



Introduction

The Cannabis Control Board (“Board”) has adopted regulations that apply to adult-use cannabis licensees. As part of these regulations, there are requirements in place regarding flavored vaporized or inhaled adult-use cannabis products.

These regulatory provisions become effective on September 27th, 2023. Starting on that day, processors may no longer make adult-use cannabis products that violate the requirements on flavored vaporized or inhaled adult-use cannabis products. In the event that the Office of Cannabis Management (“Office”) is made aware that a processor or any adult-use licensee authorized to make such products, is making cannabis products that are flavored in a way that is prohibited (such as due to complaints), then this guidance may help processors or any adult-use licensee authorized to make such products, understand whether their cannabis products would be considered “flavored.”

This guidance is a tool to help licensees that process vaporized or inhaled adult-use cannabis products (which may include processors [including adult-use conditional processors], microbusinesses, cooperatives or collectives, registered organization adult-use cultivator processor distributor retail dispensary (“ROD”), and registered organization adult-use cultivator, processor and distributor (“ROND”) licensees) better understand these regulations. This guidance explains:

- what is in the adult-use regulations related to vaporized or inhaled adult-use cannabis products;
- answers to common questions about vaporized or inhaled adult-use cannabis products; and
- expectations for compliance.

The complete text of the regulation can be found in paragraph (9) of subdivision (f) of §123.6 of Title 9 of the New York Codes, Rules, and Regulations (“NYCRR”). The complete text of the 9 NYCRR Part 123 is available on the Office’s website at www.cannabis.ny.gov/regulations.

What is in the Adult-use Regulations?

The Board has adopted regulations which prohibit vaporized or inhaled adult-use cannabis products from containing certain flavors.

These regulations define what it means for an adult-use cannabis product to be flavored:

“Flavored shall mean a cannabis product with a distinguishable taste or aroma, other than the taste or aroma of cannabis, imparted either prior to or during consumption of such product or a component part thereof, including, but not



limited to, tastes or aromas relating to specific foods or beverages or any concept flavor that imparts a taste or aroma that is distinguishable from the taste or aroma of cannabis. A cannabis product shall be presumed to be flavored if a licensee or a licensee’s agent or employee has made a statement or claim directed to consumers or the public, whether expressed or implied, that such cannabis product has a distinguishable taste or aroma other than the naturally occurring taste or aroma of cannabis. A cannabis product shall not be presumed to be flavored solely due to the cultivar used in the product.” (See 9 NYCRR §118.1(a)(45)).

These regulations also prohibit vaporized or inhaled adult-use cannabis products from being flavored in certain ways.

“(f) Requirements for all cannabis products. All cannabis products processed for distribution for retail sale shall: . . .

(9) if the cannabis product is vaporized or inhaled, the vaporized or inhaled cannabis product must meet the following additional requirements: . . .

(vi) vaporized or inhaled cannabis products shall not be flavored if such flavor is:

- (a) menthol or any type of mint;*
- (b) cotton candy;*
- (c) bubble gum;*
- (d) candy;*
- (e) clove;*
- (f) vanilla;*
- (g) chocolate;*
- (h) ice cream or gelato;*
- (i) soda;*
- (j) cereal;*
- (k) dessert;*
- (l) a concept flavor; or*
- (m) another flavor that is attractive to individuals under twenty-one, as determined by the Office.” (See 9 NYCRR §123.6(f)(9)(vi)).*

Answers to Common Questions

Are all flavors banned?

No, the only flavors that are not allowed are those with the potential to make a vaporized or inhaled cannabis product attractive to individuals under the age of twenty-one. When used in inhaled or vaporized adult-use cannabis products, the following flavors are not allowed: menthol or any type of mint; cotton candy; bubble gum; candy;



clove; vanilla; chocolate; ice cream or gelato; soda; cereal; dessert; concept flavors; and any other flavor that is attractive to individuals under twenty-one.

What makes an adult-use cannabis product flavored?

In order for an adult-use cannabis product to be flavored, the taste or aroma must be distinguishable from the naturally occurring taste or aroma of cannabis. An adult-use cannabis product can be considered flavored for one of two reasons:

1. An adult-use cannabis product can be considered flavored based on its **formulation**.
 - ➔ For example, if the Office receives a complaint that a specific adult-use cannabis product was flavored in a manner that appeared to violate the regulations, then its formulation may be analyzed to determine whether it is flavored. This analysis may use lab testing results or other information to understand the terpenes or other flavoring agents used in the product and their concentration.
2. Alternatively, an adult-use cannabis product can also be considered flavored based on **statements or claims** that licensees make about it, which would include how the product is packaged, labeled, marketed, or advertised.
 - ➔ For example, if a processor indicated on a vaporizer's label that the cannabis product "Tastes like candy!", then that cannabis product would be considered flavored because of that claim. In that scenario, because the processor has made a claim that the vaporizer contains a product that tastes like candy, then the cannabis product's formulation would not matter. Even if you tried the vape and did not think it tasted like candy, it would still be considered flavored because of the statement directed to consumers ("Tastes like candy!") that leads them to believe the product is flavored.

Are labels such as "notes of vanilla" prohibited if those notes are part of the natural occurring taste or aroma of the cannabis in the vaporized or inhaled cannabis product?

Statements or claims such as "notes of vanilla" regarding vaporized or inhaled adult-use cannabis products are only allowed to be made when it is clear to an individual viewing that statement or claim that the overall taste or aroma of the cannabis product is indistinguishable from the naturally occurring taste or aroma of cannabis.

