



ALBANY LAW SCHOOL

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Cannabis Law in New York State: The Licensing Process

July 21, 2022

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Cannabis Law in New York State: The Licensing Process

Agenda

- 12:00 - 12:15 p.m. Introduction and
Overview of Legalization of Cannabis in NYS
MRTA and Cannabis Law
- 12:15 - 12:30 p.m. Conditional Licenses: AUCC and AUCP
Conditional Cannabis Cultivation Bill
- 12:30 - 12:50 p.m. CAURD Licenses
Proposed Conditional Adult Use Retail Dispensary regulations
- 12:50 - 1:00 p.m. Questions

Cannabis Law in New York State: The Licensing Process

July 21, 2022

Speaker Biography

Danielle Holmes, Esq. is currently the Deputy Director of Licensing for the Office of Cannabis Management (OCM). As a 2012 Albany Law graduate, Danielle has ten years of experience in public service focusing on administrative and regulatory practice and working in highly regulated industries. In the inaugural role with OCM, she is developing the policies and procedures for licensing for the adult-use cannabis industry, designs and develops the applications to meet the required legal standards, drafted the first regulations for licensing and continues to assist in the drafting of cannabis licensing and operational regulations, oversees all licensing activity, and reviews all licenses being presented to the Cannabis Control Board for consideration.

Prior to her role with OCM, Danielle was the Director of Licensing for the New York State Gaming Commission (Gaming Commission). In that role, she oversaw all licensing required for New York's casinos, racinos, Indian gaming facilities, racetracks, and the lottery. At the Gaming Commission she reviewed thousands of applications and made final determinations on whether to issue approvals, suspensions, probations, revocations and denials of licenses. When there was an administrative challenge to any of the licenses she reviewed, Danielle was often the primary witness representing the Gaming Commission. Before stepping into the Director of Licensing role, Danielle was an Assistant Counsel in the Gaming Commission's Counsel's Office where she focused primarily upon the implementation of commercial gaming into New York State by drafting new regulations, reviewing and approving casino internal controls, and developing reporting requirements, and the associated procedures, of the casinos.

Prior to moving to New York, Danielle worked for the Massachusetts Gaming Commission (Commission) as a Staff Attorney and focused primarily on horse racing activities. Danielle frequently represented the Commission in administrative hearings, led the regulation promulgation process for the Commission, assisted in drafting legislative reports, update regulations, and proposed new legislation.

While life is exciting and hectic in this new role, Danielle finds time to enjoy her husband, two kids, several horses, dogs, and a cat where she lives in Ballston, NY. Moving from urban Massachusetts to suburban New York, Danielle has come to appreciate a more relaxed life and enjoys watching her children compete in horse riding competitions and learn how to care for the animals.



**Office of Cannabis
Management**

Marihuana Regulation and Taxation Act

And Licensing under the Cannabis Law

July 13, 2022

How NYS Legalized Cannabis

- The Marihuana Regulation & Taxation Act (MRTA) was signed into law on March 31, 2021 legalizing adult-use cannabis (also known as marijuana, or recreational marijuana) in New York State. The legislation created a new Office of Cannabis Management (OCM) governed by a Cannabis Control Board to comprehensively regulate adult-use, medical, and hemp cannabis. The OCM will issue licenses and develop regulations outlining how and when business can participate in the new industry.
- MRTA Chapter 29 of the Laws of 2021; Senate Bill S854A / Assembly A1248 (a copy of this legislation was not provided in the materials due to its length)

What is the MRTA?

Chapter 92 of the laws of 2021

- Legalized adult-use cannabis (recreational marijuana) while also expanding the State's existing medical cannabis and cannabinoid (CBD) hemp programs
- Legalization represents a shift to a **public health framework** for cannabis policy
- Adults may now carry and use (smoke or consume) cannabis in NYS
- As of today – no one in NYS is legally authorized to sell cannabis for recreational use
 - Medical marijuana sales are legal for people who are certified by a health care provider



What is Legal in NYS

- Adults over 21 can buy and possess:
 - Up to three ounces of cannabis flower
 - Up to 24 grams of concentrated cannabis (oils, tincture, edibles, vapes, etc.)
- Cannabis can be consumed in a private home or state-licensed on-site consumption site
- Smoking cannabis is not allowed anywhere smoking tobacco isn't allowed

What is Legal in NYS

- Currently, home cultivation is not legal in NYS
- Medicinal cannabis patients will be allowed to grow at home first
- Eventually, New Yorkers who are 21 and older can grow in their own home:
 - Up to six plants for personal use (3 mature plants and 3 immature plants)
 - A maximum of 12 plants per household (even if there are three or more adults over the age of 21)

Office of Cannabis Management

The Office of Cannabis Management (OCM) is an independent state office established by the Marijuana Regulation and Taxation Act (MRTA) and housed within the Division of Alcoholic Beverage Control. The OCM will provide a unified regulatory structure to comprehensively regulate and control the cultivation, processing, manufacture, distribution, transportation, and sale of cannabis in New York State. This includes medical cannabis, adult-use or “retail” cannabis and cannabinoid hemp.

- The goal of the OCM is to ensure social justice, public health and safety, and economic development through a comprehensive regulatory framework that centralizes licensing, enforcement and economic development functions

OCM and The Board

- OCM regulates adult-use cannabis (“retail / recreational”), medical cannabis; and hemp.
- The MRTA created OCM to be governed by a Cannabis Control Board (“the Board”) consisting of 5 board members, with 3 appointments from the Governor, 1 from the Senate and 1 from the Assembly.
- The Board is vested with, among many others, the powers to issue or deny licenses, as well as the ability to revoke, cancel or suspend any licenses.

Social Equity: Ensuring NY Does the Right Thing

Equity in the Market

- MRTA establishes a goal to award 50% of all Adult-Use Licenses to Social and Economic Equity applicants- individuals who have lived in communities disproportionately impacted by the War on Drugs and other underrepresented groups including minority and woman owned businesses, distressed farmers, and service-disabled veteran-owned businesses.

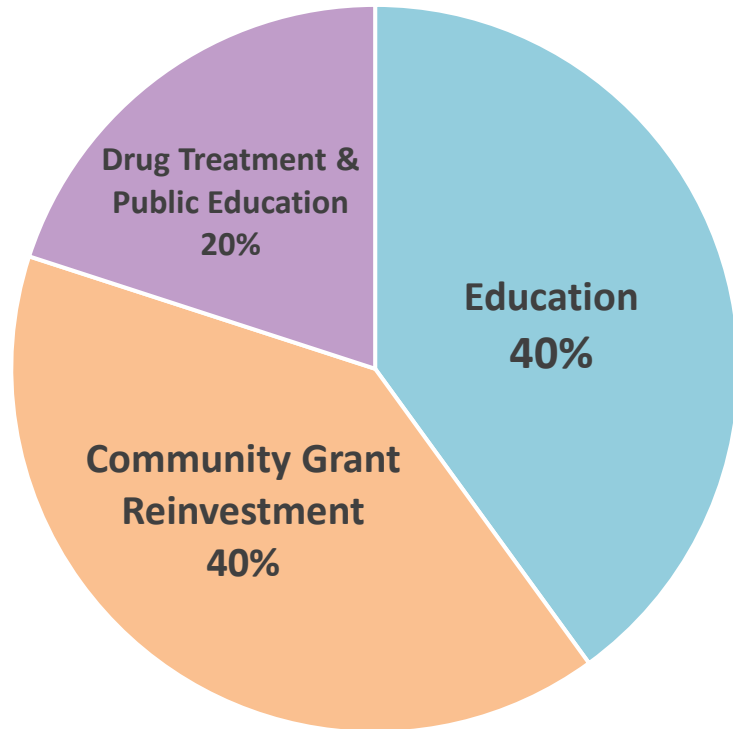
Community Reinvestment

- Invests 40% of the adult-use cannabis tax revenue towards rebuilding communities harmed by the War on Drugs via the New York State Community Reinvestment Grant Fund.

Record Expungement

- Expungement for any cannabis conviction for conduct which is now legal under the law.

