

**City of New York
OATH Environmental Control Board**

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Office of Administrative Trials and Hearings Environmental Control Board (OATH ECB) proposes to amend the Department of Buildings (DOB) Penalty Schedule by amending two existing infractions related to Site Safety Managers/Coordinators and site-specific safety orientation programs, and adding five new infractions related to Construction Superintendents. 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? OATH ECB will hold a public hearing on the proposed rule. The public hearing will take place at **10:00 a.m. on Tuesday, August 9, 2016**. The hearing will be in the OATH 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 OATH 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 OATH ECB, Attention: Simone Salloum, Assistant General Counsel, 66 John Street, 10th Floor, New York, NY 10038
- **Fax.** You can fax written comments to OATH 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 August 9, 2016. You can speak for up to three minutes.

Is there a deadline to submit written comments? You may submit written comments up to August 9, 2016.

Do you need assistance to participate in the Hearing? You must tell OATH 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 Wednesday, August 2, 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 OATH ECB's office located at 66 John Street, 10th Floor, New York, NY 10038.

What authorizes OATH 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 OATH ECB's regulatory agenda for this Fiscal Year because it was not contemplated when OATH ECB published the agenda.

Where can I find OATH ECB's rules? OATH ECB's rules are in Title 48 of the Rules of the City of New York.

What laws govern the rulemaking process? OATH ECB must meet the requirements of Section 1043 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

OATH ECB is proposing an amendment to the 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 continue to promote a zero tolerance policy for safety-related violations and to ensure that penalties for safety-related infractions serve as an effective deterrent.

The proposed amendment to the penalty schedule will add five new infractions and amend two existing infractions:

- The proposed five new infractions reflect penalties for the broadened range of jobs that require a Construction Superintendent's supervision and the duties and responsibilities of a Construction Superintendent. The proposed new infractions will allow DOB to effectively enforce the new provisions found in Section 3301-02 of Chapter 3300 of Title 1 of the Rules of the City of New York (effective May 30, 2016), and assist DOB in meeting its mission of enhancing the quality of life for all New Yorkers and making New York City a safer place.
- The amendments to the two existing infractions increase penalty amounts and clarify the infraction descriptions. Failing to designate or provide a Site Safety Manager or Site Safety Coordinator results in unsafe jobsites that are ill-equipped to handle situations involving public or worker safety. In addition, site-specific safety orientation programs prepare workers to perform their jobs properly and in a safe manner, mitigating hazards related to construction work.

[Deleted material is in brackets.]

New material is underlined.

Section 1. Buildings Penalty Schedule II, found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (“Buildings Penalty Schedule”), is amended by adding two new entries relating to Subdivision (c) of Section 3301-2 of Title 1 of the Rules of the City of New York, and one new entry relating to Paragraph 7 of such Subdivision, after the entry for 1 RCNY 103-04(b)(5)(iii), “Removal of shed or protective measure without Department approval,” 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>1 RCNY 3301-02(c)</u>	<u>Class 1</u>	<u>Construction Superintendent failed to perform duties per rule.</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>1 RCNY 3301-02(c)</u>	<u>Class 2</u>	<u>Construction Superintendent failed to perform duties per rule.</u>	<u>No</u>	<u>No</u>	<u>\$5,000</u>	<u>Yes</u>	<u>\$25,000</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>
<u>1RCNY 3301-02(c)(7)</u>	<u>Class 1</u>	<u>Construction Superintendent failed to immediately notify the department of conditions as required.</u>	<u>No</u>	<u>No</u>	<u>\$2,500</u>	<u>No</u>	<u>\$12,500</u>	<u>\$6,250</u>	<u>\$25,000</u>	<u>\$12,500</u>	<u>\$25,000</u>

Section 2. Buildings Penalty Schedule II, found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is amended by adding a new entry relating to Section 28-401.20 of the New York City Administrative Code after the entry for NYC Admin. Code 28-401.9, “Failure to file evidence of compliance with Workers Comp, law and/or disability benefits law,” 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 (\$)
NYC Admin. Code 28-401.20	Class 1	<u>Licensee/registrant failed to fully and completely cooperate as per section.</u>	No	No	\$5,000	No	\$25,000	\$12,500	\$25,000	\$25,000	\$25,000

Section 3. Buildings Penalty Schedule II, found in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is amended by adding a new entry relating to Section 3301.3 of the Building Code and Subdivisions (b) and (c) of Section 3301-02 of Title 1 of the Rules of the City of New York after the entry for BC 3301.2 & 27-1009(a), “Failure to institute/maintain safety equipment measures or temporary construction – No handrails,” 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>BC 3301.3 & 1 RCNY 3301-02(b), (c)</u>	<u>Class 1</u>	<u>Failure to designate and/or have Construction Superintendent present at site as required.</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>

Section 4. The entry for BC 3310.5 & 27-1009(d), “Failure to have Site Safety Manager or Coordinator present as required,” and the entry for 28-110.1, “Failure to conduct workers’ site-specific safety orientation program per site safety plan,” found in Buildings Penalty Schedule II in Section 3-103 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, are amended 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 (\$)
BC 3301.3 & BC 3310.5 & BC 3310.5.2[& 27-1009(d)]	Class 1	Failure to <u>designate and/or</u> have Site Safety Manager or <u>Site Safety Coordinator</u> present <u>at site</u> as required.	No	No	[\$2,400] <u>10,000</u>	[Yes] <u>No</u>	[\$12,000] <u>25,000</u>	[\$6,000] <u>12,500</u>	[\$24,000] <u>25,000</u>	[\$12,000] <u>25,000</u>	\$25,000
[28-110.1] BC 3310.10	Class 1	Failure to conduct [workers’] a site-specific safety orientation program <u>for all workers</u> [per site safety plan].	No	No	[\$1,200] <u>2,500</u>	No	[\$6,000] <u>12,500</u>	[\$3,000] <u>6,250</u>	[\$12,000] <u>25,000</u>	[\$6,000] <u>12,500</u>	\$25,000