

New York City Department of Consumer and Worker Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to add rules to clarify the licensing requirement for third-party food delivery services.

When and where is the hearing? DCWP will hold a public hearing on the proposed rule. The public hearing will take place at **11:00AM on February 5, 2024**. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial +1 646-893-4323.
- To participate in the public hearing via videoconference, please follow the online link:
<http://tinyurl.com/DCWPRules12624>
 - Meeting ID: 245 841 178 285
 - Passcode: 60hyBN

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

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dcwp.nyc.gov.
- **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) 436-0396. You can also sign up on the phone or video conference before the hearing begins at 11:00AM on February 5, 2024. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before February 5, 2024.

What if I need assistance to participate in the hearing? You must tell DCWP’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may tell us by telephone at (212) 436-0396 or by email at Rulecomments@dcwp.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by January 29, 2024.

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, all comments received by DCWP on the proposed rule will be made available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCWP to make this rule? Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules. This proposed rule was not included in DCWP’s regulatory agenda for this fiscal year because it was not contemplated when the Department published the agenda.

Where can I find DCWP’s rules? The Department’s rules are in Title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCWP 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 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to add rules to clarify the licensing requirement for third-party food delivery services.

“Third-party food delivery service” is defined in the Administrative Code as “any website, mobile application or other internet service that: (i) offers or arranges for the sale of food and beverages prepared by, and the same-day delivery or same-day pickup of food and beverages from, a food service establishment; and (ii) that is owned and operated by a person other than the person who owns such food service establishment.” New York City Administrative Code Section 20-563.

The Department has reviewed responses to requests for information from several companies that provide different types of online support to restaurants. Based solely on the Administrative Code definition of “third-party food delivery service”, it is not always clear what types of technology companies are required to be licensed. As part of the Department’s first year of regulating this industry, it has also encountered confusion among companies concerning the scope of the statutory definition.

This proposed new rule would provide clarity on when a business would need to be licensed as a third-party food delivery service. Specifically, it defines when a company “offers or arranges” for the delivery or pickup of food from a food service establishment if it operates a consumer-facing platform or service. Under this new language, which is not exhaustive, a person or business would need a license if it operates a consumer-facing online or mobile platform and excludes a restaurant from participating in such platform unless the restaurant pays a fee.

Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules.

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.

Proposed Rule Amendments

Section 1. Section 2-461 of Subchapter KK of Chapter 2 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 2-461 License Application Requirements.

- (a) Third-party food delivery service licenses expire on August 31st in odd numbered years.
- (b) An application for a third-party food delivery service license must include the Department’s basic license application, the third-party food delivery service license application supplement, and any other documents and information requested by the Department.
- (c) Pursuant to § 20-113 of the Administrative Code, a separate third-party food delivery service license is required for each trade name that a person uses to conduct the business of a third-party food delivery service. A third-party food delivery service license applicant must submit a separate license application for each trade name it will use to conduct the business of a third-party food delivery service.

(d) A licensee or applicant must notify the Department in writing of any change to the list of websites, mobile applications, third-party food delivery platforms, uniform resource locators, or operating systems provided in the licensee's or applicant's basic license application or third-party food delivery service license application supplement within 10 days of the change.

(e) "Offers or arranges", as used in the definition of "third-party food delivery service" in § 20-563 of the Administrative Code, includes, but is not limited to, the operation of a consumer-facing online or mobile platform or service on which the consumer can order food and beverages without leaving such platform or service, including when such platform or service uses an application programming interface with any food service establishment, where such online or mobile platform or service excludes any food service establishment from participation in such consumer-facing online or mobile platform or service unless such food service establishment pays a fee of any kind for any type of services.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
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212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment to Rules Relating to Licensing Requirements for Third Party Food Delivery Services

REFERENCE NUMBER: 2023 RG 027

RULEMAKING AGENCY: Department of Consumer and Worker Protection

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
Senior Counsel

Date: December 20, 2023

**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 to Rules Relating to Licensing Requirements for Third Party Food Delivery Services

REFERENCE NUMBER: DCWP-34

RULEMAKING AGENCY: Department of Consumer and Workforce Protection

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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

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

December 5, 2023
Date