

New York City Department of Consumer and Worker Protection

Notice of Adoption

Notice of Adoption to amend rules to clarify the licensing requirement for third-party delivery food services.

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 Sections 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 January 4, 2024. A public hearing was held on February 5, 2024 and approximately 6 comments were received. No changes were made to the proposed rule.

Statement of Basis and Purpose of Rule

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is amending its rules to clarify the licensing requirement for third-party food delivery services.

“Third-party food delivery service” is defined in the Administrative Code as “any website, mobile application or other internet service that: (i) offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from, a food service establishment; and (ii) that is owned and operated by a person other than the person who owns such food service establishment.” New York City Administrative Code Section 20-563.

The Department has reviewed responses to requests for information from several companies that provide different types of online support to restaurants. Based solely on the Administrative Code definition of “third-party food delivery service”, it is not always clear what types of technology companies that provide such support to restaurants are required to be licensed. As part of the Department’s first year of regulating this industry, it has also encountered confusion among companies concerning the scope of the statutory definition.

This rule provides clarity with respect to when a business would need to be licensed as a third-party food delivery service. Specifically, it defines the term “offers or arranges” as used in the definition of “third-party food delivery service.” Under this new language, which is not exhaustive, a person or business would need a license to operate as a third-party food delivery service if it operates a consumer-facing online or mobile platform and excludes a restaurant from participating in such platform unless the restaurant pays a fee.

Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection 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.

Rule Amendments

Section 1. Section 2-461 of Subchapter KK of Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding a new subdivision (e), to read as follows:

(e) “Offers or arranges”, as used in the definition of “third-party food delivery service” in § 20-563 of the Administrative Code, includes, but is not limited to, the operation of a consumer-facing online or mobile platform or service on which the consumer can order food and beverages without leaving such platform or service, including when such platform or service uses an application programming interface with any food service establishment, where such online or mobile platform or service excludes any food service establishment from participation in such consumer-facing online or mobile platform or service unless such food service establishment pays a fee of any kind for any type of services.