumed concentrate,” a commenter suggested the addition of a definition for “tablet.” They believe that it is important to label higher THC potent tablets on the market appropriately so that consumers are aware and that such products cannot be misconstrued with other consumable products like candy or other food. Additionally, the commenter proposes that in this definition that tablets be unflavored, unsweetened, and intended to be swallowed whole to ensure they cannot be used as other types of food products.

RESPONSE: It should be noted that in 9 NYCRR 128.5 all cannabis products sold from a licensed dispensary must contain the total THC in the package, the total THC per milligram per serving, the number of servings per package, as well as other pertinent consumer information. The Office acknowledges these concerns and may consider including the changes to the definition in future guidance and rulemaking. No changes were made to the revised proposed regulations as a result of this comment.

Add: Professional Services

COMMENT: A commenter suggested the addition of a definition for “professional services” to the regulations and suggested adding corresponding language throughout the revised proposed regulations. The commenter argues that this definition is accepted by both the American Bar Association and New York Bar Association and provides clarity for licensees and they believe it would clearly subject any professional practicing their profession to the professional conduct and ethics rules that govern them.

RESPONSE: It should be noted that any professional licensed in the State of New York is subject to all laws that govern their profession and the rules and regulations of their licensing authority. Further, all persons licensed by the Board and Office are encouraged to conduct all ancillary business with persons who are in good standing with their licensing authority. No changes were made to the revised proposed regulations as a result of this comment.

Add: Professional Services Provider

COMMENT: A commenter suggested the addition of a definition for “professional services provider” to the regulations and suggested adding corresponding language throughout the revised proposed regulations. They would define such term as a person who provides professional services to an applicant or licensee, including attorneys, accountants, architects, engineers, health care professionals, and real estate professionals.

RESPONSE: It should be noted that any professional licensed in the State of New York is subject to all laws that govern their profession and the rules and regulations of their licensing authority. Further, all persons licensed by the Board and Office are encouraged to conduct all ancillary business with persons who are in good standing with their licensing authority. No changes were made to the revised proposed regulations as a result of this comment.

Add: Professional Services Agreement

COMMENT: A commenter suggested the addition of a definition of “professional services agreement” to the regulations and suggested adding corresponding language throughout the revised proposed regulations. They would define such term as an agreement between a “professional services provider” and an applicant or a licensee.

RESPONSE: It should be noted that any professional licensed in the State of New York is subject to all laws that govern their profession and the rules and regulations of their licensing authority. Further, all persons licensed by the Board and Office are encouraged to conduct all ancillary business with persons who are in good standing with their licensing authority. No changes were made to the revised proposed regulations as a result of this comment.

Add: Legacy Operator

COMMENT: A commenter suggested the addition of a definition for “legacy operator” to the regulations and suggested adding corresponding language throughout the revised proposed regulations. They would define such term as an individual that: 1) Commercialized for most of their income, ceremonially distributed, or sacramentally distributed cannabis; 2) Outside of the legal framework; 3) During the period of prohibition; and 4) Predating legalization by five years.

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

Part 119 –Municipality Rulemaking

COMMENT: A commenter requested that the Office should regulate and discourage smoking directly outside dispensaries and that the state should require signage be posted with such requirements.

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

COMMENT: A commenter requested that the Board and Office ensure that dispensaries and consumption sites are equitably distributed.

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

COMMENT: A commenter believes that the revised proposed regulations should apply to all applications in order to ensure fair and equal treatment of all applicants.

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

Section 119.1 – Preemption and Prohibitions on Municipality Rulemaking

COMMENT: Commenters requested that proximity requirements be measured using linear distance. Commenters also requested that the proximity requirements be further expanded to include any building where a kindergarten through twelfth grade school operates, or any building where substance use disorder and recovery, harm reduction, behavioral health, homeless shelters, and transitional housing is provided.

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

COMMENT: A commenter requested that the revised proposed regulations should be revised to explicitly state that adult-use cannabis dispensaries should not be on the same road and within 500 feet of the entrance of a building occupied in whole or in part by a social service facility of substance use facility.

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

COMMENT: A commenter requested that the revised proposed regulations should be revised to clarify that adult-use cannabis dispensaries should be on the same road and within 500 feet of the “main” entrance of a building occupied exclusively as a school.

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

COMMENT: A commenter requested that the revised proposed regulations be amended to remove the distance requirements related to public youth facilities. The commenter believes that municipalities could potentially apply the definition “public youth facility” in an inconsistent manner and therefore further restrict locations where viable adult-use cannabis dispensaries could be located.

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

COMMENT: A commenter requested that the limitation on school buildings, specifically that schools be used exclusively as a school could result in many of them being carved out of the location protections in revised proposed section 119.1. The commenter believes that is the case because many if not most schools are also used for other activities outside of normal classroom hours.

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

COMMENT: A commenter requested that section 119.1 be revised so that the City of New York can impose what they believe to be reasonable restrictions on cannabis business-related businesses, particularly those that may be located within a building that contain multiple units. The commenter equates licensed cannabis dispensaries with businesses that sell tobacco products or electronic cigarettes.

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

COMMENT: A commenter requested that an amendment be made to paragraph (a) of Section 119.1 to allow municipalities to authorize co-located adult-use dispensary that was previously sited as a medical dispensary, thereby disregarding the distance requirements of that section.

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

COMMENT: A commenter proposed an amendment that would provide exemptions to applicants that are seeking to be located near a house of worship, provided the house of worship supplies a letter of non-opposition to the Board and Office and such house of worship has an established relationship with the applicant. The commenter argues that in addition to the density issues that exist within some areas of the state, there are also some houses of worship that may willingly waive proximity restrictions, and houses of worship and faiths that utilize cannabis sacramentally and/or ceremonially.

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

Section 119.2 – Authorizations for Municipality Rulemaking

COMMENT: A commenter requested clarification on how subparagraph (a) would affect the City of New York’s existing Smoke Free Air Act (SFAA) and its prohibition on smoking and vaping would configure. Related to this, the commenter recommends that the revised proposed regulations clarify the method to measure 500 feet using a radius to measure along street frontage.

RESPONSE: It should be noted that any authorized cannabis consumption facility or adult-use on-site consumption premises are the only indoor or outdoor spaces that would be permitted to allow cannabis smoking or vaping. In that respect, such spaces would be unenforceable under the SFAA or other similar local laws. No changes were made to the revised proposed regulations as result of this comment.

COMMENT: A commenter requested clarification on why distance requirements in revised proposed section 119.2 do not apply to CAURD dispensaries but apply to all the other license types that will be able to dispense adult-use cannabis. The commenter believes that distance requirements in relation to public youth facilities should apply to all adult-use cannabis dispensaries, regardless of how they were or are licensed by the Board.

RESPONSE: Because the CAURD program existed prior to the revised proposed regulations being promulgated, there would have been undue restrictions imposed on CAURD dispensaries already in operation if such requirements were imposed. No changes were made to the revised proposed regulations as result of this comment.

COMMENT: A commenter requested that provisions related to distance requirements between a retail dispensary, microbusiness, or registered organization with dispensing (ROD) and a public youth facility be removed from the revised proposed regulations, as existing registered organizations seeking to co-locate medical and adult-use cannabis dispensary sites may have to modify or move existing operations in order to obey this regulation.

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

COMMENT: Commenters requested that adult-use cannabis dispensaries in residential areas should not be allowed to operate later than 12:00 A.M. in order to allow such dispensaries to coexist with other local businesses as well as residents.

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

COMMENT: Although some commenters appreciated dispensaries would be forbidden to operate between the hours of 2:00 A.M. and 8:00 A.M. unless expressly permitted by the municipality, commenters requested that general operating hours for adult-use dispensaries should be more flexible and allow for municipality and/or community input as to how such dispensary would fit into the surrounding neighborhood.

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

COMMENT: A commenter requested that the distance between a dispensary and a playground be expanded from 500 feet to 1,000 feet.

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

COMMENT: A commenter requested that community boards in the City of New York should be allowed to negotiate restrictions on licensees and enter into agreements with applicants to provide for methods of operations that may be appropriate for the location they are seeking to locate, regardless of input from the Office.

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

Section 119.3 – Notifications to Municipalities

COMMENT: A commenter requested that there should be required that more information be included in the notification to municipalities, such as an applicant’s business experience, and that municipalities should be entitled to have access to all information required by section 120.2 for adult-use cannabis licenses.

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

COMMENT: A commenter stated that the time for municipalities to respond to respond to a notice from an applicant is too short and requested that such time period be expanded to at least 60 days. Another commenter generally requested more time, stating that 30 days is not enough time for municipalities to provide appropriate response to the Board. They believe the additional time is needed for municipalities to provide public notification, schedule and hold a hearing, and to draft and submit recommendations to the Board.

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

COMMENT: A commenter stated that the 30-day municipal review window of applicant location is too long, and that statutory opt-out provisions and local zoning procedures should address concerns. The commenter believed the 30 days would create opportunities for municipalities to create undue delay. Further, the commenter argued that the revised proposed regulations should be amended to clarify that the Board and Office has the authority to grant a license at a proposed location when it is in the public interest to do so.

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

COMMENT: A commenter requested clarification on what they view as a discrepancy between subdivision (d) of section 119.3 and section 119.5. They believe municipalities have a 30-day window to comment on proposed dispensary locations as stated in subdivision (d) of section 119.3 and that they have an additional 30-day available to them if they request it, or an additional 15 days for a total of 45 days.

RESPONSE: According to the revised proposed regulations in subdivision (d) of section 119.3, a municipality may request, in writing on a form that will be available from the Office, no more than an additional 30 days to express an opinion for or against a license.

COMMENT: A commenter requested that the regulations be amended so that local social service agencies be notified by applicants when an adult-use cannabis dispensary or establishments for on-site consumption is potentially being located in their district(s). This notification would be in addition to the notification municipalities receive from applicants which is already required under section 119.3.

RESPONSE: The Office acknowledges this comment; however, social service agencies are government agencies. There could be an internal notification procedure within local municipal government following an applicant's mandatory notification to a municipality as required under revised proposed section 119.3 if the establishment of a licensed cannabis business could cause disruption within such municipality. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: A commenter stated that the revised proposed regulations require a location intent notification to municipalities by a ROD, but that such notification form is not yet available on the Office's website.

RESPONSE: The revised proposed regulations have not been approved for final adoption by the Board. The Office will make such a municipal notification form available for RODs at the appropriate time. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: A commenter requested clarification on whether the transfer of ownership or a change in TPI requires notification and review by a municipality.

RESPONSE: Under the revised proposed regulations, a transfer of ownership would require notification to a municipality, however no notification would be required for a change in TPI to a municipality.

Section 119.4 – Distance Requirements and Measurement of Distance Requirements

COMMENT: A commenter requested that where the Board or Office may grant adult-use cannabis licensee's exceptions to distancing rules, that the Office include local government expert review and input in the process.

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

COMMENT: A commenter claimed there was a typographical error in this section, utilizing the word “or” instead of “of” in the term “house of worship.”

RESPONSE: No such typographical error exists. This comment is beyond the scope of the revised proposed regulations. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: A commenter believed that the revised proposed regulations should be amended to provide that adult-use retail dispensaries cannot locate within 1,000 feet of a medical dispensary. They also believe that the regulations should be clarified that a licensee must be specifically approved by the Office for a particular location to justify denying any request within the radius.

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

COMMENT: A commenter stated that the Office should not be allowed to prioritize or decide licensees based on those they may prefer.

RESPONSE: This comment is beyond the scope of the revised proposed regulations. The Cannabis Law delineates how the Board grants cannabis licenses, which was enacted by the Legislature and Governor.

COMMENT: A commenter requested that the revised proposed regulations be amended to allow adult-use dispensaries to locate within 250 feet of a RO or ROD in a municipality having a population of 20,000 or more, instead of the revised proposed 1,000 feet. Another commenter requested 500 feet in the same sized municipality.

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

COMMENTER: A commenter requested that the revised proposed regulations be amended to provide that adult-use dispensaries should be allowed to open “on the same road and within 1,000 feet of a registered organization, ROD, or microbusiness” instead of within 1,000 feet, in a municipality having a population of 20,000 or more.

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

COMMENT: A commenter stated that the setback requirements for cannabis dispensaries should be standardized with establishments that sell alcohol, which is a distance to travel in a straight line.

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

COMMENT: A commenter sought clarification on how medical dispensaries and co-located medical and adult-use dispensaries would be treated for purposes of the additional setback rules as established in the revised proposed regulations, at least for various time periods within municipalities of varying population sizes. The commenter believes that RO dispensaries are being punished and treated differently without justification.

