# New York State Hemp Licensing Program
## Guidance Document

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Overview

The New York State Department of Agriculture and Markets (Department) is administering a Hemp Licensing Program authorized by Article 29 of the New York State Agriculture and Markets Law and the 2018 Agriculture Improvement Act (Federal Farm Bill of 2018).

The New York State Hemp Licensing Program licenses hemp growers, hemp seed sellers, and nursery growers who will be selling hemp plants, and regulates the growth, cultivation, and production of hemp, defined as the plant species *Cannabis sativa* L. and any part of that plant, whether growing or not, with a total THC concentration equal to or less than 0.3% on a dry weight basis.

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.

The Department does not license or regulate any growers, processors, distributors, or retailers of *marijuana*, defined as the plant species *Cannabis sativa* L. and any part of that plant with a total THC concentration exceeding 0.3% on a dry weight basis. The regulation of marijuana in the state of New York is administered by the New York State Office of Cannabis Management (OCM).

The OCM also regulates cannabidiol (CBD) processors, retailers, and distributors who manufacture, sell, or distribute products such as tinctures, oils, topicals, pills, capsules, food, beverages, and raw hemp flower that are intended for human consumption or application for their cannabinoid content. The OCM can be contacted at the information below.

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

Licenses

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. Licenses available include:

- **Hemp Grower License** - $500
  - Authorizes the growth, cultivation, and handling of hemp plant material for market
  - License term: 3 years
- **Nursery Grower License** - $100
  - Authorizes the sale of rooted hemp plants or seedlings
  - License term: 2 years
- **Hemp Seed Retail License** - $100
  - Authorizes the sale of hemp seeds
  - License term: 3 years

A research hemp license authorizes the growth or cultivation of hemp for scientific, academic, or commercial research purposes but does not authorize hemp to move into commerce.

- **Hemp Research License** - $500
Authorizes the growth, cultivation, and handling of hemp plant material for research purposes, not for commerce
License term: 3 years

Applications
Individuals and businesses that would like to participate in the hemp program must submit for consideration a completed application form with all required maps, fees, and FBI Identity History Summaries included. Incomplete applications will be denied. Please review the Application Guidance Document for more information on how to apply.

An original hardcopy of the application with all necessary attachments and fees must be submitted to the Department by mail at the address below.

New York State Department of Agriculture and Markets
Plant Industry Division
10B Airline Drive
Albany, NY 12235

Eligibility
An authorization to grow or sell hemp is not a right. The decision to grant such an authorization is at the sole discretion of the Department. Disqualifying factors may include but are not limited to:

• an incorrect or incomplete application,
• drug-related felony convictions of any key participants within the last 10 years, and/or
• proposing to use a growing or processing location already registered to an existing authorization.

The Department reserves the right to make determinations regarding the appropriateness of proposed growing, processing, and/or storage locations of hemp. Sites located in areas that are zoned residential will not be approved. Zoning classifications are locally established, and it is the applicant’s responsibility to ensure that a proposed growing location is not in an area zoned for residential use.

Growing of hemp in or attached to a residence, in a residential setting, or as an ornamental plant is not permitted.

Applicants must have control over the proposed locations through ownership or lease agreements.

Requirements
Each application and renewal application must include:

• The business and contact information of the applicant,
• The focus of the business,
• A description and map of each proposed location where hemp will be cultivated, processed, or stored by physical address, GPS coordinates, and area measurements (Outdoor area measurements should be in acres and indoor area measurements should be in square feet.),
• The name and location of the intended seed source(s) and the variety or varieties that will be purchased,
• FBI Identity History Summaries (background checks) for all key participants of the business, and
• A nonrefundable application fee.
Amendments
License holders must submit requests to amend their original application by submitting an Amendment Application to the Department for review. Common amendment changes include:

- adding or removing grow locations,
- changing seed sources or varieties, and/or
- updating contact information.

Amendment applications must include the $100 amendment fee and must be approved by the Department before enacting any changes to the growing operation.

Renewals
The Department will provide an application for renewal to the licensee 90 days prior to the expiration of the current license. The licensee must submit the renewal application to the Department at least 30 days before the expiration of the current license.

Sampling Agents
All private sampling agents must be certified and trained by the Department in order to conduct regulatory sampling for this program. The Department does not require a fee to certify a sampling agent. Sampling agent certifications are valid for a period of one year.

Applications
Individuals interested in becoming a state-certified sampler must submit for consideration a completed application form with an FBI Identity History Summary included. Incomplete applications will be denied. Please review the Application Guidance Document for more information about how to apply.

