

**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 Transportation (DOT) Penalty Schedule. This schedule is found in Section 3-124 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 DOT.

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 February 11, 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 February 11, 2015. You can speak for up to three minutes.

Is there a deadline to submit written comments? You may submit written comments up to February 11, 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 February 4, 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? Sections 1049-a and 1043 of the New York City Charter and Sections 19-144 and 19-150 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? The 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 New York City 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

The Department of Transportation issues violations for certain types of infractions against contractors who fail to provide adequate protection at worksites to ensure the safety of pedestrians and vehicles. Although existing law allows fines for these infractions to be as high as \$5,000, the current fine is set at only \$400, and has been at that amount since 1995. This amount is also relatively low compared to other DOT safety-related violations such as for failing to secure a steel plate, for example. The fine for that violation is \$1,200 and reflects the danger to public safety that could occur from a steel plate that is not properly secured.

To maintain consistency across its safety related infractions, and to promote the safety of pedestrians and vehicles around a worksite, the Environmental Control Board (“ECB”) is proposing a rule to increase the penalty for failure to provide adequate protection from \$400 to \$1,200. The ECB is also proposing that the default penalty for failure to provide adequate protection be raised from \$1,200 to \$3,600.

[Deleted material is in brackets.]

New material is underlined.

§ 1. The Department of Transportation Penalty Schedule entry for Admin. Code 19-109(a), found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is amended to read as follows:

Section/Rule	Description	Penalty	Default
Admin. Code 19-109(a)	Failure to provide adequate protection at worksite	[\$400] <u>\$1,200</u>	[\$1,200] <u>\$3,600</u>

**NEW YORK CITY LAW DEPARTMENT
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**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of DOT Penalty Schedule (Failure to Provide Adequate Protection at Worksites)

REFERENCE NUMBER: 2014 RG 091

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: November 19, 2014

**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 DOT Penalty Schedule (Failure to Provide Adequate Protection at Worksites)

REFERENCE NUMBER: OATH-ECB-51

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) Does not provide a cure period because a cure period would present a substantial risk to public safety.

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

November 19, 2014
Date