

RULE MAKING ACTIVITIES

Each rule making is identified by an I.D. No., which consists of 13 characters. For example, the I.D. No. AAM-01-96-00001-E indicates the following:

AAM	-the abbreviation to identify the adopting agency
01	-the <i>State Register</i> issue number
96	-the year
00001	-the Department of State number, assigned upon receipt of notice.
E	-Emergency Rule Making—permanent action not intended (This character could also be: A for Adoption; P for Proposed Rule Making; RP for Revised Rule Making; EP for a combined Emergency and Proposed Rule Making; EA for an Emergency Rule Making that is permanent and does not expire 90 days after filing.)

Italics contained in text denote new material. Brackets indicate material to be deleted.

Department of Agriculture and Markets

NOTICE OF ADOPTION

Golden Nematode (*Globodera Rostochiensis*) Quarantine

I.D. No. AAM-26-24-00001-A

Filing No. 724

Filing Date: 2024-09-09

Effective Date: 2024-09-25

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of section 127.2 of Title 1 NYCRR.

Statutory authority: Agriculture and Markets Law, sections 18, 164 and 167

Subject: Golden Nematode (*Globodera Rostochiensis*) Quarantine.

Purpose: To lift the Golden Nematode Quarantine in Portions of Nassau, Suffolk, Seneca, and Steuben Counties.

Text or summary was published in the June 26, 2024 issue of the Register, I.D. No. AAM-26-24-00001-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Christopher Logue, New York State Department of Agriculture and Markets, 10B Airline Drive, Albany, NY 12235, (518) 457-2087, email: Plants@agriculture.ny.gov

Assessment of Public Comment

The agency received no public comment.

Office of Alcoholism and Substance Abuse Services

NOTICE OF ADOPTION

Voluntary Certification of Recovery Residences in NYS

I.D. No. ASA-24-23-00021-A

Filing No. 723

Filing Date: 2024-09-09

Effective Date: 2024-09-25

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Addition of Part 860 to Title 14 NYCRR.

Statutory authority: Mental Hygiene Law, sections 32.01, 32.05-1, 32.06 and 32.07

Subject: Voluntary certification of recovery residences in NYS.

Purpose: This part establishes the requirements for recovery residences certified by OASAS.

Text or summary was published in the June 14, 2023 issue of the Register, I.D. No. ASA-24-23-00021-P.

Final rule as compared with last published rule: No changes.

Revised rule making(s) were previously published in the State Register on July 3, 2024.

Text of rule and any required statements and analyses may be obtained from: Eugene Martin, New York State Office of Addiction Services and Supports, 1450 Western Avenue, Albany, NY 12203, (518) 485-2373, email: Eugene.Martin@oasas.ny.gov

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2027, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

(1) COMMENT: Will waivers be available, specifically for 860.8 (c) relating to Safety and Housing Standards, based on average rent/home price in the locality Are all recovery houses considered dormitory type residences, and if not, can we get an exemption from Parts 814.6(a)(1) (i) and (ii).

RESPONSE: OASAS reviewed the comment, and no amendment was made. OASAS does not issue specific guidance related to requesting waivers. If applicants choose to request a waiver of any provisions in Part 860, they will be reviewed, and a response issued. 860.8(b) regarding dormitory type residences states that all recovery residences are exempt from the requirements in the quoted sections of Part 814.

(2) COMMENT: 860.4 – Include definitions for “Recovery Capital,” “Certified Recovery Peer Advocate” and “Incident”.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as Recovery Capital and Certified Recovery Peer Advocates (CRPA), including guidelines on CRPA application and certification, will be discussed in guidance, as will incident reporting requirements.

(3) COMMENT: 860.4 – “Assertive linkages” – Explore opportunities to provide state funding for these activities aligned with staffing and infrastructure common to a typical recovery house.

RESPONSE: OASAS reviewed the comment and determined no amendment was necessary as the comment is outside the scope of the rule. OASAS will take this suggestion into consideration during the implementation period.

(4) COMMENT: 860.5(a)(10)(ii)- “Incident review committees” are not common to an RH; it is more of a review process.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as guidance will be issued in this area. All OASAS-certified programs comply with the requirement for incident review committees to minimize incidents and implement safe, quality practices.