New York State Cannabis Tax Revenue Fund



- All cannabis tax revenue deposited into this fund
- **Community Grants Reinvestment**
 - Grants to non-profit and community-based organizations in communities disproportionately impacted by cannabis prohibition and other social equity initiatives as determined by the Cannabis Advisory Board
- Drug Treatment & Public Education
 - Develop and implement statewide public education campaigns and provide substance use disorder treatment programs for youth and adults

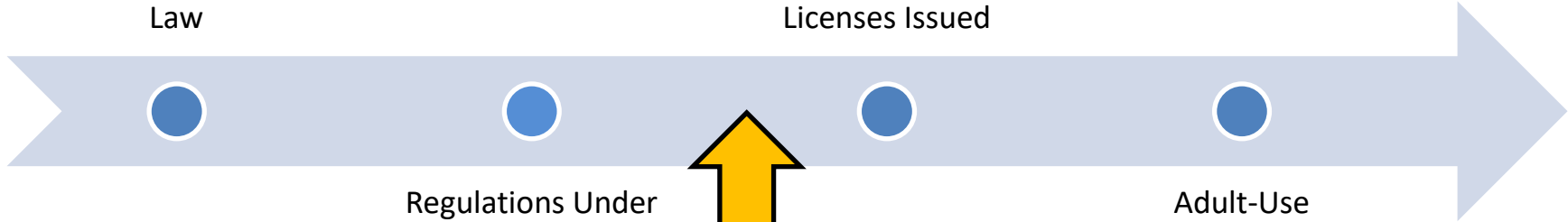
Where We Are Today



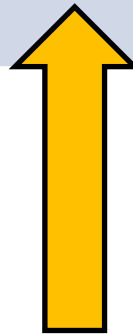
MRTA Signed into Law



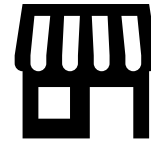
Conditional Adult-Use Retail Dispensary Licenses Issued



Regulations Under Development
CAURD regulations open for comment



Where we are today



Adult-Use Licenses Issued



Licensing under the Cannabis Law

Adult-Use Licenses

Cultivator

growing, cloning,
harvesting, drying, curing,
grading, trimming

Nursery

only clones, immature
plants, seeds, and other
agricultural products

Processor

extracts concentrated
cannabis and/or compounds
or manufactures

Distributor

wholesale sale to
dispensary, on-site
consumption, or delivery
service

Retail-dispensary

sells cannabis products
directly to consumers

Delivery

bringing cannabis products
directly to consumers

On-Site Consumption

sells directly to consumers
for use on-site at the
location (like a bar)

Adult-Use Cooperative
democratically controlled.
Can cultivate, process,
distribute. Cannot sell
directly to consumer

Microbusiness

may be cultivator, processor,
distributor or retailer. No
person can own more than
one license



Overview: License Issuance and Denial

- Cannabis Law vests the authority to issue or deny licenses with the Cannabis Control Board (“the Board”). Cannabis Law §61(1)
- All applications are submitted to the Office and reviewed and processed by the Licensing team and then enter a background investigation led by OCM’s Enforcement team. Once cleared by Licensing and Enforcement, they go for a legal sufficiency review by Counsels office. Final recommendation on issuance or denial then comes from the Operations (Licensing) team to the Board.
- All license decisions are issued during a public meeting by the Board.

What are Conditional Licenses?

Conditional Licenses

- Conditional Adult-Use Cultivator License “AUCC”
 - Cannabis Law §68-C
- Conditional Adult-Use Processor Licenses “AUCP”
 - Cannabis Law §69-A
- Conditional Adult-Use Retail Dispensary Licenses “CAURD”
 - **Proposed** regulations in 9 NYCRR 116



Adult-Use Conditional Cultivator Licenses

- The “AUCC” Licenses were established in order to allow for the early growing of cannabis to kick-start the supply chain
- Cannabis is federally illegal, so the supply must be grown within the state.
- In order to have a successful retail market, the cannabis products must be grown, processed, packaged, and delivered to the retail dispensary from within New York State, prior to retail dispensary being able to open.

AUCC Licenses

- The Conditional Cannabis Cultivation Bill was signed in February 2022 by Governor Hochul to give the opportunity for the first licenses to grow cannabis to be issued to New York Farmers.
- Eligible applicants for an AUCC license must have been authorized to grow hemp under the Department of Agriculture and Markets Industrial Hemp Research Program.
- The AUCC Licenses were established in order to allow for the early growing of cannabis to kick-start the supply chain.
- Cannabis is federally illegal, so the supply must be grown within the state.
- In order to have a successful retail market, the cannabis products must be grown, processed, packaged, and delivered to the retail dispensary from within New York State, prior to retail dispensary being able to open.
- Eligible applicants must have provided proof that they grew hemp for two of the past four years (2018-2021), and that they were in good standing with Ag and Markets.

AUCC Licenses

- The Office opened the application period in March of this year, and we received just over 300 total applications, and have issued over 200 to date.
- Applicants were required to provide proof of their authorization from Ag and Markets and proof of their growing and harvesting hemp for two of the past four years (2018-2021).
- Applicants were permitted to form a new entity to apply for this license, in order to isolate their cannabis business from their other assets. In these cases applicants had to show majority common ownership between the two entities. *Cannabis Law §68-C(1)(c)*

AUCP Licenses

Cannabis Law §69-A

- AUCP licenses were established in order to facilitate the processing of cannabis products.
- Applicants for an AUCP license must have applied for a Hemp Processor license from OCM prior to January 1, 2022; and must hold an active cannabinoid hemp processor license prior to applying for an AUCP license.
- Like the AUCC licensees, AUCP applicants were able to form a new business entity to apply for this license, so long as majority common ownership was maintained.
- We have received just under 20 applicants for an AUCP license at this time (7/12/22) and they are all still in the process of being reviewed.

Regulatory Authority and Proposed Rule Making

- The regulatory process in the State of New York is governed primarily by Article 2 of the State Administrative Procedure Act (SAPA). This process is administered in the Office of Cannabis Management Legal Division. To initiate a regulatory proposal, SAPA requires submission of a Notice of Proposed Rulemaking to the Secretary of State for publication in the New York State Register. If no public hearing is required, the notice must precede adoption by at least 60 days (45 days for revised rulemaking). Publication by the Secretary of State is the primary means of giving notice of proposed actions. However, any person or entity may file a standing request to receive notices from the Department directly.

What is a CAURD license?

- Conditional Adult-Use Retail Dispensary (CAURD)
- Small number of overall licenses
- First set of licenses to legally sell adult-use cannabis
- Limited to:
 - people with a previous cannabis conviction (or their eligible family members)
 - Non-profit organizations serving justice involved people
- Conditional license period for four years (with two-year renewal)

Proposed Conditional Adult-Use Retail Dispensary Regulations:

<https://cannabis.ny.gov/part-116-proposed-conditional-adult-use-retail-dispensary-regulations>



Conditional Licensees get extra support

- Eligible for Cannabis Investment Funding
 - Mix of state and private funding
 - Money can be used to help:
 - Buy or Rent Space
 - Design or Build Dispensary
 - Fit out location with furniture and equipment

Eligibility for a CAURD License

Individual Eligibility

PROPOSED: 9 NYCRR 116.4 License Eligibility and Evaluation

Justice
Involved



Have Business
Ownership
Experience



What does it mean to be justice involved?

Proposed 9 NYCRR 116.4(a)(2)(i)

- a) You (the person applying for the license) was convicted of a cannabis related offense in NYS prior to March 31, 2021

OR

- b) You had a parent, legal guardian, child, spouse, or dependent who was convicted of a cannabis related offense in NYS prior to March 31, 2021

OR

- c) You were a dependent of an individual who was convicted of a cannabis related offense in NYS prior to March 31, 2021

Applicants will have to provide proof of this conviction

Does it have to be a marijuana conviction?

For CAURD Licenses: YES

- Applicants must have a cannabis conviction to be eligible for a CAURD license.
- If a person is convicted of another crime with no cannabis conviction they are not eligible for the CAURD license
- Having additional convictions is not automatically disqualifying, but are subject to Cannabis Law Section 137 prohibitions.

Persons Forbidden from Trafficking Cannabis

Cannabis Law Section 137 sets forth “Persons Prohibited from Trafficking Cannabis” and includes (but is not limited to) prohibitions for:

- Individuals with felony convictions in the past three years involving fraud, money laundering, forgery or “other unlawful conduct related to owning and operating a business;”
- Individuals with a felony conviction in the past five years for relating to employing, using, or providing a minor with any controlled substance;
- Individuals under 21 years of age;
- Certain prohibitions against non-citizens or persons not lawfully admitted for permanent residence in the United States;
- Police officers; and
- Elected village officers.

