

Pursuant to the authority vested in the Cannabis Control Board by sections 13, 41 and 43 of the Cannabis Law, Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, and a new Chapter II is added, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

Chapter II – Rules of the Office of Cannabis Management

Part 115 - Personal Home Cultivation of Medical Cannabis.

§ 115.1 Definitions.

§ 115.2 Personal Home Cultivation of Medical Cannabis.

§ 115.3 Sale of Medical Cannabis for Home Cultivation.

§ 115.1 Definitions.

(a) For purposes of this section, the following definitions shall apply:

(1) “Cultivation” means growing, cloning, harvesting, drying, curing, grading, and trimming of the cannabis plant.

(2) “Designated caregiver” means an individual designated by the certified patient. A designated caregiver is twenty-one years of age or older for purposes of this Part.

(3) “Immature cannabis plant” means a non-flowering female cannabis plant or a cannabis plant which

does not have buds that may be observed by visual examination.

(4) “Mature cannabis plant” means a female plant that has flowered and that has buds that may be observed by visual examination.

(5) “Office” means the New York State office of cannabis management.

(6) “On the grounds” means the external areas of the private residence where the individual resides and has legal rights to use such external areas for their own purposes, including but not limited to, a backyard or any land adjacent to the private residence.

(7) “Personal Home cultivation” means growing, cloning, harvesting, drying, curing, grading, and trimming of cannabis plants for medical use that is subject to Cannabis Law Article 3 and Penal Law Article 222.

(8) “Private residence” means any building or part of a building, or structure designed and occupied for residential purposes, including but not limited to a private home; townhouse; condominium; co-op; apartment; or mobile home. For purposes of this Part, a hospital, hotel, motel, resort, or other similar public accommodation, shall not be considered a private residence, except as may be expressly allowed by the Board.

(9) "Process" or "Processing" means extracting, preparing, treating, modifying, compounding, manufacturing or otherwise manipulating cannabis for use to concentrate or extract its cannabinoids. For purposes of this section, processing does not include growing, cultivation, cloning, harvesting, drying, curing, grinding, or trimming.

§ 115.2 Personal Home Cultivation of Medical Cannabis.

(a) Certified patients twenty-one years of age or older may cultivate cannabis for personal use pursuant to Section 115.2 of this Part.

(b) Designated caregivers twenty-one years of age or older, 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.

(c) The personal home cultivation of medical cannabis may only occur in, or on the grounds of, a person's private residence.

(d) No certified patient shall plant, cultivate, harvest, dry, process or possess more than three mature cannabis plants and three immature cannabis plants at any one time.

(e) No more than six mature and six immature cannabis plants may be cultivated, harvested, dried, or possessed within any private residence, or on the grounds of any private residence at any one time.

(f) No certified patient or designated caregiver shall sell or barter any cannabis seeds, immature cannabis plants, mature cannabis plants, or cannabis, produced by a plant cultivated pursuant to this Part, to any other person. This subdivision does not prohibit the transfer, without compensation, to a certified patient or a designated caregiver twenty-one years of age or older, up to three ounces of cannabis and up to twenty-four grams of concentrated cannabis.

(g) A certified patient or designated caregiver may lawfully possess up to five pounds of personal home cultivated cannabis in their private residence or on the grounds of such person's private residence per section five of penal law section 222.15.

(h) Except as otherwise approved by the Office, no certified patient or designated caregiver shall process cannabis at home by means of any liquid or gas, other than alcohol, that has a flashpoint below 100 degrees Fahrenheit.

(i) Immature cannabis plants and mature cannabis plants must be stored in a secure location within a private residence or on the grounds of such certified patient or designated caregiver's private residence; and reasonable measures must be taken to ensure that such plants, and any cannabis cultivated from such plants, is not readily accessible to anyone under the age of 21. Such reasonable measures may include but are not limited to:

(1) conducting cannabis cultivation in an enclosed area, which may not be plainly visible from public view, including from the street of the private residence or on the grounds of the certified patient or designated caregiver's private residence; and

(2) locking and storing cannabis in a manner that prevents theft, loss, or access, which may include, but are not limited to locks, gates, doors, fences, and other barriers by an unauthorized person, including a person under the age of 21.

