



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Department of Health and Mental Hygiene (“Department”) is proposing to add a new chapter to the Department’s rules to clarify the tobacco sales requirements in Local Laws 94 and 97 of 2013, also known as the Tobacco 21 and Sensible Tobacco Enforcement laws, respectively.

When and where is the Hearing? The New York City Department of Health and Mental Hygiene will hold a public hearing on the proposed rule. The public hearing will take place at 10:00AM until 12:00PM on April 28, 2014. The hearing will be at
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th Floor, Room 14-45
Long Island City, NY 11101-4132

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

- **Website.** You can submit comments to the Department through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to resolutioncomments@health.nyc.gov.
- **Mail.** You can mail written comments to the NYC Department of Health and Mental Hygiene, Office of General Counsel, Gotham Center, 42-09 28th Street, 14th Floor, CN 31, Long Island City, New York 11101.
- **Fax.** You can fax written comments to the NYC Department of Health and Mental Hygiene, Office of General Counsel, at (347) 396-6088.
- **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 Svetlana Burdeynik at (347) 396-6078/6116. You can also sign up in the hearing room before the hearing begins on April 28, 2014. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by or before 5:00 p.m. on April 28, 2014.

Do you need assistance to participate in the Hearing? You must tell the Office of General Counsel 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 (347) 396-6078. You must tell us by April 14, 2014.

Can I review the comments made on the proposed rules? You can review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by DOHMH will be made available to the public within a reasonable period of time by the DOHMH Office of the General Counsel.

What authorizes the Department to make this rule? Sections 556 and 1043 of the New York City Charter (“Charter”) and sections 17-176.1, 17-706 and 17-709.1 of the New York City Administrative Code (“Administrative Code”) authorize the Department to make this proposed rule. This proposed rule was not included in the Department’s regulatory agenda for this Fiscal Year because Local Laws 94 and 97 were not passed until November 2013.

Where can I find the Commission’s rules? The Department’s rules are in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department must satisfy the requirements of section 1043 of the Charter when creating or changing rules. This notice is made according to the requirements of section 1043(b) of the Charter.

Statement of Basis and Purpose of Proposed 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 amendments and additions to Chapter 7 modify 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 retail dealer requirements in Local Law 97 and Local Law 94. 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 proposed 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.

The Department of Health’s authority for these rules is found in section 1043 of the New York City Charter and sections 17-176.1, 17-706, and 17-709.1 of the New York City Administrative Code.

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. 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 does 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 list of Chapter headings in Title 24 of the Rules of the City of New York is amended to insert the title of a new Chapter 13, to read as follows:

TITLE 24

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Chapter 1 Posting Regulations for Vendors of Alcoholic Beverages

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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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**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 Tobacco Sales Requirements

REFERENCE NUMBER: 2014 RG 015

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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: March 25, 2014

**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: Amendment of Tobacco Sales Requirements

REFERENCE NUMBER: DOHMH-41

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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 a cure period would run counter to the proposed rule's goal of preventing risks to public health.

/s/ Ruby B. Choi
Mayor's Office of Operations

March 26, 2014
Date