An original hardcopy of the application with all necessary attachments must be submitted to the Department by mail at the address below.

New York State Department of Agriculture and Markets
Plant Industry Division
10B Airline Drive
Albany, NY 12235

Eligibility:
A certification to sample hemp is not a right. The decision to grant such a certification is at the sole discretion of the Department. Disqualifying factors may include but are not limited to:

- an incorrect or incomplete application,
- a drug-related felony conviction within the last 10 years,
- holding an active hemp grower license in any state, and/or
- being a current employee of or having a financial stake in a hemp growing operation.

Requirements:
Each application and renewal application must include the following:

- the business name and contact information of the applicant,
- public information preferences,
- sampling coverage area by county, and
- an FBI Identity History Summary (background check).

Amendments:
Sampling agents must submit requests to amend their original application by submitting an Amendment Application to the Department for review. Common amendment changes include:

- adding or removing counties to cover,
• changing public information preferences, and/or
• updating contact information.

Amendments must be approved by the Department before enacting any changes to the operation.

Renewals:
The Department will provide an application for renewal to the agent 90 days prior to the expiration of the current certification. The agent must submit the renewal application to the Department at least 30 days before the expiration of the current license.

Training
Sampling agents must complete state-mandated training and pass a sampling exam to receive a certification to sample hemp. Training will be scheduled by the Department upon application approval. Training must be completed within a timeframe determined by the Department.

Sampling agents must be recertified each year.

Reports and Forms
All sampling agents are required to submit the following reports to the Department by their required due dates. The Department may require additional reports to facilitate regulatory oversight of this program. The Department will notify agents of any new reporting requirements.

• Chain of Custody Form – due within 24 hours of shipping samples.
• Monthly Sampling Report – due the first of each month.

Please review the instructions on page one of the Sampling Agent Reporting Package for more information about each report.

Testing Facilities
THC testing facilities must be added to the Department’s list of Identified Hemp Testing Laboratories in order to conduct regulatory THC testing for growers in this program. After December 31, 2022, all THC testing facilities must be registered with the Drug Enforcement Administration (DEA) as required by the USDA.

Testing facilities interested in being included on the Department’s list must submit for consideration a completed application form. The Department does not require any fees to list a testing facility.

Requirements
The Department requires that all THC testing facilities hold a valid ISO 17025 certification issued by a third party to the standards developed by the International Organization for Standardization.

Testing facilities must use post-decarboxylation or other similarly reliable methods approved by the USDA that considers the potential conversion of THCA into THC. The formula to calculate this conversion is (delta-9 THC + (THCA x 0.877)). All regulatory test results must reflect the total THC amount. Testing facilities must also estimate and report a measurement of uncertainty (MU) for each test result.

Testing facilities must have an effective disposal procedure for non-compliant samples.
Seeds and Plants

Purchasing
Seed or plant procurement is the responsibility of the license holder. License holders who plan to obtain seed through an international import should check with the seed supplier to determine what documentation is required. All interstate shipments of hemp seeds or plants must be from a plant grower or retailer licensed in the state of origin or be accompanied by a phytosanitary certificate.

Hemp seeds and plants may only be procured by license holders. Hemp seeds may only be purchased in New York State from an authorized party who holds a Hemp Seed Retail License. Hemp plants may only be purchased in New York State from an authorized party who holds a Hemp Nursery Grower License.

Selling
Individuals or businesses, with a physical presence in New York State, who wish to sell hemp seeds or hemp transplants must have a valid license issued by the Department. Selling hemp seeds requires a Hemp Seed Retail License and selling hemp plants requires a Hemp Nursery Grower License. All sales must be to authorized license holders.

Inspections
The registered locations of a grower are subject to inspection by the Department as often as and to the extent necessary to ensure compliance with state and federal regulations and to determine whether required reports, records, and documentation are accurate and complete.

Growers shall provide the Department with complete and unrestricted access to the premises where hemp is cultivated and stored, to the sites where the hemp cultivation business operates, and to the books and records relating to the cultivation of hemp.

Sampling
Growers must submit a Pre-Harvest Report at least 30 days before the anticipated harvest date of each hemp lot.

Growers are responsible for selecting certified Sampling Agents and identified THC testing facilities from the published lists on the Department’s website. Growers are responsible for communicating any special laboratory procedures or shipping requirements to the Sampling Agents.

Once the report is received by the Department, it will be reviewed by a Horticultural Inspector. All lots may be subject to state-mandated sampling. Sampling will be decided at the discretion of the Department.

