Office of Cannabis Management

# NEW YORK STATE CANNABIS MARKET RULES

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## OVERVIEW

New York State's adult-use cannabis regulations outline the rules of conduct for licensees and goods and services in New York's two-tier cannabis market. The rules in Section 124, called General Business Requirements and Prohibitions, are intended to keep New York's cannabis market competitive for small and medium-sized enterprises while giving the entire cannabis supply chain a framework for contracting and growing New York's cannabis industry together. The section includes the following key components.

**Undue Influence and Incentives** (Section 124.1) outlines the guardrails for the "two-tier system" that governs interactions amongst participants in the supply chain as they produce the final products purchased by consumers. The section covers:

- The restrictions placed on third-party platforms and marketplaces designed to empower retailers to market their own brands to consumers while acknowledging the critical role a dispensary's online presence might play in its customer acquisition strategy; and
- The guidelines for distributors' and brands interactions with a retail dispensary, including restrictions on the ability of a brand to "unduly influence" a retail dispensary. These rules are designed to prevent those competition-inhibiting actions, while allowing brands the opportunity to educate budtenders and dispensary staff on the quality and benefits of that brand's products through budtender samples and provide up to $200 annually per brand of retail advertising specialties, which are branded promotional goods with some secondary value to the retailer, like a branded product display, for example.

**Terms of Sale** (Section 124.2) details the rules governing transactions between adult-use licensees authorized for distribution and retail dispensaries. Key highlights include:

- Permissible and Prohibited discounts distributors are permitted to offer to retailers;
- A 30-day limit on the number of days of credit licensees authorized to distribute may offer to a retailer;
- A restriction on exclusive agreements between adult-use cannabis licensees on branded cannabis products or cannabis merchandise, including the requirement that distributors must offer the same product at the same price to all dispensaries, and must sell to any dispensary willing to meet that price and pay cash for the product; and
- Establishes a delinquency (cash on delivery or "COD") list, providing vital protection for retail dispensary and distributor licensees who play by the rules.

**Goods and Services Agreements** (Section 124.3) create a framework for non-licensee third parties to interact in various ways with licensees. These rules establish two classes of goods and services provider: exempt (which includes arrangements licensees have with their landlords, financiers, part-time CFOs, lawyers, accountants, and other goods and services providers that do not involve performing licensed activities), and non-exempt (which includes arrangements licensees have with third-parties consulting on the licensee's cannabis-related activities). In addition, this section dictates the way these third parties can be compensated, and how agreements that are "stacked" together will be treated by the office.

**Agreements Creating Financial or Controlling Interest** (Section 124.4) introduces the 10%/50%/$250,000 rule (or 10/50/250 rule). The rule states that any goods and services provider who receives, in a calendar year, a payment that exceeds the greater of 10% of a licensee's gross revenue, 50% of the licensee's net profit, or $250,000 will be considered to have a financial or controlling interest in that licensee, and therefore be considered a TPI of that license. The rule is a critical tool in protecting licensees from predatory goods and services providers, an issue faced by many licensees in other jurisdictions where this rule does not exist.

**Note:** The 10/50/250 rule is a cornerstone of the Office's regulation of a licensee's interactions with third-party goods and services providers. Please review the True Party of Interest (TPI) guidance for more information.

**Contracting Requirements** (Section 124.5) gives licensees the ability to use contracted labor to perform functions or activities ancillary to the authorized licensed activities (including accounting, legal services, and architectural and construction services) while requiring the hiring of employees, even if only on a seasonal basis. Licensees may contract out 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.

**Subsidiaries** (Section 124.6) describes the requirements for the corporate structures and the interrelation operations between the subsidiary and the licensee.

**Receivership** (Section 124.7) sets up a process for creditors and interest holders to ensure an orderly transition in the case of bankruptcy, death, disability, or other unforeseen issues arising for a licensee.

## KEEP IN MIND WHILE APPLYING:

**Consider Goods and Services Provider Restrictions.** There are additional restrictions on goods and services providers even if the provider is not a TPI.

- **Exempt goods and services providers:**
    - include general goods and services providers, landlords, financiers; and
    - have limited influence or control over a licensee; and
    - can be an exempt services provider across tiers as long as they are not a TPI in any tier. If they are a TPI in one tier, they can only provide services in that same tier.
- **Non-exempt goods and services providers:**
    - include but are not limited to, agreements for the provision of consulting, advisory, or strategic services related to the licensee's cultivation, processing, extraction, manufacturing, distributing, and /or selling of cannabis or cannabis products; and
    - may have an impact on how a licensee conducts business, despite not making those decisions for the licensee directly; and
    - can be based on a flat fee, in which case they can provide goods and services across tiers, as long as they are not a TPI in any tier; or
    - can be based on a non-flat-fee agreement, in which case they can only provide goods and services in one tier, no matter their TPI designation.

**Note:** A goods and services provider may become a TPI if an agreement exceeds the thresholds outlined in the 10/50/250 rule. If a goods and services provider has multiple agreements with the same licensee, those agreements are "stacked", and will be evaluated in the aggregate.

- By becoming a licensee or TPI in one tier, you are restricted from becoming a licensee or TPI or having any type of goods and services agreement with any other tier (including both exempt and non-exempt agreements). For example, a cultivator or a processor or their TPI could not be a lender or a landlord to a retail dispensary or delivery licensee.
- A TPI in a licensee can provide goods and services to that licensee, but they are regulated as a TPI, not as a goods and services provider.

## MORE RESOURCES

All applicants are strongly encouraged to review the Adult-Use Cannabis Regulations and all application resources to learn more about how to obtain and operate an adult-use cannabis license in New York State. Please note that this is only the first application window for general adult-use cannabis licensing. Future application windows for licenses such as nursery, delivery, cooperative or collective, and on-site consumption are anticipated. Please email info@ocm.ny.gov if you have any further questions.