

# GOVERNMENT OF THE DISTRICT OF COLUMBIA

## Department of Health

Health Regulation and Licensing  
Administration  
Medical Marijuana Program



### **Cultivation Centers and Dispensaries Frequently Asked Questions for the Medical Marijuana Program**

The most recent set of emergency and proposed regulations for the District of Columbia Medical Marijuana Program (MMP) can be viewed online at [www.hrla.doh.dc.gov/mmp](http://www.hrla.doh.dc.gov/mmp). Briefly, the regulations are written to implement the Legalization of Marijuana for Medical Treatment Initiative Amendment Act of 2010 (“Act”). The regulations do not deal with all aspects of the Act, but rather are focused on dealing with those issues that must be addressed at the beginning of the implementation of the Act.

These Frequently Asked Questions are a non-binding guide to potential applicants and address questions submitted by potential applicants or other persons to [doh.mmp@dc.gov](mailto:doh.mmp@dc.gov). However, the Act and the regulations remain the controlling law.

Questions: Will a green house with the proper lighting and water in the basement of my home qualify?

Response: Please refer to 22-C DCMR 5412 Registration Prohibited in Residential Use District 5412.1 No registration shall be issued to a cultivation center or dispensary located in a residential-use district as defined in the Zoning Regulations and shown in the official atlases of the Zoning Commission for the District.

Question: When will applications be available for Cultivation Centers and Dispensaries?

Response: The Mayor shall publish a notice of open application for cultivation center and dispensary registrations that includes the application requirements. Notices shall appear, at a minimum, in the DC Register.

Question: Can I apply for a cultivation center and a dispensary registration?

Response: Yes. An applicant may apply for more than one (1) cultivation center registration but may apply for only one (1) dispensary registration. (22-C DCMR 5408.1)

Question: I received notice that my Letter of Intent was not accepted. What is my recourse?

Response: The rejection of the Letter of Intent is a final agency action. Any review of such final action must be sought in Superior Court of the District of Columbia located at 500 Indiana Avenue, N.W., Washington, DC 20001.

Question: Can we pay the application and license fees by credit card?

Response: Please refer to 22-C DCMR 5103.1 All registration and permit fees shall be paid by cashier's check, certified check, or money order payable to the DC Treasurer. Applicants shall pay the fees specified by the Department at the time an application is filed. The fees shall be returned to the applicant, minus the processing fee, if the application is not selected, denied, or withdrawn.

Question: Can we use the traditional DC ABRA certification map determination as to the distance between our properties and the nearest forbidden facility, be it a school or rec center etc, as the official surveyors certification for the purposes of the applications? If not who do you recommend as a business or government office that will give us an "official" survey of the distance between our properties and the nearest forbidden facility?

Response: Please refer to 22-C DCMR 5404.1 (d) A certified surveyor's report setting forth the proximity of the cultivation center or dispensary to the nearest public or private, preschool, primary or secondary school or recreation center, and the name of the school or recreation center. The District does not recommend specific surveyors. Selecting a qualified surveyor is a business decision for the applicant.

Question: Can you provide any additional information regarding your preferences for packaging the response?

Response: Responses should be submitted in a manner that enables the application panel to clearly understand each element of the application responses, that clearly identifies all supporting materials and ties the supporting documents to the relevant application response, and that will keep the application materials together. It is recommended that the materials be referenced (such as a table of contents or tabbed) and bound in a manner to avoid loose papers.

Question: Is there a maximum page limit for the response?

Response: No. Applicants are provided the opportunity to answer questions completely. Responses should be clear, concise, and specific. Appendices must be clearly labeled.

Question: Other than utilizing 12pt for the text, are there any additional formatting requirements or preferences for the response?

Response: Font type must be legible. Appendices must be clearly labeled. As defined in the regulations, the failure by an applicant to address all of the required criteria and measures will result in the application being considered non-responsive and not accepted for review by the panel.

Question: If we apply for two cultivation centers for the same company in the same building, do we need to have separate books, separate employees, totally separate spaces? Do the cultivation centers have to be totally separate or can resources be shared?

Response: Please refer to 22-C DCMR 5614 Co-Location and Integration.

Question: Specifically what type of documentation will be required to provide the source of funds use to acquire or develop the business for the cultivation center; what type of closing documents are required as well, This is a direct question to questions 15.

Answer: Please refer to 22-C DCMR 5404.3 An applicant for a dispensary or cultivation center registration shall advise the Department, in the application, as to the source of the funds used to acquire or develop the business for which the registration is sought, and shall provide independent documentation concerning the source of such funds and copies of closing documents in connection with the purchase of a registered business upon request of the Department.

Question: Question 11 (C) “business plan demonstrates a start-up timetable which provides an estimated time from registration of the dispensary to full operation, and the assumptions used for the basis of those estimates”  
\*Request for clarification; ‘dispensary’ => ‘cultivation center’?

