

Executive Order No. 17 Local Government Mandate Evaluation Impact on Local Government and Property Taxpayers

Submitting Agency: OCM

NYCRR Citation: 9 NYCRR Part 133.

Description of the Regulation: This proposed rule will allow the Office of Cannabis Management to continue enforcement actions against licensed and unlicensed persons who are engaging in unlicensed cannabis activities, which include the sale of unregulated, untested and potentially unsafe cannabis products. This rule would also authorize the Office to commence enforcement actions against licensed persons who violate applicable regulations. The Office has been empowered to issue orders to seal to effectively padlock unlicensed business whose operations meet certain criteria outlined in a newly enacted law that was passed with the 2024-2025 New York State Budget, Part G of Chapter 55 of the Laws of 2024. These regulations establish procedures to implement this new law. This rule will also allow the Office to establish a secret shopper program and designate personnel and agents to pose as shoppers, all meant to support its compliance objectives, ensure that licensees adhere to their regulatory obligations, and deter operators inclined to circumvent compliance requirements and the Cannabis Law. These emergency regulations also provide the Office with the ability to hold hearings in response to violations of the Cannabis Laws, related regulations, Part G of Chapter 55 of the Laws of 2024, or this emergency rule.

These proposed regulations outline the procedures that will apply during the administrative hearings process relating to enforcement actions taken by the Office against unlicensed entities, including the process for respondent to request an emergency hearing on an order to seal and provide a newly required statement of ownership information upon the Office's request as a condition to proceeding with a hearing.

Statutory Authority for the Regulation: Cannabis Law §§ 13, 16, 16-a, 17, 89, 132, 133 and 138-a

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1. Does the regulation impose a mandate on a county, city, town, village, school district or special district that requires such entity to:

a. Provide or undertake any program, project or activity;

Yes

No

b. Increase spending for an existing program, project or activity (even if such program, project or activity is voluntarily undertaken by a local government unit);

Yes

No

- c. **Grant any new property tax exemption, or broaden the eligibility or increase the value of any existing property tax exemption; or**

Yes

No

- d. **Carry out a legal requirement that would likely have the effect of raising property taxes.**

Yes

No

If the answers to all questions above are “no,” ensuring the regulation will not result in a mandate on local governments and property taxpayers, no further information is required. If the answer to any question above is “yes,” and the regulation may have a fiscal impact on local governments and property taxpayers, please proceed to items 2 – 3.

2. **Is the mandate required by federal law or regulation or state law?**

Yes

No

- a. **If yes, please cite the specific provision in the statute or federal regulation.**
- b. **If yes, please describe any elements of the regulation not specifically mandated by the statute or regulation.**

3. **If any portion of the mandate is not required by federal or state law, please attach to this Checklist an Accounting for such portion containing:***

- a. **A description of the mandate in the regulation;**
- b. **An accounting of the impacts of such mandate that includes:**
- (i) **A fiscal impact statement;**
- (ii) **A cost-benefit analysis, which includes:**
- (x) **a specific delineation of the costs and benefits to local governments and property taxpayers; and**
- (y) **a quantification of the impact on local government revenue and expenditures, where such impact is quantifiable based on available information (please consult with the Regulatory Review Unit if further guidance is needed);**
- c. **A description of input sought and received from affected local governments;**
- d. **A description of the proposed revenue sources to fund such mandate; and**
- e. **An explanation as to why this regulation should be advanced with a mandate.**

*Note: The “Regulatory and Flexibility Analysis for Small Businesses and Local Governments” may be attached so long as the items set forth in 3 above are fully accounted for in the Analysis.

JOB IMPACT STATEMENT

The proposed rule will allow for the creation of new jobs to support the activities of entities registered, licensed, and permitted by the Office of Cannabis Management while decreasing the number of unregulated jobs conducting unlicensed activities. This transition will take place as the Office supports the success of a regulated cannabis industry through a robust yet responsible enforcement process that includes severe violations for unregulated cannabis and cannabinoid hemp related activities not duly authorized by the Board or Office. By ensuring the regulated cannabis industry is able to develop on a level playing field through such enforcement, this rule will allow jobs in this newly regulated industry to be created and bolstered. This Office has determined to the extent that licensed operators maintain compliance with applicable law and regulations, there are no foreseeable adverse impacts on jobs in the legitimate marketplace.

