

NEW YORK CITY POLICE DEPARTMENT

Notice of Adoption

Notice is hereby given that pursuant to the authority granted to the Police Commissioner by Section 435 of the New York City Charter ("Charter") and Sections 20-273 and 20-277 of the New York City Administrative Code, and in accordance with section 1043 of the Charter, the Police Department has promulgated a new Chapter 21 of Title 38 of the Official Compilation of the Rules of the City of New York entitled "Recordkeeping for Pawnbrokers and Certain Second-Hand Dealers."

A public hearing to consider the adoption of this rule was held by the Police Department on May 15, 2014. Comments received from the public in connection with the rulemaking are found at <http://rules.cityofnewyork.us/comments-view/19947>.

NOTE: New matter is underlined; deleted matter is in [brackets].

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of the Police Department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Title 38 of the Rules of the City of New York is amended by adding a new Chapter 21 to read as follows:

CHAPTER 21

RECORDKEEPING FOR PAWNBROKERS AND CERTAIN SECOND-HAND DEALERS

§21-01 Introduction.

The following rule has been promulgated by the Police Commissioner to implement the provisions of Local Law No. 149 of 2013 ("the Local Law"), which establishes new requirements for recordkeeping by pawnbrokers and certain second-hand dealers in New York City.

§21-02 Definitions.

Dealer in Second-Hand Articles. "Dealer in Second-Hand Articles" or "Second-Hand Dealer" means a dealer in second-hand articles as such person is defined in Section 20-264 of the New York City Administrative Code.

Dealer Subject to Electronic Recordkeeping Requirements. "Dealer Subject to Electronic Recordkeeping Requirements" means a dealer in second-hand articles who deals in: (1) the purchase or sale of any second-hand manufactured article composed wholly or in part of gold, silver, platinum, or other precious metals; the purchase or sale of any old gold, silver, platinum or other precious metals; the purchase of articles or things comprised of gold, silver, platinum or other precious metals for the purpose of melting or refining; the purchase or sale of used electrical appliances excluding kitchen appliances; the purchase or sale of any used electronic equipment, computers or component parts of electronic equipment or computers; or (2) the purchase or sale of pawnbroker tickets or other evidence of pledged articles, or the redemption or sale of pledged articles, where the second-hand dealer is not a pawnbroker.

Computer. "Computer" means a device which, by manipulation of electronic, magnetic, optical or electrochemical impulses, pursuant to an ordered set of data representing coded instructions or statements, can automatically perform arithmetic, logical, storage or retrieval operations, including but not limited to a tablet, laptop, desktop, gaming system, e-reader, MP3 player, or smartphone.

Electronic Equipment. "Electronic Equipment" means a device capable of recording, storing, playing or displaying digital media, including but not limited to a tablet, laptop, desktop, gaming system, e-reader, MP3 player, cellphone, smartphone, or any other electronic device capable of voice communication.

IMEI Number. "IMEI Number" means International Mobile Equipment Identity number.

Pawnbroker. "Pawnbroker" means a collateral loan broker as defined in Section 52 of the New York State General Business Law.

Police Commissioner. "Police Commissioner" means the Commissioner of the New York City Police Department.

§21-03 Pawnbrokers Required to Create and Upload Electronic Records.

(a) In addition to the physical records of transactions required to be created and maintained pursuant to the provisions of the New York City Administrative Code and the New York State General Business Law, pawnbrokers are required to create an electronic record of each transaction at the time such transaction takes place. The electronic record must be uploaded immediately, or on a daily basis no later than midnight of the day of such transaction, to a web-based electronic data transfer service designated by the Police Commissioner.

(b) The electronic records to be created and uploaded must include the following information: (i) the date, time, location and type of transaction; (ii) the serial number pre-printed on the physical record of such transaction; (iii) an accurate description of each article pawned or pledged, including type of article, manufacturer, make, model, serial number, IMEI number, inscriptions and distinguishing marks; (iv) an accurate description of each article purchased or sold, including type of article, manufacturer, make, model, serial number, IMEI number, inscriptions and distinguishing marks; and (v) one or more digital photographs reasonably capturing the likeness of each subject article, including any serial numbers or other identifying markings which are visible. Such photograph(s) must be created in a jpeg format.

§21-04 Second-Hand Dealers Required to Create and Upload Electronic Records.

