



OCM released the first round of proposed regulations in November. Comments for those closed in January. Based on input from those comments, OCM has issued revised proposed regulations, which are open for an additional 45 days of public comment. This is a condensed summary of OCM's Revised Proposed Regulations for Personal Home Cultivation of Medical Cannabis (Part 115) which were published in the NY State Registrar on June 8, 2022 and open for public comment until July 25, 2022.

Important Definitions (§ 115.1)

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 (21) 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 under cannabis law.
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.

Who can cultivate medical cannabis for individual personal use?

NY Medical card holders (Certified Patient) that are twenty-one (21) years and older may grow cannabis for themselves or another Certified Patient who is twenty-one (21) years or older, or whose physical or cognitive impairments prevent them from cultivating cannabis.

For the purposes of this section of the regulations, *‘Designated Caregivers’* refers to any individual designated by a certified patient. Designated caregivers must be twenty-one (21) years or older.

No patient may have more than one Designated Caregiver and such patients shall identify a single site for cultivation of their medical cannabis.

Where can Certified Patients and Designated Caregivers obtain cannabis seeds and/or plants for medical personal cultivation?

The regulations do not specify where a Certified Patient or Designated Caregiver has to get their seeds and plants. Therefore it is entirely up to the Certified Patient and Caregiver where and how they obtain their seeds and plants. This does not exempt Certified Patients or Designated Caregivers from following all Federal and State laws regarding purchase and transport of cannabis seeds and plants.

The regulations do outline the rules that businesses – NY Medical Cannabis Registered Organizations and Adult-Use Retail License Holders – must follow in order to sell seeds and plants to NY Certified Patients and Designated Caregivers.

How much cannabis can be cultivated for personal medical use by any one individual?

Certified patients can grow no more than three (3) immature (non-flowering) female plants and three (3) mature (flowering) female plants at a time.

If there are two (2) or more Certified Patients living in one residence, the total allotted personal cultivation of medical cannabis for that household can be six (6) immature and six (6) mature female plants. No more than twelve (12) female plants can be cultivated, harvested, dried, or possessed within any private residence, or on the grounds of any private residence at any one time.

Designated Caregivers may grow up to six (6) cannabis plants for one Certified Patient. A Designated Caregiver can grow for up to four (4) Certified Patients at a time. However, a Designated Caregiver shall not grow more than twelve (12) cannabis plants total, including any plants said Designated Caregiver is growing for themselves.

Where can personal cultivation of cannabis occur?

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

Designated Caregivers can only cultivate cannabis at, or on the grounds of, the Designated Caregiver's private residence or the Certified Patient's private residence.

"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.

"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, church garden, local government community garden or other similar public accommodation, shall not be considered a private residence, except as may be expressly allowed by the Board.

What measures must be taken when storing cannabis plants kept for cultivation?

Designated Caregivers must keep any cannabis being cultivated for certified patients separate from any other cannabis being cultivated, and in a manner that can readily determine to whom such cannabis plants belong.

All plants, both mature and immature 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.

Patients and caregivers must take reasonable measures to ensure that the plants and cannabis obtained from the plants are not readily accessible to anyone under the age of twenty-one (21). Such reasonable measures **may** include but are not limited to taking measures to obstruct or hide the visibility of the cultivation site, plants, and cannabis as well as securing the site, plants, and cannabis by locking and storing cannabis in a manner that prevents any unauthorized person from accessing it.

Can my landlord stop me from growing my medicine or growing medicine for others?

In most cases, landlords may not refuse to lease, or otherwise penalize a certified patient or designated caregiver for activities related to medical cannabis, 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.

The personal cultivation of medical cannabis law and/or regulations for personal cultivation of medical cannabis does not exempt an individual from being liable for any property damage as outlined in their lease agreement.

Can Designated Caregivers who are not the Designated Caregiver of a Certified Patient provide personal cultivated cannabis to that patient?

Yes. Even if not growing cannabis for a particular patient, you may provide those patients each with up to three (3) ounces of cannabis and up to twenty-four (24) grams of concentrated cannabis. Having additional patients who you do not specifically grow for does not allow you to grow more than the twelve (12) plants per residence.

Can I charge to be a Designated Caregiver?

No. You cannot profit from personal cultivation of medical cannabis. You cannot sell barter or trade the cannabis that you grow for yourself or a patient. Only Registered Organizations licensed to grow medical cannabis or Adult-Use Retail License Holders can profit from the sale of seeds, plants, or services associated with personal cultivation of medical cannabis.

Designated Caregivers can 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.

Designated Caregivers may 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.

How much medical personal cultivation cannabis can be stored in the home at one time?

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. *Note: this is different from what you are allowed to carry on your person at one time outside of your household.*

Are Certified Patients and Designated Caregivers allowed to process personal cultivation cannabis and make concentrates?

Yes, with limitations.

"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

It is prohibited to process cannabis at home by means of any liquid or gas, other than alcohol, that has a flashpoint below 100 degrees Fahrenheit.

§ 115.3 Sale of Medical Cannabis for Home Cultivation

This section deals with the sale of seeds and plants to Designated Caregivers and Certified Patients. There are no regulations requiring either Certified Patients or their Designated Caregivers to have to purchase seeds, plants, or clones from a Registered Organization (Medical Cannabis Company) or Licensee (Adult-Use license holder). Therefore we have not summarized the following and the regulations are presented in their entirety.

Section 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.
- 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:

- a) strain name in bold type;
- b) product type (eg cannabis seeds, cannabis plant);
- c) potential potency, as confirmed by testing of the parent cannabis plant (THC:CBD levels);
- d) date of harvest;
- e) unique identification number (UID);
- f) any pesticides used in the cultivation;
- g) name of the entity, licensed or registered with the Office, that cultivated the cannabis;
- h) name of the entity, licensed or registered with the Office, that sold the cannabis, if different from cultivator;
- i) for seeds, a seed count and net weight must be included on the packaging label in US customary units and metric;
- j) a warning to “keep out of reach of children”; and
- k) 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:
- i. 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
 - ii. 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 the lot unless prior approval is obtained from the Office.
5. Submit medical cannabis, samples and manufacturing materials to the Office upon request.