

## **Alert** | New York Government Law & Policy



**November 2022**

### **New York State Cannabis Control Board Releases Proposed Adult-Use Regulations**

On Nov. 21, 2022, the New York State Cannabis Control Board (CCB) **approved** draft regulations governing the Adult-Use Cannabis program. While the Office of Cannabis Management (OCM) has utilized a conditional licensing process to begin to build out the adult-use cannabis market in New York, these draft regulations set the stage for mainstream licensure as contemplated by the Marijuana Regulation and Taxation Act (MRTA).

#### **Application and Licensure**

The draft regulations establish authorizations, requirements, and prohibitions associated with each adult-use license type including nursery operations, cultivation, processing, distribution, retail, and microbusiness. Delivery and on-site consumption licenses also are contemplated but will be addressed in future regulations. OCM will accept license applications on a continuous rolling basis, though OCM reserves its right to limit acceptance of applications. In addition, OCM proposes, in evaluating applications and ultimately selecting licensees, that the agency will have maximum flexibility to utilize selection mechanisms, including but not limited to scoring, compliance, qualified lotteries, and a randomized selection process or any combination of those methodologies. Licenses will be valid for two years from issuance.

In addition to the application and selection process, the proposed regulations provide a variety of **cultivation license opportunities**. Consistent with other state adult-use cannabis regulations, the proposed

regulations establish overall canopy limits and license-specific tiers for cultivation based on cultivation methods (outdoor, mixed light, combination of outdoor and mixed light, and indoor). Cultivators can cultivate anywhere from 5,000 square feet to 100,000 square feet, depending on the selected tier. Cultivators utilizing a combination of outdoor and mixed light may cultivate, depending on the selected tier, anywhere from 5,000 square feet outdoors/2,500 square feet mixed light to 100,000 square feet outdoors/30,000 square feet mixed light.

The draft regulations also establish a proposed fee structure for each license type. In addition to a non-refundable \$1,000 application fee, if the application is approved, licensees are required to remit a fee based on license type to OCM prior to final issuance of a license. For cultivation and processing licenses, the fee amount increases depending on the canopy size and scope of the processing. For instance, an outdoor Tier 1 cultivator can expect to pay \$1,000 and \$150 per square foot of cultivation canopy, whereas an outdoor Tier 5 cultivator can expect to pay \$40,000 and \$440 per square foot of cultivation canopy greater than 5,000 square feet. The proposed fee for a retail dispensary license is \$7,000.

### **True Parties of Interest (TPI) and Cross-Ownership Restrictions**

Consistent with the MRTA, which establishes a two-tier market structure prohibiting entities in the supply tier (cultivators, processors, and distributors) from holding any interests in licensees participating in the retail space (dispensaries, on-site consumption sites, and delivery services), the draft regulations provide additional clarity on determining TPI status and whether cross-ownership could be implicated in a business relationship or arrangement with a cannabis licensee. The definition of TPI is largely consistent with OCM guidance issued for the conditional program. TPIs include any person who has a financial interest in the applicant or licensee, has authority or exercises control over the applicant or licensee, or assumes the responsibility of the debts of the applicant or licensee, as well as spouses of anyone considered a TPI. The draft regulations also address the concept of passive investment – those TPIs that have a limited ownership interest and do not otherwise have control or influence over the applicant or licensee. However, adhering to the horizontally integrated framework mandated by the MRTA, passive investment across the supply and retail tiers remains prohibited under the proposed regulations.

### **Social and Economic Equity**

The draft regulations identify criteria for social and economic equity participants – minority-owned business, women-owned business, distressed farmer, service-disabled veteran owned business. All social and economic equity applicants will have a 50% reduction in their application fees. To maintain their designations, they, along with all licensees, will be subject to ongoing compliance and reporting obligations related to ownership and control.

The regulations also describe parameters for a “Community Impact Plan,” which will show how an applicant or licensee will benefit communities and individuals from communities disproportionately impacted by the war on drugs, through workforce opportunities or investments in community resources and education.

### **Local Control**

The draft regulations establish clear parameters for municipal lawmaking, and largely mirror the rules found in New York’s Liquor Laws, including prohibitions on the authority of local governments to adopt local laws or ordinances or imposing fees specific to cannabis licensees. The MRTA and proposed regulations do allow localities to impose time, place, and manner restrictions on retail dispensaries, but the dispensaries cannot limit their operations to less than 70 hours per week. In addition, the draft

regulations also prohibit the issuance of adult-use retail or on-site consumption sites on the same road or within 500 feet of school grounds, or a community facility (e.g., day care, public park, playground, public swimming pool, and library). Similarly, the proposed regulations prohibit a dispensary or consumption site from being located within 200 feet of a house of worship.

### Medical Marijuana Licensees

Generally, vertical integration is prohibited for entities licensed in the adult-use cannabis program, with limited exceptions for the Registered Organizations (ROs) operating in the medical cannabis program and microbusinesses. Consistent with the MRTA, the proposed regulations contemplate that an RO can enter the adult-use market vertically integrated with or without a retail license component. Notably, the proposed regulations prohibit an RO seeking retail authorization from applying for adult-use retail until cannabis sales have been underway in New York for three years. ROs seeking adult-use licensure will be required to pay additional fees for cultivation, processing, distribution, and dispensing – approximately \$10 million for licensure in the supply-tier and \$20 million for retail authority.

### Next Steps

Under New York’s Administrative Procedure Act, the draft regulations are subject to a minimum 60-day public comment period upon publication in the State Register before they can be formally adopted. In addition, at the end of the public comment period, OCM is required to assess public comments and republish the regulations if it makes substantial changes to the substance of the regulations.

## Authors

This GT Alert was prepared by:

- [Lynelle K. Bosworth](#) | +1 518.689.1469 | [bosworthl@gtlaw.com](mailto:bosworthl@gtlaw.com)
- [Jane E. McLaughlin](#) | +1 518.689.1463 | [mclaughlinj@gtlaw.com](mailto:mclaughlinj@gtlaw.com)

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