

To: New York State Office of Cannabis Management (OCM)
Cc: SBS Commissioner Dynishal Gross; Felicia A. B. Reid, Acting Executive Director – OCM, John Kagia, Director of Policy – OCM
From: Tosin Ajayi, Senior Policy and Research Analyst – Cannabis NYC
Re: NYC Comments on NYS Proposed Regulation of Part 128 & Part 129- Cannabis Packaging, Labeling, Marketing, and Advertising.

Dear OCM Team:

Please find enclosed New York City's updated comments on the [Proposed Amendments to Part 128 and Part 129 - Cannabis Packaging, Labeling, Marketing and Advertising Regulations](#).

Cannabis NYC coordinated this interagency submission as part of our continued commitment to a unified, collaborative approach to supporting the development of the legal cannabis industry. The same agencies that participated in the initial 60-day comment period have reaffirmed their positions and provided updated responses to the newly introduced changes.

We appreciate the opportunity to provide feedback and remain engaged in the regulatory process for cannabis packaging, labeling, marketing, and advertising. The City shares the Office of Cannabis Management's goals of ensuring a successful legal cannabis market—one that promotes safe access for patients and consumers and creates opportunities for justice-involved licensees to thrive.

The agencies contributing to these comments are:

- Cannabis NYC, Department of Small Business Services (Cannabis NYC)
- NYC Department of Health & Mental Hygiene (DOHMH)
- NYC Administration for Children's Services (ACS)

We look forward to continuing to support the state's efforts to build a thriving, equitable, and sustainable legal cannabis market.

Respectfully,



Tosin Ajayi
Senior Policy and Research Analyst, Cannabis NYC

Contents

Part 128.1 – Definitions	3
Part 128.3 – Cannabis Product Packaging Prohibitions.....	8
Part 128.4 – Retail Packaging Sustainability Program	10
Part 128.5 – Cannabis Product Labeling Minimum Standards.....	10
Part 128.6 – Cannabis Product Labeling Prohibitions	15
Part 128.9 – Referenced Material	16
Part 129.2 – Adult-Use Marketing and Advertising General Requirements	16
Part 129.3 – Adult-Use Marketing and Advertising Prohibitions.....	20
Part 129.4 – Outdoor Signs.....	22
Part 129.5 – Adult-Use Marketing and Advertising Violations and Penalties.	22

Guidance for Review

This memo includes four types of comments:

1. **Initial Comments** submitted during the previous 60-day public comment period;
2. **Updated Comments** reflecting feedback on the revised regulations issued during the current 45-day comment period;
3. **Reaffirmed Comments** that have carried over and need to be reiterated; and
4. **New Comments** that address issues not previously raised.

All comments are clearly labeled as **Initial Comment**, **Updated Comment**, **Reaffirmed Comment**, or **New Comment**. Where applicable, Initial Comments are followed by corresponding updated feedback.

Comments from specific City agencies are followed by the relevant agency acronym in parentheses (e.g., **DOHMH**, **ACS**, **Cannabis NYC**).

Please note: Page numbers in purple text throughout pages 3-23 of this document reference OCM’s publications of [Proposed Amendments to Part 128 and Part 129 - Cannabis Packaging, Labeling, Marketing and Advertising Regulations](#), cited on page 1 of this document.

Part 128.1 – Definitions

§ 128.1 Definitions

(Page 1-2)

Subdivision (b) of section 128.1 is amended to read as follows: **(b) Advertisement means any sign, publication, video, use of a brand representative, or any other form of media for the purpose of causing, directly or indirectly, the purchase or use of a brand or any cannabis or cannabis product or service. Advertisements include but are not limited to: websites, social media, print media, broadcast media, TV, radio, streaming media, out of home media, merchandise, discounts, coupons, points-based reward systems, customer loyalty programs, bundled discounts, event sponsorship, brand representatives, street art, murals, and electronic communications.**

- **Initial Comment:** The current definition of “advertisement” raises concerns about clarity and enforceability and we urge OCM to consider defining the scope of this term more precisely. The inclusion of broad and vague categories in the current definition risks creating uncertainty for cannabis business operators and enforcement agents alike. Specifically, the inclusion of “social media” within the definition of advertising merits reconsideration. Social media is a unique and rapidly evolving space, distinct from traditional advertising platforms. Merriam-Webster defines social media as “forms of electronic communication through which users create online communities to share information, ideas, and content.”¹ Given its dynamic nature, social media should be treated separately from other forms of advertising. Platforms like Instagram, which is currently the most popular social media platform for cannabis businesses, already impose strict limitations on cannabis-related content. For example, Meta’s policy explicitly prohibits ads promoting THC products and limits CBD-related promotions to those with prior approval.² Introducing further restrictions through this regulation could hinder the ability of cannabis businesses to engage with their audience and market their products effectively. Moreover, monitoring all cannabis-related social media accounts across the state would be impractical. The potential for businesses to inadvertently violate these rules, especially when unaware of specific restrictions, is high. (Cannabis NYC)

Updated Comment: We remain concerned that the inclusion of “social media” in the definition of “advertisement” continues to present significant challenges, particularly for clarity, enforceability, and practical compliance by licensees. Lack of clarity may lead to

¹ “Social media.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriamwebster.com/dictionary/social%20media>. Accessed 7 Nov. 2024.

² CBD and Related Products | Transparency Center (meta.com)

unintentional noncompliance: If this outcome is not the intent of the regulation, the text should be revised or clarified in guidance to ensure businesses understand what constitutes compliant use of social media. Otherwise, businesses risk unknowingly violating advertising rules, particularly smaller operators and SEE licensees without legal teams or professional marketing support. We recommend the Office to either remove “social media” from the definition of “advertisement” or establish a separate category for “digital and social media promotion” with clear, tailored parameters that reflect the unique nature and constraints of online platforms. Doing so would support transparency, enforcement consistency, and more equitable access to compliant marketing strategies for all licensees. (Cannabis NYC)

(Page 1-2)