RURAL AREA FLEXIBILITY ANALYSIS

Types and Estimated Numbers of Rural Areas:

Outside of major cities and metropolitan population centers, most counties in New York State contain rural areas. Under the Cannabis Law, opt-out provisions are not applicable at the county level. There are 44 rural areas in New York State, and in 13 such areas, each has at least one registered organization or adult-use retail dispensary, or both, in operation. There are a total of 117 licensed dispensaries open across the State as of May 10, 2024, of which approximately 19 are in rural counties where the population is less than 200,000 persons, per U.S. Census Bureau (2021).

Reporting, Recordkeeping and Other Compliance Requirements; and Professional Services:

There might be new reporting, recordkeeping, or other compliance requirements imposed on public or private entities in rural areas because of the proposed regulations. Some of the compliance and enforcement requirements will clarify that cannabinoid hemp product could be subject to compliance and enforcement actions. No new professional services will be required specifically of entities in rural areas. Compliance requirements will be limited to the Office, administrative law judges, entities licensed by the Office, and unlicensed entities who are not in compliance with the Cannabis Law, regulations, and related guidance. Additionally, the Office has established a secret shopper program, pursuant to new legislation, meant to support its compliance objectives and ensure licensees adhere to their regulatory requirements and act as a preemptory deterrent to operators who might be inclined to circumvent compliance requirements and the Cannabis Law.

Costs:

There may be minimal compliance costs to existing establishments in rural areas associated with new reporting and recordkeeping compliance requirements, however such new compliance requirements are imposed on all licensees, to which this proposed regulation applies, alike, and not particularly to those in rural areas. Compliance costs will be limited to the Office and to licensed entities and unlicensed entities who commit a violation and/or who may be subject to corrective action or hearings.

Minimizing Adverse Impact:

The proposed rule will apply to individuals, licensed entities, and unlicensed entities who commit violations and/or may be subject to enforcement action. Applicants in rural areas of the State, as well as other areas of the State, will be able to obtain information from the agency and online regarding any violations, the associated corrective action, and the hearing process.

Respondent will be able to select the location for any hearing called pursuant to this proposed rule, which may be held at one of three locations where the Office maintains an office, and respondents will also be offered the opportunity to participate remotely as well.

Rural Area Participation:

Previously adopted rules were developed in response to feedback from multiple organizations, State agencies, and advocates who have provided feedback and suggestions for the implementation of violations, hearings, and enforcement procedures and activities, and this proposed rule includes elements from the previously adopted and currently effective rule. This rule was also developed in response to the additional enforcement powers granted to the Office by Part G of Chapter 55 of the Laws of 2024. As a result, this proposed rule includes new provisions which clarify that the stop work order shall include a warning notice posted in a

publicly visible location, and that removal or alteration of the notice is subject to fines; describe enforcement's broadened authority to issue orders to seal for unlicensed activity if imminent threat to public, safety and welfare exists, where the location is not used for residential purposes and when the unlicensed activity is more than a de minimis part of the business; stipulate the process for a respondent to request an emergency hearing on an order to seal; and requires a respondent to provide a verified statement of ownership information upon the Office's request as a condition to proceeding with a hearing. In addition, the proposed emergency rule also outlines a number of refinements to the investigation and hearings processes related to licensed businesses, including new methods through which the Office may implement a secret shopper program for compliance purposes.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL BUSINESS AND LOCAL GOVERNMENTS

Effect of Rule:

This proposed rule will allow the Office of Cannabis Management to continue enforcement actions against licensed and unlicensed persons who are engaging in unlicensed cannabis activities, which include the sale of unregulated, untested and potentially unsafe cannabis products. This rule would also authorize the Office to commence enforcement actions against licensed persons who violate applicable regulations. The Office has been further empowered to issue orders to seal to effectively padlock unlicensed business whose operations meet certain criteria outlined in a newly enacted law that was passed with the 2024-2025 New York State Budget, Part G of Chapter 55 of the Laws of 2024. These regulations establish procedures to implement this new law. This rule will also allow the Office to establish a secret shopper program and designate personnel and agents to pose as shoppers, all meant to support its compliance objectives, ensure that licensees adhere to their regulatory obligations, and deter operators inclined to circumvent compliance requirements and the Cannabis Law. These emergency regulations also provide the Office with the ability to hold hearings in response to violations of the Cannabis Laws, related regulations, Part G of Chapter 55 of the Laws of 2024, or this emergency rule.

These proposed regulations outline the procedures that will apply during the administrative hearings process relating to enforcement actions taken by the Office against unlicensed entities, including the process for respondents to request an emergency hearing on an order to seal and

provide a newly required statement of ownership information upon the Office's request as a condition to proceeding with a hearing.