(j) Certified patients utilizing a designated caregiver shall identify a single site for cultivation of their medical cannabis.

(k) Designated caregivers growing on behalf of a certified patient may grow up to three mature cannabis plants and three immature cannabis plants for one certified patient. A designated caregiver that is also a certified patient shall not grow more than three mature cannabis plants and three immature cannabis plants for their own use, nor any one of their individual certified patient's use. Provided however, if a designated caregiver grows for two or more certified patients, which may or may not include themselves, they shall not grow more than six mature cannabis plants and six immature cannabis plants on their own private residence at any one time. A designated caregiver may grow on behalf of, but no more than, four certified patients at a time, which shall not include themselves if they are a certified patient.

(l) In addition to the requirements in Section 115.2 of the Part, designated caregivers shall:

(1) keep any cannabis being cultivated for the designated caregiver's certified patient separate from any other cannabis being cultivated, and in a manner that can readily determine to whom such cannabis plants belong;

(2) only receive reimbursement for the actual costs of goods, materials, or utilities for which they have incurred expenses directly related to the cultivation of cannabis for the certified patient, and not receive reimbursement or compensation for their time, knowledge, or expertise;

(3) not sell any cannabis produced by any immature cannabis plant or mature cannabis plant which is or was cultivated for a certified patient, even if the certified patient no longer needs or wants such cannabis; and

(4) only cultivate cannabis at, or on the grounds of, the designated caregiver's private residence or the certified patient's private residence.

(m) No landlord may refuse to lease, or otherwise penalize a certified patient or designated caregiver solely for engaging in medical cannabis activity as authorized by this Part and in accordance with 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 of cannabis products on its premises, provided no restriction may be construed to limit the certified medical use of cannabis.

(n) Section 115.2(k) of this Part does not exempt an individual from being liable for any property damage as outlined in their lease agreement.

§ 115.3 Sale of Medical Cannabis for Home Cultivation.

(a) No person or entity shall sell medical cannabis plants or seeds for home cultivation unless it has complied with the Cannabis Law, this Part, any other applicable federal and state rules, regulations and laws as amended for medical cannabis, and is a registered organization registered in accordance with Article 3 of the Cannabis Law or a licensee authorized by the Office of Cannabis Management. Applicable federal law or rules and regulation shall not be construed as to include any such federal law, rules or regulation that is contrary to, or otherwise conflicts with this Part or the Cannabis Law.

(b) Prior to selling medical cannabis for home cultivation, registered organizations or licensees shall update standard operating procedures to include activities related to home cultivation and furnish the standard operating procedures to the Office upon request.

(c) Packaging and Labeling requirements. Notwithstanding any other law or regulation, each cannabis plant or package of seeds for sale shall be labeled with an unobstructed and conspicuous label prior to being transported to the dispensing facility or delivered to the patient as follows:

(1) Labeling shall include the following information:

(i) strain name in bold type;

(ii) product type (eg cannabis seeds, cannabis plant);

(iii) potential potency, as confirmed by testing of the parent cannabis plant (THC:CBD levels);

(iv) date of harvest;

(v) unique identification number (UID);

- (vi) any pesticides used in the cultivation;
 - (vii) name of the entity, licensed or registered with the Office, that cultivated the cannabis;
 - (viii) name of the entity, licensed or registered with the Office, that sold the cannabis, if different from cultivator;
 - (ix) for seeds, a seed count and net weight must be included on the packaging label in US customary units and metric;
 - (x) a warning to “keep out of reach of children”; and
 - (xi) any other information as determined by the Office.
- (2) The label shall be printed on or affixed to any package or container that is used to display the cannabis seed or cannabis plant for retail sale.
- (3) Packaging shall be in a manner that is not attractive to minors and that preserves the integrity of the cannabis. Seed packaging shall not be plastic.

(4) Packaging and labeling shall not contain any untruthful or misleading statements including, but not limited to, health or benefit claims.