RESPONSE: A co-located medical and adult-use dispensary will have an advantage over an adult-use only dispensary by virtue of being able to serve both medical and adult-use patients and customers. The Board and Office are seeking to create as much of a level playing field for all, at

least for a period. Medical dispensaries and adult-use dispensaries also serve different populations making the distance between the two dispensaries less problematic. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: Some commenters stated that they appreciated the initial proposed regulations and how setbacks were designed and intended to prevent clustering of dispensaries and help to increase access to cannabis across communities. However, these commenters believed the revised proposed regulations which lift the setbacks in December 2023 would cause issues in the marketplace.

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

COMMENT: Some commenters stated that they believed there are layers of inconsistency, disadvantage, and punitive actions taken by the Board and Office against ROs seeking to obtain co-location and/or ROD status when it comes to the setback limitations established in revised proposed section 119.4.

RESPONSE: Medical dispensaries and adult-use dispensaries serve different populations making the distance between the two dispensaries less problematic. The Office acknowledges this comment; however, no changes were made to the revised proposed regulations as a result of this comment.

COMMENT: A commenter stated the distance requirements provided for in subparagraph (2) of paragraph (a) section 119.4 are overly restrictive and could be unworkable in the future. The commenter believes that the 2,000-foot radius should be amended to 1,000 feet as it will ultimately

benefit both small and large operators, especially as the commenter stated that in their opinion some municipalities make zoning and other requirements more difficult for applicants and licensees to navigate.

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

COMMENT: A commenter proposed to add a new subparagraph to paragraph (b), related to promoting public convenience and advantage standards, that would provide the Board with another option to allow a licensee to locate in a municipality that has a population of 28,000 or more.

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

COMMENT: A commenter objected to the revised proposed regulations and that in section 119.4 there is a consistent standard for a “public convenience.” Particularly, the commenter’s objection is based upon the fact that local social services districts are preempted from enacting local legislation or implementing administrative procedures to protect the populations they serve.

RESPONSE: The Office conducted a literature review to better understand existing evidence to suggest specific public health and safety considerations related to the proximity of a retail cannabis dispensary with addiction service providers. Findings did not indicate a correlation between negative treatment outcomes and access to retail adult-use cannabis. Additionally, social service agencies and districts are government agencies and within local government. There could be an internal notification procedure within local municipal government following an applicant’s

mandatory notification to a municipality as required under revised proposed section 119.3 if the establishment of a licensed cannabis business could cause disruption within such municipality. No changes to the revised proposed regulation were made as a result of this comment.

COMMENT: A commenter proposed that the term “active” should be added to subparagraph (1) of paragraph (f) of section 119.4 related to houses of worship in order to clarify that the distance being measured is indeed from a house of worship that is actively being utilized as such.

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

COMMENT: A commenter proposed an edit of paragraph (h) that would clarify that it should be the “main” entrance as in “main door” of a school or house of worship only, and strike other language related to school grounds, public youth facilities, and other entrances. Additionally, the commenter would propose to amend subparagraph (j) to add “school” and again strike language related to school grounds and public youth facilities.

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

COMMENT: A commenter proposed to strike subparagraph (4) from paragraph (f) of section 119.4 related to location distance to public youth facilities. The commenter believed that the definition of “public youth facility” has no statutory authority and will be applied in an overly broad manner by municipalities.

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

COMMENT: A commenter echoed comments made similarly to those made with respect to the definition of “public youth facility,” and stated that the age limit should be twenty-one years old, not seventeen as presented in the revised proposed regulations.

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

Section 119.5 – Unreasonably Impracticable; Review and Determination

COMMENT: A commenter requested clarification on how Section 119.5 would affect the City of New York’s existing Smoke Free Air Act (SFAA) and its prohibition on smoking and vaping, including cannabis, in food service establishments and outdoor cafes.

RESPONSE: It should be noted that any authorized consumption facility or adult-use cannabis on-site consumption premises are the only indoor or outdoor spaces that would be permitted to allow cannabis smoking or vaping. In that respect, such spaces would be unenforceable under the SFAA or other similar local laws. No changes were made to the proposed regulations as a result of this comment.

COMMENT: A commenter requested an amendment to paragraph (c) to make all determinations within 30 days of the filing of the request for reconsideration with the Board. The commenter

believed that without established deadlines, municipalities would be able to delay or ignore cannabis businesses through interminable municipal rulemaking.

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

COMMENT: A commenter proposed to add a new paragraph to section 119.5 that would allow the Office to refer or request the State Attorney General to enforce provisions of the Cannabis Law or provisions of the finalized adult-use regulations, if in the event a municipality adopts a local law, ordinance, or regulation or takes any provision of the Cannabis Law or the finalized adult-use regulations, that is in contravention to the of an advisory opinion. The commenter believed that there are some municipalities in the state that have imposed unreasonable zoning requirements, such as banning cannabis business in any retail business areas.

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

Section 119.6 – Severability

The Office did not receive comments on this section.

Part 120 – Application and Licensure

Section 120.1 – General Application and License Authorization and Requirements

COMMENT: A commenter recommends changes to the application submission and review language to remove specific periods for which the application is received by the Board.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment; however no changes were made to the revised proposed regulations as result of this comment.

COMMENT: A commenter recommends combining subdivisions (a) and (b) and require the Board to assess the need for new licensee based on market demands. And when the Board determines new licenses, the board will be required to prioritize SEE applicants when preparing to issue new licenses subject to the needs of the market.

RESPONSE: The Board has the authority under the Cannabis Law to evaluate the market needs within the two-tier market structure and determine which license type should be issued, including specific activities of such license which might need in the cannabis market.

COMMENT: A commenter expressed support for provisions where the Office requires applicant owners to state their history of providing employee benefits and suggests that the Office consider requiring licensees to provide paid sick leave and offer health insurance in furtherance of protecting the health of those who work in cannabis businesses, consistent with State and New York City laws.

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

Section 120.2 - Application for Adult-use Cannabis License

COMMENT: A commenter recommends that the Office include a notice to the public that as long as the federal government continues its prohibition of cannabis, there is a risk of federal legal consequences to non-U.S. citizens who own or work in the state's licensed cannabis program.

RESPONSE: The Office acknowledges this comment and may consider future regulations if necessary. The Board and Office, respectively, have the authority to make public announcements and have done so using various media platforms. No changes to the revised proposed regulations were necessary as a result of this comment.

COMMENT: A commenter recommends revising the language to qualify the disclosure requirements of individuals and entities which have an interest in the applicant to those who have a controlling ownership interest in the applicant or to who exert authority over the management of the business of the applicant.

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

COMMENT: A commenter recommends removing the criminal history reporting requirement for spouses of TPIs.

RESPONSE: The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: A commenter recommends removing the provision of the paragraph and subparagraph in together in section 120.2, subdivision (a), and concludes these requests are duplicative.

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

Section 120.3(a) – License Specific Tiers and Options

COMMENT: Commenters sought clarification on permitted activities within or around the allotted square footage of a canopy.

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

COMMENT: - A commenter recommends removing the nursery license altogether from the adult-use regulations, thereby removing the license as an option for the market. The rationale for its removal is the belief that this license type favors landholders.

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

COMMENT: A commenter believes that indoor nurseries should be able to supply outdoor mixed light.

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

COMMENT: A commenter voiced general frustration about the lack of development of the microbusiness licensee and believed it should have been a higher priority of the Office. Further, they believe having a canopy size option of 100,000 square feet supports larger corporations.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: Some commenters recommend including a canopy option for indoor and mixed-lighting. They argue that the unpredictability of New York's climate and exposure to other environmental factors supports the addition of the option.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: Commenters recommend microbusiness provisions be expanded to include activities not previously selected in the initial application, and a combination tier to allow microbusiness to grow outdoors and indoors, adding a fifth tier.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: A commenter recommends lifting the restriction of one license tier for one type of cultivation activity, giving the applicant/licensee the option of using the designated space for more than one cultivation activity.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: A commenter made a general statement about microbusinesses without offering any recommendations or suggestions either for or against improving the regulatory language.

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

COMMENT: A commenter expressed admiration for the revision to the microbusiness license that gives a viable pathway for farmers to participate in retail but conversely express

disappointment in how the revised regulations establish the parameters which must be used for conditional cultivators to transition to adult-use cultivator license. They seek to amend the definition of “craft product” to include Tier 2 cultivators claiming that that’s where most of the cultivators operate from as conditional cultivators. The commenter additionally seeks further revisions to the revised proposed regulations to correct discrepancies regarding rules around lighting and requests a new transitional period to allow the conditional licensee to come into compliance with lighting requirements.

RESPONSE: The revised proposed regulations reflect the canopy size that was equivalent to the largest conditional cultivator licensee in operation, therefore satisfying the requirements set forth in cannabis law regarding flowering canopy and lighting, which the Board is authorized to detail in regulation. Revising the craft definition to include Tier 2 cultivators would be inconsistent with the licensing model for smaller operators. No changes to the revised proposed regulations were necessary as a result of this comment.

COMMENT: A commenter recommends allowing cultivators to cultivate using all four types of cultivation options and not limiting the cultivator to one type of cultivation activity.

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

COMMENT: Several commenters recommend allowing cultivators the choice to make use of indoor and greenhouse infrastructure to complement their outdoor grows, which will provide a much-needed element of stability to their operations, especially during this time of climate change and the unstable and irregular weather conditions it produces.

RESPONSE: The cultivator license type offers four different categories of tiers, one being a combination tier for outdoor using the same greenhouse method through a mixed-light framework. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: A commenter suggests that there should be a processor's license with a standalone extraction activity.

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

COMMENT: There were comments submitted made by individuals generally asking the Office to modify tiers to expand mix-lighted activities.

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

COMMENT: The Office received several comments seeking to modify the combination tiers to allow combined indoor and outdoor cultivation across the tiers.

RESPONSE: The cultivator license type offers four different categories of tiers, one being a combination tier for outdoor using the same greenhouse method through a mixed-light framework. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: A commenter expressed dissatisfaction for the 20-light limit for mixed-light cultivation activities and the canopy size restriction of no more than 25,000 square feet. The commenter says no such restrictions apply to registered organizations.

RESPONSE: The cultivation tiers provide the same options for all licensees that fit within that construct. No changes were made to the proposed regulation as a result of this comment.

COMMENT: A commenter recommends not offering a process by which conditional cultivators are given a pathway to transition into an equivalent adult-use license and considers it under the lens of offering priority licensure.

RESPONSE: The Legislature found it necessary to amend the Cannabis Law by adding section 68-c, establishing the adult-use conditional cultivators license type. These operators have the experience and knowledge base as former hemp cultivators and will bring stability to New York's market. In accordance with the Cannabis Law, the Office must implement its provisions which include recognizing the expiration date of this license type by providing pathways to full licensure. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: Some commenters recommend modifying part of section 120.3 to give conditional cultivator license more indoor cultivation options in tiers and expand Tier 3 to include mixed-light and combination options.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: Commenters proposed the addition of a new licensing category, “transitional license” that would provide for path for shops that have been operational since the enactment of

the MRTA to acquire official licenses from the Board and Office. The commenter believes that if a viable pathway is provided to these operators, many if not most would take advantage of the opportunity. The commenter further recommends that the illicit operators should be required to pay an up-front \$200,000 per location licensing fee, up to a maximum of three locations. Additionally, the commenter proposes that the operators would be required to organize community impact events, including educational events.

RESPONSE: The Office acknowledges this comment; however, it should be noted for those meeting the application criteria, had opportunity to apply for licensure from the Office if they were justice-involved under the CAURD program. Additionally, these illicit operators continue to operate throughout the state, and further, they continued to operate after the Office issued cease and desist letters. It should be further noted that the Legislature and Governor saw fit to enact legislation, Part UU of Chapter 56 of the Laws of 2023, that enhanced enforcement actions against illicit cannabis operators. No changes were made to the revised proposed regulations as result of this comment.

COMMENT: A commenter recommends creating a new tier option for which conditional adult-use licensees can transition that has a canopy size of over 200,000 square feet. In addition to the creating a new tier, one commenter sought to create a tier with a reduced fee.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: Several commenters sought to expand the adult use cultivator transition structure by giving conditional cultivators the option to transition into a microbusiness license with a retail function, require the Office to expediate and clarify the review process for transitional licensees, and allow such cultivators to transition into any tier category.

RESPONSE: The tier options offered to conditional cultivators are consistent with the Board’s and Office’s policy objective and the Cannabis Law. No changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: A commenter recommends removing “sale history” as a criterion, given the market challenges which exist in the retail tier.

RESPONSE: The Office and Board recognize the current challenges within the adult-use market and have taken steps in response to some of those challenges, such as the creation of the Cannabis Growers Showcase. However, seeking information concerning a cultivator's productivity is a necessary factor and assists the Office and Board in evaluating whether to approve a tier change. No changes to the revised proposed regulations were necessary as a result of this comment.