Note: Section 137 provides an avenue for the applicant to overcome some prohibitions by showing evidence of rehabilitation in accordance with Article 23-A of the Correction Law

CAURD applications must be *led* by Justice Involved People

Proposed 9 NYCRR §116.4 License Eligibility and Evaluation

- Justice involved means someone who has a cannabis conviction or is an eligible family member/relative of someone with a cannabis conviction (§116.4(a)(2)(i))
- Convictions must have been in NYS
- Convictions must have occurred before March 31, 2021
- The justice involved person or persons applying must own at least 51% of the proposed cannabis business (§116.4(b)(1))
- The justice involved person or persons must be able to prove their conviction and place of residence at the time of the arrest or conviction

Business Ownership Requirements

- The justice involved person(s) applying must have experience owning at least 10% of a “qualifying business” (§116.4(a)(2)(iii))
- The applicant does not have to currently own the business – but they will have to prove that they did own it at some point
- The applicant must also be able to show the business had at least two years of net profits *while they were the business owner* (§116.4(a)(2)(iii))
- *The individual or entity that satisfies this requirement under §116.4(a)(1) and (2) must own at least 30% of the applicant entity and shall have sole control of the applicant or license. (§116.4(b)(2))*

Eligibility for Non-Profit Organizations:

Proposed 9 NYCRR 116.4(a)(3)

- Is a 501(c)(3) or you operate under a 501(c)(3) nonprofit organization
- Intentionally services “justice involved” individuals and communities disproportionately impacted by cannabis prohibition
- Operate and manage a social enterprise that has been profitable for a minimum of two years
- Have a history of creating vocational opportunities for justice involved individuals
- Have justice involved individuals on its board or serving as officers
- Have a minimum of five full time employees

**What will the
applicants be required
to provide?**

Application Requirements: Justice Involvement

Required to demonstrate:

- Proof of the conviction
 - Before 3/31/2021
 - Many different types of documentation could be accepted
- Where they lived at the time of the conviction
 - Applicants who lived in areas with a low median household income at the time of arrest or conviction will be prioritized
- For family members of someone convicted they must prove how they are related to the person who was convicted (i.e., marriage certificate, birth certificate, etc.)

Suggestions from the office on what documents are applicable:

- Proof of the conviction
 - From the jurisdiction where the arrest occurred
 - NYS Division of Criminal Justice Services
 - Uniform Background Check
- Proof of residence
 - Lease, utility bill, post-marked envelope, letter from public housing authority
- Proof of relationship
 - Birth or Marriage Certificate
 - Legal Custody Agreement



Application Requirements: Previous Business Ownership

Required to demonstrate:

- The applicant don't have to currently own the business
- Proof the CAURD applicant owned at least 10% of a business
 - Ownership or incorporation documents
- Demonstration of at least two years of net profits when justice involved person owned the business

Suggestions from the office on what documents are applicable:

- To show ownership:
 - Business tax returns/statements
 - Legal documents (partnership, incorporation agreements)
- To show profitability:
 - Bank statements/records
 - Audited financial statements
 - Must show two years of profits during the same time period the applicant was an owner



Evaluation

Proposed 9 NYCRR 116.4(c)

- Proposed evaluation criteria:
 - Whether the justice involved individual themselves were convicted of a cannabis related offense
 - The justice involved individual's residence at the time of the arrest or conviction compared to areas with historically high rates of arrest, conviction, or incarceration for cannabis related offenses, areas with historically low median income, or whether or not the justice involved individual was provided by a public housing authority in NYS
 - The number of employees employed by the qualifying business
 - The number of years the qualifying business has been in operation
 - The profitability of the qualifying business
 - The type of business and whether the business was a retail business, or sold products or services directly to the end-consumer;
 - Whether the business had a physical location
 - Whether the business received or resolved any violations, fines or fees assessed by state, federal or regulatory authorities

**What about people
who are not eligible
for the conditional
licenses?**

This is just a first step...

- CAURD licenses are just the first group of retail licenses available
- The Office will be opening the “general licenses” in the coming months for all license types.
- Persons ineligible for the conditional licenses may still receive support through mentorship, incubation and business development

Adult-Use Licenses

Cultivator

growing, cloning,
harvesting, drying, curing,
grading, trimming

Nursery

only clones, immature
plants, seeds, and other
agricultural products

Processor

extracts concentrated
cannabis and/or compounds
or manufactures

Distributor

wholesale sale to
dispensary, on-site
consumption, or delivery
service

Retail-dispensary

sells cannabis products
directly to consumers

Delivery

bringing cannabis products
directly to consumers

On-Site Consumption

sells directly to consumers
for use on-site at the
location (like a bar)

Adult-Use Cooperative

democratically controlled.
Can cultivate, process,
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Microbusiness

may be cultivator, processor,
distributor or retailer. No
person can own more than
one license



Other Opportunities in the Cannabis Industry

- Packaging and labeling companies
- Secure transport businesses
- Security companies
- Vape and other cannabis devices
- E-commerce websites
- Licensing and branding companies
- Marketing and design agencies
- Media networks
- Retail design firms
- Hydroponics
- Vertical agriculture
- Greenhouse systems
- Horticultural lighting companies
- Nutrient suppliers
- Extraction equipment
- Commercial kitchens
- Payroll companies
- Compliance
- Point-of-Sale systems
- Software and mobile application developers
- Accounting
- Real estate



STATE OF NEW YORK

8084--A

IN SENATE

January 25, 2022

Introduced by Sens. HINCHEY, KRUEGER, RAMOS -- read twice and ordered printed, and when printed to be committed to the Committee on Agriculture -- reported favorably from said committee and committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the agriculture and markets law and the cannabis law, in relation to providing a conditional adult-use cultivator license and a conditional adult-use processor license

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Section 520 of the agriculture and markets law is amended
2 by adding a new subdivision 3 to read as follows:

3 3. The department shall, to the extent practicable, share data and
4 documentation related to an agricultural research pilot program with the
5 office of cannabis management.

6 § 2. The cannabis law is amended by adding a new section 68-c to read
7 as follows:

8 § 68-c. Conditional adult-use cultivator license. 1. A conditional
9 adult-use cultivator license shall be subject to the same authori-
10 zations, restrictions and requirements applied to any adult-use cultiva-
11 tor pursuant to section sixty-eight of this article for the duration of
12 the conditional period of the license, as well as to any new terms and
13 conditions imposed by the board and office.

14 2. To be eligible to apply for a conditional adult-use cultivator
15 license, a cultivator must:

16 (a) have held a valid industrial hemp grower authorization from the
17 department of agriculture and markets, as of December thirty-first, two
18 thousand twenty-one, which authorized the growing of cannabinoid hemp,
19 and is in good standing with the department of agriculture and markets;

20 (b) have grown and harvested hemp for at least two of the past four
21 years pursuant to that license and be able to provide proof, as defined
22 by the office, of the amount of hemp planted by the applicant during
23 each of the two years that hemp was grown; and

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD14348-09-2

1 (c) as an individual applicant have an ownership interest of fifty-one
2 percent or more, or as any other applicant have an ownership interest of
3 fifty-one percent or more of the entity that is the licensee.

4 3. A conditional adult-use cultivator license shall authorize the
5 cultivation of cannabis outdoors or in a greenhouse with no more than
6 twenty artificial lights unless otherwise authorized by the office. A
7 conditional adult-use cultivator licensee may cultivate up to forty-
8 three thousand five hundred sixty square feet of flowering canopy
9 outdoors or twenty-five thousand square feet of flowering canopy in a
10 greenhouse. A cultivator may cultivate both outdoors and in a green-
11 house provided the flowering canopy in a greenhouse is less than twen-
12 ty-thousand square feet and the total flowering canopy is equal to or
13 less than thirty-thousand square feet.

14 4. A conditional adult-use cultivator licensee must comply with any
15 environmental standards and requirements mandated by the office.

16 5. The cultivation of cannabis shall only be permitted within the same
17 or an adjacent county in which the conditional adult-use cultivator
18 licensee had previously been authorized by the department of agriculture
19 and markets to grow hemp.

20 6. A conditional adult-use cultivator licensee shall have the tempo-
21 rary authority to minimally process and distribute cannabis products,
22 provided that such final products shall be in the form of cannabis flow-
23 er, without holding an adult-use processor or distributor license estab-
24 lished pursuant to sections sixty-nine and seventy-one of this article;
25 provided that the licensee complies with all requirements for the proc-
26 essing and distribution of cannabis products as set out by the board in
27 regulations or in the terms and conditions of the conditional license.
28 Such authority to minimally process and distribute cannabis products
29 expires on June first, two thousand twenty-three. After June first, two
30 thousand twenty-three, any conditional adult-use cultivator seeking to
31 process and distribute cannabis products shall be required to apply for
32 and receive a processor and distributor license to conduct this activ-
33 ity.

34 7. For the duration of the conditional period of the conditional
35 adult-use cultivator license, the ownership or organizational structure
36 of the entity that is the licensee shall not be amended, except pursuant
37 to the provisions of subdivisions two, three and four of section sixty-
38 seven of this article.