Subdivision (c) of section 128.1 is amended to read as follows: (c) *Attractive to individuals under twenty-one* means a cannabis product’s label, package, advertisement, advertising, or marketing that is pleasing or appealing to, or targets, individuals under the age of twenty-one by using or including, among other things: (2) similarities to products, or words that refer to products that are commonly associated with, or marketed in a manner so as to be attractive to, individuals under the age of twenty-one, including but not limited to, any imitation of food, candy, soda, drinks, cookies, or cereal (with the exception of using the name of a cultivar), in labeling, packaging, advertising, or marketing; (3) terms “candy” or “candies” or variants in spelling such as “kandy” or “kandeez” (with the exception of cultivar names); (4) symbols, images, characters, public figures, phrases, toys, or games that are commonly used to market products to individuals under the age of 21; (5) images of individuals who could reasonably appear to be under the age of 21, unless the individual is at least 25 years of age; or (6) audio that may be attractive to individuals under the age of twenty-one, including but not limited to audio using children’s voices or cartoon voices

- **Initial Comment:** With respect to the proposed amendment to remove “bubble-type or other cartoon-like font” and “bright colors that are ‘neon’ in appearance” from the definition of “Attractive to individuals under twenty-one,” the City recognizes the importance of ensuring that licensed businesses are able to build brand awareness and compete with illicit brands, which still have a larger market share of the cannabis consumer demographic. As of September 2024, the Adult-Use market has recorded \$653.9 million in total revenue sales across the state.³ Despite steady revenue growth, New York’s underground cannabis is still estimated to generate over \$1 billion annually.⁴ However, the City also recognizes the public health risks presented by intentional and unintentional cannabis consumption by persons under 21. While overall rates of cannabis

³ [mrta-implementation-report.pdf \(ny.gov\)](#)

⁴ [ACRG-New-York-Illicit-Cannabis-Market-Absorption-Analysis-1.pdf \(q4cdn.com\)](#)

use by minors do not appear to have shifted significantly since legalization,⁵ incidents of Poison Control contacts related to cannabis—including unintentional pediatric ingestion cases—have become far more frequent. This rise may be attributable in part due to increased availability and limited public education on safe cannabis storage, but also in part due to the presence of unlicensed products that share design elements with well-known youth-targeted brands and products, such as bright colors, playful fonts, mascots, and imagery. A large body of research has established a relationship between the inclusion of bright colors and childish lettering in product packaging and marketing, and how attractive it is to a younger audience.^{6,7,8,9,10} OCM must consider the public health consequences of potentially contributing to this trend by also allowing bright colors and bubble/cartoon-like fonts in the legal market. Alternative approaches may be worth considering. For example, if OCM does not believe the existing prohibitions are reasonably enforceable due to the challenge of precisely defining the terms “bubble” or “neon,” an alternative approach could rely upon a robust totality-of-the-circumstances approach to regulating design elements that may be attractive to individuals under 21. Additionally, some risks related to youth consumption can be mitigated through increased public education about safe storage and availability of tamper-proof packaging and lockboxes. If OCM moves forward with this amendment, the Office should also consider refining existing youth protections and enhancing enforcement measures to prevent underage sales. The Cannabis Control Board could also choose to maintain the inclusion of “bubble type or other cartoon like font” and “bright colors that are ‘neon’ in appearance” in the definition of attractive applicable to part 128, and only delete those provisions from the definition applicable to part 129; this would provide licensed retailers greater flexibility in marketing and advertising, without compromising regulations surrounding product packaging and labeling. Additionally, the City would like to propose adding “animations” to § 128.1 (c)(1) to read “(1) cartoons, animations, or mascots;” due to the fact that some individuals may understand “cartoons” and “animations” to be different, and animations may be particularly germane to teens.

Updated Comment: While maintaining strong youth protections is essential, OCM should also consider the need for licensed operators—particularly equity businesses—to build recognizable, competitive brands. Studies have shown that plain packaging

⁵ Youth Risk Behavior Survey : data summary & trends report 2011-2021 (cdc.gov)

⁶ [https://iris.who.int/bitstream/handle/10665/148353/Plain packaging of tobacco products, Evidence Brief \(Eng\).pdf](https://iris.who.int/bitstream/handle/10665/148353/Plain_packaging_of_tobacco_products_Evidence_Brief_(Eng).pdf)

⁷ <https://www.scielo.br/j/csp/a/NgrzmpbQmcfZw6GH3Ds79cF/?lang=en>

⁸ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6288865/>

⁹ <https://www.sciencedirect.com/science/article/pii/S0376871619304107?via%3Dihub>

¹⁰ <https://www.tobaccofreekids.org/plainpackaging/tools-resources/policy/research-evidence>

substantially reduces consumer appeal compared to branded designs.¹¹ While this outcome may limit youth interest, it can also reduce engagement among adults and weaken the competitiveness of licensed products in a market still dominated by unregulated sellers. OCM should therefore pursue a balanced approach that maintains youth safeguards while allowing responsible brand differentiation within the legal market.(Cannabis NYC)

Updated Comment: Brightly colored packaging has been repeatedly associated with greater visual attention, higher appeal, lower perceived harm, and higher willingness to try among adolescents and young children in peer-reviewed published studies.^{12,13} Other states, such as Massachusetts, have taken action to restrict the use of bright colors. See [935 CMR 500.105\(6\)\(b\)](#) (prohibiting cannabis product packaging in Massachusetts from displaying “bright colors, defined as colors that are ‘neon’ in appearance”). (DOHMH)

Reaffirmed Comment: Include "animations." Some understand "cartoon" and "animation" to be different, and animations may be particularly germane to teens. (ACS)

(Page 4)

Subdivision (h) of section 128.1 is amended to read as follows: *Child-resistant* means special packaging for sale to a consumer that is: (1) designed or constructed to be significantly difficult for children under five years of age to open and not difficult for adults to use properly as defined by sections 1700.15 and 1700.20 of Title 16 of the Code of Federal Regulations relating to Poison Prevention Packaging Standards; and (2) follows the packaging standards set forth in Title 16, as it relates to Commercial Practices, of the Codes of Federal Regulations section 1700.15 and the testing procedure set forth in Title 16, as it relates to Commercial Practices, of the Codes of Federal Regulations section 1700.20

New Comment: While child-resistant packaging is critical for safety, it can unintentionally create barriers for older adults and individuals with conditions such as

¹¹ Goodman, S., Hammond, D., & Wadsworth, E. (2019). The impact of plain packaging and health warnings on consumer appeal of cannabis products. *Drug and Alcohol Dependence*, 205, 107633.

