

Cannabis Farming: New York Legislative and Regulatory Proposals

Submitted on behalf of
**New York's Small Farm Alliance of Cannabis Growers
(Small FarmA)**
December 19, 2018

New York's Small Farm Alliance of Cannabis Growers and Supporters (Small FarmA) is a group co-founded by Andi Novick and Ben Dobson to support craft and small farm growers as New York prepares to permit the growing of this crop.

Economic and Ecological Responsibility

How are ecology and economy related? The root word 'eco' comes from an ancient Greek word, *oikos* -and refers to the conceptual 'home.' New York State is *home* to over 19 million diverse people. As New York prepares to open an immensely lucrative market, it is our responsibility to ensure that the generated capital is re-circulated within the state to optimize benefit to residents through increased jobs and wages, increased equity and increased social and environmental impact. New York State has an opportunity to demonstrate leadership that benefits its people, planet and profits in systemic, quantifiable and impact driven ways. This proposal seeks to foster the creation of an inclusive and equitable economy. In an inclusive and equitable economy, benefit is intentionally distributed amongst local rural and urban communities, so that small farmers, women and people of color can maximize their impact as leaders. It is imperative that we level the playing fields of opportunity. New York's economic wellbeing and social ecology will improve exponentially when marginalized communities are empowered to participate on equal footing. We advise that the state vigilantly protect the rights of farmers who forge their living on the frontlines of ecological disruption, to preserve and fortify an important American agricultural tradition. We must acknowledge and be accountable for previous choices that have left our nation's infrastructure and communities vulnerable. Solutioning at the local and state levels will play a significant role in charting a new course for a sustainable future.

Revitalizing farming communities & regional economies

The introduction of any new crop into the legal market, particularly this new crop, presents once-in-a-lifetime opportunities for New York. The birth of a new industry and the generation of employment and economic development across the state must be carefully shaped and purposely designed or it will be lost to large corporations that create employment for some and wealth for a few, deepening their pockets with most of the money: money that belongs to New Yorkers.

The new legislation must be crafted to support the craft and small farm growers in order to ensure this New York State home-grown quality craft industry has the chance to develop and thrive. That requires legislation that not only builds in structural support for growers and other entrepreneurs as they take on the myriad opportunities about to open to them, but also intentionally prohibits the growth of a large corporate cannabis industry dominated by a few large players by controlling size of operations and prohibiting vertical integration for larger players.

It is in the State's interest to make sure this new cannabis industry is *decentralized*, thus spreading the benefits to the greatest number of New Yorkers. Lessons learned from states such as Colorado, which did not protect craft growing and processing, is that concentrated wealth in

the hands of a few leaves limited opportunities for small entrepreneurs, most notably our small farmers.

The NYS Legislative Commission on Rural Resources already expressly found in its Fall 2006 report, *A Vision for Rural New York*:

“The future prosperity of our rural regions remains undeniably central to the Empire State’s overall well-being in this new century.”

In the law creating this Commission, the Legislature proclaimed: “New York’s indispensable rural resources are *decentralized*, diverse and unique, and their enhancement and protection require special attention in view of their special characterization and needs.”

Create a Legal Structure that Protects Small Growers and Farmers to Develop a New York Top Quality Farm Craft Market

We want the new legislation to create a regulatory structure that protects farmers and other regular people who aren’t necessarily well capitalized. We have proposed a market structure which learns from the mistakes of other states and seeks to prevent the concentration of wealth in the hands of a few, instead sharing that wealth with many New Yorkers, particularly those communities who have endured many generations of disproportionate criminalization under misguided drug war policies.

In order for our rural communities across the state to thrive the new law must direct that a licensing structure be created which not only controls the size of big agri-cannabusiness and other cannabis industries coming into our state only to take the money out of our state, but also facilitates the creation of a New York-proud farm craft industry by supporting vertically integrated strategic hubs that will assist small growers in these initial years as we all learn to navigate what will be one of the most highly regulated industries.

We want the government to support the cannabis farm craft industry of New York by supporting craft growers and small farmers precisely as it has supported farm breweries. Although we’ve not laid out the provisions of Section 51A - the Farm Brewery license - in this document, we need the same statutory rights for cannabis farm growers in order to realize and vitalize this new small farm industry which holds such promise for our state. We want to protect small growers and farmers to develop a best quality craft cannabis market and establish increasingly high standards.

Proposed Licensing Structure

Cap the size of industrial growers

In order to protect small growers, we have proposed a licensing structure that seeks to prevent craft and small farm growers from being overrun by large agri-cannabis businesses, by controlling the size of large grow operations - capping the maximum growing space at 100,000 square feet - and limiting licenses to one per customer. Initially, Massachusetts was set to allow cultivators to grow as large as they wanted, but then realized that not having a cap could create a situation where a cultivator was growing so much product, it might be tempting to divert some of that product out of state, or to the unregulated illicit market. Massachusetts’ law then restricted the largest space a large grower could grow to a 100,000 square foot cap (2.3 acre), determining that could help discourage both diversion and discourage huge agri-cannabis companies from taking hold of the market.

