



New York Farm Bureau • 159 Wolf Road • Suite 300 • Albany, New York 12205 • (518) 436-8495 Fax: (518) 431-5656

January 8, 2021

Katherine Ceroalo
DOH, Bureau of Program Counsel
Reg. Affairs Unit, Room 2438
ESP Tower Building
Albany, NY 12237

RE: Comments on Proposed Regulation I.D No. HLT-45-20-00002-P Cannabinoid Hemp

Dear Ms. Ceroalo,

The New York Farm Bureau (NYFB), the state's largest general farm organization, appreciates the opportunity to submit comments to the New York State Department of Health regarding the proposed regulation on the processing, manufacturing and retail sale of cannabinoid hemp products in New York State. NYFB represents a diverse group of farmers, processors and manufacturers from across New York State that grow, process and sell hemp products. While these regulations provide a structure for the continued growth of the New York hemp extract products industry, NYFB members have ongoing concerns regarding the impact this regulation will have on all hemp farmers, processors, manufacturers and retailers.

NYFB has been working to ensure fair hemp regulations since the 2014 Farm Bill created the research hemp pilot program, and it is critical that these regulations work for our members to ensure the hemp industry's continued success. According to a USDA study published in 2020¹, industrial hemp acreage in the U.S. increased from 0 acres in 2013 to over 90,000 acres in 2018. New York was one of the first states to start a hemp pilot program and it is imperative that the state continues to support the hemp industry. As of November 2020, 618 out of the 719 hemp growers authorized by the New York State Department of Agriculture and Markets are growing hemp for CBD². This shows the large interest in growing hemp for cannabinoid products and the importance of having regulation that supports, rather than hinders, the growth of this industry.

NYFB appreciates the work and effort that the Department put into drafting this regulation to establish comprehensive standards for the processing and labeling of New York cannabinoid hems products. The standards ensure that consumers can have confidence when purchasing these products. While this is an important aspect of these regulations, it is also essential that this regulation allows all hemp farmers, processors, and retailers the same opportunity to process and

¹ <https://www.ers.usda.gov/webdocs/publications/95930/eib-217.pdf?v=2427.5>

² https://agriculture.ny.gov/system/files/documents/2020/11/authorized_research_partners.pdf

sell these products. Currently, there are several aspects of the regulation that hinder the ability of farmers and businesses to produce, process and sell their cannabinoid hemp products.

Sales of Hemp Flower Products

NYFB members have expressed serious concerns with the prohibition on the sale of hemp flower products to processors, distributors, retailers and consumers in the state. Prior to this proposed regulation, the New York hemp industry has been growing and farmers have already made plans and taken steps towards growing hemp for its flower products to be sold. While the regulation does not prohibit farmers from selling their flower products in other states where permitted, it is confounding that these regulations currently do not support the sale of New York hemp flower products in New York State. All this does is take potential business out of the state and out of New York's economy. This will have a serious negative economic impact on hemp farmers that have made the investment in developing a business model, growing hemp and producing hemp flower products for sale in New York. In addition, the pandemic has caused additional hardship on hemp farmers as certain market opportunities have shrunk under pandemic-related financial constraints. The Department needs to gear the regulations towards supporting farms and businesses during these difficult times, rather than imposing restrictions that will hinder their economic recovery. Once a hemp crop tests within legal limits for the cannabinoids content, heavy metals, pesticides limits, biological limits and mycotoxin limits, farmers should be able to sell their crop directly to consumers with a Certificate of Analysis as documentation of proof. NYFB urges the Department to reconsider this restriction and support New York's growing hemp industry.