(5) COMMENT: 860.5(a)(13) — “Educational services” for children seems to imply enrollment in school; defining “educational services” could provide clarity.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as this will be clarified and expanded in guidance. Recovery residence policies and procedures must outline that if a resident and child live in the residence, the resident must have the child enrolled in and attend age-appropriate schooling. The resident is responsible for the care and wellbeing of the child, including their education.

(6) COMMENT: 860.5(c)(3) – Training and network development activities should support criteria for terminating residency, which must include assertive linkages to emergency medical assessment, treatment services, recovery services, and/or safe housing alternatives.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as training and best practices for these areas will be covered in guidance.

(7) COMMENT: 860.5(d)(3) –The prohibition against borrowing money from or lending money to a resident should exclude formal financial assistance supports offered as part of the program and governed by residence policy.

RESPONSE: OASAS reviewed the comment and no amendment was made, as the regulation prohibits borrowing or lending money, and does not preclude any financial assistance supports offered by the residence.

(8) COMMENT: 860.5(d)(5) –In addition to a recovery residence being able to receive payment for rent from other entities, they should be able to receive service fees based on agreements with third party funders such as Medicaid.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as potential recovery services being billed to Medicaid will be addressed in guidance. This provision prohibits “patient brokering” and other unethical practices involving soliciting money or items.

(9) COMMENT: 860.6(a)(2) – One year in recovery and one year living in recovery housing - this is too prescriptive and will likely limit the pool of residence manager applicants significantly.

RESPONSE: OASAS reviewed the comment and no amendment was made, as there are two distinct paths of qualification for residence managers: one is based on professional work experience, and the other is based on lived experience in recovery. OASAS maintains that these minimum qualifications are necessary to ensure residence managers are effective.

(10) COMMENT: 860.7(c) – Relationship Agreements. This is primarily a standard of care with primary responsibility placed on the recovery house. Is the same requirement applied to SUD providers and are templates for these relationships offered? Are MCOs involved in these network development and cross training opportunities? Is one agreement sufficient to meet this standard.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as this will be clarified in guidance. This requirement does not also apply to SUD providers, as they provide their own services within the program on-site. MCOs are not required to be involved. It is recommended that residences have a separate agreement with each community partner or program.

(11) COMMENT: 860.8(b) - While recovery residences are exempt from certain provisions in Part 814, the building and facility requirements (814.3 and 814.4) could be cost-prohibitive and a key weapon of NIMBYism.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as recovery residences are community-based residential dwellings, and must comply with all applicable laws and regulations, as reflected in Part 814. OASAS supports combatting NIMBYism. Focus on the home-like environment will be reflected in guidance.

(12) COMMENT: 860.9 –Add “Resident has a right to choose a treatment provider when obtaining recovery services outside the recovery residence.”

RESPONSE: OASAS reviewed the comment, and no amendment was made, as this right is in section 860.9(c).

(13) COMMENT: 860.10(c) – “Maximum length of stay” prohibition may conflict with funding sources. It is common to do month-to-month, or week-to-week agreements from a “landlord tenant” perspective.

RESPONSE: OASAS reviewed the comment and no amendment was made, as OASAS maintains that residents should have a length-of-stay according to their recovery journey, rather than reside according to a time-based lease, because progress towards individual recovery occurs in different timeframes. When the resident and staff determine they have

reached their identified recovery goals, they may work together on a plan to transition to permanent or alternative housing.

(14) COMMENT: 860.7(a) Does the use of a “substance” include legal cannabis and alcohol?

RESPONSE: OASAS reviewed the comment, and no amendment was made, as the regulation is clear that any substances not legally prescribed by a medical professional are prohibited in recovery residences.

(15) COMMENT: 860.5 (a) Does “governing authority of the residence” refer to OASAS, or will this fall to the LGU, an associated agency board, or self-selected governance.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as “governing authority” will be clarified in the application for certification. “Governing authority” refers to the owner/operator (or principals) of the recovery residence.

(16) COMMENT: 860.6 There are no proposed ratios for residence staffing or stated qualifications except for residence manager, but several requirements indicate that sufficient staff is needed to meet residents’ emergent needs and to supervise volunteers/interns/peers. What other staff roles are suggested and what qualifications are needed.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as all locations, recovery residences, specific populations, and residential buildings vary. Accordingly, the proposed regulation does not mandate roles, other than residence manager, or staffing ratios. OASAS encourages, but does not require, recovery residences to supplement their staff with volunteers/interns/peers in addition to the residence manager to meet residents’ needs.