Farm-based Microbusinesses

A microbusiness is a cannabis grower (indoor or outdoor cultivation) and/or cannabis infused product manufacturer/distributor and/or retailer. A microbusiness may manufacture, distribute and sell all of its own harvest and the cannabis-infused products produced from its harvest.

We support the MRTA's microbusiness category of a 10,000 square feet multi-permitted license, but have further refined the proposed law as applied to farm-based microbusinesses. When a microbusiness is located on a farm, the activities which the microbusiness is entitled to perform pursuant to this license are to be considered 'farm operations' pursuant to the Agricultural and Markets Law section 301(11) and the statute should be amended accordingly. When the farm is located within an agricultural district, all agricultural activities permitted by the license must be statutorily protected from local zoning exclusion.

Creating smaller tiers for Craft Growers

We have proposed further subdividing the 10,000 square feet growing area described for microbusiness licenses into smaller tiers for the purpose of creating more accessible craft grower licenses. This will enable individual craft growers to start smaller, which also allows the state to minimize entry fees, all facilitating easier access into the market. The tiered growing we've proposed is only for a craft grower license, although a craft grower can choose to apply for a farm-based microbusiness license if she wants to be able to manufacture cannabis-infused products and/or be able to distribute and sell directly to customers, as provided by the microbusiness license.

Vertically Integrated Cooperatives and Farmer Associations

Recognizing the challenges that we've seen in other states for existing and new farmers to enter the market, either because they're small or may not have a background in business - much like a lot of great craft brewers who've started successful businesses- we propose supporting small growers with a cooperative-style entrepreneurial arrangement that by definition shares the wealth among the thousands of craft growers and small farmers who will have the opportunity to create business for themselves and New York.

Traditionally, cooperatives and farmer associations represent business structures that democratically share, rather than consolidate, wealth, thereby contributing to the growth of New York's regional economies and to the strength of communities. The new law should direct that the regulations provide that these models of shared wealth not be limited in size (i.e., the number of members or the accumulated size of grow operations), since all growers will already be limited as either being licensed craft, microbusinesses or small farm growers. The new law should further encourage the creation of new jobs in the communities throughout this state by directing that licenses issued to either a cooperative or a farmer association, include the license to grow as well as all other licenses (seed breeding and sale of seeds; testing, manufacturing cannabis-infused products & distribution, on-site use, research, delivery and retail sales, except a farmer association license would not include delivery or retail sales).

We are proposing that regional cooperatives and farmer associations be established in strategic parts of the State to serve as integral hubs which can support member/growers with a host of services to ensure their success as they're first starting out. They could serve as testing facilities. They could also do the branding, marketing and selling, thus taking that burden off the smaller grower. In addition to providing a "built-in" market for small growers, these hubs would be sharing cultivation knowledge and other resources to assist small growers in this new business; they could serve as seed banks and centers of genetic research - all the while encouraging collaboration and innovation and simultaneously engaging the community in an important economic growth opportunity.

Our vision is for these hubs to eventually be self-supported cooperatives or farmer associations, but in the early years of this industry we have proposed the state provide enough of these resource hubs to ensure the success of local growers, small farms and small cannabis businesses as they navigate the regulations and learn to grow a new crop in a more diverse and inclusive industry.

Resource Hubs: Incubator plus program

We propose that New York State establish strategically located *Resource Hubs* charged with the goals of increasing the success rates and viability of small business enterprises and positioning them to exceed the five-year mark. To this end, New York State may offer non-extractive finance and custom-tailored business support with confidence in the promise of a multi-faceted return on investment. There is also a moral imperative to redress the harms done by the state through disproportionate marijuana prohibition to ensure that the establishment of this new industry be for the benefit of the many.

This once in a century opportunity to realize financial profits as a result of removing prohibition can and should benefit government (and the people it represents) more than accommodate the withdrawal of monies by private and outside companies. We see the benefit to the state multifold: 1) by creating hubs in strategic areas of New York, the state will multiply job opportunities, thus serving to revitalize depressed agricultural communities as well as the urban communities most disproportionately impacted by the “War on Drugs” waged against low-wealth African Americans and Latinos; 2) the state can ensure an outcome of a diverse and inclusive market by requiring at least 51% of licensees who work in these hubs be reserved for Women or Minority-owned Business Enterprises; 3) the state can profit financially, beyond taxation, from the opportunity that legalization of cannabis provides, while also keeping those monies working for New York; 4) the hubs will serve the state not only for the expertise they will develop, but by becoming a resource for members and non-member growers as well as other licensed cannabis businesses, providing a place for small growers to sell their harvest, have it tested, have their harvest turned into cannabis-infused products, exchange information, knowledge and resources relating to strains, seeds, cultivation, genetics, branding, retail selling and distribution, and other relevant issues as all are learning in this newly created industry; 5) the hubs can also ease the state’s regulatory compliance work by assuming member growers’ compliance with quality and quantity, assuring that regenerative farming practices are being adhered to and numerous other ways, particularly given this dynamic relationship being proposed between the state and regionally located cooperative hubs.

