

New York City Department of Consumer Affairs

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer Affairs (“DCA” or “Department”) is proposing to add new rules to implement Local Laws 197 and 198 of 2017 relating to second-hand automobile dealers, including financing disclosures, contract cancellation options, a consumer bill of rights, and recordkeeping.

When and where is the hearing? DCA will hold a public hearing on the proposed rule. The public hearing will take place at 10:00 AM on Wednesday, February 28, 2018. The hearing will be in the DCA hearing room at 42 Broadway, 5th Floor, New York, NY 10004.

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

- **Website.** You can submit comments to DCA through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dca.nyc.gov.
- **Mail.** You can mail comments to Casey Adams, Deputy Director of City Legislative Affairs, New York City Department of Consumer Affairs, 42 Broadway, 8th Floor, New York, NY 10004.
- **Fax.** You can fax written comments to the Department of Consumer Affairs, (646) 500-5962.
- **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) 436-0095. You can also sign up in the hearing room before the hearing begins at 10:00 AM on Wednesday, February 28, 2018. 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 5:00 PM on Wednesday, February 28, 2018.

What if I need assistance to participate in the hearing? You must tell the 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 can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0095. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00 PM on Monday, February 26, 2018.

This location has the following accessibility option(s) available: 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, all comments received by DCA 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 DCA to make this rule? Sections 1043 and 2203(f) of the New York City Charter, and Sections 20-104(e) and 20-275.1 of the New York City Administrative Code authorize the Department of Consumer Affairs to make this proposed rule. This proposed rule was not included in the Department of Consumer Affairs’ regulatory agenda for this Fiscal Year because it was not contemplated when the Department published the agenda.

Where can I find DCA’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? DCA 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

DCA is proposing to add new rules to implement Local Laws 197 and 198 of 2017 relating to second-hand automobile dealers. Specifically, the proposed new rules would:

- require dealers to provide financing disclosures to consumers;
- clarify the automobile contract cancellation options that dealers offer to consumers;
- create a consumer bill of rights that dealers must display; and
- clarify requirements related to record-keeping by dealers.

DCA’s authority for these rules is found in Sections 1043 and 2203(f) of the New York City Charter and Sections 20-104(e) and 20-275.1 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.

Proposed Rules

Subchapter K of Chapter 2 of Title 6 of the Rules of the City of New York is amended by adding new Sections 2-106 through 2-109 to read as follows:

2-106 Financing Disclosures.

(a) To comply with Section 20-268.1(e)(2) of the Administrative Code, each second-hand automobile dealer must provide to each consumer the financing disclosure shown below on a paper no less than 8.5 inches by 11 inches in dimension in the language in which the sales or finance contract was negotiated, provided the commissioner has made such disclosure available in such language.

FINANCING DISCLOSURE – SALE OF USED CAR			
[NAME OF LICENSEE] [ADDRESS OF LICENSEE] • [CITY, STATE, ZIP CODE]		DCA LICENSE # _____ [LICENSEE PHONE NUMBER] [LICENSEE WEBSITE]	
Date	<hr/>	Automobile Year	<hr/>
		Make and Model	<hr/>
Buyer (Name and Address)	<hr/> <hr/> <hr/>	Vehicle Identification Number (VIN)	<hr/>
		Selected Finance Company	<hr/>
SALE TERMS		FINANCING TERMS	
Automobile Cash Price <i>without</i> Add-on Products and Services		Total Sale Price <i>without</i> Add-ons <i>after</i> Financing Charges	

Sales Tax		Number of Payments	
Down Payment <i>(if applicable)</i>		Annual Percentage Rate (APR)	
Trade-In Amount <i>(if applicable)</i>		Lowest APR offered to buyer by any finance company for loan with same term and down payment*	
Total Registration and Other Fees		APR offered to buyer by selected finance company	
Total Cash Price without Add-on Products and Services		Monthly Payment without Add-on Products and Services	

*Many factors impact the financing terms you are offered. Please ask your dealer for more information about what financing product is best for you.

