

*The following document is intended to provide guidance for adult-use conditional cultivators (AUCC) and processors (AUCP) who are transitioning to a non-conditional adult-use cannabis license, pursuant to Cannabis Law. More information about the conditional cultivator and processor programs are available on the [Office's website](#).*

### **General Questions**

#### **1. When can I apply for a license?**

The application for adult-use conditional cultivators (AUCC) and processors (AUCP) to transition to a non-conditional license will open on Wednesday, October 4, 2023, and close on Monday, December 18, 2023 at 5PM EST. Applications will be reviewed on a rolling basis. AUCCs and AUCPs are encouraged to apply in this application window to ensure the Office is able to process their application before the conditional license expires. The Office is also planning to open a second application window only available to AUCCs and AUCPs in early 2024 for those who were unable to apply in this window and will be sharing more information in the future.

#### **2. Which types of licenses can a conditional licensee transition to?**

An AUCC can transition and have their applications reviewed on a rolling basis for an adult-use cultivator, a Type 3 processor (if desired, in addition to a cultivator license), distributor (if desired in addition to cultivation and Type 3 processor licenses) or a microbusiness license.<sup>1</sup> Obtaining a “Type 3 Packaging, Labeling and Branding” processor license will give an AUCC the same ability to process, package, and manufacture cannabis flower products that they held with the conditional cultivator license. Unless the AUCC also holds an AUCP license, an AUCC applying for an adult-use processor license other a “Type 3” will be queued and reviewed with the general applicant pool.

AUCPs can apply to transition to any of the available adult-use processor types and, if desired, may also obtain a distributor license. As a reminder, only distributor licenses or licenses that have distribution authority are allowed to sell cannabis products to a retail dispensary. AUCP applying for an adult-use cultivator license will be queued and reviewed with the general applicant pool.

More information specific to the AUCC and AUCP licenses is available below, and details about the licensing application is available at the [Office's licensing application guidance](#).

#### **3. Where do I apply for a license?**

The Office's [website licensing page](#) will provide links to the online application located within New York Business Express (NYBE). If you already have a NYBE Business Profile linked to the applicant, then you may apply using the NY.GOV login that is linked

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<sup>1</sup> Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York Section 120.4(b)(3)(iii)

to the existing NYBE profile or create a new NYBE profile. If you do not have a NYBE Business Profile linked to the applicant, then you will need to create a NYBE Business Profile using a NY.GOV login to start your application.

#### **4. When does my conditional cultivator or processor license expire?**

Pursuant to Cannabis Law, all conditional licensees become invalid on June 30, 2024. Further, licensees' distribution authorizations terminate on June 1, 2024. To be eligible to transition to a non-conditional adult-use cultivator or processor license, an application for transition must be submitted to the Office during an open application window.

#### **5. Does my new license become effective immediately upon being granting a license by the Cannabis Control Board?**

Yes, if a non-conditional license is applied for and awarded, then it will become effective upon being granted.

Transitioning AUCCs should select the cultivation method and tier they plan to utilize under their license. Please note, that AUCCs will have the opportunity to apply for an amendment to change cultivation methods and/or tiers in the future, only as authorized under the regulations.

Further, for licensees of all types, regulations regarding licensing requirements including, but not limited to operations, licensing authorizations, and prohibitions including True Parties of Interest (TPI) and goods and services agreements, will apply effective immediately upon adoption of the adult-use regulations. More information about rules and requirements for cultivator and processor licensees is available below and at the following links:

- [Cultivator](#)
- [Processor](#)
- [Distributor](#)
- [Microbusiness](#)
- [Application One Pager](#)
- [True Parties of Interest Guidance](#)
- [True Parties of Interest for FAQ Suppliers](#)

#### **6. What do I need to apply?**

Applicants will be required to provide information about their business, including but not limited to:

- Primary contact information
- Primary address and business location
- Proof of Control over the proposed premises, except for AUCCs transitioning into microbusiness
- Good standing qualifications

- Various operational components of the licensee’s business
- Disclosure of any other businesses or business activities at the licensed premises
- Disclosures for all required True Parties of Interest (TPI)
- Non-refundable application fee of \$1,000

If an adult-use cultivator, processor, or distributor application is approved, the approved applicant must pay a non-refundable licensing fee that will depend on the type (and for cultivators—tier) of the premises that will be licensed, prior to final license issuance. Prior to commencing licensing activities on the premises, a licensee must submit proof of a valid Certificate of Occupancy or equivalent to the Office.