This industry is more complicated than most due to the excessive regulations required, the infancy of the industry and the fact that federal funds and other federally related issues create major obstacles. While the state can scale licensing activities and fees, restrict vertical integration for industrial players, create microlicenses and prioritize certain applicants, this is insufficient for this particular industry. The high risk associated with starting a cannabis business; the limited options for securing finances given the federal government’s position; the further limitations on access to capital for people without collateral; the lack of access to insurance; the cost-prohibitive nature of operating a regulation-compliant business all demand that the state responds with a novel approach, more robust than it has done historically with incubator models.

We urge the government to create a small business incubator plus program, providing direct support to small-scale operators who are cannabis license holders. Specifically, the model we are proposing is the cooperative model described in this document, wherein the coop would be licensed to be vertically integrated and would function, unlike a private business, to share

knowledge and training and resources. Indeed, the cooperative hubs could serve as centers for genetic research and environmental stewardship and also assist the state in education, providing workshops for all cooperative members as well as for communities throughout the state.

In addition to financing, the state would provide those other services typically provided to an incubator program: direct support in the form of small business development supports including strategic business planning and research, compliance assistance, education, job training in the fields of the various licenses, helping entrepreneurs understand how to obtain funding and other counseling services. State managed impact-oriented *Resource Hubs*, would offer New York a most excellent insight into the industry through metrics-oriented management designed to positively inform proposals for regulation. Furthermore, systemic state support will fortify the viability and growth of multiple and diverse small farm-based cannabis enterprises.

Applicants for employment in one of the State's strategically located *Resource Hubs* would be required to satisfy licensing criteria in one or more of the licensed categories, but the fees associated with permitting and licensing would be deferred until after the cooperative was financially viable and able to afford those fees. Priority would be given to people of color, women and equity applicants, with at least 51% of licenses reserved for these groups of people who apply to participate in these state-supported cooperatives hubs. Through the defined incubation period equity would be allocated to members, effectively fortifying the function and formation of worker cooperatives. And the state will recoup its expenses and a small amount of interest.

The state's objective should be to help ensure the success of these farm cooperatives so that these hubs become a source of growing employment for the community and the state. We want the new law to direct that the regulations prioritize the creation of living wage, long-term jobs with benefits in our regional communities, starting with our farming communities.

An annual market supply and demand check-in

We want as much of our cannabis coming from small farmers and from cannabis grown in the ground out in the sun - thereby maximizing the nutrient integrity of this plant and the health of all New Yorkers, while protecting and contributing towards the health of our planet. We recognize it will take some time before our craft and small farm growers can meet the greater demands of New York's market, which is why we're proposing that new legislation provide an annual market supply and demand check-in. Annually the state could adjust the allocation of licenses to industrial growers, either issuing licenses to additional growers to meet higher demands or restrict licensing to larger growers as small cultivators are able to scale up, or some other way the state plays an active role in intentionally making room for small growers as they quite literally grow to the task.

Amend the Agricultural and Markets laws to recognize Cannabis Sativa as an Agricultural Crop & all Licensed Activities on a Farm as Farming Operations

The new legislation needs to recognize Cannabis sativa as an agricultural crop independently and as well as an agricultural product. We are urging the state to support the development of this crop just as the law has done with regard to industrial hemp. Accordingly, the Agriculture and Markets Law should be amended to include this Cannabis sativa as an agricultural product and that it be treated the same way as other crops and seed.

As was also done with hemp Cannabis sativa, AML section 301 should be amended by adding *this* Cannabis sativa to the definition of crops as well as amending that portion of section 301(11) defining "farm operations" to include all operations relevant to the farming and production of

cannabis. “Farm operations” would include drying, curing, trimming/manicuring, packaging manicured cannabis flowers in a secured building. (Hereinafter these particular operations are referred to as “preparing” the cannabis for sale. Typically, these activities are referred to as processing, but the MRTA uses the word processing to include a wider range of activities inclusive of manufacturing cannabis into a cannabis-infused product and therefore we are using preparing in order to distinguish the term from processing in the MRTA).

“Farm operations” in the case of farm-based microbusinesses, cooperatives and farmer associations, should also include additional secured buildings where cannabis-infused products are manufactured, including and an area for packaging the manufactured cannabis products for distribution; farm gate or direct farm marketing including on site use. Additionally, for cooperatives and farmer associations “farm operations” could also include secured buildings for laboratory testing, genetic research and/or seed breeding.

More than legally recognizing this Cannabis sativa as a crop, we want the governor’s office to provide at least the same amount of support for the potential of this plant as it has shown for both hemp and the craft brewery market. With regard to the new hemp market, the Legislature declared that it is the “Policy of the state to become a leader in encouraging and supporting research into the growth, cultivation uses, processing and development of industrial hemp and products derived from industrial hemp to *benefit its people and to support New York farms and businesses*”³¹ and the Legislature hailed the “tremendous potential for farmers and manufacturers in New York State.”³²

With regard to the craft brewing industry: “The vast majority of these breweries are small manufacturing businesses that support their local communities and create thousands of jobs across the entire state. This doesn't happen without ... the unprecedented support from Governor Cuomo and state legislators who... provide opportunities for growth, and pass meaningful legislation for the brewing industry.”³³

Zoning Immunity for Farms in Agricultural Districts

Learning from the experiences of local farmers in Massachusetts who have been excluded from growing by local zoning boards that are either refusing to permit cannabis growing in their district or relegating it into industrial areas (where farms are not located), it is imperative that New York’s new law expressly provide zoning immunity for growers who are already in agricultural districts.