ADD-ON PRODUCTS OR SERVICES

Add-on Product or Service Selected <i>(If no add-on products or services selected, write N/A below.)</i>	Cash Price of Add-on*	Automobile Cash Price with Selected Add-on*	Monthly Payment with Selected Add-on* and Financing Charges
TOTAL PRICE OF AUTOMOBILE WITH ALL SELECTED ADD-ONS*			

*Includes down payment and trade-in amount, if applicable, and sales tax.

CONTRACT ASSIGNMENT DISCLOSURE: You must sign a financing contract, known as a Retail Installment Contract, with the dealer. After you sign the contract, the dealer may transfer the contract to another party. That party has the right to receive payments from you under the contract. The dealer must notify you about a transfer and the party to whom you owe payment immediately after the transfer occurs.

CONFIRM RECEIPT

Applicant Signature

Date

Co-Applicant Signature

Date

By signing, you are only confirming that you received this form. You are not purchasing the automobile or accepting financing because you have signed or received this form.

(b) To comply with Section 20-268.1(e)(4) of the Administrative Code, a second-hand automobile dealer must retain a copy of each financing disclosure shown in subdivision (a), along with a written acknowledgement that the consumer received the disclosure, for a period of no less than 6 years. The written acknowledgement requirement is satisfied by obtaining the consumer's written signature or initials on the disclosure document.

(c) It is a violation of Section 20-268.1(f) of the Administrative Code for a second-hand automobile dealer to attempt to have a consumer waive any of the protections set forth in Section 20-268.1. Each attempt shall constitute a separate and independent violation.

(d) It is a violation of Section 20-268.3 of the Administrative Code for a second-hand automobile dealer to provide inaccurate translations of documents to a consumer. Each inaccurate document provided to a consumer shall constitute a separate and independent violation.

2-107 Automobile Contract Cancellation Option.

(a) To comply with Section 20-268.2(a) of the Administrative Code, each second-hand automobile dealer must provide to each consumer the automobile contract cancellation option form shown below on a paper no less than 8.5 inches by 14 inches in dimension, printed in color, in the language in which the sales or finance contract was negotiated, provided the commissioner has made the form available in such language.

NYC USED CAR CONTRACT CANCELLATION OPTION

Buying a used car can be one of the largest financial commitments you make. Under NYC law, dealers must give you this contract cancellation option, which allows you to cancel the contract within two (2) business days. This option gives you time to review the contract away from the dealership. Read the Terms and Conditions on the front and back of this form. This contract cancellation option must be in the language in which you negotiated the contract.

BUYER'S NAME AND ADDRESS (Reference to "Buyer" or "You")		CO-BUYER'S NAME AND ADDRESS (Reference to "Buyer" or "You")	
USED CAR DEALER'S NAME AND ADDRESS (Reference to "We" or "Us")		DCA LICENSE NUMBER	
AUTOMOBILE DESCRIPTION (Reference to "Automobile")			
YEAR:	MAKE:	MODEL:	VEHICLE IDENTIFICATION NUMBER (VIN):
PURCHASE DATE	DEADLINE TO CANCEL (DATE AND TIME)		

TERMS AND CONDITIONS

CANCELLATION OPTION: This form outlines the terms and conditions of the contract cancellation option. *If you ACCEPT*, you have the right to cancel the purchase within two (2) business days and get a full refund. *If you DECLINE*, you give up this right. Read both sides before signing.

- In order to cancel the sales contract, you must sign and personally deliver the "Notice to Cancel the Sales

Contract" to the dealer by the date and time listed in the yellow box above.

- The dealer keeps the car and its title until you decline to cancel the sales contract in writing or give up your right to cancel the sales contract by failing to act before the deadline.
- If you cancel the sales contract in compliance with the terms and conditions set forth in this form, the dealer must immediately give you a full refund, including sales tax.
- You agree to execute all necessary documents in order to cancel the sale and obtain a full refund.
- The dealer cannot increase the price of the car or add a fee if you ACCEPT the contract cancellation option *except in the case of a trade-in vehicle*. **Trade-in vehicles require a \$100 refundable deposit and may also require a \$50 non-refundable deposit.** See the back for terms and conditions for trade-in vehicles.
- The dealer cannot require you to DECLINE the contract cancellation option or to decline cancelling a sales contract as a condition for buying the car.
- The dealer must give you a copy of this completed contract cancellation option document with your signature. If you cancel the sales contract, the dealer must give you a copy of the document you submitted to cancel the sales contract.