39 8. The office shall set out specific terms and conditions setting out
40 requirements necessary to be awarded and maintain a conditional adult-
41 use cultivator license, including but not limited to the requirement
42 that a licensee agrees to participate in an environmental sustainability
43 program and a social equity mentorship program. Such mentorship program
44 shall be directed to train individuals interested in becoming licensed
45 cultivators and shall leverage remote and in-person mentees with experi-
46 ence in agriculture business management, sustainable cannabis culti-
47 vation, and best practices. Candidates for the mentorship program must
48 be at least eighteen years of age, must be a New York state resident,
49 and must be individuals that would be considered social equity appli-
50 cants as defined by section eighty-seven of this article. The license
51 terms and conditions set out by the office shall include requirements
52 that a licensee enter into a labor peace agreement with a bona-fide
53 labor organization that is actively engaged in representing or attempt-
54 ing to represent the applicant's employees within six months of licen-
55 sure, that the maintenance of such labor peace agreement shall be an

1 ongoing material condition of licensure, and that licensees shall meet
2 any other eligibility requirements established by the office.

3 9. The board shall establish a non-refundable application and license
4 fee, in a manner consistent with section sixty-three of this article,
5 for the conditional adult-use cultivator license. No such license shall
6 be issued after December thirty-first, two thousand twenty-two and such
7 license shall only be valid through June thirtieth, two thousand twen-
8 ty-four.

9 10. A conditional adult-use cultivator license shall be deemed to have
10 been surrendered to the board and a conditional adult-use cultivator
11 licensee shall be deemed not to be in good standing, as determined in
12 the discretion of the executive director in a written notice, effective
13 upon delivery to the licensee at the licensee's last known address on
14 file with the office, for reasons including but not limited to:

15 (a) failure to abide by all the terms and conditions of the condi-
16 tional adult-use cultivator license;

17 (b) failure to adhere to all requirements set out in regulations and
18 guidance, including those promulgated after receiving the conditional
19 adult-use cultivator license;

20 (c) failure to submit information, records, or reports;

21 (d) failure to correct deficiencies in accordance with an approved
22 corrective action plan;

23 (e) deviation from regulations, licensing terms, or standard operating
24 procedures in a manner that the office determines may jeopardize health
25 or safety of the public, or the quality of products grown or produced;

26 (f) failure to provide office employees with access to the premises;
27 and

28 (g) failure to begin operations within six months of the date of the
29 issuance of the license.

30 11. A licensee whose conditional adult-use cultivator license has been
31 deemed surrendered may within ten days of the delivery date of such
32 notice appeal the determination of the executive director to the board
33 pursuant to subdivision eighteen of section ten of this chapter. The
34 board shall have sole discretion to determine the conduct of the appeal,
35 which shall include notice and an opportunity to be heard. Upon review
36 by the board, the board shall issue a final written determination which
37 may then be reviewed pursuant to section one hundred thirty-five of this
38 chapter and article seventy-eight of the civil practice law and rules.

39 12. In the event that a conditional adult-use cultivator licensee
40 elects to cease operation of all permitted activities or to surrender
41 its license, the following provisions shall apply:

42 (a) the conditional adult-use cultivator licensee shall notify the
43 office in writing at least thirty days prior to the anticipated date of
44 closure;

45 (b) such written notice shall include a proposed plan for closure. The
46 plan shall be subject to office approval and shall include timetables
47 and describe the procedures and actions the licensee shall take to prop-
48 erly destroy or otherwise dispose of all the licensee's supply of canna-
49 bis and/or cannabis products; and

50 (c) the licensee or former licensee must maintain and make available
51 to the office all records related to the cultivation of cannabis for a
52 period of three years.

53 13. No later than ninety days before the expiration of a conditional
54 adult-use cultivator license, the office shall, pursuant to a request by
55 the licensee, review the conditional adult-use cultivator licensee to
56 determine whether they are in good standing with the office. Good stand-

1 ing shall include, but not be limited to, compliance with subdivision
2 seven of this section. Any licensee found to be in good standing shall
3 be eligible to apply for and receive an adult-use cultivation license,
4 provided the licensee can meet all requirements of the new license. Such
5 a licensee will receive, at minimum, an adult-use cultivator license for
6 the size of flowering canopy that they were licensed to grow pursuant to
7 their conditional adult-use cultivator license or a larger size flower-
8 ing canopy and authorization to use artificial light as may be set out
9 by the board in regulation. A licensee may not separately apply for any
10 license type under this article permitting the cultivation of adult-use
11 cannabis while holding a conditional adult-use cultivator license.

12 14. For the purposes of this section, the office has the authority to
13 define terms including but not limited to "greenhouse", "immature
14 plant", "flowering canopy" as part of the terms and conditions of the
15 conditional adult-use cultivator license.

16 15. Nothing herein shall limit the authority, power, or other rights
17 or remedies of the board or office.

18 § 3. Section 69 of the cannabis law is amended to read as follows:

19 § 69. Adult-use processor license. 1. A processor's license shall
20 authorize the acquisition, possession, processing and sale of cannabis
21 from the licensed premises of the adult-use cultivator by such licensee
22 to duly licensed processors or distributors. A person holding an adult-
23 use processor's license may apply for, and obtain, one distributor's
24 license solely for the distribution of their own products.

25 2. For purposes of this section, processing shall include, but not be
26 limited to, blending, extracting, infusing, packaging, labeling, brand-
27 ing and otherwise making or preparing cannabis products. Processing
28 shall not include the cultivation of cannabis.

29 3. No processor shall be engaged in any other business on the premises
30 to be licensed; except that a person issued an adult-use cannabis culti-
31 vator, processor, and/or distributor license or a processor who has also
32 been issued a hemp grower license by the department of agriculture and
33 markets or a cannabinoid hemp processor license under this chapter may
34 hold and operate all issued licenses on the same premises.

35 4. No cannabis processor licensee may hold more than one cannabis
36 processor license provided a single license may authorize processor
37 activities at multiple locations, as set out in regulations by the
38 board.

39 5. No adult-use cannabis processor shall have a direct or indirect
40 interest, including by stock ownership, interlocking directors, mortgage
41 or lien, personal or real property, management agreement, share parent
42 companies or affiliated organizations or any other means, in any prem-
43 ises licensed as an adult-use cannabis retail dispensary or in any busi-
44 ness licensed as an adult-use cannabis retail dispensary or in any
45 registered organization registered pursuant to article three of this
46 chapter.

47 6. Adult-use processor licensees are subject to minimum operating
48 requirements as determined by the board in regulation.

49 § 4. The cannabis law is amended by adding a new section 69-a to read
50 as follows:

51 § 69-a. Conditional adult-use processor license. 1. A conditional
52 adult-use processor license shall be subject to the same authorizations,
53 restrictions and requirements applied to any adult-use processor pursu-
54 ant to section sixty-nine of this article for the duration of the condi-
55 tional period of the license, as well as to any new terms and conditions
56 imposed by the board and office.

1 2. To be eligible to apply for a conditional adult-use processor
2 license, a processor must:

3 (a) have applied for a cannabinoid hemp processor license pursuant to
4 section ninety-two of this chapter before January first, two thousand
5 twenty-two;

6 (b) hold an active cannabinoid hemp processor license issued by the
7 office; and

8 (c) as an individual applicant have an ownership interest of fifty-one
9 percent or more, or as any other applicant have an ownership interest of
10 fifty-one percent or more of the entity that is the licensee.

11 3. A conditional adult-use processor license shall authorize the proc-
12 essing and manufacturing of cannabis products provided the licensee
13 complies with all requirements for the processing and manufacture of
14 cannabis products as set out by the board. A conditional adult-use
15 processor licensee shall only perform extraction activities if author-
16 ized to under the licensee's cannabinoid hemp processor license and all
17 extraction methods are subject to office approval.

18 4. A conditional adult-use processor licensee must comply with any
19 environmental standards and requirements as mandated by the office.

20 5. The processing of cannabis shall only be permitted at the same
21 location in which the conditional adult-use processor licensee is
22 authorized to process hemp, unless expressly authorized by the office.

23 6. A conditional adult-use processor licensee shall have the authority
24 to distribute cannabis products without holding an adult-use distributor
25 license established pursuant to section seventy-one of this article
26 until June first, two thousand twenty-three, provided that the licensee
27 complies with all requirements for the distribution of cannabis products
28 as set out by the office. After June first, two thousand twenty-three,
29 any conditional processor seeking to distribute cannabis products shall
30 be required to apply for and receive a distributor license to conduct
31 this activity.

32 7. For the duration of the conditional period of the conditional
33 adult-use processor license, the ownership or organizational structure
34 of the entity that is the licensee shall not be amended, except pursuant
35 to the provisions of subdivisions two, three and four of section sixty-
36 seven of this article.

