

New York City Department of Consumer and Worker Protection

Notice of Adoption

Notice of Adoption to amend rules regarding the application process for tobacco retail dealer and electronic cigarette retail dealer licenses that become available within community districts.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer and Worker Protection by Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department amends Title 6 of the Rules of the City of New York.

This rule was proposed and published on October 4, 2022. A public hearing was held on November 3, 2022.

Statement of Basis and Purpose of Rule

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is amending 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 establish that the application process will be administered twice per year, beginning in May and November. This change allows 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 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.

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.