

**City of New York
Office of Administrative Trials and Hearings
Environmental Control Board**

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) proposes to repeal in their entirety the following penalty schedules: the Recycling – Sanitation Collection Rules Penalty Schedule, the Sanitation Asbestos Rules Penalty Schedule, the Sanitation Penalty Schedule, and the Vehicle and Traffic Law Penalty Schedule. These schedules are located in Sections 3-120, 3-121, 3-122, and 3-125 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY), and contain penalties for summonses issued by the New York City Department of Sanitation (DSNY). OATH ECB also proposes to repeal certain provisions of its Environmental Conservation Law Penalty Schedule (48 RCNY § 3-105) and its Public Safety Graffiti Penalty Schedule (48 RCNY § 3-119), which are also enforced by DSNY. DSNY is proposing a related rule with a penalty schedule incorporating the violations from the above-referenced penalty schedules that do not have fixed penalties in the Administrative Code of the City of New York.

When and where is the Hearing? OATH ECB will hold a public hearing on the proposed rule. The public hearing will take place from **10:00 a.m. through 11:00 a.m. on June 5, 2019**. The hearing will be in the OATH 10th Floor 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 rule by:

- **Website.** You can submit comments to OATH ECB through the NYC rules website 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, Attention: Simone Salloum, Senior Counsel, 100 Church Street, 12th Floor, New York, NY 10007.
- **Fax.** You can fax written comments to OATH, Attention: Simone Salloum, Senior Counsel, at (212) 361-1900.
- **Hearing.** You can speak 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 OATH at (212) 436-0708, or you can also sign up in the hearing room before the hearing begins on **June 5, 2019**. You can speak for up to three (3) minutes.

Is there a deadline to submit written comments? You may submit written comments up to **5:00 p.m. on June 5, 2019**.

What if I need assistance to participate in the Hearing? You must tell us 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 100 Church Street, 12th Floor, New York, NY 10007. You may also call OATH by telephone at (212) 436-0708 to request a reasonable accommodation. Advance notice is requested to allow sufficient time to arrange accommodations. Please tell us by **May 29, 2019**.

This location has the following accessibility option(s) available: Wheelchair Accessible.

Can I review the comments made on the proposed rule? You can review the comments that have been submitted online by visiting the NYC rules 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, 66 John Street, 10th Floor, New York, NY 10038.

What authorizes OATH ECB to make this rule? Section 1049-a of the New York City Charter (City Charter) authorizes OATH ECB to make this proposed rule. This proposed rule is included in OATH's regulatory agenda for this Fiscal Year.

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(b) of the City Charter when creating or changing rules. This notice is made according to the requirements of Sections 1043(b) and 1049-a of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) proposes to repeal in their entirety the following penalty schedules:

- Recycling – Sanitation Collection Rules Penalty Schedule (48 RCNY § 3-120). This penalty schedule contains recycling violations of sections 1-08, 1-09, and 1-10 of Title 16 of the RCNY applicable to residential premises, city agencies and institutions, and private carter-collected waste. This penalty schedule also contains a violation of section 16-324(a) of the Administrative Code of the City of New York (Administrative Code) concerning repeat recycling violations.
- Sanitation Asbestos Rules Penalty Schedule (48 RCNY § 3-121). This penalty schedule contains violations of Chapter 8 of Title 16 of the RCNY relating to the storage, transportation, and disposal of waste containing asbestos.
- Sanitation Penalty Schedule (48 RCNY § 3-122). This penalty schedule contains violations of Titles 10 and 16 of the Administrative Code; Chapters 1, 3, 4, 5, 11, and 17 of Title 16 of the RCNY; and section 397-a of the New York State General Business Law.
- Vehicle and Traffic Law Penalty Schedule (48 RCNY § 3-125). This penalty schedule contains violations of New York State Vehicle and Traffic Law, relating to abandoning

a vehicle and the illegal placement of handbills on windshields or under windshield wipers of vehicles.

OATH ECB proposes to repeal from the Public Safety Graffiti Penalty Schedule (48 RCNY § 3-119) the violation of Administrative Code section 10-117.3(b) for failure to remove graffiti. OATH ECB also proposes to repeal from Environmental Conservation Law Penalty Schedule (48 RCNY § 3-105) the violation of New York State Environmental Conservation Law section 27-1701(3) for improper disposal of a lead acid battery.

DSNY is proposing a related rule with a penalty schedule that incorporates the violations in the above-referenced penalty schedules that do not have fixed penalties in the Administrative Code, and instead have range penalties. DSNY is not incorporating violations into its proposed rule that have fixed penalties in the Administrative Code.

The context for this proposed repeal is that OATH ECB is in the process of repealing all penalty schedules in its rules codified at Subchapter G of Chapter 3 of Title 48 of the RCNY so that they can be incorporated into the rules of the agencies having rulemaking and policymaking authority over the laws underlying the violations. Such repeals will also serve OATH's core function of adjudication and help alleviate the false public perception that OATH is an enforcement agency, rather than a neutral tribunal.

Although OATH ECB is empowered to impose penalties under the New York City Charter and has until recent years promulgated penalty schedules, the regulatory and enforcement agencies have the necessary expertise to determine appropriate penalties for violation of the rules and of the laws within their jurisdiction based on the severity of each violation and its effect on City residents. Moving the penalty schedule to the enforcement agency's rules will also make it easier for the public to find the penalties, which will be located within the same chapter as the rules supporting the violations alleged in the summonses. Finally, the proposed rule repeal will speed up the rulemaking process by eliminating the need for OATH ECB approval of proposed or amended penalties for agency rules that have already been established by the legislature and/or that have already undergone the City Administrative Procedure Act (CAPA) process by the enforcement agency. The public will still have the opportunity to comment on proposed penalties during that process.

Working with the City's rulemaking agencies, the Law Department, the Mayor's Office of Management and Budget, and the Mayor's Office of Operations conducted a retrospective rules review of the City's existing rules, identifying those rules that could be repealed or modified to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to help support public understanding and compliance. This proposed rule repeal was identified as meeting the criteria for this initiative.

Section 1. The Recycling – Sanitation Collection Rules Penalty Schedule rule, found in Section 3-120 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is REPEALED.

§ 2. The Sanitation Asbestos Rules Penalty Schedule rule, found in Section 3-121 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is REPEALED.

§ 3. The Sanitation Penalty Schedule rule, found in Section 3-122 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is REPEALED.

§ 4. The Vehicle and Traffic Law Penalty Schedule rule, found in Section 3-125 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is REPEALED.

§ 5. The Public Safety Graffiti Penalty Schedule, found in Section 3-119 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is amended by repealing the following entry:

Section/Rule	Description	Penalty	Default
[A.C. 10-117.3(b)]	Failure to remove graffiti	150	300]

§ 6. The Environmental Conservation Law Penalty Schedule, found in Section 3-105 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is amended by repealing the following entry:

Section/Rule	Description	Penalty	Default
[NYS Env. Cons. Law 27-1701(3)]	Improper disposal of lead acid battery	50	50]