37 8. The office shall set out specific terms and conditions setting out
38 requirements necessary to be awarded and maintain a conditional adult-
39 use processor license, including but not limited to the requirement that
40 a licensee agrees to participate in an environmental sustainability
41 program and a social equity mentorship program. Such program shall be
42 directed to train individuals interested in becoming licensed processors
43 and shall leverage remote and in-person engagement to provide mentees
44 with experience in processing techniques and good manufacturing prac-
45 tices. Candidates for the mentorship program must be at least eighteen
46 years of age, must be a New York state resident, and must be individuals
47 that would be considered social equity applicants as defined by section
48 eighty-seven of this article. The license terms and conditions set out
49 by the office shall include requirements that a licensee enter into a
50 labor peace agreement with a bona-fide labor organization that is
51 actively engaged in representing or attempting to represent the appli-
52 cant's employees within six months of licensure, that the maintenance of
53 such labor peace agreement shall be an ongoing material condition of
54 licensure, and that licensees shall meet any other eligibility require-
55 ments established by the office.

1 9. The board shall establish a non-refundable application and license
2 fee, in a manner consistent with section sixty-three of this article,
3 for the conditional adult-use processor license. No such license shall
4 be issued after December thirty-first, two thousand twenty-two and such
5 license shall only be valid through June thirtieth, two thousand twen-
6 ty-four.

7 10. A conditional adult-use processor license shall be deemed to have
8 been surrendered to the board and a conditional adult-use processor
9 licensee shall be deemed not to be in good standing, as determined in
10 the discretion of the executive director in a written notice, effective
11 upon delivery to the licensee at the licensee's last known address on
12 file with the office, for reasons including but not limited to:

13 (a) failure to abide by all the terms and conditions of the condi-
14 tional adult-use processor license;

15 (b) failure to adhere to all requirements set out in regulations and
16 guidance, including those promulgated after receiving the conditional
17 adult-use processor license;

18 (c) failure to submit information, records, or reports;

19 (d) failure to correct deficiencies in accordance with an approved
20 corrective action plan;

21 (e) deviation from regulations, licensing terms, or standard operating
22 procedures in a manner the office determines may jeopardize health or
23 safety of the public, or the quality of products produced;

24 (f) failure to provide office employees with access to the premises;
25 and

26 (g) failure to begin operations within six months of the date of the
27 issuance of the license.

28 11. A licensee whose conditional adult-use processor license has been
29 deemed surrendered may within ten days of the delivery date of such
30 notice appeal the determination of the executive director to the board
31 pursuant to subdivision eighteen of section ten of this chapter. The
32 board shall have sole discretion to determine the conduct of the appeal,
33 which shall include notice and an opportunity to be heard. Upon review
34 by the board, the board shall issue a final written determination which
35 may then be reviewed pursuant to section one hundred thirty-five of this
36 chapter and article seventy-eight of the civil practice law and rules.

37 12. In the event that a conditional adult-use processor licensee
38 elects to cease operation of all permitted activities or to surrender
39 its license, the following provisions shall apply:

40 (a) the conditional adult-use processor licensee shall notify the
41 office in writing at least thirty days prior to the anticipated date of
42 closure;

43 (b) such written notice shall include a proposed plan for closure. The
44 plan shall be subject to office approval and shall include timetables
45 and describe the procedures and actions the licensee shall take to prop-
46 erly destroy or otherwise dispose of all the licensee's supply of canna-
47 bis and/or cannabis products; and

48 (c) the licensee or former licensee must maintain and make available
49 to the office all records related to the cultivation of cannabis for a
50 period of three years.

51 13. No later than ninety days before the expiration of a conditional
52 adult-use processor license, the office shall, pursuant to a request by
53 the licensee, review the conditional adult-use processor licensee to
54 determine whether they are in good standing with the office. Good stand-
55 ing shall include, but not be limited to, compliance with subdivision
56 seven of this section. Any licensee found to be in good standing shall

1 be eligible to apply for and receive an adult-use processor license,
2 provided the licensee can meet all requirements of the new license.

3 14. For the purposes of this section, the office has the authority to
4 define terms including but not limited to "extraction" as part of the
5 terms and conditions of the conditional adult-use processor license.

6 15. Nothing in this section shall limit the authority, power, or other
7 rights or remedies of the board or office.

8 § 5. The cannabis control board shall provide a report on the condi-
9 tional cultivator and processor licenses as provided for by this act.
10 Such report shall include, but not be limited to: the number of condi-
11 tional licenses applied for by geographic region and approved by the
12 board; the revenue received from such conditional licenses from fees and
13 taxation related to cultivation, distribution, and eventual sale of
14 adult-use cannabis; the number of individuals, if any, that transition
15 from a conditional license to other licenses issued by the board and the
16 types of licenses awarded; the number of applicants determined to be
17 social equity applicants that applied for and received a conditional
18 cultivator and processor license; the effectiveness and participation
19 data related to the social equity mentoring program; and other such data
20 and information that the board deems necessary and appropriate. Such
21 report shall be published on the office's website and presented to the
22 governor, the majority leader of the senate and the speaker of the
23 assembly, no later than January 1, 2023 and again on January 1, 2024.
24 Nothing shall preclude the office from providing such reporting as part
25 of the annual report required by the board pursuant to section ten of
26 the cannabis law, provided, however, that the information required by
27 this act shall be clearly separate from other reporting.

28 § 6. This act shall take effect immediately, provided however, that
29 the provisions of sections two and four of this act shall expire on June
30 30, 2024 when upon such date the provisions of such sections shall be
31 deemed repealed.

Pursuant to the authority vested in the Cannabis Control Board by Section 13 of the Cannabis Law, Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, and a new Part 116 is added, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Part 116

Conditional Adult-Use Retail Dispensary

Part 116 – Conditional Adult-Use Retail Dispensary

§ 116.1 Definitions.

§ 116.2 Application for Conditional Adult-Use Retail Dispensary License.

§ 116.3 Attestations.

§ 116.4 License Eligibility and Evaluation.

§ 116.5 Denials.

§ 116.6 Application for Renewal or Transition.

§ 116.7 Requirements and Prohibitions for a Conditional Adult-Use Retail Dispensary.

§ 116.8 Suspension, Revocation, and Surrender.

§ 116.9 Severability.

§ 116.1 Definitions.

For the purposes of this Part, the following terms shall have the following meanings:

- (a) *Act* means the Marihuana Regulation and Taxation Act, Chapter 92 of the Laws of 2021.

- (b) *Aggregate ownership interest* means the total ownership interest held by:
 - (i) a legal entity and any legal entity in its multilevel ownership structure; or
 - (ii) an individual and the spouse, domestic partner, civil union partner, child, sibling, or parent of such individual.

- (c) *Applicant* means a person applying for a license under this Part.

- (d) *Board* means the New York State Cannabis Control Board established pursuant to the Act.

- (e) *Bona fide labor organization* means a local labor union:
 - (1) that represents employees in this state with regard to wages, hours and working conditions;
 - (2) in which officers have been elected by secret ballot or otherwise in a manner consistent with federal law; and

(3) that is free of domination or interference by any employer and has received no improper assistance or support from any employer.

(f) *Conditional period* means four years from the date the license is granted.

(g) *Control* means the power to order or direct the management, managers, or policies of a person.

(h) *Eligible Applicant* means an applicant that satisfies all the required elements in section 116.4 of this Part.

(i) *Financial institution* means any bank, mutual savings bank, consumer loan company, credit union, savings and loan association, trust company, or other lending institution under the jurisdiction of the Department of Financial Services.

(j) *Financial interest* means any actual or future right to ownership, investment or compensation arrangement with another person, either directly or indirectly, through business, investment, spouse, parent or child. Person with a financial interest does not include a passive investor.

(k) *Financier* means any person, other than financial institution or government or governmental subdivision or agency, that provides capital as a gift, provides a grant, or lends

capital pursuant to a secured or unsecured financing agreement. A financier may not receive an ownership interest, control of the business, a share of revenue, gross profits or net profits, a profit sharing interest, or a percentage of the profits in exchange for a gift, grant or loan, unless the financier receives prior approval from the Office.

(l) *First renewal date* means two years from the date the license is granted.

(m) *Fund* means a social and economic equity fund in which the state, any state agency, public authority, public benefit corporation, or division thereof has invested and is formed for the limited purpose of funding costs, which include, but are not limited to construction, renovations and equipment purchasing associated with establishing or developing adult-use cannabis operators.

(n) *Justice involved* means a person that satisfies the required elements in section 116.4(a)(2)(i) of this Part.

(o) *License* means a license issued pursuant to this Part and is conditioned on all requirements and prohibitions being met.

(p) *Licensee* means a person who has been granted a license to engage in the retail sale of cannabis products under this Part.