CANCELLATION DEADLINE: The deadline to personally deliver to the dealer (address above) the signed "Notice to Cancel the Sales Contract" is shown in the yellow box above. The date and time can be no earlier than the close of business on the second weekday (excluding legal holidays) after you sign the sales contract or the retail installment contract, whichever is later.

TRADE-IN VEHICLES: SEE THE BACK OF THIS FORM FOR ADDITIONAL TERMS AND CONDITIONS.

Sign here to ACCEPT option

By signing below, you and the dealer agree to the terms and conditions on both sides of this form. You acknowledge that you received and read this form. **BY SIGNING HERE, YOU ELECT TO ACCEPT THIS OPTION.***

Buyer's Signature

Co-Buyer's Signature

Sign here to DECLINE option

By signing below, you voluntarily give up the right to cancel your car purchase. You acknowledge that you received and read this form. **BY SIGNING HERE, YOU ELECT TO DECLINE THIS OPTION.**

Buyer's Signature

Co-Buyer's Signature

*You are accepting the *option* to cancel the contract, not cancelling the contract. To cancel the contract, you need to complete the Notice below and follow terms and conditions.

NOTICE TO CANCEL THE SALES CONTRACT

By signing below, you are exercising your right to cancel the purchase of the used car described in this form. The personal delivery of this notice to the dealer is sufficient to exercise the option to cancel the sales contract.

Cancellation Deadline: Date _____ Time _____

Buyer's Signature

Date / Time

Co-Buyer's Signature

Date / Time

NOTICE TO DECLINE CANCELLATION OF THE SALES CONTRACT

By signing below, you are declining your right to cancel the purchase of the used car described in this form.

Buyer's Signature

Date / Time

Co-Buyer's Signature

Date / Time

ADDITIONAL TERMS AND CONDITIONS

TRADE-IN VEHICLES: If you have agreed to trade in a vehicle and you **ACCEPT** the contract cancellation option, you must pay a refundable deposit of \$100. You may either **USE** the trade-in vehicle during the cancellation period for an additional non-refundable fee of \$50 or **LEAVE** the trade-in vehicle with the dealer until you cancel the sales contract or the option expires. Select one option below.

Leave the Vehicle: By signing below, I, _____, choose to leave the trade-in vehicle with the dealer until I choose to cancel the sales contract or the option expires.
(name)

TRADE-IN AUTOMOBILE DESCRIPTION

YEAR: MAKE: MODEL: VEHICLE IDENTIFICATION NUMBER (VIN):

I agree to the following terms and conditions:

- If I cancel the sales contract, the dealer may keep the \$100 deposit and must return the trade-in vehicle to me on the day I exercise the cancellation option.
- If I do not cancel the sales contract, the dealer must immediately refund the \$100 deposit when I pick up the automobile I purchased under the sales contract.
- The dealer cannot sell my trade-in vehicle until either I have declined to exercise the cancellation option or the time to do so has expired. If the dealer inadvertently sells or otherwise transfers the title to my trade-in vehicle, the dealer must pay me the retail market value of the trade-in vehicle or its value as stated in the sales contract, whichever is greater.

Buyer's Signature

Date

Co-Buyer's Signature

Date

Use the Vehicle: By signing below, I, _____, choose to use the trade-in vehicle during the cancellation period for a non-refundable fee of \$50. I agree to the following terms and conditions:
(name)

- During the cancellation period, I cannot drive more than 250 miles in the trade-in vehicle.
- I must return the vehicle in the same condition as when I presented it as a trade-in vehicle, except for any reasonable wear and tear.
- If I comply with the terms and conditions and do not cancel the sales contract, the dealer must immediately refund the \$100 deposit when I pick up the automobile I purchased under the sales contract.
- If I do not comply with the terms and conditions, the dealer may either cancel the sales contract or keep the \$100 deposit.
- The dealer does not have to give me the car I purchased until I deliver the trade-in vehicle.

