

Part 115 – Personal Home Cultivation of Medical Cannabis APC

COMMENT: One commenter stated that indoor home cultivation may be very costly to set up and maintain, particularly the cost of electricity for grow lights. The commenter suggested that growing in church gardens, community plots, or on rooftops should not be prohibited based on the spirit of the Cannabis Law.

RESPONSE: Section 222.15 of the Penal Law states that the personal cultivation of cannabis shall only be permitted within, or on the grounds of, a person's private residence. Anything considered a person's private residence would be permitted for personal cultivation of cannabis. Whether a location is considered a private residence for personal cultivation purposes must be determined by the individual. No changes were made to the regulations as a result of this comment.

COMMENT: One commenter requested additional language be placed in the regulations to protect tenants from landlords attempting to prohibit them from participating in the medical cannabis program. The commenter was concerned that without additional language, landlords would create new lease terms blocking patients from the program with the impact being primarily on low-income patients.

RESPONSE: No landlord has the right to prohibit a patient from participating in the medical cannabis program. A landlord may **not** refuse to lease, or otherwise penalize a certified patient or designated caregiver solely for engaging in medical cannabis activity as authorized by section 127 of the Cannabis Law, except: (1) if failing to do so would cause the landlord to lose a monetary or licensing related benefit under federal law or regulations; or (2) if a property has in place a smoke free policy, it is not required to permit the smoking or vaporizing of cannabis products on its premises, provided no restriction may be construed to limit the certified medical use of cannabis. Section 115.2 has been updated to reflect this.

COMMENT: A few commenters expressed concerns with the impact the regulations will have on landlord rights and their ability to protect their properties from any damage that may occur from tenants cultivating their own cannabis. One commenter requested the language be reworded and another asked for additional language to cover this issue as it has been problematic in other states.

RESPONSE: The proposed regulations do not restrict or prohibit a landlord from exercising their right to take legal action against a tenant who causes property damages except, what is generally associated with normal wear and tear due to a tenant's legal home cultivations activities. Changes to the proposed regulations were made as a result of this comment.

COMMENT: A couple of commenters suggested adding a requirement to label both immature and mature plants. One commenter suggested a label with the words “*Cannabis sativa cultivated and regulated-Pursuant to Title 9 NYCRR Part 115.2 (b).*” Another commenter suggested requiring plants be labeled with the name of the person growing the plant.

RESPONSE: Patients and designated caregivers are not required to label plants; however designated caregivers are expected to keep plants in a manner that can readily determine which patients such cannabis plants belong to. No revisions to the proposed regulations are necessary to address these comments.

COMMENT: Commenters recommended removing the requirement for designated caregivers to keep plants separate for different patients as it would restrict those with limited space available. The commenter believes requiring caregivers to keep plants in a manner that can readily determine to whom such cannabis plants belong to is sufficient.

RESPONSE: The proposed regulations do not limit the approach designated caregivers may use to maintain a separation of any cannabis being cultivated. The only requirement is that the approach used for separation must

be in a manner that can readily identify each cannabis plants and its corresponding patient. No revisions to the proposed regulations are necessary to address these comments.

COMMENT: One commenter questioned if cannabis could be extracted into oils and butters as many patients prefer to consume edibles over smoking. Another commenter suggested the Office should detail steps or recipes that caregivers could take to create various edible or liquid forms of cannabis for those unable to inhale or vaporize efficiently.

RESPONSE: This comment is beyond the scope of the proposed regulations.

COMMENT: Comments were received regarding the term “grinding” in the definition of “Process” or “Processing”. The commenter suggested replacing the term “grinding” in the definition of “Process” or “Processing” with one or all of the following terms: “milling”, “shredding”, or “composting”. As an alternative, they also suggested either striking the term from the definition or replacing with the term ‘grading’ which is a term used in Article 1 of the Cannabis Law §§3(19). The commenter also suggested replacing the term “grinding” in the list of terms defining cultivation with “composting”, “milling” and/ or “shredding”.

RESPONSE: The office reviewed the comment and made a revision to the proposed regulations to remove the term grinding from the definition of “Process” or “Processing”. The term grading was not added as an exclusion to the definition of “process” or “processing” since it is already stated that “processing” does not include “cultivation” and the definition of “cultivation” in Article 1 of the Cannabis Law already includes the term grading.