Section 120.4 – Fees

COMMENT: A commenter requested that the non-refundable fee should be transferred from the original application to a new application.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider

issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: Commenters recommend modifying the fee language to reflect their proposed new combination tier which gives cultivators the ability to combine both indoor and outdoor activities throughout the tiers.

RESPONSE: The regulations offer various tiers for applications to select, and licensees to operate within. The Office acknowledges this comment; however, no changes were made to the revised proposed regulations a result of this comment.

COMMENT: A commenter submitted statements about the SEE plan utilizing the \$20 million special licensing fee to finance the Community Reinvestment Fund and social equity initiatives. The commenter believes this is the rationale used to allow ROs enter the adult-use marketplace. The commenter added that a potential ten-year window before capitalization is not acceptable, as they believe it would go against the rationale used to allow ROs enter. Further, the commenter believes a phased payment over ten years with incremental increases as the ten-year deadline approaches, or the like, should be added to the revised proposed regulations. Further, the commenter states that cooperative licenses would only account for cultivators and farmers, or a business cooperative structure. They believe cooperatives should encompass the entirety of a cooperative model, including worker-owned, consumption establishments, and business cooperatives. Additionally, the commenter believes such models should also be allowed across all license types. Otherwise, the commenter believes without expanding the cooperative license, it may severely limit social equity participation without being able to leverage pooling resources,

collaboration of small business in other areas of the supply chain, entry of operational social equity cooperatives (which New York has a growing number of), and the tradition of group economics in Black and Afro-Latin communities. Further, the commenter argues that by not directly addressing this issue and including cooperatives more extensively in the rules will likely lead to questions and confusion around TPI rules for workers and consumer cooperatives, again leading to greater barriers to social equity participation.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: Some commenters recommended to reduce or entirely remove the RO fee in the revised proposed regulations and the language requiring the remainder of said fee to due upon the triggering event.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: Some commenters asked that the Board delay RO entry to the adult-use market, pointing to previous proposed regulation proposed entry period for ROs. Other commenters asked to delay the prioritization of additional social justice and equity businesses, such as CAURD and other SEE applicants.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: A commenter proposed that for every square foot of indoor canopy a RO uses, they must be matched by small indoor farms, at the same time of roll out. The commenter further recommends that ROs can only slowly acquire their canopy, starting with 10,000 of canopy annually for the first five years, then after data-based reasoning, proof of sales, and demand for product, be able to expand towards their full possible permit.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: Some commenters seek to reduce the \$5 million fees for minority-owned ROD, or defer the fee schedule where no greater than \$2.5 million shall be due at the time the ROD license is issued; and the remainder, if any, paid within 180 days of the opening of the ROD's second co-located dispensary. Other commenters recommend modifying the language to give the Board complete discretion to either reduce, defer, or eliminate the special fee for social economic and equity applicants. Some commenters suggest that by modifying the fee it could be deemed a providing a form of financial assistance to these applicants. Lastly, one commenter sought to have license renewal fees deferred for co-located dispensaries.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

Section 120.5 – Filing of an Application

The Office did not receive comments on this section.

Section 120.6 – Processing of an Application

The Office did not receive comments on this section.

Section 120.7 – Application Eligibility and Evaluation

COMMENT: Commenters recommend using a standard evaluation process would remove any perception that the process wasn't based on the applicant's merits. They believe using the approach outlined under revised proposed section 120.7 would lead to a subjective evaluation. Within the same context, other commenters opined on the Board review process, stating that the language appeared overly broad and vague.

RESPONSE: The Board and Office anticipate different requirements for the type of license an applicant seeks. Further, the language in the proposed revised regulations contemplates different standards that must be met as required by the desired license type sought. Pursuant to the Cannabis

Law, the Board is empowered to establish necessary standards by which the applicant will demonstrate, and the Board will review and evaluate for consideration of licensure. The language here is consistent with the Cannabis Law in effectuating the goals therein. No changes to the proposed revised regulations were necessary as result of this comment.

COMMENT: A commenter believes that the significant disclosures of sensitive business information required in revised proposed section 120.7 should clarify why and what this information will be used for. For example, they stated that it would be inappropriate for a regulator to mandate that one licensee pay higher wages just because another licensee is doing so.

RESPONSE: The objectives here are consistent with the Cannabis Law. The Board and Office are interested in, among other policy goals, ensuring that there exists a fair and equitable market for all those who participate in it, including the employees and other personnel. No changes to the proposed regulations were necessary as a result of this comment.

COMMENT: Some commenters requested more clarity regarding this provision.

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

COMMENT: Some commenters believe the language which gives the Board discretion to determine which license to prioritize, process, and consider by using the mechanism expressed in the Cannabis Law exposes the process to litigation whereby stymying the application period rollout.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: A commenter expressed admiration for inclusion of new ROs, requiring all ROs to create and supply the Office with a community impact plan, but recommends removing the requirement that registered organizations must have four dispensaries in operation to be eligible to enter into the adult-use market. They believe it favors the originally ROs who have had time to establish themselves in New York.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

Section 120.8 – Application for Additional Licenses or License Type

COMMENT: A commenter asked the office to clarify the process for submitting multiple applications for the different license types and whether an applicant or licensee can apply for multiple licenses or just a licensee. They believe as written, it does appear that this process is limited to just the licensee.

RESPONSE: An applicant interested in applying for multiple licenses or license types must submit a separate application for each license sought. No changes were made to the revised proposed regulations were necessary as a result of this comment.

COMMENT: A commenter requested clarification on whether the abridge license option applies to licensees and applicants.

RESPONSE: The abridge application only applies to licensees who meet certain conditions. No changes to the revised proposed regulations were necessary as result of this comment.

Section 120.9 – Issuance of a License

COMMENT: A commenter recommends modifying the language to empower the Board with the flexibility to elect to reduce, waive, credit, refund or defer any application fee(s) otherwise due by a transferee if such transferee is a minority-owned business or women-owned business.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

Section 120.10 – License Duration

COMMENT: A commenter recommends removing the language stating that a license will expire after two years.

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

Section 120.11 – License Renewal

COMMENT: A commenter recommends modifying the language to include language giving an applicant flexibility and time to secure a labor peace agreement by allowing them to submit a notarized statement reflecting such.

RESPONSE: The Office acknowledges this comment and took it under consideration, however, it was determined that it could not remove this requirement, as it is a requirement recognized by the Cannabis Law. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: A commenter recommends clarifying whether municipal code violations would be used to determine whether the licensee maintains compliance to satisfy licensure renewal.

RESPONSE: As part of operating under a valid license, licensees must maintain compliance with all applicable municipal code. No changes to the revised proposed regulations were necessary as result of this comment.

Section 120.12 – License Denial

COMMENT: A commenter recommends that the Board not utilize the “good moral character” factor when considering whether to deny a license or renewal of such license but would recommend its use with considering it for qualification.

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

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

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

Section 120.13 – Reapplication after License Denial

COMMENT: A commenter proposed modifications to this language to reflect the changes they made in other sections concerning applicant/licensee and their TPI's knowledge of illicit sales of cannabis.

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

Section 120.14

The Office did not receive comments on this section.

Section 120.15

The Office did not receive comments on this section.

Section 120.16

COMMENT: A commenter expressed admiration for the idea that juvenile offenses will not be used to determine suitability. They further requested clarification if juvenile offenses would be considered to determine social equity and priority review status.

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

Section 120.17

The Office did not receive comments on this section.

Section 120.18

COMMENT: Several commenters find that the reporting changes to the business operations is overly broad, while other commenters seek to increase the reporting time by which a business must notify the Office of certain changes.

RESPONSE: The requirements in the revised proposed regulations address, in part, significant changes to the composition of the licensee's business regarding its control and operational

structure. As such, the Office and Board must be made aware of these changes expeditiously. No changes to the revised proposed regulations were necessary as a result of this comment.

COMMENT: A commenter recommends excluding spouses of passive investors from the disclosure requirements, which they believe would extend the exclusion against disclosing such information to spouses of passive investors.

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

Section 120.19 – Licensed Premises for Cannabis Events

COMMENT: A commenter recommends removing the additional fee, which might be levied where a licensee anticipates the number of attendees to be greater than 100.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: A commenter suggests putting the burden of compliance on the event organizer for multiple licensed premises that may participate in a larger event that has approval. They further suggest adding language to clarify liability.

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

COMMENT: A commenter suggests that cannabis event should not be located next to certain rehabilitation facilities.

RESPONSE: The location of any cannabis event would be in conformity of these revised proposed regulations and pursuant to the Cannabis Law. No changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: A commenter requests clarification as to whether the “temporary licensed max period” applies through the duration of the license.

RESPONSE: The specified time depends on the type of event as detailed in the application to the office. However, no event may exceed a period of 30 concurrent days. No changes to the proposed revised regulations were necessary as result of this comment.

Section 120.20 – Opportunity to Cure

The Office did not receive comments on this section

Section 120.21 – Severability

COMMENT: A commenter suggests renumber to reflect a recommended a NEW addition, section 120.22, the “savings clause.”

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

Part 121 – Social and Economic Equity Rules

Section 121.1 – Qualifications for a Social and Economic Equity Applicant

COMMENT: A commenter proposed to qualify every hemp and cannabis farmer and adult use cultivator as a distressed farmer due to limited retail outlets and complexities filing a Schedule F.

RESPONSE: The Office has expanded the criterion for individuals and farms to qualify as a distressed farmer without filing a Schedule F. The Office acknowledges this comment; however, no changes were made to the revised proposed regulations as a result of this comment

COMMENT: A commenter proposed to add “legacy operator” as a qualification for a social and economic equity applicant as well as prioritizing legacy operators within the adult use industry.

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

COMMENT: A commenter proposed that applicants qualifying for both a minority and women owned business should have extra priority status in processing applications.

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

COMMENT: A commenter proposed that women should be added as a priority group due to underrepresentation in the cannabis industry.

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

COMMENT: A commenter proposed removing “children removed from the home by Child Protective services...” from the list of potential qualifiers for individuals from communities disproportionately impacted. The commenter states that data does not exist in Administration for Children’s Services (ACS) systems and that ACS child protection staff do not remove children from homes simply because a parent/caretaker uses cannabis.

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

Section 121.2 – Ownership and Sole Control Minimums

COMMENT: A commenter proposes that required documentation for social equity applicants be considered for selection criteria only versus a requirement due to potential burden applicants may face when trying to acquire information.

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

Section 121.4 – Commitment to Social and Economic Equity

COMMENT: A commenter requests clarity on whether social and economic equity applicants need to submit a community impact plan.

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

Part 121 – General and Miscellaneous Comments

COMMENT: A commenter submitted concerns regarding the Office’s Social and Economic Equity Plan. The commenter believes the plan is not sufficient in communicating a clear strategy to achieve social equity priorities found in the MRTA.

RESPONSE: The Office acknowledges this comment. This comment is beyond the scope of these revised proposed regulations.

COMMENT: A commenter proposes granting amnesty for legacy operators so they can share their expertise in the legal market without fear of persecution.

RESPONSE: The Office acknowledges this comment. This comment is beyond the scope of these revised proposed regulations.

COMMENT: A commenter proposes allowing Part 116 Provisional Licensees that couldn't become operational during the one-year window due to zoning restriction and stringent community board requirements to be moved to a second preferred choice.

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

COMMENT: A commenter proposes that all qualified Social Equity applicants should receive free legal aid.

RESPONSE: The Office acknowledges this comment. This comment is beyond the scope of these revised proposed regulations.

COMMENT: A commenter proposes that contracts with any social and economic equity applicants should be reviewed and approved by a department at the Office.

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

COMMENT: A commenter submitted concerns regarding limitations for current licensure opportunities.

RESPONSE: The Office acknowledges this comment. This comment is beyond the scope of these revised proposed regulations.

COMMENT: A commenter proposes that the Office issue a moratorium to pause the issuance of any new processing licenses until one year after New York has 463 legal dispensaries open.

RESPONSE: The Office acknowledges this comment. This comment is beyond the scope of these revised proposed regulations.

COMMENT: A commenter proposes that the Office should allow adult use conditional cultivators to grow five acres, with four of the acres being biomass. The commenter suggests this will help cultivators to compete with ROs and keep prices down for New York's consumers.

RESPONSE: The Office acknowledges this comment. This comment is beyond the scope of these revised proposed regulations.

Part 123 – License Specific Authorizations, Requirements and Prohibitions

Section 123.1 – Nursery Ownership, Interests, Business Authorizations and Prohibitions

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

RESPONSE: The revised proposed regulations authorize nursery licensees to distribute these items to retail dispensaries for retail sale to consumers. The Board and Office will take this comment into consideration for future rulemaking, but no changes have been made to the revised proposed regulations as a result of this comment.

