



February 13, 2023

Chris Alexander, Executive Director
New York State Office of Cannabis Management
PO Box 2071
Albany, NY 12220
regulations@ocm.ny.gov

RE: Part 118, 119, 120, 121, 123, 124, 125, 131 - Adult-Use Cannabis Regulations (Adult-Use)

Dear Mr. Alexander:

On behalf of the 58 local health departments and their leading county health officials across New York State, as well as the undersigned partner organizations in the public health, health care and education sectors, the New York State Association of County Health Officials (NYSACHO) is submitting comments on the proposed Adult Use Cannabis regulations being considered for adoption. Our members and partner organizations are extremely concerned that the state is not fully prioritizing public health and safety by including public health protections within forthcoming regulations. Earlier this year, NYSACHO and other public health organizations submitted public health recommendations regarding marketing and packaging; most of those recommendations, despite being put together by lead health officials, were disregarded. Further, the illicit market has overrun New York City and other areas of the state, negating the established statutory process that legal license holders and members of the legacy market, those who are trying to follow the state's regulatory framework, follow to protect health and safety measures. At this time, strong enforcement and regulatory oversight is required rather than any relaxation of licensing requirements.

The key role of the Cannabis Control Board is inherent in its name; it exists to put in place controls on adult-use cannabis in New York State, those protections necessary to assure equity, health and safety are the foremost considerations in market establishment and operation. NYSACHO recognizes the growing illicit market is posing challenges while the necessary structures for legal market establishment are still in process. However, challenges posed by the illicit market must be addressed through increased enforcement resources, and where necessary, statutory changes. Regulations for the establishment of the adult use market must continue to be focused on protecting the health and safety of those at-risk and should not be compromised or rolled-back because of the illicit market. We respectfully ask that OCM, and the Cannabis Control Board continue working toward prioritizing public health to ensure this

program is successful, viable for those working in the growing, processing, and retail space, and most importantly, safer to consumers.

We respectfully request that you incorporate the 14 recommendations outlined below within the final package of Adult-Use Cannabis Regulations:

1. Throughout the regulations, for any information that is provided to consumers, licensees and others involved in the adult use cannabis program, particularly education, all information should be written in plain language, culturally relevant and translated into the top languages spoken in New York State.
2. To protect communities from unintentional exposures or unintentional ingestion of cannabis products that most commonly impact the health and safety of young children, adolescents, and older adults, it is critical that we use *specific language* in regulation that will prevent processors and retailers from selling products that are enticing to these vulnerable groups. While we support the broad regulatory language that ensures products will not be appealing to those under twenty-one years of age, public health officials feel strongly that being as specific as possible is key to preventing misinterpretation via the regulatory process.

Additionally, NYSACHO recommends the following changes regarding the proposed provisions contained within the adult-use regulatory package:

Regarding 123.6 Processor License Facility Operations starting on page 136

3. To assure that there is no cross-contamination with non-cannabis containing edible products, we recommend that addition of the following language to this section:

No processing/production of cannabis products shall occur in facilities that provide processing and production of non-cannabis products unless the licensee can clearly demonstrate that all parts of the cannabis processing/production chain are sufficiently separated from other processing areas to assure no cross-contamination.

Packaged cannabis products shall be stored separately from non-cannabis products in such way as to assure cross-contamination cannot occur should integrity of the product packaging be in any way compromised or damaged.

4. **Regarding 123.6** We support the language on page 141 “(2) edibles, that are not in shapes considered to be attractive to individuals under twenty-one as defined in Part 128 of this Title...” and thus recommend the Office of Cannabis Management keep it within the final regulatory package. However, we feel that this language should proceed a list of any specific characteristics that are not permitted. For example: edibles should not include any additional coloring (any shades of red, blue, yellow, purple, orange, green, etc.) and further, they should not be made in the shapes of characters, fruits, insects, animals, desserts, or is otherwise attractive to individuals under the age of twenty-one as defined in Part 128 of this Title. We further recommend that solid edibles be required to be in simple geometric shapes and that each dose be physically independent, an approach that has been found to better communicate to consumers an appropriate dose than the use of scoring large bars or cookies.

5. We support the language on page 144 “(11) are in the shape of, or imprinted with the shape, either realistic or caricature, of a human being, animal, insect, or fruit, or is otherwise attractive to individuals under the age of twenty-one as defined in Part 128 of this Title;” and thus recommend the office of cannabis management keep it within the final regulatory package.

