

## 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 amend a section of the rules concerning the use of the terms “certified,” “certified pre-owned,” or manufacturer “certified” and notices to buyers of secondhand automobile dealers.

**When and where is the hearing?** DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11AM on Monday, March 4, 2024. The public hearing will be accessible by phone and videoconference.

- To participate in the public hearing via phone, please dial +1 646-893-7101
- To participate in the public hearing via videoconference, please follow the online link:
  - <http://tinyurl.com/DCWPRules-SHADs>
  - Meeting ID: 293 712 011 578
  - Passcode: 4uH5ia

**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](mailto: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 emailing [Rulecomments@dcwp.nyc.gov](mailto:Rulecomments@dcwp.nyc.gov). You can also sign up on the phone or videoconference before the hearing begins at 11AM on Monday, March 4, 2024. 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 March 4, 2024.

**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@dcwp.nyc.gov](mailto:Rulecomments@dcwp.nyc.gov). Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by February 26, 2024.

**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 section 20-104 and 20-702 of the New York City Administrative Code authorize the Department of Consumer and Worker Protection to make these proposed rules. This proposed rule was included in the Department of Consumer and Worker Protection’s regulatory agenda for Fiscal Year 2024.

**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 its rules about notices to buyers of secondhand automobiles to reform small business regulations without compromising consumer protection.

DCWP is also proposing to add a new section 6 RCNY § 5-14 to clarify that describing goods or services as “certified,” “certified pre-owned,” or “manufacturer certified” is a deceptive trade practice unless such goods or services meet the requirements of that section. DCWP is also proposing to add two new penalties to 6 RCNY § 6-47 to capture violations of new section 6 RCNY § 5-14 (a) and (b).

Sections 1043, 2203(f) and 2203(h)(1) of the New York City Charter and sections 20-104 and 20-702 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. Subparagraphs (ii),(iii), (iv), and (v) of paragraph (1) of subdivision (g) of Section 2-103 of subchapter K of chapter 2 of title 6 of the Rules of the City of New York are amended to read as follows:

(ii) [After January 31, 1971, all] All contracts for sale of second-hand automobiles shall contain the following [provisions], in type which is 10 point or larger in scale, on that face of the contract to which the buyer’s signature is affixed:

[IMPORTANT NOTICE TO BUYER

(A) STATE LAW REQUIRES THAT SELLERS OF SECOND HAND CARS CERTIFY IN WRITING TO THE BUYER THAT EACH CAR IS IN SAFE CONDITION AT THE TIME OF SALE.

(B) THIS CERTIFICATION IS A GUARANTEE THAT THE CAR IS IN SAFE CONDITION AT THE TIME OF SALE.

(C) YOU HAVE A RIGHT TO REQUEST THE DEALER TO REPAIR OR TO PAY IN FULL FOR REPAIRS OF ANY UNSAFE CONDITION IN THE CAR WHICH DOES NOT COMPLY WITH THIS CERTIFICATION.

(D) THIS BUSINESS IS LICENSED BY THE DEPARTMENT OF CONSUMER AFFAIRS, (INSERT THE DEPARTMENT'S CURRENT ADDRESS), COMPLAINT PHONE: (212) (INSERT THE DEPARTMENT'S CURRENT TELEPHONE NUMBER).] NYC DEPARTMENT OF CONSUMER AND WORKER PROTECTION LICENSE NO. (INSERT DCWP LICENSE NUMBER). IF YOU HAVE A COMPLAINT ABOUT THIS BUSINESS VISIT NYC.GOV/DCWP OR CONTACT 311.

(iii) No dealer shall include terms in a contract for sale of a secondhand automobile to a buyer other than another dealer which purport to limit the dealer's responsibility under § 417 of the Vehicle and Traffic Law or under this regulation. Impermissible limitations shall include, but not be limited to, sale of the automobile "as is," with a disclaimer of warranties, or with a term or terms limiting the dealer's duty to repair, or pay for the repair of, defects existing at the time of sale to a portion of the total cost of parts and labor.

[(iv) All applications for licenses as second-hand automobile dealers or for renewals of said licenses to be issued on or after January 31, 1971, shall be submitted with copies of any forms of contracts employed by the applicant at the time of application or which he plans to employ after said application.

(v) After November 1, 1970, each dealer in second-hand automobiles shall display and post conspicuously at his place of business, at all times so as to be readily legible by patrons, a sign or placard not less than 30 inches by 18 inches in dimension with letters thereon not less than 1-inch high stationed thereon, to read as follows:

NOTICE TO OUR CUSTOMERS

(A) STATE LAW REQUIRES THAT SELLERS OF SECOND-HAND CARS CERTIFY IN WRITING TO THE BUYER THAT EACH CAR IS IN SAFE CONDITION AT THE TIME OF SALE.

(B) THIS CERTIFICATION IS A GUARANTEE THAT THE CAR IS IN SAFE CONDITION AT THE TIME OF SALE.

(C) YOU HAVE A RIGHT TO REQUEST THE DEALER TO REPAIR OR TO PAY IN FULL FOR REPAIRS OF ANY UNSAFE CONDITION IN THE CAR WHICH DOES NOT COMPLY WITH HIS CERTIFICATION.

(D) THIS BUSINESS IS LICENSED BY THE DEPARTMENT OF CONSUMER AFFAIRS, (INSERT THE DEPARTMENT'S CURRENT ADDRESS AND CURRENT TELEPHONE NUMBER).]

