

## The Microbusiness Cannabis License and the Entrepreneur: A Point of Entry to NJ's Market

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This article explores the microbusiness designation and its requirements as it applies to the adult use (recreational) market, and the protections favoring New Jersey residents embedded in the microbusiness designation.

By **Lisa Gora and Michael F. Schaff** | February 8, 2021

To date, there have been three requests for applications (“RFAs”) since the inception of the New Jersey Medicinal Marijuana Program in January 2010. From the three RFAs, 12 entities have been awarded licenses to operate medicinal cannabis establishments in New Jersey.

In the first RFA, entities applying for a medicinal marijuana license were required to demonstrate that a certain percentage of their owners were New Jersey residents during the two years prior to the submission date of their application. For the second and third RFAs, the New Jersey residency requirement was waived. In lieu of this requirement, the Department of Medicinal Marijuana attributed bonus points to applicants with an ownership structure that included New Jersey residents. The intended purpose behind waiving the New Jersey residency requirement was to relax the barrier of entry into the New Jersey cannabis market in order for out-of-state operators to bring experience into New Jersey’s burgeoning (and immature) medicinal cannabis market.

This waiver has been viewed by some to have created an impediment to New Jersey entrepreneurs looking to apply for a New Jersey cannabis license who may not have the same experience or access to capital as established out-of-state operators. With the passage of adult use cannabis, the New Jersey legislature has created new opportunities for New Jersey entrepreneurs in the cannabis market when they developed the concept of a “microbusiness” license. Although there is a microbusiness designation under the medical marijuana program, this article explores the microbusiness designation and its requirements as it applies to the adult use (recreational) market, and the protections favoring New Jersey residents embedded in the microbusiness designation.

The microbusiness license establishes a path for New Jersey entrepreneurs to avoid competing with multi-state operators who have access to the capital necessary to operate a full license cannabis establishment. The microbusiness designation creates three significant protections: (1) 100% of the ownership in the microbusiness must be held by New Jersey residents who have resided in New Jersey for at least the two years prior to submission of their microbusiness application; (2) at least 51% of the owners, directors, officers, or employees of the microbusiness must be residents of the town, or the neighboring town, where the microbusiness will operate; and (3) the license is a “reduced” form of one of the six recreational licenses (cultivator, manufacturer, distributor, wholesaler, retailer, and delivery service) that allow maintenance of a smaller cannabis business operation concerning capacity and quantity.

Ideally, each microbusiness will be able to operate a business at costs lower than a full license cannabis business due to its size limitations: no more than 10 employees, operation in a space no larger than 2,500 square feet, and, except for a cannabis distributor, possessing no more than 1,000 cannabis plants each month. In practice this means that:

- for cannabis cultivators, the grow cannabis canopy area cannot be more than 2,500 square feet;
- for cannabis manufacturers, they cannot acquire more than 1,000 pounds of manufactured cannabis products for resale in each month; and
- for cannabis retailers, they cannot acquire more than 1,000 pounds of cannabis, or the equivalent amount in any form of manufactured cannabis product or cannabis resin.

The microbusiness designation has two additional limitations. First, there are limitations on microbusiness owners, directors, or other persons with financial interest who also have decision-making authority from holding an interest in any other licensed cannabis establishment. Second, a microbusiness licensee cannot sell or transfer its license. These two limitations were intended to prevent large cannabis businesses from trying to influence the microbusiness market.

It may be possible in the future for microbusiness licensees to expand their cannabis businesses by converting the license and continuing their operations as licensed entities under one of the six full recreational licenses. However, as of the date of this article, this conversion process has not yet been fully developed by the Cannabis Regulatory Commission.

In order to make sure that New Jersey entrepreneurs will have access to participate in the cannabis market, the Cannabis Regulatory Commission is required to ensure that 10% of the total licenses issued for *each class* of cannabis establishment is designated for and only issued to microbusinesses, and that at least 25% of the total licenses issued *in aggregate (no matter the class)* are issued to microbusinesses. This is a minimum requirement, not a cap, so it is very possible that microbusinesses can significantly exceed those requirements.

To conclude, although the microbusiness license has not been made available in any previous RFA, it is expected to be available within the first RFA for the adult use market.

As noted in our previous columns, cannabis insiders have projected a target of July or August 2021 for the first RFA. We suggest that you please reach out to cannabis counsel if you are interested in applying for, or learning more about, the microbusiness license.

With regard to a deeper dive into the other classes of licenses available under the adult use recreational market, please look out for our next article.

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