

New York City Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer Affairs (“DCA” or “Department”) is proposing to add new rules relating to auctioneers and auction houses to subchapter M of chapter 2 of title 6 of the Rules of the City of New York. First, the Department is proposing to add a new rule to clarify that auction houses must receive an auction house license to engage in the business of auctioneering. Second, the Department is proposing to add a new rule to require that auctioneers must notify a winning bidder within seven days of the auction if the auctioneer opts to cancel the sale of the lot or reoffer and resell the lot.

When and where is the hearing? DCA will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Monday, June 3, 2019. The hearing will be in the DCA hearing room at 42 Broadway, 5th Floor, New York, NY 10004.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCA through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **Mail.** You can mail comments to Casey Adams, Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** You can fax written comments to the Department of Consumer Affairs, (646) 500-5962.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0095. You can also sign up in the hearing room before the hearing begins at 10:00 AM on Monday, June 3, 2019. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before 5:00 PM on Monday, June 3, 2019.

What if I need assistance to participate in the hearing? You must tell DCA’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0155. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Thursday, May 30, 2019.

This location has the following accessibility option(s) available: wheelchair accessible.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCA on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCA to make this rule? Sections 1043 and 2203(f) of the New York City Charter and Sections 20-104(b) and 20-278 of the New York City Administrative Code authorize DCA to make this proposed rule. This proposed rule was not included in the Department’s regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find DCA's rules? The Department's rules are in title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCA must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Consumer Affairs (“DCA” or “Department”) is proposing to add new rules relating to auctioneers and auction houses to subchapter M of chapter 2 of title 6 of the Rules of the City of New York.

First, the Department is proposing to add a new rule to clarify that auction houses must receive an auction house license to engage in the business of auctioneering. Section 20-278 of the New York City Administrative Code states that it is “unlawful for any person to engage in the business of auctioneer without a license therefor.” “Person” is defined broadly in the Administrative Code to include both businesses and individuals. See NYC Admin. Code § 20-102. Auction houses, which are businesses that conduct auctions and employ auctioneers, are required to be licensed under this provision. Accordingly, the Department has long issued two separate licenses: one for auctioneers and one for auction houses. Many sections of the Department’s rules already reference licensed auction houses separate from auctioneers. See 6 R.C.N.Y § 2-121(f); 6 R.C.N.Y. § 2-123(c)(1), (c)(2). This proposed rule clarifies the requirements of the Administrative Code and longstanding Department practice that auction houses must be licensed. It also clarifies that an auction house must use only licensed auctioneers to conduct auctions.

Second, the Department is proposing to add a new rule to require that auctioneers must notify a winning bidder within seven days of the auction if the auctioneer opts to cancel the sale of the lot or reoffer and resell the lot. Currently, many auctioneers and auction houses have significant discretion under their own auction terms and conditions to cancel sales at any time because of potential errors or disputes related to bidding. Such cancelations create significant confusion for buyers. To prevent abuse and ensure finality with respect to auction sales, the proposed rule establishes a deadline by which an auctioneer or auction house must identify an error or dispute and notify the successful buyer of their decision to cancel the sale or reoffer and resell the lot.

Sections 1043 and 2203(f) of the New York City Charter and Sections 20-104(b) and 20-278 of the New York City Administrative Code authorize the Department to make these proposed rules.

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.

Proposed Rule Amendments

Section 1. Subchapter M of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-120 Auction Houses

(a) It shall be unlawful for any organization to engage in auctioneering without an auction house license. An organization that holds an auction house license does not need an auctioneer license.

(b) Auction house license applicants and auction house licensees must comply with this subchapter and subchapter 13 of chapter 2 of title 20 of the Administrative Code, as applicable.

(c) The attainment of an auction house license by an organization does not satisfy the obligation of any individual to obtain and hold an auctioneer license or the obligation of an auction house to use only licensed auctioneers to conduct auctions.

§ 2. Subchapter M of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-122 Requirements and Obligations of Licensees.

(m) In the case of error or dispute related to bidding, the auctioneer must notify the successful bidder no later than by the end of the seventh calendar day following the date of the auction if the auctioneer opts to cancel the sale of the lot or reoffer and resell the lot. If the auctioneer does not notify the successful bidder by the end of the seventh calendar day following the date of the auction, the auctioneer shall be prohibited from canceling the sale of the lot, or reoffering and reselling the lot, as a result of any bidding error or dispute.

(n) An auction house must use only licensed auctioneers to conduct auctions.

**DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Rules Governing Auctioneers and Auction Houses

REFERENCE NUMBER: 2019 RG 007

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose;
and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: April 18, 2019

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Rules Governing Auctioneers and Auction Houses

REFERENCE NUMBER: DCA-92

RULEMAKING AGENCY: Department of Consumer Affairs

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) No cure period/mechanism is provided because it would not be possible to cure the notice required for canceling the sale of a lot..

/s/ Francisco X. Navarro
Mayor's Office of Operations

April 18, 2018
Date