

## NEW YORK CITY POLICE DEPARTMENT

### **Notice of Public Hearing and Opportunity to Comment on Proposed Rule**

**What are we proposing?** The Police Department is proposing a new rule to implement Local Law 149 of 2013, which amended Sections 20-267, 20-273, and 20-277 of the New York City Administrative Code, to require electronic recordkeeping by pawnbrokers and by certain second-hand dealers, specifically those dealing in electronics, jewelry, and pawn tickets. The rule will provide the necessary framework and operational requirements to enable businesses to comply with the new recordkeeping provisions.

**When and where is the Hearing?** The Police Department will hold a public hearing on the proposed rule, which will take place from 11:00 AM to 1:00 PM on May 15, 2014 in the Police Department's Auditorium located at One Police Plaza, First Floor, New York, New York 10038.

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

- **Website.** You can submit comments to the Police Department through the NYC rules website: <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [nycrules@nypd.org](mailto:nycrules@nypd.org).
- **Mail.** You can mail written comments to Assistant Commissioner, Intergovernmental Affairs, New York City Police Department, One Police Plaza, Room 1406A, New York, New York 10038.
- **Fax.** You can fax written comments to New York City Police Department, Office of Deputy Commissioner, Legal Matters at (646) 610-8428.
- **Hearing.** You can speak at the public 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 (646) 610-5336, or you can sign up in the hearing room before the hearing begins on May 15, 2014. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** Yes, you must submit written comments by 6:00 PM on May 13, 2014.

**What if I need assistance to participate in the Hearing?** You must tell the Office of Deputy Commissioner, Legal Matters 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 (646) 610-5336. You must tell us by May 8, 2014.

**Can I review the comments made on the proposed rule?** You can review the comments made online on the proposed rule by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at the Office of Deputy Commissioner, Legal Matters, One Police Plaza, Room 1406A, New York, New York 10038.

**What authorizes the Police Department to make this rule?** Section 435 of the City Charter and Sections 20-273 and 20-277 of the Administrative Code authorize the Police Department to make this proposed rule. This proposed rule was not included in the Police Department's regulatory agenda for this Fiscal Year because the local law requiring it had not yet been enacted.

**Where can I find the Police Department's rules?** The Police Department's rules are in title 38 of the Rules of the City of New York.

**What rules govern the rulemaking process?** The Police Department 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**

Local Law 149 of 2013 amended Sections 20-267, 20-273, and 20-277 of the New York City Administrative Code, to require electronic recordkeeping by pawnbrokers and by certain second-hand dealers, specifically those dealing in electronics, jewelry, and pawn tickets. Section four of Local Law 149 of 2013 authorizes the Commissioner of the Department of Consumer Affairs (DCA) and the Commissioner of the New York City Police Department (NYPD) to promulgate rules necessary to carry out the provisions of this new law.

Pawnbrokers and second-hand dealers in New York City are licensed by DCA and their record-keeping practices are monitored by both DCA and the NYPD. It is vitally important to ensure that accurate and complete records are maintained by these businesses, which may unwittingly be used as the repository of stolen property. DCA inspectors and NYPD officers must routinely visit these locations to inspect what is informally called the "Police Book," i.e., the log book containing a record of each transaction on tear-off sheets, to ensure that they are completed accurately and that they correctly reflect the property present in the store.

By requiring accurate and detailed electronic recordkeeping for pawnbrokers and certain second-hand dealers, implementation of Local Law 149 of 2013 will both improve administrative efficiency and deter property crime by discouraging the disposal of stolen property.

The following rule is proposed by the Police Commissioner to implement the provisions of Local Law 149 of 2013. The rule would:

- Identify the businesses which are subject to electronic recordkeeping;
- Direct the manner, format, and timeliness with which electronic records are created, maintained and uploaded;
- Notify businesses subject to electronic recordkeeping about the types of information that must be included when describing certain items in their electronic records; and
- Specify the equipment necessary to create, maintain and upload the electronic records as well as the length of time electronic records must be retained.

The Police Department's authority for this rule is found in Section 435 of the City Charter and Sections 20-273 and 20-277 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.

Section 1. Title 38 of the Rules of the City of New York is amended by adding a new Chapter 21 to read as follows:

**CHAPTER 21**

**RECORDKEEPING FOR PAWNBROKERS AND CERTAIN SECOND-HAND DEALERS**

**§21-01 Introduction.**

The following rule has been promulgated by the Police Commissioner to implement the provisions of Local Law No. 149 of 2013, which establishes new requirements for recordkeeping by pawnbrokers and certain second-hand dealers in New York City.

**§21-02 Definitions.**

**Dealer in Second-Hand Articles.** “Dealer in Second-Hand Articles” or “Second-Hand Dealer” means a dealer in second-hand articles as such person is defined in Section 20-264 of the New York City Administrative Code.