Section 123.2 – Nursery Operations

COMMENT: Commenters remarked on language which prohibited a nursery from distributing plants taller than two (2) feet in height. Commenters suggested this language be removed to allow nurseries to sell larger plants to consumers.

RESPONSE: This prohibition reduces the likelihood that a mature plant could be inadvertently distributed. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters requested clarity on whether nurseries may use mature cannabis to “pheno hunt” or otherwise engage in research and development.

RESPONSE: The revised proposed regulations would not prohibit a nursery from maintaining mature cannabis within the nursery area in order to determine whether the plant is suitable for use as a mother plant or for any other purpose in the production of clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, or cannabis seeds. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters stated that the regulations must be changed to allow nurseries to test mature cannabis.

RESPONSE: The revised proposed regulations would not prohibit a nursery from maintaining mature cannabis within the nursery area and testing a mature plant—whether through a permitted laboratory or through another method---to determine if such plant is suitable for use in the production of clones, seedlings, immature cannabis plants, clones propagation material, tissue culture, or cannabis seeds. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the revised proposed regulations exempt a nursery from being required to document information related to production and genetic sourcing if that nursery has a patent or trademark number for that information.

RESPONSE: Licensees are required to document this information in order to ensure that the resulting cannabis products do not harm public health and safety. In the event such records are subject to disclosure pursuant to Article 6 of the Public Officers Law then the Office will deny access to any trade secrets contained within such records. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the revised proposed regulations be amended to allow a cultivator to maintain mother plants and produce clones from that mother plant, even if the cultivator does not hold a nursery license.

RESPONSE: The revised proposed regulations allow a cultivator to clone cannabis and would not prohibit this activity from occurring within the cultivator's cultivation canopy. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters stated that it would be unreasonable if clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, and cannabis seeds have the same packaging and labeling requirements as adult-use cannabis products because these nursery products are not psychoactive and could mean that the products could not be maintained in a retail dispensary environment.

RESPONSE: The Board and Office acknowledge this comment and will consider it in future rulemaking, but at this time no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters requested additional information regarding the authorizations of a nursery license. Specifically, commenters:

- Asked if a nursery can sell clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, and cannabis seeds to consumers at retail;
- Suggested amendments that would allow a licensee to operate a nursery area in a combination of indoor and either mixed-light or outdoor space;

- Suggested changes to the restriction in paragraph 2 of subsection (a) of Part 123.2 that immature cannabis plants that may only be distributed to retailers if under 2 feet in height. Commenters stated this change is necessary to allow nurseries to use “plants in a flowering stage for R&D”; and
- Asked if there is a maximum proportion of the nursery area that can contain mature cannabis.

The commenter stated, generally, the importance to them of utilizing the nursery license to conduct research and development and identify unique phenotypes of cannabis.

RESPONSE: In regard to the specific concerns raised by this comment:

- A nursery licensee cannot sell these things directly to consumers at retail at this time. The Board and Office acknowledge this comment and are continuing to explore the authorizations of the nursery license as it relates to this topic, but no changes have been made to the revised proposed regulations.
- A nursery area must be indoors, outdoors, or in mixed-light and cannot be in a combination of indoors and either mixed light or outdoor space.
- The restriction on plants being 2 feet or less in height only applies to plants distributed to a retailer and does not apply to plants sold to cultivators or to plants maintained in the nursery area as part of seed production. The revised proposed regulations would allow a nursery to bring multiple plants of the same cultivar to maturity within the nursery area as part of the licensee’s production, and the regulations do not prohibit a nursery from conducting research and development or “phenotype hunting” as part of seed production.
- The revised proposed regulations allow a nursery from maintaining a portion of the nursery area that consists exclusively of mature cannabis so long as the primary purpose of that

area is to produce clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture or cannabis seeds.

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

Section 123.3 – Cultivator Ownership, Interests, Business Authorizations and Prohibitions

COMMENT: Commenters suggested the revised proposed regulations be amended to allow cultivators to cultivate in separate locations.

RESPONSE: The revised proposed regulations do not require a canopy to be contiguous and allow a licensee to cultivate at multiple locations in accordance with the licensee’s cultivation tier and cultivation type; the arrangement proposed by this comment is already allowed by the revised proposed regulations. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters asked why language regarding cultivators and minimal processing had been removed from the regulations. Commenters stated that it did not make sense that a cultivator would be required to get a processor license and become GMP certified “just to put flower in a bag.”

RESPONSE: The Board and Office will take this comment into consideration for future rulemaking. The revised proposed regulations do not require all processing facilities be GMP certified but require that processing occur in accordance with GMP standards “as applicable for the type of cannabis or cannabis product being processed or as otherwise determined by the Office.” No changes have been made to the revised proposed regulations as a result of this comment.

Section 123.4 – Cultivator Operations

COMMENT: Commenters remarked on the requirement that a cultivator tag each mature cannabis plant with a plant tag. Commenters stated that this requirement would be burdensome and wasteful as written and suggested the regulations allow for strategies such as row labeling or lot labeling. Commenters stated these alternatives would allow for greater flexibility while still ensuring that cultivators accurately track and report their cannabis inventory.

RESPONSE: The Board and Office will take this comment into consideration for future rulemaking, but at this time no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters remarked on the energy and environmental reporting required of cultivators. Commenters stated that the revised proposed regulations would create an undue burden for licensees and the commenters suggested changes that would require the Office to provide forms and additional guidance on the information collected.

RESPONSE: The Office will take this comment into consideration when developing future guidance, but no changes were made to the proposed regulation as a result of this comment.

COMMENT: Commenters suggested that the revised proposed regulations require immature cannabis be entered into a licensee’s inventory tracking system on the day it is received, and not within three days.

RESPONSE: The Board and Office may take this comment into consideration in considering future actions, but no changes were made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern that the on-premises identification system required by the revised proposed regulations would be burdensome for outdoor cultivators to maintain and did not make sense for “small outdoor growers” and suggested these types of cultivators be exempted from this requirement.

RESPONSE: An on-premises identification system is necessary in order to ensure trackability of cannabis products in the event of an adverse event, recall, or other incident. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters requested additional clarity on required waste reporting for cultivators. Commenters asked if the required reporting was tons of waste or volume of solid waste and asked if it included or excluded recyclable materials and whether organics should be included in reporting.

RESPONSE: The Office may take this comment into consideration when developing future guidance, but no changes were made to the proposed regulation as a result of this comment.

Section 123.7 – Distributor Ownership, Interests, Business Authorizations and Prohibitions

COMMENT: Comments suggested that the revised proposed regulations be amended to allow a distributor or its TPI to have certain exempt goods and service agreements with retailers.

RESPONSE: The Board and Office will take this comment into consideration in considering future actions, but no changes were made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters stated that distributors should be able to purchase cannabis products directly from cultivators and that prohibiting this “robs the cultivators of necessary value-add revenue.”

RESPONSE: The proposed regulations allow a cultivator to acquire a processor license, which would allow the cultivator to process its products and sell them to a distributor. No changes were made to the revised proposed regulations as a result of this comment.

Section 123.5 – Processor Ownership, Interests, Business Authorizations and Prohibitions

COMMENT: Commenters expressed concern that it would be burdensome for brands to be required to disclose TPI relationships in order to work with enter into branding agreements with processors. Commenters stated that requiring TPIs disclose information about spouses or “going into shareholder records” would be too burdensome.

RESPONSE: The revised proposed regulations are consistent with the requirements of the Cannabis Law and the disclosure requirements of other two-tier industries such as alcohol. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the revised proposed regulations require a specific agreement if a processor processes cannabis grown by a cultivator without taking ownership over it.

RESPONSE: The Board and Office will take this comment into consideration in considering future actions, but no changes were made to the revised proposed regulations as a result of this comment.

Section 123.6 – Processor Operations

COMMENT: Commenters suggested that the Office extend indoor air quality standards to cultivation and processing facilities that are indoors. Commenters shared information regarding cannabis industry employees who have died or experienced other health concerns in cannabis processing facilities in other states.

RESPONSE: No licensee may put the health and safety of their employees at risk. The Board and Office take protections for the cannabis workforce very seriously. The Board and Office will take this comment into consideration in considering future actions, but no changes were made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the Office better define packaging and labeling that is attractive to individuals under twenty-one. Commenters suggested that the Office explicitly approve each product’s packaging and labeling—including licensee names, product names, cultivar labeling, product shape, and other aspects of products—to ensure that they are not attractive to individuals under twenty-one.

RESPONSE: Pre-approval over the look and feel of adult-use cannabis product packaging and labeling is not necessary currently to protect public health. The Board and Office have several tools available to ensure compliance with applicable laws and regulations. Requiring pre-approval could create an administrative burden that would not be appropriate given the nature of current adult-use cannabis product packaging and labeling. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the Office create a grant program that allows licensees, community-based organizations, and others to apply for funding to “access and distribute” lockable, scent proof cannabis storage containers.

RESPONSE: The Office and Board will continue to work with stakeholders, including the Cannabis Advisory Board, to make communities aware of safer cannabis product storage strategies, however no changes were made to the revised proposed regulations as a result of this comment.

COMMENT: An organization representing county health officials requested that the Office and other partner state agencies regularly meet with county health departments to better strengthen protections for public health.

RESPONSE: The Office continues to build collaborative relationships with a number of stakeholders, including public health officials, in order to identify strategies that best protect public health and to respond to emerging public health risks, such as those reported through the Incident Report Form located at www.cannabis.ny.gov/report-an-incident. The Office will continue to use

all possible avenues, including the Cannabis Advisory Board, to engage these critical stakeholders. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters remarked on language that would prohibit a cannabis product intended to be inhaled or vaporized from being processed for distribution for retail sale if the product is flavored with a prohibited flavor.

Some commenters who represent businesses that make or sell vaporizers and distillate-based oil for vaporization opposed this language and recommended it be removed entirely. These commenters urged the Office to reconsider the policy. Commenters stated that the language would “add disruption” to the market and that they believed the policy would create barriers to processors using distillate to make vaporized products. Commenters expressed concern that the policy would result in flavored vapes being pulled from dispensary shelves in massive numbers, and they worried that inspectors could use discretion in inconsistent ways. These commenters stated that they believed, based on their own review of one dispensary’s menu, that the policy would mean 20% of vapes on that dispensary’s shelves could not be sold.

A second group of commenters—including some processors—commended the Office for creating public health protections but made suggestions to alter the policy in order to avoid creating confusion. Some of these commenters removed certain flavors from the list of prohibited flavors because they felt that these flavors were too vague. Other of these commenters stated that “explicit guidance allowing for the reintroduction of flavors that contribute to the natural flavors and aromas of cannabis would be critically beneficial” in implementing this policy in a manner that protects public health and cannabis consumers.

A third group of commenters encouraged the Office take further steps to combat youth use of cannabis products. These commenters suggested taking additional steps: such as expressly prohibiting other flavors (like fruit), requiring distillate-based products use “(flavored)” on their labeling, or to prohibit all flavors, including in paraphernalia like rolling papers or tips.

RESPONSE: It is of utmost concern to the Board and the Office that adult-use cannabis products are not made attractive to individuals under twenty-one and do not make false claims or mislead consumers, including in their packaging and labeling.

The proposed regulations will not create an undue burden on adult-use cannabis processors or the adult-use cannabis industry, and the proposed regulations are necessary to protect public health. The currently effective regulations regarding the marketing and advertising of adult-use cannabis products identify exemptions where products may be labeled with the cultivar of cannabis contained within. These proposed regulations are necessary to ensure that processors do not utilize this allowance for cultivar labeling to create adult-use cannabis products that are attractive to individuals under twenty-one.

As additional processing facilities begin operations and as products begin to be processed in greater number, the potential impact of this policy could only increase if it were delayed for further consideration. The Board and Office do not believe prohibitions on certain flavored products will have the impacts that some processors fear it will because the proposed regulations do not prohibit a cannabis product from having a taste or aroma that is indistinguishable from the naturally occurring taste or aroma of cannabis.

In regard to commenters desiring additional prohibitions on flavored rolling papers or tips or other paraphernalia, the proposed regulations would consider a product “flavored” if a flavor that was distinguishable from the naturally occurring taste or aroma of cannabis was imparted

during consumption of a product, such as through a rolling paper or tip or other component of the product.

The Office will continue to work with processors and retailers to ensure that implementation of this policy is equitable and does not unduly impact processors or retailers. Should it become necessary, the Office may issue guidance further assisting processors and retailers in ensuring the products they sell remain compliant with this policy. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters stated that “TPI must be deduced in the negative” for laboratories and suggested adding laboratories to the revised proposed regulations in order to provide better guidance.

