

Ohio Marijuana License Application Process Outlined by Regulations

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On January 29, 2024, the Ohio Division of Cannabis Control (DCC) released the first package of proposed rules (Regulations) to govern the state's emerging legal cannabis market. The Regulations cover the Ohio marijuana license application process and also remove and rescind certain fees.

When Will Initial Applications Be Made Available?

All application materials will be published no later than June 7, 2024. This does not mean that applications will be due by this date. Instead, that is the date the DCC must provide application materials to be utilized by applicants to submit their applications for licensure.

The first entities authorized to file an application will be cultivators, processors, testing laboratories, and dispensaries, which are currently licensed to operate under the medical marijuana program. According to [guidance](#) published by the DCC, provisional licenses will be issued by September 7, 2024. The DCC expects to issue up to 50 dispensary licenses. The DCC will also issue Level III cultivator licenses; however, this round of Regulations does not apply to those licenses or that application process.

Who Can Apply?

Dual-Use License Conversions

Only a cultivator, processor, testing lab, or dispensary currently licensed as a medical marijuana facility may apply to convert its license to a dual-use (i.e., both adult-use and medical-use) license.

The Regulations provide that, upon receipt of an application for conversion to a dual-use license, the DCC will review and either approve the application and issue a dual-use provisional license, deny the application, or advise the applicant of any application deficiencies. If the DCC has notified an applicant of application deficiencies, the applicant will have 10 business days after receipt of the DCC notification to cure the deficiencies and submit any additional documentation to the DCC. If the applicant fails to cure the deficiencies within the 10-day period, then the DCC will consider the application abandoned.

10(B) Dispensary Licenses

Specifically, with respect to the retail sale of marijuana in Ohio, there is an opportunity for currently licensed medical cultivators and dispensary licensees to obtain 10(B) dispensary licenses.

According to the Regulations, a “10(B) license” is a “dispensary license issued pursuant to section [3780.10\(B\)](#) of the Revised Code and [the Regulations].” Section 10(B) requires that the DCC issue licenses to applicants who have a current certificate of operation or medical provisional license issued at the time the statute went into effect, i.e., December 7, 2023, and that those licenses be issued no later than September 7, 2024.

[According to the DCC](#), 10(B) licenses will be allocated as follows:

- For a Level I medical marijuana cultivator with a certificate of operation or provisional license: three (3) dispensary licenses per entity at locations designated in a license application.
- For a Level II medical marijuana cultivator with a certificate of operation or provisional license: one (1) dispensary license per entity at a location designated in a license application.
- For a medical marijuana dispensary with a certificate of operation or provisional license, which does not have any common ownership or control with any cultivator or processor: one (1) dispensary license per entity at a location designated in a license application.

It is our understanding that, at this time, only currently licensed medical marijuana cultivators and dispensaries will qualify for 10(B) licenses. The DCC will publish 10(B) application materials [here](#). Prior to publishing these materials, the DCC will determine which entities are eligible to apply for these licenses and the total number of licenses for which they are eligible. Eligibility and total license numbers will be determined by the DCC.

Cannabis Social Equity & Jobs Program Participants

The Regulations do not provide details on how the application process will work for applicants who qualify under the Cannabis Social Equity & Jobs Program but state that further information will be provided prior to the application window opening.

What Will Applicants Need to Disclose?

Applicants will need to provide contact information and a roster of all owners. Based on experience in other jurisdictions, anyone who owns, controls, or shares in the revenues of a licensed entity may need to be disclosed and investigated. In addition, an applicant must show they do not have any ownership or investment in any licensed testing labs and that the applicant does not share any employees or corporate officers with labs (in this case, corporate officers will likely be interpreted to mean any principals or managers of a business). Applicants must show that they will not operate within 500 feet of a prohibited facility (e.g., school, house of worship). Applicants must also show that no individual applicants are employed by a regulatory or government entity that can significantly influence or control licensed businesses. Further, applicants must be in compliance with all state tax laws.

Applicants must also identify whether they will apply for a dual-use license or a 10(B) license.

The Regulations require that dual-use applicants must:

- a. Adhere to all dual-use licensing requirements for a period of four years.
- b. Ensure that its facility equally serves and accommodates medical patients and caregivers and non-medical consumers alike.

- c. Ensure ongoing inventory sufficient to maintain an adequate supply of medical marijuana to meet the current demand and projected patient and caregiver population.
- d. Provide accommodations for medical marijuana patients and caregivers that may be provided in any of the following ways:
 1. Dedicated hours of operation limited to medical-only patients and caregivers, during which non-medical consumers are prohibited from the facility.
 2. Expanded options for medical marijuana delivery and online ordering.
 3. A point-of-sale accommodation that services medical patients and caregivers prior to adult-use consumers.

What Is the Ohio Marijuana Application Process for 10(B) Licenses?

Each applicant will be entered into a drawing for a license for which they are eligible. A third-party operator will draw from a pool of 10(B) applicants. The third-party operator will rank all 10(B) applicants numerically in the order in which their application was drawn.