COMMENT: One commenter requested clarification on, and for the office to explicitly state, whether or not co-ops are considered a “private residence” for the purposes of the regulations.

RESPONSE: The regulations allow for home cultivation in private residences which includes any building or part of a building, or structure designed and occupied for residential purposes. This would include cooperatively owned residences. The proposed regulations were amended as a result of this comment.

COMMENT: Some commenters suggested adding to the definition of “private residence” to clarify that separate grow rooms or simple barriers cannot be used to exceed plant limits.

RESPONSE: The regulations stipulate that the plant limits apply to a person’s private residence or on the grounds of a person’s private residence. Therefore, plants grown on any part of a person’s indoor or outdoor private residence would count towards their maximum allotted plant limit. No changes to the proposed regulations were necessary as a result of this comment.

COMMENT: A few commenters suggested that the definition for “private residence” is too strict and may limit small farmers and others who work out of their home. Commenters suggested striking the word “exclusively” and replacing it with “primarily.”

RESPONSE: In accordance with Section 41 of the Cannabis Law and Section 222.15 of the Penal Law, a person who intends to cultivate cannabis must do so within such person’s private residence or on the grounds of the private residence. The proposed regulations do not prohibit a person from utilizing their private residence for any other purposes, such as work-related activities, by requiring that an area of the residence be used by such said person exclusively for residential purposes. The proposed regulations were amended as a result of this comment.

COMMENT: Comments were received regarding the term’s “immature” and “mature”. One commenter suggested the terms immature and mature are not appropriate terms, and regulations should use proper botanical

terms that coincide with the actual stage of growth a plant is in, such as when a plant can be identified as female and when a plant is ready for harvest. One commenter stated that unless the grower pays for lab analysis, it is impossible to determine the sex of a plant as male or female in advance of the flowering stage. Another commenter urged that the definitions be limited to female cannabis plants only as male plants are useless to home cultivators. Another commenter suggested seedlings and cuttings be excluded from the definition of immature and only plants taller than 15 inches be included. Many commenters requested the definitions of mature and immature be revised. Commenters recommended “Immature cannabis plant” means [*a cannabis plant which has exhibited signs of female flowers, such as, the formation of two observable white or pink pistils on calyxes or buds of pre-flowers observed at the node site by visual examination*] by visual examination.” “Mature Cannabis Plant” “means a female plant that has larger, denser flower clusters throughout the plant, darker pistils, and brownish or amber trichomes throughout the plant that may be observed by visual examination.”

RESPONSE: The regulations follow the terminology used by the Marijuana Regulations and Taxation Act (MRTA). Additionally, the current definition for immature and mature plants in the regulations indicate only female plants will be considered, therefore, male plants would not count towards the statutory limitation of growing no more than three immature and three mature plants. No revisions to the proposed regulations are necessary to address these comments.

COMMENT: A few commenters requested clarification on whether a cutting and its mother is considered a plant. One commenter suggested they should not be counted towards a cultivator’s plant limits. Another commenter stated that without clarification, this is a gray area that would require law enforcement to interpret the regulations and potentially lead to inequitable enforcement.

RESPONSE: A mother plant and a planted cutting are both considered immature plants. No revisions to the proposed regulations are necessary to address this comment.

COMMENT: One commenter requested the Cannabis Control Board and Office of Cannabis Management consider other states who have passed cannabis regulation and add to the definition of “impairment” used throughout the bill. The commenter stated training should be provided for employers as well as state Sheriff County and City Police so that they are able to tell the differences between intoxication impairment and mental/physical impairments from debilitating disease and disability.

RESPONSE: The comments are out of scope for the proposed regulations. No revisions are necessary to address these comments.

COMMENT: Many commenters had questions about when the regulations will be approved and implemented. Several commenters pleaded to get the regulations approved as soon as possible so those that need it, can begin growing. Several commenters asked what the next steps are after the public comment period for implementing the regulations.

RESPONSE: The Office follows the New York State Administrative Procedure Act which governs the rulemaking process in New York State. The process requires an initial 60-day public comment period, which ended on January 18, 2022, for the medical cannabis home cultivation regulations. The Office reviewed the public comments received and, as a result of some of the comments, made amendments to the proposed regulations. The second public comment period will end 45 days after the revised rulemaking is published in the State Register. No revisions are necessary to address these comments.

