

Pursuant to the authority vested in the Cannabis Control Board by Sections 13, 85, 89, 91, and 131 of the Cannabis Law and Section 222.15 of the Penal Law, Parts 115 and 123 of Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York, are amended to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

**Paragraphs (2) of subdivision (a) of section 123.2 is amended to read as follows:**

(2) only sell and/or distribute cannabis clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, or cannabis seeds to a licensee authorized to sell cannabis products to consumers if any such plants are [under two (2) feet in height] immature cannabis plants;

**Paragraph (1) of subdivision (b) of section 123.2 is amended to read as follows:**

(1) distributing for retail sale any mature cannabis plants [or immature cannabis plants that are two (2) feet or taller] to a licensee authorized to sell cannabis products to consumers;

**Paragraph (1) of subdivision (b) of section 123.2 is amended to read as follows:**

(b) A retail dispensary may acquire cannabis clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, or cannabis seeds [seedlings and immature plants] from any licensee authorized as a nursery [once adult-use home cultivation is authorized by the Board].

**Subdivision (b) of section 123.9 is amended to read as follows:**

(b) A retail dispensary may acquire cannabis clones, seedlings,[ and] immature cannabis plants, cloned propagation material, tissue culture or cannabis seeds from any licensee authorized as a nursery[ once adult-use home cultivation is authorized by the Board].

**The title of Part 115 is amended to read as follows:**

Part 115 – Personal Home Cultivation

**Section 115.1 is amended to read as follows:**

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

(1) *Board* means the New York State Cannabis Control Board as defined in article 1 of the Cannabis Law.

(2) *Cultivation* means growing, cloning, harvesting, drying, curing, grading, and trimming of the cannabis plant.

(3) *Designated caregiver* means a person designated by the certified patient. A designated caregiver is 21 years of age or older for purposes of this Part.

(4) *Immature cannabis plant* or *immature plant* means a cannabis plant which does not have a flower or buds that may be observed by visual examination.

(5) *Landlord* means owner, lessor, assignor, or managing agent of, or other person having the right to sell, rent or lease or approve the sale, rental or lease of a housing accommodation, constructed or to be constructed, or an interest therein.

(6) *Local law* means a local rule or local regulation or local ordinance or action which is adopted by a county, town, city or village on matters otherwise not preempted by the Cannabis Law or prohibited by article 222 of the Penal Law.

(7) *Mature cannabis plant* means a cannabis plant that has observable buds or flowers.

(8) *Nursery* means nursery as defined in article 1 of the Cannabis Law.

(9) *Office* means the New York State Office of Cannabis Management.

(10) *On the grounds* means the external areas of the private residence where the person 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.

(11) *Personal home cultivation* means growing, cloning, harvesting, drying, curing, grading, and trimming of cannabis plants for medical use or adult-use that is subject to article 222 of the Penal Law.

(12) *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.

(13) *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 Part, processing does not include growing, cultivation, cloning, harvesting, drying, curing, grinding, or trimming.

(14) *Unauthorized person* means any person under the age of 21 and other persons not authorized to access the private residence or grounds by the resident, owner, or tenant.

**Subdivisions (c), (g), (h), (j) of section 115.2 are amended to read as follows:**

(c) The personal home cultivation of medical cannabis may only occur in, or on the grounds of, a person's private residence, where the person occupying such private residence is 21 years of age or older.

\* \* \* \* \*

(g) A certified patient or designated caregiver may lawfully possess up to five pounds of [personal home cultivated] cannabis flower that has been trimmed from cannabis plants which

may or may not have been cultivated in their private residence or on the grounds of such person's private residence, the equivalent weight of such cultivated cannabis in concentrated cannabis as determined by the Office, or a mixture of both cannabis flower and the equivalent weight of cultivated cannabis in concentrated cannabis, [per section five of penal law] pursuant to subdivision 5 of section 222.15 of the Penal Law.

\* \* \* \* \*

(h) [Except as otherwise approved by the Office, no] No certified patient or designated caregiver shall process cannabis [at home] in a private residence by mixing[means of any liquid or] gas [,other than alcohol, that has a flashpoint below 100 degrees Fahrenheit]or any other flammable materials or flammable substance with gas. All persons who process cannabis in a private residence or on the grounds of a private residence, shall use a foreseeable degree of caution and concern for the safety of humans, pets, and property that a reasonable person would use.

