

HEMP AND MARIJUANA LICENSING AND REGULATIONS MANUAL

A Project Paper
Presented to the Faculty of the Graduate School
of Cornell University
in Partial Fulfillment of the Requirements for the Degree of
Master of Professional Studies in Agriculture and Life Sciences
Field of Hemp Science

By
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PREFACE

Recent changes in the law for hemp and marijuana (*Cannabis sativa* L.), at the federal and state levels, have significantly changed the regulatory landscape and created new economic opportunities, challenges, and risks that are continuously evolving as this nascent industry grows and matures.

State legislatures have taken considerable action to promote and establish state-licensed hemp programs and classify hemp as an agricultural commodity. This expands farmers' ability to grow and market their crops and increases their access to insurance, banking, and other financial and marketing services. Hemp refers to the plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol concentration of not more than 0.3 percent (0.3%) on a dry weight basis. Hemp has a wide range of applications and can be used to develop many industrial products such as paper, fibers, textiles, concrete, insulation, cosmetics, animal bedding, animal feed, food, beverages, and more.

Under the 2018 Farm Bill, individual states and tribes were permitted to submit hemp plans to the USDA for approval. To date, 47 states have enacted hemp production programs or allowed for hemp cultivation research in their territories. The New York State plan was approved under the USDA Final Rule, which took effect on March 22, 2021. The New York State Department of Agriculture and Markets is responsible for the administration of the Hemp Licensing Program in New York State, which oversees licensing for hemp growers, seed sellers, nursery growers, and sampling agents.

To date, 37 states, Guam, Puerto Rico, The US Virgin Islands, the Northern Mariana Islands, and the District of Columbia have voted to allow medical use of marijuana and marijuana products. These 37 states include: Alaska, Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Hawaii, Illinois, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Utah, Vermont, Virginia, Washington and West Virginia.

Additionally, 18 states, Guam, the Northern Mariana Islands, and the District of Columbia have voted to legalize and regulate adult-use consumption of marijuana and marijuana products. These 18 states include: Alaska, Arizona, California, Colorado, Connecticut, Illinois, Maine, Massachusetts, Michigan, Montana, New Jersey, New Mexico, New York, Nevada, Oregon, Vermont, Virginia and Washington.

Marijuana refers to all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin. The term marijuana does not include hemp, as defined above, and does not include the mature stalks of *Cannabis sativa* L., fiber produced from its stalks, oil, or cake made from its seeds and any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), its fiber, oil, cake, or sterilized seed incapable of germination. Marijuana means all cannabis that tests as having a total THC concentration level of higher than 0.3 percent (0.3%) on a dry weight basis.

Despite progress made at the state level, Marijuana remains a Schedule I drug according to federal law under the Controlled Substances Act of 1970. The DEA holds the position that marijuana holds “no currently accepted medical use and a high potential for abuse.”

That said, there is hopeful progress and promising steps being taken by congress. For example, the Marijuana Opportunity Reinvestment and Expungement Act (MORE), recently passed through the House (but stuck in the Senate), would abolish federally criminal penalties for individuals that possess, cultivate, or distribute marijuana. The act would expunge criminal records for nonviolent marijuana convictions and also impose a tax to assist communities that were previously impacted by policing practices related to nonviolent marijuana use.

Other examples of federal legislation that would further establish a regulated marijuana industry include The Cannabis Administration and Opportunity Act (CAOA) and The Secure and Fair Enforcement Banking Act (SAFE Banking Act). The CAO is another marijuana legalization bill drafted by the senate and lead by Senators Chuck Schumer, Ron Wyden, and Cory Booker that would end federal prohibition of cannabis and reinvest in communities that were unfairly targeted in the War on Drugs. The SAFE Banking Act allows state licensed marijuana businesses with much needed access to banking and financial services. The goal of these acts in reforming cannabis laws, is to “safely and responsibly regulate cannabis sales, possession, and use in a way that balances individual liberty with public health and safety.”

Currently, there is no consolidated resource that details hemp and marijuana laws and regulations in New York State and on the Federal level. The information that exists is fragmented and requires significant time and effort to figure out. The manual produced here, centralizes the most important licensing and legal information for the hemp and marijuana industries. This manual provides potential industry entrants with historical context for hemp and marijuana reform, lists key legal definitions, and provides detailed instructions and resources for applying to different license types. This information will help ensure producers are operating in full compliance with the law, with a specific focus on New York State production and operation.

BIOGRAPHICAL SKETCH

Spencer is an Ironman Triathlete and Cornell Graduate Student, with a lifelong passion for adventure, food, gardening, and the outdoors. His philosophy is that the most important things in life are human connection, family and friends, lifelong learning, taking risks to try new things, and of course, dogs.

Spencer studied economics and finance at Lafayette College before moving to New York City to pursue sales roles at two technology startups over two years. The first company Spencer joined was called iCore Networks, where he was promoted from account executive to manager in the fastest time in company history. Following his success at iCore Networks, Spencer briefly worked for an HR software startup called Justworks. He then took a position as a luxury Real Estate agent in Manhattan where he worked successfully as a top agent for an additional 4 years.

During the pandemic Spencer realized that he needed greater connection with the outdoors to be happy. He departed New York City, and went to work on a Cranberry farm in New Jersey's Pine Barrens. After the growing season he took a job at a landscape architecture company and plant nursery. He loved the hands on and physically demanding work that came with farming and landscaping. This type of work always required problem solving and gave Spencer a much higher sense of accomplishment and self-worth than sitting at a desk staring at a screen all day.

During the pandemic, Spencer also made a habit of visiting a different state forest every week for a trail run, followed by a visit to a local farm to learn about the challenges and opportunities of different farm businesses. This habit quickly turned into a passion and then an obsession. It led him to apply to Cornell University to get a masters in hemp science and entrepreneurship with the vision of starting his own cannabis focused agrotourism business.

Core values that drive his vision as a future cannabis business leader include: customer service, psychological safety, human connection, and the opportunity to provide new exciting educational and interactive farm experiences. He wants to create a place where people can come to nourish their souls and experience family, friends, nature, great food, and ultimately the best version of themselves.

He is producing this manual as a starting point to assist other entrepreneurial dreamers in the cannabis industry begin to execute on their visions.

DEDICATION

I would first like to thank Dr. Heather Grab for your relentless guidance, support, expertise, and friendship over the last year, without which this manual would not have been possible.

Thank you to Daniela Vergara for your inspiration, dedication, creativity, and encouragement throughout the process of developing this manual. I could not have accomplished this without your support.

Thank you to Dr. Chris Smart and Carlyn Buckler for your mentorship, advice, and persistence in fueling my intellectual curiosity and pushing me to achieve higher goals.

Thank you to my parents Cindy Rice and Stuart Rice for your patience in supporting my life's journey and for encouraging my decision to come to Cornell.

Thank you to my friends and colleagues William Sale and Andrew Demetri (AKA Dr. Terpene) for taking this journey together as a family. I would not be where I am today without you both.

Thank you to the greater Cornell and Ithaca Community for creating an environment where information, intellect, and ideas can be openly exchanged to create new things.

I am very grateful.

Introduction & Chronology of Recent Agricultural Improvement Acts

Recent changes in the law for hemp and marijuana (*Cannabis sativa* L.), at the federal and state levels, have significantly changed the regulatory landscape and created new economic opportunities, challenges, and risks that are continuously evolving as this nascent industry grows and matures.

Here, we provide potential industry entrants with historical context for hemp and marijuana reform, list key definitions, and provide detailed instructions and resources for applying to different license types. This information will help ensure producers are operating in full compliance with the law, focused on New York State.

Agriculture Improvement Act of 2014 (2014 Farm Bill) – The 2014 Farm Bill permitted State Departments of Agriculture & higher education institutions to produce hemp as part of pilot programs for research purposes.

Agriculture Improvement Act of 2018 (2018 Farm Bill) – The 2018 Farm Bill superseded the 2014 Farm Bill and other elements that were retained in the 2014 Farm Bill from the Agricultural Markets Act of 1946.

This legislation removed hemp from the Controlled Substances Act drug scheduling system and allowed states and tribes to propose their own hemp plans to the USDA for approval. Upon approval from the USDA states and tribes have full jurisdiction over their respective programs, but are required to report necessary data to the Agricultural Marketing Service (AMS) and the United States Department of Agriculture (USDA).

Interim Final Rule (IFR) – October 31st, 2019 the Interim Final Rule established a national program for production of industrial hemp.

- While many states initially switched to the interim final rule, some states chose to remain operating under the 2014 farm bill.
- New York State extended the 2014 Farm Bill until January 1, 2022. Following that date, all hemp programs are operating under the USDA Final Rule.

USDA Final Rule – Effective March 22, 2021, the USDA Final Rule supersedes the Interim Final Rule (IFR) and establishes a Domestic Hemp Production Program as previously mandated in the Agriculture Improvement Act of 2018.

The Marijuana Regulation and Tax Act (MRTA) — Effective March 31st, 2021, The MRTA legalized adult-use cannabis and established the Cannabis Control Board (CCB) which sits above the Office of Cannabis Management (OCM). The CCB consists of a chairperson nominated by the governor and with the advice and consent of the senate. The governor will have two direct appointments to the board, and the temporary president of the senate and the speaker of the assembly will each have one direct appointment to the board—each of which will have term limits of 3 years.

The table below, depicts each license type and the granting agencies responsible for administration of such licenses:

1. Individual states and tribes must submit proposed plans to the USDA for approval
2. Since New York State has an approved USDA plan, producers growing grain, fiber, or cannabinoid hemp will report to the New York State Department of Agriculture and Markets
3. Individual Cannabinoid Hemp, Adult-Use, and Medical Producers will report to the New York State Office of Cannabis Management

<p>The USDA is the granting agency that approves:</p>	<p>The New York State Department of Agriculture and Markets responsible for granting licenses for:</p>	<p>The New York State Office of Cannabis Management is responsible for granting licenses for:</p>
<ol style="list-style-type: none"> 1. Tribal Hemp Production Plans 2. State Hemp Production Plans 	<ol style="list-style-type: none"> 1. Grain Hemp Producers 2. Fiber Hemp Producers 3. Cannabinoid Hemp Producers 4. Sampling Agents 	<ol style="list-style-type: none"> 1. Cannabinoid Hemp Products 2. Adult-Use Marijuana 3. Medical Marijuana

Key Definitions:

Hemp: The plant species *Cannabis sativa* L. and any part of that plant, including the seeds thereof and all derivatives, extracts, cannabinoids, isomers, acids, salts, and salts of isomers, whether growing or not, with a delta-9 tetrahydrocannabinol (THC) concentration of not more than 0.3 percent (0.3%) on a dry weight basis.

- Hemp that tests above 0.3% THC on a dry weight basis is considered a Schedule 1 substance under the Controlled Substances Act (CSA) as enforced by the Drug Enforcement Agency (DEA)

Cannabinoid hemp: Any hemp and any product processed or derived from hemp, that is used for human consumption provided that when such product is packaged or offered for retail sale to a consumer, it shall not have a concentration of more than three tenths of one percent delta-9 tetrahydrocannabinol.

Marijuana: All parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds, or resin. The term marijuana does not include hemp, as defined in this plan, and does not include the mature stalks of *Cannabis sativa* L, fiber produced from its stalks, oil, or cake made from its seeds and any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), its fiber, oil, cake, or sterilized seed incapable of germination. Except as otherwise provided by this plan, marijuana means all cannabis that tests as having a total THC concentration level of higher than 0.3 percent (0.3%) on a dry weight basis.

Indian Tribes: Any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe. Indian tribes are considered independent entities.

Territory of the Indian Tribe includes:

(a) All land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, including rights-of-way running through the reservation;

(b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within the limits of a state;

(c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same; and

(d) any lands title to which is either held in trust by the United States for the benefit of any Indian Tribe or individual or held by any Indian Tribe or individual subject to restriction by the United States against alienation and over which an Indian Tribe exercises a jurisdiction.

Key participants: Key participants are a person or persons who have a direct or indirect financial interest in the entity producing hemp, such as an owner or partner in a partnership. A key participant also includes a person in a corporate entity at executive levels including the chief executive officer, chief operating officer, and chief financial officer.

- The AMS defines “key participants” as those that “exercise managerial control over hemp production.” States/Tribes are free to incorporate the AMS definition of key participants into their plan, but are not required to do so.

