

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Environmental Protection (the “Department”) is proposing a rule to amend the penalty schedule for violations of Title 24, Chapter 1 of the Administrative Code, also known as the Air Pollution Control Code (Air Code).

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place at 10 a.m. on April 26, 2017. The hearing will be held in the 11th floor conference room at 59-17 Junction Boulevard, Flushing, New York.

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

- **Website.** You can submit comments to the Department of Environmental Protection through the NYC Rules web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to nycrules@dep.nyc.gov.
- **Mail.** You can mail written comments to the Department of Environmental Protection, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to the Department of Environmental Protection, Bureau of Legal Affairs, at 718-595-6543.
- **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 718-595-6531. You can also sign up in the hearing room before the hearing begins on April 26, 2017. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by April 26, 2017.

Do you need assistance to participate in the hearing? You must tell the Bureau of Legal Affairs 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 718-595-6531. You must tell us by April 19, 2017.

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 Bureau of Legal Affairs.

What authorizes the Department to make this rule? Section 1043 of the City Charter and sections 24-178 and 24-105 of the Administrative Code authorize the Department to make this proposed rule. This proposed rule was included in the Department’s regulatory agenda for this fiscal year.

Where can I find the Department’s rules? The Department’s rules are in title 15 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department must meet the requirements of Section 1043(c) of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Proposed Rule

On May 11, 2016, Chapter 43 of Title 15 of the Rules of the City of New York, establishing a penalty schedule for violations of the Air Code, took effect. It has since been discovered that there is an error in the penalty schedule.

Administrative Code Section 24-169, which prohibits the use, purchase, sale, offer, storage or transport of fuel with excess sulfur content, is listed in the penalty schedule with the incorrect subdivision. The schedule should include § 24-169(a) and § 24-169(b) but not § 24-169(c), which is not a charging section. The amounts of the penalties are set forth correctly, and remain unchanged.

Consistent with the above, DEP promulgates the following amendment, to be found at 15 RCNY Chapter 43.

The text of the Rule follows.

Section 1. Chapter 43 of Title 15 of the Rules of the City of New York is amended to read as follows:

Section of Law	Violation Description	Compliance	1st Offense Stip.	1st Offense	Default Penalty	2nd Offense	2nd Stip.	3rd and Subsq. Offense	3rd & Subsq. Stip.
24-169(a)	Use/purchase/sale/offer/storage/transport of fuel with excess sulfur content (# 2 oil)	Purchase and use fuel with proper sulfur content - forthwith	1,600	1,600	6,400	3,200	3,200	4,800	4,800
24-169(b)	Use/purchase/sale/offer/storage/transport of fuel with excess sulfur content (# 4 oil)	Purchase and use fuel with proper sulfur content - forthwith	1,600	1,600	6,400	3,200	3,200	4,800	4,800
[24-169(c)]	[Use/purchase/sale/offer/storage/transport of fuel with excess sulfur]	[Purchase and use fuel with proper sulfur content – forthwith]	[1,600]	[1,600]	[6,400]	[3,200]	[3,200]	[4,800]	[4,800]

**NEW YORK CITY LAW DEPARTMENT
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100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendments to the Penalty Schedule for Violations of the Air Code

REFERENCE NUMBER: 2017 RG 019

RULEMAKING AGENCY: Department of Environmental 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: March 15, 2017

**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: Amendments to the Penalty Schedule for Violations of the Air Code

REFERENCE NUMBER: DEP-34

RULEMAKING AGENCY: Department of Environmental 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 rule violations arise from completed events, the consequences of which are immediate, which makes a cure period impracticable under the circumstances.

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

March 15, 2017
Date