

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 amend Chapter 6 of Title 6 of the Rules of the City of New York to establish fixed penalties for the violations of the laws related to electronic cigarette retail dealers.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Friday, June 15, 2018. The hearing will be in the Department’s 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 comments to Casey Adams, Director of City Legislative 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 on Friday, June 15, 2018. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any written comments to the proposed rule by 5:00 PM on Friday, June 15, 2018.

What if I need assistance to participate in the hearing? You must tell the Department’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) 436-0095 or by email to cadams@dca.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Wednesday, June 13, 2018.

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 the Department of Consumer Affairs to make this rule? 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 8 of Local Law 144 of 2017 authorize the Commissioner of the Department to make this proposed rule. This proposed rule was not included in DCA's regulatory agenda for this Fiscal Year because it was not contemplated when DCA published the agenda.

Where can I find the Department'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? The Department 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

Local Law 144 of 2017 requires that retailers of electronic cigarettes (“e-cigarettes”) be issued a license, like cigarette retailers, and caps the number of these licenses. E-cigarette use has increased dramatically since e-cigarettes were introduced in U.S. markets less than 10 years ago. In 2015, 15.9 percent of New York City high school students were e-cigarette users. Local Law 144 capped the number of e-cigarette retailers at half the current number by community district, with the reduction in number coming through attrition. Existing sellers will be able to continue to renew their license so long as they meet all applicable licensure requirements. The law also prohibits pharmacies from selling e-cigarettes.

To implement Local Law 144, DCA seeks to add a new rule, Section 6-12.1, to Subchapter B, Chapter 6, of Title 6 of the Rules of the City of New York, to establish fixed penalties for the violations of the laws related to electronic cigarette retail dealers.

DCA’s authority for these rule is found in 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 8 of Local Law 144 of 2017.

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 Rules

Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended by adding Section 6-12.1 to read as follows:

§ 6-12.1. Electronic Cigarette Retail 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, or Title 6 of the Rules of the City of New York.

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.

Unless otherwise specified by law, a second or third or subsequent violation shall mean 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).

For sections of law marked by a single asterisk (*), a second, third or subsequent violation means a violation of subdivision (b) of § 17-704.1 or subdivision (a-1) of § 17-706 of Title 17 of the Administrative Code, or any combination of such provisions, whether by admitting to the violation, being found in violation in a decision, or entering into a settlement agreement for violating the provision of law or rule, at the same place of business within a three-year period.

In certain cases, the Department may ask for license suspension or revocation, 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.

<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>
<u>Admin. Code 20-561(a)(1)</u>	<u>Unlicensed electronic cigarette retail dealer</u>	<u>\$100 per day</u>	<u>\$100 per day</u>	<u>\$100 per day</u>	<u>\$100 per day</u>	<u>\$100 per day</u>	<u>\$100 per day</u>
<u>Admin. Code 20-561(a)(2)</u>	<u>Permitting premises under person's control to be used as unlicensed electronic cigarette retail dealer</u>	<u>\$100 per day</u>	<u>\$100 per day</u>	<u>\$100 per day</u>	<u>\$100 per day</u>	<u>\$100 per day</u>	<u>\$100 per day</u>
<u>Admin. Code 17-704.1(b)*</u>	<u>Unlawful delivery of electronic cigarettes</u>	<u>\$1,000</u>	<u>\$1,000</u>	<u>\$2,000 (plus revocation)</u>	<u>\$2,000 (plus revocation)</u>	<u>\$2,000 (plus revocation)</u>	<u>\$2,000 (plus revocation)</u>
<u>Admin Code 17-706(a-1)*</u>	<u>Unlawful sale of electronic cigarettes to an individual under 21</u>	<u>\$1,000</u>	<u>\$1,000</u>	<u>\$2,000 (plus revocation)</u>	<u>\$2,000 (plus revocation)</u>	<u>\$2,000 (plus revocation)</u>	<u>\$2,000 (plus revocation)</u>
<u>Admin Code § 17-706(c)</u>	<u>No minimum age sign violation or missing information on sign</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>	<u>\$500</u>

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

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

RULE TITLE: Establishment of Penalty Schedule for Violation of Provisions of Law Relating to Electronic Cigarette Retailers

REFERENCE NUMBER: 2018 RG 024

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: May 3, 2018

**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: Establishment of Penalty Schedule for Violation of Provisions of Law Relating to Electronic Cigarette Retailers

REFERENCE NUMBER: DCA-70

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) Does not provide a cure period because the requirement for a cure period is mitigated by the extensive notice period, outreach, and guidance on compliance to the regulated individuals and communities.

/s/ Stephen Narloch
Mayor's Office of Operations

May 8, 2018
Date