(a) In addition to the physical records of transactions required to be created and maintained pursuant to the provisions of the New York City Administrative Code, second-hand dealers subject to electronic recordkeeping requirements must create an electronic record of certain transactions at the time such transactions take place, as provided in subdivision (c) or (d) of this section, as applicable. The electronic record must be uploaded immediately, or on a daily basis no later than midnight of the day of such transaction, to a web-based electronic data transfer service designated by the Police Commissioner.

(b) Second-hand dealers subject to electronic recordkeeping requirements must create and upload electronic records of transactions involving (i) the purchase or sale of any second-hand manufactured article composed wholly or in part of gold, silver, platinum, or other precious metals; (ii) the purchase or sale of any old gold, silver, platinum or other precious metals, (iii) the purchase of articles or things comprised of gold, silver, platinum or other precious metals for the purpose of melting or refining, (iv) the purchase or sale of used electrical appliances excluding kitchen appliances; (v) the purchase or sale of any used electronic equipment, computers or component parts of electronic equipment or computers; or (vi) the purchase or sale of pawnbroker tickets or other evidence of pledged articles, or the redemption or sale of pledged articles, where the second-hand dealer is not a pawnbroker.

(c) The electronic records to be created and uploaded by dealers subject to electronic recordkeeping requirements for transactions not involving the purchase or sale of pawnbroker tickets or other evidence of pledged articles, or the redemption or sale of pledged articles, must include the following information: (i) the date, time, and location; (ii) the serial number pre-printed on the physical record of such transaction; (iii) an accurate description of each article purchased or sold, including type of article, manufacturer, make, model, serial number, IMEI number, inscriptions and distinguishing marks; and (iv) one or more digital photographs reasonably capturing the likeness of each subject article, including any serial numbers or other identifying markings which are visible. Such photograph(s) must be created in a jpeg format.

(d) The electronic records to be created and uploaded by second-hand dealers subject to electronic recordkeeping for transactions involving the purchase or sale of pawnbroker tickets or other evidence of pledged articles, or the redemption or sale of pledged articles, must include the following information: (i) the name and address of the person who issued such ticket or other evidence; (ii) the pledge number of such pawn ticket or other evidence; (iii) the amount

loaned or advanced as it appears on such pawn ticket or other evidence; (iv) the day and hour of such purchase, sale or redemption, as the case may be; (v) the serial number pre-printed on the physical record of such transaction; (vi) the sum paid or received for such pawn ticket or other evidence, or the sum paid or received for the redeemed article or pledge; (vii) such description of a pledged article as appears on such pawn ticket or other evidence and an accurate description of every redeemed pledged article including type of article, manufacturer, make, model, serial number, IMEI number, inscriptions and distinguishing marks; and (viii) one or more digital photographs reasonably capturing the likeness of each subject article, including any serial numbers or other identifying markings which are visible. Such photograph(s) must be created in a jpeg format.

§21-05 Descriptions of Items Containing Gold, Silver, Platinum or Other Precious Metals or Other Jewelry.

When providing descriptions of articles purchased, sold, pawned or redeemed which are composed wholly or in part of precious metals, or are otherwise commonly described as jewelry, pawnbrokers and second-hand dealers subject to electronic recordkeeping requirements must include the following information as relevant: (i) type of precious metal; (ii) weight of precious metal in karats; (iii) number of precious stones on item; (iv) type(s) of precious stones on item; (v) unique marks or inscriptions on item, including any specific words; and (vi) any visible alterations, modifications or damage to the item.

§21-06 Descriptions of Electrical Appliances, Electronic Equipment and Computers.

When providing descriptions of electrical appliances, electronic equipment, computers or their component parts, pawnbrokers and second-hand dealers subject to electronic recordkeeping requirements must include the following information as relevant: (i) manufacturer; (ii) make; (iii) model number; (iv) serial number; (v) IMEI number; (vi) identifying numbers including any numbers etched on the item pursuant to a crime prevention program of the New York City Police Department or any other entity; and (vii) any visible alterations, modifications or damage to the item, including altered or missing serial or IMEI numbers.

§21-07 Creation and Uploading of Electronic Records.

(a) The electronic records required by the Local Law and this Chapter must be created accurately and in English, and contain all required items of information. All digital photographs must reasonably capture the likeness of the subject article. Such electronic records and photographs must be uploaded immediately, or on a daily basis no later than midnight of the day of such transactions, to the web-based electronic data transfer service designated by the Police Commissioner for this purpose.