**Dealer Subject to Electronic Recordkeeping Requirements.** “Dealer Subject to Electronic Recordkeeping Requirements” means a dealer in second-hand articles who deals in: (1) the purchase or sale of any second-hand manufactured article composed wholly or in part of gold, silver, platinum, or other precious metals; the purchase or sale of any old gold, silver, platinum or other precious metals; the purchase of articles or things comprised of gold, silver, platinum or other precious metals for the purpose of melting or refining; the purchase or sale of used electrical appliances excluding kitchen appliances; the purchase or sale of any used electronic equipment, computers or component parts of electronic equipment or computers; or (2) the purchase or sale of pawnbroker tickets or other evidence of pledged articles, or the redemption or sale of pledged articles, where the second-hand dealer is not a pawnbroker.

**Computer.** “Computer” means a device which, by manipulation of electronic, magnetic, optical or electrochemical impulses, pursuant to an ordered set of data representing coded instructions or statements, can automatically perform arithmetic, logical, storage or retrieval operations, including but not limited to a tablet, laptop, desktop, gaming system, e-reader, MP3 player, or smartphone.

**Electronic Equipment.** “Electronic Equipment” means a device capable of recording, storing, playing or displaying digital media, including but not limited to a tablet, laptop, desktop, gaming system, e-reader, MP3 player, cellphone, smartphone, or any other electronic device capable of voice communication.

**IMEI Number.** “IMEI Number” means International Mobile Equipment Identity number.

**Pawnbroker.** “Pawnbroker” means a collateral loan broker as defined in Section 52 of the New York State General Business Law.

**Police Commissioner.** “Police Commissioner” means the Commissioner of the New York City Police Department.

**§21-03 Pawnbrokers Required to Create and Upload Electronic Records.**

(a) In addition to the physical records of transactions required to be created and maintained pursuant to the provisions of the New York City Administrative Code and the New York State General Business Law, pawnbrokers are required to create an electronic record of each transaction at the time such transaction takes place. The electronic record must be uploaded immediately, or on a daily basis no later than midnight of the day of such transaction, to a web-based electronic data transfer service designated by the Police Commissioner.

(b) The electronic records to be created and uploaded must include the following information: (i) the date, time, location and type of transaction; (ii) the serial number pre-printed on the physical record of such transaction; (iii) an accurate description of each article pawned or pledged, including type of article, manufacturer, make, model, serial number, IMEI number, inscriptions and distinguishing marks; (iv) an accurate description of each article purchased or sold, including type of article, manufacturer, make, model, serial number, IMEI number, inscriptions and distinguishing marks; and (v) one or more digital photographs reasonably capturing the likeness of each subject article, including any serial numbers or other identifying markings which are visible. Such photograph(s) must be created in a jpeg format.

**§21-04 Second-Hand Dealers Required to Create and Upload Electronic Records.**

(a) In addition to the physical records of transactions required to be created and maintained pursuant to the provisions of the New York City Administrative Code, second-hand dealers subject to electronic recordkeeping requirements must create an electronic record of certain transactions at the time such transactions take place, as provided in subdivision (c) or (d) of this section, as applicable. The electronic record must be uploaded immediately, or on a daily basis no later than midnight of the day of such transaction, to a web-based electronic data transfer service designated by the Police Commissioner.

(b) Second-hand dealers subject to electronic recordkeeping requirements must create and upload electronic records of transactions involving (i) the purchase or sale of any second-hand manufactured article composed wholly or in part of gold, silver, platinum, or other precious metals; (ii) the purchase or sale of any old gold, silver, platinum or other precious metals, (iii) the purchase of articles or things comprised of gold, silver, platinum or other precious metals for the purpose of melting or refining, (iv) the purchase or sale of used electrical appliances excluding kitchen appliances; (v) the purchase or sale of any used electronic equipment, computers or component parts of electronic equipment or computers; or (vi) the purchase or sale of pawnbroker tickets or other evidence of pledged articles, or the redemption or sale of pledged articles, where the second-hand dealer is not a pawnbroker.

(c) The electronic records to be created and uploaded by dealers subject to electronic recordkeeping requirements for transactions not involving the purchase or sale of pawnbroker tickets or other evidence of pledged articles, or the redemption or sale of pledged articles, must include the following information: (i) the date, time, and location; (ii) the serial number pre-printed on the physical record of such transaction; (iii) an accurate description of each article purchased or sold, including type of article, manufacturer, make, model, serial number, IMEI number, inscriptions and distinguishing marks; and (iv) one or more digital photographs reasonably capturing the likeness of each subject article, including any serial numbers or other identifying markings which are visible. Such photograph(s) must be created in a jpeg format.

(d) The electronic records to be created and uploaded by second-hand dealers subject to electronic recordkeeping for transactions involving the purchase or sale of pawnbroker tickets or other evidence of pledged articles, or the redemption or sale of pledged articles, must include the following information: (i) the name and address of the person who issued such ticket or other evidence; (ii) the pledge number of such pawn ticket or other evidence; (iii) the amount

loaned or advanced as it appears on such pawn ticket or other evidence; (iv) the day and hour of such purchase, sale or redemption, as the case may be; (v) the serial number pre-printed on the physical record of such transaction; (vi) the sum paid or received for such pawn ticket or other evidence, or the sum paid or received for the redeemed article or pledge; (vii) such description of a pledged article as appears on such pawn ticket or other evidence and an accurate description of every redeemed pledged article including type of article, manufacturer, make, model, serial number, IMEI number, inscriptions and distinguishing marks; and (viii) one or more digital photographs reasonably capturing the likeness of each subject article, including any serial numbers or other identifying markings which are visible. Such photograph(s) must be created in a jpeg format.