Compliance Requirements:

Licensees and unlicensed entities will be required to submit to site visits, compliance inspections, or enforcement investigations, including any affiliated vehicles owned, leased, or utilized by the entity, which may be held without prior notice. These entities will also be required to submit to inspections or investigations of records held or maintained, including but not limited to financial statements, payrolls, and correspondence. Examination and inspection may include interviews of individuals including employees, contractors, supervisors, or others who under operation of a subpoena could be compelled to produce papers or other documents necessary for an investigation. The licensed or unlicensed premises would be subject to inspection by those who are authorized by the Director of Enforcement, in addition to those authorized representatives of the Office, any peace officer, or a police officer upon a request from the office to support the office's regulatory enforcement activities. The Office will be empowered to direct licensees to send any cannabis, cannabis samples or products, cannabinoid hemp samples, cannabinoid hemp products, which also includes products marketed and labeled by the licensee as such, to a laboratory for testing. Licensees may have their license summarily suspended by the Office if such licensee does not make themselves available for an inspection or an investigation, for not providing any documents and information requested by the Office, or by not allowing access to the licensed premises or not cooperating with Office representatives. The Office may also seize cannabis or cannabis products and issue a stop order during an inspection or investigation.

Currently, unlicensed entities are required to cease all cannabis or cannabinoid hemp related activities upon receipt of the Office's issuance of a notice of violation and order to cease unlicensed activity to those engaged in unlicensed activities. The Office may seize cannabis, cannabis products, cannabinoid hemp or hemp extract product, or any product marketed or labeled as such, found in the possession of a person engaged in the unlicensed conduct. 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. Such notice of violation and order to cease unlicensed activity shall not be removed except when authorized by the Office and any removal shall constitute a violation and punishable by a fine. 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. Such warning sticker shall not be removed except when authorized by the Office and any removal shall constitute a violation and punishable by a fine.

New provisions include new methods through which the Office may issue orders to seal to effectively padlock unlicensed business whose operations meet certain criteria outlined in a newly enacted law that was passed with the 2024-2025 New York State Budget, Part G of Chapter 55 of the Laws of 2024. These regulations establish procedures to implement this new law. Hearing provisions are also set forth in the regulations. More specifically, these regulations further clarify that site visits, inspection, and investigations can be conducted outside of the normal business hours of the operator or without notice; that cannabinoid hemp products may be

directed for laboratory testing, that the Office is authorized to issue orders to seal for unlicensed activity if imminent threat to public, safety and welfare exists, where the location is not used for residential purposes and when the unlicensed activity is more than a de minimis part of the business, and the circumstances for delayed padlocking; stipulates the process for respondent to request an emergency hearing on an order to seal; and that respondents are required to provide a verified statement of ownership information upon the Office's request as a condition to proceeding with a hearing. These regulations also clarify the issuance of stop work orders and the licensee's requirement to complete a full corrective action plan and how the implementation of that corrective plan should occur.

Professional Services:

These proposed regulations do not require professional services from local governments. Small business, both licensed and unlicensed, may need to utilize or hire law professionals, accounting professionals, or other financial professionals to assist in site visits, inspections, investigations, or proceedings as revised in this rule, but this should have little to no effect on other small businesses.

Compliance Costs:

There may be minimal compliance costs to existing small business establishments associated with new reporting and recordkeeping compliance requirements, however such new compliance requirements are imposed on all licensees, registrants, and permittees, to which this proposed regulation applies, alike, and not particularly to small businesses. Compliance costs will be limited

to the Office and to licensed entities and unlicensed entities who commit a violation and/or who may be subject to corrective action or hearings.

The Office does not anticipate that the proposed rule will impose an economic impact on any existing, lawfully operating small business entity. Entities or persons that commit violations outlined in the Cannabis Law, Part G of Chapter 55 of Laws of 2024 and related regulations, including the regulations revised in this rule, may be subject to civil penalties and fees, which may include padlocking of the premises or building. There may be additional costs to licensed entities if the Office finds such entity must initiate a corrective action plan because of a violation or must agree to a hearing, or if the licensed entity wishes to cure.

Economic and Technological Feasibility:

This rule is economically and technologically feasible. The operations of the Office implementing hearings and bolstering hearings and enforcement do not impose any unique technological or economic challenges to small businesses or local governments.

Minimizing Adverse Impact:

This rule will expand the Office's ability to ensure a level playing field for the cannabis industry through enhanced violations and a bolstered hearings and enforcement process. This rule will provide a fair and impartial hearing process that respects all parties throughout, overseen by an administrative law judge. These regulations do not create an adverse impact to small businesses

and local governments, unless small business entities that are licensed by the Office commit any violations.

