

DEPARTMENT OF HEALTH

NOTICE OF EMERGENCY AND PROPOSED RULEMAKING

The Director of the Department of Health, pursuant to Section 14 of the Legalization of Marijuana for Medical Treatment Amendment Act of 2010 (Act), effective July 27, 2010 (D.C. Law 18-210; D.C. Official Code §§ 7-1671.01, *et seq.* (2012 Repl.)), and Mayor's Order 2013-201, dated October 28, 2013, hereby gives notice of the adoption of, on an emergency basis, the following amendments to Subtitle C (Medical Marijuana) of Title 22 (Public Health and Medicine) of the District of Columbia Municipal Regulations (DCMR).

This emergency action is necessary to protect the public by ensuring that there are a sufficient number of cultivation centers and dispensaries open for business to adequately supply the needs of the District's registered patients. The Department of Health's Medical Marijuana Program has completed two (2) application rounds since the program began. Presently, ten (10) cultivation center applicants have been notified that they are eligible to complete the remaining requirements for registration. However, to date, only five (5) of the cultivation center applicants have actually opened for business, and only three (3) of those applicants are currently producing medical marijuana. Likewise, after completing two (2) application rounds, only three (3) of the six (6) applicants eligible for dispensary registrations have actually opened for business.

The Department is currently registering an average of 200 new qualified patients per month, and this number is expected to continue to increase. This emergency action will help to ensure that applicants which have been approved and deemed eligible for registration proceed expeditiously to open their facilities for business.

This emergency rule was adopted on May 19, 2015, and became effective immediately on that date. The emergency rule will expire one hundred twenty (120) days from the date of adoption (September 16, 2015), or upon publication of a Notice of Final Rulemaking in the *D.C. Register*, whichever occurs first.

The Director of the Department of Health also gives notice of her intent to adopt this rule, in final, in not less than thirty (30) days from the date of publication of this notice in the *D.C. Register*, and upon completion of the thirty (30) day Council period of review if the Council does not act earlier to adopt a resolution approving the rules.

Chapter 53, GENERAL REGISTRATION REQUIREMENTS, of Title 22-C, MEDICAL MARIJUANA, is amended as follows:

Subchapter 5303, FAILURE TO OPEN OR OPERATE, is amended to read as follows:

5303 FAILURE TO OPEN OR OPERATE

5303.1 For purposes of this section, "deemed eligible" shall mean:

- (a) The applicant has met all application prerequisites;

- (b) The applicant has been selected by the Director for registration; and
- (c) The applicant is only pending the remaining necessary approvals required under this title from MPD, DCRA, OTR, and the Department, including passing the pre-opening inspection.

5303.2 Being “deemed eligible” does not guarantee that an applicant will receive a registration, or create a contract between the applicant and the Department. The medical marijuana laws of the District of Columbia and the federal government are subject to change at any time and that the District of Columbia shall not be liable as a result of these changes.

5303.3 Any applicant for a dispensary registration that was notified on or before June 11, 2014, that it was deemed eligible to register for a dispensary registration shall:

- (a) Within thirty (30) days after the effective date of these regulations, submit a detailed, written plan to the Department clearly outlining how the applicant will obtain the final necessary approvals required under this title for registration, including passing the pre-opening inspection, and open for business within sixty (60) days from the effective date of these regulations; and
- (b) Obtain a registration and open for business within sixty (60) days from the effective date of these regulations.

5303.4 Except as provided in § 5303.5 of this chapter, any applicant for a dispensary registration that is subject to the requirements of § 5303.3 of this chapter that fails to meet the requirements of § 5303.3, shall be deemed no longer eligible for registration effective as of sixty-one (61) days from the effective date of these regulations, and the Department shall notify the applicant that it is no longer eligible for registration. If a registration has been issued, the registrant shall surrender and return the registration to the Department.

5303.5 Any applicant for a dispensary registration that is authorized to relocate pursuant to the Medical Marijuana Cultivation Center Emergency Amendment Act of 2015, effective March 30, 2015 (D.C. Act 21-36), shall not be subject to the provisions of § 5303.3 of this chapter.

5303.6 Any applicant for a cultivation center registration that was notified on or before July 25, 2014, that it was deemed eligible to register for a cultivation center registration shall:

- (a) Within thirty (30) days after the effective date of these regulations, submit a detailed, written plan to the Department clearly outlining how the applicant will obtain the final necessary approvals required under this title

for registration, including passing the pre-opening inspection, and begin growing within sixty (60) days from the effective date of these regulations; and

- (b) Obtain a registration and begin growing within sixty (60) days from the effective date of these regulations.

- 5303.7 Except as provided in § 5303.8 of this chapter, any applicant for a cultivation center registration that is subject to the requirements of § 5303.6 of this chapter that fails to meet the requirements of § 5303.6, shall be deemed no longer eligible for registration effective as of sixty-one (61) days from the effective date of these regulations, and the Department shall notify the applicant that it is no longer eligible for registration. If a registration has been issued, the registrant shall surrender and return the registration to the Department.
- 5303.8 Any applicant for a cultivation center registration that passed its pre-opening inspection prior to the effective date of these regulations shall not be subject to the provisions of § 5303.6 of this chapter.
- 5303.9 For purposes of this section, to “begin growing” shall mean the registrant has planted, in a suitable medium, at least ten (10) percent of the number of cannabis plants the registrant is authorized by law to grow.
- 5303.10 A registration for a dispensary or cultivation center shall be returned to the Director if the dispensary or cultivation center fails to operate for any reason for more than sixty (60) days after it has opened for business.
- 5303.11 Once a registration has been returned to the Department, the Director may select the next highest scoring applicant to receive the registration. If there are no applicants pending, the Director may open the application process to select a replacement dispensary or cultivation center applicant.

All persons desiring to comment on the subject matter of this proposed rulemaking action shall submit written comments, not later than thirty (30) days after the date of publication of this notice in the *D.C. Register*, to Phillip Husband, General Counsel, Department of Health, Office of the General Counsel, 899 North Capitol Street, N.E., 5th Floor, Washington, D.C. 20002. Copies of the proposed rules may be obtained between the hours of 8:00 a.m. and 4:00 p.m. at the address listed above, or by contacting Angli Black, Administrative Assistant, at Angli.Black@dc.gov, (202) 442-5977.