

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 implement Local Law 123 of 2022 by amending the Dealers in Secondhand Articles Penalty Schedule to add a new charge related to the purchase of second-hand catalytic converters and Local Law 151 of 2021 by adding a penalty schedule for failures by DCWP licensees to promptly notify DCWP of certain security breaches involving unauthorized access to individuals’ personal identifying information (“data breaches”).

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 May 8. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial 646-893-7101
 - Meeting ID: 277 456 127 899
 - Passcode: Ekch23
- To participate in the public hearing via videoconference, please follow the online link:
<https://tinyurl.com/y75t4rku>
 - Meeting ID: 277 456 127 899
 - Passcode: Ekch23

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@dcwp.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) 436-0210. You can also sign up on the phone or videoconference before the hearing begins at 11:00AM on Monday, May 8. 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 May 8.

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) 436-0210 or by email at Rulecomments@dcwp.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Monday, May 1.

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, 2203(f) and 2203(h)(1) of the New York City Charter and sections 20-104, 20-119 and 20-275 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 amend 6 RCNY § 6-19, the Dealers in Second-hand Articles Penalty Schedule, in order to implement Local Law 123 by adding a new charge concerning the purchase of secondhand catalytic converters. DCWP is also proposing to add a new section 6 RCNY § 6-85 to add a penalty schedule for failures by DCWP licensees to promptly notify DCWP of data breaches.

Sections 1043, 2203(f) and 2203(h)(1) of the New York City Charter and sections 20-104, 20-119 and 20-275 of the New York City Administrative Code authorize the Department of Consumer and Worker Protection 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.

Section 1. Section 6-19 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is amended to read as follows:

§ 6-19 Dealers in Second-Hand Articles Penalty Schedule.

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 153 of 2013.

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).

In certain cases, the Department may ask for license suspension or revocation, as permitted by statute. In determining whether a violation is a second, third, or subsequent violation for purposes of suspension or revocation pursuant to Section 20-275(d) of Title 20 of the New York City Administrative Code, any violations of the following provisions must be considered: Sections 20-268.1, 20-268.2, 20-268.3, 20-268.4, 20-268.5, 20-268.7 and 20-271 of the New York City Administrative Code, and 6 RCNY §§ 2-105, 2-106, 2-107, 2-108, and 2-109. If a respondent is found in violation of multiple provisions that require a suspension period, the suspension periods shall run concurrently.

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and Subsequent Default
Admin. Code § 20-265	Operating as a second hand dealer without a license	\$100 per day	\$100 per day	\$100 per day	\$100 per day	\$100 per day	\$100 per day
Admin. Code § 20-267	Failure to report required records to police commissioner	\$175	\$175	\$300	\$300	\$500	\$500
Admin. Code § 20-268	Failure to comply with specified restrictions pertaining to second hand dealers	\$175	\$175	\$300	\$300	\$500	\$500
Admin. Code § 20-268.1	Failure to comply with requirements related to sale and financing of second-hand automobiles	\$750	\$1,000	\$900	\$1,000	\$1,000 (plus suspension or revocation)	\$1,000 (plus suspension or revocation)
Admin. Code § 20-268.2	Failure to comply with requirements related to automobile contract cancellation option	\$750	\$1,000	\$900	\$1,000	\$1,000 (plus suspension or revocation)	\$1,000 (plus suspension or revocation)
Admin. Code § 20-268.3	Failure to provide certain secondhand automobile contract documents in advance	\$750	\$1,000	\$900	\$1,000	\$1,000 (plus suspension or revocation)	\$1,000 (plus suspension or revocation)
Admin. Code § 20-268.4	Failure by a second-hand automobile dealer to post consumer bill of rights	\$750	\$1,000	\$900	\$1,000	\$1,000 (plus suspension or revocation)	\$1,000 (plus suspension or revocation)
Admin. Code § 20-268.5	Failure to comply with requirements related to secondhand automobile records and reports	\$750	\$1,000	\$900	\$1,000	\$1,000 (plus suspension or revocation)	\$1,000 (plus suspension or revocation)

