

New York's Attempts To Jump Start The Adult-Use Cannabis Industry Through Social Equity

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By Alex Malyshev. Published in the [*New York Law Journal*](#).

This month marks the one-year anniversary of former Governor Andrew Cuomo signing the Marijuana Regulation and Taxation Act ("MRTA") into law. Yet, a year on, it does not appear that proposed regulations – and licenses – for commercial adult-use cannabis market are on the near horizon. This likely means that sales under the MRTA will not begin in earnest until the first quarter of 2023, at the earliest.

However, it does appear that New York is poised to issue some conditional licenses this year as part of its "[Seeding Opportunity Initiative](#)," which seeks to prioritize individuals impacted by the war on drugs as part of the licensing process. In order to create the infrastructure for some limited sales in 2022, the initiative has three prongs.

The Conditional Adult-Use Retail Dispensary License

At the center of the initiative is a "Conditional Adult-Use Retail Dispensary" license meant to go to social equity entrepreneurs who have been convicted (or had a close family member convicted) of marijuana-related offenses and have a background in owning and operating a small business. The Office of Cannabis Management ("OCM") published proposed [rules](#) after its March 10, 2022, meeting. The rules are now in the public comment period. The OCM's aim is to begin issuing these licenses towards the end of the Summer of 2022 (which means sales may occur by late 2022).

Under the proposed rules, an applicant must demonstrate (1) a significant presence in New York State, (2) that at least one of the owners (if the applicant is an entity) was "justice involved" in New York (e.g. convicted, or had a close family member convicted, of marijuana related offense, prior to the MRTA coming into force), and (3) that the applicant held at least a ten percent ownership interest in, and control of, a qualified business for two years. Such "justice involved" individuals must own at least 51% of the applicant.

Alternatively, an applicant can be a non-profit organization recognized under Section 501(c)(3) of the Internal Revenue Code serving "justice involved" individuals and communities impacted by the war on drugs by operating a social enterprise that had at least two years of positive net assets or profits. Such an organization must have "justice involved" individuals on its board, and employ five full time employees. Considering federal prohibitions on cannabis, and the Internal Revenue Service's general hostility to the industry, it remains to be seen whether this is a viable avenue for a license

At the conclusion of this "conditional" period, licensees will be given the opportunity to transition into a fully licensed adult-use retail dispensary. In evaluating such an application the OCM will look at the licensees history of compliance with state and local laws, and service to the community in which it is located.

The Conditional Adult-Use Cultivator And Processor Licenses

Recognizing that adult-use dispensaries cannot open without supply, Governor Hochul signed Senate Bill [S8084A](#) into law, allowing certain hemp cultivators and processors to apply for “Conditional Adult-Use Cultivator” and “Conditional Adult-Use Processor” licenses this year. The legislation achieves this by allowing a subset of existing participants in the state’s “pilot” hemp program to apply for these provisional licenses. The application [portal](#) is already open.

To be eligible for a conditional cultivator license, an applicant must: (1) have been authorized to grow hemp under the Department of Agriculture and Markets Industrial Hemp Research Pilot Program; (2) be in good standing with the Department of Agriculture and Markets; (3) have been authorized by Department of Agriculture and Markets to grow cannabinoid or “CBD hemp” as opposed to growing hemp for grain or fiber; (4) have grown and harvested cannabinoid or “CBD hemp” for two of the past four years (between 2018 – 2021) and be able to provide the Office with proof documenting such activities; and (5) hold at least a 51% or more ownership in the entity that held the industrial hemp grower authorization from Department of Agriculture and Markets. A conditional licensee may grow up to one acre of cannabis outdoors, or 25,000 sq/ft in a greenhouse, and may engage in “minimal processing and distribution” activities of their own cannabis flower products. The application fee is \$2,000.

To be eligible for a conditional adult-use processor license, a processor must (1) have applied for a cannabinoid hemp processor license before January 1, 2022, (2) hold an active cannabinoid hemp processor license, and (3) as an individual applicant have an ownership interest of 51% or more of the entity that is the licensee. The license will allow the processing and manufacturing of cannabis products at the same location as the previously authorized hemp processing (unless permission to relocate is obtained). The licensee will also be required to comply with various environmental mandates and requirements.

Importantly, to avoid the need for a separate conditional distribution license, holders of conditional processor licenses will be allowed to distribute products until June 1, 2023, provided that the licensee complies with requirements imposed by the office. Both types of licenses have restrictions on changes in ownership and organizational structure during the conditional period.

Support For Social Equity Applicants

Finally, Governor Hochul’s [FY 2023 Executive Budget](#) proposes a \$200 million public-private fund to provide direct capital and startup support for social equity applicants. In addition, as part of the initiative, the Dormitory Authority of the State of New York (“DASNY”) would provide support leasing and construction services to dispensaries. Because the plan is under active negotiation with the legislature the contours remain in flux. Still, this is a step in the right direction, as failure to support social equity applicants, both financially and through other resources, would simply set them up for ruin once better capitalized and organized applicants enter the field in 2023.

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