<https://doi.org/10.1016/j.drugalcdep.2019.107633>

Cooper, M., & Shi, Y. (2025). Packaging of cannabis edibles, health warning recall, and perceptions among young adults. *JAMA Network Open*, 8(4), e253117. <https://doi.org/10.1001/jamanetworkopen.2025.3117>

¹² Tan ASL, Weinreich E, Padon A, et al. Presence of Content Appealing to Youth on Cannabis-Infused Edibles Packaging. *Subst Use Misuse*. 2022;57(8):1215-1219. doi:10.1080/10826084.2022.2069268

¹³ Drovandi, A., Teague, PA., Glass, B. et al. A systematic review of the perceptions of adolescents on graphic health warnings and plain packaging of cigarettes. 2022; *Syst Rev* 8, 25. <https://doi.org/10.1186/s13643-018-0933-0>

arthritis, lupus, cancer, or others who may struggle with grip strength. These challenges can limit access, particularly for medical consumers.

We recommend OCM consider guidance that balances safety with accessibility, encouraging packaging that is both child-resistant and usable by adults with physical impairments. (Cannabis NYC)

(Page 5)

Subdivision (l) of section 128.1 is amended to read as follows: (l) Health claim means any claim on the retail package or marketing layer or in the marketing or advertising of a cannabis product, that expressly or by implication, including, but not limited to, by "third party" references, written statements (e.g., a brand name including a term such as "heart"), symbols (e.g., a heart symbol), or branding, characterizes the relationship of any cannabis product to a disease or health-related condition or symptom. Implied health claims include those statements, symbols, branding, advertisements, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between the presence or level of a substance in the cannabis product to a disease or health-related condition or symptom.

New Comment: The inclusion of the heart symbol as an implied health claim is overly broad and does not reflect the symbol’s widespread cultural and commercial use. While the heart may be used in clinical contexts, it is also a common symbol of love, emotion, or community, frequently appearing in brand logos, slogans, and general marketing without any reference to health benefits.

For example, a product branded as “I ♥ NY Cannabis” would not be making a health-related claim but rather expressing identity, pride, or connection to place and culture—similar to how heart symbols are used in countless non-health-related industries, including fashion, hospitality, and tourism.

This interpretation risks penalizing licensees for artistic or emotional expression and could result in unnecessary restrictions on branding—especially for small businesses and equity licensees that rely on cultural relevance and storytelling in their marketing. (Cannabis NYC)

(Page 6)

Subdivision (q) of section 128.1 is amended to read as follows: (q) Net quantity means the total net weight or net volume of the cannabis product minus the weight of the packaging and expressed in metric units, as follows: (1) if the product is a solid, semi-solid, or viscous product not otherwise listed in this section, including but not limited to whole cannabis flower, the net weight shall be expressed in grams, or milligrams for weights under one gram; (2) if the product is a pre-roll or a multi-pack of pre-rolls, the net weight shall

include all cannabis components including, but not limited to, the dried cannabis and any concentrates added to the product (e.g. kief, hash, cannabis extract, or other concentrates) and be expressed in grams, or milligrams for weights under one gram, and the net weight shall not include the rolling paper, filter tip, or other non-cannabis components; (3) if the product is in liquid form, the net volume shall be expressed in milliliters; or (4) if the product is a vaporization cartridge or single-use pen, the net weight of the cannabis oil or concentrate shall be the net volume prior to that oil or concentrate's placement in the vaporizer, cartridge, pen, pod, or other device and shall be expressed in grams

- **Initial Comment:** The weight of the filter or tip of a pre-roll should not be included in the net weight shown on pre-roll packaging to prevent confusion about the actual amount of cannabis flower included in the final product. This is particularly relevant when popular pre-roll brands use glass tips, which are significantly heavier than traditional paper filters and a current trend in product development. Consumers should have transparency in understanding how much cannabis they are purchasing versus the non-cannabis materials included in the final product, such as filters and tips. This will benefit both consumers and retailers, fostering greater trust and clarity in the market. (Cannabis NYC)
- **Updated Comment:** We are pleased to see that the revised definition of net quantity now explicitly excludes the weight of the rolling paper, filter tip, and other non-cannabis components. This change directly addresses concerns we raised in our initial comment about consumer confusion and the need for transparency, particularly with the use of heavier components like glass tips in pre-rolls. (Cannabis NYC)

Part 128.3 – Cannabis Product Packaging Prohibitions

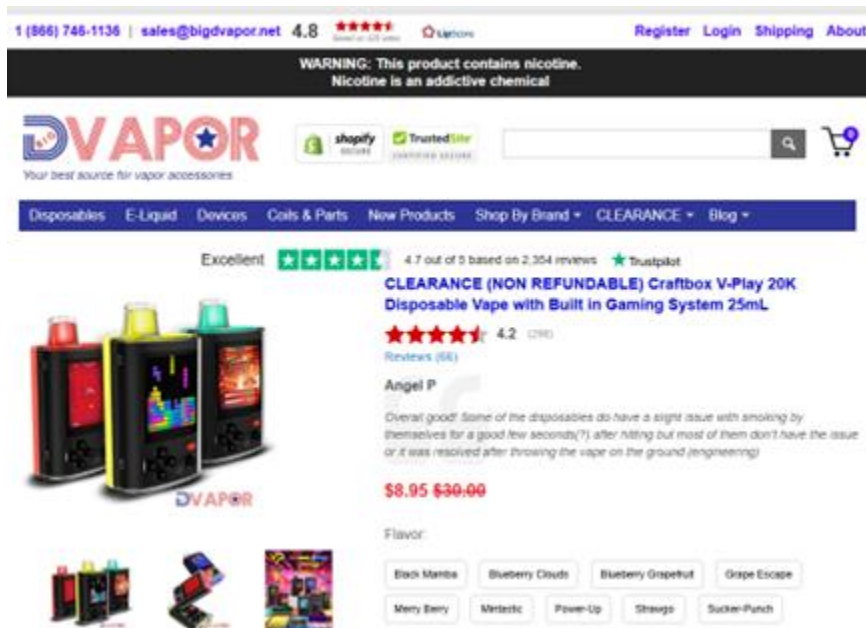
(Page 12-13)

Paragraphs (1) through (3) of subdivision (a) of section 128.3 are amended as follows: (a) Cannabis product packaging shall not: (1) be attractive to individuals under the age of twenty-one as defined in section 128.1 of this Part; (2) be made of plastic, unless containing a minimum 25% post-consumer recycled content provided that: (i) the provisions of this paragraph shall not apply to: (a) plastics deemed necessary to adhere to child resistance requirements, such as push buttons for cardboard boxes or other mechanisms designed to prevent children from opening containers; and (b) items for which no option that utilizes post-consumer recycled content is available. Proof that the licensee had conducted its due diligence in examining packaging alternatives, and that the licensee has found no alternative, must be maintained by the licensee and made readily available to the office

upon request; (ii) new licensees have 12 months from the date of licensure to comply with the 25% minimum post-consumer recycled content requirement and must provide evidence of compliance upon the initial license renewal; and (iii) documentation of compliance with this subdivision shall be made readily available to the office upon request. (3) violate any additional requirements as set out by the office or any other packaging requirements established in any New York State law or regulation.