More information on the application is available at the [general licensing application webpage](#).

## 7. How do I prove control over a premises?

***Please note:*** *On application forms, the premises may sometimes be referred to as a “location.”*

AUCPs and AUCCs (except those AUCCs transitioning to a microbusiness license) are required to submit proof that they have control over a premises to submit an application. You can prove that you have control over a premises by uploading an executed deed if you own it, or by uploading a lease agreement if you are leasing it. These documents must show that the applicant possesses or has the right to use sufficient land, buildings, and other premises as specified in the application to properly carry out the activities for which licensure is sought.

Please note: the prior requirement that an AUCC only cultivate in the county in which it previously farmed hemp (or an adjacent county) does not apply to general licenses. AUCCs are free to propose a premises in any county of the state, so long as they can prove they have control over the premises.

## 8. Can I apply for a provisional license?

Only AUCCs seeking to transition to a microbusinesses license may pursue a provisional license. For those AUCCs seeking to transition to a microbusiness license and do not have control over a premises at the time of initial application, they may submit the application without these details and gain a provisional license from the Board. After receiving a provisional license, you may take up to twelve (12) months to update your application through a correction process as you identify and finalize a premises. Once location information is updated on the application, the Office will review. If the proposed location is deemed in compliance with the rules and [regulations related to retail dispensaries](#), a final license will be approved. After a final license is issued, licensing fee is paid, and license certificate is granted, a licensee can begin operations.

## **9. What is good standing? How do I know if I am in good standing?**

Pursuant to Cannabis Law, good standing with the Office of Cannabis Management (Office) is required to transition from an adult-use conditional cultivator or processor license to a non-conditional adult-use license.

An adult-use conditional license is in good standing if:

- the conditional licensee submitted the mentorship training survey before the date of applying;
- the conditional licensee submitted all past inventory reports and requested surveys from the Office;
- the conditional licensee has no unanswered queries from the Office regarding unresolved findings, infractions, or violations related to compliance, and no formal violations against them;
- the conditional licensee utilizes an electronic inventory management tracking system that is capable of integrating with the Office's seed-to-sale inventory tracking system pursuant to Section 125.7(a)(3) of Title 9;
- the conditional licensee has entered a labor peace agreement with a bona-fide labor organization that will be binding on the non-conditional license; and
- The licensee demonstrated general compliance with all applicable rules and regulations.

Any additional questions regarding AUCC and AUCP good standing requirements can be sent to [compliance@ocm.ny.gov](mailto:compliance@ocm.ny.gov).

## **10. Will the Office be collecting information about my business' TPI?**

Yes. Conditional licensees seeking to transition must disclose certain TPI on the general licensing application.

TPI that will need to be disclosed on the application include any non-shareholder TPI and any shareholders with an ownership interest of 10% or more if the license is a privately held company, or 5% or more if the license is a publicly traded company.

Further, licensees are required to maintain an up-to-date list of certain TPI with the Office. Additional details regarding general licensing application TPI disclosure is available in the general licensing [application frequently asked questions](#) and [TPI guidance documents](#).

## **11. Who can apply to transition to a non-conditional license?**

The hemp grower or cannabinoid hemp processor who originally qualified for the conditional adult-use license must be the majority owner of the licensed entity upon transition to a non-conditional adult-use license. Applicants must apply with the business entity that will hold the license.

**12. Am I allowed to amend the ownership or organizational structure of the entity that holds my license?**

Applicants must apply with the business entity that will hold the license. You can make changes to the way your business is currently structured or, even apply as a new entity but the requirement of *Question 11* must be met. The hemp grower or cannabinoid hemp processor who originally qualified for the conditional adult-use license must be the majority owner of the licensed entity upon transition to a non-conditional adult-use license.

Licensees may request certain amendments to their license at a later date, but this will not be possible immediately. More information about amending the ownership or organizational structure of the entity that is licensed will be shared in the future as the application to submit and request such changes becomes available. Certain ownership amendments and complete license transfers may require additional approval of the Cannabis Control Board (“Board”).