- They must, however, define who participates in their plan and for each license or authorization they issue, must identify at least one individual who will be subject to a criminal history check

Hemp Processor: Cannabinoid hemp processor means a person licensed by the department to extract hemp extract and/or manufacture cannabinoid hemp products, whether in intermediate or final form, to be used for human consumption. Must be licensed in compliance with **Article 5** of Cannabis Law

Hemp Manufacturer: Cannabinoid hemp manufacturer means a person licensed by the department to prepare, treat, modify, compound, process, package or otherwise manipulate hemp or hemp extract into a cannabinoid hemp product. Does not include: growing, cultivating, cloning, harvesting, drying, curing, grinding or trimming, or extraction.

Research Partnership Agreement: Any person holding an active research partnership agreement with the Department of Agriculture and Markets shall be awarded licensure under this section, provided the research partner is actively performing research pursuant to such agreement and is able to demonstrate compliance.

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This section outlines regulations for State and Tribal hemp plans and provides a brief overview of the license types provided by the New York State Department of Agriculture and Markets for The New York State Hemp Licensing Program.

States and tribes must submit their proposed plans to the USDA for approval. Some information in this section is drawn directly from The New York State Department of Agriculture and Markets found ([here](#)).

New York State and Tribal Growth, Cultivation, and Production of Hemp

Granting Agency: The Agricultural Marketing Service (AMS) administers programs that create domestic and international marketing opportunities for U.S. producers of food, fiber, and specialty crops.

The USDA Final Rule: Builds on the Interim Final Rule under provisions granted to the USDA in the 2018 Farm Bill, and authorizes the Department of Agriculture and Markets (AMS), under the USDA, to issue regulations to regulate the production of hemp.

The New York State Department of Agriculture and Markets regulates the growth, cultivation, and production of hemp. The New York State Hemp Licensing Program pertains to the following license types:

- Hemp Grower License - Authorizes the growth, cultivation, and handling of hemp plant material for market
 - o License cost - \$500
 - o License term: 3 years
 - o The New York State Hemp Grower Application can be found [here](#).

- Nursery Grower License - Authorizes the sale of rooted hemp plants or seedlings
 - o License cost - \$100
 - o License term: 2 years
 - o The New York State Hemp Nursery License can be found [here](#).

- Hemp Seed Retail License - Authorizes the sale of hemp seeds
 - o License cost - \$100
 - o License term: 3 years
 - o The New York State Hemp Seed Retail Application can be found [here](#).

- Hemp Research License – Authorizes the growth or cultivation of hemp for scientific, academic, or commercial research purposes but does not authorize hemp to move into commerce
 - o License cost - \$500
 - o License term: 3 years
 - o The New York State Hemp Research License Application is the same document as the New York State Hemp Grower Application and can be found [here](#)

Individuals and businesses that would like to participate in this program must submit for consideration a completed application form with all required maps, fees, and an FBI Identity History Summary for all key participants dated within 60 days of the date of application. Incomplete applications will be denied.

States/Tribes are not prohibited from adopting more stringent requirements for hemp production than specified by USDA/AMS “baseline regulations.” They are also not restricted from prohibiting hemp production altogether.

The baseline regulations include requirements for:

- Licensing
- Sampling
- Testing
- Disposal
- Information collection

States and Tribes must submit report stating that they have adequate resources to support and carry out plans of their hemp program

The full New York State Hemp Plan filed with the AMS can be found [here](#).

Application Information

- Application instructions can be found [here](#).
- Additional application guidance can be found [here](#).
- No person shall grow, cultivate, or handle hemp in New York State without a valid commercial or research license issued by the Department
- The Department requires a non-refundable application fee for each type of license sought
- A commercial hemp license authorizes the growth or cultivation of hemp plants in the state to sell for commercial sale

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This section outlines the process and requirements for obtaining a New York State Sampling Agent license. Some of the information in this section is drawn directly from the New York State Department of Agriculture and Markets found ([here](#)).

Sampling Agent License

Granting Agency: New York State Department of Agriculture and Markets

License Requirements:

- Completed Application ([here](#))
 - o The applicant's name, address, phone number, and email address
 - o A list of the NYS counties to cover as a private hemp sampler, and

- An FBI Identify History Summary Check dated no more than 60 days prior to the date of application
- Once the department has completed its review, applicants must complete the required Hemp Sampling Agent Training and pass the Sampling Agent exam
- Applicants are not authorized to sample hemp for Department compliance until they have received a New York State Sampling Agent Certification from the Department

Application Fees:

- None

Disqualifying factors may include but are not limited to:

- Having an active hemp license in any state
- Being a current employee of a hemp growing facility in any state
- Having a financial stake in a hemp growing operation in any state
- Being a nuclear or extended family member of a hemp licensee
- Being a hemp broker, distributor, or processor
- Soliciting hemp for sale, processing, or distribution or being an employee of an entity that is soliciting, producing, processing, or distributing hemp, and/or having a drug-related felony conviction within the past 10 years in any state

Reports

All hemp sampling agents certified under the New York State Hemp Licensing program must submit the following two forms ([here](#)):

1. Chain of Custody Form

- Submitted within 24 hours of shipping samples
- The form will be generated by the Department and given to the sampling agent for each hemp sample required
- If the sampling agent delivered the sample to the lab in person, they must write, “hand delivered” in the shipping company box and the date of the delivery in the date shipped box
- A copy of the form must be included inside the shipping container to be sent with the samples to the testing facility
- The form is only complete and accepted by the Department if it is signed by both the sampling agent and grower representative
- The form is not required if the sampling agent did not sample any hemp during a particular month
- Photos of each lot taken before sampling and the picture of the sample bag in the shipping box must be included in the shipping box

2. Monthly Sampling Report

- Includes information regarding:
 - o Date of Sampling
 - o Grower Authorization #s
 - o Sample ID #s
 - o Date Shipped
 - o Shipping Company
 - o Tracking #

- The report is required even if the sampling agent did not sample in a particular month

- If the sampling agent delivered the sample to the lab in person, write “hand delivered” in the tracking # column and leave the shipping company column blank

- Each line on the form should be for a single sample ID and therefore, a single lot/variety

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This section outlines USDA hemp plan regulations. USDA plans must be offered to States and Tribes that do not have their own submitted and approved plans. Some information in this section is drawn directly from the USDA Final Rule found ([here](#)).

Federal and Individual Growth, Cultivation, and Production of Hemp

Granting Agency: USDA – The USDA, provides leadership on food, agriculture, natural resources, rural development, nutrition, and related issues based on public policy, the best available science, and effective management.

To obtain a license, a producer must create an account using the Hemp eManagement Platform (HeMP) and use HeMP to submit a USDA Hemp Application. Applications are accepted year-round on a rolling basis and can be accessed [here](#).

For producers operating directly under the USDA, the following instructions apply:

- Applicants must complete the USDA Hemp Plan Producer Licensing Application and an FBI Identity Summary found [here](#)
- USDA producers must submit the USDA Producer Annual Report found [here](#)
- The USDA will not approve applications sent to them from producers in States/Tribes that already have their own plans

- Applications are accepted and considered year-round on a rolling basis
- Disposal documentation must be created and submitted to USDA through the “USDA Hemp Plan Disposal Form” found [here](#)

Individual Producers

- Individual producers from States/Tribes that do not have USDA-approved plans may file separate applications for hemp production licensees under the general USDA hemp production plan

Fees and Administrative Costs

- The estimated average cost of program administration fees is \$800 annually, which includes:
 - o Application fees
 - o Site registration fees
 - o Licensing fees
 - o “Other fees”
- The estimated administrative fees *exclude* sampling and testing costs
- Criminal background checks cost \$18 for each key participant

Additional detailed requirements and legal information can be found in Appendix A, supplemental to this document.

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This section outlines cannabinoid hemp product regulations in New York State, per the rules and regulations set forth by the Cannabis Control Board under the Office of Cannabis Management. Some information in this section was drawn directly from OCM licensing site found ([here](#)).

Cannabinoid Hemp Product Licenses

Granting Agency: New York State Office of Cannabis Management

How to Apply – Applications can be found on the New York State Office of Cannabis Management’s Website [here](#)

“The Office of Cannabis Management” (OCM) is an independent state office established by the Marijuana Regulation and Taxation Act (MRTA) and housed within the Division of Alcoholic Beverage Control.

The OCM will provide a unified regulatory structure to comprehensively regulate and control the cultivation, processing, manufacture, distribution, transportation, and sale of cannabis in New York State.

“Cannabis Control Board” (CCB) – The CCB regulates cannabinoid hemp and adult-use cannabis and is an independent entity within the division Alcoholic Beverage Control. The board retains the right to make regulations pursuant to: processing, distribution, marketing, transportation, and sale of cannabinoid hemp and hemp extracts used for human consumption, which includes:

- Application forms, qualifications, administration, fees, and license duration
- Books, records, and reporting requirements to be created and maintained by licensees, including procedures for inspections of such records
- Methods and standards of processing, labeling, packaging, and marketing
- Procedures for how cannabinoid hemp, hemp extracts or ingredients, additives, or products derived therefrom can be deemed acceptable for sale
- Provisions governing the modes and forms of administration (including inhalation)
- Procedures for determining standards and requirements for products sold in and out of state to be sold within the state
- Restrictions governing advertising and marketing
- Any cannabinoid hemp flower product clearly labeled or advertised for the purposes of smoking, or in the form of a cigarette, cigar, or pre-roll, or packaged or combined with other items designed to facilitate smoking such as rolling papers or pipes, shall only be offered for sale in licensed adult-use cannabis retail dispensaries

The CCB consists of a chairperson nominated by the governor and with the advice and consent of the senate. The governor will have two direct appointments to the board, and the temporary president of the senate and the speaker of the assembly will each have one direct appointment to the board—each of which will have term limits of 3 years.

The OCM can be contacted at the information below:

- Phone: 1-888-626-5151
- Email: info@ocm.ny.gov
- Website: www.cannabis.ny.gov

The Regulations Do Not Apply To:

- Cannabinoid hemp, hemp extracts, or other hemp products that are not used for human consumption
- Products deemed GRAS (Generally Recognized As Safe) pursuant to federal law (ex. Hemp seed oil, proteins derived from hemp grain, etc.)

Extraction and/or Manufacturing Licenses Must Include:

- Name, address, phone
- ID of all property and facilities
- Hours of operation
- Employee ID #
- ID of all extraction methods
- Worker's comp and disability insurance proof
- Summary of source of hemp and extracts
- Products to be manufactured
- SOP stating compliance with quality, security, and requirements by the office
- GMP evidence – must have or obtain within 6 months of application approval & before operations start
- Description of any other business activities on the property to be licensed
- Copies of organizational documents
- Statement of good moral character
- Statement of guarantee of compliance in activities
- Statement of experience and competency
- Proof of sufficient product liability insurance
- Any other information required by the office

Retail Applications Must Include:

- Name, address, phone number, and email address
- Physical address of any real property; internet address for online retailer
- Name, license numbers of manufacturer, packer, distributor, processor and state/country where they are located—to the extent possible
- Summary and descriptions of products for sale
- Statement of good moral character
- Cannot sell in form of inhaler, injectable, or pre-roll form, or packaged in combination with items designed to facilitate smoking
- Proof of certificate of authority from NYS dept. of taxation and finance as applicable

Application Fees & License Duration:

- Hemp Processor Extraction *and* manufacturing: Non-refundable \$1000 application fee; \$3500 license fee per location (refundable if denied); valid for **2 years**
 - o Applications can be found: [here](#)

- Manufacturing *only*: Non-refundable \$500 application fee; \$1000 license fee per location (refundable if denied); valid for **2 years**
 - o Manufacturing applications can be found: [here](#)

- Retail: Refundable \$300 license fee per retail location; valid for **1 year**
 - o Retail applications can be found: [here](#)

Additional detailed requirements and legal information can be found in Appendix B, supplemental to this document.

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This section outlines conditional cultivation licensing regulations in New York State, per the rules and regulations set forth by the Cannabis Control Board under the Office of Cannabis Management. Some information in this section was drawn directly from Senate Bill S8084A found ([here](#)).

State of New York Legislation 8084-A: Conditional Cultivation Licenses

Legislation 8084A – An act to amend the agriculture and markets law and the cannabis law, in relation to providing a conditional adult-use cultivator license and a conditional adult-use processor license

Granting Agency: New York State Office of Cannabis Management

“The Office of Cannabis Management” (OCM) is an independent state office established by the Marijuana Regulation and Taxation Act (MRTA) and housed within the Division of Alcoholic Beverage Control.

