

Emergency Justification

9 NYCRR Part 114

Emergency action is necessary for the preservation of the public health, safety, and general welfare to ensure that the Cannabis Control Board (Board) can prevent the manufacturing and retail sale of intoxicating cannabinoid hemp products in New York State.

In 2018, the U.S. government passed the Agriculture Improvement Act, commonly known as the Farm Bill, which defined hemp to distinguish it from cannabis, limiting hemp to a delta 9 THC concentration of no more than 0.3% on a dry weight basis, compared to cannabis which can surpass 0.3% THC. This 2018 Farm Bill definition of hemp is currently being used by processors to produce cannabinoid hemp products which contain intoxicating levels of THC due to the product's net weight being higher than that of cultivated hemp biomass on a dry weight basis. In fact, processors have also exploited the ambiguity of the federal law by producing products with higher levels of other types of THC cannabinoids which, as a result, have the same intoxicating effect as cannabis products. A wide variety of these intoxicating cannabinoid hemp products are sold online and in retail stores without verifying the age of the consumer purchasing the product. These intoxicating products are available in a variety of forms, including edibles, beverages, tinctures, and supplements.

The way that these intoxicating products are allowed to be made and sold in accordance with the 2018 Farm Bill is inconsistent with New York's intent to regulate, control, and tax cannabinoid hemp products in a manner that protects the public health, safety, and welfare of the people in the state. Intoxicating cannabinoid hemp products frequently mislead consumers to believe the product contains very little, or no THC, when in fact the finished product could contain intoxicating levels of THC. This ambiguous labeling puts consumers at risk of overconsumption and accidental ingestion of intoxicating levels of THC or other adverse events. In cases of young children accidentally consuming such products, it can result in hospitalization and in very rare cases, death. Intoxicating cannabinoid hemp products pose

an immediate risk to the health and safety of consumers, youth, and adolescents who have access to these products, and to young children who can accidentally consume these products, mistaking them for other consumer goods like food.

These emergency regulations are necessary to immediately allow the Office to address several challenges with the processing and retail sale of cannabinoid hemp products in New York State, protect public health and safety by, among other things, limiting the THC content of these products and ensuring consumers are not misled by these products' marketing. The emergency regulations include rules limiting the total THC and cannabinoid levels and establishing a minimum allowable CBD:THC ratio in cannabinoid hemp products; revision to cannabinoid hemp retailer prohibitions to prohibit the sale of cannabinoid hemp products containing over 0.5 milligrams of total THC per serving to individuals under the age of twenty-one; revisions to the current laboratory testing requirements for cannabinoid hemp products; and requirements for the packaging, labeling, marketing, and advertising of cannabinoid hemp products. Additionally, revisions have been made to rectify some inconsistencies in these terms and the revised adult-use regulations that are currently in public comment period. These updates eliminate any potential confusion in how the adult-use and cannabinoid hemp terms are understood.