

## New York City Department of Consumer and Worker Protection

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rules**

**What are we proposing?** The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to amend its rules on the application process for tobacco retail dealer and electronic cigarette retail dealer licenses that become available within community districts. These amendments would establish an application process to be held twice per year instead of the current annual process.

**When and where is the hearing?** DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11:00am on Thursday, November 3, 2022. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial 646 558 8656
  - Meeting ID: 843 2184 2581
  - Passcode: 479328
- To participate in the public hearing via videoconference, please follow the online link:  
<https://us02web.zoom.us/j/84321842581?pwd=eGRVR2NBaHV5SjVnZFZTcE5XL1E2dz09>
  - Meeting ID: 843 2184 2581
  - Passcode: 479328

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

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [Rulecomments@dcwp.nyc.gov](mailto:Rulecomments@dcwp.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) 436-0396. You can also sign up on the phone or videoconference before the hearing begins at 11:00am on Thursday, November 3, 2022. 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 11:59pm on Thursday, November 3, 2022.

**What if I need assistance to participate in the hearing?** You must tell DCWP’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) 436-0396 or by email at [Rulecomments@dcwp.nyc.gov](mailto:Rulecomments@dcwp.nyc.gov). Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Thursday, October 27, 2022.

**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 DCWP 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 DCWP to make this rule?** Sections 1043, 2203(c), and 2203(f) of the New York City Charter and Sections 20-104(a) and 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules. This proposed rule was not included in the Department of Consumer and Worker Protection’s regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

**Where can I find DCWP'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?** DCWP 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 and Worker Protection (“DCWP” or “Department”) is proposing to amend its rules on the application process for tobacco retail dealer and electronic cigarette retail dealer licenses that periodically become available within community districts.

The number of tobacco retail dealer and electronic cigarette dealer licenses is capped. Licenses become available to prospective licensees only when the number of licenses in use in a given community district falls below the license cap for such community district. Right now, the application process for available licenses is administered annually, beginning in May of each year. These amendments would establish that the application process will be administered twice per year, beginning in May and November. This change will allow eligible businesses to sooner apply for licenses that become available.

Sections 1043, 2203(c), and 2203(f) of the New York City Charter and Sections 20-104(a) and 20-104(b) 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. Section 2-13 of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

### **§ 2-13 Application Process for Available Licenses within Community Districts.**

(a) On [April 1, 2019, and on every April 1 thereafter] the first business day in April and the first business day in October of each year, the Department will publish the following information for each community district in the City: (i) the community district cap; (ii) the number of current Tobacco Retail Dealer licenses; and (iii) the number of available Tobacco Retail Dealer licenses.

(b) [Beginning on May 1, 2019, and on every May 1 thereafter, in each community district where Tobacco Retail Dealer licenses are available, the Department shall accept requests to apply for a Tobacco Retail Dealer license until 5:00 p.m. on the last business day in May of such year.]

(1) For each community district where Tobacco Retail Dealer licenses are available as of the first business day of April in a given year, the Department will accept requests to apply for a Tobacco Retail Dealer license from the first business day in May until 5:00 p.m. on the last business day in May of such year.

(2) For each community district where Tobacco Retail Dealer licenses are available as of the first business day of October in a given year, the Department will accept requests to apply for a Tobacco Retail Dealer license from the first business day in November until 5:00 p.m. on the last business day in November of such year.

(3) The Department will reject any duplicate requests to apply.

(c) At the close of each request period, in each community district where Tobacco Retail Dealer licenses are available, the Department will randomly select [a number of] from among the requesters businesses that may apply for a Tobacco Retail Dealer license and invite such businesses to apply for such license. The

number of [such] businesses selected shall be equal to the number of licenses available in that community district. An invitation to apply is only valid for the business randomly selected by the Department and may not be transferred to another business.

(d) Once notified by the Department, selected businesses will have 65 days from the date of notification to submit a complete application for a Tobacco Retail Dealer license. If a complete application is not received by the Department within 65 days, or the application is otherwise denied, the opportunity to apply will be forfeited, and the Department will offer the opportunity to apply to another business in the same community district that is randomly selected from the pool of requesters, and that business will have 65 days to submit a complete application.

(e) When the Department has issued all available licenses within each community district, the application process will be closed, and the remaining request pool will be voided. A request from any given [year] request period will not be valid in a subsequent [year] request period.

(f) Any license issued that causes the number of licenses in a community district to exceed the community district's retail dealer cap will be considered to be issued in error and voided.

(g) Any license issued as a result of deceptive or misleading application materials will be considered to be issued in error and voided.

§ 2. Section 2-452 of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

**§ 2-452 Application Process for Available Licenses within Community Districts.**

(a) On [April 1, 2019, and on every April 1 thereafter] the first business day in April and the first business day in October of each year, the Department will publish the following information for each community district in the City: (i) the community district cap; (ii) the number of current Electronic Cigarette Retail Dealer licenses; and (iii) the number of available Electronic Cigarette Retail Dealer licenses.

(b) [Beginning on May 1, 2019, and on every May 1 thereafter, in each community district where Electronic Cigarette Retail Dealer licenses are available, the Department shall accept requests to apply for an Electronic Cigarette Retail Dealer license until 5:00 p.m. on the last business day in May of such year.]

(1) For each community district where Electronic Cigarette Retail Dealer licenses are available as of the first business day of April in a given year, the Department will accept requests to apply for an Electronic Cigarette Retail Dealer license from the first business day in May until 5:00 p.m. on the last business day in May of such year.

(2) For each community district where Electronic Cigarette Retail Dealer licenses are available as of the first business day of October in a given year, the Department will accept requests to apply for an Electronic Cigarette Retail Dealer license from the first business day in November until 5:00 p.m. on the last business day in November of such year.

(3) The Department will reject any duplicate requests to apply.

(c) At the close of each request period, in each community district where Electronic Cigarette Retail Dealer licenses are available, the Department will randomly select [a number of] from among the requesters businesses that may apply for an Electronic Cigarette Retail Dealer license and invite such businesses to apply for such license. The number of [such] businesses selected shall be equal to the number of licenses available in that community district. An invitation to apply is only valid for the business randomly selected by the Department and may not be transferred to another business.

(d) Once notified by the Department, selected businesses will have 65 days from the date of notification to submit a complete application for an Electronic Cigarette Retail Dealer license. If a complete application is not received by the Department within 65 days, or the application is otherwise denied, the opportunity to apply will be forfeited, and the Department will offer the opportunity to apply to another business in the same community district that is randomly selected from the pool of requesters, and that business will have 65 days to submit a complete application.

(e) When the Department has issued all available licenses within each community district, the application process will be closed, and the remaining request pool will be voided. A request from any given [year] request period will not be valid in a subsequent [year] request period.

(f) Any license issued that causes the number of licenses in a community district to exceed the community district's retail dealer cap will be considered to be issued in error and voided.

(g) Any license issued as a result of deceptive or misleading application materials will be considered to be issued in error and voided.

**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:** Amendment of Rules Governing Applications for Tobacco Retailer Dealer and Electronic Cigarette Retail Dealer Licenses

**REFERENCE NUMBER:** 2022 RG 078

**RULEMAKING AGENCY:** Department of Consumer and Worker Protection

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: September 13, 2022

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

CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)

**RULE TITLE: Amendment of Rules Governing Applications for Tobacco Retailer Dealer and Electronic Cigarette Retail Dealer Licenses**

**REFERENCE NUMBER: DCWP-27**

**RULEMAKING AGENCY: Department of Consumer and Worker Protection**

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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

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

September 13, 2022  
Date