(17) COMMENT: 860.3 – “Certified recovery residences” is exclusionary to an existing certification process through NYSARR. NYSARR proposes that if an organization chooses to certify under NYSARR they can hold themselves out specifically as a “NYSARR Certified Residence”. NYSARR is an emerging affiliate of NARR. The NYSARR certification process allows access to a wider variety of types and models of recovery housing to support safe and supportive living environments to people seeking recovery.

RESPONSE: OASAS reviewed the comment and no amendment was made, as OASAS is the state agency statutorily charged with certifying substance use treatment and recovery programs. MHL 32.05-A specifies the term “certified recovery residences.” Certification of recovery residences under OASAS is voluntary.

(18) COMMENT: 860.4 (h) – The term Social Model of Recovery uses relationships and social environments to facilitate a community of recovery. The regulations and funding do not seem to support the robust staff to have recovery coaches and peers that would implement and sustain the model. There is a need for more detailed guidance on the social model of recovery, including standards and elements.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as more detailed information on the Social Model of Recovery will be included in Guidance.

(19) COMMENT: 860.4 (j) – Residence Manager is not defined as to the number of houses or units they can manage, which might permit inadequate management and supervision.

RESPONSE: See response to comment (16).

(20) COMMENT: 860.5 (a) (11) – Will Recovery residences be subject to HIPAA and 42 CFR.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as this is outside the scope of the rule. Recovery residences must have policies and procedures on confidentiality in accordance with State and Federal laws, rules, and regulations. Recovery residences should consult with their legal counsel to determine if they are subject to, and in compliance with, specific laws, rules, and regulations.

(21) COMMENT: 860.5 (a) (14) – This will require OASAS to amend Part 815 or have a new set of rights for people living in Certified Recovery Residences.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as this is outside the scope of the rule. Recovery residences are required to develop their own policies and procedures for resident rights and responsibilities. OASAS will provide guidance on recommended rights and responsibilities.

(22) COMMENT: 860.6 (a) (2) – Concerns about whether a manager can be required to be in recovery, how will that be certified, what definition of recovery is being used, and asking about behavioral health history in an interview. This requirement creates a risk for the agency to ask a prospective employee and may violate employment law. Employment decisions based on recovery status may violate anti-discrimination laws, which protect individuals with a history of substance abuse who are not currently using illegal drugs.

RESPONSE: See response to comment (9). Effective residence managers often have a history of living in recovery housing. A residence manager applicant self-disclosing their recovery will serve the purpose of meeting that path of qualification and supporting their hiring. The applicant must

attest to not currently using any illegal substances and should be in recovery from substance use disorder. OASAS and recovery residences may not discriminate against any individual in recovery.

(23) COMMENT: 860.7 –Guidance on managing return to use off-site is important. A Harm Reduction approach to safe use, recognizing the principle of person-centered care seems missing.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as additional details and suggestions on approaching resident return to use as well as harm reduction approaches will be included in guidance.

(24) COMMENT: 860.8(b)(1) – Waiver of Part 814 (c) (1-6) raises concerns: seems reasonable to set aside space for private conversation between staff and residents; to have private bathrooms, at least showers and toilets; and to have PHI and personal identification protected and securely stored. Requiring janitorial, maintenance supplies in designated areas is a health and safety concern and offices or work areas should be made available to facilitate effective patient supervision and monitoring.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as these provisions in Part 814 are not applicable to recovery residences because they are specifically tailored to counseling and treatment in facility and clinical settings. However, OASAS will address in guidance recommendations for private spaces for peers or staff to meet with residents, maintenance of resident records, and separate areas for household/cleaning supplies. Guidance will provide that bedrooms and bathrooms in certified residences should afford needed privacy but are not required to have label designations.

(25) COMMENT: 860.8 (b) (2) – Allows recovery residences to have dormitories and to exceed 24 persons per dormitory. We expect that recovery residences would be a private room, as it is housing.

RESPONSE: OASAS reviewed the comment, and no amendment was made, as the exemption permits residences with more than 24 residents to operate within applicable space requirements reflected in Part 814. See response to comment (24) regarding bedrooms affording privacy to residents.

implementation of that corrective plan should occur. 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.