- **Initial Comment:** Prohibiting packaging features that create sound may inadvertently disadvantage individuals who are blind or visually impaired. Terpenes are critical in the purchase decisions of consumers. Therefore, prohibiting packaging from emitting a scent may limit the ability for brands to add innovative packaging technology to educate consumers. (Cannabis NYC)
- **Updated Comment:** From a substance use prevention perspective, packaging technology that emits scents, sounds, or contains digital displays is also considered a marketing strategy that may increase youth interest or lead to greater adult use, thus increasing the risks associated with cannabis use.¹⁴ Specific prohibitions such as these are simpler to enforce than general requirements to “not appeal to youth.” It is easy to imagine the cannabis industry using devices similar to those for vaping nicotine already on the market (despite lacking FDA marketing authorization) that have built-in gaming systems or digital displays, such as the example below. Accordingly, we urge the Board to add a prohibition on the use of digital displays in product packaging and labeling. (DOHMH)

¹⁴ Ju, H., Lee, H., Choi, J., Kim, S., & Kang, E. (2024). The online promotion strategies of e-cigarette and heated tobacco product retailers in South Korea following the COVID-19 pandemic: Implications for regulation. *Tobacco induced diseases*, 22, 10.18332/tid/178380. <https://doi.org/10.18332/tid/178380>



1. Source: https://www.bigdvapor.net/products/craftbox-v-play-20k-disposable-vape-with-built-in-gaming-system?srsId=AfmBOophwCJKCO9jqXkfrjYLy6ya9Lp0_XR9571kmKxREXqIqqXzG9IC (DOHMH)

Part 128.4 – Retail Packaging Sustainability Program

(Page 14)

Paragraph (b) of subdivision (a) of section 128.4 is amended to read as follows: (b) [Within two years of issuance of the license Upon renewal of the license, [the] a processor, microbusiness, cooperative, RO, ROD, or ROND licensee shall submit to the [Board or] office, in a form and manner determined by the office, an [revised] environmental sustainability product packaging plan that reduces use of plastics in packaging.

- **Reaffirmed Comment:** Consider adding a requirement to demonstrate compliance with the existing environmental sustainability program pre-renewal. (ACS)

Part 128.5 – Cannabis Product Labeling Minimum Standards.

(Page 17-20)

Subdivision (b) of section 128.5 is amended to read as follows: (b) The retail package or, if it is used, the marketing layer shall contain the following information:

- **New Comment:** The NYC Health Department recommends adding the following information to subsection 128.5(b) for those who may not know what the QR code or scannable bar code on the label represents: “A statement that the product has been tested for contaminants and to scan the QR (or bar) code for more information.” Massachusetts has a similar requirement under [935 CMR500.105\(5\)\(a\)6](#), p. 73. (DOHMH)

(Page 20)

Newly renumbered paragraph (7) of subdivision (b) of section 128.5 is amended to read as follows: (7) clear usage instructions, except for cannabis products intended for inhalation;

- **Initial Comment:** OCM should consider the public health implications of removing the requirement to include usage instructions for cannabis products intended for inhalation on the principal packaging display panel. Consumer education on proper product use is an important component of safety and harm reduction efforts, especially for products that require the use of an open flame or an electrical heating element, as is the case for inhalable cannabis products. As an alternative to a mandate to include business-defined usage instructions on inhalation-based products, OCM could consider issuing guidance for what these instructions may or may not include or produce its own instructions that businesses must use or direct consumers to. (DOHMH)

(Page 20)

Subdivision (c) of section 128.5 is amended to read as follows: (c) Required labeling shall be no smaller than 6-point font size. Font size must be maintained when printed on the label. All content required by this Part shall be clearly written or printed and in the English language using text that contrasts from the background. In addition to the required labeling in English, licensees may include accurate foreign language translation(s) of the labeling text, provided such translation otherwise complies with this Part.

- **Reaffirmed Comment:** Consider increasing to 8-point font. 6-point font can be difficult to read, even for those with perfect vision. (ACS)

(Page 21)

Subdivision (f) of section 128.5 is amended to read as follows: (f) The retail package or, if it is used, the marketing layer, shall contain the following warnings, provided however, if the word “warning” is clearly associated with all warnings as a header then the word “warning” does not need to be included in the individual warnings where specifically

indicated below: (1) “This product contains cannabis and THC”; 2) “KEEP OUT OF REACH OF CHILDREN AND PETS. For use only by persons 21 years of age and older”;

- **Reaffirmed Comment:** Consider adding why cannabis products should be kept out of reach of children; the potential consequences of unintended ingestion; that it is illegal for children to be in possession of the product; and, where to go for help if cannabis is inadvertently ingested by children or pets. For example, “Unintentional consumption by children can lead to poisoning, difficulty breathing, excessive sleepiness and other health concerns. It is also illegal for children to possess this product (unless they are a certified patient under law). If unintentional consumption is suspected, contact the Poison Center.” Retail packaging should include warnings like those required for advertising (see *e.g.*, Section 129.2) (ACS)
- **New Comment:** The NYC Health Department recommends adding the signal word “Warning:”, or a similar signal word (*e.g.*, “Caution,”) to the beginning of the warning message under 128.5(f)(1) to ensure it is not overlooked as general packaging or marketing text in instances where “Warning” is not included as a header. This recommendation is consistent with text under 128.5(f)(3), which also includes “Warning:” at the start of the statement. Requiring this signal word will improve consumer attention and recall. It also aligns with federal tobacco and alcohol-related precedents. While warning symbols increase attention, research has found that they do not communicate risk severity as effectively as signal words. Including both the warning symbol and signal word on cannabis products improves consumer awareness and understanding.¹⁵ Given the rapid expansion of the cannabis industry and declining perception of harm, NYS’s cannabis warning messaging would benefit from including a signal word to improve public understanding of health risks and to prevent youth use.