Section 2. A new section 14 is added to Chapter 5 of Title 6 of the Rules of the City of New York as follows:

**§ 5-14: Certifications.**

- (a) It shall be a deceptive trade practice for a seller to represent a good or service as "certified" or "certified pre-owned" unless (1) such certification is based upon specific criteria established by an entity other than the seller; (2) the entity that established such criteria is clearly and conspicuously disclosed; (3) the seller is authorized by said entity to offer for sale such "certified" or "certified pre-owned" goods or services; (4) the certification criteria, as well as confirmation the good or service has met such criteria, are provided to the buyer prior to sale; and (5) the good or service satisfies the certification criteria.

- (b) It shall be a deceptive trade practice for a seller to represent a good as manufacturer certified, unless, in addition to the requirements of subsection (a) of this section, such certification is based upon specific criteria established by the manufacturer, and the seller is authorized by the manufacturer to offer for sale such manufacturer certified.
- (c) It shall be a deceptive trade practice for a second-hand automobile dealer to make any representation that has the tendency or effect of misleading a consumer to believe that certification of a second-hand automobile pursuant to section 417 of the New York Vehicle and Traffic Law confers any sponsorship, approval, certification, accessories, characteristics, approval, or status other than meeting the minimum standards required by sections 417 and 419-a of the New York Vehicle and Traffic Law.

Section 3. Section 6-47 of Chapter 6 of Title 6 of the Rules of the City of New York is revised as follows:

#### **§ 6-47: Consumer Protection Law 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.

Pursuant to Section 20-703(d) of the Administrative Code of the City of New York, the knowing violation of any provision of Subchapter 1 of Chapter 5 of Title 20 of the Administrative Code of the City of New York or of any rule promulgated thereunder is subject to a penalty of \$3,500.

Pursuant to Section 20-703(b) of the Administrative Code of the City of New York, each individual statement, description or other representation or omission that constitutes a deceptive trade practice shall give rise to a distinct and independent violation.

The number of violations of any provision listed below shall be calculated pursuant to § 20-703(c) of the Administrative Code of the City of New York.

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 three 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 § 20-700	Engaged in an unlawful deceptive or unconscionable trade practice	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-09	Failure to comply with the requirements for limitations on offers	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-10	Engaged in deceptive classified ads	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-11	Failure to comply with requirements for limited editions	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-12	Failure to comply with requirements for prices in multi-product and multi-service advertisements	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-13	Failure to comply with advertisements claiming to boost the immune system	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-14(a)	Misrepresenting a good or service as "certified" or "certified pre-owned"	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-14(b)	Misrepresenting a good or service as "manufacturer certified"	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-23	Failure to meet the requirement(s) for layaway plans	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-24	Failure to meet requirement(s) for credit card limitations	\$150*	\$150*	\$250	\$250	\$350	\$350
6 RCNY § 5-32	Failure to meet the requirement(s) for documentation of transactions	\$150	\$150	\$250	\$250	\$350	\$350
6 RCNY § 5-33	Failure to comply with the requirements for transactions negotiated in Spanish	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-36	Failure to meet the requirement(s) for sale of used items	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-37	Failure to comply with disclosure of refund policy requirements	\$150*	\$150*	\$250	\$250	\$350	\$350
6 RCNY § 5-38	Failure to comply with requirements for selling goods temporarily in short supply	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-39	Failure to meet the requirements for cancellation of home appointment	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-40	Improper limit or disclaimer of liability for negligence	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-40(e)	Improper posting of sign that business is not liable for negligence	\$525*	\$525*	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-41	Collected sales tax on sale of good or service not subject to such tax under Article 28 of the NYS Tax Law or rule and regulations promulgated thereunder	\$150	\$150	\$250	\$250	\$350	\$350
6 RCNY § 5-42	Violation of the prohibition on price gouging	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-47	Failure to meet the requirement(s) for jewelry sellers and appraisers	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-50	Failure to comply with the requirements for delivery of furniture and major appliances	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-51	Failure to meet the requirement(s) for retail sale of gasoline	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-54	Failure to meet the requirement(s) for repairs of consumer goods	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-55	Failure to meet the requirement(s) for meat and poultry advertising	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500

6 RCNY § 5-56	Failure to meet the requirement(s) for window gates	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-57	Failure to meet the requirement(s) for utility bill payments	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY 5-58	Improper offer of sale of food in damaged containers	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-59	Improper imposition of restaurant surcharges	\$150	\$150	\$250	\$250	\$350	\$350
6 RCNY § 5-60	Failure to meet the requirement(s) for franchises	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-61	Failure to meet the requirement(s) for public performance seats	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-63	Failure to meet the requirement(s) for catering contracts	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-68	Failure to meet the requirements for dealers at flea markets	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-69	Failure to meet the requirements of blood pressure reading services	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-70	Failure to meet the requirements for retail service establishments	\$150	\$150	\$250	\$250	\$350	\$350
6 RCNY § 5-73	Failure to meet the requirement(s) for the sale of box cutters	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500
6 RCNY § 5-75	Failure to post the Buyer's Guide when selling or offering to sell any used automobile	\$150	\$150	\$250	\$250	\$350	\$350
6 RCNY §§ 5-87 through 5-103	Prohibited conduct in offering sales or discounts and related recordkeeping requirements	\$525	\$525	\$1,050	\$1,050	\$3,500	\$3,500

**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: Amendment of Rules Relating to Notices to Buyers of Second-Hand Automobiles and Other Consumers**

**REFERENCE NUMBER: DCWP-40**

**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 the violation cannot be corrected or undone.

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

January 18, 2024  
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:** Amendment of Rules Relating to Notices to Buyers of Second-Hand Automobiles and Other Consumers

**REFERENCE NUMBER:** 2023 RG 087

**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: January 18, 2024