



**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” or “DOHMH”) is proposing to amend Chapter 13 of Title 24 of the Rules of the City of New York to clarify requirements related to Local Law 145 of 2017, which imposes a tax on tobacco products other than cigarettes (OTP), creates minimum prices for cigarettes and OTP, and sets minimum pack sizes for various OTP.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place from 9:45AM until 11:45AM on August 2, 2018. The hearing will be at
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, Room 8-25
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 online to the Department through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You may email comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail comments to:

New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN 31
Long Island City, NY 11101-4132

- **Fax.** You may fax comments to the Department at 347-396-6087.
- **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. You can also sign up in the hearing room before the hearing begins on August 2, 2018. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received before August 2, 2018, at 5:00 pm.

What if I 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. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by July 19, 2018.

This location is wheelchair-accessible.

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 website 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 for review by the public at the Department's Office of the Secretary.

What authorizes the Department to make this amendment? Section 389(b) of the New York City Charter provides that "heads of mayoral agencies shall have the power to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law." Charter Section 1043(a) similarly provides that each "agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law." Administrative Code section 17-709.1 authorizes the Department to promulgate rules as may be necessary to implement the Tobacco Product Regulation Act. Section 23 of Local Law 145 authorizes the Department of Finance, the Department of Health and Mental Hygiene, and the Department of Consumer Affairs to "take such measures as are necessary for the implementation of this local law, including the promulgation of rules" before its effective date.

Where can I find the Department rules and the Health Code? The Department's rules and the Health Code are located in Title 24 of the Rules of the City of New York.

What laws govern the rulemaking process? The Department must satisfy the requirements of Section 1043 of the Charter when adding or amending rules. This notice is made according to the requirements of Section 1043(b) of the Charter. These changes were not included in the Department's legislative agenda because they were not contemplated at that time.

Statement of Basis and Purpose of Proposed Rule

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. The proposed rules address the OTP 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. The Department is proposing these rules to publicize the price floors of the OTP products for a range of quantities to account for the variation in the packaging and quantity of the products sold.

Local Law 145 sets minimum pack sizes for OTP, complementing the price floors. 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.

The proposed amendment is as follows:

“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 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 the paragraph one of this subdivision.

<u>Cigar Pack Size</u>	<u>Price Floor</u>
<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 the paragraph one of this subdivision.

<u>Smokeless Tobacco Pack Size</u>	<u>Price Floor</u>
<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 7.7 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 which 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.

<u>Loose Tobacco Size</u>	<u>Price Floor</u>
1.5 ounces (minimum size)	<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.

**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: Minimum Prices of Other Tobacco Products

REFERENCE NUMBER: DOHMH-95

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) A cure period is not provided because it would be impracticable under the circumstances and because the violations pose significant risks to public health.

/s/ Francisco X. Navarro
Mayor's Office of Operations

June 26, 2018
Date

**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: Minimum Prices of Other Tobacco Products

REFERENCE NUMBER: 2018 RG 079

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: June 26, 2018