The right to farm protections alone are insufficient. While AML sec 305-a does prohibit local governments from unreasonably restricting farm operations within an agricultural district, there is that wiggle room in the law which permits local municipalities to exclude certain farming operations if “it can be shown that the public health or safety is threatened.” It is because we have all been misled to believe that cannabis is so dangerous as to have been classified along with heroin, that local zoning boards could conceivably exclude cannabis farming as a public health or safety risk.

Cooperatives and farmer associations as well as farm-based microbusiness are licensed to perform additional licensed activities related to their farming. The language exempting local zoning boards from precluding growing should additionally make it clear that other licensed activities be permitted farming activities.

Supporting a new cannabis craft industry for New York deserves at least the same level of statutory zoning protection that the legislature has provided for, *inter alia*, casinos, oil and gas drilling, residential day care, hazardous waste facilities, and other unpopular industries. What we’re asking for in the new statute isn’t extraordinary in the way some of those prior exemptions

were. We want to protect small farmers, craft growers, farm-based microbusinesses, cooperatives and farmers associations *who are already in agricultural districts* to be able to grow and process this crop by having the new statute make this intention clear, thus preventing local zoning boards from being able to stop farmers from farming this crop as they would any other crop. We want cannabis farms and agritourism to prosper the way vineyards and craft breweries have, but because of the misconceptions about cannabis we need the statute to explicitly provide zoning protection from local zoning boards for cannabis farm-based microbusinesses, cooperatives, farm associations and small growers located within agricultural districts.

Reducing carbon emissions from the atmosphere and sequestering carbon in the ground are priorities that must be incorporated into all new legislation

At the heart of last week's Climate Conference in Poland (COP) was the "rulebook" covering, among other things how countries report and control their greenhouse gas emissions. Given our federal government's irresponsibility it is incumbent on the states to assume this role. New York's Assembly had approved the nation's most ambitious climate change statute, requiring the state to reduce greenhouse gas emissions from major sources to zero by 2050 and increase the use of energy from renewable sources.

Given the importance of such legislation, presumably the Governor and the Senate will prioritize such legislation this year. Moreover, both houses of the Legislature created similar versions of the Carbon Farming Act, the Assembly declaring that "enhancing carbon sequestration, the long-term storage of carbon in plants [and] soils, through farming is *in the best interest of New Yorkers.*"

As a matter of policy and "*in the best interests of New Yorkers,*" any new legislation involving the growing of a crop should incorporate what the Carbon Farming Act recognized that: "[b]y using no-till systems, planting cover crops, trees and perennial forages, and managing compost application, farmers can see improvements in water holding capacity, nutrient storage, and reduced erosion.... All of these farming practices have the collateral benefit of sequestering carbon in the soil, thereby reducing its release into the atmosphere as CO₂."

All Cannabis in NYS should be Grown Free of Synthetic Chemicals

By adhering to the stated priorities in the aforesaid pieces of legislation, we will not only be doing our share in protecting the planet by going beyond reducing greenhouse gasses and actually pulling CO₂ out of the air and sequestering it in the soil, but we will be providing New Yorkers with the healthiest form of cannabis, not just free of pesticides, but the most nutrient-dense cannabis. What we are asking is that the new legislation mandate that all cannabis grown in this state be free of synthetic chemicals and be grown in a manner that comports with these carbon-positive principles. Growing cannabis is a privilege and those who don't want to grow it consciously should be prohibited from growing in our state.

This necessarily includes cannabis grown indoors. Indoor cannabis cultivation is one of the most energy intensive industries in the U.S. The unsustainable way cannabis is grown indoors releases disastrous levels of greenhouse gas pollution into the atmosphere. Massachusetts, recognizing that indoor cannabis cultivation could throw off their commitment to reducing carbon emissions, restricted electrical use, capping it at 36 watts per square foot of cultivation space. Boulder Colorado requires that all medical and recreational cannabis growers report their energy use to the city and offset 100% of their electricity use with renewables.

Consistent with the commitment to reduce carbon in the atmosphere, clearly no businesses operating as a result of this new legislation should be permitted to operate in contravention of these objectives. The new legislation must incorporate these climate-saving requirements for all growing: both restricting electrical consumption as well as requiring that all fossil fuel-based energy be offset 100% from renewable sources. To fail to do so not only undermines New

York's stated goals, but dangerously hinders our very real need to reduce global warming with expediency.

We believe New York can and should take the lead in this new and multi-faceted industry by modeling through laws that: require carbon farming practices and minimize greenhouse gas pollution; intentionally create an economy which puts the interests of local entrepreneurs, small businesses, and particularly farmers at the center of this new industry by providing supportive structures that facilitate local development while prohibiting vertical and horizontal integration in the industrial market; establish and enforce the highest quality testing standards of any state in the nation; create genetics research opportunities discovering the best strains for medicinal and healing uses; position New York as a global leader in cannabis research, including hemp research.