COMMENT: One commenter asked how much cannabis could be stored in the home and if you exceed that amount, will the product have to be destroyed?

RESPONSE: Section 222.15 of the Penal Law states that a person may lawfully possess up to five pounds of home cultivated cannabis in their private residence or on the grounds of such person's private residence. In public settings or outside of a person's private residence, no more than three ounces of cannabis and up to twenty-four grams of concentrated cannabis is permitted. The Office intends to issue future guidance on the disposal of excess home cultivated cannabis. No revisions to the proposed regulations are necessary to address these comments.

COMMENT: One commenter asked what part of the plant would be considered cannabis since a large percentage of the plant has little to no medicinal value.

RESPONSE: Article 1 of the Cannabis Law defines the term medical cannabis, which incorporates the term cannabis, which is defined to explicitly describe which parts of the plant are considered cannabis. No changes were made to the proposed regulations as a result of this comment.

COMMENT: One commenter asked if home cultivation is permitted in towns that opt-out of adult-use retail or on-site consumption sites.

RESPONSE: Section 222.15 of the Penal law permits a county, town, city, or village to enact and enforce regulations to reasonably regulate home cultivation, however local municipalities cannot completely or essentially prohibit a person from engaging in the action or conduct of home cultivation as authorized by the Cannabis Law but does not authorize prohibition of home cultivation. Municipalities are only allowed to opt-out of having adult-use retail dispensaries and adult-use on-site consumption sites located within such municipalities' jurisdiction. No changes were made to the proposed regulations as a result of this comment.

COMMENT: One commenter asked if the proposed medical cannabis home cultivation regulations apply to hemp plants.

RESPONSE: The proposed regulations are drafted to discuss cannabis plants as defined in Cannabis law, which do not include hemp plants. No changes to the proposed regulations were necessary as result of this comment.

COMMENT: One commenter inquired whether Registered Nurses are permitted to handle cannabis since it is a federal schedule I drug.

RESPONSE: According to Article 3 Section 42 of the Cannabis Law, certified patients, designated caregivers, employees of designated caregiver facilities, practitioners, employees of registered organizations, and cannabis researchers shall not be subject to arrest, prosecution, or penalty in any manner, or denied any right or privilege, including but not limited to civil penalty or disciplinary action by a business or occupational or professional licensing board or bureau, solely for the certified medical use or manufacture of cannabis, or for any other action or conduct in accordance with article three of the Cannabis Law in New York State. No changes to the proposed regulations were made as a result of this comment.

COMMENT: A few commenters suggested the regulations should clarify or remove security and odor rules as they are vague. They believe that such “reasonability” standards should be either clarified or removed entirely so that home cultivators would not be forced to guess what the Cannabis Control Board, OCM, their neighbors, and/or local authorities will deem “reasonable,” nor be subject to penalty if they guess wrong. One commenter stated the requirements are unduly subjective and lend themselves to inequitable enforcement. Other commenters suggested installation and maintenance of security devices is a requirement that is stricter than

regulations that allow for handguns in homes with minors and that it would be too expensive to meet. The commenters believe the regulations should be practical, and not be financially burdensome. Several commenters were concerned that residents and guests of a household would have ready access to plants and expressed the desire to have stricter regulations around safe storage practices to reduce the risk of unauthorized users and youth potentially accessing and being poisoned by home cultivated cannabis.

RESPONSE: The proposed regulations do not specify the type of security device. Examples of security devices may include, but are not limited to locks, gates, doors, fences, and other barriers. Security measures are intended to protect public health and safety. With multiple options available, a person can choose an approach to security devices that best meets their budget and physical space for home grow. Changes to the proposed regulations were made as a result of this comment

COMMENT: Several commenters expressed concerns about the lack of regulations regarding the elimination of odors from the cultivation process and suggested it will harm the health and safety of those in the home and those nearby because of noxious fumes that may be produced. A commenter stated this is of even greater concern for household members and neighbors with asthma and other respiratory issues. Other commenters expressed concerns about the recognizable scent of cannabis lingering in neighborhoods for days and the importance of it not carrying over to schools, hospitals, substance use prevention, treatment, and recovery programs, neighborhood parks, or other public areas.

