

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 to add and amend rules to implement Local Law 129 of 2021 (“LL 129”). LL 129 creates an exception to the item pricing requirements for retail stores that provide price scanners available for customer use. These proposed rules provide guidance on the required number of, and adequate locations for, price scanners.

When and where is the hearing? DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11:00 AM on Monday, May 2, 2022. 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: 881 7142 8875
- To participate in the public hearing via videoconference, please follow the online link:
<https://us02web.zoom.us/j/88171428875?pwd=bkVUT2ZYcXFTdnRPTzN4VjA5QkhZZz09>
 - Meeting ID: 881 7142 8875

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 calling (212) 436-0345. You can also sign up on the phone or videoconference before the hearing begins at 11:00 AM on Monday, May 2. 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 Monday, May 2, 2022.

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 telephone at (212) 436-0345 or by email at Rulecomments@dca.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Wednesday, April 27, 2022.

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 Sections 20-104(b) and 20-708.1(c)(15) 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 to add and amend rules to implement Local Law 129 of 2021 (“LL 129”). LL 129 creates an exception to the item pricing requirements for retail stores that provide price scanners available for customer use. These proposed rules provide guidance on the required number of, and adequate locations for, price scanners.

These proposed amendments would require that, to meet the exemption to item pricing, a retail store must have a price scanner within 30 feet of every item or post a sign prominently and conspicuously informing customers of where a price scanner is located. A retail store would also have to have at least as many price scanners for consumer use as the retail store has checkout stations, although no more than 10 price scanners for consumer use would be required. Finally, these proposed amendments would add an entry to the truth in pricing penalty schedule for the new rules, under which price scanners fall.

Sections 1043 and 2203(f) of the New York City Charter and Sections 20-104(b) and 20-708.1(c)(15) of the New York City Administrative Code authorize the Department to make 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. Subchapter B of Chapter 5 of Title 6 of the Rules of the City of New York is amended by adding a new Section 5-116 to read as follows:

§ 5-116 Requirements for Price Scanners.

(a) A retail store that seeks to rely on the exemption set forth in § 20-708.1(c)(15) of the Administrative Code from the item pricing requirement set forth in § 20-708.1(b) of the Administrative Code must provide price scanners for consumer use in accordance with this section.

(b) A price scanner for consumer use must be located within 30 feet of any item sought to be exempted from item pricing in accordance with this section unless the requirements of subdivision c of this section are met.

(c) If a price scanner for consumer use is located more than 30 feet from an item sought to be exempted from item pricing in accordance with this section, a prominent and conspicuous sign must be posted within view of such item stating: “A Price Scanner for Customer Use to Check Prices is Located (location of price scanner).”

(d) To comply with the requirements of this section, a retail store must have at least as many price scanners for consumer use as the retail store has checkout stations, except that in no event does a retail store need to have more than 10 price scanners for consumer use to comply with this section.

§ 2. Section 6-48 of Subchapter B of Chapter 6 of Title 6 of the Rules of the City of New York is amended to read as follows:

§ 6-48 Truth in Pricing Law.

All citations are to Title 20 of the Administrative Code of the City of New York or Title 6 of the Rules of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

[For the fine amounts marked by a single asterisk, if the respondent timely submits the appropriate proof of having cured a first-time violation, the respondent will not be subject to a civil penalty, pursuant to Local Law 5 of 2017.]

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by pleading guilty, being found guilty in a decision, or entering into a settlement agreement for violating the same provision of law or rule, within two years of the prior violation(s).

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin Code § 20-708	Failure to display total selling price by tag or sign	\$50	\$50	\$175	\$175	\$250	\$250
Admin Code § 20-708.1(b)	Improper item pricing	\$18 (for each of the first 20 violations)*]	[\$500*]\$25 (for each of the first 20 violations)	\$45 (for each of the first 20 violations within 60 days)	[\$1,000]\$50 (for each of the first 20 violations [(]within 60 days)	\$50 (for each of the first 20 violations within 60 days)	[\$1,000]\$50 (for each of the first 20 violations [(]within 60 days)
Admin Code § 20-708.1(d)	Improper scanner accuracy	\$260	\$350	\$500	\$500	\$500	\$500
Admin Code § 20-708.1(e)	Improper price accuracy	\$18 (for each of the first 20 violations)	[\$500]\$25 (for each of the first 20 violations)	\$45 (for each of the first 20 violations within 60 days)	[\$1,000]\$50 for each of the first 20 violations (within 60 days)	\$50 (for each of the first 20 violations within 60 days)	[\$1,000]\$50 for each of the first 20 violations (within 60 days)
Admin Code § 20-709	Failure to display price per measure	\$50	\$50	\$175	\$175	\$250	\$250
6 RCNY § 5-113	Failure to meet the requirements of calculation and display price per measure	\$50	\$50	\$175	\$175	\$250	\$250
6 RCNY § 5-115	Failure to meet guidelines on multiple pricing	\$50	\$50	\$175	\$175	\$250	\$250
6 RCNY § 5-116	Failure to meet requirements for price scanners	\$18 (for each of the first 20)	\$25 (for each of the first 20 violations)	\$45 (for each of the first 20 violations within 60 days)	\$50 (for each of the first 20 violations within 60 days)	\$50 (for each of the first 20 within 60 days)	\$50 (for each of the first 20 violations within 60 days)

**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 Item Pricing Requirements for Retail Stores

REFERENCE NUMBER: 2022 RG 008

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: March 21, 2022

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 Item Pricing Requirements for Retail Stores

REFERENCE NUMBER: DCWP-17

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) No cure period/mechanism is provided because the authorizing statute for the rule does not provide a cure period. However, respondents are afforded notice and an opportunity to be heard with respect to all notices of violation.

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

March 22, 2022
Date