How to Apply – Applications can be found on the New York State Office of Cannabis Management’s Website: [here](#)

Eligibility – To be eligible to apply for a conditional adult-use cultivator license, a cultivator must:

1. Have held a valid industrial hemp grower authorization from the department of agriculture and markets as of December 31, 2021, which authorized the growing of cannabinoid hemp, and is in good standing with the department of agriculture and markets
2. Be in good standing with the Department of Agriculture and Markets
3. Have grown and harvested cannabinoid or “CBD” hemp for at least two of the past four years (2018-2021) pursuant to that license and be able to provide proof, as defined by the office, of the amount of hemp planted by the applicant during each of the two years that hemp was grown
4. As an individual applicant have an ownership interest of 51% or more, or as any other applicant have an ownership interest of 51% or more of the entity that is the licensee

Conditional Cultivation License

- A conditional adult-use cultivator license authorizes the cultivation of cannabis outdoors or in a greenhouse with no more than 20 artificial lights—unless otherwise authorized by the office.
- A conditional adult-use cultivator licensee may cultivate up to 43,560 square feet (1-acre) of flowering canopy outdoors or 25,000 square feet of flowering canopy in a greenhouse
- A conditional adult-use cultivator licensee may cultivate both outdoors and, in a greenhouse, provided the flowering canopy in a greenhouse is less than 20,000 square feet and the total flowering canopy is equal to or less than 30,000 square feet

Conditional Processor License

- A processor’s license authorizes the acquisition, possession, processing, and sale of cannabis from the licensed premises of the adult-use cultivator by such licensee to duly licensed processors or distributors
- A conditional adult-use processor license is subject to the same authorizations, restrictions, and requirements applied to any adult-use processor pursuant to this legislation
- Processing shall include, but not be limited to:
 - o Blending
 - o Extracting
 - o Infusing
 - o Packaging
 - o Labeling

- Branding
- Otherwise making or preparing cannabis products
- Processing does not include cultivation
- A person holding an adult-use processor's license may apply for and obtain one distributor's license solely for the distribution of their own products
- Processors must not be engaged in any other business on the premises to be licensed
 - Exception is a person issued an adult-use cannabis cultivator, processor, and/or distributor license OR a processor who has also been issued a hemp grower license by the Department of Agriculture and Markets or a cannabinoid hemp processor license
- Cannabis processor licensees may not hold more than one cannabis processor license provided a single license may authorize processor activities at multiple locations per the office's guidelines
- No adult-use cannabis processor may have a direct or indirect interest in any premises or business licensed as an adult-use cannabis retail dispensary or in any registered organization registered pursuant to this regulation, which includes ownership/interest:
 - By Stock Ownership
 - Interlocking Directors
 - Mortgage or Lien
 - Personal or Real Property
 - Management Agreement
 - Sharing a Parent Company
 - Any other Affiliated Organizations

Application Window, Expiration, and Fees

- The application window is March 15, 2022 – June 30, 2022
 - Applicants must create a profile at New York Business Express (NYBE) and submit an application on the NYBE website
- Conditional adult-use cultivator licenses will not be issued after December 31, 2022
- Conditional adult-use cultivator licenses are only valid through June 30, 2024
- Applications are subject to a non-refundable application fee of **\$2,000**
 - Fees must be submitted via check to the Office of Cannabis Management at: Attn: Licensing Division, New York State Office of Cannabis Management, P.O. Box 2071, Albany, NY 12220

Receiving Full Adult-Use Cultivation Licenses:

- No later than 90 days before the expiration of a conditional adult-use cultivator license, the office shall, pursuant to a request by the licensee, review the conditional adult-use cultivator licensee to determine whether they remain in good standing
- Any licensee found to be in good standing shall be eligible to apply for and receive an adult-use cultivation license—provided the licensee can meet all the requirements of the new license
- A licensee will receive, AT MINIMUM, an adult-use cultivator license for the size of flowering canopy that they were licensed to grow pursuant to their conditional adult-use cultivator license or a larger size flowering canopy and authorization to use artificial light as may be set out by the board in regulation
- A licensee may not separately apply for an adult-use cultivation license while holding a conditional adult-use cultivator license

Additional detailed requirements and legal information can be found in Appendix C, supplemental to this document.

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This section outlines the types of adult-use licenses, permission, and ownership restrictions as proposed in the Marijuana Regulation and Tax Act (MRTA), which was signed into law on March 31, 2021. Some information in this section attributed to license types was drawn directly from the OCM ([here](#)).

Full Adult-Use License Types

Granting Agency: New York State Office of Cannabis Management

“The Office of Cannabis Management” (OCM) is an independent state office established by the Marijuana Regulation and Taxation Act (MRTA) and housed within the Division of Alcoholic Beverage Control.

Timeline and Fees – Licensing fees have not yet been specified by the office, but the \$2000 non-refundable application fee associated with conditional licenses is likely to remain the same for full-adult use licenses.

Conditional licenses are valid for two years. Conditional license holders will have the option to apply for full adult-use licenses before the conditional period expires on June 1, 2023.

Allowable License and Activity Combinations	Cultivation	Acquisition	Possession	Distribution	Sale	Processing	Manufacturing	Extraction	Delivery	On-site Consumption
Adult-use cultivator	Yes	Yes	Yes	Yes	Yes	Yes	-	-	-	-
Adult-use Conditional	Yes	Yes	Yes	Yes	-	Yes	Yes	-	-	-
Adult-use Nursery	Yes	Yes	Yes	Yes	Yes	-	-	-	-	-
Adult-use Processor	-	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	-
Adult-use Distributor	-	Yes	Yes	Yes	Yes	-	-	-	-	-
Adult-use Cooperative	Yes	Yes	Yes	-	Yes	Yes	-	-	-	-
Adult-use Microbusiness	Yes	Yes	Yes	Yes	Yes	Yes	-	-	Yes	-
Adult-use Retail Dispensary	-	Yes	Yes	-	Yes	-	-	-	Yes	-
Adult-use On-Site Consumption	-	Yes	Yes	-	Yes	-	-	-	-	Yes
Adult-use Delivery	-	Yes	Yes	-	-	-	-	-	Yes	-
Registered Organization Processor, Distributor, Retail	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	-	-
Registered Organization Cultivator, Processor, Distributor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	-	-	-

1. Adult-Use Cultivator – Authorizes a licensee to engage in activities related to the acquisition, possession, distribution, cultivation, and sale of cannabis from the licensed property of the adult-use cultivator to a licensed processor. The MRTA defines cannabis cultivation activities as related to: growing, cloning, harvesting, drying, curing, grading, and trimming.

Ownership Limits

- Licensees may not own more than one cultivator license. A cultivator is allowed to obtain one processor license and one distributor license, but only for the distribution of their own cannabis products. Cultivator licensees are not allowed to own or have any ownership interest in a licensee in the cannabis retail tier

2. Adult-Use Conditional Cultivator – Authorizes a licensee to cultivate cannabis outdoors or in a greenhouse for (up to) two years from the date of license issuance. Under this license type, licensees are allowed to minimally process, manufacture, and distribute cannabis flower products

without needing an adult-use processor or distributor license. This provision expires on June 1, 2023 when conditional cultivators are then eligible to apply for full adult-use licenses.

Ownership Limits

- No licensee is allowed to own more than one Adult-Use Conditional Cultivator license. Adult-Use Conditional Cultivator licensees that remain compliant during the conditional period will be eligible to apply for and receive a full adult-use cultivation license. Conditional cultivator licensees are not allowed to own or have any ownership interest in a licensee in the cannabis retail tier

3. Adult-Use Nursery – Authorizes a licensee to produce clones, immature plants, seeds, and other agricultural products that are specifically used for planting, propagation, and cultivation of cannabis by other licensed adult use cannabis cultivators, microbusinesses, cooperatives and registered organizations. A nursery license does not allow licensees to sell directly to consumers.

Ownership Limits

- An adult-use cultivator licensee may only hold one nursery license.

4. Adult-Use Processor – Authorizes a licensee to extract cannabis compounds and produce blends, extracts, infusions, or concentrates. A processor's license allows the licensee to engage in activities related to acquisition, possession, processing, and sale of cannabis between the licensed premises of adult-use cultivators to the licensed premises of adult-use distributors.

Ownership Limits

- No licensee is allowed to own more than one processor license. A processor licensee is allowed to obtain a distributor license, but only for the distribution of their own products. Processor licensees are not allowed to own or have any ownership interest in a licensee in the cannabis retail tier

5. Adult-Use Distributor – Authorizes a licensee to sell any cannabis or cannabis products at wholesale. The licensee is allowed to engage in activities related to the acquisition, possession, distribution and sale of cannabis from the licensed premises of licensed adult-use processors, adult-use cooperatives, microbusinesses, or registered organizations that are allowed to sell cannabis to licensed retail dispensaries, on-site consumption sites, and adult-use delivery licensees.

Ownership Limits

- No licensee is allowed to own more than one distributor license. Distributor licensees are not allowed to own or have any ownership interest in a licensee in the cannabis retail tier

6. Adult-Use Cooperative – Authorizes a licensee to engage in activities related to acquisition, possession, cultivation, processing and sale from the property of the adult-use cooperative to licensed distributors, on-site consumption sites, registered organization and/or retail dispensaries. The cooperative license does *not* allow the licensee to sell directly to consumers.

Ownership Limits

- No licensee is allowed to own more than one cooperative license, and cooperative licensees are not allowed to own or have any ownership interest in a licensee in the cannabis retail tier

7. Adult-Use Microbusiness – Authorizes a licensee to act as a cannabis producer for the cultivation of cannabis, a cannabis processor, a cannabis distributor, and a cannabis retailer. The licensee is allowed to engage in activities related to limited cultivation, processing, distribution, delivery, and sale of their own adult-use cannabis and cannabis products.

Ownership Limits

- No licensee is allowed to own more than one microbusiness license. Microbusiness licensees are not allowed to own or have any ownership interest in any other adult-use license type

8. Adult-Use Retail Dispensary – Authorizes a licensee to sell any cannabis product to cannabis consumers at retail. The licensee is allowed to engage in activities related to the acquisition, possession, sale, and delivery of cannabis from the licensed property of the retail dispensary directly to cannabis consumers.

Ownership Limits

- No licensee is allowed to own more than three retail dispensary licenses. Retail licensees are not allowed to own or have any ownership interest in a licensee in the cultivation, processing or distribution tier

9. Adult-Use On-Site Consumption – Authorizes the licensee to acquire, possess, and sell cannabis from the licensed premises of the on-site consumption licensee to cannabis consumers for use at the on-site consumption location. The consumption area must be specified and approved by the Cannabis Control Board.

Ownership Limits

- No licensee is allowed to own more than three on-site consumption licenses. On-site consumption licensees are not allowed to own or have any ownership interest in a licensee in the cultivation, processing, or distribution tier

10. Adult-Use Delivery – Authorizes the delivery of cannabis and cannabis products by licensees, independent of another adult-use cannabis license, to cannabis consumers. Delivery licensees are not allowed to have more than twenty-five individuals, or the equivalent thereof, engaged in full-time paid delivery services to cannabis consumers on a weekly basis under one license.

Ownership Limits

- No licensee may own more than one delivery license. Delivery licensees are not allowed to own or have any ownership interest in another adult-use license type

11. Registered Organization Adult-Use Cultivator Processor Distributor Retail Dispensary Authorizes a licensee to have the same privileges and conditions as adult-use cultivator, processor, distributor, and retail dispensary licensee. The licensee’s adult-use retail dispensaries will be limited to three of the organization’s medical dispensaries’ and only authorizes the distribution of the licensee’s own products. The CCB will, at a later date, further specify the extent of a registered organization’s participation in the adult-use market.

Ownership Limits

- Licensees are not allowed to have an interest in or own any other adult-use license type

12. Registered Organization Adult-Use Cultivator Processor Distributor – Authorizes a licensee to have the same privileges of adult-use cultivator, processor, and distributor licensee. The CCB will, at a later date, further specify the extent of a registered organization’s participation in the adult-use market.