RESPONSE: Odors near public areas, pursuant to 222.10 of the penal law, unless otherwise authorized by law or regulations, no person is permitted to smoke or vape cannabis in a location where smoking or vaping cannabis is prohibited pursuant to Public Health Law Article 13-E. The proposed regulations were amended to remove the requirement for home cultivators to attempt to mitigate odors as a result of these comments.

COMMENT: Comments were received regarding the ability to cultivate cannabis outdoors. One commenter stated the regulations imply but are silent on the question of indoor versus outdoor cultivation. A few commenters suggested the regulations appear to be suited towards indoor cultivation and requested language allowing for outdoor cannabis cultivation. A few commenters expressed concerns that requiring an enclosed and out of sight area would make outdoor grow impossible. One commenter provided an example of a roof top that is secured and locked but also both in sight and not enclosed. A couple of commenters urged the office to consider the implications regulations have on urban, suburban, and rural communities' ability to grow outside. One commenter further stated that placing a fence around their garden and a lock to enter would be reasonable, however expecting them to enclose it or make it not visible is an ask so restrictive, it would not be possible to legally grow it and that would be counter to the whole point of the Cannabis Law. Another commenter requested an example of how a certified patient can grow outside and be in compliance with the regulations outlined. One commenter suggested specific revisions to Section 115.2 (f) and stated that failure to amend the language as suggested would place undue burden on those residents who are not property owners as well as those communities harmed most by past enforcement efforts who reside in urban environments and would restrict the ability to grow outdoors even in rural and suburban areas. The commenter felt that the regulations as proposed, in essence effectively bar outdoor cultivation and that such restrictive regulations will promote use of the illegal market, in direct contravention of both the spirit and substance of the Cannabis Law. The commenter stated that cultivation of six cannabis plants should not require mandating such extensive and costly security measures, in particular more restrictive measures than for keeping a handgun in the home.

RESPONSE: The regulations allow for home grow “on the grounds of” a person’s private residence, which includes outdoor space. The proposed regulations do not specify a type of enclosure; therefore, cultivators should select a method that accomplishes the goal of limiting plants from the public view. Revisions to the proposed regulations were made to clarify the definition of “on the grounds of.”

COMMENT: One commenter asked for clarification on if patients under 21 can use medical cannabis with a prescription.

RESPONSE: Patients under the age of 21 who have been certified for the medical use of cannabis, and who register with the Office of Cannabis Management, in accordance with Article 3 of the Cannabis Law may use medical cannabis. In general, if the patient is under the age of 18 or incapable of consent, the patient must have a designated caregiver who is registered with the program. Note that medical cannabis is not prescribed. Only registered practitioners may certify patients for medical cannabis use. No changes to the proposed regulations were made as a result of this comment.

COMMENT: A comment was received that it is unclear whether the regulations apply to both adult-use and medical home cultivation due to inconsistent use of the phrase “personal cultivation” throughout the regulations and on the adult-use webpage.

RESPONSE: The proposed regulations are solely for home cultivation by medical patients and their designated caregivers. Future regulations will be issued to govern the home cultivation of adult-use cannabis at a later date. Changes to the proposed regulations were made as a result of this comment.

COMMENT: Many comments were received regarding caregiver plant limits. Some commenters sought clarification on the limits for caregivers growing on behalf of patients and requested that the number of plants they can grow be explicitly stated, while other commenters sought changes to the proposed regulation to increase the number of plants caregivers can grow for multiple patients. Many commenters expressed concern about the potential for plants to be exposed to pests, fungus, or disease and leaving the patient with limited or no medical cannabis supply. They also stated the plant limit does not lend itself to a proper selection process,

noting that cannabis comes in thousands of forms with unique terpene and cannabinoid profiles. Other commenters expressed that all patients a caregiver grows for should have the same number of plants grown for them and not be based on being the first or last patient. One commenter stated that giving 1 plant per patient will hurt legitimate patients who cannot afford to supplement medicine from a dispensary so there is no insurance available, and stores are extremely expensive to purchase from. Other commenters noted that a caregiver could not grow a patient's full supply unless they spent large amounts of time to travel to each home. A commenter also questioned why patients would only be permitted 1 plant when they are legally allowed more plants and up to five pounds of flower on their own and that if regulations require labeling, then there should be no reason to cut caregiver plant counts.

