

New York City Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? A new rule establishing that if, on notice of violation, the Department charges a business or individual with engaging in unlicensed activity, the party will be liable for the unlicensed activity for the period indicated in the notice unless it demonstrates that it did not in fact engage in the unlicensed activity.

When and where is the Hearing? The Department of Consumer Affairs will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 am on Monday, June 22nd. The hearing will be in the Department of Consumer Affairs hearing room at 66 John Street, 11th Floor, New York, NY 10038.

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

- **Website.** You can submit comments to the Department of Consumer Affairs through the New York City rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to Rulecomments@dca.nyc.gov.
- **Mail.** You can mail written comments to Mary Cooley, Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, New York, NY 10004.
- **Fax.** You can fax written comments to the Department of Consumer 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) 436-0392. You can also sign up in the hearing room before the hearing begins on June 22nd. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes. You must submit any written comments to the proposed rule on or before June 22nd.

Do you need assistance to participate in the Hearing? You must tell the Office of Legislative Affairs 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) 436-0392. You must tell us by June 17th.

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 Web site at <http://rules.cityofnewyork.us/>. A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Office of Legal Affairs.

What authorizes the Department of Consumer Affairs to make this rule? Sections 1043 and 2203(f) of the City Charter and Section 20-104 of Chapter 1 of Title 20 of the Administrative Code of the City of New York authorize the Commissioner of the Department of Consumer Affairs to make this proposed rule. This proposed rule was not included in regulatory agenda of the Department of Consumer Affairs for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find the rules of the Department of Consumer Affairs? The Department of Consumer Affairs' rules are located in Title 6 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department of Consumer Affairs 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(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Section 20-105 of the Administrative Code of the City of New York (“Administrative Code”) provides that it shall be unlawful for any person to engage in any trade, business or activity for which a license is required without such license. Section 20-105(b) of the Administrative Code provides that the Commissioner of the Department of Consumer Affairs (“the Department”) shall be authorized to impose fines, after notice and a hearing, upon any such person of \$100 per violation, per day for each and every day during which such person commits such violation.

The proposed rule is necessary to establish that if the Department, on notice of violation, charges a business or individual with engaging in unlicensed activity, there shall be a rebuttable presumption that the unlicensed activity continued every day, without interruption, from the first date of unlicensed activity identified by the Department in the notice through the date of the hearing. The first date of identified unlicensed activity may be the date of inspection; the date a business or individual entered a contract to conduct unlicensed business; the date a business or individual advertised or offered unlicensed services; or any other date on which activity occurred that demonstrates that unlicensed business took place.

In addition, if a decision or order that predates the hearing found that the business or individual engaged in unlicensed activity, or if the business or individual settled earlier charges of unlicensed activity, the proposed rule provides that it shall be presumed that the unlicensed activity continued from the date of the decision, order or settlement through the date of the hearing, unless the settlement specifically provides otherwise.

A business or individual may present credible evidence at the hearing to rebut the presumption of continued unlicensed activity, such as proof of obtaining a license or proof that the unlicensed activity ceased.

The proposed rule will effectuate the legislative intent behind imposing a fine of \$100 per day for unlicensed activity without requiring the Department to inspect a business or individual each and every day, which is impracticable.

“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.

New text is underlined; deleted material is in [brackets].

Proposed Rule

Chapter 1 of Title 6 of the Rules of the City of New York is amended by adding a new section 1-19 to read as follows:

§1-19 Presumption of Continued Unlicensed Activity.

(a) Unless otherwise specified in the notice, if the Department, on notice, charges a business or individual with engaging in activity without a license required under Chapter 2 of Title 20 of the New York City Administrative Code or under provisions of state law enforced by the Department, there shall be a rebuttable presumption that the unlicensed activity continued every day, without interruption, from the date specified by the Department in the notice as the first date of unlicensed activity through the hearing date.

(b) The first date of unlicensed activity specified by the Department in the notice may be the date of an inspection at which unlicensed activity is identified or any other date on which unlicensed activity first occurred, such as the date the business or individual entered into a contract to conduct business for which a license was required or the first date a business or individual advertised or offered services for which a license was required.

(c) Regardless of the date specified by the Department in the notice, if the Department presents at the hearing a copy of a decision or order from a prior proceeding finding that the business or individual engaged in the same unlicensed activity, or a copy of a settlement from a prior proceeding resolving a charge of the same unlicensed activity, there shall be a rebuttable presumption that the unlicensed activity continued every day, without interruption, from the date of the decision, order or settlement through the date of the hearing, unless the decision, order or settlement specifically provides otherwise.

(d) A party may present credible evidence at the hearing to rebut the presumption of continued unlicensed activity, such as written proof that the party obtained a license; receipts or other documentation indicating that merchandise was returned to distributors; written termination of leases or agreements; or photographs demonstrating the discontinuance of the unlicensed activity.

**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: Presumption of Continued Unlicensed Activity

REFERENCE NUMBER: 2015 RG 046

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 6, 2015

**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: Presumption of Continued Unlicensed Activity

REFERENCE NUMBER: DCA-26

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

[5/6/2015]
Date