

DELAWARE MARIJUANA LICENSING GUIDE

On April 23, 2023, Delaware became the 22nd state to legalize adult-use marijuana. On May 1, 2024, the Office of the Marijuana Commissioner (OMC) published proposed rules that will govern the new industry. Public comments will be accepted until June 3, 2024, and should be directed to OMC@delaware.gov. This guide was created to help prospective applicants evaluate licensing opportunities and provide a first look at how marijuana will be regulated in the First State.

1 LICENSING CATEGORIES AND CRITERIA

LICENSE CATEGORY	APPLICANT CRITERIA
Social Equity	Applicant must be at least 51% owned and controlled by one or more individuals who: (1) were convicted of (or are the children of someone who was convicted of) a marijuana-related offense; OR (2) resided for at least five of the past 10 years in an area with a disproportionate amount of marijuana-related arrests.
Microbusiness	Reserved for cultivation and product manufacturing applicants who (1) must be at least 51% owned and controlled by one or more Delaware residents; (2) employ no more than 10 employees; AND (3) are limited to 2,500 sq. ft. of cultivation canopy or possession of less than 1,000 marijuana plants.
Open	Applicants not subject to the above restrictions.

2 LICENSE TYPES AND MAXIMUM ALLOWED

LICENSE TYPE	OPEN	SOCIAL EQUITY	MICROBUSINESS	TOTAL
Retail	15	15	--	30
Product Manufacturing	10	10	10	30
Cultivation ≤ 2,500 sq. ft.	--	10	20	30
Cultivation > 2,500 sq. ft.	20	10	--	30
Testing Facility	3	2	--	5

3 OWNERSHIP RESTRICTIONS

Under the proposed rules, no applicant or person with a financial interest in an application can apply for or own more than one license of the same type in the same county. This restriction does not, however, prevent an applicant from holding vertically-integrated licenses in each county. Also, this restriction does not apply to existing medical marijuana licenses converting to adult-use licenses.

4 APPLICATION AND LICENSING FEES

LICENSE TYPE	APPLICATION FEE	LICENSING FEE (BIENNIAL)	TOTAL
Retail			
Social Equity	\$1,000	\$4,000	\$5,000
Open	\$5,000	\$10,000	\$15,000
Product Manufacturing			
Social Equity	\$1,000	\$4,000	\$5,000
Microbusiness	\$3,000	\$4,000	\$7,000
Open	\$5,000	\$10,000	\$15,000
Cultivation (Indoor/Outdoor Canopy Size)			
Social Equity (≤ 2,500 sq. ft. to ≤ 7.5 acres)	\$1,000	\$1,000 – \$4,000	\$2,000 – \$5,000
Microbusiness (< 2,500 sq. ft.)	\$3,000	\$1,000	\$4,000
Open (2,501 to 7,500 sq. ft. OR 1.1 to 2.5 acres)	\$5,000	\$5,000	\$10,000
Open (7,501 to 10,000 sq. ft. OR 2.6 to 5 acres)	\$5,000	\$7,500	\$12,500
Open (10,001 to 12,500 sq. ft. OR 5.1 to 7.5 acres)	\$5,000	\$10,000	\$15,000
Testing Facility			
Social Equity	\$1,000	\$4,000	\$5,000
Open	\$5,000	\$10,000	\$15,000

5 APPLICATION MATERIALS AND PROCESS

- A. Minimum Qualifications.** To apply for a marijuana license in Delaware, applicants must demonstrate minimum qualifications through submission of a comprehensive business plan, including a budget and pro forma financial statements; and plans for operations, training and staffing of its facility. Under the proposed rules, applicants for cultivation and product manufacturing licenses must also submit a quality assurance plan.
- B. Lottery.** Upon satisfaction of OMC minimum qualifications and payment of the application fee, applicants will be entered into a lottery to be conducted in an impartial and random manner. Selected applicants will be notified within 10 days following the lottery.
- C. Conditional Licensing.** Within 10 days of selection, successful applicants must submit a supplemental application and pay the applicable licensing fees. Applicants will then undergo comprehensive financial and criminal background checks, including fingerprinting. Upon completion, applicants will be granted a Conditional License, but may not engage in the licensed activity or transfer control or ownership of the license.
- D. Active Licensing.** Applicants who receive a Conditional License have 18 months to identify a physical location for operations to be approved by the Commissioner. Only after local approval of the physical location; submission of an attestation that the Applicant has entered into a labor peace agreement (LPA) with a bona fide labor organization; and, final inspection by OMC, may an Applicant commence operations.

6 TIMELINE

DATE	EVENT
July 2024	Adoption of Final Rules to administer licensing of marijuana businesses
September 1, 2024	OMC to begin accepting applications for all license types
November 1, 2024	OMC to begin issuing up to 60 cultivation facility licenses
December 1, 2024	OMC to begin issuing up to 30 product manufacturing licenses
March 1, 2025	OMC to begin issuing up to 30 retail licenses and five testing facility licenses

FOR MORE INFORMATION, PLEASE CONTACT:



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This guide was prepared for educational purposes only and is not to be construed as, or a substitute for, professional legal advice. For more information regarding Delaware marijuana licensing opportunities or Saul Ewing LLP's Cannabis Industry Practice Group, please contact the author at Peter.Murphy@saul.com.

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