



Chris Alexander, Executive Director

New York State Office of Cannabis Management

PO Box 2071 Albany, NY 12220

regulations@ocm.ny.gov

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

Dear Mr. Alexander:

On behalf of the 58 local health departments and their leading county health officials across New York State, as well as the undersigned partner organizations in the public health, health care and education sectors, the New York State Association of County Health Officials (NYSACHO) is submitting comments on the updated Adult Use Cannabis regulations being considered for adoption.

Earlier this year, NYSACHO and other public health organizations submitted comments on the initial Adult Use proposed regulations. After reviewing the updated draft regulations, we are pleased to see that several of the changes that were suggested in our initial comments were included. Of particular importance to us as public health officials, is the updated guidance about flavored cannabis products. There has been extensive research documenting the role flavors play in initiating youth use and addiction to tobacco products¹, the cannabis industry has duplicated many of the marketing strategies of the tobacco industry, including the promotion of flavored products. By including language, like what is found on pages 167-168 of the updated regulations, OCM is making a commitment to curbing youth initiation of cannabis products.

Additionally, we would like to praise how the language throughout the regulations has been strengthened to close many loopholes that existed before. Related to the issue of flavored cannabis products, the inclusion of an exact definition of flavored products on pages 11-12 and the precise ingredients allowed in inhalable products on page 163, will go a long way to preventing the cannabis industry from getting around the aforementioned flavor restrictions. These specific regulation changes, as well as the increased detail found through the updated draft, are key to protecting public health,

NYSACHO thanks OCM for their efforts in including these measures and urges that they remain in the final regulations.

While several of NYSACHO's proposals are indeed evident in this updated draft, there are still several areas that we believe can be strengthened to further protect and promote public health across New York State. We respectfully ask that you consider including the 6 proposals below in the final regulations.

123.6 Processor License Facility Operations

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

No processing/production of cannabis products shall occur in facilities that provide processing and production of non-cannabis products unless the licensee can clearly demonstrate that all parts of the cannabis processing/production chain are sufficiently separated from other processing areas to assure no cross-contamination. Packaged cannabis products shall be stored separately from non-cannabis products in such way as to assure cross-contamination cannot occur should integrity of the product packaging be in any way compromised or damaged.

2. We support the language on page 161 "(11) edibles, that are not in shapes considered to be attractive to individuals under twenty-one as defined in Part 128 of this Title..." and thus recommend the Office of Cannabis Management keep it within the final regulatory package. However, we feel that this language should proceed with a list of any specific characteristics that are not permitted. For example: edibles should not include any additional coloring (any shades of red, blue, yellow, purple, orange, green, etc.) and further, they should not be made in the shapes of characters, fruits, insects, animals, desserts, or is otherwise attractive to individuals under the age of twenty-one as defined in Part 128 of this Title. We further recommend that solid edibles be required to be in simple geometric shapes and that each dose be physically independent, an approach that has been found to better communicate to consumers an appropriate dose than the use of scoring large bars or cookies.

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

a. Eliminating inhalable products that are marketed using flavor indicating names.

b. Eliminating flavored joint/blunt wrappers.

c. Eliminating cannabis-infused beverages.

123.10 Retail Dispensary Operations.

4. Page 194, we recommend the following language be added (red text indicates recommended language to add).

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

5. We recognize that there is documented evidence demonstrating positive health outcomes in use of medical cannabis use for those living with chronic pain, and other conditions². However, these regulations apply to the adult use program, not the medical cannabis program and we recommend both programs be maintained with distinction in purpose and regulatory framework to assure that there are no implied therapeutic health benefits associated with recreational cannabis use. Words like wellness or health should not apply to the adult-use program, while they may in fact apply to the medical program. Even for medical programs, there are only a limited range of defined indicated uses and cannabis should not be promoted as a general “wellness product.”

6. We support the change in language on page 199 that addresses the concerns NYSACHO shared about dispensary created educational materials and recommend that this language remain in the final regulations. However, we would further recommend that wording be added to allow consumers to lodge complaints with OCM about the materials being handed out by a dispensary.

Additional Recommendations

7. We believe the most important aspect of creating a socially conscious and public health-based retail cannabis industry in New York State, is the inclusion of regulations to protect youth initiation and chronic use of cannabis. While we acknowledged that the Adult Use regulations do not cover all aspects of retail cannabis, we would like to use this opportunity to further recommend that OCM take into consideration

related issues when considering future regulation of the industry. To this end, we have included 3 additional related recommendations as outlined below.

a. While the current regulations prohibit packaging/labeling that is attractive to children or youth (those under twenty-one years of age), the regulations do not clearly define what that means. We recommend that OCM clearly defines what is not permitted, maintain, and update an explicit listing of product packaging/labeling names, including prohibiting names that are imitations or near imitations of candies, cartoon characters, cereals and other products widely recognized or consumed by children or names that imply fruit or other non-cannabis flavors, including cannabis strain names, and that it verifies marketed products regularly against this list. The more clearly, we outline the expectation of licensed vendors and sales, the better we are positioning retailers for success, while protecting the public health and safety of those vulnerable. We also recommend the Office strongly regulate, enforce, and approve the names of products to ensure names do not cross the line in terms of determining whether or not names are appropriate or might be appealing to those under twenty-one years of age. [We further recommend that in addition to the product name, the business names of licensees also be considered for the potential appeal to individuals under twenty-one years of age and that references to cartoons or other branding clearly related to existing products marketed to or for children be prohibited for use as licensed business names.](#)

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

c. We support the regulatory language included in the proposal to allow retailers to sell or provide lockable, scent proof storage to consumers, however, strongly urge OCM to prioritize breaking down barriers to obtaining these items (examples of barriers may include: fiscal, community access etc.). Monroe County, Michigan has a grant-funded program where lockable, scent proof bags are provided to

community members free of charge³. We recommend that a similar grant program be established for community-based organizations, CAURD licensees, county/city health departments or others to be able to apply for funding to access and distribute these products as they are working with New York communities. We strongly recommend the state allocate money to ensuring products are properly stored and out of reach via these bags or other receptacles by creating a program to fund this important work.

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

Sincerely,

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

References

¹ FDA <https://www.federalregister.gov/documents/2018/03/21/2018-05655/regulation-of-flavors-in-tobacco-products>

² JAMA. Changes in Prescribed Opioid Dosages Among Patients Receiving Medical Cannabis for Chronic Pain, New York State, 2017-2019
<https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2800813?resultClick=1>

³ Free locking marijuana bags now available
<https://www.monroenews.com/story/news/2021/07/10/free-locking-marijuana-bags-now-available/7884985002/>