LICENSES

Home Grown: no license; up to 6 female plants per person.

1. Microbusiness License
2. Craft grow License
3. Farm grow License
4. Industrial grow License
5. Cooperative License
6. Farmer Association License
7. Seed Breeding and Sales License
8. Cannabis Laboratory Testing License
9. Cannabis Infused Products & Distribution License
10. On Site Use License
11. Genetics Research and Development License
12. Distribution or Distribution Transport License
13. Retail License

APPLICATIONS

All grower licenses are limited to one per person, except a craft or small farm grower can start with a grower's only license and later apply for a farm-based microbusiness license. The state should support farm growers starting small and scaling up.

Further, with the exception of an industrial grower license, there should be no limit on the number of craft, farm, cooperative, farmers association or farm-based microbusiness licenses the state can issue. The state's policy should be to inspire this New York farm craft industry by permitting the greatest number of small farm growers to participate. Small grower licenses should be available to any New Yorker who wishes to apply and is found eligible, thereby encouraging the greatest number of small growers to be brought into the regulated market.

Applicants for all small grower licenses (farm-based microbusiness, craft and small farm growers, cooperatives and farmers associations) should be given preference over industrial cultivators and women, people of color and equity applicants should be given the highest priority.

Craft and farm growers are encouraged, but not required, to join a cooperative or a farmer association and would be allowed to change cooperatives or farmers associations if they so choose. Membership provides support and predictability for the grower and strengthens the cooperative's or farmer association's market share.

Farm based Microbusiness Application:

This license is similar to the license described in the MRTA, which permits a microbusiness licensee to act as a cannabis grower on an area less than 10,000 square feet and includes a license to manufacture cannabis-infused products and additionally to sell and distribute cannabis and the manufactured products directly to consumers and other licensed cannabis retailers (licenses number 9, 10, 12, 13 herein are inclusive in this license).

Farm-based microbusinesses should be treated differently than other cannabis microbusinesses in so far as the activities permitted by the multi-permitted license should be protected activities, considered 'farm operations' pursuant to the Agricultural and Markets Law. And farm-based microbusinesses that are in Agricultural districts should also be exempt from restriction by local zoning boards.

Application fees and license fees for farm-based microbusinesses shall be set at 50% of the combined sum of the application fees and license fees for cultivation and/or manufacturing.

A farm-based microbusiness licensee is prohibited from having any ownership interest in another type of cannabis license, but can be a member of a cooperative or a farmer association.

A farm-based microbusiness may manufacture, distribute and sell all of its own harvest and products produced from that harvest. Additionally, a farm-based microbusiness may purchase up to 2,000 pounds of cannabis from other cannabis establishments in one year.

Craft Growers Application:

We have proposed different tiers which will permit small growers to participate at different levels with lesser fees for the smaller grows. Recognizing that outdoor growing often requires more space to produce the same number of plants, we have also prescribed a maximum number of plants to be grown in a particular tier.

Tier one: up to 1,000 square feet indoors (50-125 plants). Up to 2,000 square feet of additional interior space is permitted for preparing the cannabis.

Tier two: up to 2,500 square feet indoors (100-250 plants). Up to 5,000 square feet of additional interior space is permitted for preparing the cannabis.

Tier three: up to 5,000 square feet indoors (200-500 plants). Up to 10,000 square feet of additional interior space is permitted for preparing the cannabis.

Because we are opposed to monocropping and recognize the importance of beneficial plantings, we are requiring that growers have larger areas to grow on than is actually necessary to produce the maximum number of plants. The actual growing area, however, will be far less than the required acreage we've proposed. This minimum acreage is consistent with Mendocino's outdoor growing regulations.

Tier one outdoor growers must be on a minimum of 2 acres.

Tier two outdoor growers must be on a minimum of 5 acres.

Tier three outdoor growers must be on a minimum of 10 acres.

An applicant enjoys a licensing fee discount of 50%. Craft growers would pay progressively increasing fees based on the tier they applied for and could scale up in subsequent years, after applying to the state and paying additional fees.

This license allows for growing and preparing the crop for sale. A craft grower may choose instead to apply for a farm-based microbusiness license initially or subsequently and should be given priority if she's already growing on a farm.

Craft growers can distribute and sell to a cooperative, farmer association, microbusiness, state distributor or the craft grower could get her own farm-based microbusiness license which would enable the manufacturing of cannabis infused products as well as selling directly or on site. The easiest option is to sell to a cooperative or a farmer association.

Farm Growers Application:

Tier one: up to ¼ acre or 10,000 square feet. Up to 1,200 plants and 20,000 square feet of additional interior space is permitted for preparing the cannabis.

Tier two: up to ½ acre or 20,000 square feet. Up to 2,400 plants and 40,000 square feet of additional interior space is permitted for preparing the cannabis.

Tier one outdoor growers must be on a minimum of 15 acres.

Tier two outdoor growers must be on a minimum of 30 acres.

An applicant enjoys a licensing fee discount of 50%. Farm growers would pay different fees based on the tier they applied for and could scale up subsequently, after applying to the state and paying additional fees.