6. On page 148, regarding “botanically derived terpenes”, we feel strongly that this language needs greater detail and clarification for retailers and to avoid regulatory loopholes. It is our recommendation that in addition to “botanically derived terpenes”, we use the language outlined below:

“No cannabis, cannabis concentrates or cannabis products intended for use by inhalation or combustion, including accessories intended to be used as part of cannabis cartridges and integrated cannabis vaporizers shall contain any added artificial, synthetic, or natural flavoring, including natural terpenes, or descriptor of flavor on packaging or labeling or advertising, that would imply to a reasonable consumer that the product or accessory contains flavors other than the natural flavor or aroma of cannabis, including, but not limited to, menthol, mint, mango, strawberry, grape, orange, clove, cinnamon, pineapple, vanilla, coconut, licorice, cocoa, chocolate, cherry, coffee, popcorn, and bubblegum. Flavor additives that are not inherent to the cannabis plant are not permitted to be added to cannabis or sold.”

Flavor restrictions should cover both the flavorings themselves, and packaging, marketing regulations.

7. To assure consistency in public policy designed to remove appeal to minors and to assure equity in public health protections imposed on both tobacco and cannabis vapor artificially flavored products, we additionally recommend that the Adult Use Cannabis regulations conform with proposed amendments to Public Health Law 1399-mm-1 put forth in in the Governor’s executive budget proposal regarding flavors as follows:

(5) Cannabis vapor products shall not produce any sensation distinguishable by an ordinary customer as a flavor other than those derived from cannabis or other natural botanical sources, including those that produce a cooling or numbing sensation imparted during consumption of a cannabis vapor product.

8. Extensive research, well summarized by the FDA³ has documented the role of flavors in initiating youth use, progression to regular use, and addiction to tobacco products, as well as reduced perception of harm. The cannabis industry has simply duplicated all of these marketing strategies. Rates of cannabis use and daily or near daily use by young adults have increased steadily. Additional policies to protect children, youth, older adults and others vulnerable to unintentional exposures should be included within the regulations:

Additional policies to protect children, youth, older adults, and others vulnerable to unintentional exposures should be included within the regulations:

- a. Eliminating cannabis-infused beverages.
- b. Eliminating inhalable products that are flavored or marketed using flavor indicating names.
- c. Eliminating flavored joint/blunt wrappers.

9. While the current regulations prohibit packaging/labeling that is attractive to children or youth (those under twenty-one years of age), the regulations do not clearly define what that means. We recommend that OCM clearly defines what is not permitted, maintain, and update an explicit listing of product packaging/labeling names, including prohibiting names that are imitations or near imitations of candies, cereals and other products widely consumed by children or names that imply fruit or other non-cannabis flavors, including cannabis strain names, and that it verifies marketed products regularly against this list.

NYSACHO recommends that NYS adopt the same rules, with some additions listed below, as outlined in Oregon Liquor Control Commission's bulletin² which clarifies the product and strain names that are prohibited due to attractiveness to children and misleading information. We further recommend that these names specifically be listed within the regulations, with language allowing the Cannabis Control Board to expand the list as needed, to avoid any confusion or misinterpretation from processors, retailers, and growers. The more clearly, we outline the expectation of licensed vendors and sales, the better we are positioning retailers for success, while protecting the public health and safety of those vulnerable.

"No cannabis products via packaging and labeling, nor strain names, will contain any of the following:

- 1. Types of desserts, snacks, cereals or candies (girl scout cookies, cherry pie, Doritos coolers, Runtz, thin mint, Oreos, wafers, crème Brule, cereal milk, pop tartz(s), or similar language/names).*
- 2. Types of fruits (Pineapple, pink grapefruit, etc.)*
- 3. Characters that are fictional or appealing to children (grape ape, scooby doo, smurf, Cinderella, Dr. Who or similar language/names)*
- 4. Children's games (Candyland, hopscotch, or similar language/names)*
- 5. Common street names for illegal drugs (LSD, blow, or similar language/names.)*
- 6. Reference to franchises popular to children (Star Wars, Harry Potter, Marvel or DC Comics, or similar language/names)*

We also recommend the Office strongly regulate, enforce, and approve the names of products to ensure names do not cross the line in terms of determining whether or not names are appropriate or might be appealing to those under twenty-one years of age.

Regarding 123.9 Retail Dispensary Ownership, Interests, Business Authorizations and Prohibitions

10. Page 172, we recommend the following language be added (red text indicates recommended language not add).

"(2) conduct or transact business at a retail dispensary under a name which contains as a part thereof the words "drugs", "medicines", "drug store", "apothecary", "pharmacy", "wellness", "health", "healing" or similar terms or combination of terms, or in any manner by advertisement, circular, poster, sign or otherwise describe or refer to the licensed premises, or describe the type of service or class of products sold by the retail dispensary, by the terms "drugs", "medicine", "drug store", "apothecary", or "pharmacy" "chemist" or similar terms or condition of terms, or display green crosses in imitation of typical pharmacy signs.