The Department will notify growers if they have been chosen for sampling. The Department will notify the selected Sampling Agents of the samples required. The Sampling Agents will collect the regulatory samples and send them to the growers’ preferred testing facilities. If a Sampling Agent does not collect the sample within the required timeframe, the grower should contact the Department immediately.

Growers are responsible for all costs of sampling, shipping, and testing of hemp samples.

Growers must have approval from the Department to harvest. Hemp must be harvested within 30 days of the regulatory sampling date.
THC Testing
THC testing facilities must be recognized by the Department. A list of recognized laboratories will be maintained on the Department's website. After December 31, 2022, all THC testing facilities must be registered with the Drug Enforcement Administration (DEA) to conduct regulatory THC testing for this program.

Regulatory samples required by the Department will be measured for total THC. The total THC is determined after decarboxylation or calculated by using the formula: delta-9 THC + (THCA x 0.877). The total THC amount will be added to the measurement of uncertainty to create a distribution range. The distribution range must include 0.3% or less on a dry weight basis.

A grower may request one re-test of the original sample if the grower has a good faith belief that the original test result was in error. No more than two official samples per lot will be considered by the Department. Only the final official sample will be considered by the Department when determining compliance.

Reporting Requirements

FSA Reporting
The United States Department of Agriculture (USDA) requires that all producers report hemp production of any size to the Farm Service Agency (FSA). Growers must file an FSA-578 Report of Acreage to the FSA within 10 days of planting hemp. Please review the FSA Reporting Guidance for more information.

Department Reporting
All license holders are required to submit the following reports to the Department by their required due dates. The Department may require additional reports to facilitate regulatory oversight of this program. The Department will notify license holders of any new reporting requirements.

- Planting Report – due within 20 days after each planting
- Hemp Greens/Microgreens Report – due the first of each month
- Pre-Harvest Report – due 30 days before each harvest
- Post-Harvest Report – due within 15 days after each harvest
- Disposal Report – due within 10 days after disposal
- Remediation Report – due 10 days before each remediation
- Theft Report – due within five days after filing police report
- Non-Compliant Hemp Report – due within five days after receiving high THC results
- Monthly Sales Report – due the seventh of each month

Please review the instructions on page one of the Hemp Reporting Package for more information about each report.

Disposal and Remediation
Commercial lots shall be subject to disposal or remediation when a sample tests over the acceptable hemp THC level based on regulatory sampling.

Disposal
A grower shall dispose of and document the disposal of non-compliant hemp within 5 days of receiving non-compliant test results. The method of disposal must be approved by the Department and verified by either a Department Horticultural Inspector, photos, videos, or other proof of disposal approved by the Department.

Methods of disposal include:
• off-site disposal by DEA-registered reverse distributor or law enforcement or
• on-site disposal at the farm or hemp production facility by one of the following methods:
  plow under, mow, compost, till, disc, burn, or bury

**Remediation**
A grower may remediate non-compliant hemp by one of these methods:
• disposing of all flower material and salvaging the remainder of the plant or
• blending, chopping, or shredding the entire plant into a uniform homogeneous biomass

All remediated hemp must be separated from any other hemp, clearly labeled as “hemp for remediation purposes”, and stored and labeled apart from any other remediated hemp. Remediated hemp must not leave the Department-approved location until a compliant test result is received or until the hemp will be destroyed.

All remediated plant material will be sampled and tested for the material’s THC level at the grower’s expense. All remediation test results are final. Only successfully remediated plant material may enter the stream of commerce. Any hemp which remains non-compliant must be destroyed.

**Record Keeping**
All license holders must keep and maintain accurate records on the cultivation, sampling, shipping, testing, harvest, disposal, and remediation of hemp for at least three years. These records may be reviewed by a Horticultural Inspector during an audit or inspection to ensure program compliance.

**Violations**
Growers failing to adhere to the program’s compliance requirements are subject to penalties and other enforcement action, up to and including suspension or termination of their license, depending on the number and extent of the infractions or violations that have occurred. Failure to comply with program requirements is divided into three categories: infractions, negligent violations, and culpable violations. Information about each category follows:

**Infractions**
Infractions occur when a grower fails to follow any of the requirements that are not more specifically addressed as negligent or culpable violations. The Department will establish a date by which the infraction must be corrected.

