

**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 its Food Vendor Penalty Schedule, Health Code and Miscellaneous Food Vendor Violations Penalty Schedule, Health Code Lead Abatement Penalty Schedule, and Public Health Law Penalty Schedule rules. These schedules are found in Sections 3-107, 3-110, 3-112, and 3-117 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). The Food Vendor Penalty Schedule, Health Code and Miscellaneous Food Vendor Penalty Schedule, Health Code Lead Abatement Penalty Schedule, and Public Health Law Penalty Schedule contain penalties for summonses issued by the Department of Health and Mental Hygiene (DOHMH) for violations of Title 17 of the NYC Administrative Code, New York State Public Health Law, the NYC Health Code and Chapter 6 of Title 24 of the Rules of the City of New York. DOHMH is proposing two companion rules adding a Mobile Food Vending Unit Penalty Schedule and a penalty schedule for the remaining violations to its rules.

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 **August 7, 2018**. 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 **August 7, 2018**. 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 **August 7, 2018**.

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 the address given above. You may also call OATH by telephone at (212) 436-0708 to request a reasonable accommodation. Please tell us by June 30, 2018.

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 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) is proposing to repeal its Food Vendor Penalty Schedule, Health Code and Miscellaneous Food Vendor Violations Penalty Schedule, Health Code Lead Abatement Penalty Schedule, and Public Health Law Penalty Schedule rules. These schedules are found in Sections 3-107, 3-110, 3-112, and 3-117 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY), and contain penalties for violations of provisions in Title 17 of the NYC Administrative Code, New York State Public Health Law, the NYC Health Code, and Chapter 6 of Title 24 of the Rules of the City of New York. At the same time, DOHMH is proposing two companion rules adding to its rules a Mobile Food Vending Unit Penalty Schedule and a penalty schedule for the remaining violations issued by DOHMH.

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 jurisdiction over the laws underlying these penalties.

Although OATH ECB is empowered to impose penalties under the New York City Charter and has until now promulgated penalty schedules, the regulatory and enforcement agencies have the necessary expertise to determine appropriate penalties for violation of the

rules and 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 Food Vendor Penalty Schedule rule, found in Section 3-107 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is REPEALED.

Section 2. The Health Code and Miscellaneous Food Vendor Violations Penalty Schedule rule, found in Section 3-110 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is REPEALED.

Section 3. The Health Code Lead Abatement Penalty Schedule rule, found in Section 3-112 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is REPEALED.

Section 4. The Public Health Law Penalty Schedule rule, found in Section 3-117 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York, is REPEALED.

**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: Repeal of Food Vendor, Miscellaneous Food Vendor, Health Code Lead Abatement and Public Health Law Penalty Schedules

REFERENCE NUMBER: 2018 RG 078

RULEMAKING AGENCY: Office of Administrative Trials and Hearings' Environmental Control Board

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 26, 2018

**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: Repeal of Food Vendor, Miscellaneous Food Vendor, Health Code Lead Abatement and Public Health Law Penalty Schedules

REFERENCE NUMBER: OATH-ECB-81

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 26, 2018
Date