Therefore, the NYC Health Department recommends the following amendments to the warnings listed in subsection 128.5(f):

- (1) "This product contains cannabis and THC." to: “Warning: This product contains cannabis and THC. The higher the THC, the greater the risk of adverse effects.”

We also recommend adding a new message under this subsection: “This product has not been analyzed or approved by the FDA.” FDA evaluation of helps inform consumer decision about a cannabis product’s safety, effectiveness, and potential health risks.¹⁶

¹⁵ Massey, Zachary B et al. “A systematic review of cannabis health warning research.” *Prev Med Rep* vol. 37 102573. 23 Dec. 2023, doi:10.1016/j.pmedr.2023.102573

¹⁶ U.S. Food and Drug Administration. ‘What You Need to Know (And What We’re Working to Find Out) About Products Containing Cannabis or Cannabis-derived Compounds, Including CBD,’ Consumer Updates, NYC Public Comments –Proposed Regulation of Part 128 & Part 129- Cannabis Packaging, Labeling, Marketing, and Advertising

Massachusetts requires inclusion of similar messaging (see Massachusetts cannabis regulations at 935 CMR 500.105.6, 105.7). (DOHMH)

(Page 22)

Subdivision (g) of section 128.5 is amended to read as follows: (g) In addition to the required warnings in subdivision (f) of this section, the retail package or marketing layer shall include any one of the following rotating health warnings as determined by the office:
(1) “Cannabis can be addictive.”;

Reaffirmed Comment: Health warnings on cannabis packaging are an important component of public education, public health, and safety. However, the statement “Cannabis can be addictive” alone is potentially misleading. Cannabis is not inherently addictive, but there is a risk of dependence, particularly with frequent or long-term use. A recent 2023 study revealed evidence that cannabis legalization and increased adult consumption has had limited effects on a wide range of adult psychiatric outcomes.¹⁷ However, more research is required. OCM should consider modifying the language to reflect that addiction is associated with overuse. More precisely “Cannabis can be addictive if overused,” would inform consumers of the potential risks without overstating the likelihood of addiction for the general population. (Cannabis NYC)

New Comment: While we appreciate the addition of specific warning statements in the new subsection 128.5(g), we believe “can” and “may” are too weak in most of these statements. A similar Canadian warning statement explains when it can by adding, “The higher the THC, the greater the risk.”¹⁸ The growing body of evidence leaves little doubt that there *are* health risks associated with cannabis consumption and that use *does* impair concentration. A recent review of the literature found strong evidence of acute effects on attention, memory, motor coordination, and social cognition as well as chronic effects on learning and memory.¹⁹ These risks should not be asserted, not simply suggested. As such, the NYC Health Department recommends the following changes:

Accessed Sep 17, 2025, <https://www.fda.gov/consumers/consumer-updates/what-you-need-know-and-what-were-working-find-out-about-products-containing-cannabis-or-cannabis>

¹⁷ Zellers SM, Ross JM, Saunders GRB, et al. Recreational cannabis legalization has had limited effects on a wide range of adult psychiatric and psychosocial outcomes. *Psychological Medicine*. 2023;53(14):6481-6490. doi:10.1017/S0033291722003762

¹⁸ Government of Canada. Cannabis health warning messages. Accessed 9/15/25 from <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/laws-regulations/regulations-support-cannabis-act/health-warning-messages.html>

¹⁹ Queiroz, A. P. S., Pozzolo Pedro, M. O., Waisman Campos, M., Torres, J., Ventriglio, A., & Castaldelli-Maia, J. M. (2025). Cognitive Effects of Cannabis Use: A Comprehensive Review Across Domains. *Neurology international*, 17(7), 107. <https://doi.org/10.3390/neurolint17070107>

NYC Public Comments –Proposed Regulation of Part 128 & Part 129- Cannabis Packaging, Labeling, Marketing, and Advertising

- (1) “Cannabis can be addictive. The higher the THC, the greater the risk.”²⁰;
 - (2) “Cannabis ~~use can~~ impairs concentration and coordination. Do not operate a vehicle or machinery under the influence of cannabis.”;
 - (3) “There are ~~may be~~ health risks associated with consumption of this product.”;
- or

The NYC Health Department also recommends adding the following message under updated subsection 128.5(g): “For products intended for smoking: “Warning: Cannabis smoke is harmful. Cannabis smoke contains tar and cancer-causing chemicals.”” Research indicates that cannabis smoke contains carcinogens and toxic compounds similar to those found in tobacco smoke, which may increase the risk of lung- and heart-related problems.²¹ Exposure to secondhand cannabis smoke has been shown to result in detectable levels of cannabinoids in non-smokers, including mild physiological and cognitive effects.²² Similar health warning messaging for exposure to cannabis smoke is required for cannabis products intended to be smoked in California and Canada.^{23,24} (DOHMH)

(Page 23-24)

Paragraph (3) of subdivision (h) of section 128.5 is amended to read as follows: (h) The warnings required pursuant to subdivision (f) and subdivision(g) of this section shall be displayed: (3) in text no smaller than 6-point font size.

- **Reaffirmed Comment:** Same comment as in section 128.5(c). (ACS)

(Page 23-24)

²⁰ Petrilli K, Ofori S, Hines L, Taylor G, Adams S, Freeman TP. Association of cannabis potency with mental ill health and addiction: a systematic review. *Lancet Psychiatry*. 2022;9(9):736-750. doi:10.1016/S2215-0366(22)00161-4

²¹ Graves BM, Johnson TJ, Nishida RT, et al. Comprehensive characterization of mainstream marijuana and tobacco smoke. *Sci Rep*. 2020;10(1):7160. Published 2020 Apr 28. doi:10.1038/s41598-020-63120-6

²² Herrman ES, Cone EJ, Mitchell JM, et al. Non-smoker exposure to secondhand cannabis smoke II: Effect of room ventilation on physiological, subjective, and behavioral/cognitive effects. *Drug Alcohol Depend*. 2015;151:194-202.

