

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 new rules to implement Local Law 3 of 2021. This new law requires certain businesses to notify customers of the use of biometric identifier information and prohibits the sale of such information.

This new rule will specify the form and manner of posting a sign required by any commercial establishment covered by the law that collects, uses, or retains biometric identifier information.

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 Monday, August 30, 2021. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial 646-558-8656
 - Meeting ID: 899 8596 9158
- To participate in the public hearing via videoconference, please follow the online link:
<https://us02web.zoom.us/j/89985969158?pwd=SThHbDFtL3JyMIRYcEY4eThweG9JUT09>
 - Meeting ID: 899 8596 9158

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@dca.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 emailing rulecomments@dca.nyc.gov. You can also sign up on the phone or videoconference before the hearing begins at 11:00 AM on Monday, August 30. 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 August 30, 2021.

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 email at Rulecomments@dca.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by August 25, 2021.

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 22-1202 of title 22 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 the Department of Consumer and Worker Protection’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 a new rule to implement Local Law 3 of 2021 (“LL 3”). This new law requires, among other things, certain businesses to notify customers of the use of biometric identifier information and prohibits the sale of such information.

LL 3 directs the Commissioner of DCWP to prescribe the form and manner of the sign to be used by businesses to notify customers that biometric identifier information is being collected, retained, converted, stored, or shared. This proposed new rule would mandate that covered commercial establishments post a custom sign or a sign provided by the Department on its website in a particular size and manner to comply with LL 3.

Sections 1043 and 2203(f) of the New York City Charter and section 22-1202 of title 22 of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to promulgate 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. Chapter 8 of Title 6 of the Rules of the City of New York is amended to read as follows:

Chapter 8: [Transportation Benefits] Biometric Identifier Information

§ 8-01 Biometric Identifier Information Signage.

To comply with section 22-1202 of chapter 12 of title 22 of the New York City Administrative Code, a commercial establishment covered by such section must post a sign in a clear and conspicuous manner at every entrance used by customers in a size of at least 8.5 inches by 11 inches that discloses if customers’ biometric identifier information is being collected, retained, converted, stored, or shared. The requirements of this section may be fulfilled by posting the Biometric Identifier Information Disclosure, as made publicly available on the Department’s website, in a clear and conspicuous manner at every entrance used by customers in a size of at least 8.5 inches by 11 inches.

NEW YORK CITY LAW DEPARTMENT
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CERTIFICATION PURSUANT TO
CHARTER §1043(d)

RULE TITLE: Requirements for Businesses Using Biometric Identifier Information

REFERENCE NUMBER: 2021 RG 023

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
Acting Corporation Counsel

Date: July 19, 2021

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: Requirements for Businesses Using Biometric Identifier Information

REFERENCE NUMBER: DCWP-3

RULEMAKING AGENCY: Department of Consumer and Worker 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

July 19, 2021
Date