

NEW YORK RELEASES PROPOSED REGULATIONS FOR PACKAGING/LABELING AND MARKETING/ADVERTISING ADULT-USE CANNABIS PRODUCTS

Hodgson Russ Cannabis and Hemp Alert
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The New York Cannabis Control Board (“the Board”) has released proposed regulations for the packaging, labeling, marketing, and advertising of adult-use cannabis products. The proposed regulations detail what must be included and what is prohibited on the packages and labels of cannabis products. The regulations also outline permissible and prohibited activities concerning the marketing and advertising of cannabis products by retailers.

Packaging and Labeling

The regulations require the packaging of retail cannabis products be child resistant, tamper evident, and fully enclosed. Packaging must display a label containing important information including: milligrams per single serving of THC; total CBD content; milligrams per package of total THC; amount of total THC; number of total servings; and weight of the product. Labels must conform to font and size restrictions and include what could be described as a “nutrition facts” section. This section must include, among other things, a list of ingredients, any major allergens, an expiration date, a use-by date, proper storage conditions, and clear usage instructions.

Packaging must also display one of the state-approved symbols that indicate the product is a cannabis product. The symbols include a marijuana leaf displayed inside a yellow warning triangle with the letters “THC!” featured prominently, and the New York State logo with a “21+” graphic. The regulations require packages include the contact information of the product’s manufacturer or distributor, as well as a scannable bar code linked to a certified report from a cannabis laboratory.

Packages must also display a slew of warnings, including that the product: contains THC or cannabis; should only be consumed by persons 21 years and older; should not be used if pregnant or nursing; and should be “KE[PT] OUT OF REACH OF CHILDREN AND PETS.” In order to accommodate all of these labeling requirements, licensees may affix multiple labels containing the required information. This includes accordion, expandable, extendable, or layered displays of

Attorneys

Patrick Hines
Matthew Parker
Mohammed Alam
Ariele Doolittle
Christopher Doyle
Carol Fitzsimmons
Patrick Fitzsimmons
Joseph Goldberg
Heather Kimmins
Fallon Martin
Kinsey O'Brien
Gary Schober
Daniel Spitzer
Melissa Subject
William Turkovich

Practices & Industries

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information that help to supplement small packaging.

Additionally, packaging and labeling cannot promote cannabis use by youths. For example, retail packaging cannot be made attractive to individuals under the age of 21 and cannot contain any pictures, images, or graphics unless otherwise required by the Office of Cannabis Management. This prohibition extends to the use of cartoons, cartoon-like font, bright or “neon” colors, and the use of words like “candies” or variants like “kandeez.” Labeling cannot be misleading, promote overconsumption, or promote price, discounts, or coupons. Use of the terms “craft” and “organic” are also subject to labeling restrictions.

The regulations also impose requirements and compliance with environmental regulations. Licensees must use packaging that contains a minimum 25% percent post-consumer recycled content and must submit an environmental sustainability program. The legislation similarly encourages reuse and recycling of retail packaging, so long as the packaging meets specific standards for quality and cleanliness.

Marketing and Advertising

The proposed regulations permit licensees to engage in “reasonable advertising practices.” Marketing and advertising of cannabis products cannot jeopardize public health or safety, promote use by children, or be attractive to individuals under the age of 21. Advertising can occur via television, radio, print, internet, mobile applications, social media, and other electronic or print communication. However, the licensee must have reliable evidence (and bears the burden of proving) that at least 90% of the advertisement’s audience is reasonably expected to be at least 21 years old. Advertising must also clearly and conspicuously include warnings about responsible consumption, accidental consumption, and overconsumption, as well as resources like the phone number for the National Poison Control Center, among others.

There are some notable advertising restrictions. These include: prohibitions on advertisements in the form of billboards; advertising within 500 feet of an elementary school or similar institution; promoting product potency or THC concentration; and using terms like “organic” or colloquial terms like “weed,” “stoner,” or “sticky buds.” Any talent or actor portrayed in cannabis advertising must be at least 25 years of age.

“Outdoor Signage” restrictions have their own section in the proposed regulations. For example, outdoor retail store signage is limited to displaying basic vendor information, such as name, address, and nature of the business. Signage must be affixed to a permanent structure and may not employ the use of neon lights, vehicles, or commercial mascots. Another notable restriction prohibits the depiction of cannabis, cannabis products, or the action of smoking or vaping in advertisements. Outdoor advertisements are prohibited on signs in arenas and stadiums, but may be displayed in adult-only facilities.

License suspension or revocation and fines are among the penalties a licensee who violates these new proposed requirements may face. Once in effect, licensees must pay special attention to carefully comply with the regulations at each phase of the packaging, labeling, advertising, and marketing processes.

For more information, please contact [Patrick Hines](mailto:patrick.hines@hodgsonruss.com) (716.848.1679), [Matthew Parker](mailto:matthew.parker@hodgsonruss.com) (646.218.7632), or any member of Hodgson Russ’s [Cannabis & Hemp Practice Group](#).