(b) Prior to this Chapter taking effect, New York City Police Department personnel will advise in writing pawnbrokers and second-hand dealers subject to electronic recordkeeping requirements of the identity of the service designated by the Police Commissioner for this purpose. Police Department personnel will also provide the service's contact information to such pawnbrokers and second-hand dealers so that they may be instructed by the service regarding how to use the electronic recordkeeping system, and in order to request customer assistance from the service as needed. Within 60 days of this Chapter taking effect, all pawnbrokers and second-hand dealers subject to electronic recordkeeping requirements must register with the service, commence uploading information as required by the Local Law and by this Chapter, and obtain a notice from the service confirming that such uploading was successfully received by the service.

(c) In addition to the specific items of information required by the Local Law and this Chapter for each transaction, each pawnbroker or second-hand dealer subject to electronic recordkeeping requirements must also provide to the service its own identifying information, including business name, address, phone number, fax number, Department of Consumer Affairs license number, and the store manager's name and email address, as well as an identifying number for each transaction and the identity of the business' employee or agent handling the transaction.

(d) If a pawnbroker or second-hand dealer uploads an extract from their point-of-sale software in order to comply with the requirements of this Chapter, the file must be uploaded using the web upload mechanism provided on the designated electronic data transfer service's website. The extract format must be of a type supported by the electronic data transfer service. If the pawnbroker or second-hand dealer does not use an extract from their point-of-sale software, each transaction must be manually entered using the web interface provided by the service.

(e) In the course of creating and uploading electronic records pursuant to this Chapter, pawnbrokers and second-hand dealers must complete all fields of information required, provided that if a particular item of information is unavailable, the pawnbroker or second-hand dealer must indicate such by inserting into the field "unavailable," "altered," or "not applicable," as appropriate.

(f) If in the course of a day the pawnbroker or second-hand dealer does not conduct a transaction required to be reported electronically, the pawnbroker or second-hand dealer must upload a notice of no electronically reportable transactions to the electronic data service, providing such report no later than midnight of such day. This requirement applies to each individual day during which there occurs no transaction required to be reported electronically, except that where business of any kind is not conducted on that day (for example, where the business is closed on a weekend or holiday) the notice must be forwarded to the service no later than midnight of the next day during which business of any kind is conducted.

§21-08 Required Equipment.

Pawnbrokers and second-hand dealers subject to electronic recordkeeping requirements must acquire and maintain in good working order the electronic equipment necessary to create, maintain and upload the electronic records required by the Local Law and by this Chapter, including but not limited to a computer with internet connection and a digital camera utilizing a jpeg file format so that the required information may be transmitted to the web-based electronic data transfer service designated by the Police Commissioner.

§21-09 Retention of Records.

The electronic records created pursuant to this Chapter must be retained for a minimum of six years from the date of transaction.

Statement of Basis and Purpose of Rule

Local Law 149 of 2013 amended Sections 20-267, 20-273, and 20-277 of the New York City Administrative Code to require electronic recordkeeping by pawnbrokers and by certain second-hand dealers, specifically those dealing in electronics, jewelry, and pawn tickets. Section four of Local Law 149 of 2013 authorizes the Commissioner of the Department of Consumer Affairs (DCA) and the Commissioner of the New York City Police Department (NYPD) to promulgate rules necessary to carry out the provisions of this new Local Law.

Pawnbrokers and second-hand dealers in New York City are licensed by DCA and their record-keeping practices are monitored by both DCA and the NYPD. It is vitally important to ensure that accurate and complete records are maintained by these businesses, which may unwittingly be used as the repository of stolen property. DCA inspectors and NYPD officers must routinely visit these locations to inspect what is informally called the "Police Book," i.e., the log book containing a record of each transaction on tear-off sheets, to ensure that they are completed accurately and that they correctly reflect the property present in the store.

By requiring accurate and detailed electronic recordkeeping for pawnbrokers and certain second-hand dealers, implementation of Local Law 149 of 2013 will both improve administrative efficiency and deter property crime by discouraging the disposal of stolen property.

The rule is adopted by the Police Commissioner to implement the provisions of Local Law 149 of 2013. The rule:

- Identifies the businesses which are subject to electronic recordkeeping;
- Directs the manner, format, and timeliness with which electronic records are to be created, maintained and uploaded;
- Notifies businesses subject to electronic recordkeeping about the types of information that must be included when describing certain items in their electronic records; and
- Specifies the equipment necessary to create, maintain and upload the electronic records as well as the length of time electronic records must be retained.