

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

**Notice of Promulgation of Rule**

**NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED** in the Office of Administrative Trials and Hearings (OATH) in accordance with Sections 1049 and 1043 of the New York City Charter. OATH amends section 6-17 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. The proposed rule amendment was published in *The City Record* on July 8, 2016, and a public hearing was held on August 9, 2016.

One member of the public attended the public hearing and that member testified at the public hearing concerning the rule amendment. OATH received three written comments on this rule amendment.

**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.

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**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.



**OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS**  
*Hearings Division*

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FINDING OF SUBSTANTIAL NEED FOR EARLIER IMPLEMENTATION

I hereby find, and represent to the Mayor, that there is a substantial need for the implementation, immediately upon its final publication in The City Record, of the amendment to section 6-17 of Chapter 6 of Title 48 of the Rules of the City of New York.

This declaration is made pursuant to Section 1043(f)(1)(c) of the New York City Charter. Executive Order No. 18, dated June 23, 2016, transferred all categories of adjudications within the jurisdiction of the Department of Consumer Affairs (DCA) Tribunal to OATH effective August 22, 2016, or as soon thereafter as practicable. Certain State laws require that final decisions of these adjudications be made by the DCA Commissioner. OATH's rule amends section 6-17 of Chapter 6 of Title 48 of the Rules of the City of New York. The rule as amended provides that the OATH hearing officers will issue recommended decisions for violations where the DCA Commissioner is required to make the final decision. The DCA Commissioner may adopt, reject, or modify the recommended decision.

OATH intends to begin adjudicating violations previously under the jurisdiction of the DCA Tribunal on August 22, 2016. Immediate implementation of this rule amendment is necessary to conform State law and OATH rules concerning the finality of these hearing officers' decisions prior to August 22, 2016.

Without this finding, the amendment to section 6-17 will not take effect until mid-September. In order to avoid a conflict between OATH's procedural rules and State law concerning the finality of OATH hearing officer decisions related to DCA adjudications, there is a substantial need for bringing these rules into effect immediately upon publication in The City Record.

Fidel F. Del Valle, Commissioner  
Chief Administrative Law Judge, OATH  
Chairperson and Executive Director, ECB

APPROVED: Bill de Blasio  
Bill de Blasio  
Mayor

DATE: August 15, 2016