²³ Office of Environmental Health Hazard Assessment. *Regulations on Proposition 65 Title 27, Division 4, Chapter 1, Articles 1 through 9*. California Environmental Protection Agency, 20 Apr. 2025, https://oehha.ca.gov/sites/default/files/media/2025-04/OEHHA%20P65%20Regulations%20042025_1.pdf

²⁴ Health Canada. *Health Warning Messages for Cannabis Products*. Part 1. Government of Canada, 2025, <https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/laws-regulations/regulations-support-cannabis-act/health-warning-messages.html>

Subparagraph (ii) of paragraph (3) of subdivision (i) of section 128.5 is amended to read as follows: (ii) In all capital letters as indicated: “KEEP OUT OF REACH OF CHILDREN AND PETS. For use only by persons 21 years of age and older”.

- **Initial Comment:** Same comment as above regarding Section 128.5(f)(2) on additional language, particularly specifying the harm to children, which should be included even where the packaging is small. (ACS)
- **Updated Comment:** Recommend adding why cannabis products should be kept out of reach of children, potential consequences of unintended ingestion, that it is illegal for children to be in possession of the product, and where to go for help. For example, “Unintentional consumption by children can lead to poisoning, difficulty breathing, excessive sleepiness and other health concerns. It is also illegal for children to possess this product (unless they are a certified patient under law). If unintentional consumption is suspected contact the Poison Center.” Retail packaging should include warnings similar to those required for advertising (*see e.g.*, Section 129.2) (ACS)

Part 128.6 – Cannabis Product Labeling Prohibitions

(Page 20)

Paragraph 12 of subdivision (a) of Section 128.6 is amended to read as follows: (a) No cannabis product package, including an exit package, shall display any content or be labeled in any manner that: [(12) promotes price, price reductions, or any other discount, customer loyalty program, or coupon, except as part of an environmental sustainability program pursuant to Section 128.4(a) of this Title or otherwise approved by the office;]

- **Reaffirmed Comment:** With respect to the proposed amendment to allow cannabis product packaging to promote price reductions and discounts, such amendment has the potential to make legal cannabis more affordable and accessible, encouraging established cannabis consumers to transition from the unlicensed market to the licensed adult-use market. Research shows that consumers are more likely to choose legal cannabis when prices are competitive, and access is convenient.²⁵ However, it is also important to assess the public health implications of allowing price reductions and loyalty programs within the adult-use market. Loyalty programs may encourage over-purchasing and over-consumption of adult-use cannabis products. Lifting the ban on these programs may spark counterproductive interest in extending these types of programs in other markets, such as tobacco and alcohol. Introduction of discounts and loyalty programs to the adult-use

²⁵ [Cannabis consumers’ preferences for legal and illegal cannabis: evidence from a discrete choice experiment](#)
NYC Public Comments –Proposed Regulation of Part 128 & Part 129- Cannabis Packaging, Labeling, Marketing, and Advertising

cannabis market would depart from hard-won tobacco control measures, which may encourage the tobacco lobby to argue unfair treatment compared to the cannabis industry and advocate for resumed access to similar techniques. Any move to permit price reductions and loyalty programs in the adult-use market should be accompanied by additional regulations to clarify the bounds of acceptable program designs, to prevent businesses from adopting inappropriate models – *e.g.*, those that risk encouraging overconsumption or may include features that are attractive to children. On the other hand, the proposed amendment to allow packaging content that promotes price reductions and loyalty programs appears to have greater merit in the medical cannabis market, provided it is supplemented by additional regulatory controls to ensure it does not sponsor over-purchasing and over-consumption. Medical cannabis enrollees have historically cited cost as a barrier to obtaining medical cannabis. Until cannabis is removed from Schedule I under the Controlled Substances Act and added to health insurance plans’ formularies, price-reduction or cost-sharing initiatives may be an effective way to protect individuals’ access to clinically recommended treatment.

- **Reaffirmed Comment:** Consider not removing the current section 128.6 (a)(12) which covers packaging that “promotes price, price reductions, or any other discount, customer loyalty program, or coupon, except as part of an environmental sustainability program pursuant to Section 128.4(a) of this Title or otherwise approved by the office;”. There is concern that permitting these marketing tactics can lead to overconsumption. (ACS)

Part 128.9 – Referenced Material

(Page 27)

Section 128.9 is amended to read as follows: Regulations included in Part 128 of this Title contain references to documents for information as to the standards to be met or guidelines and methodologies to be used in meeting the requirements of specific regulations. In addition, copies of referenced materials are available for public inspection and copying at the Albany office of the New York State Department of State.

- **New Comment:** Consider referencing 9 NYCRR 123.10(d), which includes age verification protocols for retailers, in these regulations (parts 128 and 129) so it's clear these packaging/marketing requirements are in addition to those requirements. (ACS)

Part 129.2 – Adult-Use Marketing and Advertising General Requirements

(Page 30-31)

Paragraph (9) of subdivision (b) of section 129.2 is amended to read as follows: **(b) Any advertising and marketing of cannabis and cannabis products or services shall not (9) make medical claims or promote adult-use cannabis for a medical or wellness purpose, including but not limited to any claims or representations that the use of cannabis has curative or therapeutic effects;**

- **New Comment:** Including “wellness” in the prohibition against medical claims is overly broad and risks restricting common, culturally accepted associations between cannabis and wellness activities like yoga, relaxation, or improved sleep. “Wellness” is a subjective and widely used marketing term across industries—from teas to spa products—and is not synonymous with a medical claim. Under the current definition of “advertisement,” even referencing cannabis use alongside wellness practices could be considered a violation. Unless clearly defined, “wellness” should not be treated the same as a medical claim. (Cannabis NYC)

(Page 34-35)

Paragraphs (1-2) of subdivision (c) of section 129.2 is amended to read as follows: **(c) Any advertising or advertisement, except for brand representatives and cannabis merchandise, or except as otherwise approved by the office, must include one of the following warning statements: (1) if the advertising or advertisement contains only visual elements or a combination of audio and visual elements, the following warning statement shall be either included in a conspicuous manner on the face of the advertising or advertisement or clearly read aloud at the same volume and pace and in the same language as the rest of the advertising or advertisement: “For use only by persons 21 years of age and older. Keep out of reach of children and pets. If someone accidentally consumes cannabis, contact the Poison Center. Consume responsibly.”; or (2) if the advertising or advertisement contains only auditory elements, the following warning statement shall be clearly read aloud at the same volume and pace and in the same language as the rest of the advertising or advertisement: “For persons 21 and older. Keep away from children and pets. If cannabis is accidentally consumed, contact the Poison Center.”**