Response: The Department notes a typographical error and will send notification to all permitted applicants. The Question should read as follows:

(C) Measure 3: The business plan demonstrates a start-up timetable which provides an estimated time from registration of the CULTIVATION CENTER to full operation, and the assumptions used for the basis of those estimates. (up to five (5) points)

Question: Question 14 “Please provide a written and detailed plan for closure of the cultivation center.” \*Is this question in reference to daily closing procedures similar to Question 8(E)(k) or a temporary/permanent closing of the registered cultivation center?

Response: The question relates to procedures initiated by the Cultivation Center in case of temporary closure or permanent closure as outlined in the regulations.

Question: Question 14 of the cultivation center application reads: “Please provide a written and detailed plan for closure of the cultivation center.” Please advise whether “closure” refers to closing at the end of the business day or the permanent or temporary closure of the cultivation center.

- a. Should the plan include details for daily closure?
- b. Should the plan include details for temporary closure?
- c. Should the plan include details for permanent closure?

Response: Please see the answer to the immediately prior question.

Question: Is there a medical marijuana certification provider recognized by the Department within the District?

Response: Not as of 9/7/2011.

Question: If not, has an RFP been issued for a medical marijuana certification provider program?

Response: Please continue to monitor the DC Register and the Department of Health Medical Marijuana Webpage ([www.hrla.doh.dc./mmp](http://www.hrla.doh.dc./mmp)) for Public Notice and Announcements. The Request for Proposals (RFP) will also be listed on the website of the District of Columbia Office of Contracting and Procurement found at [www.ocp.dc.gov](http://www.ocp.dc.gov).

Question: Is there a currently operating medical marijuana certification provider in the U.S. that is recognized by the Department for the purpose of certification prior to registration?

Response: Not as of 9/7/2011. Please continue to monitor the DC Register and the Department of Health Medical Marijuana Webpage for Public Notice and Announcements.

Question: The cultivation center application requires ten (10) physical copies of the application to be mailed to the Department and one (1) digital copy. How should the digital copy be submitted and in what format? Should it be emailed, and if so to whom?

Response: The digital copy of the application response should be submitted on a CD ROM or a USB Flash Drive in PDF format as defined in the application. The CD ROM or Flash Drive should be included with the materials mailed or delivered to the Department of Health. The CD ROM or Flash Drive should be labeled with the applicant's name.

Question: How should materials be submitted?

Response: All materials shall be submitted to the District of Columbia Health Regulation and Licensing Administration Department of Health Attn: Patricia M. D'Antonio, 899 North Capitol Street, NE 2nd Floor Washington, DC 20002.

Question: If I live in VA, can I apply for a medical marijuana license?

Response: Yes. There is no restriction on residency regarding applicants for Cultivation Center Registration or Dispensary Registration.

Question: I'm an attorney in Florida representing a confectioner client in DC who wishes to inquire about a license. I notice that the "Letter of Intent" period has passed and the notice says the period will not be extended. Will there be a second period?

Response: Please refer to 22-C DCMR Section 5401 with regards to Open Application Period and Required Letter of Intent. A second period has not been established as of 09/07/2011.

Question: Upon what authority does the D.C. government in the "Medical Marijuana Program Cultivation Center Acknowledgement (sic) and Attestation Form" require applicants to acknowledge and swear under penalty of perjury at ¶11(c) that: "Growing, distributing, and possessing marijuana in any capacity, other than as a part of a federally authorized research program, is a violation of federal laws. The District of Columbia's law authorizing the District's medical marijuana program will not excuse any registrant from any violation of the federal laws governing marijuana or authorize any registrant to violate federal laws."

First, it is presently unclear whether in fact growing, distributing and possessing marijuana pursuant to the Legalization of Marijuana for Medical Treatment Amendment Act of 2010 is a violation of federal law inasmuch as Congress expressly approved that Act and thus arguably repealed by implication the Controlled Substances Act in part in the District of Columbia. Indeed, a federal lawsuit is under way challenging that very premise. See: [Sibley v. Obama, et al.](#), D.C. District Court Case No.: 11-cv-00919-JDB.

Second, given the holding in [Leary v. United States](#), 395 U.S. 6 (1969), the D.C. government would be violating every applicant's Fifth Amendment right against self-incrimination as to acknowledge the statement in ¶11(c) would expose each applicant to a "real and appreciable hazard of incrimination" as ¶11(c) requires an applicant to admit he is breaking the law. Thus the D.C. government is presenting every applicant, just like Timothy Leary, with a D.C. Medical Marijuana Act which "on its face permitted him to" conspire to and acquire marijuana legally, provided an applicant complies with the regulations promulgated under the D.C. Medical Marijuana Act. And, like Timothy Leary, each applicant is confronted "simultaneously with a system of regulations which, according to the Government, prohibited him from acquiring marijuana under any conditions" under the Controlled Substances Act. As the Supreme Court in Leary made clear, this the government can not do.

