



## NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

### **Notice of Adoption of Amendments to Chapter 13 of Title 24 of the Rules of the City of New York**

In accordance with Section 1043(b) of the New York City Charter (the “Charter”) and pursuant to the authority granted to the Department of Health and Mental Hygiene (the “Department”) by Section 556 of the Charter, a notice of intention to amend Title 24 of the Rules of the City of New York was published in the City Record on July 3, 2018, and a public hearing was held on August 2, 2018. The Department now adopts the following amendments.

#### *Statement of Basis and Purpose*

Tobacco use is a leading cause of premature, preventable death in the City, killing an estimated 12,000 people annually. All tobacco products — including cigars, smokeless tobacco, tobacco containing shisha and others — are inherently dangerous, and contain nicotine, which is addictive. Despite the City’s progress in reducing cigarette smoking among youth and adults, an increasing percentage of youth are using other tobacco products (OTP) like cigars, waterpipes (hookahs), and smokeless tobacco.

According to the World Health Organization, raising prices through tobacco taxes is the single most effective way to decrease tobacco use. Taxation reduces tobacco use by reducing youth initiation, encouraging tobacco users to quit, and reducing consumption among those who do not quit. Similarly, increased minimum prices for tobacco products can also decrease tobacco consumption. Given relatively high levels of taxation on cigarettes at the federal, state, and local levels, OTP are generally less expensive than cigarettes, increasing their attractiveness as cheaper alternatives. In 2017, Local Law 145 was enacted to reduce the prevalence of OTP use, particularly among youth, utilizing two strategies: first, it establishes price floors for OTP and second, it imposes taxes on OTP.

Local Law 145 establishes minimum package sizes for cigarettes, tobacco products and non-tobacco shisha that complement the price floors. In contrast to cigarettes, which are required to be packaged and sold in packages of 20, the OTP regulated by Local Law 145 are not packaged or sold in a standardized manner, with the exception of little cigars which are sold and packaged like cigarettes. When OTP is offered for sale in relatively small, inexpensive quantities, it may facilitate experimentation with tobacco by non-tobacco users, potentially contributing to addiction, and help tobacco users to sustain their addiction at little cost. To address this, Local Law 145 prohibits retail dealers from selling little cigars, snus, shisha and non-tobacco shisha, and loose tobacco unless such products are sold in the prescribed package size.

To bring the Department's rules into agreement with Local Law 145, two sections of Chapter 13 of Title 24 of the Rules of the City of New York are being repealed and readopted. Specifically, section 13-02, which prohibits the sale of cigarettes or the sale of tobacco products for less than the listed price, is repealed and readopted to add definitions for terms used in the rule that are consistent with those in Local Law 145. Section 13-03 is repealed and readopted to reflect the price floors required by Local Law 145 for OTP products in a range of quantities to account for the variation in the packaging and quantity of the products sold.

In addition, the Department is repealing section 13-04 of chapter 13, which prohibited retail dealers from selling cigars unless they were sold in a package of at least four cigars, because Local Law 145 eliminated this requirement and replaced it with a prohibition on the sale of any cigarette or tobacco product outside of the package provided by the manufacturer. The Department is also repealing section 13-05 of chapter 13, which prohibits the sale of cigarettes and tobacco products to persons less than twenty-one years of age, because the rule does not elaborate on the prohibition imposed by the Administrative Code and, since the Department of Consumer Affairs (DCA) enforces this prohibition, there is no need for it to be repeated in the rules of the Department.

The amendment is as follows:

"Must" denotes mandatory requirements unless otherwise specified or unless the context clearly indicates otherwise.

New material is underlined. [Deleted material is in brackets.]

**Section 1.** Section 13-02 of Chapter 13 of Title 24 of the Rules of the City of New York, regarding the sale of cigarettes or tobacco products for less than the listed price, is REPEALED, and a new section 13-02 is added to read as follows:

**§ 13-02 Definitions.**

(a) "Cigar," "little cigar," "loose tobacco," "non-tobacco shisha," "shisha," "smokeless tobacco," "snus," and "tobacco product" are defined in the same manner as those terms are defined in section 17-176.1 of the Administrative Code.

(b) "Price floor" means the price floor described in subdivision (d) of section 17-176.1 of the Administrative Code.

**Section 2.** Section 13-03 of Chapter 13 of Title 24 of the Rules of the City of New York, regarding price floor for cigarettes and little cigars, is REPEALED, and a new section 13-03 is added to read as follows:

**§ 13-03 Price floor for other tobacco products.**

(a) No person may sell or offer for sale to a consumer a package of 20 little cigars, for less than the little cigar price floor of \$10.95, excluding OTP tax and sales tax.

