Updated Adult Use Cannabis Regulations

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The New York State Cannabis Control Board voted to approve revisions to the adult-use cannabis regulations on May 11, 2023. While these regulations remain subject to revision during another 45-day public comment period, it is expected that those changes will be minimal. Some of the major changes are outlined below.

True Party of Interest

There is a significant change as to who qualifies as a True Party of Interest ("TPI"). Previously, a party who had a right to receive aggregate payments that exceed the greater of 10% of gross revenue, 50% of net profit or $100,000 in connection with risk sharing or goods/services agreements would be a TPI. The new definition of TPI increases the annual threshold of the specific dollar amount from $100,000 to $250,000.

Restrictions on out-of-state ownership

The revised regulations continue to prohibit TPIs in New York's retail dispensaries from holding any interests in (including passive investors and goods and services agreements) supply-side businesses outside of New York.

However, the out-of-state restriction no longer applies to registered organizations with dispensing ("RODs") looking to convert to adult-use.

Changes for Registered Organizations (ROs)

The revised regulations allow ROs to convert their stores to adult-use dispensaries sooner than first contemplated. The initial draft stated that RODs could not begin adult-use retail sales until three (3) years after the first adult-use retail sale in New York (which occurred in late December 2022). Under the new draft, the first co-located dispensary can open after December 29, 2023 (the date of the first adult-use sale) and the second and third store can open after June 29, 2024. The fees have been modified as follows: $5 million due at the time of licensure with the remainder paid by the earlier of the opening of the ROD's second co-located dispensary; or in $5 million installments paid within 30 days of each $100 million in revenue generated by the ROD, up to $300 million. RODs will be required to dedicate a minimum of 70% shelf space for products cultivated and processed by licensees that are not RODs until January 1, 2026, and 40% shelf-space for these non-ROD licensees thereafter.

Application Periods

The original draft of the regulations provided that applications would be accepted "on a continuous rolling basis." The updated draft provides that there will be specific application periods similar to how the CAURD licensing period expired on a date certain.

Changes to municipal setbacks and zoning

The revised regulations go into further detail as to what time, place, or manner restrictions may be imposed on cannabis businesses by municipalities.

Changes to on-site consumption opportunities for adult-use dispensaries

The revised regulations allow on-site consumption at licensed retail dispensaries. Retail dispensaries can designate a distinct area on their premises where people can use the cannabis products purchased from the dispensary. This area is called a "limited retail consumption facility" and it must be inside the same building as the dispensary, or on an adjacent parcel.

Changes to temporary event permits

The revised regulations allow specific licensees to open and operate out of a temporary pop-up store for up to 30 days, subject to approval by the OCM.

Changes for Adult Use Conditional Cultivators (AUCC)

The revised regulations allow AUCCs expanded access to now convert to:

- Tier 1-4 outdoor cultivator license;
- Tier 1 or 2 mixed-light cultivator license;
- Tier 1 or 2 combination cultivator license;
- an adult-use cultivator license authorized for up to 25,000 square feet of mixed light cultivation canopy with no

more than 20 lights;

- a microbusiness license; or
- an outdoor or mixed light cooperative or collective license, provided the cooperative or collective license includes at least 5 adult-use conditional cultivators that are transitioning to adult-use cultivators and meet all other requirements to obtain a cooperative or collective license

Changes for Receivership

Cannabis businesses in New York can now seek receivership in the event of unexpected license transitions. This is a new option that was added to the regulations in response to the fact that cannabis is not yet federally legal, which means that cannabis businesses do not have access to federal bankruptcy courts.

Appointment of a receiver is a legal process that allows a court to assign a person to manage the assets of a business that is in financial or operational difficulty. The receiver is responsible for taking steps to protect the assets of the business and to ensure that it continues to operate in a way that is in the best interests of its creditors and other stakeholders.

Receiverships will be permitted in a variety of circumstances, including death, disability, bankruptcy, insolvency, receivership, assignment for the benefit of creditors, shareholder or LLC member disputes, or other exceptional circumstances.

The Lippes Mathias Cannabis Practice Team will continue to monitor the progress of this case as it relates to the ongoing rollout of New York's adult-use cannabis marketplace and licensing scheme. Should you have any questions, please contact one of our attorneys.

Christopher Fisher, Law Clerk in Lippes Mathias' Buffalo office, assisted in the drafting of this article.

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