Application and License Fees

The application and license fees for cannabinoid hemp processors and manufactures presents several concerns for those in the hemp industry. Anyone applying to be a cannabinoid hemp processor and extract cannabinoid hemp will have to pay a \$1,000 application fee and a \$4,500 license fee. For those who want to only manufacture and not extract cannabinoid hemp, they will have to pay a \$500 application fee and \$2,000 license fee. The high fee amounts will be burdensome to many farms and businesses that are looking forward to applying to be a processor, manufacturer or retailer, especially if they entered the hemp industry recently. It is important to consider that growing hemp in New York only started in 2016. While the industry has grown since then, it is essential that the state encourage new processors and support those that have been selling products for only a few years.

Also, it is important to consider that some farmers will apply to be processors and retailers since many farmers plan to grow, process and sell hemp products. Research done by Cornell University shows the potential costs of growing cannabinoid hemp. ³The costs for growing one acre of hemp are estimated to be \$13,109.81. Even if a farmer is processing and selling product from one acre of cannabinoid hemp, the farmer will still have to pay the same application and license fees as a farmer processing and selling product from ten acres of cannabinoid hemp.

After the costs of growing cannabinoid hemp, there are the expenses of processing the products. With the requirements of processors and manufacturers to show evidence of Good

³ <https://hemp.cals.cornell.edu/docs/economics-producing-hemp-cbd-ny-costs-production-land-based-raised-bed-plastic-mulch-drip-tape-irrigation-production-system-2019/>

Manufacturing Practices (GMP) and receive a third-party GMP audit, farmers are forced to decide whether to pay a processor to process their products or make additions to their facilities to meet the GMP requirements. It is estimated to cost \$20,000 to install a facility that will meet the GMP requirements so that a farmer would be able to process their own hemp for CBD products. There are other farmers that pay another processor for the extract, but then manufacture by diluting the extract, with a carrier like oil or alcohol, to make their cannabinoid products. As currently written under these regulations, farmers are forced to decide if it is profitable to continue to manufacture by diluting the extract, with a carrier like oil or alcohol on-site, when considering the costs of a GMP facility and high license fees. Most likely, any potential profits will not cover the \$20,000 GMP facility along with the \$500 manufacturer application fee, \$2,500 license fee, \$300 retail license fee and processor extraction fees which can be around \$1,000. CBD hemp growers could be looking at least \$24,300 in expenses. If the farmer pays another processor to extract and dilute the products, this will triple the production costs. For example, these regulations would increase the cost of producing a one-ounce bottle of CBD oil from \$5 to \$18. Lowering the application and license fees will allow processors to put more funds towards installing facilities that meet the GMP requirements and still be able to make a profit on their cannabinoid products.

NYFB suggests that the Department incorporate a tier system for the application and license fees similar to the tier systems used by other licensed programs in the state (for example, the craft beverage scaled licensing fees). As stated before, under the current regulation, a farmer processing and selling product from one acre of cannabinoid hemp would pay the same application and license fees as a farmer processing and selling product from ten acres of cannabinoid hemp. A tier system for the application and license fees would support the ability and opportunity for small farms and farms just entering the cannabinoid hemp market to process and sell these products.

If a farmer sells their products at multiple farmers markets, according to the proposed regulation, they will have to pay a \$300 retailer license fee for each location. The proposed fee structure does not take into consideration the scenario of a farmer processing and then selling their product at multiple market locations. The regulations need to provide flexibility for farms and businesses that sell at farmers markets, craft fairs and festivals, while also allowing a farm to take a last-minute opportunity to sell at a market that was not originally planned. The pandemic has taken away many of these events and it is important that businesses can quickly arrange to sell at these events when the opportunities are available again. NYFB has heard from members who sell at multiple farmers markets in a week. In one example, a producer sells at eight different farmers markets in a week. Based on how the regulation is currently written, that farmer would have to pay \$2,400 in license fees in order to sell at those markets.

Also, the retail license application requires retailers to list all the products they plan to sell that year. This requirement creates an unnecessary barrier since it would prohibit retailers from adding additional products to their shelves throughout the year. With any new and growing industry, there will be new products made available and businesses need to have the flexibility to take new opportunities to grow and add new options for consumers.