\* \* \* \* \*

(j) Certified patients and those utilizing a designated caregiver shall [identify] only be authorized to use a single site for cultivation of their medical cannabis for personal home cultivation.

**Subdivision (m) of section 115.2 is renumbered (o) and a new subdivision (m) is added to read as follows:**

(m) In the event that odor rises to the level of nuisance, reasonable measures must be taken to ensure that there is odor mitigation to prevent a nuisance to neighboring residents. Odor mitigation on the part of the resident should take in to account the type of structure and proximity of neighbors to avoid such a nuisance.

**Subdivision (n) of section 115.2 is renumbered (p) and new subdivisions (n) of section 115.2 are added to read as follows:**

(n) Local municipalities are prohibited from enforcing against private residents for personal home cultivation of adult-use cannabis for odor nuisance violations if they are using odor mitigation techniques approved by the Office.

**Section 115.3 is repealed and new sections 115.3, 115.4, 115.5 and 115.6 are added to read as follows:**

**§ 115.3 Personal Home Cultivation of Adult-use Cannabis.**

(a) Persons 21 years of age or older may cultivate cannabis for personal adult-use pursuant to this section.

(b) The personal home cultivation of adult-use cannabis may only occur in, or on the grounds of, a person's private residence where the person occupying such private residence is 21 years of age or older.

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

(d) 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.

(e) No person shall sell, which shall have the same meaning as the definition of “sale” pursuant to Tax Law section 492(j), any immature cannabis plants, mature cannabis plants, or cannabis, produced by a plant cultivated pursuant to this Part, or to any other person. This subdivision does not prohibit the transfer, without compensation, to another person 21 years of age or older, up to three ounces of cannabis and up to 24 grams of concentrated cannabis, pursuant to section 222.05 of the Penal Law.

(f) Pursuant to subdivision 5 of section 222.15 of the Penal Law, a person may lawfully possess up to five pounds, on the grounds of such person’s private residence, of:

(1) cannabis flower that has been trimmed from cannabis plants which have been either cultivated in their private residence or purchased; or

(2) the equivalent weight of such cultivated cannabis in concentrated cannabis as determined by the Office; or

(3) a mixture of both cannabis flower and the equivalent weight of cultivated cannabis in concentrated cannabis.

(g) No person shall process cannabis in a private residence by mixing gas or any other flammable materials or flammable substances with gas. All persons who process cannabis in a private residence or on the grounds of a private residence, shall use a foreseeable degree of caution and concern for the safety of humans, pets, and property that a reasonable person would use.

(h) Cannabis clones, seedlings, immature cannabis plants, mature cannabis plants, cloned propagation material, tissue culture, or cannabis seeds used for personal home cultivation must be stored in a secure location within a private residence or on the grounds of such person's private residence; and reasonable measures must be taken to ensure that such plants, and any cannabis cultivated from such plants, are 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 person's residence; and

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



(i) Persons cultivating adult-use cannabis for personal home cultivation purposes shall only be authorized to use a single site for cultivation of their adult-use cannabis for personal home cultivation.

(j) In the event that odor rises to the level of nuisance, reasonable measures must be taken to ensure that there is odor mitigation to prevent a nuisance to neighboring residents. Odor mitigation on the part of the resident should take in to account the type of structure and proximity of neighbors to avoid such a nuisance.

(k) Local municipalities are prohibited from enforcing against private residents for personal home cultivation of adult-use cannabis for odor nuisance violations if they are using odor mitigation techniques approved by the Office.

(l) No landlord may refuse to lease, or otherwise penalize a person solely for engaging in adult-use 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 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 adult-use cannabis products on its premises.

(m) The provisions of this section do not exempt any person who cultivates cannabis for personal adult-use from being liable for any property damage as outlined in their lease agreement.