- **Reaffirmed Comment:** OCM should consider revising this requirement to allow for flexibility in how voiceover warnings are conveyed, provided they remain clear and understandable to the target audience, which is consistent with requirements for other industries. (Cannabis NYC)

- **Reaffirmed Comment:** Removing Poison Control Center (PCC) contact information from cannabis advertising raises public health concerns. Although PCC contact information can be found via an online search, we do not expect all individuals to always have access to an internet enabled device at the time of an emergency or know what to search on it in order to find the PCC phone number. While visual and audio advertisements are limited in terms of printable area or time duration, the phrase “at 1-800-222-1222” is a relatively short phrase compared to the larger required statement and provides valuable information. The PCC is an important resource that is frequently used by individuals who have concerns about the quantity or effects of cannabis they (or someone else, including their children) has consumed. As mentioned above, rates of unintentional cannabis exposure among youth have increased dramatically both in NYC and nationally in recent years, particularly for unintentional consumption of cannabis edibles, often resulting in PCC involvement. As such, OCM should consider the public health implications of allowing businesses to omit the PCC contact information in their required statements. (DOHMH)
- **Reaffirmed Comment:** Same comment as above regarding Section 128.5(f)(2) (ACS).

(Page 35-36)

Paragraph (1-4) of subdivision (d) of section 129.2 is amended to read as follows: **(d) Any advertising or advertisement, except for audio-only advertising or advertisements, brand representatives, and cannabis merchandise, or except as otherwise approved by the office, shall include one of the following warnings in a rotating manner as directed by the office, in their entirety in a conspicuous manner on the face of the advertising or advertisement or clearly read aloud at the same volume and pace and in the same language as the rest of the advertising or advertisement: (1) "Cannabis can be addictive."; (2) "Cannabis can impair concentration and coordination. Do not operate a vehicle or machinery under the influence of cannabis." (3) "There may be health risks associated with consumption of this product."; (4) "Cannabis is not recommended for use by persons who are pregnant or nursing."; or**

- **Reaffirmed Comment:** See comment to Section 128.5(g)(1) above. (Cannabis NYC)
- **New Comment:** The NYC Health Department recommends adding the word “Warning:”, or a similar signal word (*e.g.*, “Caution,”), to the beginning of the warning messages under 129.2(d)(1) - (4). This is a well-established public health and legal practice that ensures health risks are noticed and cannot be mistaken for marketing text. Signal words improve consumer attention and recall and align with federal tobacco and alcohol-related precedents. Given the rapid expansion of the cannabis industry and

declining perception of harm, NYS’s cannabis warning messaging would benefit from including a signal word to improve public understanding of health risks and to prevent youth use.

We also request amending the warning messages for § 129.2(d)(1) and (4) as follows (new text is underlined):

(1) From “Cannabis can be addictive.” to “Warning: Cannabis can be addictive. The higher the THC, the greater the risk.”²⁶

(4) From “Cannabis is not recommended for use by persons who are pregnant or nursing.” to “Warning: Do not use if pregnant or nursing.”

We also recommend adding the following new warning messages to 129.2(d) for inclusion in a rotating manner:

“Warning: This product has not been analyzed or approved by the FDA.”

For products intended for smoking: “Warning: Cannabis smoke is harmful. Cannabis smoke contains tar and cancer-causing chemicals.” (DOHMH)

(Page 36)

Paragraph (3) of subdivision (e) of section 129.2 is amended to read as follows: (e) Warnings pursuant to subdivisions (c) and (d) of this section shall be displayed as follows if printed or otherwise written on the advertising or advertisement: (3) in text no smaller than 6-point font size;

- **Reaffirmed Comment:** Same comment as in section 128.5(c).(ACS)

(Page 39)

Subdivision (m) of section 129.2 is amended to read as follows: (m) A licensee advertising on any social media platform shall include the following information clearly visible on the profile page of the social media account, unless otherwise restricted by the social media platform advertising standards, guidelines, policies, or terms: (1) text stating that cannabis products are legal only for adults twenty-one years of age or older; (2) the licensee’s name, entity name, or doing business as name; (3) the license or permit number of the licensee; and (4) any other information as requested by the office

²⁶ Petrilli K, Ofori S, Hines L, Taylor G, Adams S, Freeman TP. Association of cannabis potency with mental ill health and addiction: a systematic review. Lancet Psychiatry. 2022;9(9):736-750. doi:10.1016/S2215-0366(22)00161-4
NYC Public Comments –Proposed Regulation of Part 128 & Part 129- Cannabis Packaging, Labeling, Marketing, and Advertising

- **Reaffirmed Comment:** OCM should consider that the requirement to include all the specified information on the profile page of social media accounts may present practical challenges. For example, Instagram only allows 150 characters for a profile bio. There is a significant risk that businesses may inadvertently violate these rules due to these type of platform restrictions or a lack of awareness about specific requirements. OCM should consider consulting with their internal digital communications team and/or working closely with social media platforms to ensure that regulatory guidelines are feasible and flexible, so long as the required information is clearly visible. (Cannabis NYC)
- **Reaffirmed Comment:** The warning discussed in the comment above re Section 128.5(f)(2) should be included in social media platform advertising as well. (ACS)

Part 129.3 – Adult-Use Marketing and Advertising Prohibitions.

- **Reaffirmed Comment:** Same comment as in paragraph 12 of section 128.6(a) (Cannabis NYC)
- **New Comment:** We conditionally agree with the amendment to allow packaging content that promotes price reductions, with the provision that it be allowed within the medical cannabis market only and be supplemented by additional regulatory controls to ensure it does not sponsor over-purchasing and over-consumption, but oppose the legalization of loyalty programs and points-based rewards systems.