**§21-05 Descriptions of Items Containing Gold, Silver, Platinum or Other Precious Metals or Other Jewelry.**

When providing descriptions of articles purchased, sold, pawned or redeemed which are composed wholly or in part of precious metals, or are otherwise commonly described as jewelry, pawnbrokers and second-hand dealers subject to electronic recordkeeping requirements must include the following information as relevant: (i) type of precious metal; (ii) weight of precious metal in karats; (iii) number of precious stones on item; (iv) type(s) of precious stones on item; (v) unique marks or inscriptions on item, including any specific words; and (vi) any visible alterations, modifications or damage to the item.

**§21-06 Descriptions of Electrical Appliances, Electronic Equipment and Computers.**

When providing descriptions of electrical appliances, electronic equipment, computers or their component parts, pawnbrokers and second-hand dealers subject to electronic recordkeeping requirements must include the following information as relevant: (i) manufacturer; (ii) make; (iii) model number; (iv) serial number; (v) IMEI number; (vi) identifying numbers including any numbers etched on the item pursuant to a crime prevention program of the New York City Police Department or any other entity; and (vii) any visible alterations, modifications or damage to the item, including altered or missing serial or IMEI numbers.

**§21-07 Creation and Uploading of Electronic Records.**

(a) The electronic records required by the law and this Chapter must be created accurately and in English, and contain all required items of information. All digital photographs must reasonably capture the likeness of the subject article. Such electronic records and photographs must be uploaded immediately, or on a daily basis no later than midnight of the day of such transactions, to the web-based electronic data transfer service designated by the Police Commissioner for this purpose.

(b) Prior to this Chapter taking effect, New York City Police Department personnel will advise in writing pawnbrokers and second-hand dealers subject to electronic recordkeeping requirements of the identity of the service designated by the Police Commissioner for this purpose. Police Department personnel will also provide the service's contact information to such pawnbrokers and second-hand dealers so that they may be instructed by the service regarding how to use the electronic recordkeeping system, and in order to request customer assistance from the service as needed. Within 60 days of this Chapter taking effect, all pawnbrokers and second-hand dealers subject to electronic recordkeeping requirements must register with the service, commence uploading information as required by law and by this Chapter, and obtain a notice from the service confirming that such uploading was successfully received by the service.

(c) In addition to the specific items of information required by the law and this Chapter for each transaction, each pawnbroker or second-hand dealer subject to electronic recordkeeping requirements must also provide to the service its own identifying information, including business name, address, phone number, fax number, Department of Consumer Affairs license number, and the store manager's name and email address, as well as an identifying number for each transaction and the identity of the business' employee or agent handling the transaction.

(d) If a pawnbroker or second-hand dealer uploads an extract from their point-of-sale software in order to comply with the requirements of this Chapter, the file must be uploaded using the web upload mechanism provided on the designated electronic data transfer service's website. The extract format must be of a type supported by the electronic data transfer service. If the pawnbroker or second-hand dealer does not use an extract from their point-of-sale software, each transaction must be manually entered using the web interface provided by the service.

(e) In the course of creating and uploading electronic records pursuant to this Chapter, pawnbrokers and second-hand dealers must complete all fields of information required,

provided that if a particular item of information is unavailable, the pawnbroker or second-hand dealer must indicate such by inserting into the field “unavailable,” “altered,” or “not applicable,” as appropriate.

(f) If in the course of a day the pawnbroker or second-hand dealer does not conduct a transaction required to be reported electronically, the pawnbroker or second-hand dealer must upload a notice of no electronically reportable transactions to the electronic data service, providing such report, no later than midnight of such day. This requirement applies to each individual day during which there occurs no transaction required to be reported electronically, except that where business of any kind is not conducted on that day (for example where the business is closed on a weekend or holiday), the notice must be forwarded to the service no later than midnight of the next day during which business of any kind is conducted.

**§21-08 Required Equipment.**

Pawnbrokers and second-hand dealers subject to electronic recordkeeping requirements must acquire and maintain in good working order the electronic equipment necessary to create, maintain and upload the electronic records required by law and by this Chapter, including but not limited to a computer with internet connection and a digital camera utilizing a jpeg file format so that the required information may be transmitted to the web-based electronic data transfer service designated by the Police Commissioner.

**§21-09 Retention of Records.**

The electronic records created pursuant to this Chapter must be retained for a minimum of six years from the date of transaction.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE:** Recordkeeping for Pawnbrokers and Certain Second-Hand Dealers

**REFERENCE NUMBER:** NYPD-6

**RULEMAKING AGENCY:** NYPD

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

April 2, 2014  
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** Recordkeeping for Pawnbrokers and Certain Second-Hand Dealers

**REFERENCE NUMBER:** 2014 RG 11

**RULEMAKING AGENCY:** NYC Police Department

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: 4-2-14