RESPONSE: Designated caregivers growing on behalf of a patient may grow up to six cannabis plants for the certified patient. A designated caregiver cannot grow more than twelve cannabis plants. The proposed regulations have been amended as a result of these comments.

COMMENT: A couple commenters asked who was permitted to cultivate on their behalf and if there are penalties if someone were to help them? Another commenter requested a limit to the total number of patients a designated caregiver could cultivate for during any one harvest.

RESPONSE: Designated caregivers twenty-one years of age or older may cultivate cannabis on behalf of up to four certified patients. Designated caregivers caring for a certified patient either younger than twenty-one years of age or whose physical or cognitive impairments prevent them from cultivating cannabis, may cultivate cannabis for use by such patient, provided that no patient may have more than one designated caregiver grow on their behalf. There are no penalties for someone acting as a designated caregiver in accordance with the requirements of the Cannabis Law. No changes to the proposed regulations were made as a result of this comment.

COMMENT: One commenter requested clarification on whether a designated caregiver growing for multiple people could split where they grew plants between their private residence and the patients' private residence so that all 6 plants for each patient is utilized.

RESPONSE: A designated caregiver shall only cultivate cannabis at, or on the grounds of the designated caregiver's private residence or the certified patient's private residence. Plants being grown for a single patient cannot be split between multiple private residences. No changes to the proposed regulations were made as a result of this comment.

COMMENT: Many commenters asked for guidance on how they should obtain legal seeds once the regulations are approved. One commenter requested the Office clarify in the current Medical Use of Marijuana Regulations Title 10 Part 1004 Section 1004.12 that Registered Organizations are authorized to sell seeds and cuttings for home cultivation to patients.

RESPONSE: Registered organizations, registered in accordance with Article 3 of the Cannabis Law, or other licensee licensed in accordance with Article 4 of the Cannabis Law and authorized by the Office, are permitted to sell immature cannabis plants and seeds for home cultivation. The proposed regulations for home cultivation have been amended as a result of these comments to clarify the source of cannabis for home cultivation. The Office of Cannabis Management filed new Medical Cannabis Program regulations, for public comment, that will ultimately replace Title 10 Part 1004. The proposed regulations can be viewed by visiting the following link: [Proposed Medical Regulations](#) .

COMMENT: Comments were received requesting guidance for Registered Organizations regarding labeling, packaging, tracking, pricing, marketing, advertising, and reporting to the Office transactions for home

cultivation products. One commenter additionally stated that the proposed regulations do not address where or how certified patients can obtain the requisite materials to cultivate at home and to that end, Registered Organizations should be permitted to make the requisite updates to their dispensaries to accommodate appropriate storage of home cultivation products.

RESPONSE: The proposed regulations have been amended to include requirements to address these comments.

COMMENT: One commenter requested that the Office provide clarity in the regulations that the OCM, and not the Registered Organizations, will be responsible for enforcement of the plant limitations. The commenter stated that if the Registered Organizations have a responsibility to include seeds and seedlings in the existing seed to sale tracking system, this needs to be outlined in the regulations or provided to the Registered Organizations in guidance.

RESPONSE: This comment is beyond the scope of the proposed regulations.

COMMENT: One commenter stated that NY patients should have the right to legally purchase and grow seeds from the vast array of cannabis genetics currently available in the broader US market.

RESPONSE: Federal law prohibits cannabis from crossing state lines. Any cannabis obtained for home cultivation must be obtained from entities that are registered or licensed in New York State under the Cannabis Law. No changes were made to the proposed regulations as a result of this comment.

COMMENT: One commenter advocated for "transfer without compensation" of "Cannabis Seedlings" and "Cannabis Clone Babies" or "Clone Cuttings" from patient to patient suggesting that most medical cannabis patients may be reluctant or ill prepared to care for a seedling or clone cutting.

