

EMERGENCY REGULATION – Actions Relating to Unlicensed Activities

Pursuant to the authority vested in the Cannabis Control Board by Sections 13, 16, 16-a, 17, 89, 132, 133 and 138-a of the Cannabis Law and part UU of Chapter 56 of the Laws of 2023, Chapter II of Subtitle B of Title 9 of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby adding a new section 133.23 to be effective upon filing with the Department of State, to read as follows:

Section 133.23 Actions Relating to Unlicensed Activities.

(a) The Office may issue a notice of violation and order to cease unlicensed activity to any person, as defined in subdivision 40-a of section 3 of the Cannabis Law, who is cultivating, processing, distributing or selling cannabis, cannabis product, cannabinoid hemp or hemp extract product, or any product marketed or labeled as such in this state without obtaining the appropriate registration, license, or permit therefor, or engaging in an indirect retail sale.

(b) In the event that the Office issues a notice of violation and order to cease unlicensed activity to a person:

(1) that person must cease all cannabis or cannabinoid hemp related activity as describe in subdivision (a) of this section.

(2) the Office may seize any cannabis, cannabis product, cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, found in the possession of a person engaged in the conduct described in subdivision (a) of this section.

(3) the Office may affix a copy of such notice of violation and order to cease unlicensed activity on the front window, door, or exterior wall of the location where such activity is taking place. The notice and order shall be on or within five feet of the front door or other opening to such location where customers enter from the street, at a vertical height no less than four feet and no more than six feet from the ground or floor. When an establishment does not have a direct entrance from the street, the person shall permit the Office to post such notice of violation and order to cease unlicensed activity at its immediate point of entry in a place where potential customers or members of the public are likely to see it.

(4) Such notice of violation and order to cease unlicensed activity shall not be removed except when authorized by the Office. Any removal of such notice of violation and order to cease unlicensed activity shall constitute a violation of these regulations and shall be punishable by a fine of up to \$5,000 in accordance with subdivision 1 of section 16 of the Cannabis Law.

(5) The person served with such notice of violation and order to cease unlicensed activity shall also permit the Office to affix one or more warning stickers at or near the front door or other opening to such location where customers enter from the street advising the public that the business is ordered to stop the unlawful activity and of the public health and safety concerns relating to illicit cannabis.

(6) Such warning sticker shall not be removed except when authorized by the Office. Any removal of the warning sticker shall constitute a violation of these regulations and shall be punishable by a fine of up to \$5,000 in accordance with subdivision 1 of section 16 of the Cannabis Law.

(c) The Office may initiate an administrative proceeding to enforce the order to cease the unlicensed activity and assess penalties for the violation. The proceeding will be subject to Articles 3 and 4 of the State Administrative Procedure Act and sections 8(a) and (b), 9, 10(a) and (c), 11, 12, 13(a), 14, and 15 of Part 133 of Title 9 of the New York Codes, Rules, & Regulations. Any references to “licensee” in such sections shall be read to apply to persons subject to enforcement pursuant to this section.

(1) Notwithstanding subdivision (c) of section 113.8 of this subchapter and pursuant to subdivision 3 of section 17 of the Cannabis Law, the notice of hearing may provide for a hearing date on less than fifteen days’ notice.

(2) The Office may issue subpoenas pursuant to the Civil Practice Law and Rules.

(3) The parties may enter a stipulation for the resolution of any and all issues at any time prior to issuance of a decision by the assigned administrative law judge. The Office may issue a consent order upon agreement or stipulation of the parties. A consent order shall have the same force and effect as an order issued after a hearing.

(4) After the hearing, the administrative law judge shall issue a decision in writing based on findings of fact and conclusions of law. Such decision shall be final and binding when issued unless an appeal is taken pursuant to subdivision (5) of this section.

(5) Any of the parties may appeal the decision of the administrative law judge within 30 calendar days of receipt.

(i) Any such appeal must be submitted electronically in a written memorandum, not exceeding 20 pages, stating the appellant's arguments and setting forth specifically the questions of procedure, fact, law or policy to which exceptions are taken, identifying that part of the administrative law judge's decision and order to which objection is made, specifically designating the portions of the record relied upon, and stating the grounds for the appeal.

(A) A party upon whom an adverse party has served an appeal may file and serve a memorandum in opposition and cross-appeal within 30 calendar days after such service. A response to a cross-appeal may be filed and served within 15 calendar days after service of the cross-appeal. The failure of any party to respond shall not be deemed a waiver or admission.

(B) The record on appeal shall consist of the evidentiary exhibits from and transcript of the hearing, and the memoranda of appeal, opposition, and cross-appeal.

(C) The Board may stay the effective date of the decision of the administrative law judge, and shall, based solely on the record on appeal, either confirm the decision in writing, make a written, superseding decision, or remand the matter to the administrative judge for additional proceedings.

(ii) The Board shall be responsible for issuing a decision on the appeal.

(A) The drafting of the decision may be delegated to a designee who has had no prior involvement with respect to the matter.

(B) Board's decision shall be supported by at least a majority of the members deciding the matter.

(iii) The Board's decision constitutes a final agency decision and shall be binding when issued.

(6) All parties shall have the right to appeal the decision of the Board by the commencement of a proceeding pursuant to Article 78 of the Civil Practice Law and Rules.