**13. Can I apply to qualify as a social and economic equity (SEE) license?**

Yes, you can apply to qualify as a SEE license, granting you reduced, waived, or deferred fees and other technical support, in accordance with Cannabis Law. Please review the [SEE applicant overview](#) to learn more about applying qualifying as a SEE applicant.

**14. Where can I find more information about TPI and goods and services agreements?**

The Office has published guidance for [true parties of interest](#) available on the Office’s website.

**Adult-Use Conditional Cultivators (AUCC)**

**15. What type of cultivation licenses can I apply for if I currently possess an AUCC?**

An existing licensed Adult-Use Conditional Cultivator may apply to transition to one of the following cultivator licenses:

- a. Tier 1 to Tier 4 outdoor cultivator license;
- b. Tier 1 or Tier 2 mixed-light cultivator license;
- c. Tier 1 or Tier 2 combination cultivator license;
- d. An adult-use cultivator license authorized for up to 25,000 square feet of mixed light cultivation canopy with no more than 20 lights, however no additional lights may be authorized without the issuance of additional regulations<sup>2</sup>;
- e. A microbusiness license, or provisional microbusiness license (must include cultivation, and at least 1 or more licensed activities including processing, distributing, or retail dispensary); or

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<sup>2</sup> Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, Section 120.3(f)

- f. An outdoor or mixed light cooperative or collective license, provided the cooperator or collective license includes at least five (5) adult-use conditional cultivators that are transitioning to adult-use cultivators and meet all other requirements to obtain a cooperative or collective license. **The cooperative application will open at a later date.**

An Adult-Use Conditional Cultivator must be in good standing with the Office to be approved for an adult-use cultivator license.

**Please Note:** Although the AUCC license allowed the AUCC to engage in minimal processing of cannabis flower products and to distribute these products, the adult-use cultivator license does not authorize a cultivator to process or distribute cannabis products. An adult-use cultivator that wishes to continue processing activities (such as packaging and labeling) and/or its distribution activities upon transition must also apply for, and obtain, a processor and/or distributor license prior to conducting any processing or distribution activities. Unless the AUCC also holds an AUCP license, an AUCC applying for an adult-use processor license other than the Type 3 processor license specific to “Packaging, Labeling, and Branding”, will be queued and reviewed with the general applicant pool.<sup>3</sup> Obtaining a Type 3 processor license, would give an AUCC the same authority under the AUCC license, to be able to process, package and manufacture cannabis flower products.

**16. If I am granted an adult-use cultivator license, does my new cultivation canopy tier and license type apply immediately?**

Yes, the adult-use cultivation license becomes effective immediately. However, if an AUCC applies to transition to another license type other than the one it currently holds – for example from an outdoor canopy license to a mixed-light microbusiness license – but requires time to build out its new facility, it can be authorized by the Office to continue cultivating under its existing canopy method/tier until no later than December 1, 2024. Under no circumstances can a cultivator grow under BOTH its existing AND future canopy. Any cultivator found to be growing more than the chosen allocated canopy will immediately be required to destroy any excess cultivation.

**17. Can I apply for a processor or distributor license at the same time as applying for a cultivation license?**

Yes, in addition to applying for one of the adult-use cultivator options listed above, an AUCC may apply for an adult-use distributor and processor license. AUCC applications for cultivator, distributor, and Type 3 - processor licenses will be prioritized for review. Unless the AUCC also holds an AUCP license, an AUCC applying for an adult-use processor license other than the Type 3 processor license specific to “Packaging, Labeling, and Branding”, will be queued and reviewed with the general applicant pool.<sup>4</sup>

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<sup>3</sup> Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York Section 120.4(b)(3)(iii)

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Additional application and licensing fees apply for each application submission and license granted based on the type of license sought. There are discounts for cultivators applying for a distributor license and—if the cultivator is a Tier 1 or Tier 2 cultivator—for a processor license.

### **18. What is the application and licensing fee for a cultivator license upon transition?**

The non-refundable application fee for transitioning from an adult-use conditional cultivator licenses to another, non-conditional license is \$1,000. This fee is paid at time of application.