As such, ¶11(c) must be removed from the "Medical Marijuana Program Cultivation Center Acknowledgement (sic) and Attestation Form".

Response: The Department of Health cannot respond to this question as it involves issues in a pending lawsuit. The requirement in ¶ 11(c) remains in place.

Question: Please explain the conflict between Rule 5003.3 which holds that: "A dispensary or cultivation center registration is not transferable to a new location" and 5104.7 which holds: "The fee for the transfer of a registration to a new location shall be one thousand dollars (\$1,000). This fee shall also cover any audit and inspection costs incurred by the Department."  
Can a cultivation center registration be transferred to a new location?

Response: Rule 5003.3 is the controlling provision on this issue. The language in 5104.7, pertaining to fees, will be repealed in subsequent rulemaking.

Question: The question presented is what the Department of Health means by the phrase used in the final implementing regulations, "residentially zoned district" codified at 22 DCMR Sec. 5301.1 and "residential-use district" codified at 22 DCMR Sec. 5412.1?

Section 5301.1 of the regulations implementing the medical marijuana program states that a "registration for a cultivation center or dispensary shall not be issued for any premises located within a residentially zoned district." 22. DCMR Sec. 5301.1. The regulations do not define what is meant by the phrase "residentially zoned district."

Similarly, Section 5412.1 of the implementing regulations state that no "registration shall be issued for a center or dispensary located in a residential-use district as defined in the Zoning Regulations and shown in the atlases of the Zoning Commission for the District."

An exhaustive computer search of the entire D.C. Code Annotated and the D.C. Municipal Code, including the Zoning Regulations and the Zoning Commission, do not reveal a definition of the phrase, "residential-use district" or the phrase "residentially zoned district." Reference is made in the Municipal Code to the phrase "residential zone district," "residence district," and "residential uses" (within certain designated zones) but none of these terms are defined in regulation or statute.

Provisions in the D.C. Code governing the sale of alcoholic beverages, like the Department of Health's regulations implementing the medical marijuana program, make reference to "residential-use district" but like the Department of Health's medical marijuana regulations, do not define what is meant by the phrase, "residential-use district" and simply cross-references to the Zoning Regulations and the atlases of the Zoning Commission. D.C. Code Annotated §§ 25-314, 25-337 (2011). But as

noted above, the Zoning Regulations and the Zoning Commission do not define the term "residential-use district."

Response: It refers to districts that, under the Zoning Regulations, are as zoned as "residence districts", as defined in 11 DCMR 105.1(a).

Question: Does the Department have information available regarding the number of registered patients?

Response: No. The Department will begin accepting registrants shortly after Dispensary Registrations are established. 22-C DCMR 200.7 requires that as part of the registration process, a qualifying patient shall designate the dispensary from which he or she will receive medical marijuana, and this designation shall appear on the qualifying patient's registration card and, if applicable, the caregiver's registration card.

Question: The cultivation center applications ask for submission of 10 printed copies. Do forms/documents requiring applicant's signatures have to be submitted in their original form for each of the 10 copies or will one set with original signatures and 9 with copies suffice?

Response: One set with original signatures and 9 copies will suffice.

Question: Requests for clarification of question, measures of information requested.

Question 4:  
Please provide a detailed description of the nature of the proposed operation.

Question 7:  
Knowledge of District and federal law and regulation relating to marijuana

Questions 9:  
(B) Measure 2: The applicant demonstrates knowledge of organic growing methods to be used in the growing and cultivation of marijuana. The applicant shall describe the various strains to be cultivated.

(D) Measure 4: Provide information that covers where the medical marijuana will be cultivated and stored.

Response: Please refer to the 4<sup>th</sup> Proposed and Emergency Regulations 22-C DCMR Medical Marijuana. The measures are direct with regards to information requested.



Questions: In terms of the cultivation center what is the minimum amount of plants that needs be grown per center?

Response: The Department does not define a minimum amount of plants. Applicants are required to describe its plan to provide a steady supply of medical marijuana to registered dispensaries.

Question: Will plans created by a draftsman suffice or do they need to be signed off by a licensed architect?

Response: For commercial properties (which the MMP cultivation centers & dispensaries are), yes, we would require plans to be signed off by a licensed architect.