Ownership Limits

- Licensees are not allowed to have an interest in or own any other adult-use license type

Important Information on Taxes:

The MRTA establishes three taxes on adult-use cannabis. There is a tax imposed at the distributor tier based on the milligrams (mg) of total THC in the cannabis product. There are different rates of tax depending on the cannabis product form:

- Edibles, such as food and beverages, are taxed at \$0.03 per mg of THC

- Concentrates, such as vape oil, waxes, shatter, and resin, are taxed at \$0.008 per mg of THC
- Cannabis flower, and flower products such as pre-rolls, are taxed at \$.005 per mg THC
- On the retail side for sale to the consumer, the following two taxes are imposed:
 - 9% state excise tax
 - 4% local excise tax
- The taxes listed above do not apply to medical cannabis

All cannabis taxes would be deposited in the New York state cannabis revenue fund. The revenue would be used to cover costs to administer the state program and implement state law.

The remaining funding would be split in the following three ways:

- 40% toward Education
- 40% toward Community Grants Reinvestment Fund (CGRF)
- 20% to Drug Treatment and Public Education Fund (DTPEF)

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This section outlines, in greater detail, the types of adult-use licenses, permission, and ownership restrictions as proposed in the Marijuana Regulation and Tax Act (MRTA), which was signed into law on March 31, 2021. Some information in this section is drawn directly from the MRTA (Senate Bill S854A) found ([here](#)).

Marijuana Regulation and Tax Act (MRTA) – The MRTA legalized adult-use cannabis and established the Cannabis Control Board (CCB) which sits under the Office of Cannabis Management.

Granting Agency: Office of Cannabis Management

“The Office of Cannabis Management” (OCM) is an independent state office established by the Marijuana Regulation and Taxation Act (MRTA) and housed within the Division of Alcoholic Beverage Control. The OCM provides a unified regulatory structure to comprehensively regulate and control the cultivation, processing, manufacture, distribution, transportation, and sale of cannabis in New York State.

The MRTA is intended to:

- Regulate, control, and tax cannabis
- Generate significant new revenue
- Make substantial investments in communities and people most impacted by cannabis criminalization and address the collateral consequences of such criminalization
- End the racially disparate impact of existing cannabis law
- Prevent access to cannabis by those under the age of 21
- Reduce the illicit market
- Create new industries, increase employment, and strengthen New York's Agricultural sector
- Protect the environment and improve the state's resiliency to climate change
- Protect public health, safety, and welfare of the people of the state

The Cannabis Control Board has the following powers and duties:

1. To issue or refuse to issue any registration, license, or permit
2. To limit, or not to limit, the number of registrations, licenses, and permits of each class to be issued within the state
 - a. Issuance of registrations, licenses, and permits in a manner that prioritizes social and economic equity applicants—goal of 50% awarded to such applicants
3. To revoke, cancel, or suspend any registration, license, or permit
4. To fix by rule and regulation standards and requirements of cultivation, processing, packaging, marketing, and sale of medicinal cannabis, adult-use cannabis and cannabis product, and cannabinoid hemp and hemp extract products
5. To prohibit, at any time of public emergency, the cultivation, processing, distribution, or sale of any or all cannabis products
6. To hold hearings, subpoena witnesses, compel their attendance, administer oaths, to examine any person under oath and in connection therewith to require the production of any records relative to the inquiry
7. To appoint necessary directors, deputies, counsels, assistants, investigators, or employees within the limits provided by appropriation
8. To inspect or provide authorization for the inspection at any time of any premises where medical cannabis, adult-use cannabis, or cannabinoid hemp and hemp extract is cultivated, processed, stored, distributed, or sold
9. To prescribe forms of applications for registrations, licenses, permits, and reports as deemed necessary by the board
10. To appoint advisory groups and committees as deemed necessary to provide assistance for the board to carry out their objectives

11. To exercise the powers and perform the duties in relation to the administration of the board and the office of cannabis management, including but not limited to budgetary and fiscal matters
12. To develop and establish minimum criteria for certifying employees to work in the cannabis industry in positions that require advanced training and education
13. To enter into contracts and agreements deemed necessary to effectuate policy
14. To advise the office of cannabis management and/or urban development corporations in making low or zero interest loans to economic equity applicants
15. To suspend licenses that endanger public health, safety, or welfare
16. To provide public comment periods before issuing regulations
17. To prepare an annual report to evaluate the effectiveness of the program in conjunction with the department of taxation and finance, the department of health, the department of agriculture and markets, the office of addiction services, the office of mental health, the New York state police, the department of motor vehicles, and the division of criminal justice services
18. To issue a final determination in the event of appeals
19. To approve the opening of new license application periods
20. To approve any price quotas or price controls
21. To approve social and economic equity plans
22. To enter into tribal-state compacts with the New York state Indian nations and tribes
23. To delegate powers, functions, and duties to the executive director
24. To review the impact of licenses two years after the first retail sale in order to evaluate: the goals of social equity, fairness for small businesses, the supply of cannabis, and prevention of dominant marketplace participants in the industry

Adult-Use Cannabis Applications and License Types

License Application – Any person, 21 years of age or older, may apply to the board for a license to cultivate, process, distribute, deliver, or dispense cannabis within the state for sale. All applications must be in writing, verified, and contain all information and fees required by the board.

- Licenses must contain a description of the premises and must be a license to the person therein specifically designated to cultivate, process, distribute, deliver, or dispense cannabis in the premises therein specifically licensed.
- Except as otherwise stated, a separate license is required for each facility at which cultivation, processing, distribution, or retail dispensing is conducted
- Application information includes, but is not limited to:

- Information about the applicant’s identity
 - Racial and ethnic diversity
 - Ownership and investment information
 - Corporate structure
 - Evidence of good moral character
 - Submission of fingerprints to the Division of Criminal Justice
 - Information about the premises to be licensed
 - Financial Statements
- The board at its discretion may wholly prohibit and/or prescribe specific criteria under which it will consider and allow limited transfers or changes of ownership, interest, or control during the registration or license application period and/or up to two years after an approved applicant commences licensed activities

Fees – Licensing fees have not yet been determined for non-conditional adult-use applications. The board has authority to charge applicants a non-refundable application fee for licensure. Fees may be based on the license type, cultivation and/or production volume, or any other factors deemed reasonable and appropriate by the office.

The board has the authority to charge licensees a biennial license fee. This fee is based on the amount of cannabis to be cultivated, processed, distributed, and/or dispensed or the gross annual receipts

Limitations & License Duration

- License applicants must be over 21; employees must be at least 18; any employee between 18 and 21 may not have direct interaction with customers inside a licensed retail store
- Licensees may not sell to anyone under the age of 21, or to any visibly intoxicated person
- Licensees must validate IDs before selling their product to ensure no sales are to minors
- The board has the authority to limit canopy size, plant count, square footage and the amount of cannabis grown, processed, distributed, or sold by a licensee
- Licenses are valid for **2 years** from the date of issuance

Adult-Use Cultivator – An adult-use cultivator’s license authorizes the acquisition, possession, distribution, cultivation, and sale of cannabis from the licensed premises of the adult-use cultivator by such licensee to duly licensed processors in New York State. The board may establish regulations allowing licensed adult-use cultivators to perform certain types of minimal processing without the need for an adult-use processor license.

- Cultivation shall include, but not be limited to, the agricultural production practices of planting, growing, cloning, harvesting, drying, curing, grading, and trimming of cannabis
- A person holding an adult-use cultivator’s license may apply for and obtain one processor’s license *and* one distributor’s license solely for the distribution of their own products
- A person holding an adult-use cultivator’s license may not also hold a retail dispensary license
- Cultivator licensees may not have a direct or indirect interest, including stock by ownership, interlocking directors, mortgage or lien, personal or real property, management agreement, share parent companies or affiliated organizations, in any premises licensed as an adult-use cannabis retail dispensary or any business licensed as an adult-use cannabis retail dispensary
- No person may have a direct or indirect financial or controlling interest in more than one adult-use cultivator license, provided that one adult-use cultivator license may authorize adult-use cultivation in more than one location

Registered Organization Adult-Use Cultivator Processor Distributor Retail Dispensary

License – A registered organization cultivator processor distributor retail dispensary license will have the same authorization and conditions as adult-use cultivator, adult-use processor, adult-use distributor, and adult-use retail dispensary licenses issued pursuant to this article provided, however, that the location of its adult-use dispensaries shall be limited to only three of the organization's medical dispensaries' premises and facilities authorized pursuant to article three of this chapter, and that it may only distribute its own products. Provided that such registered organizations will maintain its medical cannabis license and continue offering medical cannabis.

- Such license does *not* qualify such organization for any other adult-use license
- No registered organization may not also hold another retailer dispensary license nor may licensees have a direct or indirect interest, including stock by ownership, interlocking directors, mortgage or lien, personal or real property, management agreement, share parent companies or affiliated organizations, in any premises licensed as an adult-use cannabis retail dispensary or any business licensed as an adult-use cannabis retail dispensary

Registered Organization Adult-Use Cultivator Processor and Distributor License – A registered organization cultivator, processor, and distributor license shall have the same

authorization and conditions as an adult-use cultivator, processor, and distributor license provided, however, that such license does not qualify such organization for any other adult-use license and may only authorize the distribution of the licensee's own products.

Adult-Use Processor License – Processing includes, but is not limited to, blending, extracting, infusing, packaging, labeling, branding, and otherwise making or preparing cannabis products. Processing does not include the cultivation of cannabis

- A processor's license authorizes the acquisition, possession, processing and sale of cannabis from the licensed premises of the adult-use cultivator by such licensee to duly licensed processors or distributors.
- A person holding an adult-use processor license may apply for, and obtain, one distributor license solely for the distribution of their own products
- No processor may be engaged in any other business on the premises; except that a person issued an adult-use cannabis cultivator, processor, and/or distributor license may hold and operate all issued licenses on the same premises
- No processor may hold more than one cannabis processor license, provided a single license may authorize processor activities at multiple locations
- No adult-use cannabis processor may have a direct or indirect interest, including stock by ownership, interlocking directors, mortgage or lien, personal or real property, management agreement, share parent companies or affiliated organizations, in any premises licensed as an adult-use cannabis retail dispensary or any business licensed as an adult-use cannabis retail dispensary

Adult-Use Cooperative License – A cooperative license authorizes the acquisition, possession, cultivation, processing, distribution, and sale from the licensed premises of the adult-use cooperative by such licensee to duly licensed distributors, on-site consumption sites, registered organization, and/or retail dispensaries, but *not* directly to cannabis consumers.

To be licensed as an adult-use cooperative, the cooperative must:

- Be comprised of residents of New York State as an LLC or LLP
- Subordinate capital both as regards control over the cooperative undertaking, and as regards the ownership of the pecuniary benefits arising therefrom
- Be democratically controlled by the members on the basis of one vote per member
- Vest in and allocate with priority to and among the members of all increases arising from their cooperative endeavor in proportion to the members' active participation in the cooperative endeavor

- Must operate according to the seven cooperative principles published by the International Cooperative Alliance found [here](#)
- A cooperative member must not be a member of more than one adult-use cooperative
- No person or member of an adult-use cooperative license may have a direct or indirect financial or controlling interest in any other adult-use cannabis license
- No adult-use cannabis cooperative may have a direct or indirect interest, including stock by ownership, interlocking directors, mortgage or lien, personal or real property, management agreement, share parent companies or affiliated organizations, in any premises licensed as an adult-use cannabis retail dispensary or any business licensed as an adult-use cannabis retail dispensary
- The board will develop regulations governing cooperative licenses regarding the establishment of canopy limits and the size and scope of cooperative licensees and other measures designed to incentivize the use and licensure of cooperatives

Adult-Use Distributor License – A distributor license authorizes the acquisition, possession, distribution, and sale of cannabis from the licensed premises of a licensed adult-use cultivator, processor, adult-use cooperative, microbusiness, or registered organization authorized to sell adult-use cannabis to duly licensed retail dispensaries and on-site consumption sites.

- No distributor may have a direct or indirect economic interest in any microbusiness, adult-use retail dispensary, adult-use on-site consumption licensee or in any registered organization. This restriction does *not* prohibit a registered organization from being granted licensure to distribute adult-use cannabis products cultivated and processed by the registered organization to licensed adult-use retail dispensaries
- Any distributor with a direct or indirect interest in a licensed cultivator or processor may only distribute cannabis or cannabis products cultivated and/or processed by that licensee
- Distributors may charge an appropriate fee for the distribution of cannabis, including volume-based fees

Adult-Use Retail Dispensary License – A retail dispensary license authorizes the acquisition, possession, sale, and delivery of cannabis from the licensed premises of the retail dispensary to cannabis consumers.

