

**City of New York
Environmental Control Board**

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Environmental Control Board (ECB) proposes to amend its Department of Buildings (DOB) Penalty Schedule. This schedule is found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. It contains penalties for notices of violation issued by the New York City DOB.

When and where is the Hearing? ECB will hold a public hearing on the proposed rule. The public hearing will take place at 2:00 p.m. on November 10, 2015. The hearing will be in the ECB Conference Room located at 66 John Street, 10th Floor, New York, NY 10038.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the ECB through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to Rules_Oath@oath.nyc.gov.
- **Mail.** You can mail written comments to ECB, Attention: James Macron, Counsel to the Board, 66 John Street, 10th Floor, New York, NY 10038.
- **Fax.** You can fax written comments to ECB at 212-361-1900.
- **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 Elizabeth Nolan at 212-436-0708. You can also sign up in the hearing room before the hearing begins on November 10, 2015. You can speak for up to three minutes.

Is there a deadline to submit written comments? You may submit written comments up to November 10, 2015.

Do you need assistance to participate in the Hearing? You must tell ECB staff if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 212-436-0708. You must tell us by November 3, 2015.

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, a transcript of the hearing and copies of the written comments will be available to the public at the ECB's office located at 66 John Street, 10th Floor, New York, NY 10038.

What authorizes ECB to adopt this rule? Section 1049-a and 1043 of the New York City Charter and Section 28-202.1 of the New York City Administrative Code authorize ECB to adopt this proposed rule. This proposed rule was not included in ECB’s regulatory agenda for this Fiscal Year because it was not contemplated when ECB published the agenda.

Where can I find the ECB’s rules? ECB’s rules are in Title 48 of the Rules of the City of New York.

What laws govern the rulemaking process? ECB must meet the requirements of Section 1043(b) of the Charter when creating or changing rules. This notice is made according to the requirements of Sections 1043(b) and 1049-a of the Charter.

Statement of Basis and Purpose of Proposed Rule

The New York City Environmental Control Board (“ECB”) is proposing a rule that would modify the Buildings Penalty Schedule to reflect the 2014 updates to the NYC Construction Codes and to more clearly and effectively allow the New York City Department of Buildings (“DOB”) to enforce particular sections of law.

The 2014 updates to the NYC Construction Codes amended the Administrative Code of the City of New York, the New York City Plumbing Code, the New York City Building Code, the New York City Mechanical Code and the New York City Fuel Gas Code, and brought these codes up to date with the 2009 editions of the International Building, Mechanical, Fuel Gas and Plumbing Codes.

The updates amended existing requirements, added new requirements and renumbered existing sections of these Codes. The Buildings Penalty Schedule needs to be amended to reflect some of these changes. The proposed rule amends the Buildings Penalty Schedule by:

- updating sections of law for certain violations (“Failure to provide pedestrian protection for sidewalks and walkways,” “New building or open lot occupied without a valid certificate of occupancy,” and “Failure to obey a vacate order”),
- updating descriptions for certain violations (“New building or open lot occupied without a valid certificate of occupancy” and “Failure to obey a vacate order”),
- deleting one existing violation (“Use of supported scaffold without a scaffold user certificate”), and
- adding one new violation (“Scaffold training certificate card not readily available for inspection”).

Penalty amounts for all existing violations remain unchanged. All penalties fall within the guidelines for all classes of violations, as stated in Section 28-202.1 of the New York City Administrative Code. The statutory maximum for each class of violation is:

Class 3 (lesser violation) -\$500,

Class 2 (major violation) - \$10,000, and
 Class 1 (immediately hazardous violation) - \$25,000.

Eligible Class 2 (major) violations, and all Class 3 (lesser) violations, are indicated as curable in the penalty schedule.

[Deleted material is in brackets.]
 New material is underlined.

Section 1. The Environmental Control Board proposes to amend its Buildings Penalty Schedule in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by deleting the following violation:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
[BC 3314.4.6]	[Class 1]	[Use of supported scaffold without a scaffold user certificate]	[No]	[No]	[1600]	[No]	[8000]	[4000]	[16000]	[8000]	[25000]

§ 2. The Environmental Control Board proposes to amend the following violations in its Buildings Penalty Schedule in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to read as follows:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
BC3307.3 (2008 Code) and BC 3307.1 (2014 Code)	Class 1	Failure to provide pedestrian protection for sidewalks and walkways	No	No	4800	No	24000	12000	25000	24000	25000
[28-118.2] <u>28-118.1</u>	Class 1	[New building] <u>Building</u> or open lot occupied without a valid certificate of occupancy	No	No	1000	No	5000	2500	10000	5000	25000
[28-207.4] <u>28-201.1</u>	Class 1	Failure to obey a Vacate Order by <u>the Commissioner</u> per <u>28-207.4</u>	No	No	4800	No	24000	12000	25000	24000	25000

§ 3. The Environmental Control Board proposes to amend its Buildings Penalty Schedule in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to add one new violation after the entry in that schedule for BC3314.4.5 (2008 Code) & BC3314.4.5.1 (2014 Code), Unqualified supervisor or worker performing work on scaffold, to read as follows:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
<u>BC 3314.4.6 (2008 code) & BC 3314.4.5.8 (2014 code)</u>	<u>Class 2</u>	<u>Scaffold training certificate card not readily available for inspection</u>	<u>Yes</u>	<u>No</u>	<u>800</u>	<u>Yes</u>	<u>4000</u>	<u>2000</u>	<u>8000</u>	<u>4000</u>	<u>10000</u>

**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 Buildings Penalty Schedule Reflecting Recent Construction Code Amendments

REFERENCE NUMBER: 2015 RG 105

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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: September 16, 2015

**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 Buildings Penalty Schedule Reflecting Recent Construction Code Amendments

REFERENCE NUMBER: OATH-ECB-62

RULEMAKING AGENCY: OATH-ECB

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) Provides cure periods for eligible Class 2 (major) violations, and all Class 3 (lesser) violations, as indicated in the penalty schedule.

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

September 16, 2015
Date