Lastly, not only are the fees too high, but the non-refundable application fee will deter prospective applicants. Especially with new and complex requirements, these application fees should be refundable if an application is denied. If the application and license fees requirements are amended to be more affordable, there will be more applicants which supports a growing number of hemp extract products that meet New York standards. New York State should be encouraging more businesses and innovation, instead of charging high fees for applications and discouraging individuals from joining the industry.

Infusion

The concept of purchasing a locally sourced product and the ability of farmers to grow, process and sell a product has been essential to meeting the consumer demand of buying local New York products. The opportunity for farmers to grow hemp and process the hemp through infusion and sell the product directly to consumers is crucial to meeting that consumer demand. Although the definition of processing and manufacturing is broad, the proposed regulation does not explicitly define or exempt infusion. Infusions are made through methods such as soaking the herb in a carrier (olive oil or alcohol) and through the use of non-industrial equipment. The product can be tested for cannabinoid content, heavy metals, pesticide limits, biological limits and mycotoxin limits and receive a Certificate of Analysis as documentation of proof. NYFB requests that the Department create an additional category of “Cannabinoid Hemp Farm Processor” in this regulation for farmers doing on-farm infusion of cannabinoid hemp to be sold directly to consumers. This license would be similar to the New York State Department of Agriculture and Markets home processor exemption.

Product Requirements

The regulations state that products need to be shelf stable; however, this proposed regulation also allows the sale of cannabinoid hemp product that are food or beverages which may require refrigeration. The requirement for products to be shelf stable is confusing and adds unnecessary limitations to which products retailers will be permitted to sell.

Scannable Code/QR Code

NYFB members have also raised concerns with the requirement to put a scannable code or QR code linked to a downloadable Certificates of Analysis (COA) on the product. This requirement should not be mandated as long as the retailer is able to provide a paper COA or emails the COA to their customers when they purchase the product. While it is important that new technology be implemented to make it easier to access the information on a product, many areas in New York still do not have access to affordable, reliable broadband. This can make it difficult for a consumer to scan a QR code. It is imperative that the issue of limited broadband is addressed so that this type of technology can be utilized, and, in the meantime, an alternative option is important.

Conclusion

NYFB appreciates the opportunity to recommend these changes and engage with the Department, but NYFB should have been consulted when the Department was preparing the Regulatory Impact Statement, Regulatory Flexibility Analysis and Rural Area Flexibility Analysis for these regulations since NYFB represents many farmers and businesses that would

be affected by this regulation. NYFB welcomes continuing discussions with the Department on the impact of future regulations regarding hemp products.

As the Department reviews and edits this regulation, it is crucial that information and guidance is shared with the hemp industry on any final regulations and requirements before there is active enforcement. It is important to support the growing hemp industry and for the Department to be proactive in the educational aspect of implementing new regulations. NYFB will share information and resources on this regulation, but requests that the Department also provide opportunities for farmers, processors, manufacturers, and retailers to receive this information directly from the agency and have the opportunity ask questions. Only by taking those steps, will the hemp industry in New York continue to evolve and have a positive impact on the New York economy.

For these reasons, NYFB urges you to take into consideration the potential negative impact parts of this proposed regulation would have on farmers in New York and make amendments that will ensure that all farms and operations receive the same opportunity to grow, process and sell all cannabinoid hemp products. NYFB looks forward to continuing the conversation on this very important topic.

Thank you for your time and consideration of these comments.

Sincerely,

A handwritten signature in cursive script that reads "Renée St. Jacques". The signature is written in black ink and is positioned above the typed name and title.

Renée St. Jacques
Associate Director of Public Policy

Cc. Patrick Hooker, Deputy Secretary for Food and Agriculture
Richard Ball, Commissioner, NYS Department of Agriculture and Markets
Axel Bernabe, Assistant Counsel for Health
Norman Birenbaum, Director of Cannabis Programs