

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Environmental Protection (DEP) is proposing to amend the Air Code and Noise Code Penalty Schedules by replacing outdated citations to the rules of the Office of Administrative Trials & Hearings (OATH).

When and where is the hearing? DEP has determined, pursuant to New York City Charter section 1043(e), that a public hearing on the proposed rule would serve no public purpose.

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

- **Website.** You can submit comments to the DEP 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 DEP Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to the DEP Bureau of Legal Affairs, at 718-595-6543.

Is there a deadline to submit written comments? Yes, you must submit written comments by April 28, 2017.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rule by going to the website at <http://rules.cityofnewyork.us/>. 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 and sections 24-257 and 24-204 of the Administrative Code authorize the department to make this proposed rule. This proposed rule was not 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 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 August 7, 2016, OATH made changes to its rules, which are found at Title 48 of the Rules of the City of New York (RCNY). OATH has repealed the Air Code and Noise Code Penalty Schedules from its rules and these penalty schedules have been promulgated by DEP as 15 RCNY 43-01 *et seq.* (Air) and 15 RCNY 47-01 *et seq.* (Noise). When DEP promulgated these penalty schedules in its rules, outdated references to sections of OATH's rules were carried over. The proposed rules replace these outdated references.

Consistent with the above, DEP promulgates the following amendments, to be found at 15 RCNY Chapters 43 and 47.

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:

§ 43-02 Air Code Penalty Schedule

When a respondent is found in violation of any of the following provisions of the New York City Administrative Code, Rules of the City of New York, or New York Codes, Rules and Regulations, any civil penalties [recommended] imposed by a Hearing Officer under 48 RCNY § [3-57(a)] 6-17(a) and/or any default penalties imposed under 48 RCNY § [3-81(a)] 6-20(b) in accordance with § 1049-a(d)(1)(d) of the Charter, and/or any civil penalties imposed for admissions of violation(s) under 48 RCNY § [3-32] 6-09(a) or late admissions under 48 RCNY § [3-81(b)] 3-17, will be imposed in accordance with the following penalty schedule:

Section 2. Chapter 47 of Title 15 of the Rules of the City of New York is amended to read as follows:

§47-01 General

Whenever a respondent is found in violation of any of the following provisions of the New York City Administrative Code or Rules of the City of New York, any civil penalties [recommended] imposed by a Hearing Officer pursuant to 48 RCNY §[3-57(a)] 6-17(a) and/or any default penalties imposed pursuant to 48 RCNY §[3-81(a)] 6-20(b) in accordance with §1049-a(d)(1)(d) of the New York City Charter and/or any civil penalties imposed for admissions of violation(s) pursuant to 48 RCNY §[3-32] 6-09(a)

or late admissions pursuant to 48 RCNY §[3-81(b)] 3-17 will be imposed pursuant to the penalty schedules set forth below.

§47-02 Noise Code Penalty Schedule

All Citations are to the NYC Administrative Code unless otherwise indicated.

A stipulation penalty is imposed if there is a “Y” (Yes) in the Stipulation column in the Penalty Schedule rather than a “N” (No), and if a stipulation is offered and accepted at a hearing.

Definition of 2nd and/or 3rd and/or 4th offense: By the same respondent of the same provision of law, order, rule or regulation as the previous violation and, if the respondent is the owner, agent, lessee or other person in control of the premises with respect to which the violation occurred, at the same premises as the previous violation (all violations committed within two years).

Pursuant to 48 RCNY §[3-81(b)] 3-17, a late admit fee of \$30.00 will be added to all the below listed penalties for a failure to submit a payment by mail[, as per 48 RCNY §3-32,] within 30 days of the mailing date of the default order issued against respondent.

**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: Technical Amendments to Air Code and Noise Code Penalty Schedules

REFERENCE NUMBER: 2017 RG 024

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 17, 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: Technical Amendments to Air Code and Noise Code Penalty Schedules

REFERENCE NUMBER: DEP-35

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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Francisco X. Navarro

Mayor's Office of Operations

March 17, 2017

Date