11. We recognize that there is documented evidence demonstrating positive health outcomes⁴ in use of medical cannabis use for those living with chronic pain, and other conditions. However, these regulations apply to the adult use program, not the medical cannabis program and we recommend both programs be maintained with distinction in purpose and regulatory framework to assure that there are no implied therapeutic health benefits associated with recreational cannabis use. Words like wellness or health should not apply to the adult-use program, while they may in fact apply to the medical program. Even for medical programs, there are only a limited range of defined indicated uses and cannabis should not be promoted as a general “wellness product.”

12. While we recognize that buffer zones between cannabis businesses and youth-serving facilities such as schools/colleges and public libraries are set in MRTA statute, we strongly urge the cannabis control board and the office of cannabis management to pursue immediate statutory change to further restrict barrier distances between entities serving those under the age of twenty-one and adult use cannabis retailers or on site-consumption licenses. Currently set at 500 ft of school grounds or 200 ft from a house of worship, these zones should be expanded to 1500 feet which would conform with requirements for tobacco retailers under public health law and provide additional protections for minors. They should also include a 1500 foot distance from universities and colleges which concentrates large numbers of youth under 21, as well as many under 25, whose brains are still developing and at higher risk from cannabis use. Five hundred feet can be basically a block and a half from a high school.

13. The proposed regulations on page 177 currently state: “(3) A retail dispensary may create their own or utilize current and relevant educational materials created from a third-party source, provided the primary purpose of the educational materials is to educate cannabis consumers about safer consumption of cannabis products. A retail dispensary that allows a third party to create educational materials on its behalf is responsible to ensure that such material complies with all applicable state and local laws, rules, and regulations. Content containing cannabis product claims or studies shall be referenced.”

p. 177 (i) (3) and (4) To ensure consistency and accuracy in the educational materials and information that dispensaries are providing to consumers, this section of the proposed regulations should be eliminated, and the office of cannabis management should work with the State Department of Health to create to create a single state vetted piece of educational material that provides key health warnings similar to those used in Canada, and directions on safer use guidelines for those who choose to use cannabis. All cannabis retailers should be required to provide a copy to each customer. Safer use guidelines should cover issues such as starting low and going slow, not using while pregnant or breastfeeding, waiting sufficient time for edible doses to take effect, and preferring lower THC products.

14. Regarding lockable storage, we support the regulatory language included in the proposal to allow retailers to sell or provide lockable, scent proof storage to consumers, however, strongly urge OCM to prioritize breaking down barriers to obtaining these items (examples of barriers may include: fiscal, community access etc.). Monroe County, Michigan has a grant-funded program where lockable, scent proof bags are provided to community members free of charge^{5,6}. We recommend that a similar grant program be established for community-based organizations, CAURD licensees, county/city health departments or others to be able to apply for funding to access and distribute these products as they are working with New York communities. We strongly recommend the state allocate money to ensuring

products are properly stored and out of reach via these bags or other receptacles by creating a program to fund this important work.

County Health Officials and partners commend the Governor and Office of Cannabis Management for making public health a pillar of the adult-use cannabis program, but this commitment will only hold true if the OCM and the advisory board heeds recommendation from the public health, medical and communities serving children across New York State. Please do not hesitate to call on us as local public health experts to ensure public health remains at the forefront during regulatory development of this program.

Sincerely,

The New York State Association of County Health Officials (NYSACHO)

The New York State Academy of Family Physicians (NYSAFP)

The New York State Public Health Association (NYSPHA)

The New York State Parent Teachers Association (NYSPTA)

The School Administrators Association of New York State (SAANYS)

Resources

1. <https://legiscan.com/CA/text/SB1097/id/2597958>
2. [Microsoft Word - Strain Name Attractiveness to Children_header.docx \(oregon.gov\)](#)
3. FDA <https://www.federalregister.gov/documents/2018/03/21/2018-05655/regulation-of-flavors-in-tobacco-products>
4. JAMA. Changes in Prescribed Opioid Dosages Among Patients Receiving Medical Cannabis for Chronic Pain, New York State, 2017-2019 [Changes in Prescribed Opioid Dosages Among Patients Receiving Medical Cannabis for Chronic Pain, New York State, 2017-2019 | Substance Use and Addiction Medicine | JAMA Network Open | JAMA Network](#)
5. [Free locking marijuana bags now available \(monroenews.com\)](#)
6. [Lockable, smell-proof bags to promote marijuana safety being given away in Jackson County - mlive.com](#)