**§ 115.4 Sale of Cannabis for Personal Home Cultivation.**

(a) No person or entity shall sell, which shall have the same meaning as the definition of “sale” pursuant to subdivision (j) of section 492 of the Tax Law, medical or adult-use cannabis clones, seedlings, immature cannabis plants, cloned propagation material, or tissue culture, to consumers for personal home cultivation unless it has complied with the Cannabis Law, this Part, any other applicable federal law, rules or regulation, which 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, or any state rules, regulations, and laws, and is a registered organization registered in accordance with article 3 of the Cannabis Law, or an adult-use retail dispensary, microbusiness, or ROD licensed in accordance with article 4 of the Cannabis Law, that maintains an active Nursery Dealer Certificate of Registration from the New York State Department of Agriculture and Markets Division of Plant Industry. A ROND, licensed in accordance with article 4 of Cannabis Law, is authorized to sell cannabis clones, seedlings, immature cannabis plants, cloned propagation material, or tissue culture, to consumers for personal home cultivation for medical use purposes and will require an active Nursery Dealer Certificate of Registration from the New York State Department of Agriculture and Markets Division of Plant Industry if and only if the ROND is selling cannabis clones, seedlings, immature cannabis plants, cloned

propagation material, or tissue culture for personal home cultivation for medical use that were cultivated by another authorized licensed entity.

(b) Prior to selling medical or adult-use cannabis for personal home cultivation, registered organizations or adult-use retail dispensary, microbusiness, ROND, and ROD licensees shall update standard operating procedures to include activities related to personal 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 clone, seedling, immature cannabis plant, cloned propagation material, tissue culture, or package of seeds for sale shall be labeled with an unobstructed and conspicuous label prior to being transported to the licensee authorized herein to sell to persons for personal home cultivation or delivered to the cannabis certified patient or consumer as follows:

(1) Labeling shall include the following information:

(i) strain name in bold type;

(ii) product type (e.g., 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) name of the entity, licensed or registered with the office, that cultivated the cannabis;
- (vii) name of the entity, licensed or registered with the office, that sold the cannabis, if different from nursery;
- (viii) for seeds, labeling that is consistent with the requirements of subdivisions A and C of section 137 of the Agriculture and Markets Law;
- (ix) a warning to “keep out of reach of children”; and
- (x) 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 clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, or cannabis seed for retail sale.

(3) Packaging shall be in a manner that is not attractive to individuals under of twenty-one, as defined in Part 128 of this Title, 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, when a registered organization, adult-use retail dispensary, microbusiness, ROND, or ROD licensee shall transport medical or adult-use cannabis for personal home cultivation, they shall transport in a manner determined by the office and shall ensure that the following are provided to the person 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) a document signed by a duly authorized representative from the registered organization, adult-use retail dispensary, microbusiness, ROND, or ROD 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 subdivision (b) of section 325.2 of Title 6 of the NYCRR have been used;

(e) Storage. Notwithstanding any other law or regulation, all medical and adult-use cannabis clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, or cannabis seeds intended for the cultivation of cannabis for personal medical or adult-use shall be:

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

(i) registered organization;

(ii) adult-use dispensary;

(iii) microbusiness;

(iv) ROND; or

(v) ROD; and

(2) stored in such a manner as to protect against physical, chemical and microbial contamination and deterioration.

(f) Sales of medical and adult-use cannabis for personal home cultivation. A registered organization, adult-use retail dispensary, microbusiness, ROND, or ROD licensees shall:

(1) only conduct sales of medical and adult-use cannabis for personal home cultivation at a registered organization, adult-use retail dispensary, microbusiness, ROND, or ROD licensed premises authorized by the office or via delivery, if the licensee is authorized for delivery of cannabis to certified patients or consumers, by registered organization employees, adult-use retail dispensary employees, microbusiness employees, ROND employees, or ROD employees, all of whom shall be 21 years of age or older, to persons 21 years of age or older;

(2) immature plants only in quantities determined by the office.