(b) No person may sell or offer for sale to a consumer a package of cigars for less than the cigar price floor, excluding OTP tax and sales tax.

(1) The cigar price floor is \$8.00 for the first cigar, plus \$1.75 for each additional cigar.

(2) The table below shows the price floors for some cigar package sizes. Price floors for package sizes not listed below must be calculated according to paragraph one of this subdivision.

<b><u>Cigar Pack Size</u></b>	<b><u>Price Floor</u></b>
<u>Single cigar</u>	<u>\$8.00</u>
<u>2-pack</u>	<u>\$9.75</u>
<u>3-pack</u>	<u>\$11.50</u>
<u>4-pack</u>	<u>\$13.25</u>
<u>5-pack</u>	<u>\$15.00</u>
<u>8-pack</u>	<u>\$20.25</u>
<u>10-pack</u>	<u>\$23.75</u>
<u>20-pack</u>	<u>\$41.25</u>

(c) No person may sell or offer for sale to a consumer a package of smokeless tobacco for less than the smokeless tobacco price floor, excluding OTP tax and sales tax.

(1) The smokeless tobacco price floor is \$8.00 for the first 1.2 ounces, plus \$2.00 for each additional 0.3 ounces or any fraction thereof.

(2) The table below shows the price floors for some smokeless tobacco package sizes. Price floors for package sizes not listed below must be calculated according to paragraph one of this subdivision.

<b><u>Smokeless Tobacco Pack Size</u></b>	<b><u>Price Floor</u></b>
<u>1.2 ounces (minimum size)</u>	<u>\$8.00</u>
<u>Greater than 1.2 ounces but less than or equal to 1.5 ounces</u>	<u>\$10.00</u>
<u>Greater than 1.5 ounces but less than or equal to 1.8 ounces</u>	<u>\$12.00</u>
<u>Greater than 1.8 ounces but less than or equal to 2.1 ounces</u>	<u>\$14.00</u>
<u>Greater than 2.1 ounces but less than or equal to 2.4 ounces</u>	<u>\$16.00</u>
<u>Greater than 2.4 ounces but less than or equal to 2.7 ounces</u>	<u>\$18.00</u>
<u>Greater than 2.7 ounces but less than or equal to 3.0 ounces</u>	<u>\$20.00</u>

(d) No person may sell or offer for sale to a consumer a package of snus for less than the snus price floor, excluding OTP tax and sales tax.

(1) The snus price floor is \$8.00 for the first 0.32 ounces, plus \$2.00 for each additional 0.08 ounces or any fraction thereof.

(2) The below table shows the price floors, for some snus package sizes. Price floors for package sizes not listed below shall be calculated in accordance with paragraph one of this subdivision.

<u>Snus Pack Size</u>	<u>Price Floor</u>
<u>0.32 ounces (minimum size)</u>	<u>\$8.00</u>
<u>Greater than 0.32 ounces but less than or equal to 0.40 ounces</u>	<u>\$10.00</u>
<u>Greater than 0.40 ounces but less than or equal to 0.48 ounces</u>	<u>\$12.00</u>
<u>Greater than 0.48 ounces but less than or equal to 0.56 ounces</u>	<u>\$14.00</u>
<u>Greater than 0.56 ounces but less than or equal to 0.64 ounces</u>	<u>\$16.00</u>

(e) No person may sell or offer for sale to a consumer a package of shisha for less than the shisha price floor, excluding OTP tax and sales tax.

(1) The price floor for a package of shisha is \$17.00 for 3.5 ounces, plus \$3.40 for each 0.7 ounces or any fraction thereof in excess of 3.5 ounces.

(2) The table below shows the price floors for some shisha package sizes. Price floors shall be calculated in accordance with paragraph one of this subdivision.

<u>Shisha Container Size</u>	<u>Price Floor</u>
<u>3.5 ounces (minimum size)</u>	<u>\$17.00</u>
<u>Greater than 3.5 ounces but less than or equal to 4.2 ounces</u>	<u>\$20.40</u>
<u>Greater than 4.2 ounces but less than or equal to 4.9 ounces</u>	<u>\$23.80</u>
<u>Greater than 4.9 ounces but less than or equal to 5.6 ounces</u>	<u>\$27.20</u>
<u>Greater than 5.6 ounces but less than or equal to 6.3 ounces</u>	<u>\$30.60</u>
<u>Greater than 6.3 ounces but less than or equal to 7 ounces</u>	<u>\$34.00</u>

<u>Greater than 7 ounces but less than or equal to 7.7 ounces</u>	<u>\$37.40</u>
<u>Greater than 17.7 ounces but less than or equal to 8.4 ounces</u>	<u>\$40.80</u>
<u>Greater than 8.4 ounces but less than or equal to 9.1</u>	<u>\$44.20</u>
<u>35 ounces</u>	<u>\$170.00</u>

(f) No person may sell or offer for sale to a consumer a package of non-tobacco shisha for less than the non-tobacco shisha price floor. The non-tobacco shisha price floor is the same as the shisha price floor.