Small Business and Local Government Participation:

The rule was developed, partially, in response to feedback from multiple organizations, State agencies, and advocates who have provided comments and feedback, through further examination of the markets relating to compliance matters by the Office, and suggestions for the effective implementation of violations, hearings, and enforcement. Since the CAURD regulation was adopted in August 2022, the Office has actively sought input from local governments throughout the State, and established biweekly calls with the New York City's Mayor's Office. The Office's External Affairs team attended seminars for the NYS Association of Counties (NYSAC). The outreach to small businesses has been equally robust, with events on adult-use licensure bringing the Office to counties throughout the State to talk with people about the application process for adult-use licensure. Our activity with local enforcement agencies to bring illicit activity off the streets has produced discussions on how to take a collaborative approach and what we need to do in order to make it effective. The revisions contained in this rule were developed in response to the Office's new enforcement powers that were granted by the enactment of Part G of Chapter 55 of the Laws of 2024.

The Office heard the public's demand to close illicit cannabis shops throughout the State and worked diligently to pass new legislation to establish the opportunity for counties and cities to expand their authority with regard to enforcement efforts over businesses selling cannabis without

the appropriate license. In addition to our active outreach, there will be a public comment period in connection with the regulations that will allow for additional comments to be considered.

CURE PERIODS

The proposed rule would allow those who have been denied the ability to change or renew a license with the ability to cure the deficiency as stated in the notice of denial. The notice shall include the number of calendar days and the options to cure. Additionally, the proposed rule requires that a licensee that receives a notice of pleading be advised of the licensee's opportunity to cure the violations within 30 calendar days of receipt of such notice of pleading.

REGULATORY IMPACT STATEMENT

Statutory Authority:

Sections 13, 16, 16-a, 17, 89, 132, 133 and 138-a of the Cannabis Law and Part G of chapter 55 of the Laws of 2024, provides that the Cannabis Control Board (Board) shall propose such rules and regulations as the Board may deem necessary or proper to fully effectuate the provisions of the Cannabis Law. This proposed rule implements new enforcement powers granted to the Office by law and bolsters the hearings and enforcement process that has been established by the Office.

Legislative Objectives:

The Legislature intended to decriminalize, regulate, control, and tax adult-use cannabis and cannabis products, generate significant new revenue, make substantial investments in communities and people most impacted by cannabis criminalization, reduce participation of otherwise law-abiding citizens in the unlawful market, and expand the Office's power to take action against persons engaging in activity for which a license, permit, registration or authorization is required.

Needs and Benefits:

The proposed rule establishes new procedures and penalties relating to the Office's compliance, violations, hearings, and enforcement activities. The proposed rule accords with the Cannabis Law and creates requirements that are intended to further protect public health, safety, and welfare by preventing unlawful cannabis or unsafe practices from permeating the marketplace.

The proposed rule incorporates and adds new violations and other provisions to those previously incorporated based on the Cannabis Law, Tax Law, and Penal Law and any related regulations designed to be sufficient to deter unlicensed activities, in accordance with the new Budget legislation, to help ensure licensed businesses that follow all laws, regulations, and guidance will flourish. The proposed rule describes the process for enforcement activities upon discovery of such referenced violations, including fair hearings, stipulations and consent orders, and an appeal process.

The proposed regulations accomplish this objective by authorizing the Office to initiate enforcement actions against licensed and unlicensed persons and respond appropriately to persons that engage in illicit, unlicensed, or unauthorized cannabis activities, which includes the sale of unregulated, untested and potentially unsafe cannabis, cannabis products, hemp extract of cannabinoid hemp product. Based on the recent legislation and the proposed rule, the Office is further empowered to conduct site visits, inspections, and investigations of the licensed premises without notice, to seize any and all cannabis, cannabis products, cannabinoid hemp or hemp extract product and cannabis hemp samples, and any products labeled or marketed as such, from licensed and unlicensed persons, as well as in appropriate circumstances require such persons to cease all cannabis or cannabinoid hemp related activity.