Question: Please advise we have a 501(c)3 we do not want to cultivate or dispense drugs, this is what we propose. We will contract with a cultivation center in California. The medication will be mailed to the client once they have registered without our DC facility. The DC facility will offer, Medical Counseling, Education Classes, Information and referral services. No medication (drugs) will be kept at any of our offices. We will hire the following staff Medical Social Worker, Nurse, Medical Assistant, Clerk, and accountant. If clients need a prescription we will refer them to a doctor. Please be advised that we are a public charity. We cannot lose \$2,500.00. Please advise how we should proceed as we do not want to cultivate or dispense. Our contract dispensary will mail all medications, we will not touch any medication only offer the above services how would you classify what we propose?

Mail Order through our California vendor  
Information and Referral  
Medical Counseling  
Education Classes Cancer, Heart Disease HIV Protection, Lose Grief,  
Managing Pain

Response: Please refer to the 4<sup>th</sup> Proposed and Emergency Regulations 22-C DCMR Medical Marijuana for (a) definitions of registrations and outline of requirements for the registrations permitted in the District of Columbia and (b) provisions requiring a \$5,000.00 fee with only \$2,500.00 being refundable as specified in the rules.

A registration will only be issued to an applicant for a cultivation center. Please see the definition of a cultivation center set forth below.

**Cultivation Center**- means a facility operated by an organization or business registered with the Mayor pursuant to section 6 of the Act from or at which medical marijuana is cultivated, possessed, manufactured, and

distributed in the form of medical marijuana, and paraphernalia is possessed and distributed to dispensaries.

Question: According to the law, it states that an applicant may only apply for 2 cultivation permits. After reading the list, I see many applicants with three accepted letters of intent and one applicant with six. I wanted to get clarification because it seems that the law states that an applicant can only apply for 2 cultivation permits and 1 dispensary.

Response: The limitations on the number of permissible registrations remain in place regardless of the number of letters of intent an applicant may submit.

5200.2 The number of cultivation centers registered to operate in the District of Columbia shall not exceed ten (10).

5413.2 No individual, partnership, corporation, entity, or organization shall directly or indirectly hold more than twenty percent (20%) of the cultivation center registrations, which are permissible to be granted under the law and this subtitle at the time of issuance of the registrations.

Question: Section 5614 of the regulations permits co-location of two or more cultivation centers in the same building provided that they maintain separate books and records, and their own secure and distinct registered premises that are separated at a minimum by a fixed boundary.

a. Assuming that the areas used for cultivation are secure and distinct, and separated by a fixed boundary, may the co-located cultivation centers share some common areas that are part of the current structure of the premises -- *e.g.*, entryways, stairwells in the case of cultivation centers located on an upper floor, bathrooms?

Response: Yes, if the common areas are entirely outside the secure perimeter of both co-located cultivation centers. Common areas are limited to restrooms, stairwells, lobbies, and other such areas that provide common tenant services unrelated to cultivation center operations.

Though co-location is permissible, please note that an application for a cultivation center registration should reflect that applicant's ability to operate independently. An application that is completely dependent upon another applicant may result in the failure of that applicant to successfully qualify for a registration.

b. If common areas are permitted, may such common areas also include facilities that will be built out in the premises, *e.g.*, facilities for drying, curing, weighing, packaging, labeling, and a commercial kitchen, assuming that such facilities can be configured to be accessible to only

one cultivation center at a time (*e.g.*, by virtue of separate locked entryways)?

Response: No. These functions are specific to cultivation center operations, and are may not be shared. Each cultivation center must perform these functions in areas that are part of its discrete secure perimeter.

c. If common areas are permitted, may the security plan for the common areas be included in each cultivation center's security plan?

Response: Permitted common areas (specified in section a above) should be addressed in the security plans for each of the affected cultivation centers – security plans will not be cross-referenced with each other during the review process.

Question: Section 5605 of the regulations requires a cultivation center or dispensary to destroy or dispose of unused or surplus medical marijuana and its by-products by providing it to MPD for destruction. However, Section 5621 of the regulations, governing transport, appears to authorize transport only to registered dispensaries. Therefore, please advise how the unused or surplus medical marijuana and its by-products are to be “provided” to MPD for destruction.

a. Will MPD pick up the unused or surplus medical marijuana and its by-products?

b. Does Section 5621 permit transport of the unused or surplus medical marijuana and its by-products to MPD?

c. If so, will Section 5621 be amended to specify the transport authority explicitly?

Response: The Department of Health has referred this question to the Metropolitan Police Department for response. Information is forthcoming.

Question: Section 5408 of the regulations describes both non-profit and for-profit corporations. However, Question 1(d) of the cultivation center application for corporations reads: "The compassion center must be a nonprofit corporation." Therefore, please advise whether the corporation may be a non-profit or a for-profit corporation.

- a. May a for-profit corporation apply for a license to cultivate medical marijuana?
- b. If so, will Question 1(d) of the cultivation center application be amended?

Response: The Department notes the typographical error and will send notification to all permitted applicants. The statement "The compassion center must be a nonprofit corporation," is struck from the Cultivation Center Application.