This license allows for growing and preparing the crop for sale. A farm grower may choose instead to apply for a farm-based microbusiness license initially or subsequently and should be given priority if she's already growing on a farm.

Farm growers can distribute and sell to a cooperative, farmer association, microbusiness, state distributor or the farm craft grower could get her own microbusiness license which would enable the manufacturing of cannabis infused products as well as selling directly or on site. The easiest option is to sell to a cooperative or a farmer association.

Industrial Growers Application:

Industrial growers are limited to 1 license for growing and cannot apply for any other licenses.

Can grow up to 100,000 square feet or 2.3 acres on a 50-acre facility and up to 100,000 square feet of additional support space can be used for processing.

Cooperative Application:

Only small growers (craft growers, farm-based microbusiness growers and small farmers) can be members of a cooperative.

With this license comes authorization to conduct all activities allowed under licenses 7-13: seed breeding and sale of seeds; testing, manufacturing cannabis-infused products & distribution, on-site use, research, delivery and retail sales. This license provides the potential for the greatest vertical integration of all licenses.

Application fees and license fees for cooperative shall be set at 50% of the combined sum of the application fees and license fees for cultivation and/or manufacturing.

A cooperative can process crops from member growers, can create cannabis-infused products, can package, brand and distribute on behalf of its member growers. Cooperatives can also contract separately with non-members for any of these services.

A cooperative must be owned by local member growers with profits flowing back to member/owners. There should be no limit on the number of members who can participate in a cooperative or on the collective amount of growing space of a cooperative. All cooperative members are small business members and their production is limited by their licenses. Imposing a limit on the size of a cooperative would be inconsistent with what should be New York State's policy to consciously create good jobs for the greatest number of New Yorkers, regardless of their income levels or access to venture capital and to prevent the consolidation of wealth in a few.

A farm cooperative may manufacture, distribute and sell all of its members' harvest as well as products produced from that harvest. Additionally, a cooperative may purchase up to 2,000 pounds of cannabis from other cannabis establishments in one year. The activities which the cooperative is entitled to perform pursuant to this license are to be considered 'farm operations' pursuant to the Agricultural and Markets Law.

A cooperative can sell and distribute directly to the consumer or to a cooperative, farmer association, microbusiness, licensed retailer, lounge or on-site premise establishment, or a state distributor.

Farmer Association Application:

Only small growers (craft growers, farm-based microbusiness growers and farm growers) can be members of a farmer association.

With the license comes authorization to conduct all activities allowed under licenses 7-12: seed breeding and sale of seeds testing, cannabis-infused products & distribution, on-site use, research. A farmer association license allows for vertical integration of all permitted licensed activities with the exception of a retail license.

Application fees and license fees for a farmer association shall be set at 50% of the combined sum of the application fees and license fees for cultivation and/or manufacturing.

A farmer association can process crops from other member growers, can create cannabis-infused products, can package, brand and distribute on behalf of its member growers. Farmer associations can also contract separately with non-members for any of these services.

A farmer association must be owned by a locally licensed cannabis farm grower or group of locally licensed farm cannabis growers. A farmer association must provide price and profit sharing to association members. The supplying farms do not have to be members of the farmer association, but non-members will not be entitled to the additional benefits of membership, including profit-sharing.

There should be no limit on the number of members who can participate in a farmers' association or on the collective amount of growing space of a farmer association. All farmer association members are small business members and their production is limited by their licenses. Imposing a limit on the size of a farmer association would be inconsistent with what should be New York State's policy to consciously create good jobs for the greatest number of New Yorkers, regardless of their income levels or access to venture capital and to prevent the consolidation of wealth in a few. In fairness and consistent with the model we've created, given that farmer

associations are larger than cooperatives and don't require full distribution of profits, we have omitted the retail sales activity as part of this otherwise vertically integrated license.

A farmer association may manufacture, distribute and sell all of its members' harvest and products produced from that harvest. Additionally, a farmer association may purchase up to 2,000 pounds of cannabis from other cannabis establishments in one year. The activities which the farmer is entitled to perform pursuant to this license are to be considered 'farm operations' pursuant to the Agricultural and Markets Law.

A farmer association can sell and distribute directly to the consumer or to a cooperative, farmer association, microbusiness, licensed retailer, lounge or on-site premise establishment, or a state distributor.

Seed Breeding and Sales Application:

To ensure the quality and viability of seeds, best suited for the particular microclimates. Can sell to approved growers only.

Cannabis Laboratory Testing Application:

Unlimited licenses

Needs to meet ISO standard in addition to the higher standards New York State will create plus any new New York-approved protocols.

Cannabis Infused Products & Distribution Application:

Allowed to purchase bulk cannabis, limited by weight, of tested product from licensed small growers, farmers, co-ops, farmer association, or industrial grows.

A privately-owned manufacturer of cannabis infused products (as opposed to a Coop or Farmer Association) would be limited to processing no more than 5,000 pounds of cannabis annually.

Allowed to sell on wholesale market to co-ops, farmer associations.

On Site Consumption Application:

Allowed to sell cannabis products on premises.

Consumption of cannabis is allowed within the premises. No alcohol sales.