- No person may have a direct or indirect financial or controlling interest in more than **three** adult-use retail dispensary licenses
- No person holding a retail dispensary license may also hold an adult-use cultivation, processor, microbusiness, cooperative, or distributor license or be registered as a registered organization (sections 68 and 68-b exceptions)
- No retail license may be granted for any premises unless the applicant is the owner or can demonstrate possession of the premises within 30 days of final approval of the license

through a lease, management agreement, or other agreement stating the applicant has control over the premises for at least the term of the license

- With the exception of delivery or microbusiness licensees, no premises may be licensed to sell cannabis products outside of a store location—The principal entrance must be from the street level and located on a public thoroughfare
- No cannabis retail location may be within 500 ft. of a school grounds or within 200 ft. of a house of worship

Microbusiness License – A microbusiness license authorizes the limited cultivation, processing, distribution, delivery, and dispensing of their own adult-use cannabis and cannabis products.

- A microbusiness licensee may not hold any direct or indirect interest in any other license and may only distribute its own cannabis and cannabis products to dispensaries
- The size, scope, and eligibility criteria will be determined by the board in the future in consultation with the executive director and the chief equity officer

Delivery License – A delivery license authorizes the delivery of cannabis and cannabis products by licensees independent of another adult-use cannabis license, provided that each delivery license may not have more than 25 individuals providing full-time paid delivery services to cannabis consumers per week.

- No person may have a direct or indirect financial or controlling interest in more than one delivery license

Nursery License – A nursery license authorizes the production, sale, and distribution of clones, immature plants, seeds, and other agricultural products used specifically for the planting, propagation, and cultivation of cannabis by licensed adult-use cultivators, cooperatives, microbusinesses, or registered organizations.

- A person or entity holding an adult-use cultivator license may apply for, and obtain, one nursery license to sell directly to other cultivators, cooperatives, microbusinesses, or registered organizations

Adult-Use On-Site Consumption License – An adult-use on-site consumption license authorizes the consumption of cannabis in the area licensed

- Applicants will only be granted an adult-use on-site consumption license if they are the owner or are in possession of the premises through a lease. The license may be renewed without the requirement of a lease after the initial lease period expires

- Licensees may not have a direct or indirect financial or controlling interest in more than three adult-use on-site consumption licenses
- Licensees that hold an adult-use on-site consumption license may **not** also hold an adult-use retail dispensary, cultivation, processor, microbusiness, cooperative, or distributor license
- An adult-use on-site consumption premises may not be located within 500 ft. of a school grounds or within 200 ft. of a house of worship
- Adult-use on-site consumption licensees may only keep adult-use cannabis or cannabis products on their premises if it comes from other licensed adult-use providers and must contain the appropriate labels

Notifying Municipalities – Adult-Use retail dispensary licensees, registered organization adult-use cultivator processor distributor retail dispensary licensees, or on-site consumption licensees must notify the municipality, between 30 and 275 days, before their intent to file an application

Additional detailed requirements and legal information can be found in Appendix D, supplemental to this document.

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APPENDIX A. New York State and Tribal Growth, Cultivation, and Production of Hemp

Additional Legal Description of “Indian Tribe”

- The Indian Tribe is considered to be an independent entity and will have regulatory authority over **ALL** hemp production within its Territory
- Tribes may submit plan directly to USDA if they want primary regulatory authority over hemp production under the 2018 Farm Bill
- If an Indian Tribe does not assume primary jurisdiction over the Tribe’s Indian territory, the USDA has jurisdiction over the hemp production on an Indian Tribe’s Federal Register
- The USDA, therefore, must know the limits of its jurisdiction over such Indian territory, just as it must know its jurisdiction over lands ordinarily within State jurisdiction
- Hemp grown on tribal land must include geospatial location like States, and they may contract the Farm Service Agency (FSA) for assistance defining geospatial location at no cost
- USDA technical assistance is also available upon request for tribes that lack sufficient technical resources or expertise
- USDA Office of Tribal Relations (OTR) is also available as a resource to facilitate consultations and communications between the Federal Government and Tribal Governments (as related to hemp production for the purposes of this document)
- The USDA, not the state where the tribal entity resides, will regulate hemp production if a tribe chooses not to regulate their own production
- An Indian Tribe with approved plan may regulate hemp production throughout territory without regard to the Tribe’s ability to demonstrate inherent regulatory authority.

Land – Land used for production of hemp must be documented as follows:

- Legal description and geospatial location of each field, greenhouse, or other site where hemp is produced.
- Requires reporting of total hemp crop acreage to the Farm Service Agency (FSA) – must include license number when reporting – “Report of Acreage” form
- A producer can grow hemp at up to three locations

Seed certification – The Federal Seed Act authorizes recognized third party seed certifiers (AOSCA) to administer seed standards and testing in hemp to confirm varietal purity.

- Seed varieties are typically certified if they exhibit properties that are distinct, uniform, and stable
- The AMS is **NOT** establishing a seed certification program due to lack of data
- The AMS recommends the use of hemp seed from varieties that have undergone a variety review, following the process outlined in the Federal Seed Act and associated regulations, (7 U.S.C. 1551–1611 and 7 CFR part 201), and produced according

to AOSCA standards. These types of seed have been screened and tested for purity and are properly labeled

Intellectual Property

- Matters related to intellectual property should be addressed to the Plant Variety Protection Office (PVPO)
 - o Seed-propagated hemp that is approved for plant variety protection by the PVPO is subject to protection for 20-years (25 for vines and trees)
 - o The PVPO is administered by the AMS
 - o Certificate holders can restrict others from marketing and selling the protected cultivar

Sampling & Testing

Definition of Sampling – Sampling is the process of collecting cuttings from hemp plants for purposes of compliance testing

Definition of “Lot” – A lot is defined as a “farm, tract, field, or subfield,” that is growing same cultivar

Sampling Requirements

- No more than 1% plants, with a “representative sample” taken from each lot, should exceed 0.3% THC with a 95% confidence interval
 - o Some states base testing on hemp market class and overall THC
 - o Some states use historical records, growing history, and cultivar type to determine compliance
- The AMS agrees to testing plan flexibility and acknowledges that sampling every lot is burdensome and expensive
- The AMS agrees to allow separate sampling and testing requirements for research institutions contingent that all plants that test above 0.3% limit are subsequently destroyed and must report information

Performance based sampling

- The Final Rule agrees to Performance based sampling; as opposed to processed based sampling
- Performance based methods can be developed by states and tribes, but must meet the USDA standard of no more than 1% plants in each lot exceed 0.3% THC
- The AMS allows flexibility for alternative sampling and testing protocols, going forward, provided they are “comparable and similarly reliable”
 - o Genetic testing is **NOT** currently an acceptable form of “similarly reliable” testing.
- Performance based methods include:

- A seed certification process or a process that identifies varieties that consistently demonstrate compliance in a state or tribal territory
 - A certification process where the producer has consistently produced compliant hemp over several seasons/years & “other similar factors”
- If no performance-based sampling protocol is developed by states or tribes, then every lot must be sampled. This naturally creates incentive to develop a protocol.

Physical Collection of Samples

- Samples must be taken *pre-harvest* and shall be taken 5-8” from the “main stem” of the flowering top of the plant (that includes leaves and flowers), “terminal bud” (that occurs at the end of a stem) or “central cola” (cut stem that could develop into a bud) of the flowering top of the plant
- Only designated trained agents can collect samples, for which the licensee is responsible for the costs and logistics
- The regulation requires harvest be conducted and completed within 30 days of sampling
- If the harvest is not completed within 30 days, a second round of sampling and testing is needed
- The regulation allows commencement of the harvest before the receipt of test results, but crops cannot be released into commerce until the test results confirm compliance
- The licensee must electronically submit testing results through online portal
- The licensee can request retests, but will bear costs

NOTE: The Interim Final Rule allowed for testing for *only* THC, not including THCA. The USDA Final Rule specifies that compliance is based on TOTAL POTENTIAL THC = [THC + THCA (0.877)] (this is a molar mass-based calculation that assumes 100% conversion efficiency; hence the word, “potential.”).

Acceptable Testing Methods Include:

- Gas Chromatography (GC) – A method of analysis that uses heat to volatilize and separate compounds such as cannabinoids and terpenes for analysis. Heat results in decarboxylation, so GC will be used to measure only THC.
- Liquid Chromatography (LC) – with UV detection – A method of analysis that uses no heat to profile both the acidic and neutral forms of cannabinoids, so the detection will be separated into THCA & THC (Acid & Neutral form)

Measurement of Uncertainty (MU)

Definition of Measurement of Uncertainty (MU) – The measurement of uncertainty means the parameter, associated with the result of a measurement, that characterizes the dispersion of the values that could reasonably be attributed to the quantity subject to measurement.

- The AMS will not adopt standard MUs or set upper/lower boundary limits, but States/Tribes may develop their own
- Future standards could be set by organizations such as the American Society for Testing and Materials (ASTM) International
 - MU is not typically standardized, but rather controlled using standard testing methods
 - USDA does not have enough data to set limits, and therefore any suggestions would be arbitrary
- Measurement of Uncertainty (MU) can be subtracted and/or added to the tested result. If 0.3% falls within the range, the sample is deemed compliant
 - For example, if the MU is 0.06 and the sample tests at 0.35% THC, the sample is compliant because it falls between the lower and upper bounds of the range; 0.29-0.41%
- The AMS will examine ways to discourage “lab shopping” – shopping for higher MUs to create an artificially higher THC threshold for samples
 - MU differences across state lines could cause issues for interstate commerce

Research Institutions – Research institutions are entities that are licensed to grow hemp for the purpose of higher education and conducting research and must obtain license through the USDA

- Research institutions registered with the DEA may handle plants with THC exceeding 0.3% for the duration of experimentation
- Licenses may not be sold, assigned, transferred, pledged, or otherwise disposed of, alienated, or encumbered
- A research institution may have multiple licenses in multiple states
 - If the licensee holds a license in other states that have plans—they must operate under the state’s plan rather than USDA plan

Research Hemp Plants

- Special Land Grant Universities (Cornell and others) reserve special carve outs for research and genetic preservation commonly referred to as a Specialty Crop Research Initiative.
 - Hemp plants used for research **do not** need to follow the same testing requirement that states, “with a 95% confidence interval that no more than 1% of lot exceeds 0.3% THC”
 - This gives research institutions more flexibility and a buffer for conducting their research and preserving genetic material
 - Hemp that is produced for research is not subject to the same sampling requirements or the requirements pertaining to non-compliant plants, provided that the producer adopts and carries out an alternative sampling method that has the potential to ensure, at a confidence level of 95 percent, that the cannabis plant species *Cannabis sativa* L. that will be subject to this alternative method will not test above the acceptable hemp THC level
 - USDA licensees will need to submit an alternative sampling method to USDA for approval and shall ensure the disposal of all non-compliant plants. USDA

licensees shall also comply with the reporting requirements including reporting disposal of non-compliant plants.”

Lab Accreditation/Lab Approval Program (LAP)

ISO 17025 Accreditation ISO 17025 Accreditation means that the laboratory has met the Management Requirements and Technical Requirements of ISO17025 and is deemed technically competent to produce calibration and testing results. This level of accreditation can only be granted by an authorized accreditation body.

- The AMS is not requiring ISO 17025 accreditation at this time due to lack of capacity and time and expense involved in the accreditation process
 - o Upfront expense of accreditation is typically \$5,000-\$10,000 and the annual ongoing costs are typically \$3,000-\$8,000
- The USDA plan does not allow sampling/testing for **end products**
 - o States may employ their own end use testing methods – The AMS will evaluate the experience of states, moving forward, and apply that knowledge to the USDA plan moving forward

DEA Lab Registration Requirement

- The AMS will require accredited labs to become DEA registered
- A list of approved labs can be found on USDA Domestic Hemp Production Program site
- Enforcement of DEA lab testing is delayed through December 31, 2022 due to lack of supply of labs and time to become DEA certified
- Based on CSA because the lab might “potentially” handle a controlled substance
 - o Q: What happens when we see federal decriminalization
 - I would assume this requirement goes away
- USDA has no authority over DEA accreditation process
 - o DEA has their own IFR (85 FR 51639)

Other Testing: Performance-based sampling

- o Harvested pre-flower?
- o Clones and cuttings?
- o Microgreens?