The proposed regulations allow the Office to initiate investigations against licensed entities that may result in a range of categorized violations by severity, including a stop work order where the violation is an immediate and severe threat to public health and safety and emergency action is warranted, or a summary suspension where the violation is inconsistent with the orderly

operation of a regulated business. The proposed regulations will also enable the Office and Board to take action against unlicensed entities that are engaged in unlawful cannabis related activities that pose an immediate threat to the public health or safety. The Office would be further empowered to seize any and all cannabis and cannabis products from unlicensed entities, as well as require such entity to cease all cannabis related activity. The Office may also refer such investigations to the Department of Taxation and Finance, the district attorney, or any other civil or criminal investigative or enforcement agencies. This will also provide the Office with the ability to hold hearings in response to violations of the Cannabis Law, Part G of chapter 55 of the Laws of 2024, or related regulations concerning this proposed rule. The proposed rule authorizes the Board and the Director of Enforcement to delegate the authority to deputize others to conduct enumerated enforcement activities, increasing the manpower needed to shut down illicit shops.

Part 133 outlines new methods for which the Office may commence disciplinary action, including a Notice of Pleading, and allows a licensee to plead to all their charges or reduced charges and consent to civil penalties. This process would provide a truncated method to resolve matters. These regulations clarify that site visits as well as inspection investigations can be conducted without notice and that cannabinoid hemp products may be directed for laboratory testing. These regulations further detail the method by which the Office may issue an order to seal a building or premises in connection with any business engaging in unlicensed activities and other activities enacted pursuant to Part G of chapter 55 of the Laws of 2024. These regulations also clarify the issuance of stop work orders and the licensee's requirement to complete a full corrective action plan and how the implementation of that corrective plan should occur.

Costs:

Regulated Entity Costs Related to the Implementation of and Continuing Compliance with the Regulation:

The Office discussed anticipated costs related to the violations, hearings, and enforcement provisions with other states who have already implemented and currently oversee existing legalized cannabis programs. Penalty costs associated with certain violations will vary significantly and will fall primarily on individual licensees, not oversight entities. There are statutorily outlined penalties in the Cannabis Law ranging in cost from \$50 to \$20,000. There are also statutorily outlined criminal penalties in the Cannabis Law, as well as in the Tax Law and Penal Law, ranging from a violation to felony-level offenses, which may also be accompanied by a fine.

Costs to State and Local Governments:

The proposed rule does not require the State or local government to perform any additional tasks beyond those contemplated under the Cannabis Law. When the Cannabis Law was enacted, it was anticipated a certain level of collaboration may be needed by State and local enforcement entities for the Office to effectuate its duties. However, Part G of chapter 55 of the Laws of 2024 expands the Office's, other executive agencies', and county and cities' enforcement authority, which could result in additional costs to counties and cities should they choose to pass a local law authorizing the jurisdiction to implement the new grant of authority. The costs to the State would be limited to the enforcement activities under the Office and the cost to local governments would be varying, depending on whether they decide to pass a local law authorizing the establishment of an enforcement program to regulate the illicit activity occurring in their jurisdiction and the level of involvement needed by the Office for enforcement activities.

Costs to the Office of Cannabis Management:

The Office of Cannabis Management anticipates that violations, hearings, and enforcement initiatives will require Office resources to support the development, review, and ongoing monitoring, compliance, and enforcement of licensees, as well as licensed and unlicensed entities engaged in unlawful cannabis or cannabis-related activities. Staff will be required to inspect, investigate, review, and determine potential violations by licensees and whether they rise to the level necessitating summary suspension or proposed revocation. Nevertheless, the Office anticipated these costs and these costs are in line with the legislative intent of the Cannabis Law and Part G of chapter 55 of the Laws of 2024.

Local Government Mandates:

The proposed rule does not impose any new programs, services, duties or responsibilities on local government. However, when the Cannabis Law and Part G of chapter 55 of the Laws of 2024 were enacted, it was anticipated a certain level of collaboration may be needed by local law enforcement entities for the Office to effectuate its duties. Local governments, however, are not mandated to assist the Office in its enforcement activities. All collaborations are done in the spirit of cooperation.

Paperwork:

The paperwork associated with violations, hearings, and enforcement of licensees and unlicensed entities engaged in unlawful cannabis-related activities New York State will include maintaining

records of inspections, any investigations, violations, summary suspensions, hearing records, among other requirements. It is anticipated that inspections will be ongoing.

Duplication:

The proposed rule does not duplicate any existing State or federal requirements that are applicable to regulated cannabis violations, hearings, or enforcement.