RESPONSE: The regulations do not prohibit the transfer of cannabis or concentrated cannabis between persons twenty-one years of age or older without compensation in the quantities authorized in Section 222.05 of Article 222 the Penal Law. The term Cannabis is defined in Article 1 of the Cannabis law and includes all parts of the plant of the genus Cannabis, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The definition of Cannabis in Article 1 of the Cannabis law also states that cannabis does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination. Cannabis does not include hemp, cannabinoid hemp or hemp extract as defined by Article 1 of the Cannabis Law, or any drug products approved by the federal Food and Drug Administration. No changes were made to the proposed regulations as a result of this comment.

COMMENT: Several comments were received regarding the sale of home-grown cannabis products. The commenters recommended clarifying the intent of the proposed rules to prohibit home cultivators from selling the product they grow. The commenters stated that diversion of home-grown cannabis product is a significant regulatory concern in other states. The commenters further suggested the following language: *No person shall sell, barter, or materially profit directly or indirectly, from providing any cannabis seeds, immature cannabis plant, mature cannabis plant, or cannabis, produced by a plant cultivated pursuant to this Part, to any other person.* Multiple commenters also recommended striking Section 115.3(d)(3), suggesting the provision is too restrictive given that caregivers may need to try cultivating different strains for different patients. The commenters believe that with caps on the total number of plants and patients, the provision is unnecessary in preventing diversion and could be counter to the patients' best interests. Another commenter stated that cuttings

offer patients an opportunity to grow guaranteed female plants and also have a predisposed amount of knowledge regarding the specific cultivar in which they will be growing. A couple of commenters suggested caregivers should be able to sell or gift clones or seeds to patients so that patients can produce their own medicine. Another commenter suggested creating a forum where patients and caregivers could give other patients the excess of their harvest in the event someone had a poor or failed harvest or cannot grow their own due to limitations.

RESPONSE: The proposed regulations state that no person shall sell or barter to any other person any cannabis seeds, immature cannabis plant, mature cannabis plant, or cannabis, produced by a plant cultivated pursuant to Part 115. A sale, whether profitable or not, is prohibited pursuant to the proposed regulations. Patients and designated caregivers are not prohibited from transferring cannabis without compensation. Transferring cannabis under the possession limit between adults who are twenty-one years or older without remuneration (money paid or service provided) is legal under the Cannabis Law. No changes were made to the proposed regulations as a result of these comments.

COMMENT: One commenter requested that the Office consider options for small growers that want to sell in the marketplace and referenced the success crafters in the beer and wine industry are experiencing. The commenter suggested the idea of allowing someone to get a lower price permit based on income level and allowing them to grow 20 plants, have their product tested, and sell to a state-controlled retailer.

RESPONSE: This comment is beyond the scope of the proposed regulations.

COMMENT: One commenter suggested that Caregivers should be entitled to some sort of compensation for their efforts, even if that compensation consist of only out of pocket costs.

RESPONSE: The current regulations permit designated caregivers to be reimbursed for the costs of goods, materials, or utilities for which they have incurred expenses. Caregivers cannot be reimbursed for their time, knowledge, or expertise. No changes were made to the proposed regulations as a result of these comments.

COMMENT: A couple of commenters expressed that you should be able to grow cannabis without having to pay for a monthly or yearly license to grow plants at home.

RESPONSE: The Marihuana Regulation and Taxation Act does not include a patient or caregiver registration fee, or a fee to engage in home cultivation. The patient registration fee for the Medical Cannabis Program has been permanently waived by the Cannabis Control Board. No changes were made to the proposed regulations as a result of these comments.

COMMENT: Numerous commenters suggested that plant limits were far too restrictive for the needs of medical patients and should be increased. Some commenters suggested that certifying physicians should be the one to determine how many plants a patient may grow. Commenters detailed many reasons why the limits were insufficient, including:

- Plant limits only prevent individuals from growing a quality product and increase the risk of a catastrophic failure in home cultivation. Plants are agricultural products, not synthetic pills made in a lab. Crops can be easily destroyed by insects, disease, weather, and other factors. There needs to be a selection process to only take the best plants and ensure the most success.
- While a 3 plus 3 limit makes sense in sunny, warm climates, individuals cultivating outdoors only have one grow season in New York and the current plant limits would not produce enough supply to last throughout the year. Cannabis is not an easy plant to grow correctly, and that one plant is not guaranteed to yield any desired amount of usable medicinal flower.