The licensing fee is paid later in the application process—before a final license is issued—and will vary based on the license sought. A [detailed fee schedule](#) is available on the Office’s website.

As a reminder, Social and Economic Equity applicants are eligible for a 50% reduction, waiver, or deferral of fees.

### **19. What does a “cultivation tier” mean?**

A tier size indicates the maximum cultivation canopy allowed under a single cultivator license. This size depends on the license type being pursued. The following tier sizes do not correspond to microbusinesses or to cooperatives or collectives (which have different tier sizes).

#### *Adult-use Cultivator, Mixed Light:*

- Tier 1: up to but not exceeding 5,000 square feet;
- Tier 2: greater than 5,000 square feet and up to but not exceeding 12,500 square feet;
- Tier 3 (outdoor only): greater than 12,500 square feet and up to but not exceeding 25,000 square feet; or
- Tier 4 (outdoor only): greater than 25,000 square feet and up to but not exceeding 50,000 square feet.

#### *Adult-use Cultivator, Combination:*

- Tier 1. Up to but not exceeding 5,000 square feet of outdoor; and up to but not exceeding 2,500 square feet of mixed light; or
- Tier 2. Greater than 5,000 square feet, and up to but not exceeding 12,500 square feet of outdoor; and greater than 2,500 square feet and up to but not exceeding 6,250 square feet of mixed light.

#### *Adult-use Cultivator, Outdoor:*

- Tier 1: up to but not exceeding 5,000 square feet;
- Tier 2: greater than 5,000 square feet and up to but not exceeding 12,500 square feet;
- Tier 3: greater than 12,500 square feet and up to but not exceeding 25,000 square feet; or

- Tier 4: greater than 25,000 square feet and up to but not exceeding 50,000 square feet.

## **20. What is a mixed-light cultivation?**

Mixed Light means cultivation of mature cannabis in a greenhouse, hoop-house with cannabis cultivation lights, glasshouse, conservatory, hothouse, or similar structure, using a combination of sunlight and lighting meeting the photosynthetic photon efficacy (PPE) standards for the mixed-light tier set out by the Office in regulation.

## **21. What are my canopy size and type options if I apply to transition to a microbusiness license?**

Conditional cultivators who decide to switch to a microbusiness license may select from the following license options:

- i. Indoor canopy, not to exceed 3,500 square feet;
- ii. Mixed light canopy, not to exceed 5,000 square feet;
- iii. Outdoor canopy, not to exceed 10,000 square feet; or
- iv. Combination canopy, not to exceed outdoor canopy of 5,000 square feet and mixed-light canopy of 2,500 square feet.

## **22. What is a microbusiness authorized for?**

An adult-use microbusiness must engage in cannabis cultivation and additionally at least one of the following activities authorized by the Cannabis Law for a microbusiness: processing, distribution, or retail sales. An adult-use microbusiness may, based on the activities for which it has been licensed, sell cannabis to a processor; sell cannabis products to a distributor; distribute cannabis products to other retail dispensary licensees, including ROD and on-site consumption licensees; sell cannabis products it has cultivated or processed to consumers via a retail premises; obtain approval to operate a limited retail consumption facility; sell cannabis products via delivery to consumers; and send cannabis or cannabis products to a processor for processing without relinquishing ownership of that cannabis or cannabis product.

## **23. If I am going to pursue a microbusiness license, am I able to start retail sales of adult-use cannabis products immediately?**

Yes, a microbusiness applicant can apply with a proposed retail premises for Office approval. Upon licensure by the Board, the microbusiness would be authorized to sell cannabis products at their retail premises.

Alternatively, a microbusiness who is initially licensed without retail authorization may—at a later time—request an amendment to their license’s authorized activities to include retail.

Microbusiness licensees sell adult-use cannabis product to customers at their own retail premises must comply with the Office’s rules and guidance for retail dispensaries, including notifying the municipality where their retail premises will be located, obtaining approval for the premises from the Office, and completing all other application and



licensing requirements. Microbusinesses pursuing retail authorization should familiarize themselves with the location search process and the rules about opt-out municipalities, proximity to other dispensaries, and houses of worship and schools and school grounds.