Alternatives:

The Office reviewed suggestions from the public regarding changes to its violations, enforcement and hearings process. The most substantial of these offered alternatives included, but were not limited to, clarification of specific hearing procedures (i.e., conciliation conferences); amendments to the regulations to allow for greater enforcement by way of “any designated enforcement agency”; allowing local municipality building, fire and health inspectors to be allowed to inspect licensees; and revising rules to allow for Category 1 Violations for establishing cannabis dispensaries near any social services facilities including shelters and substance use treatment providers. As a result, the Office removed conciliation conferences and established a Notification of Violation process which would also include a truncated method to resolve matters by way of a Notification of Pleadings. The Office worked and was able to amend Cannabis Law, pursuant to Part G of Chapter 55 of the Laws of 2024, to broaden enforcement authority to include those additional agencies delegated by the Director of Enforcement to assist in enforcement efforts. Finally, the Office reviewed and determined that any allegation that siting a cannabis dispensary near a social service facility that caters to substance use would increase relapsing into drug-use is not accurate and would perpetuate an

erroneous belief that cannabis is a gateway drug, which the Office has worked to educate the public that it is not.

The Office has taken into consideration the alternatives offered by the public and continues to revisit such topics as the industry, and the regulation thereof, evolve. The Office will continue to review alternatives and determine their viability as the industry matures.

Federal Standards:

Federal requirements do not include provisions for regulated cannabis violations, hearings, or enforcement.

Compliance Schedule:

The emergency regulations will take effect immediately upon the filing of the Notice of Emergency Adoption and Proposed Rulemaking with the New York State Register.

Contact:

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New York State Department of Health
State Environmental Quality Review (SEQR)

Negative Declaration

Notice of Determination of Non-Significance of Proposed Rule Adoption

This notice is issued to 6 NYCRR Part 617, 10 NYCRR Part 97 and Article 8 (State Environmental Quality Review of the Environmental Conservation Law).

The Office of Cannabis Management, as lead agency, has determined that the emergency rule changes described below will not have a significant effect on the environment and a draft Environmental Impact Statement will not be prepared.

1. Emergency Action:
9 NYCRR, Part 133

Description of Rule:

This proposed rule will allow the Office of Cannabis Management to continue enforcement actions against licensed and unlicensed persons who are engaging in unlicensed cannabis activities, which include the sale of unregulated, untested and potentially unsafe cannabis products. This rule would also authorize the Office to commence enforcement actions against licensed persons who violate applicable

regulations. The Office has been empowered to issue orders to seal to effectively padlock unlicensed business whose operations meet certain criteria outlined in a newly enacted law that was passed with the 2024-2025 New York State Budget, Part G of Chapter 55 of the Laws of 2024. These regulations establish procedures to implement this new law. This rule will also allow the Office to establish a secret shopper program and designate personnel and agents to pose as shoppers, all meant to support its compliance objectives, ensure that licensees adhere to their regulatory obligations, and deter operators inclined to circumvent compliance requirements and the Cannabis Law. These emergency regulations also provide the Office with the ability to hold hearings in response to violations of the Cannabis Laws, related regulations, Part G of Chapter 55 of the Laws of 2024, or this emergency rule.

These proposed regulations outline the procedures that will apply during the administrative hearings process relating to enforcement actions taken by the Office against unlicensed entities, including the process for respondent to request an emergency hearing on an order to seal and provide a newly required statement of ownership information upon the Office's request as a condition to proceeding with a hearing.

2. SEQR Status: Unlisted

3. Location: Statewide

4. Reasons for Supporting this Negative Declaration: The proposed regulations are introduced as a result of 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, and are specific to rules and regulations for violations, hearings, and enforcement across the state, absent significant environmental impact. The requirements of this proposal and standards set forth therein do not meet or exceed the criteria found in 6 NYCRR Section 617.11.

SUMMARY OF EXPRESS TERMS

As required by section 13, 16, 16-a, 17, 89, 132, 133, and 138-A of the Cannabis Law and Part G of Chapter 55 of the Laws of 2024, Chapter II of Subtitle B of Title 9 (Executive) of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended, and new Part 133 added, to be effective upon filing of a Notice of Emergency Adoption in the New York State Register.

§ 133.1 Definitions

Defines terms used for Part 133, such as, administrative law judge (ALJ), debarment, investigation, party, and unlicensed activity.

§ 133.2 Denial of Requests for Change or Amendment of License or Renewals of License

Establishes a process where the Office may approve or deny a change to a license, including notifying the licensee if the request was approved or identifying the reasons why the request was not approved, including anything that does not satisfy requirements and then providing an opportunity to cure. Addresses the hearing process before an ALJ.

§ 133.3 Site Visits, Compliance Inspections and Enforcement Investigation

Authorizes the Office to conduct, with or without notice, site visits, compliance inspections or enforcement investigations of the licensee and any premises, any affiliated vehicles owned, leased, or utilized by the licensee. Authorizes the Office to examine and inspect licensee records and that samples or products could also be subject to examination and testing. Describes the

process for investigative purchases, including reporting requirements and the enforcement action resulting from such activity.