- Several commenters noted that by not permitting a higher number of plants per person or household, the Sea of Green (SOG) method of cultivation cannot be utilized.
- Cannabis comes in thousands of forms, all with unique terpene and cannabinoid profiles. Strains affect individuals in different ways and plant limits will prevent a variety of medication. Expanded germination allowances promotes good genetic diversity and selection during the home cultivation process. This will help with reducing the impact of disease and pests by allowing home cultivators to select plants that are genetically the strongest performing early in the cultivation cycle.

RESPONSE: Section 222.15 of the Cannabis Law sets the maximum allowable number of plants per individual at three mature and three immature plants and the maximum allowable number per household to six mature and six immature plants. The regulations follow the requirements of the Cannabis law. No revisions to the proposed regulations are required to address these comments.

COMMENT: Many commenters suggested imposing a stricter limit on the amount of cannabis that can be cultivated at home, given to others, or stored in the home. Commenters were concerned about individuals exploiting the home grow policy and potentially selling excess cannabis in bulk. Some commenters also suggested that the current limits would increase the potential for patient cannabis addiction and excess product being easily available to others.

RESPONSE: Section 222.05 of the Cannabis Law states that transferring, without compensation, to a person twenty-one years of age or older, up to three ounces of cannabis and up to twenty-four grams of concentrated cannabis is permitted. No revisions are required to address this comment.

COMMENT: Commenters suggested implementing an area restriction rather than a plant count restriction.

RESPONSE: Section 222.15 of the Cannabis Law sets the maximum allowable number of plants per individual at three mature and three immature plants. The regulations follow the requirements of the Cannabis Law. No revisions are required to address this comment.

COMMENT: Many commenters expressed concern over the impact home cultivation may have on child health and safety citing data that discusses the harmful effect marijuana may have on pregnant women, breastfeeding mothers, and children. Several commenters implored the OCM and CCB to keep child health and safety at the forefront when developing cannabis regulations. Other commenters requested proper warnings about the risks of marijuana use are provided, particularly to those taking medications. Another commenter suggested the state should consult with experts in treatment, prevention, recovery, and harm reduction.

RESPONSE: The Office of Cannabis Management is building a regulated cannabis program that has public health and consumer safety at its core and will include a robust public education campaign. No changes were made to the proposed regulations as a result of these comments.

COMMENT: A few commenters suggested that the proposed regulations will expose schoolchildren to secondhand smoke from homeowners in front of, behind, and next to schools growing their own cannabis.

RESPONSE: Pursuant to 222.10 of the penal law, unless otherwise authorized by law or regulations, no person is permitted to smoke or vaporize cannabis in a location where smoking or vaping cannabis is prohibited pursuant to Public Health Law Article 13-E. No changes were made to the proposed regulations as a result of these comments.

COMMENT: One commenter proposed that funding and training is allocated solely for medical cannabis patients to get them up and running with the knowledge and materials they need to cultivate at home. The commenter suggested this as a method to help bring equity to the program and individuals with chronic

conditions and disabilities. Other commenters suggested organic cultivation methods free of synthetic pesticides and fertilizers should be mandated or at minimum encouraged through educational materials and programs by the State, as a matter of public health and that providing educational materials will foster an understanding of how different cannabis cultivation methods can impact human health, safety, and the environment. Another commenter stated the regulations completely leave out children who could be exposed to molds and chemicals from indoor grows and the regulations do not take steps at protecting the general resident who might now know better, and it doesn't take steps to protect the environment from these chemicals.

RESPONSE: The Office of Cannabis Management intends to issue future guidance or advisories for the education and promotion of public health and safety.

COMMENT: Several commenters expressed concern about the lack of regulations around the chemicals used in the cultivation process and the impact they may have on health, safety, and the environment. Some commenters requested additional language be added to regulate the chemicals used during the entire home cultivation process. Specifically, commenters expressed concerns over the increased potential for fires, explosions, and suggested disseminating information informing residents of the dangers of using fertilizers and pesticides on plants that will be lit on fire. Lastly, commenters expressed concern over the chemicals that may be introduced into the wastewater system and the negative impact it may have on the environment.

RESPONSE: The Office reviewed the comments concerning the chemicals used in the cultivation process and the impact they may have on health, safety, and the environment. The Office intends to issue guidance further clarifying the appropriate types of chemicals necessary to conduct home cultivation in a safe manner. No changes were made to the regulations as a result of these comments.