The site selection process will then proceed in two phases:

Phase One

During Phase One, a 10(B) applicant will submit one facility site location application on a form to be provided by the DCC (if a 10(B) applicant is entitled to more than one license, it must choose one site to enter into Phase One, with the other to be entered into Phase Two). The application must demonstrate the following:

- The business address for the proposed facility.
- That the site is not located within one (1) mile of an existing dispensary facility or the proposed facility of another 10(B) applicant.
- The proposed facility site is not located within 500 feet of a prohibited facility.
- The proposed facility site is not subject to any local ordinances or prohibitions from operation.
- The proposed facility site meets all zoning or other local requirements for the operation of a dispensary at the proposed facility site.
- Any other information required by the DCC.

If more than one 10(B) applicant submits for the same facility, the one with the higher ranking, as determined by the third-party operator, will have priority, and the other applicant will have an opportunity to select another site. In addition, if one applicant is within one (1) mile from another applicant, the lower-ranking applicant must select another site.

The DCC will provide notice of sites that have been identified in Phase One. The DCC will also determine the start and end date of Phase One (which, as of the date of publishing, the DCC has not yet determined). If an applicant fails to comply with the application requirements by the end of the Phase One site selection process, the DCC is empowered to modify the applicant's ranking or move the applicant into Phase Two.

Phase Two

After Phase One concludes, the DCC will establish regional districts for Phase Two site selection. The Regulations do not indicate how the DCC will establish these regional districts. Applicants who make it to Phase Two will provide a preference sheet for their ranked order of preferences in the various regions where Phase One sites were identified. Phase Two facility applications must demonstrate the items required in the Phase Two application, as well as identifying that the proposed location is in the regional district assigned to the applicant. The same preference towards applicants with a higher ranking by the third-party operator in Phase One will be implemented in Phase Two. Applicants who fail to submit their regional district preference in a timely manner will have their preference determined by the DCC.

What Is a Disqualifying Offense?

The Regulations list offenses that would disqualify an applicant from receiving a license. Those include the following:

- Any felony or misdemeanor offense of [Chapter 2925](#) (drug offenses), [Chapter 3719](#) (controlled substances act), or [Chapter 4729](#) (pharmacists; dangerous drugs) of the Ohio Revised Code.
- Felony theft.
- A crime of moral turpitude.
- Any offense in another jurisdiction substantially equivalent to the above-listed offenses.

The timeframe for disqualifying offenses is five years prior to the date of the application. Offenses related to marijuana will not be considered disqualifying.

What Is the Application Fee?

Each 10(B) applicant will be required to pay \$5,000 (five thousand dollars) per license application. The fee is not refundable. There is no fee to apply for a dual-use license.

How Does the Rulemaking Process in Ohio Work?

These Regulations are subject to notice and comment through Friday, February 9, 2024; comments may be submitted to DCCRules@com.ohio.gov. The DCC states it will consider comments received and make changes to the rules as necessary. There will also be an opportunity for interested individuals and entities to provide testimony during upcoming hearings.

Further, although the DCC seeks comments to the proposed rules no later than February 9, 2024, the rules remain subject to public comment as provided in the Ohio Administrative Procedure Act (APA), Sections 119.01 to 119.13 of the Revised Code. Section 119.03 sets forth the procedure that state agencies in Ohio, such as the DCC, are required to follow in adopting, amending, or rescinding rules.

Pursuant to Section 119.03, the DCC, in addition to the initial comment period, must hold a public hearing on the proposed rules. The DCC is required to give public notice of the hearing at least thirty days prior to the

hearing date. During the hearing, interested parties are entitled to present their positions, arguments, or contentions, orally or in writing, examine witnesses, and present evidence.

The period between the proposal of an administrative rule and its becoming a final rule in Ohio is typically around 60 to 90 days, but it can vary.

How Can Legislation Impact the Regulations?

As noted, the length of the rule adoption process varies. Because there presently exist both Senate and House bills that seek to amend the current adult-use statute, if the legislature were to pass one of them, any proposed or adopted rules then existing would most certainly need to be amended, or possibly rescinded. In this case the APA would, once again, come into play.

Rescission and Reduction of Fees

The DCC also proposes to eliminate a section of Ohio's medical marijuana regulations outlining the structure for fees for patients and caregivers. Currently, the registration fee is \$50 for patients and \$25 for caregivers. The proposed regulations would also reduce the annual cost of a processor license from \$100,000 to \$50,000.

Takeaway

It is expected to take months before application materials are made available, but the DCC's publishing of the Regulations is an important first step in the process of establishing the adult-use marijuana market in Ohio. While these Regulations are dense, many questions remain. Among the major unresolved issues is how 10(B) licenses will be divided by region. Also, there is no indication as to how qualified social equity applicants will apply. We expect that further regulations and guidance from the DCC will provide additional context and insight on these and other important issues affecting Ohio's new adult-use marijuana industry.

Although these rules are subject to change, they provide an outline of what the application process will look like. If you would like to discuss what you can do now to obtain a license in Ohio or provide goods or services to Ohio's burgeoning marijuana industry, do not hesitate to reach out to the authors or to [McGlinchey's cannabis team](#).

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