

## 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 amendments to the penalty schedule for the sales of petroleum products located in Section 6-42 of Chapter 6 of Title 6 of the Rules of the City of New York. This amendment would lower the maximum penalty for one type of violation, eliminate violations that do not exist, and add a penalty for a violation recently added to the Rules. DCA is also proposing to add violations to the weights and measures penalty schedule in Section 6-38 of Chapter 6 of Title 6 of the Rules of the City of New York.

**When and where is the hearing?** DCA will hold a public hearing on the proposed rule. The public hearing will take place at 10:30AM on Wednesday, August 7, 2019. 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](mailto:Rulecomments@dca.nyc.gov).
- **Mail.** You can mail comments to Carlos Ortiz, Director of Community 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) 436-0345. You can also sign up in the hearing room before the hearing begins on Wednesday, August 7, 2019. 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 5:00PM on Wednesday, August 7, 2019.

**What if I need assistance to participate in the hearing?** You must tell the Department’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 can tell us by mail at the address given above. You may also tell us by telephone at (212) 436-0155. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 5:00PM on Monday, August 5, 2019.

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?** Section 180(3) of the New York Agriculture and Markets Law, Section 20-574 of Chapter 3 of Title 20 of the New York City Administrative Code, and Sections 1043 and 2203(f) of the New York City Charter authorize the Department of Consumer Affairs to make these proposed amendments. This

proposal 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**

The Department of Consumer Affairs (“DCA” or “Department”) is proposing amendments to the penalty schedule for the sales of petroleum products located in Section 6-42 of Chapter 6 of Title 6 of the Rules of the City of New York (“Rules”) and the penalty schedule for weights and measures located in Section 6-38 of the Rules. Specifically, DCA is proposing the following:

- Currently, the penalty schedule provides a maximum penalty of \$500 for violations of DCA Rule 5-51. However, Section 20-703 of the Code provides for a maximum penalty of \$350 for violations of regulations promulgated pursuant to the Consumer Protection Law. Because DCA Rule 5-51 was promulgated pursuant to the Consumer Protection Law, it should carry a maximum penalty of \$350.
- Currently, the penalty schedule has entries for 1 NYCRR §§ 220.8 and 220.9, which have been repealed, and 1 NYCRR § 224.18, which does not exist. DCA is proposing to eliminate these entries.
- Section 3-103 of the Rules of the City of New York, Inspection of Printer Tickets, was recently added to DCA’s rules. DCA is now proposing to add a penalty for violations of Section 3-103 to the penalty schedule.
- Adding the following violations to the weights and measures penalty schedule in Section 6-38, which exist in City and State law and should be included in the penalty schedule: Section 20-584 of the New York City Administrative Code (“Code”) (testing, sealing and marking), Code Section 20-585 (standard measures and containers), Code Section 20-587 (sale by true weight or measure required), Code Section 20-590 (repair of inaccurate devices), Section 184 of the New York Agriculture and Markets Law (condemnation, seizure or repair of false devices), Section 185 of the New York Agriculture and Markets Law (stop-use, stop-removal and removal orders), and Section 186 of the New York Agriculture and Markets Law (possession and use of false devices).

Section 180(3) of the New York Agriculture and Markets Law, Section 20-574 of Chapter 3 of Title 20 of the New York City Administrative Code, and Sections 1043 and 2203(f) of the New York City Charter authorize the Department of Consumer Affairs to make these proposed amendments.

An analysis of this proposed rule as described in Section 1043(d) of the New York City Charter was not performed because it falls under the exception in Section 1043(d)(4)(ii).

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 6-38 of Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended by adding seven new entries, in alphanumeric order, to read as follows:

**§ 6-38 Weights and Measures Penalty Schedule.**

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
<u>Admin Code § 20-584</u>	<u>Improper use of weighing or measuring device that has not been marked by the Department.</u>	<u>\$75</u>	<u>\$100</u>	<u>\$90</u>	<u>\$100</u>	<u>\$100</u>	<u>\$100</u>
<u>Admin Code § 20-585</u>	<u>Improper manufacturer or use of any dry or liquid measure unless it conforms to the standards provided by article sixteen of the agriculture and markets law.</u>	<u>\$75</u>	<u>\$100</u>	<u>\$90</u>	<u>\$100</u>	<u>\$100</u>	<u>\$100</u>

<u>Admin Code § 20-587</u>	<u>Improper sale or offer for sale of any commodity or article of merchandise at or for a greater weight or measure than its true weight or measure.</u>	<u>\$75</u>	<u>\$100</u>	<u>\$90</u>	<u>\$100</u>	<u>\$100</u>	<u>\$100</u>
<u>Admin Code § 20-590</u>	<u>Failure to repair a condemned weighing or measuring device.</u>	<u>\$75</u>	<u>\$100</u>	<u>\$90</u>	<u>\$100</u>	<u>\$100</u>	<u>\$100</u>
<u>NY Agri &amp; Mkts § 184</u>	<u>Improper use of a condemned device or improper removal, obstruction, or defacement of a condemnation tag.</u>	<u>\$450</u>	<u>\$600</u>	<u>\$1,080</u>	<u>\$1,200</u>	<u>\$1,200</u>	<u>\$1,200</u>
<u>NY Agri &amp; Mkts § 185</u>	<u>Improper use, removal, or failure to remove a device in violation of order.</u>	<u>\$450</u>	<u>\$600</u>	<u>\$1,080</u>	<u>\$1,200</u>	<u>\$1,200</u>	<u>\$1,200</u>
<u>NY Agri &amp; Mkts § 186</u>	<u>Improper possession of a false weighing or measuring device or system.</u>	<u>\$450</u>	<u>\$600</u>	<u>\$1,080</u>	<u>\$1,200</u>	<u>\$1,200</u>	<u>\$1,200</u>

§ 2. Section 6-42 of Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended by deleting three entries, amending one entry, and adding one entry, in alphanumeric order, to read as follows:

**§ 6-42 Sales of Petroleum Products Penalty Schedule.**

<b>Citation</b>	<b>Violation Description</b>	<b>First Violation</b>	<b>First Default</b>	<b>Second Violation</b>	<b>Second Default</b>	<b>Third and Subsequent Violation</b>	<b>Third and Subsequent Default</b>
<u>6 RCNY § 3-103</u>	<u>Failure to retain or produce copies of printer tickets</u>	<u>\$75</u>	<u>\$100</u>	<u>\$90</u>	<u>\$100</u>	<u>\$100</u>	<u>\$100</u>
<u>6 RCNY § 5-51</u>	<u>Failure to comply with regulations pertaining to retail sale of gasoline</u>	<u>\$260</u>	<u>\$350</u>	<u>[\$500]315</u>	<u>[\$500]350</u>	<u>[\$500]350</u>	<u>[\$500]350</u>
<u>[1 NYCRR § 220.8</u>	<u>Improper retail petroleum devices</u>	<u>\$300</u>	<u>\$400</u>	<u>\$720</u>	<u>\$800</u>	<u>\$800</u>	<u>\$800]</u>
<u>[1 NYCRR § 220.9</u>	<u>Improper delivery of petroleum products</u>	<u>\$300</u>	<u>\$400</u>	<u>\$720</u>	<u>\$800</u>	<u>\$800</u>	<u>\$800]</u>
<u>[1 NYCRR § 224.18</u>	<u>Improper retail sale of gasoline-alcohol blends</u>	<u>\$500</u>	<u>\$875</u>	<u>\$1,000</u>	<u>\$4,000</u>	<u>\$5,000</u>	<u>\$10,000]</u>