(3) provide persons purchasing medical or adult-use cannabis clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, or cannabis seeds for personal home cultivation with a safety insert at the time of sale. The safety insert shall include the following information:

(i) the medical or adult-use 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 or adult-use cannabis;

(iv) instructions for reporting serious adverse events, as that term is defined in section 113.1 of this Chapter;

- (v) a warning about driving and operation of mechanical equipment while under the influence of medical or adult-use cannabis;
- (vi) information on tolerance, dependence and withdrawal, and substance use, how to recognize what may be problematic usage of medical or adult-use cannabis and how to obtain appropriate services or treatment;
- (vii) language stating medical or adult-use cannabis clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, or cannabis seeds intended for personal home cultivation must be kept secure and out of reach of children;
- (viii) language stating that the person shall not sell, which shall have the same meaning as the definition of “sale” pursuant to subdivision (j) of section 492 of the Tax Law, give, transfer, or distribute any medical or adult-use cannabis cultivated on the grounds of or in the private residence of such person for compensation or other remuneration to any other person;
- (ix) for medical cannabis, language stating that the certified patient, or designated caregiver, may not distribute medical cannabis to anyone else;
- (x) for adult-use cannabis, language stating that the person may not give, transfer, or distribute more than three ounces of cannabis and 24 grams of concentrated cannabis of the adult-use



cannabis cultivated on the grounds of or in the private residence of such person to any other person;

(xi) language stating that unwanted, excess, or contaminated medical or adult-use 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;

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

(xiii) any other information as determined by the office.

(g) Reporting and recordkeeping. Notwithstanding any other law or regulation, registered organizations, adult-use retail dispensary, microbusiness, ROND, or ROD licensees shall perform seed to sale tracking of cannabis clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, or cannabis seeds for personal home cultivation and submit seed to sale data from the registered organization's, adult-use retail dispensary, microbusiness or ROND, or ROD licensee's system of record to the office in a format as determined by the office.

(h) Returns, complaints and serious adverse events.

(1) Medical or adult-use cannabis clones, seedlings, immature cannabis plants, cloned propagation material, tissue culture, or cannabis seeds returned to the licensee authorized herein

to sell to persons for personal home cultivation, where it was sold, shall be securely stored separate from working inventory while awaiting disposal and disposed of as determined by the office.

(2) Registered organizations, adult-use retail dispensary, microbusiness, ROND, and ROD licensees shall notify the office within twenty-four (24) hours of the following:

(i) any serious adverse events that the registered organization, adult-use retail dispensary, microbusiness, ROND, or ROD licensee are made aware of;

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

(3) Within ten (10) days of the occurrence of one or more of the events in paragraph two of this subdivision, the registered organization, adult-use retail dispensary, microbusiness, ROND, or ROD 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 and adult-use 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 and adult-use cannabis, samples and manufacturing materials to the office upon request.

#### **§ 115.5 General Provisions**

(a) Counties, towns, cities and villages may enact and enforce local laws that reasonably regulate the actions set forth in this Part, pursuant to subdivision 6 of section 222.15 of the Penal Law, provided, however, no county, town, city or village may enact a local law that completely or essentially prohibit a person from engaging in the conduct authorized by this Part or sections 222.05 and 222.15 of the Penal Law.

(b) If any provision of this Part or its application to any particular person or circumstance is held invalid, the remainder of this Part and its application to other persons and circumstances shall not be affected thereby.

#### **§ 115.6. Severability and Reference Materials.**

(a) Referenced Materials. Regulations included herein contain references to documents for information as to the standards to be met or guidelines and methodologies to be used in meeting the requirements of specific regulations. In addition, copies of referenced materials are available for public inspection and copying at the Albany office of the New York State Department of State.

**Table 1**

<b>Regulation</b>	<b>Referenced Material</b>	<b>Availability</b>
<b>9 NYCRR Part/sec./etc.</b>	<b>CFR (Code of Federal Regulations) or other</b>	
115.1(6); 115.1(11); 115.2(g); 115.3(e); 115.3(f); 115.5(a)	Penal Law Article 222	**
115.4(c)(1)(viii)	Agriculture and Markets Law § 134	**
115.4(d)(2)	6 NYCRR §325.2(b)	*

\* Electronic copies of New York Codes, Rules and Regulations (NYCRR) sections can be searched directly at:

[https://govt.westlaw.com/nycrr/index?\\_\\_lrTS=20190327201930309&transitionType=Default&contextData=%28sc.Default%29](https://govt.westlaw.com/nycrr/index?__lrTS=20190327201930309&transitionType=Default&contextData=%28sc.Default%29)

\*\* Electronic copies of New York State Law, including, but not limited to, Penal Law, may be searched directly under the Laws tab (which drops down to “Laws of New York”) at:

<http://public.leginfo.state.ny.us/lawssrch.cgi?NVLWO:>