



**DEPARTMENT OF HEALTH AND MENTAL HYGIENE
COMMISSIONER OF HEALTH AND MENTAL HYGIENE**

**NOTICE OF ADOPTION OF A NEW CHAPTER 13
IN TITLE 24 OF THE RULES OF THE CITY OF NEW YORK**

In compliance with §§1043(a) and 389(b) of the New York City Charter, a notice of public hearing and notice of intent to add a new Chapter 13 (“Cigarette and Tobacco Product Sales”) to Title 24 of the Rules of the City of New York were published in the City Record on March 28, 2014, and a public hearing was held April 28, 2014. No written comments were received and three individuals testified at the hearing. The proposed rule was not modified.

Statement of Basis and Purpose

Statutory authority

These amendments to Title 24 of the Rules of the City of New York are issued pursuant to §§556 and 1043 of the New York City Charter (“Charter”), and §§17-176.1, 17-706, and 17-709.1 of the Administrative Code of the City of New York (“Administrative Code”).

Pursuant to Section 556 of the Charter, the Department of Health and Mental Hygiene (the “Department” or “DOHMH”) has jurisdiction to regulate all matters affecting health in the City of New York. Section 1043 of the Charter gives the Department rulemaking powers. Chapter 1 and Chapter 7 of Title 17 of the Administrative Code authorize the Department to make rules with regard to the sale of cigarettes, tobacco products, and electronic cigarettes.

Basis and purpose of the rule

Tobacco is a leading cause of preventable premature death in the United States and the City of New York. Smoking-related illnesses cost New Yorkers billions of dollars annually in health care costs and lost productivity. There is strong evidence that people who begin smoking at an early age are more likely to develop a severe addiction to nicotine than those who start at a later age. Several studies also show that the availability of low-priced cigarettes and tobacco products increases demand for cigarettes and tobacco products and contributes to continued use, particularly among youth. Local Law 94 of 2013 (“Tobacco 21”) and Local Law 97 of 2013 (“Sensible Tobacco Enforcement”) aim to reduce tobacco use and protect public health by raising the legal minimum sales age for cigarettes, tobacco products, and electronic cigarettes, and prohibiting the redemption of price reduction instruments in the purchase of cigarettes and tobacco products.

On November 19, 2013, the Mayor signed into law Tobacco 21 and Sensible Tobacco Enforcement, amending sections 17-176, 17-702, 17-704, and 17-706, and adding sections 17-176.1 (Prohibition on the Sale of Discounted Cigarettes and Tobacco Products), 17-703.1 (Sign Required), 17-703.2 (Requirements for Retail Dealers Concerning Cigarette Tax), and 17-709.1 (Rules) to Chapter 7 of Title 17 of the Administrative Code. These laws amend the definitions of cigarette and tobacco product, and impose new licensing, sales, and signage requirements on cigarette and tobacco product retailers.

Local Law 94 raises the minimum sales age for cigarettes, tobacco products, and electronic cigarettes from eighteen to twenty-one, and requires retailers to post signage that informs consumers and establishments of this sales restriction. Local Law 97 prohibits the redemption of price reduction instruments (such as coupons) for cigarette or tobacco products and the sale of cigarettes or tobacco products below the listed price. In addition, Local Law 97 establishes a price floor (lowest price possible) for cigarettes and little cigars, imposes a packaging requirement on cigars priced at \$3 or less, and requires cigarette retailers to post a sign stating that all cigarette packages must bear valid New York State and New York City tax stamps.

These rules facilitate compliance with Chapter 7 by explaining the requirements Local Law 97 and Local Law 94 impose on retail dealers. Anyone required to comply with the requirements for cigarette and tobacco product sales should read these rules together with Chapter 7 of the Administrative Code.

The rules:

- Set forth the listed price requirements for cigarettes and other tobacco products;
- Provide the minimum sales age for cigarettes, tobacco products, electronic cigarettes, herbal cigarettes, pipes, and rolling papers; and
- Specify the format and content of the tax stamp and age restriction signs that all cigarette and tobacco product retailers are required to post under the new laws.

Changes made in response to comments

At the public hearing, the Bodega Association of the United States requested that the Department provide retailers with sufficient time to comply with the rules, educational materials, and the required age restriction and tax stamp signs.

A second person expressed his support for the rules.

No one requested any changes to the rules and none have been made.

The rule is as follows. Matter underlined is new.

“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. Title 24 of the Rules of the City of New York is amended by adding a new Chapter 13, Cigarette and Tobacco Product Sales, to read as follows:

CHAPTER 13

CIGARETTE AND TOBACCO PRODUCT SALES

§13-01. Scope and applicability.