Significant revisions to the rule from the prior proposed rulemaking include changes to who is authorized to represent the Office at a hearing (§ 133.18); when and what types of records may be admitted as evidence in a hearing (§ 133.18); mandatory revocation of current licenses held by a respondent when a final determination has been issued affirming continued unlicensed activity following issuance of an order to cease unlicensed activity (§ 133.25); and specific authorization to the Office to seize material or equipment, such as packaging, used in the creation, production, packaging, or maintenance of cannabis, cannabis product, cannabinoid hemp or cannabinoid hemp extract product, or any product marketed or labeled as such (§ 133.25). Additionally, minor technical changes are being made in §§ 133.3(a); 133.22(g); 133.25(g)(1).

The Board voted to adopt these emergency rules which would add Part 133 to Title 9 NYCRR, which would become effective upon filing. Once effective, the emergency regulations would authorize the Office to continue on-site compliance visits without initial notice to the licensee, investigations against licensed and unlicensed entities that result in a range of categorized violation by severity, where the violation is an immediate and severe threat to public health and safety and emergency action is warranted, including summary suspension, to where the violation is inconsistent with the orderly operation of a regulated business; empower the Office to seize any and all cannabis and cannabis products from unlicensed entities, as well as require such entity to cease all cannabis related activity; authorize the Office to refer such investigations to the Department of Taxation and Finance, the district attorney, or any other civil or criminal investigative or enforcement agencies; and provide the Office with the ability to hold hearings in response to violations of the Cannabis Laws, related regulations or of this emergency rule which allows the Office to send duly authorized representatives to issue notices of violation and orders to cease unlicensed activity and apply warning notices on the premises of unlicensed cannabis businesses, to make known to the public which businesses are dangerous to consumers due to their sales of unregulated cannabis or cannabinoid hemp products. Based on the recent legislation, 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 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.

It is essential to continue to allow for this activity to occur as many of these processes have begun and are still in the process. Without these emergency regulations, there would be no effective enforcement regulations to establish the compliance and enforcement process necessary to create a stable and effective enforcement process to ensure that the Legislature’s intentions 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, and reduce participation of otherwise law-abiding citizens in the unlawful market are accomplished.

Subject: Empowers the Office of Cannabis Management to take further enforcement actions against unlicensed cannabis activity.

Purpose: To address illicit cannabis activity and take action to enforce the Cannabis Law.

Substance of emergency/revised rule (Full text is posted at the following State website: <https://cannabis.ny.gov/marihuana-regulation-and-taxation-act-mrta> (located under “Regulation” section on webpage)): 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 and Revised Rulemaking 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

Office of Cannabis Management

NOTICE OF EMERGENCY ADOPTION AND REVISED RULE MAKING NO HEARING(S) SCHEDULED

Empowers the Office of Cannabis Management to Take Further Enforcement Actions Against Unlicensed Cannabis Activity

I.D. No. OCM-22-24-00002-ERP

Filing No. 726

Filing Date: 2024-09-10

Effective Date: 2024-09-10

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action Taken: Addition of Part 133 to Title 9 NYCRR.

Statutory authority: Cannabis Law, sections 13, 16, 16-a, 17, 89, 132, 133 and 138-a

Finding of necessity for emergency rule: Preservation of public health, public safety and general welfare.

Specific reasons underlying the finding of necessity: The Cannabis Control Board (the Board) has determined it necessary to adopt this emergency rule allowing the Office of Cannabis Management (the Office) to take punitive action against any person issued a license, registration, or permit by the Board who is found to be in violation of Cannabis Law or other applicable regulations. The adoption of this emergency rule is necessary to protect the public health, safety and welfare by ensuring cannabis and cannabinoid products meet the health and safety standards established by the Board.

The previously proposed rule outlined new methods for which the Office may commence disciplinary action, including a Notice of Pleading and allowing 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 can be conducted as well as inspection investigations without notice and that cannabinoid hemp products may be directed for laboratory testing. 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

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 each of its stages of implementations be completed to the satisfaction of the Office, but that unlicensed persons, and 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 to the satisfaction of the Office. 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 appropriate representation and provides for how hearings will be conducted by the ALJ, to include among other things, the swearing in of witnesses; what types of records may be admitted as evidence in a hearing and when; how the official record will be kept, consolidation and severance, intervention of another party, and burden of proof. 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