RESPONSE: The cannabis laboratory permit is not an adult-use cannabis license; when an adult-use cannabis license precludes its holder from holding a cannabis laboratory permit, that prohibition related to the adult-use license is included in the revised proposed regulations. Standards, prohibitions, and other regulations related to the cannabis laboratory permit are in separate regulations, and the Board and Office will take this comment into consideration when considering future revisions to such cannabis laboratory permit regulations. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested changing the regulations to allow a pathway through which the Office can allow licensees to deliver cannabis through a drone.

RESPONSE: Use of unmanned transport in cannabis transport creates public health risks, such as the risk of improper age verification of cannabis consumers, among other things. It is not clear

at this time that the costs of implementing and monitoring an approval program would justify the benefits, but the Office will continue to explore solutions that allow licensees to reduce their environmental impact. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested requiring retail dispensaries to implement cannabis packaging recycling or reuse or other sustainability strategies.

RESPONSE: The regulations for packaging and labeling, which are separate and distinct from the revised proposed regulations, already require that non-conditional licensees which package adult-use cannabis products implement a Retail Packaging Sustainability Program. It would be acceptable for a processor to, as part of an approved Retail Packaging Sustainability Program, work with the dispensaries it distributes its cannabis products to ensure retail packages are collected and returned to the processor for re-use. Because of this requirement placed on processors, it would be burdensome and potentially confusing to also require retailers implement a similar program. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that an exception be created to allow cultivators to “exclude specific areas containing flowering cannabis that is not intended for sale, that is being grown for the purposes of breeding, phenotype searches, or research and development,” from being counted towards the cultivator’s canopy limit. Commenters expressed concern that, without such allowance, licensees would not be able to have enough space to conduct proper breeding or R&D programs.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

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

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

COMMENT: Commenters suggested the revised proposed regulations be amended to prohibit cannabis products from being processed in facilities that process or produce any products that do not contain cannabis.

RESPONSE: Section 69 of the Cannabis Law prohibits a processor from engaging in any other business on the premises to be licensed, unless the processor is engaged in business authorized by another adult-use cannabis or a hemp grower or cannabinoid hemp processor license, at the premises. The Board and Office will take this comment into consideration in considering future actions, but no changes were made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested combining tablets and capsules with tinctures to create a class of products that commenters called “orally-ingested concentrates.” Commenters went on to state that their business has the best-selling orally ingested concentrate product in another state and suggested that this new product class be allowed to contain more than 10mg of Total THC per serving and more than 100mg of Total THC per package. Commenters stated that these products are not attractive to individuals under twenty-one.

RESPONSE: The toxicity risk to young children persists for orally ingested cannabis products, regardless of whether they are described on their label as a “concentrate” or an “edible”. Tablets, capsules, lozenges, and other similar “less attractive” product types, even in their most basic shape, can resemble candy and other consumer goods marketed to children. The facts of these products create risk. Although it is clear there are financial benefits to processors in allowing more potent products, it is not clear that these benefits outweigh both the increased compliance burden in implementing this suggestion in a manner that ensures the resulting high-potency products are not attractive to individuals to twenty-one and the increased likelihood of adverse events, including the serious adverse events—sometimes leading to death—that occur in children who accidentally overconsume orally ingested products containing cannabis. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested the proposed regulations include allow processors longer than one year from commencing licensed operations in order to submit a qualified third-party GMP audit. Commenters encouraged the Office to quickly identify approved third-party auditors to allow for scheduling and completion of audits.

RESPONSE: The Board and Office may take this comment into consideration in considering future actions, including the development of operational guidance for licensees, but no changes were made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested ROs be permitted to “sell medically labeled products into the AU market” to “gauge AU demand.”

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: Commenters stated that a “certificate of temporary occupancy” would be more appropriate documentation to request of a processor that is requesting approval to engage in volatile solvent-based or hydrocarbon extraction.

RESPONSE: The revised proposed regulations allow an equivalent document to a certificate of occupancy, as determined by the Office, to be submitted. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that transdermal formulations be allowed as adult-use cannabis products. Commenters stated that these products are no different than topicals.

RESPONSE: Certain product types are not suitable as adult-use cannabis products to avoid consumer confusion and protect public health and safety. The Board and Office will take this

comment into consideration for future rulemaking; however, no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested prohibiting that edibles look like candy or be packaged in a way that resembles consumer products.

RESPONSE: The revised proposed regulations would prohibit a cannabis product from using a commercially available candy or snack food item in a cannabis product if such item is recognizable as the commercially available candy or snack food item when processing of the cannabis product is complete. Additionally, currently-effective regulations regarding the packaging and labeling of adult-use cannabis products—which are separate regulations from the revised proposed regulations—prohibit cannabis products from being packaged to resemble products which are primarily marketed to individuals under twenty-one, or in any other way that is attractive to individuals under twenty-one. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the Office clarify that edibles would be attractive to individuals under twenty-one if using any added color or being in any shape that is not a “simple geometric shape.” Commenters also suggested that each serving of an edible be “physically independent” and clearly labeled.

RESPONSE: The Board and Office will take these comments into consideration for future rulemaking; however no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters asked if the limit on the phytocannabinoid content of a cannabis product would “trump permitted variance.” Other commenters suggested that the revised proposed regulations be amended to allow a larger variation between the amount of total THC stated on a product’s label and the actual amount of THC in that product as determined by lab testing, and some commenters suggested a +/- 20% allowance, instead of the +/- 15% allowance in the revised proposed regulations.

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

COMMENT: Commenters asked if ingredients were prohibited in vaporized products if not on the FDA’s inactive ingredients list. Commenters stated that this list may be inappropriate because certain ingredients on the list are prohibited by the Office in vaporized products and because some ingredients not on the list may be acceptable.

RESPONSE: The revised proposed regulations prohibit vaporized or inhaled cannabis products from including certain ingredients, regardless of whether they are on the FDA’s inactive ingredients list. Additionally, the revised proposed regulations allow the Office to approve certain ingredients in vaporized or inhaled cannabis products if they are not on the FDA’s inactive ingredients list. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters asked if stability testing was required to substantiate a product’s date of expiration or a product’s use by date. Commenters stated it would be unreasonable to expect

stability testing for a product with a date of expiration that was ten years away. Commenters suggested the allowance of real-time and accelerated stability testing.

RESPONSE: The revised proposed regulations would require a licensee possess stability data to support both an unopened product's date of expiration and an opened product's use-by date. The revised proposed regulations are intended to prevent licensees from labeling products with very long dates of expiration, such as ten years, that cannot be substantiated by reputable stability data. However, the Office acknowledges that certain unopened cannabis products may maintain stability for a long period of time and may take comments regarding accelerated stability testing into consideration to better understand the potential impacts on consumers, however, no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters asked if a product's terpene content would be determined by lab testing or a processor's product plans or other records. Commenters expressed concern that the natural variance of lab testing may mean products that are near 10% terpenes could appear to be in violation when they, in reality, are not.

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

COMMENT: Commenters stated that revisions to the proposed regulations which ensured product quality plans are made available to employees of processors would be important in improving worker safety by allowing employees to better understand health and safety risks in their job.

RESPONSE: Safety of New York’s cannabis workforce is a high priority of the Board and Office. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern that, because of lab testing requirements, some cannabis products would be unsuitable for consumption and cause the supplier to lose money. Moreover, commenters stated that—in their opinion—permitted labs sometimes “make a mistake” and that processors did not have sufficient recourse. Commenters suggested that licensees be allowed to remediate products for reasons other than what would be allowed by the revised proposed regulations. Commenters also suggested allowing remediation of products that the revised proposed regulations would not allow to be remediated. Commenters generally expressed concern regarding the Office’s lab testing standards, particularly the allowances for yeast and mold in outdoor grown cannabis, which commenters felt were too strict.

RESPONSE: The Office continues to evaluate the potential health and safety ramifications of remediation. The Office’s lab testing standards are not determined by the revised proposed regulations. No changes have been made to the revised proposed regulations due to these comments.

Section 123.7 – Distributor Ownership, Interests, Business Authorizations and Prohibitions

COMMENT: Comments suggested that the revised proposed regulations be amended to allow a distributor or its TPI to have certain exempt goods and service agreements with retailers.

RESPONSE: The Board and Office will take this comment into consideration in considering future actions, but no changes were made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters stated that distributors should be able to purchase cannabis products directly from cultivators and that prohibiting this “robs the cultivators of necessary value-add revenue.”

RESPONSE: Pursuant to section 68 of the Cannabis Law, the proposed regulations allow a cultivator to apply for and obtain one processor license and one distributor license, which would allow the cultivator to process its products and sell them to a distributor and, if a distributor license is applied for and obtained, to distribute their own products. No changes were made to the revised proposed regulations as a result of this comment.

Section 123.8 – Distributor Operations

COMMENT: Commenters asked how “maximum margins” would be defined for purposes of requirements with which distributors must comply.

RESPONSE: The revised proposed regulations require a distributor comply with any maximum margins determined by the Office. When such determinations are made, information regarding such determination will be provided to relevant licensees. No changes have been made to the proposed regulations as a result of this comment.

Section 123.9 – Retail Dispensary Ownership, Interests, Business Authorizations and Prohibitions

COMMENT: Commenters suggested that cultivators be allowed to sell directly to retail dispensaries.

RESPONSE: The revised proposed regulations do not prohibit a cultivator from also holding a distributor license. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters asked if a nursery would need a distributor license in order to distribute clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, and cannabis seeds to a retail dispensary for retail sale to consumers.

RESPONSE: Pursuant to Section 75 of the Cannabis Law, a nursery may distribute these nursery products to a retailer as an authorization of the nursery license; a distributor license would not be required. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern that a limited retail consumption facility would violate the cannabis law and “harm customers.”

RESPONSE: The revised proposed regulations include a number of protections for consumers within a consumption facility and create standards for air quality within a consumption facility and protections for employees that may be exposed to secondhand smoke in these facilities. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern that the revised proposed regulations would too greatly limit retailers by prohibiting retail dispensaries and their true parties of interest from holding a direct or indirect interest in a person outside of New York State that is licensed to conduct certain activities such as cultivation and processing. Other commenters supported the rule but suggested that goods and services agreements that would be considered exempt from Part 124 also be considered exempt from this requirement.

RESPONSE: This prohibition is necessary in order to ensure that cultivators, processors, and distributors are not interested in retail dispensaries. No changes have been made to the revised proposed regulations as a result of this comment.

Section 123.10 – Retail Dispensary Operations

COMMENT: Commenters suggested that the revised proposed regulations prohibit retail dispensaries and on-site consumption licensees from serving alcohol.

RESPONSE: Section 85 of the Cannabis Law prohibits a cannabis retail licensee from selling alcoholic beverages or having or possessing a license or permit to sell alcoholic beverages, on the premises where cannabis products are sold. The revised proposed regulations do not yet include operating requirements for the on-site consumption license, and the Board and Office will take this comment into consideration for future rulemaking, however, no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the revised proposed regulations prohibit retail dispensaries and on-site consumption licensees from having outdoor areas such as terraces, rooftops, sidewalk sheds, or other outdoor areas.

RESPONSE: It is not clear that this suggestion would benefit all geographic regions of the state. The revised proposed regulations include requirements related to municipal control as it relates to odor control of licensed premises. The Board and Office will take this comment into consideration for future rulemaking; however, no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters which represent retail workers stated they had concerns regarding the protections for retail dispensary employees who work at premises containing a limited retail consumption facility. Commenters suggested that there be a requirement for licensees to utilize a clear window or other technology to monitor the facility without being stationed inside it, at a minimum

RESPONSE: The revised proposed regulations require a licensee monitor a consumption facility during its hours of operation. Because employees should not be stationed within an LRCF, it is intended that this monitoring is done from outside of the facility, and the Board and Office will take this clarifying comment into consideration when developing future guidance related to the implementation of limited retail consumption facilities. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters remarked positively that the revised proposed regulations protect worker privacy by clarifying that only a retail dispensary employee's first name and last initial—

instead of their full name—must appear on a dispensary’s sales transaction records and consumer receipts.

RESPONSE: The Board and Office have a commitment to ensuring the health and safety of the cannabis industry’s workforce. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested additional words, such as “wellness,” and “health” be added to the list of words that a retail dispensary cannot conduct or transact business under. Commenters stated that—although there is documented evidence demonstrating positive health outcomes in use of medical cannabis—that these words would not be appropriate for adult-use retail dispensaries to conduct business under.

Alternatively, other commenters suggested that retail dispensaries should have greater flexibility to make claims regarding health conditions or symptoms such as sleep, pain, and anxiety. These commenters suggested that retail dispensary employees be able to recommend products for being “congruent with” medical cannabis a customer has previously purchased.