Please further note, under no circumstances, can a microbusiness or its true parties of interest have any direct or indirect interest in a retail dispensary, delivery, or on-site consumption license. Further, a microbusiness and distributor cannot have any TPI in common except for passive investors.

**24. Where can I learn more about the cooperative or collective license?**

The Office will issue more information about this license soon. A conditional cultivator may transition to an outdoor or mixed light cooperative or collective license once they have obtained a final license, provided the cooperative or collective license includes at least five (5) adult-use conditional cultivators and meets all other requirements to obtain a cooperative or collective license. The Office will notify conditional licensees who wish to transition into a cooperative or collective license when the window to submit their application opens. At this time, conditional cultivators must transition into another license type to avoid having their license expire.

**25. Are there any energy restrictions on the type of lighting I can use?**

Yes, there are restrictions on the type of horticultural lighting equipment that cultivators operating in mixed light, combination, and indoor tiers may use in cultivation.

Cultivators licensed as cooperatives, microbusinesses and in Tiers 1 and 2 must use lighting that meets a minimum photosynthetic photon efficacy (PPE) rating of 1.7 micromoles per Joule ( $\mu\text{mol}/\text{J}$ ). These cultivators must meet this minimum lighting standard by their second license renewal (in four years). Tiers 3, 4, and 5 licensees are required to use lighting that meets a minimum PPE of 2.2  $\mu\text{mol}/\text{J}$ . These cultivators must meet this minimum lighting standard by their first license renewal (in two years).

Cultivators should be advised that financial incentives may be available from their utility to exceed the Office's minimum lighting standard. Information about utility territory by county can be found on the [Department of Public Services' website](#).

Additionally, minimum standards set in New York State Energy Code at a higher level than the Office's regulations will supersede the Office's regulations. Please note that the Board reserves the right to issue industry advisories, which may be used in the future to update these standards.

**26. What are my energy tracking requirements?**

All cultivators will be subject to energy and other resource tracking requirements. This will include information about monthly water and energy use, which cultivators will be able to find on their monthly utility bills (if applicable).

Cultivators will also need to provide information about cannabis yield and organic waste generated (i.e. stems, stalks, fan leaves), which they will also enter into their seed-to-sale system

Additionally, resource tracking requirements will request information about use of renewable energy (both on-site generation and purchased off-site renewables), energy sourcing information (i.e. utility provider), fossil fuel consumed through cultivation and operational information such as canopy size and lighting equipment used (as applicable).

The Office will make available web-based platforms for cultivators to enter this data on a monthly-basis. Access to the platforms will come at no additional cost to licensees. More information about these platforms and the process cultivators will use to report data will be forthcoming.

## **27. Can I obtain a nursery license?**

Cultivators must separately apply to obtain a nursery license. The Office will release more information about this license soon.

A nursery license authorizes its holder to operate a nursery area of a specific size and type, and to produce, package, label, and distribute clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, and cannabis seeds to a duly licensed nursery, cultivator, cooperative or collective, microbusiness, ROD, or ROND. Once home cultivation is authorized by the Board, these cannabis nursery products may also be distributed to retail dispensaries and microbusinesses to be sold to consumers.

Before a final nursery license can be issued, the nursery must also have a Nursery Grower Certificate of Registration issued from the New York State Department of Agriculture and Markets Division of Plant Industry. The Nursery Grower Certificate of Registration requires that the nursery be inspected by the Department of Agriculture and Markets before this certificate may be issued.

## **28. Can I co-locate my cultivation facility with other cultivators?**

A licensed cultivator may co-locate their canopy allotment and perform licensed activities on another licensed cultivator's premises, provided that the arrangement does not result in any person becoming a TPI in the license. A person cannot be a TPI with a financial or controlling interest in more than one cultivator. In addition to exerting control over a license, licensees should be careful not to receive payments in a calendar year that exceed the greatest of i) 10% of revenue of the licensee making the payments; ii) 50% of net profit of the licensee making the payments; or iii) \$250,000, which would also create a financial or controlling TPI interest in the payor licensee. Similarly, a management services agreement between two licenses would create a financial and controlling TPI interest in the licensee seeking services.

