

**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 Buildings (DOB) Penalty Schedule to encourage swift and decisive compliance with safety-related orders and other regulations at construction sites. This schedule is found in Section 3-103 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 DOB.

When and where is the Hearing? ECB will hold a public hearing on the proposed rule. The public hearing will take place at **10:30 AM on Wednesday, March 30, 2016**. 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: Helaine Balsam, Deputy General Counsel, OATH, 100 Church Street, 12th Floor, New York, NY 10007.
- **Fax.** You can fax written comments to ECB, 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 Wednesday, March 30, 2016. You can speak for up to three minutes.

Is there a deadline to submit written comments? You may submit written comments up to Wednesday, March 30, 2016.

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 Friday, March 25, 2016.

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? Section 1049-a and 1043 of the New York City Charter and Section 28-204.1 of Chapter 2 of Title 28 of the 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 Charter when creating or changing rules. This notice is made according to the requirements of Sections 1043(b) and section 1049-a of the Charter.

Statement of Basis and Purpose

The New York City Environmental Control Board (ECB) is proposing to modify the ECB Department of Buildings (DOB) Penalty Schedule found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York to encourage swift and decisive compliance with safety-related orders and other regulations at construction sites.

This proposed modification to the penalty schedule will add two new infractions and amend three existing infractions. The new infractions will enable DOB to effectively enforce Commissioner's Orders relating to the safe operation of construction equipment and other matters that ensure public safety. The amendments increase the penalties for inadequate safety measures during crane, derrick or other hoisting operations and for failure to safeguard all persons and property affected by construction operations, promoting DOB's zero tolerance policy for abuses of public safety regulations.

[Deleted material is in brackets.]

New material is underlined.

Section 1. The Environmental Control Board proposes to amend its DOB Penalty Schedule, found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, by adding, in numerical order, new entries relating to Section 28-201.1 of the New York City Administrative Code, to read as follows:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
<u>28-201.1</u>	<u>Class 1</u>	<u>Unlawful Acts. Failure to comply with a law, rule or Commissioner's Order involving construction and/or equipment safety operations</u>	<u>No</u>	<u>No</u>	<u>\$10,000</u>	<u>No</u>	<u>\$25,000</u>	<u>\$25,000</u>	<u>\$25,000</u>	<u>\$25,000</u>	<u>\$25,000</u>
<u>28-201.1</u>	<u>Class 2</u>	<u>Unlawful Acts. Failure to comply with a law, rule or Commissioner's Order involving construction and/or equipment safety operations</u>	<u>No</u>	<u>No</u>	<u>\$5,000</u>	<u>No</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>

§ 2. The Environmental Control Board proposes to amend entries in its DOB Penalty Schedule, found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, for NYC Admin. Code BC 3316.2 & BC 3319.1 & 27-1054, Inadequate safety measures: Operation of crane/derrick/hoisting equipment in unsafe manner, and both classes 1 and 2 of NYC Admin. Code BC 3301.2 & 27-1009(a), Failure to safeguard all persons and property affected by construction operations, to read as follows:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty (\$)	Mitigated Penalty (\$)	Default Penalty (\$)	Aggravated I Penalty (\$)	Aggravated I Default Penalty (\$)	Aggravated II Penalty (\$)	Aggravated II Default – Maximum Penalty (\$)
BC3316.2 & BC 3319.1 [& 27-1054]	Class 1	Inadequate safety measures: [Oper'n] Operation of crane/derrick/hoisting [equip]equipment in unsafe manner	No	No	[\$4800] \$10,000	No	[\$24,000] \$25,000	[\$12,000] \$25,000	\$25,000	[\$24,000] \$25,000	\$25,000
BC 3301.2 [& 27-1009(a)]	Class 1	Failure to safeguard all persons and property affected by construction operations.	No	No	[\$2400] \$10,000	No	[\$12000] \$25,000	[\$6000] \$25,000	[\$24000] \$25,000	[\$12000] \$25,000	\$25,000
BC 3301.2 [& 27-1009(a)]	Class 2	Failure to safeguard all persons and property affected by construction operations.	No	No	[\$1200] \$5,000	No	[\$6000] \$10,000	[\$3000] \$10,000	\$10,000	[\$6000] \$10,000	\$10,000

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 Buildings Penalty Schedule (Operation of Construction Equipment)

REFERENCE NUMBER: 2016 RG 020

RULEMAKING AGENCY: Environmental Control Board

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: February 17, 2016

**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 Buildings Penalty Schedule (Operation of Construction Equipment)

REFERENCE NUMBER: OATH-ECB-66

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 the violations pose significant risks to public health and safety.

/s/ Guenevere Knowles
Mayor's Office of Operations

February 17, 2016
Date