§ 133.4 Violations

Creates five violation categories, ranging in severity: Category 1 where the violation is an immediate and severe threat to public health and safety and emergency action is warranted, to Category 5 where the violation is inconsistent with the orderly operation of a regulated business. Mandates that a licensee may not destroy, damage, or conceal potential evidence of a violation unless engaged in a corrective action plan or remediation as approved by the Office, otherwise such action creates a presumption of guilt. Authorizes the Office to enforce against licensees violating Cannabis Law or regulations, and enforcement sanctions may include civil penalties, fees, suspension, debarment, or referral to law enforcement. Multiple enforcement actions or sanctions may be applied concurrently or consecutively. Clarifies the use of a stop work order imposed by the Office on licensees.

§133.5 Corrective Action Plan

Requires that an entire corrective action plan and its subsequent stages of implementations be completed to the satisfaction of the Office, but that unlicensed persons, and potentially some unlicensed activities, are not afforded this process.

§133.6 Summary Suspension and Stop Work Orders

Authorizes the Office to issue summary suspension orders or stop work orders to any licensee and permittee that has committed a Category 1 violation or failed to make themselves or any

documents available during an inspection or investigation by the Office. These orders require a licensee to immediately cease all business activity and submit a corrective action plan; allows licensees to request an expedited hearing; explains that non-compliance of either order may result in the immediate revocation of any of the licensee's licenses and may prohibit the issuance of any new or renewal of any existing license. Authorizes the Office to issue a stop work order to any unlicensed person engaged in any cannabis related activity that poses an immediate threat to the public health or safety, such violation may be further referred to the Department of Taxation and Finance, the district attorney, or any other civil or criminal investigative or enforcement agencies. Requires the immediate cessation of all cannabis related activity by the unlicensed person and authorizes the Office to seize any and all cannabis, cannabis related products, or cannabinoid hemp related products, or any products marketed or labeled as such, whether occurring naturally or derived from another source.

§ 133.7 Grounds for Suspension, Cancellation, Revocation, or Debarment of a License, Registration, or Permit, and Denial of Renewal, Change, or Amendment of Licenses, Registrations, or Permits

Authorizes the Office to suspend, cancel, or revoke a license, registrant, or permittee, or debar a person from licensure, registration, or permitting, and deny the renewal or change of a license, registration, or permit, where the information from such licensee, registrant, or permittee was deceptive, false, or fraudulent or they failed to implement a corrective action plan. Additionally, the Office may suspend, debar, or deny renewal of such licensee if they committed or conspired to commit activity unauthorized by the Cannabis Law, including the diversion of cannabis or cannabis products.

§ 133.8 Commencement of Disciplinary Proceedings

Describes how disciplinary proceedings may be commenced with a notice of pleading. Such notice of pleading shall set forth the charges; indicate the consequences of the proceedings, such as suspension, revocation and cancellation of the license; require the licensee to plead to the charges by a specified date; and advises the licensee of their rights, amongst other things. In cases of revocation proceedings, this section also affords an electronic copy of such notice of pleading be sent to the owner of the building where the licensed business is located.

§ 133.9 Disciplinary Proceedings Procedures

Outlines the activities that occur once a disciplinary proceeding has been commenced. The licensee may be afforded an opportunity to plead no contest or conditional no contest and this section describes the activities that follow each pleading. Failure to plead by the requisite date shall be deemed an admission of all charges and consent to penalties imposed with no further hearing to be held. All monetary fines shall be paid within 90 calendar days from the date of the letter or notice of pleading or default. Failure to pay may result in additional penalties, fees and interest. The licensee may also request a one-time reconsideration of the charges and penalties.

§133.10 Request for a Hearing and Notice of Hearing

Outlines the process for requesting a hearing, and the notice of hearings provided as a result, with the Office of Administrative Hearing (OAH).

§133.11 Request for Adjournment

Requires a request for adjournment of a hearing to be made in writing and submitted to the ALJ and other parties before the hearing. Adjournments are only granted by the ALJ and only after consultation with all parties.

§133.12 Answer or Responsive Pleadings

Explains the process for serving or answering pleadings by the parties.

§133.13 Amendment of Pleadings

Authorizes any party to amend or supplement a pleading any time before the issuance of the ALJ's decision, upon approval of the ALJ.

§133.14 Service of Papers

Authorizes all notices and papers connected with a hearing, other than the notice of hearing and statement of charges, to be served by email or ordinary mail.