§13-02. Prohibition on the sale of cigarettes or tobacco products for less than the listed price.

§13-03. Price floor for cigarettes and little cigars.

§13-04. Out-of-package sales prohibited

§13-05. Sale of cigarettes, tobacco products, or electronic cigarettes to minors and young adults prohibited.

§13-06. Signage.

§13-01. Scope and applicability.

This chapter applies to sales of cigarettes and tobacco products in the City of New York pursuant to section 17-176.1 and Chapter 7 of Title 17 of the Administrative Code of the City of New York (“Administrative Code”).

§13-02. Prohibition on the sale of cigarettes or tobacco products for less than the listed price.

(a) Pursuant to subdivision (a) of §17-176.1 of the Administrative Code, the listed price is the price listed for cigarettes or tobacco products on their packages or on any related shelving, posting, advertising or display at the place where the cigarettes or tobacco products are sold or offered for sale, including all applicable taxes.

(b) “All applicable taxes” includes excise taxes and sales taxes.

(c) For cigarettes and tobacco products subject to §20-708 of the Administrative Code, the listed price must specify the price exclusive of sales tax and the amount of sales tax to be charged.

(d) Paragraph four of subdivision (b) and paragraph four of subdivision (c) of §17-176.1 of the Administrative Code prohibit the sale of cigarettes or tobacco products to a consumer for less than the listed price, but do not prohibit a person from:

- (i) changing the listed price; or
- (ii) informing customers that the listed price has changed.

§13-03. Price floor for cigarettes and little cigars.

Pursuant to subdivision (d) of §17-176.1 of the Administrative Code, the price floor for a package of cigarettes and little cigars is \$10.50 including sales tax and \$9.65 excluding sales tax.

§13-04. Out-of-package sales prohibited.

Pursuant to subdivision (b) of §17-704 of the Administrative Code, retail dealers are prohibited from selling a cigar for \$3.00 or less including sales tax, or \$2.76 or less excluding sales tax, unless it is sold in a package of at least four cigars.

§13-05. Sale of cigarettes, tobacco products, or electronic cigarettes to minors and young adults prohibited.

(a) Pursuant to subdivision (a) of §17-706 of the Administrative Code, any individual purchasing cigarettes, tobacco products, or electronic cigarettes must be at least twenty-one years of age.

(b) Pursuant to subdivision (b) of §17-706 and §17-714 of the Administrative Code, any individual purchasing non-tobacco shisha, herbal cigarettes, pipes, or rolling papers must be at least eighteen years of age.

§13-06. Signage.

(a) *Age restriction sign.* Pursuant to subdivision (c) of §17-706 of the Administrative Code, any person operating a place of business where cigarettes, tobacco products, electronic cigarettes, herbal cigarettes, non-tobacco shisha, pipes, or rolling papers are sold or offered for sale must post in a conspicuous place a sign, printed on a white card in bold red letters that are at least one-half inch in height and capitalized as indicated below, which states:

**“PROHIBITED for SALE to persons UNDER 21:
Cigarettes, cigars, chewing tobacco, powdered tobacco,
other tobacco products, or electronic cigarettes,**

and

**“PROHIBITED for SALE to persons UNDER 18:
Non-tobacco shisha, herbal cigarettes,
pipes, rolling papers, or smoking paraphernalia”**

(b) Cigarette tax stamp sign. Pursuant to §17-703.1 of the Administrative Code, a retail dealer must post, in a conspicuous place at the point of sale of cigarettes or at the place where cigarettes are displayed or offered for sale, a sign that complies with the requirements of this subdivision. The sign must be printed on a white card in bold red letters that are at least one-half inch in height and capitalized as indicated below. The sign must include images of the current New York City and New York State tax stamp and a pack of cigarettes with a New York City and New York State tax stamp on the bottom of the pack, and must state:

**“ALL CIGARETTES MUST HAVE
A NEW YORK CITY AND
NEW YORK STATE TAX STAMP”**

The sign must also include the contact number for the Sheriff’s hotline for reporting potential violations, available on the New York City Department of Consumer Affairs website.

§2. The Table of Contents in Title 24 of the Rules of the City of New York is amended to read as follows:

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| | | TITLE 24 |
| | | DEPARTMENT OF HEALTH AND MENTAL HYGIENE |
| Chapter 1 | Posting Regulations for Vendors of Alcoholic Beverages | |
| | | * * * |
| 12 | Window Guards | |
| Appendix A | Lease Notice to Tenant | |

Appendix B Notice to Tenant or Occupant [English]

Appendix B Notice to Tenant or Occupant [Spanish]

13 Cigarette and Tobacco Product Sales

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