Sampling Agent & Agent training – trained agents, or Federal, State, Tribal local law enforcement agents

- AMS will provide training documents for sampling
- Will establish uniform standardized criteria
 - o USDA training *or* State/Tribal training
 - End result the same – trained agents must collect samples
 - o Use of 3rd party samples **IS** permitted

- Samplers can only access areas where hemp is grown/stored
- States and Tribes should maintain their own lists of sampling agents

Sampling Guidelines – How to Take Samples:

- The Final Rule does **NOT** specify total volume of sample due to heterogeneity of plants

Disposal

- Plants disposed of based on being affected by the following qualities are not required to be reported: diseases, hermaphrodites, pests, male plant
- The Interim Final Rule only allowed for disposal of plants that test over 0.3% THC by DEA certified or other duly licensed agents, since plant material is considered a Schedule 1 substance under CSA
- The Final Rule is more flexible and allows producers to dispose of the plants themselves, which can be disposed of by: tilled/plowed under, discing, mulching, deep burial, bush mower/chopper, burned, green manure, or other farm uses. The disposed material may not be sold through commerce; must be **“non-retrievable, non-ingestible form.”**
- Producers must still include procedures for disposal that includes a monthly disposal report
- Producers must include acceptable proof of disposal in the form of photos, videos, or oversight, etc.

Remediation

- The Final Rule does not include testing for seeds and stalks, nor does it cover processing or processor licensing
- The rule specifies that producers can blend material for remediation or simply destroy floral mass. Any remediated crop must then be tested/retested for compliance after remediation and can only enter commerce if tests under 0.3%
- Retests may not include post-harvest plant material
- Successfully remediated crops may reenter the stream of commerce; unsuccessful must be properly disposed

Reverse Distributor

- The Final Rule allows growers the permanent flexibility to conduct on-farm disposal activities themselves without required onsite law-enforcement supervision
- Producers do **NOT** need to use DEA-registered reverse distributors or local law enforcement to dispose of non-compliant plants **IF** the producer disposes plants using one or more of the following means outlined [here](#).
- Reporting of disposed plants is completed using “USDA Hemp Plan Producer Disposal Form” and a monthly disposal record is required

Negligence

Definition: Failure to exercise the level of care that a reasonably prudent person would exercise in complying with the regulation

- The negligence threshold has been increased in the Final Rule to 1.0% THC from 0.5% THC as previously listed in the Interim Final Rule
- **One negligent violation per year** is the max – this prevents producers from losing their license in a single growing season—particularly if the producer has multiple sites that use same seed, e.g.
- Negligent violations can be triggered in other areas outside of cultivation, such as failure to report a legal description of the land/property used for growing hemp
- Growers will **not** be penalized for negligent violation if they make reasonable efforts to grow hemp, meaning:
 - o They use germplasm that has reliably stayed under the threshold in the past
 - o They are engaging in best practices yet plants still go “hot”
 - o This reduces financial risk for farmers and provides easier access to credit by reducing occurrence of negligent violations that make hemp growers appear riskier to lenders
- **A corrective action plan** must be submitted after a negligence violation that must include the projected date of remediation
 - o Producers must periodically report to State or Tribal government for 2 years following a negligence violation
 - o 3 violations in 5 years will result in restricting the producer from growing hemp for 5 years from the date of the third violation
 - o Between 0.3%-1.0% will not trigger negligent violation
 - o One violation per year is the maximum
 - o Violations are **not** subject to criminal charges

“Culpable mental state greater than negligence”

- **Definition:** Acting intentionally, knowingly, willfully, recklessly, or with criminal negligence. This is more severe than negligence and must be reported to Attorney General, USDA, and/or local Law Enforcement
- Those that grow “hot” hemp in a “culpable mental state greater than negligence” may not participate in hemp program for 10 years if they are found guilty (those found guilty from operating under 2014 Farm Bill before Dec. 20th, 2018 are exempt)

Information Sharing to USDA (within 30 days of information receipt)

Required Information

- Name, address, phone, email of producer, and employer identification number (EIN)
- Name of the business, address of the principal business location, the full name and title of employees
- Criminal history reports are needed for each participant and must be completed no more than 60 days before the application is submitted
- A legal description and geospatial location of all areas and structures
- Status of license
- States must maintain records for minimum 3 years and must submit an annual report of location and acreage grown to the Farm Service Agency (FSA). The USDA maintains the database and makes the following information available to local law enforcement:
 - Area Planted
 - Area Harvested
 - Area Remediated/Destroyed
 - Provides Real Time Data & Field Based Resources
- USDA auditors, inspectors, representatives have access to any premises where hemp plants may be held during reasonable business hours
- All reports and records are required to be submitted to USDA as part of participation in the program and include:
 - **Confidential data/business information** including but not limited to:
 - Information constituting a trade secret or disclosing a trade position
 - Financial condition, or business operations of the particular licensee or their customers, shall be received by, and at all times kept in the custody and control of, one or more employees of USDA or their representatives
 - Confidential data or business information may be shared with applicable Federal, State, Tribal, or local law enforcement or their designee in compliance with the Act
- **States and Tribes** with approved plans are required to report information to USDA through three Forms:
 - The “State and Tribal Hemp Producer Report”
 - The “State and Tribal Hemp Disposal Report”
 - The “State and Tribal Hemp Annual Report”
- **USDA** collects information from USDA producers through:
 - The “USDA Producer Application”
 - The “USDA Annual Report”
 - The “USDA Disposal Report”
- **Laboratories** provide information on the “Laboratory Test Report”
 - Labs must submit **ALL** test results, whether passing or failing

State and Tribe Plan Approval & Appeals – All State and Tribe plans must be approved by the USDA

- The USDA is required to send a letter of approval within 60 days of receipt of the plan, and post approvals on their website
- Plans that are not approved will receive a letter outlining the plan’s deficiencies
 - o Plans can be resubmitted within 60 days of receipt of denial from the USDA
- States/Tribes can appeal
 - o Appeals must be submitted within 30 days of denial
 - o If producer is denied in a state/tribal plan or denied appeal, they may apply under the USDA plan
- If appeal is denied, applicant may request a formal “adjudicatory proceeding” within 30 days to review the decision. Appeal process applies to applications, renewals, terminations, and suspensions
- USDA Hemp Production Program Plan licensees may appeal denials of a license, renewal, suspension, or revocation to an AMS Administrator that must be submitted and received in writing within 30 days of notification of denial, **OR** within the time-period specified within the letter of notification—whichever occurs **LATER**
- As USDA rules change, State/Tribal plans must be amended in tandem with the changes
- If States/Tribes makes changes to their plans, their plans should be resubmitted to USDA within 60 days of any changes
 - o If not, USDA can revoke program plan starting the following calendar year.
 - o In that case, the state/tribe would have to operate under USDA
- Licenses are non-transferable in any way
- Licenses must be renewed every 3 years (Based on the calendar year ending December 31st)
- USDA AMS will produce database from State/Tribal/USDA producers that will be accessible to local law enforcement

Transport, Shipping, & Interstate Commerce

- Nothing in this title or an amendment made by this title prohibits the interstate commerce of hemp based on the USDA memorandum – Section 10114 of the 2018 Farm Bill
- The USDA recommends transporters carry copy of producer’s license/authorization or any other recommended documentation by State/Tribe when transporting hemp across state lines
- States/Tribes can impose more restrictive paperwork/documentation requirements, but the USDA cannot add transport paperwork requirements because it does not have jurisdiction over common carriers or other types of transporters
- Even if states prevent production of hemp, they cannot prevent transport of hemp through their State/Tribe/Territory
- 28 Several States already identified documents to facilitate transportation of hemp across states

- The AMS strongly encourages producers of hemp and carriers providing transportation services to provide the following documentation accompanying the hemp cargo:
 - o Copies of the laboratory testing report(s)
 - o Hemp grower license
 - o Invoice/ bill of lading
 - o Contact information of buyer and seller

USDA Plans – USDA plans must be offered to States/Tribes that do not have their own

- Applicants must complete the USDA Hemp Plan Producer Licensing Application and an FBI Identity Summary
- USDA producers must submit the USDA Producer Annual Report
- The USDA will not approve applications sent to them from producers in States/Tribes that already have their own plans
- Applications are accepted and considered on rolling basis
- USDA plans have the same increased flexibility in rules for disposal as mentioned above for states and tribes
- Disposal documentation must be created and submitted to USDA through the “USDA Hemp Plan Disposal Form”
- The USDA may conduct audits of fields, facilities, or information (records) no more than every three years to their licensees
- Audits may include examination of:
 - o Resources and personnel employed to administer and oversee an approved plan
 - o Process for licensing and systematic compliance review of hemp producers
 - o Sampling methods and lab testing requirements and components
 - o Disposal and/or remediation of non-compliant hemp plants or hemp plant material practices
 - o Results and methodology used for the annual inspections of producers
 - o Information collection procedures and information accuracy (i.e. geospatial location, contact information, legal description of land, etc.)
- Audit reports are issued to States/Tribes within 60 days of completion
- State/Tribe in violation must submit corrective action plan, that will be approved or denied by the USDA within 60 days. If the USDA has to conduct a second audit and that audit fails, then:
 - o The license is suspended for one year waiting period, or until the State/Tribe becomes compliant, whichever is later
- For areas that do not have physical addresses or are difficult to identify precisely, FSA will assist in description
- States and Tribes can choose to further restrict application timeline, otherwise the USDA application period is year round

- The biggest factor for choosing year-round acceptance was differences in regional growing seasons and the associated differences in logistics for seasonal planting

Suspensions & Revocation under USDA

- Failure of compliance with the regulations may lead to a one year waiting period. If the license was issued more than three years prior to the date of restoration, the producer shall submit a new application and criminal history report
- The producer in violation may be required to operate under corrective action plan for full license restoration
- A license may be *revoked* if the producer is convicted of a felony, submits materially false statements (culpable mental state beyond negligence), or is found to be growing cannabis above acceptable hemp THC level (again, with culpable mental state greater than negligence)

Individual Producers

- Individual producers from States/Tribes that do not have USDA-approved plans may file separate applications for hemp production licensees under the general USDA hemp production plan

Factors of International Competition:

Seed Certification – Countries in the European Union and Canada for example, are farther ahead of the U.S. in developing certified seed programs, which will be a necessary in the development of performance-based sampling methods and for developing uniformity and stability in crop cycles.

Examples of international Seed Certification Programs:

- **Canada** – Canada’s seed certification program is regulated by Health Canada, which provides a “List of Approved Cultivars”
- **European Union** – The EU’s seed certification is regulated by the Organization for Economic Co-operation and Development (OECD), which provides a “List of Varieties Eligible for Seed Certification”

THC Thresholds – THC thresholds differ between countries, which may have an effect on the import/export market and international commodity pricing. Countries that have more relaxed limits may see a competitive edge in attracting hemp producers as a result.

Alternatively, larger companies and operations that have already invested in staying compliant at lower threshold levels, argue in favor of stricter limits to maintain their existing competitive advantage

- **1% THC Threshold** – The following countries have a 1% THC threshold for Hemp
 - o Switzerland
 - o Thailand
 - o Australia
 - o Uruguay
 - o Ecuador
- **0.2% THC Threshold**
 - o The European Union

Context Statistics for the Industry

- There were an estimated 327,000 planted acres of hemp in 2019
- There were 19,121 producer licenses granted as of July 2020 from 44 States
- Using data from Kentucky and Montana, the AMS estimates that 97% of hemp producers qualify as small businesses—meaning their total annual receipts totaling <\$1M

Kentucky as Example of State Leader

- Kentucky has a “Varieties List” that tracks THC across varieties
- Kentucky (and Nevada) have certified varieties that consistently test below 0.8% and 0.9% respectively
- The University of Kentucky developed a Division of Regulatory Services’ Hemp Proficiency Testing Program
- The Kentucky Department of Agriculture is widely recognized as a reliable source for hemp market data as it has collected data from its producers since the inception of its hemp program in 2014. Much of this data is publicly available and was cited by many commenters.

