

New York City Department of Consumer Affairs

Notice of Adoption

Notice of Adoption to amend the fixed penalties for the violations of the laws and rules related to cigarette retail dealers, now called tobacco retail dealers, located in Chapter 6 of Title 6 of the Rules of the City of New York.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer Affairs by Sections 1043, 2203(c), 2203(f), and 2203(h)(1) of the City Charter, Section 20-104(e) of the Administrative Code of the City of New York, and Section 23 of Local Law 145 of 2017, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department amends Section 6-12 of Chapter 6 of Title 6 of the Rules of the City of New York.

This rule was proposed and published on May 7, 2018. A public hearing was held on June 6, 2018.

Statement of Basis and Purpose of Rule

Local Law 145 of 2017 raises the minimum price of cigarettes and little cigars to \$13 a pack from \$10.50 and sets a first-ever price floor and tax for other tobacco products, such as cigars, smokeless tobacco, snus, loose tobacco and tobacco-containing shisha.

Local Law 146 of 2017 reduces the number of stores that can sell tobacco products by capping the tobacco retail dealer licenses in each community district at 50 percent of the number of active licenses as of February 24, 2018. No new tobacco retail dealer licenses will be issued in a community district until its total decreases through attrition below the cap. New York City has high tobacco retail density, with about 8,300 licensed cigarette retailers' citywide, averaging almost 30 dealers per square mile. Easy access to tobacco retailers makes it harder for smokers to quit. Moreover, youth who frequent retail stores that sell tobacco every week have double the odds of trying smoking. This law also updates the New York City retail license for selling cigarettes to encompass all types of tobacco.

To implement Local Laws 145 and 146, DCA amends Section 6-12 of Subchapter B, Chapter 6, of Title 6 of the Rules of the City of New York, to update the fixed penalties for the violations of the laws and rules related to cigarette retail dealers, which are now called tobacco retail dealers.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Rule Amendment

Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 6-12. Tobacco Retail [Cigarette]Dealer Penalty Schedule

All citations are to Title 20 of the Administrative Code of the City of New York, Title 17 of the Administrative Code of the City of New York, Title 24 of the Rules of the City of New York, or the New York Public Health Law.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

[For] Unless otherwise specified by law, for violations of Title 20 of the Administrative Code, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within [two]three years of the prior violation(s).

Unless otherwise specified by law, for violations of § 17-176.1 of Title 17 of the Administrative Code, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within five years of the prior violation(s).

For [violations] sections of law marked by a single asterisk (*), a second, third or subsequent violation means a violation of §§ 17-703, § 17-703.2, § 17-704, subdivision (a) of § 17-704.1, § 17-705, or subdivisions (a) or (b) of § 17-706, or 17-715 of Title 17 of the Administrative Code, [a second, third or subsequent violation means a violation,] or any combination of such provisions, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement [for any combination of such violations], at the same place of business within a three-year period.

Unless otherwise specified by law, for violations of § 17-715 of Title 17 of the Administrative Code, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within three years of the prior violation(s).

At a hearing, points assigned to a respondent’s New York State tobacco registration record may be reduced pursuant to New York Public Health Law § 1399-ee(3)(a).

In certain cases, the Department may ask for license suspension, revocation, or sealing as permitted by statute. If a respondent is found in violation of multiple provisions that require a suspension period, the suspension periods shall run concurrently.

The parties shall be authorized to present evidence to mitigate the license revocation or suspension period within the date range marked by two asterisks (**).

<u>Citation</u>	<u>Violation Description</u>	<u>First Violation</u>	<u>First Default</u>	<u>Second Violation</u>	<u>Second Default</u>	<u>Third and Subsequent Violation</u>	<u>Third and Subsequent Default</u>
Admin Code § 20-202(a)(1)	Engaging in unlicensed [cigarette]tobacco retail dealer activity	\$2,000, plus \$100 per day	\$2,000, plus \$100 per day				
Admin Code § 20-202(a)(2)	Permitting premises to be used for unlicensed [cigarette]tobacco retail dealer activity	\$1,500	\$2,000	\$1,800	\$2,000	\$2,000	\$2,000
Admin Code § 20-202(d)(2)	Failure to display license conspicuously	\$1,500	\$2,000	\$1,800	\$2,000	\$2,000	\$2,000
Admin Code § 20-203	Failure to comply with recordkeeping and inspection requirements	\$1,500	\$2,000	\$1,800	\$2,000	\$2,000	\$2,000
Admin Code § 20-205	Engaged in prohibited sales or purchases	\$1,500	\$2,000	\$1,800	\$2,000	\$2,000	\$2,000