RESPONSE: Medical cannabis and adult-use cannabis products are made using ingredients with differing standards of purity, and it would not be acceptable to create consumer confusion between medical cannabis and adult-use cannabis products, such as by suggesting certain adult-use products are congruent with medical cannabis. Currently-effective regulations regarding the packaging, labeling, marketing, and advertising of cannabis products—which are separate from the revised proposed regulations—do not consider general wellness claims to be prohibited health claims, and the list of words in the revised proposed regulations are based on this definition of health claim.

The Board and Office will take this comment into consideration for future rulemaking; however, no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters stated that the revised proposed regulations should better clarify the maximum amount of cannabis a person can purchase from a retail dispensary—either in store or for delivery. Commenters also suggested that the revised proposed regulations require retailers share a real-time database of all customers purchases to ensure an individual does not purchase more cannabis than they are allowed to legally possess. Commenters expressed concern that allowing consumers to purchase too much cannabis at once could lead to, or exacerbate, “addiction.”

RESPONSE: It would be administratively burdensome to implement additional inventory tracking requirements, such as the proposed changes, on licensees at this time. Moreover, the revised proposed regulations require retail dispensaries post a sign or placard, in a conspicuous location inside the retail dispensary premises that is visible to consumers, notifying them of allowable possession and purchase limits. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the revised proposed regulations clarify that cannabis products, cannabis paraphernalia, or packaging or labeling that could be mistaken for a cannabis product cannot be displayed in a location that makes them easily visible to individuals on the public throughfare on which a dispensary is located, regardless of whether they are “prominently” displayed. Commenters stated that restricting this requirement only to goods displayed prominently could be difficult to enforce and subjective. Commenters also stated that this

requirement felt inconsistent with other industries and perpetuated stigma around cannabis products.

RESPONSE: The Board and Office will take this comment into consideration for future rulemaking; however, no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested the proposed regulations allow vending machines with non-cannabis products, including cannabis accessories (pipes/papers/grinders), in or around retail dispensaries.

RESPONSE: The revised proposed regulations prohibit vending machines that contain cannabis products, but the revised proposed regulations do not create requirements regarding vending machines that contain cannabis paraphernalia. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters stated that revisions made to the proposed regulations regarding consumer education materials were welcomed and “applaud[ed] the Office’s additions” to ensure standardization of consumer education materials. Commenters suggested that the regulations include a pathway through which consumers can submit a complaint about consumer education materials.

RESPONSE: It is critically important to the Board and Office that false or misleading information is not shared by licensees and that the messages shared with consumers related to the safer storage and use of cannabis products are consistent and accurate. Individuals may report an incident regarding a cannabis business or product on the Office’s website at www.cannabis.ny.gov/report-

an-incident, and complaints regarding a dispensary's consumer education materials would be an acceptable complaint to submit using this form. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the revised proposed regulations be amended to require a retail dispensary provide its employees with access to the licensee's cash handling processes.

RESPONSE: The revised proposed regulations require a licensee provide the written operating procedures contained within the licensee's operating plan to employees during Responsible Workforce Training, and the revised proposed regulations require a licensee include procedures to safely handle, store, and transport cash in these written operating procedures. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters stated that requiring unsold products in a dispensary to be secured when the store is closed would help prevent contamination and theft.

RESPONSE: The revised proposed regulations require cannabis products at a retail dispensary be stored in a secure, locked safe, vault or other approved equipment or location and only allow a working stock to be maintained outside of this secure location. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the proposed regulations require a retail dispensary verify the age of a potential consumer before providing pricing information over the telephone.

RESPONSE: The Board and Office will take this comment into consideration for future rulemaking, however, no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that brand representatives should be allowed to be present within a limited retail consumption facility.

RESPONSE: There may be concerns regarding undue influence and employee health and safety in terms of brand representatives or other employees being present within a consumption facility. The Board and Office will take this comment into consideration for future rulemaking; however, no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern regarding limitations on payments, contracts, and other interactions between a retail dispensary and certain third parties. Commenters stated that such restrictions on where licensees can market or advertise and the information that third parties can collect regarding New York's cannabis consumers and their purchases were unfair. Commenters went on to state that engaging in these prohibited activities would not risk making cannabis products attractive to youth and suggested the restrictions be removed. Commenters expressed concern that the visibility of their products may be reduced by the revised proposed regulations.

RESPONSE: The policies in question are necessary to prevent undue influence and availing. The Board and Office will take this comment into consideration for future rulemaking; however, no changes have been made to the revised proposed regulations as a result of this comment.

Section 123.11 – Microbusiness Ownership, Interests, Business Authorizations and Prohibitions

COMMENT: Commenters stated that the microbusiness license must be made available to houses of worship that use cannabis sacramentally and ceremonially.

RESPONSE: The Office may consider this comment in future guidance and rulemaking, but no changes were made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification regarding subsections (c) and (d) of this section. Commenters stated that they did not understand these subsections and provided an example involving a person who wished to be a true party of interest in a cultivator and a microbusiness.

RESPONSE: These subsections are aligned with the Cannabis Law and the Office may consider this comment when developing future guidance to assist individuals in complying with ownership and disclosure requirements. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern that requiring a microbusiness to cultivate would make it difficult for microbusinesses to operate in urban areas.

RESPONSE: The Board and Office will take this comment into consideration for future rulemaking, however no changes have been made to the revised proposed regulations at this time as a result of this comment.

Section 123.12 – Microbusiness Operations

COMMENT: Commenters stated that the limitations on the amount of biomass a microbusiness could purchase or process were confusing. Commenters asked if the measurements were referring to wet or dry biomass and suggested changes to the revised proposed regulations that would base these limits on market demand or remove them.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: Commenters stated that limitations on where a microbusiness' retail premises would be unworkable in New York City. Commenters stated that restrictions requiring a microbusiness' retail premises be in the same county would mean that a microbusiness in New York City would be required to operate either its retail or cultivation and processing premises in an unfavorable area for that type of business.

RESPONSE: The Board and Office will take this comment into consideration for future rulemaking; however no changes have been made to the revised proposed regulations at this time as a result of this comment.

Section 123.13 – Cooperative and Collective Ownership, Interests, Business Authorizations and Prohibitions

The Office did not receive comments on this section.

Section 123.14 – Cooperative and Collective Operations

The Office did not receive comments on this section.

Section 123.15 – Registered Organization Adult-Use Cultivator Processor Distributor Ownership, Interests, Business Authorizations and Prohibitions

The Office did not receive comments on this section.

Section 123.16 – Registered Organization Adult-Use Cultivator Processor Distributor Operations

COMMENT: Commenters remarked on the medical patient prioritization plan that ROD and ROND licensees must maintain and suggested changes. Commenters suggested that the revised proposed regulations should not require ROND and ROD licensees to sell seeds or immature plants for medical home cultivation because commenters do not use seeds in their current operations and do not have facilities to store clones at their current dispensing sites. Commenters also remarked that the requirement to maintain sufficient medical cannabis product could mean a ROD or ROND maintains a level of medical cannabis “to support a sales level that will never be seen again.”

Commenters stated that

RESPONSE: A registered organization that participates in the adult-use market must prioritize its medical patients, including those that engage in medical home cultivation. No changes have been made to the revised proposed regulations as a result of this comment.

Section 123.17 – Registered Organization Adult-Use Cultivator Processor Distributor Retail Dispensary Ownership, Interests, Business Authorizations and Prohibitions

COMMENT: Commenters suggested changes to the revised proposed regulations that would allow a ROD and its TPI to hold an indirect interest or be passive investors in other license types.

RESPONSE: The revised proposed regulations are in alignment with section 80 of the Cannabis Law. No changes have been made to the revised proposed regulations as a result of this comment.

Section 123.18 – Registered Organization Adult-Use Cultivator Processor Distributor Retail Dispensary Operations

COMMENT: Commenters suggested changing the date on which a ROD would be granted authorization to open its first co-located store to a date later than December 2023. Commenters stated that the Board’s earlier revisions to this date “betray its promised[sic] under the Seeding Opportunities Initiative to support social justice and economic equity” and suggested that, instead, RODs should be granted this authorization when 150 justice-involved CAURD licensees have commence business operations within a permanent dispensary location. Commenters expressed concern that the registered organizations “have more funding available and more options” to expand to the detriment of small businesses and family farms. Additionally, commenters stated

that social equity licensees would be robbed of the time “they need to gain necessary experience, customer awareness and loyalty” to compete with larger and more established brands.

Although most commenters who remarked on the topic were opposed to revisions in the revised proposed regulations that would grant a ROD authorization to open its first co-located store in December 2023, other commenters remarked positively on these revisions. These commenters stated that they “shouldn’t have to ask [their doctor] to do unnecessary paperwork” and that if medical dispensaries were granted adult-use licenses, that it would ease their frustration. Other commenters remarked positively and suggested that the revised proposed regulations be amended to also allow a ROD to open its second and third co-located store when it opens its first in order to speed the rate at which the state meets “market demand” for adult-use consumers.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: Commenters made suggestions regarding the requirement in the revised proposed regulations that RODs dedicate a certain proportion of shelf space available for adult-use product cultivated and processed by licensees that are not RODs. Some commenters supported the spirit of ensuring that RODs sold products that were not their own and suggested that the revised proposed regulations require a larger share of shelf space be dedicated to such products.

Other commenters stated that the proposed regulations would be difficult to implement and would “dissuade the advantages of vertical operation.” Additionally, these commenters suggested that, at

a minimum, the revised proposed regulations be amended to allow products from other RODs to count towards this percentage.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: Commenters stated that it is “nonsensical” to require a ROD to locate an adult-use dispensary outside of the downstate area because the RO’s current locations have “worked.”

RESPONSE: The Board and Office continue to work to expand statewide access to both adult-use cannabis products and medical cannabis. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested allowing RODs to contract with permitted laboratories for voluntary testing services.

RESPONSE: The proposed regulations allow the Office to approve this arrangement. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters asked if RODs could “sell products wholesale” to other RODs or if that would be prohibited contracting.

RESPONSE: Under the revised regulations a ROD or ROND would be permitted to sell cannabis at wholesale to other RODs or RONDs. The Board and Office acknowledge this comment;

however no changes have been made to the revised proposed regulations at this time as a result of this comment.

COMMENT: Commenters suggested basing the maximum amount of biomass or equivalent that a ROD could process on a “market metric”

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

Section 123.19 – Delivery Ownership, Interests, Business Authorizations and Prohibitions

COMMENT: Commenters suggested that the revised proposed regulations be amended to allow a delivery licensee to have goods and services agreement with a microbusiness or ROD if that agreement is a delivery services agreement.

RESPONSE: Allowing for such arrangements could create risk of violating section 80 of the Cannabis Law and, if allowed, could create an administrative burden in assessing compliance. No changes have been made to the revised proposed regulations as a result of this comment.

Section 123.20 – Delivery Operations

COMMENT: Commenters expressed concern that the revised proposed regulations allowed an employee providing delivery services to possess too great a value of cannabis products, and that the revised proposed regulations would put employees at risk of theft or harm.

RESPONSE: The Board and Office will take this comment into consideration for future rulemaking; however no changes have been made to the revised proposed regulations at this time as a result of this comment.

COMMENT: Commenters suggested that the revised proposed regulations prohibit licensees from delivering cannabis to certain facilities. Some commenters suggested deliveries be prohibited from being made to medical clinics, whereas other commenters suggested deliveries be prohibited from being made to “any building in use for housing the homeless, victims of domestic violence, HIV-positive individuals, or LGBTQI+ youth” unless a medical need is on record with a municipal agency.

RESPONSE: Implementing this policy would be administratively burdensome and could potentially create conflict with Section 127 of the Cannabis Law. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern about requiring prepayment for delivery orders. Commenters remarked that there are significant difficulties in allowing customers to use debit or credit cards in the purchase of cannabis

RESPONSE: Delivering orders that have not been prepaid can create a safety risk to employees involved in delivery of cannabis products. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters stated that delivery licensees would not be able to run profitable businesses unless they were also allowed to sell cannabis directly to consumers. Commenters stated that the delivery license should not be an “add on to dispensaries.”

RESPONSE: The Board and Office will take this comment into consideration for future rulemaking; however, no changes have been made to the revised proposed regulations as a result of this comment.

Part 124 – General Business Requirements and Prohibitions

General Requirements and Prohibitions

COMMENT: A commenter believes that all the regulations proposed in Part 124 General Business Requirements and Prohibitions are excessively harsh.

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

Section 124.1 – Undue Influence and Incentives

COMMENT: A commenter requests that the Office provide a list of the third-party platforms, marketplaces, or aggregators that have submitted the Office's required data confidentiality and user agreements so that licensees know which ones to work with.