§133.15 Disclosure

Establishes the process of disclosures and provides that there shall be no disclosure between parties. Requires disclosure of ownership information to the Office upon request, before a hearing. The ALJ is not bound by the court observed rules of discovery and may not require disclosure. Allows the ALJ, upon good cause shown, to allow responses within time periods outside of regulatory requirements and limits or regulate the use of information disclosed by the party who made the disclosure. The ALJ may also preclude a party, that unreasonably fails to respond in a timely manner, from introducing evidence or witnesses not disclosed.

§ 133.16 Office of Administrative Hearings

Establishes an Office of Administrative Hearings (OAH) in the Office to conduct all adjudicatory proceedings in the Office. Establishes the ALJs power and authority as presiding officers or hearing officers under SAPA or other pertinent laws or regulations.

§133.17 Responsibilities of the Administrative Law Judge

Establishes responsibilities for the ALJs, including scheduling and conducting all hearings, imposing a stay during a proceeding, and not to serve in any other capacity within the Office; that the chief ALJ will report directly to the Executive Director and oversee all statements of charges and motions filed under Part 133 and make any such decisions. Requires ALJs to conduct hearings fairly and impartially, have the power to rule upon requests, issue subpoenas, summon and examine witnesses, admit and exclude evidence, dismiss charges, among other powers. Establishes recusal requirements and communications between the ALJs and the Office personnel on matters that relate to any adjudicatory proceedings before the ALJ.

§133.18 Administrative Law Judge Hearings

Allows parties to appear in person or through attorney representation and provides for how hearings will be conducted by the ALJ, among other things, to the swearing in of witnesses, the acceptance of evidence, and how the official record will be recorded, consolidation and severance, intervention of another party, burden of proof and the record to be kept. Authorizes the Office, at its discretion, to request a stay of any proceedings. Allows the Office to request a stay of any proceeding and for the Board, or their designee, to grant such request.

§133.19 Subpoenas

Requires that any subpoena(s) issued by the Office as authorized by the Board, be governed by CPLR.

§133.20 Stipulations and Consent Orders

Parties may enter for the resolution of any or all issues before a Board determination, and the Office will issue a consent order upon agreement or stipulation of the parties which will have the same force and effect as an order. Requires licensees to admit guilt to at least one of the alleged violation, agree not to contest the allegations, or assert that they cannot successfully defend themselves and they will either surrender their license or agree to a penalty.

§133.21 Administrative Law Judge's Decisions

Establishes the ALJ's decision making process following a hearing, including findings of facts, legal conclusions, and a proposed penalty, if any, to be submitted to all parties and the Board. Sets the standard for evaluation of an ALJ's work and protects an ALJ from disciplinary proceedings, removal, reassignment or other similar actions for rulings or decisions in favor or disfavor of the Office.

§133.22 Filing of Exceptions to Administrative Law Judge's Decisions

Allows any party to submit Board decision exceptions for review within 30 days of the ALJ decision. Exceptions may include findings of fact, general appropriateness of the decision, or an alternative proposed decision for consideration by the Board, amongst other things.

§133.23 Determinations of the Board

Requires the Board issue determinations in a written order within 120 days after the ALJ issues their decision, if an exception to the decision has been taken. The Board may delegate that authority to the Office.

§133.24 Appeal of the Determination of the Board

Grants all parties the right to appeal the Board determination by commencing an Article 78 proceeding.

§133.25 Actions Relating to Unlicensed Activities

Authorizes the Office to enforce against licensed and unlicensed persons and pursue persons engaged in illicit cannabis activities, including the sale of unregulated or untested and potentially unsafe cannabis products. The Office is empowered to seize all cannabis and cannabinoid hemp products or hemp extract from licensed and unlicensed persons and require the cessation of all licensed and unlicensed activity. Requires an unlicensed entity to submit an affidavit of compliance, under penalty of perjury, for any previously issued order to close, or else be subject to applicable per day penalties imposed for non-compliance with the order. Describes enforcement's broadened authority to issue orders to seal for unlicensed activity if there is an imminent threat to public, safety and welfare, where the location is not used for residential purposes and when the unlicensed activity is more than a de minimis part of the business; circumstances for delayed padlocking; the process for respondent to request an emergency hearing on an order to seal; and require respondent to provide a verified statement of ownership

information upon the Office's request as a condition to proceed with a hearing. Authorizes the Board and the Director of Enforcement to delegate the authority to deputize others to conduct enumerated enforcement activities.

§133.26 Severability

Provides that if any provision is found to be invalid, remaining provisions continue to be valid.