

**City of New York
Office of Administrative Trials and Hearings**

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing?

The Office of Administrative Trials and Hearings (OATH) proposes to modify sections 6-05, 6-17, 6-18 and 6-19, and add a new section 6-28, of Chapter 6 of Title 48 of the Rules of the City of New York. The change clarifies that certain decisions of the OATH Hearing officers in the OATH Hearings Division are not final decisions and that timely payment of penalties may be waived under certain conditions.

When and where is the Hearing? OATH will hold a public hearing on the proposed rule. The public hearing will take place at 2:00 p.m. on August 9, 2016. The hearing will be in the 10th Floor Conference Room at 66 John Street, 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 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: Helaine Balsam, Deputy General Counsel, OATH, 100 Church Street, 12th Floor, New York, NY 10007
- **Fax.** You can fax written comments to OATH at: 212-933-3079.
- **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 Stacey Turner at (212) 933-3007. 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 staff if you need a reasonable accommodation for 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) 933-3007. You must tell us by August 8, 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 100 Church Street, 12th Floor, New York, NY 10007.

What authorizes OATH to adopt this rule? Section 1049 in Chapter 45-A of the New York City Charter authorizes OATH to adopt this proposed rule. OATH's regulatory agenda for this Fiscal Year anticipated that rulemaking may be necessary to amend the existing Rules of Practice of the Health Tribunal at OATH based on its experience.

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

What laws govern the rulemaking process? OATH must meet the requirements of Section 1043(b) in Chapter 45 of the Charter when creating or changing rules. This notice is made according to the requirements of Sections 1043(b) and section 1049 of the Charter.

Statement of Basis and Purpose

Executive Order No. 18 of 2016, dated June 23, 2016, transfers to OATH all of the adjudications under the Department of Consumer Affairs (DCA) Tribunal. Beginning on August 22, 2016 or as soon thereafter as may be practicable, OATH will adjudicate all pending and future violations issued by DCA. Because certain State laws require that final decisions of these adjudications be made by the DCA Commissioner, this proposed rule establishes that OATH hearing officer decisions on violations of those State laws will be recommended decisions only. The DCA Commissioner will make the final determination after reviewing OATH's recommendation. Chapter 6 of Title 6 of the Rules of the City of New York contains the procedural rules that govern DCA's determinations.

The proposed rule amends section 6-17 (Decisions) of OATH's rules, contained in title 48 of the Rules of the City of New York, to set out the State laws to which this procedure applies.

Deleted material is in [brackets]. New text is underlined.

“Shall,” “will” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. Section 6-17 of Chapter 6 of Title 48 of the Rules of the City of New York, as amended by the Environmental Control Board at its meeting on June 30, 2016, is amended to read as follows:

§6-17 Decisions

(a) Decisions. After a hearing, the Hearing Officer who presided over the hearing will promptly write a decision sustaining or dismissing each charge in summons. The Tribunal will promptly serve the decision on all parties. Each decision will contain findings of fact and conclusions of law. Where a violation is sustained, the Hearing Officer will impose the applicable penalty, which may include a fine, penalty points, a suspension or revocation of the respondent's license

or any other penalty authorized by applicable laws, rules and regulations.

(b) Except as provided in subdivision (c), the decision of the Hearing Officer is the final decision unless an appeal is filed pursuant to §6-19 of this Chapter.

(c) Recommended Decisions.

(1) For all violations of Article 13-E of the New York State Public Health Law, the Hearing Officer will issue a recommended decision and order, which the Commissioner of the Department of Health and Mental Hygiene may adopt, reject or modify, in whole or in part.

(2) For all violations of Article 13-F of the New York State Public Health Law:

(i) where the Department of Consumer Affairs is the petitioner, the Hearing Officer will issue a recommended decision and order, which the Commissioner of such department may adopt, reject or modify, in whole or in part.

(ii) where the Department of Health and Mental Hygiene is the petitioner, the Hearing Officer will issue a recommended decision and order, which the Commissioner of such department may adopt, reject or modify, in whole or in part.

(3) For all violations in which summonses are returnable to the Tribunal as authorized by the Board under §1049-a of the New York City Charter and provisions of the New York City Administrative Code, any rules and regulations made thereunder, or provisions of New York State law, the Hearing Officer's decision is a recommended decision to the Board. If an appeal is not filed pursuant to §6-19, the Hearing Officer's recommended decision will be automatically adopted by the Board and will constitute the Board's final decision in the matter. The Board's final decision is also the final decision of the Tribunal.

(4) For all violations of Section 194 of Article 11 of the New York State General Business Law, Article 5 of the New York State General Business Law, and Sections 192, 192-a, 192-b, and 192-c of Article 16 of the New York State Agriculture and Markets Law, and of any rules and regulations promulgated thereto, the Hearing Officer will issue a recommended decision and order, which the Commissioner of the Department of Consumer Affairs may adopt, reject or modify, in whole or in part.

(d) The Tribunal may, due to Tribunal needs or the unavailability of the Hearing Officer who heard the case, designate another Hearing Officer to write the recommended decision. The decision will state the reason for the designation and will be based on the record, which includes (i) the summons, (ii) all briefs filed and all exhibits received in evidence, and (iii) a complete audio recording of the hearing or, if a complete audio recording is unavailable for any reason, a complete transcript of the hearing.

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 Certain Default Penalty Provisions

REFERENCE NUMBER: 2015 RG 108

RULEMAKING AGENCY: Office of Administrative Trials and Hearings (OATH)

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: June 27, 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 Certain Default Penalty Provisions

REFERENCE NUMBER: OATH-ECB-61

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

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

June 27, 2016
Date