(g) No person may sell or offer for sale to a consumer a package of loose tobacco for less than the loose tobacco price floor, excluding OTP tax and sales tax.

(1) The price floor for a package of loose tobacco is \$2.55 for 1.5 ounces, plus \$0.51 for each 0.3 ounces or any fraction thereof in excess of 1.5 ounces.

(2) The table below shows the price floors for some loose tobacco package sizes. Price floors for package sizes not listed below must be calculated according to the paragraph one of this subdivision.

<b><u>Loose Tobacco Size</u></b>	<b><u>Price Floor</u></b>
<u>1.5 ounces (minimum size)</u>	<u>\$2.55</u>
<u>Greater than 1.5 ounces but less than or equal to 1.8 ounces</u>	<u>\$3.06</u>
<u>Greater than 1.8 ounces but less than or equal to 2.1 ounces</u>	<u>\$3.57</u>
<u>Greater than 2.1 ounces but less than or equal to 2.4 ounces</u>	<u>\$4.08</u>
<u>Greater than 2.4 ounces but less than or equal to 2.7 ounces</u>	<u>\$4.59</u>
<u>Greater than 2.7 ounces but less than or equal to 3 ounces</u>	<u>\$5.10</u>

<u>Greater than 3 ounces but less than or equal to 3.3 ounces</u>	<u>\$5.61</u>
<u>Greater than 3.3 ounces but less than or equal to 3.6 ounces</u>	<u>\$6.12</u>
<u>Greater than 3.6 ounces but less than or equal to 3.9 ounces</u>	<u>\$6.63</u>
<u>Greater than 3.9 ounces but less than or equal to 4.2 ounces</u>	<u>\$7.14</u>
<u>Greater than 4.2 ounces but less than or equal to 4.5 ounces</u>	<u>\$7.65</u>
<u>Greater than 4.5 ounces but less than or equal to 4.8 ounces</u>	<u>\$8.16</u>
<u>Greater than 4.8 ounces but less than or equal to 5.1 ounces</u>	<u>\$8.67</u>
<u>Greater than 5.1 ounces but less than or equal to 5.4 ounces</u>	<u>\$9.18</u>
<u>Greater than 5.4 ounces but less than or equal to 5.7 ounces</u>	<u>\$9.69</u>
<u>Greater than 5.7 ounces but less than or equal to 6 ounces</u>	<u>\$10.20</u>
<u>Greater than 6 ounces but less than or equal to 6.3 ounces</u>	<u>\$10.71</u>
<u>Greater than 6.3 ounces but less than or equal to 6.6 ounces</u>	<u>\$11.22</u>
<u>Greater than 6.6 ounces but less than or equal to 6.9 ounces</u>	<u>\$11.73</u>
<u>Greater than 6.9 ounces but less than or equal to 7.2 ounces</u>	<u>\$12.24</u>
<u>Greater than 7.2 ounces but less than or equal to 7.5 ounces</u>	<u>\$12.75</u>
<u>Greater than 7.5 ounces but less than or equal to 7.8 ounces</u>	<u>\$13.26</u>
<u>Greater than 7.8 ounces but less than or equal to 8.1 ounces</u>	<u>\$13.77</u>
<u>Greater than 8.1 ounces but less than or equal to 8.4 ounces</u>	<u>\$14.28</u>

<u>Greater than 8.4 ounces but less than or equal to 8.7 ounces</u>	<u>\$14.79</u>
<u>Greater than 8.7 ounces but less than or equal to 9 ounces</u>	<u>\$15.30</u>
<u>Greater than 9 ounces but less than or equal to 9.3 ounces</u>	<u>\$15.81</u>
<u>Greater than 9.3 ounces but less than or equal to 9.6 ounces</u>	<u>\$16.32</u>
<u>Greater than 9.6 ounces but less than or equal to 9.9 ounces</u>	<u>\$16.83</u>
<u>Greater than 9.9 ounces but less than or equal to 10.2 ounces</u>	<u>\$17.34</u>

**Section 3.** Section 13-04 of Chapter 13 of Title 24 of the Rules of the City of New York, regarding the out-of-package sales of cigars, is REPEALED.

**Section 4.** Section 13-05 of Chapter 13 of Title 24 of the Rules of the City of New York, regarding the sale of tobacco products and accessories to minors and young adults, is REPEALED.

**Section 5.** Section 13-06 of Chapter 13 of Title 24 of the Rules of the City of New York, regarding signage is renumbered as Section 13-04.