

New York City Department of Consumer and Worker Protection

Notice of Adoption

Notice of Adoption to amend the penalty schedule for Dealers in Second-hand Articles and to add a new penalty schedule for failures by licensees of the Department of Consumer and Worker Protection (“DCWP” or “the Department”) to promptly notify DCWP of data breaches.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the Department of Consumer and Worker Protection by Sections 1043 and 2203(f) of the New York City Charter and Section 20-104(b) of the New York City Administrative Code, and in accordance with the requirements of Section 1043 of the New York City Charter, that the Department amends Title 6 of the Rules of the City of New York.

This rule was proposed and published on April 6, 2023. A public hearing was held on May 8, 2023 and no comments were received.

Statement of Basis and Purpose of Rule

DCWP amends its rules to implement Local Law 123 of 2022, which prohibits dealers in second-hand articles from purchasing second-hand catalytic converters unless they meet certain documentation requirements. DCWP adds a new charge to the Dealers in Second-hand Articles Penalty Schedule for second-hand dealers who purchase second-hand catalytic converters that do not meet Local Law 123’s requirements.

DCWP also amends its rules to implement Local Law 151 of 2021, which requires that licensees of certain agencies promptly notify their agencies of certain security breaches involving unauthorized access to individuals’ personal identifying information (“data breaches”). DCWP adds a new penalty schedule for DCWP licensees who fail to promptly notify the Department of these 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.

Rule Amendments

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)
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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 breach notification.	\$175	\$175	\$300	\$300	\$500	\$500