

## New York City Department of Environmental Protection

### Notice of Public Hearing and Opportunity to Comment on Proposed Rule

**What are we proposing?** The Department of Environmental Protection (“DEP”) is proposing to amend the Air Code Penalty Schedule, set forth in Chapter 43 of Title 15 of the Rules of the City of New York, in regard to changing and clarifying the criteria for second and third offenses of certain violations, including vehicular idling violations, and to provide that such violations can be admitted without going through the stipulation process.

**When and where is the hearing?** DEP will hold a public hearing on the proposed rule online. The public hearing will take place at 11 am on February 8, 2023. To participate in the public hearing, please follow these instructions:

Microsoft Teams meeting

Join on your computer, mobile app or room device:

[Click here to join the meeting](#)

Meeting ID: 231 754 331 61

Passcode: aHoyWG

[Download Teams](#) | [Join on the web](#)

Or call in (audio only)

[+1 347-921-5612,,936628871#](#)

Phone Conference ID: 936 628 871#

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

- **Website.** You can submit comments to DEP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to [nycrules@dep.nyc.gov](mailto:nycrules@dep.nyc.gov).
- **Mail.** You can mail written comments to the Department of Environmental Protection, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19<sup>th</sup> Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to DEP’s Bureau of Legal Affairs, at 718-595-6543.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling 718-595-6531. You can speak for up to three minutes.

**Is there a deadline to submit written comments?** Yes, you must submit written comments by February 8, 2023.

**What if I need assistance to participate in the hearing?** You must tell DEP’s Bureau of Legal Affairs if you need a reasonable accommodation because 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. Advance notice is requested to allow sufficient time to arrange the accommodation. DEP must receive notice by February 1, 2023 in order to consider your request.

**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 these rules?** Sections 1403(c) of the New York City Charter (“Charter”) and sections 24-105, 24-163, and 24-178 of the Administrative Code of the City of New York authorize DEP to make these proposed rules. These proposed rules were included in DEP’s regulatory agenda for this Fiscal Year.

**Where can I find DEP’s rules?** DEP’s rules are in Title 15 of the Rules of the City of New York.

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

### **Statement of Basis and Purpose**

Chapter 43 of Title 15 of the Rules of the City of New York sets forth the penalties that may be imposed for violations of the Air Pollution Control Code. Section one of this proposed rule would amend subdivision (5) of section 43-01 of title 15 of the Rules of the City of New York to revise the existing policy providing the time period following a predicate offense in which subsequent offenses may be considered second or third offenses for idling summonses and trigger potentially heightened penalties. Currently, this rule provision differentiates between all Air Pollution Control Code offenses and offenses of section 24-163 of the Administrative Code of the City of New York (“Administrative Code”), which prohibits excessive vehicle idling.

The Citizens Idling Complaint Program, authorized by section 24-182 of the Administrative Code, has caused a significant increase in the number of summonses being issued for violations of section 24-163 of the Administrative Code. This increase has resulted in delays in the issuance of summonses, meaning that much of the existing two-year period may expire while an initial summons is being issued and adjudicated. In order to address this issue, this proposed rule would increase the time period following the date of a predicate first offense of section 24-163 of the Administrative Code during which a subsequent offense can be treated as a second or third offense from two years to three.

This proposed rule amendment would also clarify that this time period policy applies to third offenses for Air Pollution Control Code offenses not related to section 24-163 of the Administrative Code, but would not amend the applicable two year period relating to such penalties.

Consistent with Chapter 6 of title 48 of the Rules of the City of New York, sections two and three of the proposed rule would add a new subdivision (7) to section 43-01 of title 15 of the

Rules of the City of New York and amend the schedule set forth in section 43-02 of such title to provide that respondents may admit violations of section 24-163 instead of entering into a stipulation. Currently, the Department of Environmental Protection (“DEP”) makes a stipulation offer on many Air Code violations, in accordance with section 24-183 of the Administrative Code. Acceptance of the stipulation offer entails admitting the violation, paying the stipulated penalty, and promising to correct the violating condition within a prescribed time period. For idling violations, committing to correct the violating condition is meaningless because of the ephemeral nature of vehicular idling. The proposed rule, by providing for admissions instead of stipulations with regard to section 24-163 of the Administrative Code, will allow respondents to admit and pay summonses online through the Office of Administrative Trials & Hearings (“OATH”) website, instead of waiting to receive a stipulation offer from DEP. This will expedite the handling of these cases and reduce the administrative burden on DEP and OATH that has been created by the rapid expansion in the number of idling summonses.

Subdivision (c) of section 1403 of the New York City Charter and sections 24-105, 24-163 and 24-178 of the Administrative Code authorize the Department to issue this proposed rule.

New text is underlined.

The text of the proposed rule follows:

Section 1. Paragraph 5 of Section 43-01 of Title 15 of the Rules of the City of New York is amended to read as follows:

5. Except in connection with violations of Section 24-163, a second or third offense means a violation of any section of the Air Code by the same respondent within two years of the date of occurrence of the prior violation, at the same premises (if premises-related), and involving the same equipment. In connection with violations of Section 24-163, a second or third or subsequent offense is a violation by the same respondent within [two] three years of the date of occurrence of the prior violation(s) and involving the same [equipment] vehicle, where the prior violation(s) was for a violation of Section 24-163.

§ 2. Section 43-01 of Title 15 of the Rules of the City of New York is amended by adding a new subdivision 7 to read as follows:

7. Each summons for a violation of section 24-163 shall provide that a respondent may admit to such violation and pay the corresponding penalty amount set forth in section 43-02.

§ 3. Section 43-02 of Title 15 of the Rules of the City of New York is amended by changing the entries for sections 24-163 and 24-163(f), as follows:

Section of Law	Violation Description	Compliance	1st Offense Stip. (\$)	1st Offense (\$)	Default Penalty (\$)	2nd Offense (\$)	2nd Stip. (\$)	3rd and Subsq. Offense (\$)	3rd and Subsq. Stip. (\$)
24-163	Idling of motor vehicle engine more than three minutes	[Do not idle motor vehicle more than 3 minutes – forthwith] <u>N/A</u>	[350] <u>N/A</u>	350	1 <sup>st</sup> : 1,000; 2 <sup>nd</sup> : 1,500; 3 <sup>rd</sup> and subseq: 2,000	440	[440] <u>N/A</u>	600	[600] <u>N/A</u>
24-163(f)	Idling of motor vehicle more than one minute while adjacent to school	[Do not idle motor vehicle more than 1 minute – forthwith] <u>N/A</u>	[350] <u>N/A</u>	350	1 <sup>st</sup> : 1,000; 2 <sup>nd</sup> : 1,500; 3 <sup>rd</sup> and subseq: 2,000	440	[440] <u>N/A</u>	600	[600] <u>N/A</u>

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Penalties and Procedures Relating to Engine Idling Violations**

**REFERENCE NUMBER: DEP-91**

**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 a cure period is not practicable under the circumstances.

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

December 27, 2022  
Date

**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 Penalties and Procedures Relating to Engine Idling Violations

**REFERENCE NUMBER:** 2022 RG 072

**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  
Senior Counsel

Date: December 23, 2022