Key Links and Resources List:

1. USDA Domestic Hemp Production Program: [USDA Domestic Hemp Program](#)
2. USDA Hemp eManagement Platform (HeMP): [HeMP](#)
3. USDA Final Rule Hemp: [USDA Final Rule Full Text](#)
4. USDA Sampling Information: [Sampling Requirements](#)
5. Department of Agriculture and Markets Website: [AMS Homepage](#)
6. Disposal Requirements: [Disposal Requirements for Hot Hemp](#)
7. State and Tribe Disposal Form: [Disposal Form](#)
8. Farm Service Agency Website (FSA): [FSA Homepage](#)
9. Farm Service Agency (FSA): [Report of Acreage Form](#)
10. Drug Enforcement Administration Controlled Substances Act: [DEA - CSA](#)
11. DEA Lab Requirements: [DEA Lab Requirements](#)
12. Plant Variety Protection Office: [PVPO](#)

13. Commodity Price Reporting: [The Jacobsen](#)
14. Hemp Industry Daily: [Hemp Industry Daily](#)
15. Brightfield Group: [The Brightfield Group](#)
16. Economic Research Service (ERS): [ERS](#)
17. Foreign Agricultural Service (FAS): [FAS](#)
18. Delta-8 World Health Organization (WHO) Report: [WHO Delta-8 Report](#)
19. EPA Allowable Hemp Pesticides: [Registered Products](#)
20. FAQs Hemp Production Program: [FAQs - Hemp Production](#)

Commentary on Democratic Process for USDA Final Rule

The final rule incorporated modifications based on public comments and lessons learned during the 2020 growing season. The AMS also engaged in two public comment periods to receive feedback about the regulations. They received 4600 comments during first public comment period and over 1100 additional comments in the second public comment period. The Department of Agriculture and Markets under the USDA will continue to collect robust data from the emerging industry to make more appropriate regulation decisions moving forward.

I was initially cynical about the regulatory development process and assumed that politicians were not listening to input from scientists, the public, and other stakeholders. However, in reviewing the entirety of the USDA Final Rule, including the public comments section, I am reassured that the democratic process works to the best of its ability—in the context of developing these guidelines.

That said, if one is seeking change and improvement as a stakeholder in the industry, passive engagement is not an acceptable form of participation to drive change. Industry participants should be encouraged to offer their opinions because they will be heard. Sitting back and complaining that things are the way they are will not result in positive change.

Additionally, the USDA AMS put together the following assessments to improve the fairness and efficiency of the Final Rule:

AMS Regulatory Impact Analysis (RIA): A comprehensive report developed with the goal of framing the laws in a way as to impose the least burden on society by maximizing net benefits related to the economy, environment, public health, safety, and equity net benefits.

AMS Regulatory Flexibility Analysis (RFA): A comprehensive report that considered the specific effects of the Interim Final Rule and Final Rule on small businesses (those that generate less than \$1M in annual receipts). The

Civil Rights Review: AMS has considered the potential civil rights implications of this rule on minorities, women, and persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability,

sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information

Commentary on deficiencies in the regulations:

There are several areas where the regulations can still be improved—although many facets for improvement fall outside of the jurisdiction of the USDA AMS. One such example of improvement would be an additional requirement for the treatment of waste products. This would be a source of improved environmental stewardship within the industry and also create new jobs from the waste management companies that would arise from transforming biowaste into products such as mulch, biochar, animal bedding, hempcrete, hempwool, and more.

Another area of improvement would be the development of a stable varieties list that would help producers avoid the costliness of sampling and testing if used. Several public comments addressed this. One commentator from Minnesota reported that their State has tested every hemp lot produced in Minnesota in the past five years, and that hemp grown for grain and fiber has never tested above the 0.3 percent total THC limit.

The most glaring issue remains addressing the arbitrary nature of the 0.3% THC limit. This limit originated in a 1976 publication, “A Practical and Natural Taxonomy for Cannabis,” in which horticulturalists Dr. Ernest Small and Arthur Cronquist used 0.3 percent THC as a threshold to distinguish hemp from marijuana in their scientific study on cannabis. Small and Cronquist openly acknowledged that they “arbitrarily adopt(ed) a concentration of 0.3 percent delta-9 THC (dry weight basis) in young, vigorous leaves of relatively mature plants as a guide to discriminating two classes of plants,” and that the number was never intended to define hemp from a legal perspective. However, changing the THC limit falls outside of the jurisdiction of the AMS and USDA.

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APPENDIX B. Cannabinoid Hemp Product Licenses

Requirements for Cannabinoid Hemp Retailers

- Must not offer or sell any product clearly labeled or advertised for the purpose of smoking, or in the form of a cigarette, cigar, pre-roll, or packaged/combined with other items designed to facilitate smoking
- Must have sufficient safeguards to verify that an individual purchasing hemp product or flower is over 21 years of age
- Must post visible signs or placards required by the office including retail license in a conspicuous location
- Products must be displayed in a way that clearly distinguishes them from non-cannabinoid products
- Must maintain sufficient records of where products were purchased from including the name of the processor, wholesaler, or permitted distributor
- The office may inspect any retail location offering cannabinoid hemp products

License Issuance and Denial

- Approved only if fully complete inclusive of fees
- Satisfaction that applicant will operate in accordance of Article 5 of Cannabis Law
- Office will prioritize applicants who previously held a research partnership with NYS AMS
- Processor licenses that are provisionally approved may begin manufacturing before the processor license is issued
 - o If the provisionally approved applicant doesn't meet full license requirements within 6 months, the provisional approval is revoked and the application denied
 - o Applicant may request additional time

Factors of denial

- Any prior convictions of any crime/charges related to violations of state or federal laws, rules, regulations pertaining to the operation of a site growing, extracting, manufacturing, or selling cannabis, hemp or cannabinoid hemp
- Misrepresentation or omission of material fact
- Patterns of deficiencies
 - o Inability to produce satisfactory records
 - o Deviation from regulations or SOPs so as to jeopardize the quality of product
 - o Refusal to provide office employees with access to premises

- No license should be considered for any applicant who is “substantially the same as the denied applicant

Renewals

- Filed with the office between 30 and 90 days prior to expiration
- Renewals are accompanied by same fees as initial licensing
- Application fee is non-refundable; licensing fee is returned if renewal is denied

Transferability

- Licenses shall not be transferable or assignable without prior written approval of the office
- A change in majority ownership or controlling interest constitutes a transfer
- Transferee must submit an application
- Denied if the transferee has a record of poor performance – two or more violations in two years

Amendments

- A licensee may amend a license to add or delete permitted activities or change the location of a licensed facility by submitting a written request to the office with the appropriate application fees

Requirements for Hemp Processors

- Must extract and/or manufacture cannabinoid hemp products according to GMP standards and maintain qualified 3rd party certification
- Maintain SOPs (Standard Operating Procedures) and quality control standards to ensure consistency, purity, strength, and composition
- **Records** to demonstrate that any hemp or hemp extract used by licensee was grown, derived, extracted, and transported in compliance with law.
 - Pesticides used
 - Dates shipments received
 - Chain of custody
 - COAs (certificates of analysis)
 - For shipments from out-of-state growers – Grower registration or license number
- Maintain safety and sanitation of all extracting and manufacturing areas
 - Adequately lit
 - Cleaned

- Smoke free
- No food consumption
- Provide all employees engaged in extraction or manufacturing with adequate training and safety equipment
- Testing of a “statistically significant” number of products per lot/batch at 3rd party lab and maintain COAs
- Maintain “sufficient” records pertaining to calibration and inspection of instruments
- Report total production and sales
- Assign lot/batch number to each production run
- Maintain proper security of facilities and equipment
- Prohibited from use of isomerized products such as delta-8 or delta-10 THC

- All records maintained for minimum of 3 years
- Permitted possession and intermediate sale between licensed processors given a COA and processor’s license information are included in shipment and the shipment is only transported intra-state
- Intermediate products must maintain THC level of less than 3%

- Monitor complaints from retailers/consumers and have a process to notify supply chain of recalls—licensees should notify the office within 24 hours of learning of a “serious” adverse event
- Ensure disposal, beyond reclamation, and maintain records of disposal of any extract or by-product with THC concentration greater than 0.3%; including amounts used in the product
- Dispose of any products that are expired, damaged, deteriorated, contaminated, or otherwise “deemed not appropriate for sale—includes disposal of any liquid, chemical or hazardous waste in accordance with the law

- The office may conduct random sampling and testing of hemp, hemp extracts, hemp products, or any solvents, chemicals, or materials used by licensee—unannounced at any time
- Use of extraction methods and solvents approved by office only

Processor Prohibitions

- Processors cannot transfer a license without prior written approval from the office
- Must not manufacture a product that is a potentially hazardous food
- Must conduct final product testing through accredited third-party lab
- Must not sell products to consumers for final retail sale without a retail license

Product Requirements

- Contain no more than 0.3% THC
- Not contain liquor, wine, beer, cider or meet the definition of an alcoholic beverage
- Contain no tobacco or nicotine
- May not be in the form of an injectable, inhaler, product including cigarette, cigar or pre-roll, or “any other disallowed form as determined by the office
- Accurately reflect testing results and contain between 80-120% of concentration of total cannabinoids as specified on product label
- Prepackaged and not added to food or any other consumable products at final point of sale

- Must be shelf stable
- Not contain synthetic or isomerized cannabinoids
- If product is food or beverage, must not contain 25 mg total cannabinoids per individually packaged product
- If product is a supplement, must not contain more than 3000 mg of total cannabinoids per product; no more than 75 mg per individual serving
- Must include measuring device such as a dropper for products that contain multiple servings that are not individually wrapped, premeasured, separated, or delineated (hash marks do not suffice)

Inhalable products

- Must be in closed system with pre-filled disposable cartridge
- Electronic vapes must have internal or external temperature controls to prevent combustion—heating element must be made of inert material
- Except for terpenes, excipients and ingredients must be pharmaceutical grade unless otherwise approved by the office
 - o No synthetic terpenes
 - o No polyethylene glycol
 - o No vitamin E acetate
 - o No medium chain triglycerides (MCT oil)
 - o No medicinal compounds
 - o No illegal or controlled substances
 - o No artificial food coloring
 - o No benzoic acid
 - o No diketones
 - o No flavors or flavoring agents except for hemp-derived terpenes
- Must include an office approved symbol that is clear and conspicuous

Packaging & Labeling

- Must include a nutritional or supplement fact panel that is based on number of servings within the container if the product is consumed through ingestion, sublingual, or oral absorption
- List of all ingredients in descending order of predominance by weight
- Number of servings per container including mg per serving and mg per package of:
 - o CBD
 - o Total THC – including delta-8 and delta-10
 - o Any other marketed cannabinoid

- Expiration or best by date
- Lot/Batch number
- Name of processor or out of state manufacturer, packer, or distributor
- Scannable barcode or QR code linked to downloadable COA or website where COA can be downloaded
- Country or countries of origin from which hemp used in the product was sourced
- Means for reporting serious adverse events or side effects
- Any other marking, statement, or symbol “as required by the office in regulation”

- Must not imitate candy label or use cartoons or other images popularly used to advertise to children or otherwise marketed to anyone under 18
- Same rules for marketing inhalable cannabinoid hemp products and flower product to anyone under 21
- Products must be packaged in tamper-evident packaging that minimizes oxygen and light exposure to prevent degradation of product and cannabinoids
- All products must have recommended serving and clear usage instructions and all products claiming to be “isolate,” “full-spectrum,” “broad spectrum,” or “distillate must comply with the applicable definition of such products

Warning Labels

All products offered for retail sale must include the following warnings on the product label or packaging in a manner that is clear and conspicuous (written in a font no smaller than 4.5 font):

- Keep out of reach of children
- That the product is derived from hemp and may contain THC, which could result in a failed drug test (font must be written in bold)– may be omitted for products that are:
 - o Topically applied
 - o Made exclusively using isolate

- Made from broad spectrum extract derived entirely from hemp grown, extracted, and manufactured in New York State
- The product has not been evaluated by the FDA for safety or efficacy
- Women who are pregnant or nursing should consult their healthcare provider before use
- If the product is inhalable, must contain a warning stating that smoking or vaporizing is hazardous to your health

Advertising

Advertisements must not:

- Make any false or misleading statements or claims
- Contain claims that products can diagnose, cure, mitigate, treat, or prevent disease
- Lead a reasonable person to believe that a cannabinoid hemp product is cannabis, marijuana, medical cannabis, or medical marijuana
- Have the purpose or effect of targeting anyone under 21

