

ENVIRONMENTAL CONTROL BOARD

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Environmental Control Board (ECB) by Section 1049-a of the New York City Charter, and in accordance with Section 1043(b) of the New York City Charter, the Environmental Control Board hereby promulgates the following rule. The rule was published in The City Record on January 11, 2012 and a Public Hearing was held on February 14, 2012.

Statement of Basis and Purpose of Final Rule

The Environmental Control Board held a Public Hearing on February 14, 2012 regarding amendments to its Health Code and Miscellaneous Food Vendor Violations Penalty Schedule found in Section 3-110 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York ("Penalty Schedule"). Four members of the public attended the Public Hearing and one of them did not wish to testify on the Proposed Rule. No written comments were received on the Proposed Rule.

Section 1

The amendment conforms the Penalty Schedule's description of violations of New York City Health Code ("Health Code") Section 3.05 to the actual language of Health Code Section 3.05.

- Section 3.05(a) of the Health Code states that "No person shall violate an order of the Board, Commissioner or Department." (As defined in Section 1.03 of the Health Code, "Board" refers to the Board of Health of the New York City Department of Health and Mental Hygiene (DOHMH), "Commissioner" refers to the Commissioner of Health and Mental Hygiene, and "Department" refers to DOHMH.)

Because Health Code Section 3.05 prohibits non-compliance with *any* order issued by DOHMH, the Board of Health of DOHMH, or the DOHMH Commissioner, the Penalty Schedule description has been amended to clarify and maintain consistency with the requirement of Health Code Section 3.05. The penalty remains the same.

Section 2

Section 2 changes the statutory citation for Health Code Section 89.29(e) to 89.29(g).

The change is necessary because on June 14, 2011, the Board of Health amended Section 89.29, resulting in a re-lettering of its subdivisions, so that subdivision (e) became subdivision (g). The description and the penalty remain the same.

New matter is underlined, and deleted material is in [brackets].

Section 1. The Health Code and Miscellaneous Food Vendor Violations Penalty Schedule found in Section 3-110 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended by revising the description of New York City Health Code Section 3.05 violations as follows:

Section/Rule	Description	Penalty	Default
NYC Health Code 3.05	Failing to comply with Department, Board of Health, or Commissioner's Order [to abate or remediate nuisance	\$1,000	\$2,000

	condition(s)]		
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Section 2. The Health Code and Miscellaneous Food Vendor Violations Penalty Schedule found in Section 3-110 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York is amended by revising the section/rule number of what is currently listed as “NYC Health Code 89.29(e)” (“Removal or covering of cessation signs or seals”) as follows:

Section/Rule	Description	Penalty	Default
NYC Health Code 89.29 [(e)] (g)	Removal or covering of cessation signs or seals	\$1,000	\$2,000