Buyer's Signature

Date

Co-Buyer's Signature

Date

LICENSEE ACKNOWLEDGMENT OF BUYER ELECTION

We acknowledge that you have elected to **CANCEL** / **NOT TO CANCEL** your sales contract for a used car.

You have complied with the terms and conditions of the contract cancellation option, including the personal delivery of the "Notice to Cancel the Sales Contract" before the cancellation deadline.

You have failed to comply with the terms and conditions of the contract cancellation option in the following way(s), giving up your right to cancel the sales contract:

Licensee Representative's Signature

Date / Time

DCA License Number

(b) To establish that a trade-in automobile was sold or transferred inadvertently under Section 20-268.2(g)(1) of the Administrative Code, a second-hand automobile dealer must have maintained written policies and procedures designed to avoid such sale and must have distributed such policies and procedures to all employees with responsibility in this area annually.

(c) If a second-hand automobile dealer determines that a consumer has failed to comply with the terms and conditions of a contract cancellation option under 20-268.2(g)(2), it must provide the consumer a written explanation of such determination. The second-hand automobile dealer must maintain a record of such determination for no less than 6 years and must provide a copy of such record to the commissioner upon request.

2-108 Consumer Bill of Rights.

(a) To comply with Section 20-268.4(b)(1) of the Administrative Code, each second-hand automobile dealer must post a copy of the consumer bill of rights shown below on a paper no less than 17 inches by 28 inches in dimension in English, and in any other language in which the second-hand automobile dealer transacts business, provided the commissioner has made the bill of rights available in such language. A copy must be posted conspicuously in any office or area of the dealer location where consumers negotiate and execute sales contracts.

Used Car Consumer Bill of Rights

Buying a used car can be one of the largest financial commitments you make. Used car dealers must post this *Used Car Consumer Bill of Rights* and give you a copy *before* you sign a sales contract. The *Consumer Bill of Rights* must be provided to you in the language in which you negotiated the contract if a translated version is available on the Department of Consumer Affairs (DCA) website at nyc.gov/dca. Take the time to read and understand the *Consumer Bill of Rights* before you sign that you received it.

Your Rights

- 1. You have the right to buy a car at the price advertised.**
Used car dealers must display prices on cars. A used car dealer may not sell you a car at a price that is more than the price advertised, quoted, or posted on the car. The dealership cannot increase the price of the car because you do not finance the car with the dealership.
- 2. You have the right to know the details of your financing agreement *before* you sign anything.**

3. **You have the right to decline financing or a loan arranged by a used car dealer.** You can pay cash or seek financing from another lender.
4. **You have the right to written disclosures about important terms of your financing contract.**

Federal law requires that you get written disclosure of terms such as your annual percentage rate (APR), the amount of money you have agreed to finance, and the total amount you will have to pay to completely satisfy the terms of the financing contract.

Under NYC law, the dealership must give you written disclosures about the lowest APR offered by the financing companies solicited by the dealer and any fees the dealer is charging you for financing. These disclosures must be in the language in which you negotiated the contract, provided DCA has made these disclosures available in such language.
5. **You have the right to the Federal Trade Commission (FTC) Buyer's Guide and a written warranty.**

The Buyer's Guide gives important information about the car and warranty and must be posted on each car.

Under the New York State Lemon Law, used car dealers must provide written warranties on used cars that cost more than \$1,500 or that have fewer than 100,000 miles. The warranty covers the engine, transmission, drive axle, brakes, radiator, steering, and alternator. Never buy a car "as is."

