

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 amendments to the Department’s penalty schedules related to tobacco retail dealers and electronic cigarette retail dealers to incorporate recent changes made to New York State law.

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 September 30, 2020. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial 1 646 558 8656.
 - Meeting Number: 867 5142 5312
- To participate in the public hearing via videoconference, please follow the online link: <https://us02web.zoom.us/j/86751425312>

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.
- **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) 436-0345. You can also sign up on the phone or videoconference before the hearing begins at 10:00 AM on September 30, 2020. 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 September 30, 2020.

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 may tell us by telephone at (212) 436-0345 or by email at Rulecomments@dca.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by September 28, 2020.

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, 2203(c), 2203(f), and 2203(h)(1) of the City Charter and Section 20-104(e) of the Administrative Code of the City of New York authorize the Department of Consumer Affairs to make this proposed rule. This proposed rule was not included in the Department of Consumer Affairs’ 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 New York City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the New York City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department seeks to amend section 6-12, the tobacco retail dealer penalty schedule, to increase certain penalty amounts set by New York State Public Health Law (“PHL”) section 1399-ee, which was recently amended by state law. New York State law amendments to section 1399-ee(2) of the PHL changed the maximum penalty for first violations of the PHL to \$1,500 from \$1,000. The state law amendments also changed the maximum penalty for subsequent violations to \$2,500 from \$1,500. The state law amendments became effective on July 1, 2020. This proposed amendment would also correct a mistake in the penalty entry for section 1399-CC(5) by lowering the maximum penalty for subsequent violations to \$1,000, as required by that subdivision of law.

The Department is also proposing to amend section 6-12.1, the electronic cigarette penalty schedule, to add violations relating to New York State PHL section 1399-mm-1(2), which prohibits selling or offering for sale flavored vapor products expected to be used with nicotine. This new provision of state law was recently passed and became effective on July 1, 2020.

Pursuant to section 1043(d)(1) of the New York City Charter, certification of this proposed rule by the Law Department is not required.

The Department’s authority for these rules is found in sections 1043, 2203(c), 2203(f), and 2203(h)(1) of the City Charter and section 20-104(e) of the Administrative Code of the City of New York.

New material is underlined.

“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. Section 6-12 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is hereby amended as follows:

§ 6-12 Tobacco 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, 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.

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 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 or of 24 RCNY § 13-03, 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 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 of Title 17 of the Administrative Code, or any combination of such provisions, whether by pleading guilty, being

found guilty in a decision, or entering into a settlement agreement, 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 (**).

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin Code § 20-202(a)(1)	Engaging in unlicensed tobacco retail dealer activity	\$2,000, plus \$100 per day	\$2,000, plus \$100 per day	\$2,000, plus \$100 per day	\$2,000, plus \$100 per day	\$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 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	\$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	\$500	\$500	\$500	\$500	\$500	\$500

	packages bearing valid tax stamps						
Admin Code § 17-704(a)*	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)*	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 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 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 § 17-715	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] <u>1,500</u>	[\$1,000] <u>1,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>
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] <u>1,500</u> (plus 2 points on NYS registration)	[\$1,000] <u>1,500</u> (plus 2 points on NYS registration)	[\$1,500] <u>2,500</u> (plus 2 points on NYS registration)	[\$1,500] <u>2,500</u> (plus 2 points on NYS registration)	[\$1,500] <u>2,500</u> (plus 2 points on NYS registration)	[\$1,500] <u>2,500</u> (plus 2 points on NYS registration)
NY Pub Health § 1399-CC(3)	Failure to obtain proper identification from purchaser	[\$1,000] <u>1,500</u>	[\$1,000] <u>1,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>
NY Pub Health § 1399-CC(5)	Improper use of the electronic transaction information	\$1,000	\$1,000	[\$1,500] <u>1,000</u>	[\$1,500] <u>1,000</u>	[\$1,500] <u>1,000</u>	[\$1,500] <u>1,000</u>
NY Pub Health	Failure to store tobacco products or herbal cigarettes	[\$1,000] <u>1,500</u>	[\$1,000] <u>1,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>

§ 1399-CC(7)	behind a counter accessible only to store personnel or in a locked container						
NY Pub Health § 1399-DD	Unlawful sale of tobacco products, herbal cigarettes, or electronic cigarettes in vending machines	[\$1,000] <u>1,500</u>	[\$1,000] <u>1,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>
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] <u>1,500</u>	[\$1,000] <u>1,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>	[\$1,500] <u>2,500</u>
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 § 13-03	Failure to comply with price floors for little cigars, cigars, smokeless tobacco, snus, shisha, non-tobacco shisha, or loose tobacco	\$1,000	\$1,000	\$2,000	\$2,000	\$5,000	\$5,000
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

§ 2. Section 6-12.1 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is hereby amended 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.

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin. Code 20-561(a)(1)	Unlicensed electronic cigarette retail dealer	\$100 per day	\$100 per day	\$100 per day	\$100 per day	\$100 per day	\$100 per day
Admin. Code 20-561(a)(2)	Permitting premises under person's control to be used as unlicensed electronic cigarette retail dealer	\$100 per day	\$100 per day	\$100 per day	\$100 per day	\$100 per day	\$100 per day
Admin. Code 17-704.1(b)*	Unlawful delivery of electronic cigarettes	\$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-1)*	Unlawful sale of electronic cigarettes 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(c)	No minimum age sign violation or missing information on sign	\$500	\$500	\$500	\$500	\$500	\$500
<u>NYS PHL Section 1399-MM-1(2)</u>	<u>Selling or offering for sale a flavored vapor product intended or reasonably expected to be used for the consumption of nicotine.</u>	<u>\$75 per package</u>	<u>\$100 per package</u>	<u>\$90 per package</u>	<u>\$100 per package</u>	<u>\$100 per package</u>	<u>\$100 per package</u>