RESPONSE: The Office may consider providing the requested information in future guidance; however this comment is outside the scope of the proposed regulations. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters believe that the requirement that third-party platforms, marketplaces, or aggregators list all licensees authorized to sell a given product is impossible without a requirement that licensees provide this information to the platforms that request it. One commenter recommends removing the requirement. Both commenters recommend changing the requirement to "qualify it such that it requires platforms to list any licensee who has confirmed such product availability to the platform." One commenter also requests that the listing be filtered geographically.

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

COMMENT: A commenter requests clarification on the restrictions on third-party platforms, marketplaces, or aggregators that require platforms to provide application programming interfaces for the track and trace system; consumer rights for data sharing and usage; and digital interactions with consumers. They believe the regulations in these sections are confusing and that the Office should reduce these restrictions.

RESPONSE: These requirements are necessary to protect consumer data and privacy and are established in other jurisdictions. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: A commenter believes that the requirement that third party platforms, marketplaces, or aggregators redirect from their website to a licensee's web-based domain for price information is not aligned with United States Supreme Court precedent on price advertising. They recommend that platforms are required to give the option to redirect to the licensee's platform instead of simply being required to redirect.

RESPONSE: The Office is not requiring that prices cannot be provided, but simply that the prices be advertised from the licensee's platform. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: A commenter requests clarification on the limitation on licensee usage of third-party platforms, marketplaces, or aggregators that place restrictions on distributors. They recommend using the term "licensees" instead of "customers" and clarification on if the restrictions apply to "business to business" sales.

RESPONSE: In this context, the "customer" of a third party platform, marketplace, or aggregator will be a licensee. These regulations apply to negotiations between licensees for distribution on a "business to business" basis. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: A commenter believes that the revised proposed regulations may prevent flexibility in marketing. The commenter stated that "gifts, discounts, rebates, and loyalty programs" are common in other states and will be necessary to ensure licensees can market their products to consumers.

RESPONSE: In accordance with currently-effective regulations regarding the packaging, labeling, marketing, and advertising of adult-use cannabis products—which are available on the Office’s website at www.cannabis.ny.gov/regulations—a licensee may promote price or use free promotional goods in their packaging, labeling, marketing, and advertising only in certain ways. The revised proposed regulations refer to inter-licensee arrangements which may create undue influence. Based upon policies in other states and similar industries, like alcohol, the revised proposed regulations create allowances for licensees to provide cannabis merchandise and product samples to other licensees in a manner that would not create undue influence. The Board and Office will take this comment into consideration for future rulemaking; however, no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: A commenter proposes amending the restrictions on agreements for payment in non-monetary means. Commenter suggests including referrals or shared information, gifts between friends, and meals between individuals to the types of goods and services that are not considered disallowed "treats or services of any nature". They believe that as written the requirements "stifle... meaningful relationships that facilitate community (and business) development".

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

COMMENT: A commenter noted extraneous highlighting in the document that should be removed.

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

COMMENT: One commenter proposed allowing licensees to provide "their respective employees, retailers and on-site consumption licensees", as well as consumers, with free samples of cannabis product, regardless of whether the sample was used to negotiate a sale. The commenter also suggested labeling it a "sample" not a "retailer sample" and adding that all other testing (not just packaging and labeling) requirements apply. Another commenter proposed removing the restriction that samples can only be given to licensees that do not already carry the product. Both commenters believe that the restrictions on samples limit consumer accessibility and employee knowledge on market offerings.

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

COMMENT: A commenter believes that the retail advertising specialties cap is too low and does not allow for many types of branded merchandise, such as countertop shoppable units which often cost over the \$200 cap, or loaned items such as laser engravers. They recommend removing the cap or raising it to \$10,000 and including a carve-out for loaned items.

RESPONSE: The \$200 limit is aligned with the State Liquor Authority's retail advertising specialties cap. No changes were made to the proposed revised regulations as a result of this comment.

COMMENT: A commenter suggests that "non-infused cannabis product samples" be excluded from the restrictions on promotional items. They believe that these types of items are important for employees and brands to be able to educate consumers about different products.

RESPONSE: There are public health and safety concerns regarding the consumer confusion that could be created by allowing the use of non-infused samples, particularly when presented in packaging and labeling that is intended for an adult-use cannabis product. Such arrangements create a risk that actual cannabis products will mistakenly be provided to consumers as “non-infused samples.” No changes were made to the revised proposed regulations as a result of this comment.

Section 124.2 – Terms of Sale

COMMENT: A commenter noted extraneous highlighting in the document that should be removed.

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

Section 124.3 – Goods and Services Agreements

COMMENT: A commenter suggests that "professional services agreements" be added as a category of exempt goods and services providers.

RESPONSE: It should be noted that any professional licensed in the State of New York is subject to all laws of the state and the rules and regulations of their licensing authority. Further, all persons

licensed by the Board and Office are encouraged to conduct all ancillary business with persons who are in good standing with their licensing authority. The category of “exempt agreements” already includes many types of professional services, including accounting and legal services. No changes were made to the revised proposed regulations as a result of this comment.

Section 124.4 – Agreements Creating Financial or Controlling Interest

COMMENT: A commenter suggests revising the language describing the rules for when a goods and services provider becomes a true party of interest in a licensee to conform with similar language elsewhere in the regulations.

RESPONSE: The Office acknowledges this comment and may provide additional guidance on this requirement in the future. No changes were made to the revised proposed regulations as a result of this comment.

Section 124.5 – Contracting Limitations

COMMENT: A commenter believes that there is a market need for seasonal, short-term, temporary contract workers. Commenter suggests allowing such labor but limiting it to a 60-day employment period that is only available "during peak hours of planting and harvest".

RESPONSE: The Office acknowledges this comment and may provide additional guidance on this requirement in the future. No changes were made to the revised proposed regulations as a result of this comment.

COMMENT: A commenter requests clarification on if licensees are prohibited from contracting with each other for plant-touching activities. They give the example of a licensed microbusiness that contracts with a licensed processor to process their product. Commenter suggests adding a statement that this provision does not restrict activities between licensees.

RESPONSE: A licensee can have a “white label” agreement with a licensed processor to process cannabis products on their behalf. This is outlined in the proposed revised adult-use regulations. No changes have been made to the proposed regulations as a result of this comment.

COMMENT: A commenter suggests that "professional services agreements" be explicitly included as an allowable type of licensee contract for ancillary activities.

RESPONSE: It should be noted that any professional licensed in the State of New York is subject to all laws that govern their profession and the rules and regulations of their licensing authority. Further, all persons licensed by the Board and Office are encouraged to conduct all ancillary business with persons who are in good standing with their licensing authority. The category of “ancillary” activities already includes many types of professional services, including accounting and legal services. No changes were made to the revised proposed regulations as a result of this comment.

Section 124.7 – Receivership

COMMENT: A commenter is concerned about potential lengthy waiting periods for licensees in need of receivership. Commenter requests that the Office enforce a 30 to 60-day processing time limit for the program.

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

Part 125 – General Operating Requirements and Prohibitions

Section 125.1 – Energy and Environmental Standards.

COMMENT: Commenters stated that they did not feel as if they would be able to meet the HVAC standards in the revised proposed regulations because a refrigerant with a global warming potential of ten or less “does not exist.” Commenters provided a link to an Australian website listing the one-hundred-year global warming potential of various refrigerants.

RESPONSE: The revised proposed regulations state that the refrigerant’s twenty-year global warming potential, instead of the one-hundred-year global warming potential, will be used to assess compliance with HVAC standards. This choice of a 20-year global warming potential is aligned with the New York State Climate Action Council’s Scoping Plan. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the Office remove language allowing for a refrigerant management plan and suggested instead that the Office ensure compliance with “current state and national regulations with regard to the use of low-GHG refrigerants”

RESPONSE: The revised proposed regulations are aligned with the New York State Climate Action Council’s Scoping Plan. Regardless of whether licensees wish to submit a refrigerant management plan for approval, licensees must comply with applicable laws and regulations, even

those that are not set by the Board or requirements of the Cannabis Law. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the Office consider the “‘dark sky’ environmental impact” of mixed light cultivation. Commenters expressed concern that lights visible at night could impact local flora and fauna.

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

COMMENT: Commenters expressed concern about the environmental impact of cannabis businesses. Specifically, commenters stated that the “retail dispensary industry as a whole is not environmentally friendly” and stated that, because batteries, cartridges, packaging, and other goods were not recyclable, that growers should be required to use only solar energy for their power.

RESPONSE: The currently effective regulations regarding the packaging and labeling of adult-use cannabis products include requirements to ensure processors take actions to increase the environmental sustainability of their cannabis product packaging. The Board and Office do not wish to place all sustainability requirements on a single license type or stage of a cannabis product’s life cycle, and the revised proposed regulations are intended to align New York’s cannabis industry with the state’s overall climate goals and Climate Scoping Plan. Requiring only solar energy at cultivation sites would unduly burden these businesses, and no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern that large business and large cultivation canopies are less likely to be environmentally sustainable than “small-scale, local businesses” and encouraged the Office not to allow “big cannabis companies to dominate the market.”

RESPONSE: The revised proposed regulations place different energy and environmental standards for cultivation in large canopy sizes than for cultivation in small canopy sizes. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters expressed concern that the revised proposed regulations must eliminate all energy performance thresholds because the Office “lacks the subject matter expertise” to evaluate their effectiveness. Alternatively, commenters suggested that the Office reimburse cultivators for their systems benefits charges. Commenters suggested this because they stated certain cultivators would not be able to apply for reimbursement for lighting purchases from energy incentive programs that are funded by systems benefits charges if the revised proposed regulations were finalized.

RESPONSE: The revised proposed regulations have been developed with feedback from several partners. The Board and Office are committed to ongoing evaluation of energy and environmental standards and ensuring alignment with the New York State Climate Action Council’s Scoping Plan. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested the revised proposed regulations develop “energy performance related requirements” in conjunction with partner agencies and industry standards such as those developed by ASHRAE.

RESPONSE: The Board and Office will take this comment into consideration for future rulemaking, however, no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters stated that it would be burdensome to require greenhouses mitigate odor generated by the facility and suggested that mixed light cultivation be exempted from the odor control standards in the revised proposed regulations because it would be burdensome to implement odor mitigation in a greenhouse.

RESPONSE: The revised proposed regulations do not require all odor be mitigated, but only odors that would otherwise cause impacts off-site. In the event the odor generated by a mixed light facility did not cause impacts off-site it would not be required to implement odor mitigation technology. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters recommended that odor mitigation standards be quantitative, or that specific technologies be required.

RESPONSE: There is a wide array of acceptable odor mitigation technology and maintaining a list of approved technologies may not allow for the development of innovative and low-cost solutions. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested removing language that would allow for dehumidification equipment that includes “on-site heat recovery” because this cannot be readily observed and is based on design specifications.

RESPONSE: The revised proposed regulations selected dehumidification standards that are aligned with the goals of the New York State Climate Action Council and NYStretch Energy Code 2023. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters stated that language related to on-site combustion of fossil fuels was improved from previous versions but went on to state that it was still unclear because it did not state how a licensee’s primary source of energy would be determined.

RESPONSE: The Office will take this comment into consideration when developing future guidance to assist licensees with operating in compliance with applicable laws and regulations, however no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters stated that the revised proposed regulations erroneously insinuate that a ground-source or air-source heat pump system would be source of energy and not a use of energy.

RESPONSE: The revised proposed regulations list ground-source and air-source heat pump systems as examples of HVAC systems that would not require a fossil fuel-based system. Examples of HVAC systems are provided because HVAC is anticipated to be a significant driver of licensees’ overall energy use. The Board and Office may consider clarifying this example in future amendments, but at this time no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters requested clarification regarding air quality standards. Specifically, commenters asked if air quality standards considered the number of fine particles per cubic meter or the micrograms of fine particles per cubic meter.

RESPONSE: The Board and Office will take this comment into consideration when developing future guidance to assist licensees with operating in compliance with applicable laws and regulations, however no changes have been made to the revised proposed regulations at this time.

COMMENT: Commenters suggested that indoor air quality standards for consumption facilities prohibit the transfer of “detectable” smoke or vapor into areas that are not consumption facilities, instead of prohibiting “visible” smoke or vapor.

RESPONSE: The Board and Office will take this comment into consideration for future rulemaking, however no changes have been made to the revised proposed regulations at this time.

Section 125.2 – Site, Operating, and Environmental Plans.

COMMENT: Commenters requested additional information regarding “how these metrics should be tracked” and pointed to the requirement in the regulations that a licensee’s site plan include the activities performed in each area of the licensed premises.

RESPONSE: It is not clear what information this comment is requesting. The Board and Office acknowledge this comment, however no changes were made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the revised proposed regulations require licensees identify a minimum of eight hours of training for each employee per year, instead of four hours, and that this requirement apply equally to all employees and not—as the revised proposed regulations currently state—be pro-rated for employees that are not full-time.