(q) *Marihuana-related offense* means a marihuana or cannabis offense defined under article two hundred twenty-one of the penal law prior to its repeal, any offense under article two hundred twenty or section 240.36 of the penal law prior to the effective date of article two hundred twenty-one of the penal law, where the controlled substance involved was marihuana, any offense that is eligible to be sealed or expunged pursuant to Chapter 131 of the Laws of 2019 or the Act or any offense identified by the Office to be a marihuana-related offense.

(r) *Passive investor* means a person that has an aggregate ownership interest of no more than five percent of the outstanding shares of an applicant or licensee whose shares are publicly traded, and such person does not have control over the applicant or licensee.

(s) *Person* means an individual, institution, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(t) *Primary Residence* means a dwelling where a person usually stays or stays more often than other locations with an intention to remain. The Office shall be authorized to select one or more, without limitation, of the following to verify an individual's primary residence:

(1) state or federal tax filing or return with proof of filing, including e-filing acknowledgements;

(2) a signed lease agreement, a property deed, a mortgage payment, or property tax statement that includes the individual's name;

(3) a letter addressed to the applicant from:

(i) the public housing authority in New York State or New York City;

(ii) a homeless shelter indicating the applicant currently resides at the homeless shelter;

(iii) a nonprofit organization or religious institution that provides services to homeless individuals, indicating the applicant's lack of permanent housing;

(iv) a domestic violence residential care program or organization that serves domestic violence survivors; or

(v) a charitable organization registered with the New York State Attorney General that provided services to the applicant and for which eligibility was established prior to the nineteenth of April, two-thousand twenty-one, attesting to residence.

(4) a voter registration card;

(5) jury summons, court order, or other document from a court within New York State;

- (6) a government issued identification;
- (7) a paycheck stub;
- (8) a utility bill;
- (9) a health institution or insurance company statement, bill or record;
- (10) a bank or credit card statement;
- (11) a document addressed to the applicant by a local government in New York State; or
- (12) any other proof of residency as determined by the Office.

- (u) *Qualifying business* means a business is defined in section 116.4(a)(2)(iii) of this Part.

- (v) *Regional Geographic Zones* means the zones established by the Office which represent the geographic area where conditional adult-use retail dispensaries will be located.

- (w) *True Party of Interest*:

- (1) includes, but is not limited to the following:

- (i) applicant or licensee's sole proprietor, partner (whether limited or general), member, manager, president, vice president, secretary, treasurer, officer, board member, trustee, director, or a person with equivalent title to each of the foregoing;
- (ii) stockholder of applicant or licensee, other than a passive investor;
- (iii) each person that makes up the ownership structure of each level of ownership for an applicant or licensee that has a multilevel ownership structure;
- (iv) person with a right to receive some or all of the revenue, gross profit, or net profit from the licensed business during any full or partial calendar or fiscal year;
- (v) person with a financial interest in the applicant or licensee;
- (vi) person that has authority to or exercises control over the applicant or licensee;
- (vii) person that has membership rights in the applicant or licensee in accordance with the provisions of any articles of incorporation, bylaws, limited liability corporation agreements, partnership agreements or operating agreement;
- (viii) person that assumes responsibility for the debts of the applicant or licensee; or

(ix) spouse of any individual in subparagraphs 116.1(w)(1)(i) through 116.1(w)(1) (iii) herein.

(2) does not include a person that, without limitation:

(i) receives payment for rent on a fixed basis under a lease or rental agreement relating to applicant or licensee. Notwithstanding, if there is a common ownership interest between applicant or licensee, and the entity that owns the real property, the Office may investigate all funds associated with the landlord to determine if the landlord is a financier. The Office may also investigate a landlord in situations where a rental payment has been waived or deferred;

(ii) receives a bonus or commission from the applicant or licensee based on the individual's sales, so long as the commission does not exceed ten percent of the sales of the applicant or licensee in any given bonus or commission period, unless otherwise determined by the Office. Commission-based compensation agreements must be in writing;

(iii) contracts with the applicant or licensee to receive a commission for the sale of the business or real property;

(iv) consults receiving a flat or hourly rate of compensation from the applicant or licensee under a contractual agreement;

(v) has an option to purchase the applicant or licensee, in the event the applicant or licensee is not an individual, or conditional adult-use retail dispensary, so long as no money has been paid under an option contract or agreement for such purchase or sale;

(vi) has a contract or agreement for services with an applicant or licensee, such as a branding or staffing company, as long as the applicant or licensee retains the right to and controls the business;

(vii) is a financial institution; or

(viii) is a passive investor.

§ 116.2 Application for Conditional Adult-Use Retail Dispensary License.

(a) Information Required to be Disclosed on Application. The application for a conditional adult-use retail dispensary license shall include the following:

(1) the legal name of the applicant;

(2) the name under which the conditional adult-use retail dispensary will operate or make sales if different than the legal name of the applicant, including, but not limited to, the assumed name, where applicable;

- (3) the name, address, federal employment identification number, and date of birth, where applicable, of the applicant and each true party of interest of applicant;
- (4) a copy of a valid photo identification containing the individual's date of birth issued by a local, state or federal government for the applicant and each true party of interest of applicant, each of which shall be at least 21 years of age;
- (5) a personal history disclosure for applicant and each true party of interest of applicant;
- (6) submission of fingerprints for applicant and each true party of interest set forth in sections 116.1(w)(i) - (iii), on a form and in such manner as specified by the Office for purpose of obtaining a criminal history report from division of criminal justice services;
- (7) the ownership structure of the applicant;
- (8) the percentage of ownership interest held by each true party of interest in the applicant, and a description of any other interest held in the applicant;
- (9) a list of all parent companies, subsidiaries, affiliates, predecessors, and successors of the applicant, including but not limited to, all individuals of each entity at each level of ownership for the applicant that has a multilevel ownership structure;

(10) the name of every financial institution at which the applicant and each true party of interest of applicant that has or has had a personal and business account that is or was used to financially support the business in the past 3 years;

(11) a current organizational chart of the applicant that includes position descriptions and the names and resumes of persons holding each position identified on the organizational chart, to the extent those positions have been filled; to the extent not revealed by the resume, include additional information with each resume setting out the employee's particular skills, education, experience or significant accomplishments that are relevant to owning or operating a conditional adult-use retail dispensary. The organization chart should identify all officers with the authority to control and all business entities that through direct or indirect means, will manage, own or control the interests and assets of the license holder. If the business entities have boards, include all board members on this chart. If the business entity has a parent company, include the name of each parent company's principal officer(s) and the percentage ownership interest;

(12) organizational documents such as the certificates of incorporation, certificates of limited partnerships, articles of organizations, charter, by-laws, partnership agreement, agreements between any two or more persons of the applicant that relate in any manner to the assets, property or profit of the applicant, or any other comparable documents that set forth the legal structure of the applicant or relate to the organization, management or control of the applicant;

(13) if an applicant is not an individual, a description, beginning with the formation of the applicant, of any and all ownership changes between the formation of the applicant and the date

the application is submitted, including, but not limited to, events such as asset sales and purchases, stock sales and purchases, mergers, business combinations, or consolidations involving the applicant, including all former names of the applicant;

(14) a copy of all compensation agreements between or among applicant and each true party of interest, or group of true parties of interest, whether direct or indirect, and to the extent such agreement is oral, a written description of the terms of such agreement with true parties of interest of the applicant;

(15) any proposed or executed contract, term sheet, agreement, or side letter between the applicant, true parties of interest of the applicant, or financier, and another party that relates to the ownership and control structure, assets, liabilities, real or intellectual property, revenue, funding or capitalization, royalties, or profit, or future profit, of the applicant or proposed licensee or comparable documents;

(16) the nature, type, terms, covenants and priorities of all outstanding bonds, loans, mortgages, trust deeds, pledges, lines of credit, notes, debentures or other forms of indebtedness issued or executed, or to be issued or executed, in connection with opening or operating the proposed conditional adult-use retail dispensary;

(17) audited financial statements of the applicant for the fiscal year ending one year prior to the date the application is submitted, which shall include, but is not limited to, an income statement, balance sheet, statement of retained earnings or owners' equity, statement of cash

flows, and all notes to these statements and related financial schedules, prepared in accordance with generally accepted accounting principles, along with the accompanying independent auditor's report. If the applicant was formed within the year preceding the application for license, provide certified financial statements for the period of time the applicant has been in existence and any pro forma financials used for business planning purposes;

(18) all sources of funding used to acquire, start, or develop the business for which the license is sought, and documentation concerning the source of the funds and copies of closing documents in connection with such acquisition or development;

(19) details of any state or federal, administrative or judicial proceeding in which the applicant or any of the true parties of interest of applicant:

(i) pled guilty, pled no contest, conditionally or otherwise, or were, convicted, fined, or the equivalent, or had a registration or license cancelled, suspended or revoked; or

(ii) managed or served on the board of a business or nonprofit organization that pled guilty or was convicted, fined, or had a registration or license cancelled, suspended or revoked.