Please note that any conditional cultivator that intends to co-locate with another cultivator must provide the Office with copies of any and all agreements between the two co-located parties. The Office will review the agreements to ensure that the arrangement does not violate TPI and other rules and will only grant a final license to each conditional cultivator if they can demonstrate that the co-location does not constitute an improper stacking of licenses in violation of the Cannabis Law and regulations.

## 29. Can I share employees with licensees?

A licensee may not use contracted labor to perform any licensed activities on behalf of that licensee, including planting, harvesting, curing, drying, or otherwise cultivating cannabis, except for executive management services so long as all non-management activities arising from, or related to, such contract or subcontract are carried out by employees of the licensee. Further, while multiple licensees do have the right to both employ the same individual, it is not permitted for one licensee to contract their employees to conduct cultivation, processing, distribution, retail sale, or any other licensed activity of another licensee.

### **Adult-Use Conditional Processor (AUCP)**

## 30. What license can I apply for if I currently have an adult-use conditional processor license?

An AUCP can transition to an adult-use processor license. Based on the authorizations requested during the application process, the adult-use processor license will allow the processor to conduct some, or all, of the following activities:

1. Extracting;
2. Infusing and blending; and
3. Packaging, labeling, and branding, including for the performance of white labeling agreements only.

Additional information is available at the Office's [guidance for adult-use processors](#) to learn more about the authorized activities under the processor license type.

**Please Note:** Although the AUCP license allowed the conditional processor to distribute cannabis products, the adult-use processor license does not automatically authorize a processor to distribute cannabis products. **An adult-use processor that wishes to continue distribution activities upon transition must also apply for, and obtain, a distributor license prior to conducting any distribution.**

## 31. What is the application and licensing fee for a processor license upon transition?

The non-refundable application fee for transitioning from an adult-use conditional cultivator licenses to another, non-conditional license is \$1,000. This fee is paid at time of application.

The licensing fee is paid later in the application process—before a final license is issued—and will vary based on the license sought. A [detailed fee schedule](#) is available on the Office's website.

Social and Economic Equity applicants are eligible for a 50% reduction, waiver, or deferral in fees.

## 32. If I have a white labeling agreement with a licensed processor, am I able to continue that agreement?

To enter into any kind of white labeling agreement, you must have a processor license or be a TPI of a processor. Therefore, you must either become a TPI to an adult-use processor license or obtain a processor license, as listed above, to continue such activities. The Office will be accepting licensing applications for processors as of October 4, 2023.

**33. Can I apply for a distributor license at the same time as applying for a processor license?**

Yes, but you must submit a separate application for your distribution license. The licensing fee for a processor to obtain a distributor license is \$2,500.

**Goods and Services Agreements**

**34. Am I permitted to have a goods and services agreement with another license?**

Cultivator and processor licensees are permitted to hold goods and services agreements with other nursery, cultivator, processor, distributor, cooperative, microbusiness, ROD, or ROND licensees, including as a financier or a landlord. However, given that a person is only permitted to hold a financial or controlling interest in a single cultivation license, if the payments received under such an arrangement exceed the greatest of: i) 10% of the customer's revenue; ii) 50% of the customer's net profits; iii) \$250,000, the licensee providing those services will be in violation of the New York State Cannabis Law.

Licensees should note that multiple agreements between the same goods and service provider and that licensee will be considered "stacked" for the calculation of these payments (i.e. if a goods and services provider has two separate contracts for two separate services, the payments received under the separate contracts will be combined during TPI evaluation). Additional [information about TPI](#) is available at the Office's website.

**35. Can a licensee pay for goods and services with a mix of cash and harvested cannabis?**

Yes. However, while it is permitted for licensees to exchange cannabis or cannabis products in place of or in addition to cash for services, licensees providing goods and services for other licensees, and being compensated in cannabis, should be aware that such compensation will be valued at the fair market value of that product for purposes of calculating whether the licensee providing the goods or services will be considered a TPI with a financial or controlling interest in the customer's license.

Licensees should note that payment provided at fair value for licensable activities such as the white labeling of another cultivator's product shall not be considered in the calculation of the 10%/50%/\$250k rule stated above. As a result, all licensees are required to keep detailed record, on an itemized basis, of the value of the payments being made to all vendors, including goods and service providers they are paying with cannabis. Please note, a cultivator is only permitted to be a TPI in a single cultivator license.