

Empire State Cannabis Update: Conditional Adult-Use Cultivation & Processor License Overview and Impact



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On February 22, 2022, Governor Kathy Hochul signed a bill into law that will award conditional adult-use licenses to qualifying cultivators and processors who were licensed under New York's Cannabinoid Hemp Program prior to January 1, 2022. In all likelihood, these conditional license applicants will be the first licensed cannabis businesses in New York's adult-use market, and, if awarded licenses, these licensees could begin growing, processing and/or distributing cannabis as early as spring or summer 2022. The basic requirements for each conditional license, as well as the impact such licenses will have on New York's cannabis industry are summarized below.

Overview

Conditional Adult-Use Cultivation License

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1. Eligibility

- To be eligible to apply for a conditional adult-use cultivation license, a cultivator must:
- Have held a valid industrial hemp grower authorization from the Department of Agriculture and Markets as of December 31, 2021;
- Be in good standing with the Department of Agriculture and Markets; and
- Have grown and harvested hemp for at least two of the past four years pursuant to that license and be able to provide proof of the amount of hemp grown.

2. Where can you grow an allowable canopy size?

- Cultivation is permitted only “within the same or an adjacent county” in which the license-holder has been authorized to grow hemp.
- Both outdoor and indoor cultivation in a greenhouse with no more than 20 artificial lights is permitted.
- Outdoor growers may cultivate up to 43,560 square feet of flowering canopy.
- Greenhouse growers may cultivate up to 25,000 square feet of flowering canopy.
- Cultivators may grow both indoors and outdoors under the same conditional license but will be restricted to 30,000 square feet of outdoor flowering canopy and 20,000 square feet or less of greenhouse flowering canopy.

3. Processing & Distribution Permissions

- Conditional cultivation licensees are granted authority to process and distribute their products without holding separate processor and distributor licenses but are limited to products “in the form of cannabis flower.”
- This temporary distribution and/or processor license expires on June 1, 2023, at which point the conditional licensee must apply for a regular processor and/or distributor’s license if they wish to continue such activities.

4. Application and Startup Windows; License Duration

- Conditional licenses will only be issued until December 31, 2022.
- Operations must begin within six months of the license being awarded or the license will be revoked.
- Licenses are valid through June 30, 2024.

5. Ownership Structure

- For the duration of the conditional period, “the ownership or organizational structure of the entity that is the licensee shall not be amended,” pursuant to certain exceptions (e.g., approval by the Cannabis Control Board (CCB)).

6. Environmental Sustainability & Social Equity Programs; Labor Peace Agreement

- In order to receive a license, applicants must agree to participate in both an environmental sustainability program and a social equity mentorship program
- Conditional licensees will also be required to 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 six months of licensure

7. Renewal

- Prior to 90 days of the conditional license expiring, the licensee must alert the Office of Cannabis Management (OCM) that it intends to apply for a full-time cultivator license.
- If the OCM finds the conditional licensee to be in good standing, the cultivator is eligible to apply for and receive

an adult-use cultivation license; so long as it can demonstrate that it meets the requirements of receiving such a license.

- The full-time license awarded will be for, at a minimum, a cultivation license “for the size of flowering canopy that [the licensee was] licensed to grow pursuant to [its] conditional adult-use cultivator license or a larger size flowering canopy and authorization to use artificial light as may be set out by the [CCB].”
- A licensee may not separately apply for any license type under this article permitting the cultivation of adult-use cannabis while holding a conditional adult-use cultivator license.

Conditional Adult-Use Processor License

1. Eligibility

To be eligible to apply for a conditional adult-use processor license, a processor must:

- Have held a cannabinoid hemp processor license prior to January 1, 2022; and
- Hold an active cannabinoid hemp processor license issued by OCM.

2. Where can you process and what activities are you limited to

- Processor activities shall only be permitted at the same location in which the licensee is authorized to process hemp, unless expressly authorized to do so elsewhere by OCM.
- A conditional adult-use processor license authorizes processing and manufacturing of cannabis products.
- Conditional processors are only permitted to perform extraction if they are currently authorized to extract under a cannabinoid hemp processor license.

3. Distribution Permissions

- Licensees are granted the temporary authority to distribute cannabis products without holding an adult-use distributor until June 1, 2023.
- After June 1, 2023, any conditional processor seeking to distribute cannabis products shall be required to apply for and receive a full-time distributor license.

4. Application & Startup Windows; License Duration

- Conditional licenses will only be issued until December 31, 2022.
- Operations must begin within six months of the license being awarded or the license will be revoked.
- Licenses are valid through June 30, 2024.

5. Ownership Structure

- For the duration of the conditional period, “the ownership or organizational structure of the entity that is the licensee shall not be amended,” pursuant to certain exceptions (e.g. approval by the CCB).

6. Environmental Sustainability & Social Equity Programs; Labor Peace Agreement

- In order to receive a license, applicants must agree to participate in both an environmental sustainability program and a social equity mentorship program.
- Conditional licensees will also be required to 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 six months of licensure.

7. Renewal

- Prior to 90 days of the conditional license expiring, the licensee must alert OCM that it intends to apply for a full-time cultivation license.
- If the OCM finds the conditional licensee to be in good standing, the cultivator is eligible to apply for and receive an adult-use processor's license, so long as it can demonstrate it meets the requirements of receiving such a license.

Anticipated Impact

Approval of the conditional licenses for cultivators and processors is a critical step forward for New York's adult-use cannabis industry, which experienced a [six-month delay](#) getting off the ground after the Marijuana Regulation and Taxation Act (MRTA) became law on March 31, 2021. Upon receiving a license, the cultivators will likely be able to salvage a growing season that appeared to be in jeopardy due to the delay caused by the CCB and OCM not releasing adult-use regulations as of the date of this post. Now, with seeds likely to be planted this Spring, the conditionally licensed processors should have biomass for extraction and manufacture this Fall and be able to provide final product to the soon-to-be licensed dispensaries and on-site consumption lounges by Winter 2022.

This timeline is consistent with [recent comments](#) on the anticipated rollout of adult use sales by OCM Executive Director Christopher Alexander during an online webinar hosted by Cornell University, and with CCB Chair Tremaine Wright's [prediction](#) just a few weeks earlier. Alexander expects the full licensing process to be rolled out by Winter 2022 or early Spring 2023, with licenses being awarded by October, November, and December 2022, depending on which section of the supply chain the applicants fall in. This prediction is significant because it means that cannabis entrepreneurs can look for finalized license applications by Summer 2022 and New Yorkers could see retail cannabis sales at dispensaries and on-site consumption lounges by December 2022, if not sooner.

What does this mean for businesses? It's time to compile your application materials.

Even without a formal application, the MRTA and the new conditional licensing bill spell out requirements such as having a security plan, staffing plan, environmental impact plan, social and economic equity plan and operations plan. Furthermore, there are significant steps you can take in terms of getting your business ready for licensing (e.g., forming an LLC, raising funds, entering into a lease and contracting with a security company) that will need to be done when the application window opens.

Lippes Mathias' [Cannabis Practice Team](#) will continue to monitor the developments in New York's cannabis burgeoning cannabis industry, including additional developments for conditional licensees, when adult-use regulations are published, and when applications are expected to be released. If you have any questions, please contact one of our attorneys.

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