COMMENT: A couple of comments were received regarding testing of home cultivated cannabis. One commenter expressed interest in having clear regulatory guidance for developing community product testing programs so that they can utilize qualitative and quantitative mass spectrometry technology to provide specific information to home cultivators about the contents of their products. One commenter expressed interest in having access to testing for home cultivated cannabis to ensure they are properly and efficiently dosing.

RESPONSE: The Office will take this comment under consideration and may provide future regulation. However, this comment is beyond the scope of the proposed regulations.

COMMENT: One commenter highlighted the dangers of cannabis extraction methods using propane, butane, and similar substances and the potential it has to accumulate in indoor settings and cause explosions. They also highlighted the dangers of overloaded circuits and the widespread damage it may cause to electrical systems and properties.

RESPONSE: The proposed regulations prohibit processing cannabis at home by means of any liquid or gas, other than alcohol, that has a flashpoint below 100 degrees Fahrenheit. It is incumbent upon home cultivators to ensure their private residences can handle any increase in electrical usage and to take appropriate measures to prevent overloading circuits. No revisions to the proposed regulations are necessary to address these comments.

COMMENTS: One commenter stated that while some New Yorkers will abide by the law, the proposed regulation will create an environment for underground sellers to exploit it and grow plants in houses across all corners of the state. Another commenter stated that the size of the plants and allowable possession seems well beyond what one person can reasonably use and therefore lends itself to misuse and illegal distribution. Several commenters urged the CCB and OCM to impose penalties and fines for violations of the proposed regulations.

RESPONSE: The Cannabis Law gives medical patients the right to home cultivate cannabis as detailed in Article 3 section 41. The legal amounts permitted for home cultivation are outlined in section 222.15 and this section sets the maximum allowable number of plants per individual at three mature and three immature plants. This section also provides information on penalties for individuals violating laws and regulations. No revisions are required to address this comment.

COMMENT: Some commenters have suggested that the police have expressed concern about how to detect and document marijuana-related impairment in both commercial vehicle operations and traffic incidents and home cultivation will make their job more difficult.

RESPONSE: This comment is beyond the scope of the proposed regulations and no changes were necessary as result of this comment.

COMMENT: One commenter stated that it's legal to consume and a lot of effort has been invested in fixing criminal records. The commenter questioned whether we really need to go after the uninformed for growing a couple of cannabis plants and stated that having people wait until the retail establishment gets in motion is not going to have a positive impact on the spirit of the law.

RESPONSE: Section 222.15 of the Cannabis Law requires penalties for individuals violating home cultivation laws and regulations. No revision is needed to address this comment.

COMMENT: Many commenters stated New Yorkers oppose having marijuana joints passed around their neighborhoods and that's why 71% of the municipalities in Westchester County opted out of opening local marijuana dispensaries and 85% of them rejected opening consumption sites. The commenters also stated that Statewide, more than 600 municipalities rejected opening dispensaries, and more than 700 rejected consumption

sites. The commenters urged the Office to follow the will of local communities and tighten the proposed home-grow regulations.

RESPONSE: Subject to a permissive referendum and pursuant to the Cannabis Law, municipalities may only opt out of allowing adult-use retail dispensaries and on-site consumption site businesses from operating within their respective jurisdictions. However, no municipality has the authority to prohibit a person who is twenty-one years of age or older or a designated caregiver caring for a certified patient who satisfies requirements set forth section 41 of the Cannabis Law, from engaging in the home cultivation of cannabis. While municipalities are not allowed to prohibit home cultivation, should they choose to do so, a municipality may enact and enforce regulations to reasonably regulate home cultivation activities. The proposed regulations are consistent with the parameters provided by the Cannabis Law. No changes were necessary as a result of this comment.

COMMENT: One commenter stated the most important issue is the complete lack of Quality, Potency and Omission of certain products currently plaguing the NY Medical program.

RESPONSE: The comments are beyond the scope of the proposed regulations.

COMMENT: Many Comments were received in support of the proposed regulation as follows:

RESPONSE: The Office acknowledges the comments in support of the regulatory amendment. No revisions are necessary to address these comments.