We agree that discounts would be an effective mechanism to expand medical cannabis access to patients with documented financial need. Medical cannabis enrollees have historically cited cost as a barrier to obtaining medical cannabis. Until cannabis is removed from Schedule I under the Controlled Substances Act and added to health insurance plans' prescription coverage formularies, price-reduction or cost-sharing initiatives may be an effective way to protect individuals' access to clinically recommended treatment. Other states that permit discount programs for medical cannabis, particularly California, have established medical cannabis discount programs that would significantly benefit low-income patients if replicated in New York. Allowing discounts for medical cannabis would increase commonalities with the broader pharmaceutical industry, which already provides drug discounts to patients via mechanisms such as discount cards, coupons, and discount/savings programs for patients who are low income or have no insurance. However, we remain concerned about allowing loyalty programs to be used by medical cannabis dispensaries due to the risk of inappropriately incentivizing overconsumption.

We oppose the removal of a ban on discounts and loyalty programs in the adult-use market, however, out of concern that they may encourage over-purchasing and over-consumption of adult-use cannabis products. Though there is limited research on this topic for cannabis specifically, researchers have identified a correlation between discounting schemes and over-consumption or youth use in the tobacco and alcohol industries.^{27,28,29} For these reasons, price reduction schemes are heavily regulated for tobacco and alcohol, expressly to prevent over-consumption, youth use, and other public health risks. Introduction of discounts to the adult-use cannabis market would depart from these hard-won tobacco and alcohol control measures. We are concerned that allowing discounts for adult-use cannabis may encourage the tobacco lobby to argue unfair treatment compared to the cannabis industry and advocate for resumed access to similar techniques.

If the Cannabis Control Board does indeed move forward with permitting price reduction mechanisms in the adult-use market, we urge the Board to issue additional regulations to clarify the bounds of acceptable program designs, to prevent businesses from adopting inappropriate models – *e.g.*, those that risk encouraging over-consumption or may include features that are attractive to youth. For example, we appreciate the Board’s proposal that price reductions do not result in the sale of cannabis products below market value, and we support the issuance of additional guidance on price reduction limitations. (DOHMH)

(Page 43)

Subdivision (b) of section 129.3 is amended to read as follows: (a) Licensees may advertise using outdoor signs provided that: (b) A licensee may advertise price reductions or any other discount, coupons, points based reward systems, customer loyalty programs, or bundled discounts for adult-use cannabis products provided that:

- **Updated Comment:** Same comment as above regarding removing the current Section 128.6(a)(12) prohibition and permitting this type of advertising (concern that it may lead to overconsumption). (ACS)

²⁷ Corrigan JR, Hackenberry BN, Lambert VC, Rousu MC, Thrasher JF, Hammond D. Estimating the price elasticity of demand for JUUL E-cigarettes among teens. *Drug Alcohol Depend.* 2021;218:108406. doi:10.1016/j.drugalcdep.2020.108406

²⁸ Elder RW, Lawrence B, Ferguson A, et al. The effectiveness of tax policy interventions for reducing excessive alcohol consumption and related harms. *Am J Prev Med.* 2010;38(2):217-229. doi:10.1016/j.amepre.2009.11.005

²⁹ Ding A. Youth are more sensitive to price changes in cigarettes than adults. *Yale J Biol Med.* 2003;76(3):115-124.

Part 129.4 – Outdoor Signs.

(Page 44)

Paragraphs (1-2) of subdivision (a) of section 129.2 is amended to read as follows: (a) Licensees may advertise using outdoor signs provided that: (1) no billboard shall be used to advertise or market cannabis or any cannabis product or service; (2) such outdoor signs contain only the following information: (i) licensee’s name, entity name, or doing business as name; 45 (ii) dispensary address, if any, and licensee’s phone number, email address, and website URL; (iii) directions to the business; and (iv) the licensed activity;

- **New Comment:** Billboards are a common, cost-effective tool—especially for small businesses—to build visibility and drive sales. OCM should ensure consistent enforcement statewide. There's a growing perception that billboard restrictions are enforced more strictly in NYC than in other regions across the state, creating an uneven playing field. Clear, uniform guidance is needed to ensure fairness and transparency across jurisdictions. (Cannabis NYC)
- **New Comment:** The varied definitions raise concerns about the volume of advertising that will be permitted within 100 yards of a licensee or event. Using the proposed definition, city blocks containing a licensed establishment could be blanketed with cannabis ads on 55 square foot posters, murals or more traditional billboards. Marketing exposure and proximity to retailers with storefront signage are associated with cannabis use,^{30,31} and frequent exposure to billboards has been found to be associated with higher risk of cannabis use disorder among youth.³² (DOHMH)

Part 129.5 – Adult-Use Marketing and Advertising Violations and Penalties.

(Page 46-47)

³⁰ Grigsby, T. J., Lopez, A., Albers, L., Rogers, C. J., & Forster, M. (2023). A Scoping Review of Risk and Protective Factors for Negative Cannabis Use Consequences. *Substance abuse : research and treatment*, 17, 11782218231166622. <https://doi.org/10.1177/11782218231166622>

³¹ Han, B., & Shi, Y. (2023). Associations of recreational cannabis dispensaries' availability, storefront signage and health benefit signs with cannabis use: findings from a representative adult sample in California, United States. *Addiction (Abingdon, England)*, 118(7), 1270–1279. <https://doi.org/10.1111/add.16132>

³² Trangenstein, P. J., Whitehill, J. M., Jenkins, M. C., Jernigan, D. H., & Moreno, M. A. (2021). Cannabis Marketing and Problematic Cannabis Use Among Adolescents. *Journal of studies on alcohol and drugs*, 82(2), 288–296. <https://doi.org/10.15288/jsad.2021.82.288>

Subdivision (c) of Section 129.5 is amended to read as follows: (c) The [O]office may take any action against any licensee who fails to comply with this Part, including but not limited to recommendations to the [B]board for suspension, cancellation, or revocation of a license, imposition of any fees or fines, requiring a licensee to cease by a date determined by the [O]office the noncompliant marketing, [and] advertising or advertisement, and requiring removal by a date determined by the [O]office of any marketing, advertising or advertisement, still being published or displayed, and any other penalties set forth in Cannabis Law and Part 133 of this Title.

- **Re-Affirmed Comment:** OCM should consider providing details in this section on an appellate process to ensure that due process is upheld for licensees facing enforcement actions of any kind. Additionally, OCM should also consider clarifying that the office may only take any *lawful* action against a licensee who fails to comply. Including the term “lawful” reinforces the importance of adhering to legal standards and ensures that licensees know that any enforcement actions are conducted within the bounds of the law. (Cannabis NYC)