

## **Clearing Confusion over Hemp in New York State**

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- Melissa:** Hi, my name is Melissa Pheterson and I am your host for today's episode. Our Cannabis Industry Team at Harris Beach monitors development in medical and recreational marijuana across New York State. In late October, the New York Department of Health released a slate of long-awaited proposed regulations for the hemp industry. The regulations attempt to fill in the gaps of the Hemp Bill signed by Governor Cuomo in January, which left many growers and processors confused about how they should proceed. I'm here with Meaghan Feenan, a member of our Cannabis Industry Team at Harris Beach, to discuss the most notable and actionable regulations. Welcome to the podcast Meaghan.
- Meaghan** Thank you for having me.
- Melissa:** So first off, can you discuss why hemp is such a heavily regulated product in New York and New York State's overall stance toward the industry?
- Meaghan:** Sure, so hemp contains what are called cannabinoids. The most well-known cannabinoids are tetrahydrocannabinol or THC, which is found in marijuana and cannabidiol or what has come to be known as CBD. THC has been heavily regulated, as it's been considered a harmful recreational drug for years and hemp sort of got lumped into that drug class category. Only recently did the federal government decriminalize hemp, but it will continue to be heavily regulated on the state level for at least the foreseeable future.
- Melissa:** Now, the New York State Department of Health recently released draft regulations authorized by the New York Hemp Bill. What are the most significant proposed regulations for hemp?
- Meaghan:** So, for background, as we discussed in a previous podcast, the Governor signed the Hemp Bill as it's colloquially being called, last January of 2020. That Bill stated that hemp manufacturers, growers and retailers were going to have to obtain licenses in order to do business in New York and authorized the Department of Health and the Department of Agriculture and Markets to draft regulations detailing what those licenses would look like. On October 27, the Department of Health finally released its proposed regulations. The regulations create two application formats, one for processors or manufacturers and one for retailers. As part of that

application, processors will be required to retain a third-party auditor to provide proof of good manufacturing practices, or GMP, as it's called, which is a federal term and standard for manufacturing. Processors will have to test a statistically significant amount of products, per batch, submit monthly data to the Department of Health and maintain a Certificate of Analysis from labs for each batch, indicating that the batch does not contain more than .3% THC. Processors that are also extracting THC or CBD from hemp, face additional fees and requirements. As part of their application, retailers will have to certify that certain requirements on what they can and cannot sell. These requirements are fairly strict. Cannabinoid hemp can't be sold in a product containing alcohol, cannot be in the form of an injectable, transdermal patch, inhaler, suppository or flower products. The Department's proposed restriction on hemp flower products is pretty big news for the industry. That means that retailers won't be able to sell cigarettes, [inaudible], or cigars containing hemp under these proposed regulations. Retailers also can't sell hemp as an additive to food or beverages at the point of sale. The hemp product must be prepackaged, which means that customers won't be able to add a CBD shot to their coffee or their smoothie at the counter. There are even stricter requirements for hemp inhalables, like vape pens, and no hemp products can be sold to anyone under the age of 21. So as directed under the terms of the Hemp Bill, the proposed regulations also create specific packaging and advertising requirements. Hemp products must contain a nutritional or supplement fact panel, an expiration date, a batch or lot number, the name of the processor or out-of-state manufacturer, a scanable barcode or QR code, linked to a downloadable Certificate of Analysis for that particular batch, and a means for reporting any negative side effects. Packaging must include conscious health and safety warnings and cannot make any curative health claims or lead a reasonable customer to believe the product is marijuana or medical marijuana. Starting on June 1, 2021, inhalable cannabinoid products, like vape pens, must include a Department of Health approved symbol of some kind. Now we don't know what that symbol looks like, it hasn't been released yet, but it's something that manufacturers will have to keep an eye on. Both in-state and out-of-state manufacturers will have to make sure that all of these packaging requirements are met to be able to sell in New York. The Department of Health's hardline approach to advertising cannabinoid products parallels their regulations for advertising tobacco products, *i.e.*, under these regulations, the Department may require retailers to keep cannabinoid products separate from other products and out of the reach of children and ban any advertising targeted toward people under the age of 21.

**Melissa:** When you were describing those regulations, I was gonna say it reminded me a lot of the tobacco regulations.

**Meaghan:** Sure.

**Melissa:** So are there any requirements on laboratories testing hemp products?

**Meaghan:** Yes. To be recognized as a cannabinoid testing lab by the Department of Health, the lab must maintain certain credentials and accreditations for the testing of cannabinoid, heavy metals, pesticides and other chemicals that they might come across. The lab must be able to confirm that the THC concentration for each batch does exceed .3%, which is the standard for legal hemp, set by the federal government. All labs will have to produce a Certificate of Analysis, that I mentioned before, for each batch they test and that Certificate must be accessible to consumers.

**Melissa:** For transparency.

**Meaghan:** Yes, absolutely. That seems to be a priority for the Department of Health.

**Melissa:** Now, do the proposed regulations prioritize hemp products grown in New York State?

**Meaghan:** The regulations appear to reserve the ability of the Department of Health to set standards and requirements above and beyond what's in these draft regulations and products that meet those elevated standards will be called New York hemp products and may have a particular symbol or sticker on their advertising. Now it's not clear from these proposed regulations what those requirements will be or when the Department will release them. So, in the meantime, the regulations do permit interstate transfer of hemp as long as the out-of-state processor can produce a Certificate of Analysis, similar to what's being required in New York. This is a big win for the cannabis industry, especially for the surrounding state of New York, as past versions of the Hemp Bill included a ban on out-of-state cannabis products.

**Melissa:** Well that's interesting. Are the penalties for noncompliance significant?

**Meaghan:** Yes. No, no criminal charges, but violators will face civil penalties. Noncompliant businesses will face a \$1,000 fine for their first violation, \$5,000 fine for their second, and \$10,000 fine for the third, and each violation thereafter, within a three year period. If the licensee refuses to comply with the Department's regulations, or willfully neglects to do so, the Department may limit, suspend or revoke their license.

**Melissa:** So, pretty significant. What kinds of businesses or industries most need to be aware of these new regulations, and why?

**Meaghan:** Any manufacturer, extractor, distributor or retailer who is working with hemp, needs to be aware of these regulations. It's important to note that New York has not had this level of control over hemp businesses until now, so this will be a major shift for anyone producing or selling hemp in New York. Before the Hemp Bill and these regulations, for example, CBD could be purchased virtually anywhere, from a farm-to-table shop, to your

grocery store, to your local Seven Eleven. These new regulations change all of that. And it's important to note that the regulations that we're discussing today are proposed draft regulations. So they will be posted in the State Registrar on November 10, and interested parties will have until January 11, 2021 to submit comments. So it's possible that the proposed regulations could change a bit, based on interested party commentary.

**Melissa:** And one final question on this topic, how can Harris Beach help processors, growers and businesses in light of these proposed regulations or any other issues they might face?

**Meaghan:** So the great thing about our Cannabis Industry Team is that the team is made up from attorneys from practice groups around the firm at every single office in New York and we have a lot of experience working with regulatory authorities to get entities licensed. We can help manufacturers, processors, retailers and laboratories alike to work through these regulations to make sure they're in compliance with New York requirements and if interested in submitting comments, we can also help you draft and submit those by the January 11, 2021 deadline.

**Melissa:** Thank you Meaghan for joining us to review these proposed hemp regulations and how Harris Beach can support regulatory compliance. To get in touch with Meaghan and learn more, visit the Harris Beach Cannabis Industry page at [Harrisbeach.com/industry/cannabis](https://harrisbeach.com/industry/cannabis).

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