

ENVIRONMENTAL CONTROL BOARD

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Environmental Control Board (ECB) by Sections 1043 and 1049-a of the New York City Charter, and Sections 19-121(b)(7), 19-147, and 19-150 of the New York City Administrative Code (Administrative Code), the Environmental Control Board (ECB) hereby promulgated the following rule that amends ECB's Department of Transportation Penalty Schedule found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY), creating penalties for offenses adjudicated by the ECB. The rule will clarify and update descriptions of violations and references to the Administrative Code and RCNY, so that the penalty schedule accurately reflects existing law. This rule was published in The City Record on July 16, 2013 and a Public Hearing was held on August 16, 2013.

Statement of Basis and Purpose of Final Rule

The Environmental Control Board (ECB) held a Public Hearing on August 16, 2013 regarding amendments to ECB's New York City Department of Transportation (DOT)'s penalty schedule, found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). A representative from the Department of Transportation attended the Public Hearing. Neither written comments nor oral testimony were presented at the August 16, 2013 Public Hearing concerning the Proposed Rule.

The Final Rule updates the section of law references associated with five DOT violations, and the descriptions of two DOT violations. These amendments will promote consistency and provide clarity by conforming violation sections and descriptions with the language in the applicable laws. They will also more accurately reflect the condition observed by an inspector issuing a violation, thus helping the respondent and the Administrative Law Judge by giving a description of the existing violation which mirrors the applicable law.

Failure to properly equip commercial bicycles

For failures to properly equip commercial bicycles, the current penalty schedule refers only to Administrative Code Section 10-157(f). This reference does not capture all the requirements for equipping commercial bicycles and bicycle operators found in the Administrative Code at Section 10-157.

The rule has amended the section of law references associated with the first and subsequent offenses for "Failure to properly equip bicycle used on behalf of a business using a bicycle for commercial purposes," from Section 10-157(f) to Section 10-157. The change will allow the

issuing officer to enforce all applicable provisions of the section related to bicycles used for commercial purposes.

Failure to replace distinctive sidewalk in kind

The rule has amended the reference to the section of law for “Failure to replace distinctive sidewalk in kind” from Section 2-09(f)(4)(xvi)(A) to Section 2-09(f)(4)(xvi)(C) of the RCNY. The reference to Section 2-09(f)(4)(xvi)(C) of the RCNY better describes DOT’s prescribed method for repairing a distinctive sidewalk. This section states that the distinctive sidewalk must be repaired in kind or replaced in its entirety with concrete.

Failure to obtain a confirmation number prior to expiration of a street opening permit (protected street)

The penalty schedule currently describes Section 2-11(f)(4)(i) of the RCNY as “No notice to DOT before start phase of work on protected street.” DOT amended Section 2-11(f) to clarify that a permittee who has obtained a street opening permit on a protected street must also obtain a confirmation number. The DOT amendment also provides guidance for obtaining the confirmation number.

The current description is outdated and could lead a permittee to erroneously believe that a confirmation number, which provides notice to DOT, is only required when work is performed on a protected street. The rule has updated the reference to Section 2-11(f)(2)(ii) of Chapter 34 of the RCNY and the description to “Failure to obtain a confirmation number prior to expiration of street opening permit (protected street).”

Failure to conform with the latest Standard Details 1042A, 1042B, or 1042C (concrete roadways)

The rule has amended the description “Failure to conform with the latest version of DOT Standard Details 1042A, 1042B, or 1042C” to add “(concrete roadways),” and has amended the section of law reference from Section 2-11(e)(13) to Section 2-11(e)(13)(vi) of the RCNY. These changes clarify that the violation applies to concrete roadways, and indicate the exact subparagraph that will be charged when a violation is issued.

New matter is underlined.

Deleted material is in [brackets].

Section 1. The Environmental Control Board has amended its Department of Transportation Penalty Schedule found in Section 3-124 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York by revising two violation descriptions and five section of law references to read as follows:

SECTION/RULE	DESCRIPTION	PENALTY	DEFAULT
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<p>[Administrative Code 10-157(f)] <u>Admin. Code 10-157</u></p>	<p>Failure to properly equip bicycle used on behalf of a business using a bicycle for commercial purposes—first offense</p>	<p>\$100</p>	<p>\$100</p>
<p>[Administrative Code 10-157(f)] <u>Admin. Code 10-157</u></p>	<p>Failure to properly equip bicycle used on behalf of a business using a bicycle for commercial purposes—subsequent offense</p>	<p>\$250</p>	<p>\$250</p>
<p>[34 RCNY 2-09 (f)(4)(xvi)(A)] <u>34 RCNY 2-09(f)(4)(xvi)(C)</u></p>	<p>Failure to replace distinctive sidewalk in kind</p>	<p>\$250</p>	<p>\$500</p>
<p>[34 RCNY 2-11 (f)(4)(i)] <u>34 RCNY 2-11(f)(2)(ii)</u></p>	<p>[No notice to DOT before start phase of work on protected street] <u>Failure to obtain a confirmation number prior to expiration of street opening permit (protected street)</u></p>	<p>\$750</p>	<p>\$2,250</p>
<p>[34 RCNY 2-11(e)(13)] <u>34 RCNY 2-11(e)(13)(vi)</u></p>	<p>Fail to conform with the latest version of DOT Standard Details 1042A, 1042B, or 1042C <u>(concrete roadways)</u></p>	<p>\$750</p>	<p>\$1,000</p>