(d) Transport. Notwithstanding any other law or regulation, a registered organization or licensee shall transport medical cannabis for home cultivation in a manner determined by the Office and shall ensure that the following are provided to the dispensing facility, patient, or designated caregiver receiving the transport or delivery:

(1) written instructions for basic care and environmental considerations for the plants (light, water, temperature controls) and the method for destruction if necessary, such as if the plants develop disease, or die; and

(2) disclosure of any pesticide used in cultivation and a document signed by a duly authorized representative from the registered organization or licensee attesting that only pesticides that are registered by the New York State Department of Environmental Conservation or that specifically meet the United States Environmental Protection Agency registration exemption criteria for Minimum Risk Pesticides, and only in accordance with section 325.2(b) of title 6 of the NYCRR have been used;

(e) Storage at the dispensing facilities. Notwithstanding any other law or regulation, all medical cannabis seeds and immature plants shall be:

(1) stored in a secure area or location within the dispensing facility accessible to the minimum number of employees essential for efficient operation, to prevent diversion, theft or loss; and

(2) stored in such a manner as to protect against physical, chemical and microbial contamination and deterioration. However, a registered organization or licensees shall not apply any pesticides to live plants at the dispensing facility;

(f) Sales of medical cannabis for home cultivation. Registered organizations or licensees shall:

(1) only conduct sales of medical cannabis for home cultivation at their dispensaries or via delivery service to certified patients twenty-one years of age or older or their designated caregivers who are registered with the Office;

(2) sell seeds and immature plants only in quantities determined by the Office in guidance.

(3) provide certified patients or their designated caregivers with a safety insert at the time of sale consistent with guidance issued by the office. The safety insert shall include:

(i) the medical cannabis strain and potential potency;

(ii) information about contraindications;

- (iii) warning of adverse effects and/or any potential dangers stemming from the use of medical cannabis;

- (iv) instructions for reporting adverse events;

- (v) a warning about driving and operation of mechanical equipment while under the influence of medical cannabis;

- (vi) information on tolerance, dependence and withdrawal, and substance abuse, how to recognize what may be problematic usage of medical cannabis and how to obtain appropriate services or treatment;

- (vii) language stating medical cannabis seeds and plants must be kept secure and out of reach of children;

- (viii) language stating that the certified patient, or designated caregiver, may not distribute medical cannabis to anyone else;

- (ix) language stating that unwanted, excess, or contaminated medical cannabis must be disposed of in a manner that makes it nonrecoverable beyond reclamation, except for stalks, stems, fan leaves, root balls, and soil media;

- (x) language stating that medical cannabis for home cultivation is not required to be, and has not been, safety compliance tested; and

- (xi) any other information as determined by the Office.

- (g) Reporting and recordkeeping. Notwithstanding any other law or regulation, registered organizations or licensees shall perform seed to sale tracking of medical cannabis for home cultivation and submit seed to sale data from the registered organization's or licensee's system of record to the Office in a format as determined by the Office.

- (h) Returns, complaints and adverse events.

- (1) Medical cannabis seeds or plants returned to the dispensing facility shall be securely stored separate from working inventory while awaiting disposal and disposed of as determined by the Office.

- (2) Registered organizations or licensees shall notify the Office within 24 hours of the following;
 - (i) any adverse events that the registered organization or licensee is made aware of;

 - (ii) any incident involving theft, loss or possible diversion of medical cannabis;

(iii) any suspected or known security breach or other facility event that may compromise public health or safety, or which requires response by public safety personnel or law enforcement;

(iv) any vehicle accidents or incidents occurring during transport of medical cannabis.

(3) Within ten days of the occurrence of one of the events in paragraph (2) of this subdivision, the registered organization or licensee shall submit a complete written incident report to the Office detailing the circumstances of the event, any corrective actions taken, and where applicable, confirmation that appropriate law enforcement authorities were notified.

(4) Quarantine any lot of medical cannabis returned or as directed by the Office, and not transport, distribute, dispense or destroy such lot unless prior approval is obtained from the Office.

(5) Submit medical cannabis, samples and manufacturing materials to the Office upon request.