

NY SENATE 8084A

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Background:

On February 22nd, Governor Hochul signed into law legislation permitting previously authorized hemp growers who operated under the NYS Industrial Hemp Research Pilot Program and meet certain requirements the opportunity to apply for a conditional adult-use cultivator license. It amends agriculture and markets and cannabis law.

This is a summary of the bill and how it translates for producers. The bullets are in order, for the most part, of how they appear in the bill. *Italics designate interpretations and/or suggestions*, not just paraphrasing the bill language. In several sections of the bill, there is additional detail readers can investigate for themselves. The bill can be found at: <https://www.nysenate.gov/legislation/bills/2021/s8084>

Summary – Law S8084A 2022

To determine qualifications, NYS Department of Ag & Markets will share information with Office of Cannabis Management as practical for the implementation of the legislation.

1. A conditional adult use license would be available to a producer if:
 - a. Producer had a CBD hemp production permit through NYSDAM prior to 12/31/21 and had been in good standing regarding permit status. *Reminder: new regulations for permit approvals has begun to meet USDA 2018 Farm Bill requirements. If someone is going to still grow hemp (less than 0.3%THC) they need to have that permit from NYSDAM in addition to this conditional permit for marijuana.*
 - b. Producer has grown and harvested CBD hemp in 2 of the last 4 (2018-2021) years
 - c. Producer can show proof of such production
 - d. The conditional license applicant is a 51% or more owner of the business that meets criteria above, a through c, to be eligible. *Reminder: NYS hemp permits are not-transferrable; the entity person proposing to get a conditional adult-use permit needs to be the same entity/person that had/has a hemp growers permit. That means no “flipping” of property/license to qualify.*

Photo Credit: Dr. Daniella Vergara



For
More
Information

NYS
Department of
Agriculture
& Markets

Hemp Licensing
Program

<https://agriculture.ny.gov/hemp>

NYS
Office
of
Cannabis
Management

<https://cannabis.ny.gov/>

2. The conditional adult use production must meet this criterion:
 - a. No more than 20 artificial lights used for production
 - b. No more than 43,560 sq. ft. (1 A) of outdoor flowering canopy
 - c. No more than 25,000 sq. ft. of greenhouse production flowering canopy. *The use of the term flowering canopy allows for increased area for non-mature plants.*
 - d. Can be produced in greenhouses and outdoors on the same farm with a maximum of 30,000 sq.ft., combined. Greenhouse canopy maximum for in/out production is 20,000 sq.ft.
 - e. Production must be in same or adjacent county to where hemp production occurred before for the same farm/business that qualifies in section 1.
 - f. Environmental standards are met. *No, that is not defined but likely equates to the usual DEC regulations around soil and water protection.*
 - g. There will also be a requirement for a social equity mentorship program. *This had some specifics in the bill but OCM will be developing more.*
 - h. Requirement for entering into (and maintaining) into a labor peace agreement with a bona-fide labor organization within 6 months of licensure (and duration).
 - i. Only distribute that farm's cannabis products. *Important note: this does NOT allow for sale to the consumer. Producer still needs to work with an intermediary business/dispensary to get the product to the consumer. Producer may not have a financial relationship with a dispensary. And, there are no permitted dispensaries at this time**.*
3. Permissions, Requirements, and Timelines -
 - a. Temporary minimal processing of product* (*minimally processed only means dried flower - whole or parts, not any extracts).
 - b. Distribution and sale of that minimally processed product* to licensed retailer.**
 - c. Those with a conditional adult-use producers permit may not have any owner, financial, or fiduciary (long list of descriptors in the legislation) relationship with a dispensary. *There are no vertical relationships allowed.*
 - d. As long as any instituted OCM regulations are being followed producers and processors may continue using a conditional license. *i.e. during the time that OCM continues to develop program regulations, those who are qualified under this law to have temporary permits, they will have to match compliance as the regulations are instituted.*
 - e. The license is valid for two years from the date of issuance and all conditional licenses “expire” 6/30/24. If a conditional licensee wants to keep participating at that point they can apply for and receive a non-conditional cultivator license if they are in good standing and meeting the requirements of the program.
 - f. There will be a non-refundable fee for the license. *Amount undefined in the bill.*
 - g. No conditional licenses will be issued after 12/31/22.
 - h. The conditional license can be revoked for various omissions or infractions. It can also be surrendered. The law has some details on how and when for these situations as well as future recordkeeping requirements.
 - i. No one can apply for a full/non-conditional license through OCM as long as they have a conditional one. Producer needs to forfeit/surrender the conditional to move on to a non-conditional license before the deadline of 6/1/23.

Disclaimers & Qualifiers

This was not written by an attorney, regulator, or legislator. This, as a summary, is the author's interpretation of the bill, and as with all legislation, the “devil is in the details”. The final implementation will surely involve additional technicalities. And, since details are constantly being released on cannabis regulations, this version was finalized on March 7, 2022 and may become obsolete/inaccurate at any time.

Photo Credit: Dr. Daniella Vergara