(20) information relating to a business continuity plan;

(21) a certificate of status or good standing from the governing state agency of the state of formation, certificate of assumed name, a certificate of authority to do business in New York from the New York Department of State if the applicant is a foreign business, where applicable;

(22) if applicant or any true parties of interest of applicant are currently or have previously been licensed or authorized in another state or jurisdiction to cultivate, process, manufacture, distribute or sell cannabis products in any form, the following:

(i) a copy of each license or authorizing document verifying licensure in that state or jurisdiction;

(ii) a statement granting permission to contact the regulatory agency that granted the license to confirm the information contained in the application is true and accurate; and

(iii) if the license, authorization, or application was ever cancelled, denied, suspended, revoked or otherwise sanctioned, a copy of documentation so indicating, or a statement that the applicant or true party of interest of applicant was so licensed and was never sanctioned;

(23) any management agreement, contract, arrangement, or other type of formal understanding between a contractor and an applicant where the contractor will or does provide administrative, operational, financial, advisory, and/or management services to an applicant in exchange for remuneration and a list of all the parties that are contained in those agreements;

- (24) a list of each vendor with which the applicant has entered into a contract, term sheet, agreement, or side letter;
- (25) whether the applicant or any true party of interest of applicant:
- (i) has ever filed a voluntary petition or had an involuntary petition filed against it for relief under the United States Bankruptcy Code;
 - (ii) is out of compliance with general obligations law section 3-503(2);
 - (iii) has been disciplined or sanctioned by a state or federal agency; or
 - (iv) has had any state or federal tax liens against any of their property;
- (26) a list of each financier of applicant, and copy of all financier agreements, if any;
- (27) a copy of each agreement between applicant and any person with a financial interest in the applicant;
- (28) a list of any charitable contributions by the applicant in the last five years;
- (29) a list of stocks, mutual funds or bonds held by the applicant;

(30) documentation acceptable to the Office that the applicant will be able to obtain insurance sufficient to indemnify and hold harmless the state and its officers and employees;

(31) information regarding any relationship, agreement, or arrangement that may exist between (i) the applicant or true parties of interest and (ii) any official or any other individuals with control over the approval of an application or license, including, but not limited to, employees of the Office and members of the Board;

(32) information evidencing compliance with the provisions set forth in section 116.4(a)(1) of this Part as required by the Office;

(33) information evidencing applicant's eligibility as set forth in sections 116.4(a)(2) or 116.4(a)(3) of this Part as required by the Office;

(34) designation of each portion of the application that applicant considers to be exempt from disclosure under the New York State Freedom of Information Law; and

(35) any additional information requested by the Office.

(b) General.

(1) Notification of the availability of applications, instructions for completion and submission of applications, and application forms will be posted on the Office's website at www.cannabis.ny.gov.

(2) The license application shall be submitted via forms provided by the Office. The forms will include instructions for their completion and submission. The application will reflect the information required of applicants by the Cannabis Law and this Part and will include requests for information in support of the application needed by the Office to ensure that the application submitted is complete. If all material, documentation, and information required by the application form is not submitted, the applicant shall receive a deficiency notice from the Office. The applicant shall then have 30 calendar days from the date the deficiency notice is sent to resubmit the application in its entirety. Applications that are still incomplete after this opportunity to cure will not be considered. Upon receipt of an application deemed to be complete, the Office will engage in no further communication with the applicant until after the selection process is completed.

(3) Only applications completed in accordance with this Part as determined by the Office and submitted in a timely manner shall be considered.

(4) Prior to the issuance of a license, an applicant may apply to amend its previously submitted true parties of interest; provided, however, that such amendment shall not violate the requirements as set forth in this Part. Failure to apply to amend may be deemed an inconsistent

material statement in the application as to its true parties of interest and such failure may constitute grounds for denial of the application by the Board.

(5) There shall be a non-refundable application and license fee of \$2,000 for applications submitted for a license under this Part.

(c) Continuing Duty to Disclose and Approval.

(1) The applicant shall have a continuing duty to disclose material changes in the information provided to the Office required in this Part.

(2) If an applicant is issued a license, this duty of ongoing disclosure shall continue throughout the licensed period and the following shall require prior written approval of the Office, including any changes thereto:

(i) ownership and control;

(ii) any financier arrangements;

(iii) any true party of interest;

(iv) location;

(v) management service agreements;

(vi) intellectual property agreements;

(vii) guaranty agreement; and

(viii) any other activity or agreement as determined by the Office.

§ 116.3 Attestations.

(a) The applicant shall sign the proof of attestation, attesting that the applicant:

(1) has submitted an application that is complete and accurate;

(2) submits to jurisdiction of the courts of New York State and the application of all state laws, local laws and regulations of New York State, including, but not limited to, relating to the conditional adult-use retail dispensary;

(3) shall not sell any cannabis product to anyone under 21 years of age;

(4) shall not sell any cannabis product in any disallowed form, as determined by the Office;

(5) shall not give away any cannabis product as set forth in the Act;

- (6) shall only acquire cannabis products from entities authorized to distribute cannabis products in New York State;
- (7) shall ensure that the eligible applicant, upon being granted a license, shall maintain the minimum ownership and control requirements set forth in section 116.4 of this Part, and that noncompliance shall be deemed a surrender of license as determined by the Office;
- (8) shall ensure that its true parties of interest are of good moral character;
- (9) shall exercise reasonable care to confirm its information and the ability of each person to meet the requirements as set forth in this Part;
- (10) shall provide the Office a complete disclosure that includes all true parties of interest and that each individual who is a true party of interest is at least 21 years of age;
- (11) shall not attempt to conceal or disguise ownership or other control over its operations in its submissions;
- (12) shall register with the New York State Department of Taxation and Finance for a certificate of adult-use cannabis registration and, if applicable, a certificate of authority should the applicant be granted a license;

(13) shall indemnify and hold harmless the State of New York for any and all civil or criminal penalties resulting from receiving a conditional adult-use retail dispensary license;

(14) has entered into a labor peace agreement with a bona fide labor organization and understands that the maintenance of such a labor peace agreement shall be an ongoing material condition of the license;

(15) shall comply with applicable state and local laws, regulations, and guidance; and

(16) shall submit any other information as required by the Office.

§ 116.4 License Eligibility and Evaluation.

(a) Eligibility. The following minimum requirements must be met to become an eligible applicant for this license:

(1) an applicant must demonstrate:

(i) a significant presence in New York State, either individually or by having a principal corporate location in the state:

(ii) it is incorporated or otherwise organized under the laws of New York State; or

(iii) a majority of the ownership of the applicant are residents of New York State by being physically present in the state no less than 180 calendar days during the current year or 540 calendar days over the course of three years;

(2) if the applicant is an individual, or an entity with one or more individuals, at least one individual must:

(i) be justice involved, which means an individual that:

(a) was convicted of a marihuana-related offense in New York State prior to the thirty-first of March two thousand twenty-one; or

(b) had a parent, legal guardian, child, spouse, or dependent who was convicted of a marihuana-related offense in New York State prior to the thirty-first of March two thousand twenty-one; or

(c) was a dependent of an individual who was convicted of a marihuana-related offense in New York State prior to the thirty-first of March two thousand twenty-one;

(ii) provide evidence of the primary residence of the justice involved individual at the time of such individual's arrest or conviction; and

(iii) hold or have held, for a minimum of two years, at least ten percent ownership interest in, and control of, a qualifying business, which means a business that had net profit for at least two of the years the business was in operation; or

(3) if the applicant is a nonprofit organization, the nonprofit organization must:

(i) be recognized as an entity pursuant to section 501(c)(3) of the Internal Revenue Code;

(ii) intentionally serve justice involved individuals and communities with historically high rates of arrest, conviction, incarceration or other indicators of law enforcement activity for marihuana-related offenses;

(iii) operate and manage a social enterprise that had at least two years of positive net assets or profit as evidenced in the organization's tax returns;

(iv) have a history of creating vocational opportunity for justice involved individuals;

(v) have justice involved individuals on its board or as officers; and

(vi) have at least five full time employees.

(b) Applicant Ownership and Control Minimums.