Admin Code § 17-176.1(b)	Selling discounted cigarettes [or tobacco products]	\$1,000	\$1,000	\$2,000	\$2,000	\$5,000	\$5,000
Admin Code § 17-176.1(c)	Selling discounted tobacco products	\$1,000	\$1,000	\$2,000	\$2,000	\$5,000	\$5,000
Admin Code § 17-176.1(d)	Selling cigarettes or tobacco products below the price floor	\$1,000	\$1,000	\$2,000	\$2,000	\$5,000	\$5,000
Admin Code § 17-703*	Operating as a wholesale dealer without a license	\$5,000	\$5,000	\$10,000 (plus revocation)	\$10,000 (plus revocation)	\$10,000 (plus revocation)	\$10,000 (plus revocation)
Admin Code § 17-703.1	Failure of retail dealer to post sign in conspicuous place that cigarettes must be in packages bearing valid tax stamps	\$500	\$500	\$500	\$500	\$500	\$500
Admin Code § 17-704(a)*	[Improper out-of-package sales]Selling or offering for sale cigarettes or tobacco products that have been removed from packaging that bears a health warning.	\$1,000	\$1,000	\$2,000 (plus revocation)	\$2,000 (plus revocation)	\$2,000 (plus revocation)	\$2,000 (plus revocation)
Admin Code § 17-704(a-1) through (f)*	[Improper out-of-package sales]Violation of minimum package sizes for cigarettes or tobacco products	\$1,000	\$1,000	\$2,000	\$2,000	\$2,000	\$2,000
Admin Code § 17-704.1(a)*	Unlawful delivery of cigarettes or tobacco products	\$1,000	\$1,000	\$2,000 (plus revocation)	\$2,000 (plus revocation)	\$2,000 (plus revocation)	\$2,000 (plus revocation)
Admin Code § 17-705*	Failure to comply with age restrictions on handling	\$1,000	\$1,000	\$2,000 (plus revocation)	\$2,000 (plus revocation)	\$2,000 (plus revocation)	\$2,000 (plus revocation)
Admin Code § 17-706(a)*	Unlawful sale of cigarettes, tobacco products, or [electronic cigarettes]liquid nicotine to an individual under 21	\$1,000	\$1,000	\$2,000 (plus revocation)	\$2,000 (plus revocation)	\$2,000 (plus revocation)	\$2,000 (plus revocation)
Admin Code § 17-706(b)*	Unlawful sale of non-tobacco [shisha, pipes, or rolling papers]smoking products to an individual under 18	\$1,000	\$1,000	\$2,000 (plus revocation)	\$2,000 (plus revocation)	\$2,000 (plus revocation)	\$2,000 (plus revocation)
Admin Code § 17-706(c)	No minimum age sign violation/missing information on sign	\$500	\$500	\$500	\$500	\$500	\$500
[Admin Code § 17-714	Unlawful sale of herbal cigarettes to persons under 18	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000	\$2,000]
Admin Code § 17-715	Unlawful sale of flavored tobacco	\$1,000	\$1,000	\$2,000	\$2,000	\$5,000 (plus 1 to 90 day suspension)**	\$5,000 (plus one year suspension)
NY Pub Health § 1399-CC(2) (sign)	Failure to conspicuously post the required tobacco sign	\$1,000	\$1,000	\$1,500	\$1,500	\$1,500	\$1,500
NY Pub Health § 1399-CC(2) (sale)	Unlawful sale of tobacco products, herbal cigarettes, liquid nicotine, shisha or electronic cigarettes to an individual under eighteen years of age	\$1,000 (plus 2 points on NYS registration)	\$1,000 (plus 2 points on NYS registration)	\$1,500 (plus 2 points on NYS registration)			
NY Pub Health § 1399-CC(3)	Failure to obtain proper identification from purchaser	\$1,000	\$1,000	\$1,500	\$1,500	\$1,500	\$1,500

NY Pub Health § 1399-CC(5)	Improper use of the electronic transaction information	\$1,000	\$1,000	\$1,500	\$1,500	\$1,500	\$1,500
NY Pub Health § 1399-CC(7)	Failure to store tobacco products or herbal cigarettes behind a counter accessible only to store personnel or in a locked container	\$1,000	\$1,000	\$1,500	\$1,500	\$1,500	\$1,500
NY Pub Health § 1399-DD	Unlawful sale of tobacco products, herbal cigarettes, or electronic cigarettes in vending machines	\$1,000	\$1,000	\$1,500	\$1,500	\$1,500	\$1,500
NY Pub Health § 1399-EE(2)	Unlawful sale of tobacco products or herbal cigarettes with a suspended or revoked NYS tobacco registration	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500	\$2,500
NY Pub Health § 1399-GG	Unlawful out-of-package sales or minimum package size	\$1,000	\$1,000	\$1,500	\$1,500	\$1,500	\$1,500
NY Pub Health § 1399-LL	Failure to comply with regulations prohibiting the sale of bidis	\$500	\$500	\$500	\$500	\$500	\$500
NY Pub Health § 1399-MM	Failure to comply with the regulations prohibiting the sale of gutka	\$500	\$500	\$500	\$500	\$500	\$500
24 RCNY § 28-06	Unlawful sale of tobacco product or non-tobacco product designed for consumption through the inhalation of smoke not in original packaging	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000	\$1,000