Includes on-site consumption and sale by craft grower on their premises at their own retail store or their own on-site use space; a cooperative's facilities own retail store or on-site use space; or a Farmer Association's on-site use space.

Restaurants may apply for a license to serve cannabis products as part of a dish, but only in an edible or infused form (no smoking or vaping allowed on premises).

Bed & Breakfasts or inns

Lounges - could be stand-alone non-alcoholic bar or part of a retail location.

Genetics Research and Development Application:

Unlimited licenses

Allowed to grow only for research and development purposes /flower composted or disposed of.
Can sell approved seeds.

Distribution or Distribution Transport Application:

The distribution designation can be one of two license varieties: distribution or distribution transport.

a) Distribution

A distributor is responsible for transporting cannabis goods, arranging for testing of cannabis goods, and conducting quality assurance review of cannabis goods to ensure they comply with all packaging and labeling requirements. This designation can only be issued to cooperatives, farm-based microbusinesses and farm associations.

b) Distribution Transport

This license allows a licensee to transport cannabis goods between licensed cultivators, manufacturers, and distributors.

Retail Application:

Includes all retail sales including on-line sales. Up to three locations per licensee.
Sales tax collected from distributor who sells to the retailer, state distributor, microbusiness, cooperative, or farmer association at the point of sale.

The retail sales can be from a physical location or on-line. The physical location can be a store front, non-storefront, or on line. Only a store front is required to be open to the public.

Requirements for all applicants for a growers' license

All applicants for any of the available growers' licenses, whether growing indoor or outdoor, are required to comply with the following provisions:

- No synthetic pesticides, fungicides, herbicides, or fertilizers are permitted to be used.
- Growers must adhere to regenerative farming principles and practices, as described in New York's Carbon Farming Act and more explicitly in the regulations to be drafted, sufficiently to satisfy New York's goals for carbon pollution reduction (outdoor growing should be carbon-negative and indoor growing should be carbon-neutral).
- The Lighting Power Densities (LPD) for cultivation space must not exceed an average of 36 watts per gross square foot of active and growing space canopy.
- All licensed medical and recreational growers must report their energy use to the State and offset 100% of their electricity use.
- All growers, including industrial growers and indoor growers, must adhere to ecological growing practices, including but not limited to- no synthetic chemical inputs and all fossil fuel energy use must be 100% off-set from renewable energy sources.
- All growers must comply with the security provisions as outlined in the NYS Outdoor Security Protocols, included as an appendix at the end of this document.

Requirements for all applicants for any license

All applicants for any of the available licenses are required to comply with the following requirements:

- Be established as a benefits corporation, pursuant to Article 17 of the Business Corporation Law¹⁶
- New York residents must hold ownership of at least 60% of the business.
- Strive to exceed New York's minimum wage benefits.
- Require a minimum of 51% of cannabis licenses of all types must be owned by Women or Minority-owned Business Enterprises (WMBE).

Additional Details on Grower Categories

Farm-based Microbusinesses

- If farm-based microbusiness grower grows on her own property and isn't a member of a co-op or a farmer association, the state would inspect the facility and the grower would pay an inspection fee.
- If farm-based microbusiness grower grows on her own property and is a member of a co-op or a farmer association, the co-op or farmer association respectively, would be responsible for the facility inspection.
- Taxes to be paid at the distribution point by farm-based microbusiness on all transactions to consumers or other licensed cannabis retailers. Cannabis and cannabis-infused products sold directly by microbusiness collects taxes on those sales.

Craft Growers

- If craft grower grows on her own property and isn't a member of a co-op or a farmer association, the state would inspect the facility and the grower would pay an inspection fee.
- If craft grower grows on her own property and is a member of a co-op or a farmer association, the co-op or farmer association respectively, would be responsible for the facility inspection.
- Taxes to be paid at the distribution point by distribution entity on all transactions from distributors to retailers. If product sold directly by microbusiness or cooperative or farmer association on farm, then taxes would be collected on those sales.

Farm Growers

- Farm growers can be members of a farmer association or of a cooperative.
- If farm grower grows on her own property and isn't a member of a farmer association, the state would inspect the facility and the grower would pay an inspection fee.
- If farm grower grows on her own property and is a member of a farmer association, the farmer association would be responsible for the facility inspection.
- Taxes to be paid at the distribution point by distribution entity on all transactions from distributors to retailers. If product sold directly by microbusiness or cooperative or farmer association on farm, then taxes would be collected on those sales.

Industrial Growers

- To prohibit horizontal integration, industrial grower can only have one license for growing up to 100,000 square feet.
- To prohibit vertical integration, industrial growers are not eligible for any other licenses.

- Industrial grower must sell all of its product to a state distributor.
- Industrial growers must pay taxes on all lots sold to retailers. Tax the transaction between processor/distributor and retail location.