Lab Testing

- To be recognized for purposes of testing cannabinoid hemp products, a lab must be approved to test medical marijuana according to the requirements specified by the New York Codes, Rules, and Regulations (found here: [Section 55-2.15](#)) OR must meet the following requirements:
 - Maintain International Organization for Standardization (ISO) or International Electrotechnical Commission (IEC) accreditation and for the testing of one or more of the following:
 - Cannabinoids
 - Heavy metals
 - Microbial impurities
 - Mycotoxins
 - Residual pesticides
 - Residual solvents and processing chemicals
 - Terpenoids
 - Maintain a valid scope of accreditation issued by an accreditation body
 - Maintain method validation reports and standard operating procedures (SOPs)
 - Processors must maintain all records associated with their testing lab's accreditation

- Products must not be sold within New York State if contaminants are detected at levels greater than specified by the office
- Pesticide, Residual solvent, Heavy Metals, Biological, Mycotoxin, and Cannabinoid limits can be accessed here: [Contaminants Limits](#)

New York Hemp Product

- Refers to cannabinoid hemp products exclusively grown and processed in New York State. The state may impose higher standards and requirements to certify products as New York Hemp Products
- Products must not be sold with the designation “New York Hemp Product” unless certified by the office. The office may also revoke the products status if it believes the product no longer meets the standards and requirements
- Falsely portraying products as “New York Hemp Products” is grounds for suspension or revocation of license

General Prohibitions

- No licensee should engage in activities for which they are not licensed and must follow all the requirements specified for activities related to processing, packaging, labeling, manufacturing, extracting, distributing, selling, or lab testing
- Hemp extract must be manufactured into cannabinoid hemp product before being offered for sale
- Hemp extract that is transported within the state must be fully enclosed in vehicle or container, and accompanied by documented proof of ownership, which includes:
 - Name
 - Physical address
 - Lot/Batch number
 - Certificate of analysis (not required if extract is being transported to a lab)
 - License number or originating cultivator/processor
 - Name and physical address of recipient
- Unless permitted, no person can distribute cannabinoid hemp products manufactured out of state to a retailer within New York State

Retailer Prohibitions

- Must not sell products in the form of an inhalable cannabinoid hemp or flower product to anyone under 21
- Must not sell a product that is potentially hazardous food or product to be added to food or other consumable product

Penalties

- Failure to comply with applicable laws, rules, and regulations is punishable by civil penalties as follows:
 - o Up to \$1,000 fine for first violation
 - o Up to \$5,000 fine for second violation within three years
 - o Up to \$10,000 fine for third and each subsequent violation within three years
- The office may limit, suspend, revoke or annul a license in cases where a licensee willfully violates, refuses, or neglects to comply with one or more laws, rules, or regulations
- Licensee has a right to a hearing, but can be temporarily limited, suspended, revoked, or annulled without a hearing for a maximum of 30-days should the office find that public health, safety or welfare is in “imminent danger”
- Three negligent violations in a 5-year period deem licensee ineligible to process or sell products for a period of 5 years.

Cannabinoid Hemp Permits

The office may issue permits expressly authorizing a permittee to conduct one or more of the following activities:

- Distribute products manufactured out of state to retailers within New York State
- Deliver products from a cannabinoid hemp retailer to consumers
- Sell products at retail for a limited time
- Continue operations for persons holding a valid CBD processor research partnership agreement with the New York State Department of Agriculture and Markets
- Any other activity as determined by the Cannabis Control Board
- Permit applicants must apply on form prescribed by the office and submit a \$100 application fee and permit fee as set by the office
- Permits are valid for one year from the date of issuance

Additional Key Facts

- Cannabinoids, as referred to in this legislation will include the following: THC, THCA, CBD, CBDA, CBN, CBG, CBC, CBL, CBV, THCV, CBDV, CBCV, CBGV, CBGM, CBE, and CBT
- Full-spectrum without intentional removal of any compound – THC limit is 0.3%
- Broad-spectrum with intention of complete removal of THC – limit is LoQ of 0.01%
- Cannabinoids do not include synthetic – subdivision (g) of section 3306 of the Public Health Law and section 9-1.1 of Title 10 of the Official Compilation of Codes, Rules and Regulations of the State of New York.

- Cannabinoid hemp products shall not include cosmetics
- Shall not include food, food ingredients, or food additives
- Shall not include extract not used for human consumption
- Manufacturing does not include processes related to growing, drying, curing. Those rules are subject to Article 29-A of the Agriculture and Markets Law
- Total THC = THC + THCA * 0.877
- Sale must only be to customers 21 and over

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APPENDIX C. State of New York Legislation 8084-A: Conditional Cultivation Licenses

Environmental Standards

- A conditional adult-use cultivator licensee must comply with the environmental standards and requirements mandated by the office

Geographical Limits

- The cultivation of cannabis is only permitted within the same or adjacent county in which the conditional adult-use cultivator licensee had previously been authorized by the Department of Agriculture and Markets to grow hemp

Conditional Processing and Distribution

- A conditional adult-use cultivator licensee will have temporary authority to minimally process and distribute cannabis products, provided that final products are in the form of cannabis flower, without holding an adult-use processor or distributor license established pursuant to sections 69 and 71 of this article; provided that the licensee complies with all requirements for the processing and distribution of cannabis products as set out by the board in regulations or in the terms and conditions of the conditional license
- Such authority to minimally process and distribute cannabis products expires on June 1, 2023. After June 1, 2023, any conditional adult-use cultivator seeking to process and distribute cannabis products shall be required to apply for and receive a processor and distributor license to conduct this activity

Organizational Structure

- For the duration of the conditional period, the ownership or organizational structure of the entity that is “the licensee” must not be amended, except pursuant to provisions and subdivisions outlined by the office

Terms and Conditions

- The office sets out specific terms and conditions outlining the necessary requirements to be awarded and maintain a conditional adult-use cultivator license, including but not limited to:
 - Licensee agrees to participate in environmental sustainability program
 - Licensee agrees to participate in a social equity mentorship program
 - The social equity program is directed to train individuals interested in becoming licensed cultivators and will leverage remote and in-person mentees with experience in agriculture business management, sustainable cannabis cultivation and best practices
 - Candidates must be 18 years of age or older, must be a New York State resident, and must be individuals that would be considered social equity applicants as defined by the office

- Licensee must enter into a labor peace agreement with a bona-fide labor organization that is actively engaged in representing or attempting to represent the applicant's employees within 6 months of licensure

License Forfeiture

A conditional adult-use cultivator license will be surrendered if the licensee:

- Fails to abide by all terms and conditions
- Fails to adhere to all requirements set out in regulations including those promulgated after receiving the conditional adult-use cultivator license
- Fails to submit information, records, or reports
- Fails to correct deficiencies in accordance with an approved corrective action plan
- Deviates from the regulations, licensing terms, or standard operating procedures in a manner that the office determines may jeopardize health and safety of the public, or the quality of products grown or produced
- Fails to provide office employees with access to the premises
- Fails to begin operations within 6 months of the date of the issuance of the license

- A licensee has the right to appeal a decision of license surrender within 10 days of the delivery date of notice

Ceasing Operations

- In the event the licensee elects to cease operation of all permitted activities or voluntarily surrender its license, the following provisions apply:
 - The conditional adult-use cultivator licensee must notify the office in writing at least 30 days prior to the anticipated date of closure
 - Written notices must contain a proposed plan for closure including timetables, procedures, and actions the licensee will take to properly destroy or dispose of the licensee's supply of cannabis and/or cannabis products—the plan must be approved by the office
 - The licensee or former licensee must maintain and make available to the office all records related to the cultivation of cannabis for a period of three years

For Processor Licenses

- **Eligibility includes:**
 - Submitted application before January 1, 2022
 - No such license will be issued after December 31, 2022 and will only be valid through June 30th, 2024
 - Must hold an active cannabinoid hemp processor license
 - As an individual applicant have an ownership interest of 51% or more, or as any other applicant have an ownership interest of 51% or more of the entity that is the licensee

- A conditional adult-use processor licensee must only perform extraction activities if authorized under the licensee’s cannabinoid hemp processor license and all extraction methods are subject to the office’s approval
- A conditional adult-use cultivator licensee must comply with the environmental standards and requirements mandated by the office
- A conditional adult-use cultivator licensee must comply with the social equity mentorship program and requirements mandated by the office
- Processing of cannabis is only permitted at the same location in which the conditional adult-use processor license is authorized to process hemp, unless expressly authorized by the office
- A conditional adult-use processor licensee has the authority to distribute cannabis products without holding an adult-use distributor license until June 1, 2023, provided the licensee complies with all requirements for distribution
 - After June 1, 2023, the licensee must apply for and receive a distributor license to conduct distributor activities
- For the duration of the conditional period, the ownership or organizational structure of the entity that is “the licensee” must not be amended, except pursuant to provisions and subdivisions outlined by the office

License Forfeiture, Ceasing Operations, & Renewals

- The processor licensee will be subject to license forfeiture under the same rules as outlined above for cultivator licensees
- The processor licensee will be subject to the same procedures for ceasing operations as outlined above for cultivator licensees
- The processor licensee will be subject to the same procedures for license renewal and obtaining a full adult-use processor license as outlined above for cultivator licensees

Reporting

The Cannabis Control Board will provide a report on the conditional cultivator and processor licenses, which includes, but is not limited to the following information:

- The number of conditional licenses applied for by geographic region
- The number of conditional licenses approved by the board
- The revenue received from conditional licenses from fees and taxation related to:
 - Cultivation
 - Distribution
 - Sale of adult-use cannabis
- The number of applicants determined to be social equity applicants that applied and received a conditional cultivator and processor license
- Effectiveness and participation data related to the social equity mentoring program
- “Other” data that the board deems necessary and appropriate
- Reports will be published on the office’s website and presented to the governor, senate majority leader, and speaker of the assembly no later than January 1, 2023 and again on January 1, 2024

Key Links:

1. The Conditional Licensing Legislation can be found here: [Legislation - S8084A](#)
2. The Office of Cannabis Management homepage can be found here: [New York State OCM](#)
3. The Office of Cannabis Management licensing information page can be found here: [Licensing](#)

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APPENDIX D. Marijuana Regulation and Tax Act (MRTA)

Selection Criteria

- Social and economic equity applicant
- Ability to maintain effective control against the illegal diversion or inversion of cannabis
- Ability to comply with all state laws and regulations
- Applicant is ready, willing, and able to properly carry out the activities for which a license is sought
- Where applicable, the applicant possesses or has the right to use sufficient land, buildings, and equipment to properly carry out activities described in the application
- Qualifies as a social and economic equity applicant or sets out a plan for benefiting communities and people disproportionately affected by enforcement of cannabis law
- It is in the public interest that such license be granted
- Applicant and managing officers are of good moral character and do not have ownership or controlling interest in more licenses or permits as allowed by this regulation
- The applicant has entered into a labor peace agreement with a bona-fide labor organization that is actively engaged in representing the applicant's employees
- The applicant will contribute to communities and people disproportionately harmed by enforcement of cannabis laws
- Adult-use cultivator or processor licensees must develop an environmental and energy impact plan

Renewals

- Licensees must provide a complete renewal application and renewal fee
- Applicants must submit documentation of the racial, ethnic, and gender diversity of their employees and owners prior to renewal
- The board must provide an application for renewal not less than 90 days prior to the expiration of the current license
- Applicants must maintain a labor peace agreement with a bona-fide labor organization
- Applicants must provide evidence of their plan to benefit communities and people disproportionately impacted by cannabis law enforcement

Amendments & Changes in Ownership or Organizational Structure

- Licenses must specify:
 - o Name and address of licensee
 - o Activities permitted by the license
 - o The land, buildings, and facilities that may be used for licensed activities
 - o The license number issued by the board
- An approved license, along with necessary fees to the board, may be amended to:
 - o Allow the licensee to relocate within the state
 - o Allow the licensee to add or delete licensed activities or facilities

- Allow the licensee to amend the ownership or organizational structure
- A license will become void by a change in ownership, substantial corporate change, or change in location without prior written approval
- “Substantial Corporate Change” is defined by:
 - For a **corporation**—A change of 51% or more of the officers/directors, stock of the corporation, or change in an existing shareholder that owns more than 51% of the company
 - For an **LLC**—A change in 51% or more of the managing members of the company, or a transfer of 51% or more of ownership interest in the company, or an existing member obtaining a cumulative of 51% or more of the ownership interest
 - For a **partnership**—A change of 51% or more of the managing partners of the company, a transfer of 51% or more of ownership interest, or an existing member obtaining a cumulative of 51% or more of the ownership interest

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