Admin. Code § 20-268.7	Failure to comply with requirements related to the purchase of second-hand catalytic converters and maintenance of records	\$175	\$175	\$300	\$300	\$500 (plus suspension or revocation)	\$500 (plus suspension or revocation)
Admin. Code § 20-270	Failure to comply with signage requirements	\$175*	\$175*	\$300	\$300	\$500	\$500
Admin. Code § 20-271(a)	Failure to label second-hand articles as not new	\$175*	\$175*	\$300	\$300	\$500 (plus suspension or revocation)	\$500 (plus suspension or revocation)
Admin. Code § 20-271(b)	Failure of dealer in second-hand automobiles to clearly and conspicuously post price of secondhand automobile or prices for add-on products	\$500*	\$500*	\$750	\$750	\$1,000 (plus suspension or revocation)	\$1,000 (plus suspension or revocation)
Admin. Code § 20-272	Failure to comply with requirements pertaining to lost or stolen property	\$175	\$175	\$300	\$300	\$500	\$500
Admin. Code § 20-273	Failure to comply with requirements pertaining to record of purchases and sales	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-101	Failure to verify and record identity of persons who sell to second-hand dealers	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-102	Failure to comply with requirements pertaining to sale of second-hand furniture	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(a)	Failure to maintain documents recording transfer of title in sale of second-hand automobile	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(b)	Failure to comply with requirements pertaining to deferred payment, collateral and financing terms in sale of second-hand automobile	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(c)	Covering or concealing of motor or serial number in sale of second-hand automobile or motorcycle	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(d)	Failure of dealer in second-hand automobiles to meet deferred payment commitments in purchase of second-hand automobile from private person	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(e)	Improper statements, representations, promises or acts by dealer in second-hand automobiles or agents	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(f)	Failure of dealer in second-hand automobiles to disclose all terms of undertaking or agreement with purchaser	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(g)(1)(i)	Sale of second-hand automobile not inspected and certified in accordance with Vehicle and Traffic Law	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(g)(1)(ii)	Failure to provide required Notice to Buyer with contract for sale of second-hand automobile	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(g)(1)(iii)	Contract for sale of second-hand automobile containing prohibited limitations	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(g)(1)(iv)	Failure of dealer in second-hand automobiles to submit form contracts with license application	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(g)(1)(v)	Failure of dealer in second-hand automobiles to display required sign at place of business	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(g)(2)	Misrepresentation of vehicle mileage	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(h)	Failure of dealer in second hand automobiles to investigate previous use of vehicle or to maintain record of vehicle's previous use and odometer reading	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(i)	Sale of second-hand automobile at price other than advertised	\$175	\$175	\$300	\$300	\$500	\$500

6 RCNY § 2-103(j)	Sale of second-hand automobile from licensed place of business by any person other than licensed dealer in second-hand automobiles	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(k)(1)	Improperly accepting deposit in sale of second hand automobile	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(k)(2)	Deposit receipt fails to contain required information	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(k)(3)	Failure to keep proper record of deposits in sales of second hand automobiles	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(l)(1)	Failure of dealer in second hand automobiles to keep proper records of income and expenses	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(l)(2)	Failure of dealer in second hand automobiles to maintain proper record of cash receipts and cash disbursements	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-103(m)(2)	Dealer in second-hand automobiles parking or allowing automobiles to encroach on a sidewalk or other public space	\$175	\$175	\$300	\$300	\$500	\$500
6 RCNY § 2-105(a)	Failure to label second-hand articles as not new	\$175*	\$175*	\$300	\$300	\$500 (plus suspension or revocation)	\$500 (plus suspension or revocation)
6 RCNY § 2-105(b)	Failure of dealer in second-hand automobiles to post price of secondhand automobile according to required specifications	\$375*	\$500*	\$675	\$750	\$1,000 (plus suspension or revocation)	\$1,000 (plus suspension or revocation)
6 RCNY § 2-105(c)	Failure of dealer in second-hand automobiles to post price of add-on products according to required specifications	\$375*	\$500*	\$675	\$750	\$1,000 (plus suspension or revocation)	\$1,000 (plus suspension or revocation)
6 RCNY § 2-106	Failure to comply with requirements related to financing disclosures for second-hand automobiles	\$750	\$1,000	\$900	\$1,000	\$1,000 (plus suspension or revocation)	\$1,000 (plus suspension or revocation)
6 RCNY § 2-107	Failure to comply with requirements related to secondhand automobile contract cancellation option	\$750	\$1,000	\$900	\$1,000	\$1,000 (plus suspension or revocation)	\$1,000 (plus suspension or revocation)
6 RCNY § 2-108	Failure to comply with requirements related to secondhand automobile consumer bill of rights	\$750	\$1,000	\$900	\$1,000	\$1,000 (plus suspension or revocation)	\$1,000 (plus suspension or revocation)
6 RCNY § 2-109	Failure of second-hand automobile dealer to comply with records and reports requirements	\$750	\$1,000	\$900	\$1,000	\$1,000 (plus suspension or revocation)	\$1,000 (plus suspension or revocation)

Section 2. Subchapter B of chapter 6 of title 6 of the Rules of the City of New York is amended by adding a new section 6-85 to read as follows:

§ 6-85 Data Breach Notification Penalty Schedule.

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.

Unless otherwise specified by law, a second, or third and 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).

Each failure to comply gives rise to a separate violation of section 20-117 of the Administrative Code.

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third and Subsequent Violation	Third and subsequent Default
Admin. Code § 20-117	Failure to promptly provide DCWP with data	\$175	\$175	\$300	\$300	\$500	\$500

breach notification.						
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**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: Penalties Related to Purchase of Second-Hand Catalytic Converters and Failure to Notify of Security Breaches Involving Unauthorized Access to Personal Identifying Information

REFERENCE NUMBER: 2023 RG 005

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
Senior Counsel

Date: March 29, 2023

**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: Penalties Related to Purchase of Second-Hand Catalytic Converters and Failure to Notify of Security Breaches Involving Unauthorized Access to Personal Identifying Information

REFERENCE NUMBER: DCWP-30

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 a cure period would defeat the purpose of the violation.

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

March 30, 2023
Date