Cooperative

- Cooperatives collect tax on purchases from growers, and from sales to consumers.
- Unlimited cooperative licenses - no cap on the number of these licenses issued by the state.
- The cooperative would be obligated to assure their member growers' compliance with regenerative cultivation practices, quality and quantity, thereby shifting a portion of this enforcement burden from the state to the cooperative itself.
- The cooperative could also supply and manage the RFID plant tagging process, which allows law enforcement to track a plant from seed to sale.
- The cooperative would also have a physical location, where members would have an option to grow their own harvests, much like a community garden.
- A cooperative by definition is the opposite of a consolidation of wealth model. A cooperative would be owned by member growers and run by a board of directors and executive leadership. It would be established as a for-profit entity, with profits flowing back to members/owners.

Farmer Association

- Farmer associations collect tax on purchases from growers, and from sales to consumers.
- Unlimited farmer association licenses - no cap on the number of these licenses issued by the state.
- A farmer association would be obligated to assure their member growers' compliance with regenerative cultivation practices, quality and quantity, thereby shifting a portion of this enforcement burden from the state to the farmer association itself.
- A farmer association could also supply and manage the RFID plant tagging process, which allows law enforcement to track a plant from seed to sale.
- A farmer association would also have a physical location, where members can grow their own harvest.
- A farmer association, unlike a private business, shares its wealth and resources. A farmer association would be owned by farmers with 20% profit sharing to supply farm/grower members.
- New York residents must represent at least 60% ownership in the farmer association.

Existing medical marijuana companies, their subsidiaries, and other companies owned by the same investors that remain vertically integrated, cannot participate in the recreational use market. The new market created by this new legislation should be designed to discourage the movement of capital out of the state and to avoid market dominance, by prohibiting vertical and horizontal integration of private entities, in favor of locally controlled, decentralized community-supported agriculture and a system designed to benefit the many, not the few.

For more on the topics explored in this document, see also the written testimony submitted by New York's Small Farm Alliance of Cannabis Growers for the hearing on the Marijuana Regulation and Taxation Act.

[Assembly Hearing Testimony](#)
[Executive Summary](#)

Appendix: Outdoor Security Protocols

A primary concern amongst legislators with regard to farm grown cannabis outdoor and in greenhouses is security. The following guidelines outline how outdoor and greenhouse production sites could be secured to prevent intrusion, theft, and vandalism.

a) This proposed security plan is divided into two levels based on the scale of the production.

Level 1

- 1,000 square foot grow site (50-125 plants) – to be sited on no less than 2 acres
- 2,500 square foot grow site (100-250 plants)– to be sited on no less than 5 acres
- 5,000 square foot grow site (200-500 plants)– to be sited on no less than 10 acres

Level 2

- 10,000 square foot grow site (up to 1,200 plants)- to be sited on no less than 15 acres
- 20,000 square foot grow site (up to 2,400 plants)– to be sited on no less than 30 acres

b) Both Level 1 and level 2 sites would need to have gates and video surveillance at their entrances. The area inside the entrance would be referred to as security zone 1. Entering security zone 1 would require permission by the owner.

c) All grow sites would be surrounded by a security fence or wall. Level 1 grow sites (5,000 square feet or smaller) would require a security fence at least 8 feet tall equipped with at least one motion sensing light and security camera.

d) Level 2 Grow sites would require a solid security fence or wall that allowed no visibility inside. This fence or wall would be at least 8 feet in height and would be equipped with motion sensing lights and cameras along all perimeters. The entrance(s) to these areas would be secured with secured gates or doors. The area inside the security fences or security walls would require a special access designation granted only to employees and eligible visitors.

e) All support buildings in which cannabis is dried, manicured, packaged and stored would need additional security. Level 1 sites would require locking doors and basic video and motion surveillance. A secondary locked room would be required to secure dried, cured product.

f) Level 2 sites would be more highly secured and surveilled. Level 2 buildings would be required to have security doors and locks, motion sensing lights and surveillance cameras. Only authorized personal and visitors would be allowed in these spaces. In side these buildings there would be two security zones. Security Zone A would encompass all drying, curing, and work spaces. Zone B would either be a safe or safe room in which finished product was stored.

g) Farmers would be required to have a response and reporting plan to accompany their security plan. Farmers would be required to report the identities of their employees to the State as well as any incidents to the appropriate authorities.

h) All farms would be required to submit their security plan to NYS for approval and then conduct an on-site inspection with local law enforcement.

ⁱ *A Vision for Rural New York*,

https://cardi.cals.cornell.edu/sites/cardiacals.cornell.edu/files/shared/documents/RED/rvp-summary_report.pdf

^j <https://www.hempgazette.com/news/ny-industrial-hemp-hg0355/>

^k Justification for bill,

https://nyassembly.gov/leg/?bn=A08509&term=&Summary=Y&Actions=Y&Votes=Y&Memo=Y&Text=Y&leg_video=1

^l *Governor Cuomo Announces Record Number of Breweries in New York State*, Feb 14, 2018,

<https://www.governor.ny.gov/news/governor-cuomo-announces-record-number-breweries-new-york-state>

^m **NYS Climate and Community Protection Act**,

<https://www.nysenate.gov/legislation/bills/2017/a8270/amendment/b>

ⁿ https://assembly.state.ny.us/leg/?default_fld=&bn=A3281&term=&Memo=Y

^o A benefits corporation should not be confused with a B Corp. The B Corp certification is a valuable branding tool for businesses, but is not a legal form.