**Negligent Violations**
Negligent violations occur when a grower fails to exercise the level of care that a reasonably prudent person would exercise in complying with the Department’s requirements. The following actions are negligent violations:
• growing and/or handling hemp without a valid license,
• growing and/or handling hemp at an unauthorized location,
• producing cannabis with a total THC level exceeding 1.0% on a dry weight basis,
• failing to timely dispose of plants determined to have more than the accepted hemp THC level,
• harvesting hemp prior to the collection of a regulatory pre-harvest sample by a Department inspector or Department-certified Sampling Agent or prior to receiving written approval to harvest from the Department,
• harvesting hemp more than 30 days after the regulatory sampling date,
• commingling lots of harvested plant material prior to state-mandated sampling and/or prior to receiving compliant test results of a regulatory sample, and/or
• failing to segregate and store the plant material and/or removing the plant material from the location authorized by the Department prior to receiving compliant test results.

Culpable Violations
Culpable violations occur when a grower fails to comply with the Department’s requirements with a culpable mental state greater than negligence. The following actions may be considered culpable violations:
• Growing or cultivating hemp with a total THC level exceeding 1.0% on a dry weight basis.
• Handling non-compliant hemp for a purpose other than ensuring its destruction or remediation.
• Introducing non-compliant hemp into the stream of commerce.

Corrective Action Plans
The Department may require a grower to submit a corrective action plan for approval. The plan must, at a minimum, include:
• a reasonable date by which the infraction or violation will be corrected and
• the actions to be taken to correct the violation and to ensure future compliance with the requirements that were not met.

Those under a corrective action plan must submit quarterly reports for a period of two years. Quarterly reports will be due on the first days of January, April, July, and October. The reports will advise the Department of the grower’s compliance with the corrective action plan. Those under a corrective action plan will be inspected annually to ensure compliance.

If a subsequent violation occurs while a corrective action plan is in place, a new corrective action plan must be submitted with a heightened level of quality control, staff training, and quantifiable action measures.

Suspension and Revocation
The Department may decline to renew or may revoke, suspend, and/or impose conditions on an authorization or certification issued by the Department. The following may result in the suspension or revocation of a license:
• seeking an authorization to grow hemp on land currently authorized to another license,
• committing an act injurious to the public health or welfare related to the license,
• growing cannabis exceeding the acceptable THC level with a culpable mental state,
• receiving three negligent violations within a five-year period,
• failing to have adequate facilities, equipment, or security to cultivate or handle hemp,
• failing to keep accurate records for at least three years,
• failing to submit all reports by the required due dates,
• providing inaccurate or misleading information to the Department,
• failing to notify the Department that a participant was convicted of a drug-related felony,
• failing to comply with any program requirements,
• engaging in the handling, processing, or retail sale of hemp without the required licenses, and/or
• seeking a license for a person who has been suspended, revoked, or is ineligible.

Change of Ownership
The New York State hemp regulations (1 NYCRR §159.3(d)) prohibits the assignment, transfer, or sale of a hemp license.
Glossary

*Cannabidiol (CBD)*: an extracted chemical component of the *Cannabis sativa* L. plant.

*Certification*: the final document issued by the Department upon the approval of a sampling agent application which allows the certified party to sample hemp in New York State.

*Culpable mental state greater than negligence*: to act intentionally, knowingly, willfully, or recklessly.

*Distribution range*: the range created by adding the measurement of uncertainty to the total THC level for regulatory samples that will be used to determine hemp compliance. Regulatory samples whose distribution range include 0.3% or less will be deemed compliant.

*Dry weight basis*: the method of determining the percentage of a chemical in a substance after removing the moisture from the substance.

*Key participant*: a sole proprietor, a partner in a partnership, or a person with executive managerial control in a business or educational entity. A person with executive managerial control includes, without limitation, persons such as a chief executive officer, chief operating officer, and chief financial officer. This definition does not include non-executive managers such as farm, field, or shift managers.

*License*: the document issued by the Department upon the approval of a grower or seed seller application which allows the licensee to participate in the program.

*Lot*: a contiguous area in a field, sub-field, tract, greenhouse, or indoor growing structure containing the same variety or strain of cannabis throughout the area.

*Measurement of Uncertainty (MU)*: 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.

*Non-compliant hemp*: hemp plant material with THC level above the acceptable 0.3% on a dry weight basis with a distribution range that does not include 0.3% or less.

*Phytosanitary certificate*: an inspection certificate issued by a competent governmental authority to show that a particular shipment of plant material has been determined to be free from harmful pests and diseases.

*Post-decarboxylation*: a value determined after the process of decarboxylation that determines the total potential delta-9 THC content derived from the sum of the THC and THCA content and reported on a dry weight basis.

*Regulatory sample*: a sample requested and required by the state to determine compliance with state and federal regulations.

*Total THC*: the value determined after the process of decarboxylation or with the application of the formula delta-9 THC + (THCA x 0.877) which expresses the potential total delta-9 THC content derived from the sum of the THC and THCA content and reported on a dry weight basis.