Read both the Buyer's Guide and warranty closely before you buy.
6. **You have the right to refuse add-ons.**

The dealership cannot require you to buy any add-ons as a condition of buying or financing the car at an offered price.
7. **You have the right to get the cost of each add-on in writing.**

The dealership must give you, in writing, the itemized cost of each add-on product and/or service, including the monthly and total cost of financing with and without each product and/or service.
8. **You have the right to be offered a cancellation option.**

Dealers must offer you a contract cancellation option, which allows you to cancel the contract within two (2) business days. This option gives you time to review the contract and any financing agreement away from the dealership. You will not be able to take the car home, but if you are trading in a car, you will be able to keep the trade-in. The contract cancellation option must be given to you in the language in which you negotiated the contract. Learn more about the contract cancellation option at nyc.gov/dca.
9. **You have the right to be free from discrimination when you apply for credit.**

Credit discrimination on the basis of race, color, religion, national origin, sex, marital status, age, or use of public assistance is illegal under federal law.
10. **You have the right to file a complaint.**

You can file a complaint against a used car dealer, regardless of your immigration status. Used car dealers must have a Department of Consumer Affairs (DCA) license in order to operate. You can **call 311** to be transferred to DCA to check a dealership's license status and complaint history. If you believe a used car dealer has violated your rights or taken advantage of you, file a complaint at nyc.gov/dca or **contact 311** (212-NEW-YORK outside NYC).

Consumer Initials or Signature:

(b) To comply with Section 20-268.4(b)(2) of the Administrative Code, each second-hand automobile dealer must provide to each consumer a written copy of the consumer bill of rights shown in subdivision (a) on a

paper no less than 8.5 inches by 14 inches in dimension in the language in which the sales contract was negotiated, provided the commissioner has made the bill of rights available in such language.

(c) A second-hand automobile dealer may comply with Section 20-268.1(e)(1) of the Administrative Code by providing each consumer with a consumer bill of rights pursuant to Section 20-268.4(b)(2) of the Administrative Code.

2-109 Records and Reports.

(a) To comply with Section 20-268.5(a) of the Administrative Code, a second-hand automobile dealer must maintain a copy of the consumer bill of rights signed or initialed by each consumer for six years after the date of execution of such document.

(b) To comply with Section 20-268.5(c) of the Administrative Code, a second-hand automobile dealer must maintain an automobile contract cancellation option report in the format shown below.

NEW YORK CITY SECOND-HAND AUTOMOBILE CONTRACT CANCELLATION OPTION REPORT

Second-Hand Automobile Dealer Name:	
Second-Hand Automobile Dealer DCA License Number:	
Business Address:	

Second-hand automobile dealers must maintain a report on consumer use of automobile contract cancellation options. The report must be made available upon request to the Department of Consumer Affairs, but no more than once annually.

Date	Number of Consumers that Accepted an Automobile Contract Cancellation Option in Connection with their Second-Hand Automobile Purchase	Number of Consumers that Cancelled their Second-Hand Automobile Sales Contracts Pursuant to an Automobile Contract Cancellation Option
January 20__		
February 20__		
March 20__		
April 20__		
May 20__		

June 20__		
July 20__		
August 20__		
September 20__		
October 20__		
November 20__		
December 20__		

- I am authorized (e.g., owner, sole proprietor, general partner, director, corporate officer, or shareholder owning 10% or more of company stock) to complete and sign this form on behalf of the Second-Hand Automobile Dealer named on the front.
- I understand that falsification of any statement made herein is an offense punishable by a fine or imprisonment or both.

Signature

Print Name

Position/Title

Date

(c) A second-hand automobile dealer shall be in violation of Section 20-268.5(c) of the Administrative Code for failing to make available a copy of its automobile contract cancellation option report to the commissioner within 20 business days of receiving a request. Notwithstanding the foregoing sentence, a second-hand automobile dealer shall not be in violation of Section 20-268.5(c) for such a failure where he or she received and complied with a similar request in the past 12 months.

**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 Rules Relating to Second-Hand Auto Dealers

REFERENCE NUMBER: 2017 RG 111

RULEMAKING AGENCY: Department of Consumer Affairs

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: January 18, 2018

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 Rules Relating to Second-Hand Auto Dealers

REFERENCE NUMBER: DCA-64

RULEMAKING AGENCY: Department of Consumer Affairs

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) There is no cure period in the proposed rule because the financing disclosures mandated by the law are only helpful if given to the consumer during the sales process.

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

January 22, 2018
Date