RESPONSE: It is important that the entirety of the industry’s workforce has ongoing occupational health and safety training that is thorough enough to protect the industry and cannabis consumers. The Board and Office will take this comment into consideration for future rulemaking; however no changes have been made to the revised proposed regulations as a result of this comment.

Section 125.3 – Security and Storage of Cannabis.

COMMENT: Commenters stated that the revised proposed regulations should not include requirements for security and that this is inconsistent with other similar industries.

RESPONSE: Cannabis businesses are more likely to conduct business using cash than other similar industries, and this increases the risks to the premises and its employees. No changes have been made to the revised proposed regulations as a result of this comment.

Section 125.5 – Responsible Workforce Training.

COMMENT: Commenters applauded the Board and Office for its commitment to workers by revising the responsible workforce training requirements to increase clarity. Commenters suggested that the Office review training that would be provided by licensees to their employees

as part of this training to ensure that it would meet core curriculum standards established by the Office.

RESPONSE: It is necessary to ensure that the adult-use cannabis workforce is provided with thorough training that assists the workforce in protecting public health and safety. The Board and Office will take this comment into consideration for future rulemaking; however no changes have been made to the revised proposed regulations at this time.

Section 125.8 – Inventory and Tracking

COMMENT: Commenters asked at which license types must report inventory discrepancies and whether licensees must notify the Office of discrepancies of both cannabis and cannabis products or only of cannabis products.

RESPONSE: The revised proposed regulations require all licensees maintain a complete cannabis and cannabis product inventory, in real-time, in the inventory tracking system. The revised proposed regulations require a licensee notify the Office of any significant discrepancy(s) identified during an inventory audit. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that licensees be given additional time to report inventory discrepancies and that a significant discrepancy allow for a larger difference between the anticipated and actual inventory than 5%.

RESPONSE: The Board and Office will take this comment into consideration for future rulemaking, however no changes have been made to the revised proposed regulations at this time.

Section 125.10 – Transport of Cannabis and Cannabis Products

COMMENT: Commenters suggested the revised proposed regulations be amended to only require cannabis and cannabis products be protected against physical, chemical, and microbial contamination and deterioration when transported in an enclosed vehicle or when non-perishable products are being transferred. Commenters stated it would not be possible to transport products that must be refrigerated when using a bike or scooter.

RESPONSE: The revised proposed regulations require that processors make cannabis products that are shelf stable. No changes were made to the revised proposed regulations as a result of this comment.

Section 125.11 – Management of Cannabis and Other Waste

COMMENT: Commenters stated that cannabis waste, once rendered unusable, should be treated as normal waste. Commenters were concerned that restrictions on waste transportation and requirements for waste transporters to register with the Department of Environmental Conservation would be burdensome.

RESPONSE: Once cannabis waste has been rendered unusable, it is still waste. The revised proposed regulations are aligned with requirements of Article 27 of the Environmental Conservation Law regarding the collection, treatment and disposal of refuse and other solid waste. No changes have been made to the revised proposed regulations as a result of this comment.

Section 125.12 – Inspections and Audits

COMMENT: Commenters requested clarification on whether the revised proposed regulations would make licensed or permitted premises and their records subject to inspection municipal agencies or other non-police agencies

RESPONSE: It may depend on whether the agency is a duly authorized representative of the Office. It may also depend on if the activities conducted on the premises mean it is subject to inspection by the agency because of law or regulations other than the revised proposed regulations. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested that the revised proposed regulations be amended to require that licensees verify individuals who identify themselves as individuals conducting an inspection authorized the Office prior to an inspection.

RESPONSE: The Board and Office will take this comment into consideration for future rulemaking, however no changes have been made to the revised proposed regulations at this time.

COMMENT: Commenters suggested that the regulations require the Office notify AUCC and AUCP licensees “simultaneously” when a final inspection of a dispensary is scheduled. Commenters stated that this help licensees communicate.

RESPONSE: A pre-operational inspection being conducted does not guarantee that a premises will be approved to operate after the inspection. Upon beginning operations, dispensaries are listed publicly on the Office’s website at www.cannabis.ny.gov/dispensary-location-verification and certain licensees do not receive advance notification. No changes have been made to the revised proposed regulations as a result of this comment.

Section 125.15 – Limited Retail Consumption Facility, Exception Area, and Microbusiness Consumption Facility Operations.

COMMENT: Commenters asked why “only opened, partially consumed cannabis products may be taken out of consumption premises?”

RESPONSE: The regulations do not require a licensee limit the only cannabis products leaving the adult-use on-site consumption premises to those that are opened and partially consumed. Rather, the revised proposed regulations require licensees ensure those products are within a retail package with a tamper evident seal applied if the package’s original seal was broken within the facility. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested the revised proposed regulations be amended to “specify licensee and dispensary sharing parameters in the event that [a government agency] must establish collateral contact during the course of a child protection investigation.”

RESPONSE: The Board and Office will take this comment into consideration for future rulemaking, however no changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested the revised proposed regulations be amended to include language “regarding the expectations for adults” who enter a consumption facility with a child younger than eighteen years old.

RESPONSE: Section 77 of the Cannabis Law prohibits a person under the age of twenty-one from being permitted within a consumption facility. The revised proposed regulations require a licensee control access to consumption facilities to ensure individuals under 21 do not enter. No changes have been made to the revised proposed regulations as a result of this comment.

COMMENT: Commenters suggested the revised proposed regulations be amended to state that a licensee's affirmative efforts to mitigate consumption that occurs near that licensee's premises may be considered in the event action is taken against a licensee for allowing consumption outside of an adult-use on-site consumption premises.

RESPONSE: The Board and Office will take this comment into consideration for future rulemaking; however no changes have been made to the revised proposed regulations as a result of this comment.

Part 131 – Severability and Reference Materials

There were no public comments submitted in relation to Part 131.

General and Miscellaneous Comments

COMMENT: A commenter submitted statements in support of the revised proposed regulations and believed that such regulations are an improvement in comparison to the proposed regulations initially adopted in December 2022. Additionally, the commenter commended the Office for committing to transparency and collaborating with stakeholders, applicants, community members, and other organizations throughout the adult-use cannabis regulatory process.

RESPONSE: The Office acknowledges this comment.

COMMENT: A commenter submitted statements in support of the revised proposed regulations, however, cautioned that the Board and Office should continue to be prepared to adjust and amend these regulations as well as others as needed as the cannabis industry evolves. However, the commenter cautioned that the state should not overregulate. Further, the commenter believes the Board and Office should continue to work and consult with stakeholders and community members for all matters of expertise.

RESPONSE: The Office acknowledges this comment.

COMMENT: A commenter submitted a statement in support related to the revised adult-use regulations and how they wish to collaborate with the Board and Office in all cannabis matters throughout the state, especially in the City of New York. Additionally, the commenter wishes to align cannabis rules and regulations in the City of New York with those in the state, continue public safety measures, establish parity with liquor rules, support environmentally sustainable development, and ensure social and economic equity goals that are set forth in the MRTA.

RESPONSE: The Office acknowledges this comment.

COMMENT: A commenter submitted a request for the Office to reevaluate the membership of the State Cannabis Advisory Board (CAB) and they believe there should be “true experts” in the field of cannabis who have helped to create the foundations of the equitable cannabis industry in New York.

RESPONSE: This comment is beyond the scope of these revised proposed regulations. The Legislature determined the composition of the CAB in the MRTA, and they are the only entity that can modify such composition. The membership of the CAB is appointed by the Governor, the Speaker of the Assembly, and the Temporary President of the Senate and non-voting ex-officio members are appointed by various state agencies according to section 14 of the Cannabis Law.

COMMENT: A commenter submitted a statement where they believe that the cannabis industry should allow local artisans in every region of the state to add their own character and differentiate products that would add an element of exclusivity from region to region and separate New York’s industry from other states. The commenter believes this could be modeled similarly to the craft beer industry. Additionally, the commenter states that the Office should create a program that

would utilize a “terroir” of New York or regions of New York that could highlight such various regions and the cannabis they produce.

RESPONSE: The Office acknowledges this comment; however, this comment is beyond the scope of these revised proposed regulations.

COMMENT: A commenter requested that the Board and Office authorize and increase access to all licensing, compliance, and markets for microbusiness, small business, social equity, legacy markets, and regenerative enterprises.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: A commenter objected to the online advertising restrictions proposed in the revised proposed regulations. The commenter further argued that the proposed restrictions are outside of government regulatory purview and could constitute “unwarranted restrictions on lawful commercial speech.” The commenter believes the revised proposed regulations are excessive and would undermine the legal cannabis market.

RESPONSE: The language references was proposed in the interest of protecting local small retail dispensaries. That being said, there is insufficient information being provided with respect to this topic to warrant making the recommended changes. The Office acknowledges this comment, and may consider issuing future guidance and regulations, however, no changes to the revised proposed regulations were necessary as result of this comment.

COMMENT: A commenter objected that the Board and Office limited adult-use cannabis cultivation licensing to a small and what they characterized as preferential groups. Additionally, the commenter believes they may have been part of the preferential group but did not have the time or financial ability to participate.

RESPONSE: This comment is beyond the scope of these revised proposed regulations. However, it should be noted that the Legislature determined there were certain groups that the Board and Office were required to prioritize to receive AUCC and AUCP licenses, pursuant to sections 68-c and 69-a of the Cannabis Law, respectively.

COMMENT: A commenter stated that they find the Office's website problematic to use and would like it to show more information on what future plans are instead of what past events have happened in addition to other material that is available.

RESPONSE: This comment is beyond the scope of these revised proposed regulations.

COMMENT: A commenter requests that the Board and Office work to protect the environment and improve climate resiliency by following the intentions of the MRTA.

RESPONSE: The Office acknowledges this comment.

COMMENT: A commenter requested that the Board and Office authorize the personal and home cultivation of cannabis immediately.

RESPONSE: This comment is beyond the scope of these revised proposed regulations.

COMMENT: Several commenters submitted statements in opposition to the general method of entry of ROs and multi-state operators (MSOs) that is proposed in revised proposed regulations. These commenters are concerned with how specifically vertically integrated ROs, many of which are MSOs may be able to quickly dominate the New York market with the large amount of capital that they typically have, and therefore would be able to drive competing small business out of business. Some of these commenters believe that the ROs should not be allowed to sell their products to licensed adult-use dispensaries, or similarly should they be allowed to sell other licensee's products.

RESPONSE: There is insufficient information being provided with respect to this topic to warrant making the recommended changes.

COMMENT: A commenter submitted concerns related to the access children and adolescents could have with more adult-use cannabis being in the marketplace. The commenter believes that there is a myth that has grown that has allowed the expansion of legalized cannabis.

RESPONSE: This comment is beyond the scope of these revised proposed regulations. However, it should be noted that the Board and Office urges all medical and adult-use cannabis consumers to store cannabis flower and products locked, out of sight, and out of reach of individuals under the age of twenty-one.

COMMENT: A commenter requested the Board and Office to not ban public consumption of adult-use cannabis, including smoking. The commenter believes average New Yorkers are unable to determine the difference between smokeable cannabis flower and smokeable hemp flower.

RESPONSE: This comment is beyond the scope of these revised proposed regulations. It should be noted that the public consumption of cannabis, including smoking, is governed by the Public Health Law. The Legislature is empowered to amend such provisions, and local governments may enact additional restrictions in their municipalities.

COMMENT: Some commenters requested the Board and Office to restrict or prohibit the public consumption of cannabis, including smoking. The commenters argue that a person can be ticketed for the consumption of alcohol in public, and cannabis should be treated the same.

RESPONSE: This comment is beyond the scope of these revised proposed regulations. It should be noted that the public consumption of cannabis, including smoking, is governed by the Public Health Law. The Legislature is empowered to amend such provisions, and local governments may enact additional restrictions in their municipalities.

Part 116 – Amendments to Sections 116.1 and 116.9

Section 116.1

COMMENT: A commenter proposes to amend the definition of “passive investor” to change the number of shares from 20% to 25% and would add language that would provide for calculation of indirect ownership based upon a proportional aspect. The commenter believes that these proposed changes would simplify the investment process for CAURD, AUCC, and AUCP licenses by allowing them to assemble minority investment groups consisting of two investors instead of three or more.

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

COMMENT: A commenter believes that “spouses” should be removed from the Part 116 definition of “true party of interest (TPI)” and instead, spouses should be added to “passive investors” to reduce the disclosure burden on applicants and licensees.

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

Section 116.9

COMMENT: A commenter proposed amendments that would remove proposed language in the revisions that would require the adult-use regulations to prevail should there be any conflict or inconsistency between them and Part 116, once such adult-use regulations become effective.

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