(1) At least 51% or more of the applicant shall be owned, in the aggregate, by (i) at least one individual that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(2), or entity that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(3) of this Part, and (ii) any other additional individuals, if any, who are justice involved;

(2) At least one individual that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(2), or entity that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(3) of this Part shall own at least 30% of the applicant and such individual or entity shall have sole control of the applicant or licensee;

(c) Evaluation. An eligible applicant shall be evaluated based on any of the following criteria which shall be weighted as determined by the Office:

(1) if the applicant is an individual, or an entity of one or more individuals, whether the justice involved individual was themselves convicted of a marihuana-related offense as set forth in section 116.4(a)(2)(i)(a) of this Part;

(2) the justice involved individual's primary residence at the time of such individual's arrest or conviction:

(i) relative to areas with historically high rates of arrest, conviction, or incarceration for marihuana-related offenses;

- (ii) relative to areas with historically low median income, or
 - (iii) was provided by a public housing authority in New York State or New York City; and
- (3) the qualifying business based on:
- (i) the number of employees employed by the business;
 - (ii) the number of years the business has been in operation;
 - (iii) the profitability of the business;
 - (iv) type of business and whether the business was a retail business, or sold products or services directly to the end-consumer;
 - (v) whether the business had a physical location;
 - (vi) whether the business received or resolved any violations, fines or fees assessed against the business by state or federal regulatory authorities; or
- (4) any other factors as determined by the Office.

(d) The office may create regional geographic zones for the scoring of applicants. Applicants may be asked to rank a number of preferences of regional geographic zones to be considered for a license. For regional geographical zones where there are more applicants than available licenses, the Office may select from eligible applicants who indicated first preference for the given region based on weighted scoring of the evaluation criteria set out above. In the event there is a tie between two or more candidates or there are more applicants than available licenses after the evaluation criteria has been applied, the Office is authorized to use a random selection process to identify the final applicants to recommend to the Board for licensure.

§ 116.5 Denials.

(a) Notwithstanding an applicant satisfying the requirements set forth in this Part, the application shall be denied where an applicant or eligible applicant, or any true party of interest of the applicant:

- (1) has submitted an application that contains inconsistent information;
- (2) failed to submit the materials required by this Part within the specified time allotted;
- (3) failed to submit fingerprints for purposes of providing a criminal history report required pursuant to section 138 of the Cannabis Law;
- (4) is a person forbidden to traffic cannabis as set forth in section 137 of the Cannabis Law;

- (5) has demonstrated prior business practices and financial arrangements that may not comply with state and local laws incidental to the cannabis industry;
- (6) has had a license associated with cannabis cancelled, revoked or suspended in any other state or jurisdiction;
- (7) creates or enhances the dangers of unlawful practices, methods and activities in the cannabis industry, including, but limited to, product inversion or diversion;
- (8) is delinquent in filing any required tax returns or paying any amount owed to any local, state or federal government;
- (9) causes a violation of Sections 72 or 85 of the Cannabis Law; or
- (10) is not a person of good moral character.

§116.6 Application for Renewal or Transition.

(a) Renewal:

- (1) Applicant shall comply with all applicable state and local laws, regulations, and guidance relating to the licensed activities for renewal of its license.

(2) Prior to the expiration of the first renewal date, licensee shall submit an application to renew the license as prescribed by the Office and include such information and fees, if any, as the Office may require.

(3) Upon request for renewal, the Office shall consider the licensee's history of compliance with the requirements of this part and applicable state and local laws, regulations, and guidance.

(4) The Board may deny a renewal after consideration of the licensee's history of compliance.

(b) Transition:

(1) After the conditional period, to continue to conduct the activities licensed under this Part, a licensee may apply to transition to an adult-use retail dispensary license issued by the Board.

(2) One hundred twenty calendar days prior to the expiration of the conditional period, licensee shall notify the Office of its intent to continue the activities licensed under this Part beyond the expiration of the conditional period.

(3) The Office shall consider the licensee's history of compliance with applicable state and local laws, regulations, and guidance, including, but not limited to, whether the applicant has served the community in which it is located, to determine whether the licensee may transition to

an adult-use retail dispensary license approved by the Board upon the expiration of the conditional period.

(4) The review shall conclude prior to the expiration of the conditional period, unless otherwise extended by the Office.

(5) The Board may deny a transition after consideration of the licensee's history of compliance.

§116.7 Requirements and Prohibitions for Conditional Adult-Use Retail Dispensary License.

(a) A conditional adult-use retail dispensary license shall have the same authorizations and conditions as an adult-use retail dispensary as defined by the Cannabis Law and regulations promulgated by the Board;

(b) Should an applicant be awarded a conditional adult-use retail dispensary license, provisions, including but not limited, the attestation in the application, become a mandatory condition of the license; and

(c) The following conditions shall also apply to the license:

(1) each licensee and true party of interest shall be at least 21 years of age;

(2) at least 51% or more of the licensee shall be owned, in the aggregate, by (i) at least one individual that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(2), or entity that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(3) of this Part, and (ii) any other additional individuals, if any, who are justice involved;

(3) at least one individual that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(2), or entity that satisfies the requirements for an eligible applicant set forth in sections 116.4(a)(1) and 116.4(a)(3) of this Part shall own at least 30% of the licensee and such individual or entity shall have sole control of the licensee;

(4) the percentage of ownership in the licensee of the individual or entity set forth in sections 116.4(a)(2) and 116.4(a)(3) of this Part shall be proportionate to their interest in the capital, assets, and profits and losses of the licensee;

(5) during the conditional period, the licensee shall maintain the minimum ownership and control requirements in the licensee as set forth in sections 116.7(c)(2), 116.7(c)(3) and 116.7(c)(4) of this Part;

(6) the licensee shall enter into and comply with all terms and conditions of any agreement with any fund, as defined by this Part, that has been approved by the Board and made available by the office, including, but not limited to, accepting a dispensary location identified by the fund

or office, any loan agreement with such fund, any lease or sublease agreement with the State of New York or its agents, or any other such agreements into which the licensee enters;

(7) the licensee shall have entered into a labor peace agreement with a bona fide labor organization and each party to the agreement has signed such agreement prior to the license being granted;

(8) the licensee shall commence operations no later than 12 months from the date the license is granted, or as otherwise determined by the Office;

(9) the applicant is prohibited from leasing, assigning, or subcontracting, in whole or in part, the leased premises associated with the fund, as defined by this Part;

(10) A licensee or any true party of interest of the licensee, shall not have a direct or indirect financial or controlling interest in more than three conditional adult-use retail dispensary licenses issued under this Part until the expiration of the conditional period;

(11) A licensee or any true party of interest of the licensee shall not hold an adult-use cultivation, conditional adult-use cultivator, processor, microbusiness, cooperative or distributor license pursuant to article four of the Cannabis Law or be registered as a registered organization pursuant to article three of the Cannabis Law, except for such organizations licensed pursuant to sections 68-a and 68-b of this article;

(12) A licensee or any true party of interest of the licensee shall not be interested, directly or indirectly, in any cultivator, processor, distributor or microbusiness operator licensed pursuant to this article, by stock ownership, interlocking directors, mortgage or lien on any personal or real property or by any other means. Any lien, mortgage or other interest or estate, however, now held by such licensee or true party of interest on or in the personal or real property of such manufacturer or distributor, which mortgage, lien, interest or estate was acquired on or before December thirty-first, two thousand nineteen, shall not be included within the provisions of this paragraph; provided, however, the burden of establishing the time of the accrual of the interest comprehended by this paragraph, shall be upon the person who claims to be entitled to the protection and exemption afforded hereby;

(13) the licensee shall comply with any other requirements as may be promulgated by the Office; and

(14) after the conditional period, to continue to conduct the activities licensed under this Part, a licensee must apply to transition to an adult-use retail dispensary license approved by the Board.

§116.8 Suspension, Revocation, and Surrender.

(a) The Board shall deliver a written notice to the licensee for failure to comply with this Part, applicable state and local laws, regulations, or guidance relating to conditional adult-use retail dispensary and adult-use retail dispensary, including those promulgated after applicant

submits its application for a license. If no effort has been made to cure, the license shall be deemed surrendered 30 calendar days from the date of the written notice.

(1) Written notice shall be sent to the licensee's last known address on file with the Office.

(b) In the event that licensee elects to cease operation of all licensed activities or to surrender its license within the conditional period, the following shall apply:

(1) licensee shall notify the Office in writing at least 30 calendar days prior to the date licensee anticipates ceasing operations;

(2) the written notice shall include a proposed plan for closure. The plan shall be subject to Office approval and may include a recommendation of any individual or entity that would qualify under this Part; and

(3) upon surrender of the license or cessation of operation, licensee shall vacate the leased premises associated with the fund, as defined by this Part, within 30 calendar days of surrender or cessation.

(c) If a licensee fails to comply with standards and special conditions of the license, the Office may assess a penalty in addition to the surrender of the license pursuant to this Part.

§116.9 Severability

The provisions of this Part are severable. If any provision of this Part is found to be invalid, or if any application of this Part to any person or circumstance is found to be invalid, the invalidity shall not affect any other provisions or applications which can be given effect without the invalid provision or application.