



**NEW YORK CITY  
DEPARTMENT OF HEALTH AND MENTAL HYGIENE**

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

In accordance with section 1043(b) of the New York City Charter, a notice of intention to amend Chapter 28 of Title 24 of the Rules of the City of New York, to prohibit the sale of flavored tobacco products, electronic cigarettes and flavored e-liquids to entities located outside of the City of New York, was published in the City Record on April 5, 2024. A public hearing was held on May 6, 2024. No one testified at the hearing, and no written comments were received. Accordingly, the Department did not substantively amend the proposed rule and now adopts such rule as indicated below.

**Statement of Basis and Purpose**

Section 17-715 of the Administrative Code of the City of New York (the “Code”) prohibits the sale of flavored tobacco products except in tobacco bars and altogether prohibits the sale of flavored electronic cigarettes and flavored e-liquids. Such section does not identify any exception to the prohibition of sales other than the sale of flavored tobacco products in tobacco bars. However, when the Department originally promulgated section 28-02 in Title 24 of the Rules of the City of New York, it adopted a narrow reading of section 17-715 that excepted sales of such products to entities located outside of the City of New York (the “City”), in addition to excepting sales of flavored tobacco products in tobacco bars, the latter of which is consistent with section 17-715.

The Department is eliminating the exception that allows sales of flavored tobacco products, electronic cigarettes and e-liquids to entities located outside of the City. The Department’s prohibition of such outside sales is motivated by several factors. First, the U.S. Food and Drug Administration (FDA) made it unlawful in 2016 to market tobacco products not authorized by the FDA, and, in 2022, made it unlawful to market non-tobacco nicotine products not authorized by the FDA. None of the flavored products covered by section 17-715 of the Code are authorized by the FDA, making the marketing of such products a violation of federal law. Second, the exception to the prohibition on sales to entities located outside of the City makes it easy for wholesalers located in the City to evade liability for illegal sales made to entities located in the City by wrongfully claiming that the sale of flavored tobacco products, electronic cigarettes and e-liquids is meant for out-of-City buyers. Finally, the adopted interpretation of section 17-715 better conforms to the letter and intent of such law, which makes no explicit exception for outside sales.

**Statutory Authority**

These rules are promulgated pursuant to the authority of DOHMH established in Charter sections 389, 556, and 1043.

The adopted rules are as follows.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 28-02 of Title 24 of the Rules of the City of New York is amended to read as follows:

**§ 28-02 Sale or Offer for Sale of Flavored Tobacco Products, Flavored Electronic Cigarettes, and Flavored E-Liquids Restricted.**

(a) Only the following entities may sell or offer for sale flavored tobacco products:

(1) Tobacco bars; and

(2) Tobacco wholesalers, but only where the sale or offer of sale is made to a tobacco bar [or to an entity located outside the City of New York].

(b) [Flavored] The sale of flavored electronic cigarettes and flavored e-liquids [may only be sold or offered for sale by wholesalers where the sale or offer of sale is made to an entity located outside the City of New York] is prohibited.

(c) Tobacco products that do not impart a characterizing flavor other than menthol, mint, and wintergreen are not subject to the restriction on sale set forth in § 17-715 of the Administrative Code or these rules, and may lawfully be sold by any retail dealer or wholesale dealer licensed to sell tobacco products, regardless of whether such sale occurs to or in a tobacco bar.