When using statements or claims such as "notes of vanilla" on a vaporized or inhaled cannabis product, licensees should consider the type of product that such statement or claim is being made. If the statement or claim is made on a cannabis product that had terpenes or other flavoring agents added to it (such as a distillate-based product), then the likelihood the resulting cannabis product will be considered flavored is much higher than if the statement or claim ("notes of vanilla") was on a product that had not had any flavoring agents added to it.



Does complying with the regulations for vaporized or inhaled adult-use cannabis products require the use of cannabis-derived terpenes? Does compliance prohibit the use of certain terpenes?

No. All botanically derived terpenes may be used in vaporized or inhaled adult-use cannabis, and no specific terpenes are prohibited. However, no synthetic terpenes may be used in vaporized or inhaled adult-use cannabis products, regardless of whether the product is considered flavored.

Regardless of which botanically derived terpenes are used, *all* vaporized or inhaled adult-use cannabis products must contain no more than 10% total terpenes. (See 9 NYCRR §123.6(f)(9)(iv)). Additionally, licensees must maintain records which contain full information on the source of all botanically derived terpenes (which includes cannabis-derived terpenes) used in vaporized or inhaled cannabis products. (See 9 NYCRR §123.6(f)(9)(v)).

Do the regulations allow for flavoring agents, other than botanically derived terpenes, to be used in vaporized or inhaled adult-use cannabis products?

Yes, but there are additional requirements that may pertain to these ingredients.

- All ingredients used in vaporized or inhaled adult-use cannabis products must be pharmaceutical grade (such as meeting United States Pharmacopeia-National Formulary (USP-NF) standards), unless the ingredient is cannabis or concentrated cannabis, a rolling paper, pre-roll filter tip, a botanically derived terpene, or another ingredient that has been approved by the Office to be used without meeting pharmaceutical grade standards; [(9 NYCRR §123.6(f)(9)(ii)).
- A vaporized or inhaled cannabis product can only contain the following things:
 - Cannabis;
 - Concentrated cannabis;
 - Botanically derived terpenes;
 - Rolling paper;
 - Pre-roll filter tips;
 - ingredients permitted by the United States Food and Drug Administration as an “inactive ingredient” for inhalation, as specified in the [United States Food and Drug Administration Inactive Ingredients Database](#); and
 - ingredients otherwise approved by the Office; (9 NYCRR §§123.6(f)(5)(iii) and (f)(9)(ii)) and
- Certain ingredients can **never** be used in vaporized or inhaled adult-use cannabis products, regardless of if they are pharmaceutical grade or are permitted by the FDA as an “inactive ingredient” for inhalation. Some of these ingredients (such as the diketone *diacetyl*) are used as flavoring agents in other products, and these ingredients are prohibited in vaporized or inhaled cannabis



products because they may cause harm to consumers when vaporized or inhaled:

- synthetic terpenes;
- polyethylene glycol (PEG);
- vitamin E acetate;
- medium chain triglycerides (MCT oil);
- medicinal compounds;
- illegal or controlled substances;
- artificial food coloring;
- benzoic acid;
- diketones; and
- any other compound or ingredient as determined by the Office. (9 NYCRR §123.6(f)(9)(iii)).

Can an adult-use cannabis product label include a cultivar (strain) of cannabis if that cultivar sounds like a flavor?

Yes. An adult-use cannabis product is not considered flavored solely due to the cultivar used in the product. However, a cannabis product—even if it is labeled with a cultivar’s name—will still be considered flavored if it has a distinguishable taste or aroma that is different from the naturally occurring taste or aroma of cannabis.

If the cannabis product has had botanically derived terpenes or other flavoring agents added to the cannabis product during processing to the extent that the cannabis product no longer has the naturally occurring taste or aroma of cannabis, then the product will be considered to be flavored.

What is a ‘concept flavor’?

Some examples of products which have a concept flavor include: “mystery” flavored products, “blue”-flavored or other color-flavored products, and products which refer to their flavor using a concept like “arctic” or “regal” flavored. Not all cannabis products that are differentiated by their name have concept flavors; a concept flavor must be a taste or aroma that is distinguishable from the naturally occurring taste or aroma of cannabis.

What if a vaporized or inhaled adult-use cannabis product’s flavor comes from its rolling paper or tip?

An adult-use cannabis product would be flavored regardless of if the flavor is part of the product formulation, through a statement or claim, or if it is imparted through consumption of the product. For example, a pre-roll using a vanilla-flavored rolling paper would be prohibited, even if the flower within the pre-roll had a taste or aroma that was not distinguishable from the naturally occurring taste or aroma of cannabis.



Expectations for Compliance

What must adult-use licensees that process do to comply with the requirements?

Once the regulations go into effect, all adult-use licensees that process must immediately stop making vaporized or inhaled adult-use cannabis products which have a prohibited flavor.

Can cannabis products prohibited by these regulations be distributed?

Yes, adult-use licensees in possession of vaporized or inhaled adult-use cannabis products that were produced prior to the effective date of the regulations on September 27th, 2023, that have a prohibited flavor can still be sold, and should be phased out (i.e. moved through and out of the supply chain) as quickly as possible. These cannabis products cannot be distributed after the date of expiration printed on the cannabis product's label.

What must adult-use retail dispensaries do to comply with these requirements?

Adult-use retailers in possession of vaporized or inhaled adult-use cannabis products that were produced prior to the effective date of the regulations on September 27th, 2023, that have a prohibited flavor should move these products out of the supply chain as quickly as possible to be phased out. These cannabis products cannot be sold at retail after the date of expiration printed on the cannabis product's label.