

City of New York
Office of Administrative Trials and Hearings

Notice of Adoption of Rule

Pursuant to the authority vested in the Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) by sections 1048, 1049 and 1049-a of the New York City Charter, and in accordance with the requirements of Section 1043 of said Charter, OATH ECB has adopted amendments to Chapter 6 of Title 48 of the Rules of the City of New York.

A proposed version of this rule amendment was published in *The City Record* on May 8, 2020. A public hearing was held on June 9, 2020. No testimony regarding the rule amendment was given at the public hearing, and OATH ECB did not receive any written comments from the public.

Statement of Basis and Purpose of Final Rule

The Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) amends subdivision a and subdivision b of section 6-19 of title 48 of the Rules of the City of New York to allow a respondent seeking to file an appeal to obtain a financial hardship waiver for restitution payments. If a respondent wishes to appeal an OATH ECB hearing decision pursuant to such section 6-19, the respondent must, in addition to meeting other requirements, indicate in writing that any fines, penalties, or restitution imposed by the hearing decision have been paid in full, unless the respondent is granted a waiver due to financial hardship, or another exception applies. Prior to this rule amendment, such a waiver could be granted with respect to the payment of fines and penalties, but not with respect to the payment of restitution. The two sections of this rule change, described below, are necessary to ensure that respondents facing financial hardship can exercise their right to an appeal regardless of the type of sanction imposed upon them by a hearing decision.

Section 1 of this rule amends clause (A) of subparagraph (iii) of paragraph 1 of subdivision a of section 6-19 of title 48 of the Rules of the City of New York to permit a respondent who has been granted a financial hardship waiver to file an appeal of an OATH ECB decision without indicating in writing that any payments of restitution imposed by the decision have been made in full. Prior to this rule change, such alternative would only be available where the decision imposed the payment of a fine or a penalty.

Section 2 of this rule amends subdivision b of section 6-19 of title 48 of the Rules of the City of New York to eliminate the restitution exception for financial hardship waivers. This amendment allows the OATH ECB Chief Administrative Law Judge, or his or her designee, to waive the requirement that a respondent indicate in writing and submit proof that the respondent has paid restitution in full prior to or at the time of filing an appeal, where the respondent has produced evidence of the respondent's financial hardship.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Clause (A) of subparagraph (iii) of paragraph 1 of subdivision a of section 6-19 of title 48 of the Rules of the City of New York is amended to read as follows:

A. Respondent is granted a waiver of prior payment of fines [or], penalties or restitution due to financial hardship, as provided in subdivision (b) of this section;

§ 2. Subdivision b of section 6-19 of title 48 of the Rules of the City of New York is amended to read as follows:

(b) Financial hardship.

[(1)] An application to the Tribunal for a waiver of prior payment due to financial hardship must be made before or at the time of the filing of the appeal and must be supported by evidence of financial hardship. The Chief Administrative Law Judge or his or her designee has sole discretion to grant or deny a waiver due to financial hardship. Application for a waiver does not extend the time to appeal.

[(2)] Notwithstanding the provisions set forth in subdivision (a)(iii), above, payment of restitution is not subject to waiver due to financial hardship. If a Hearing Officer has ordered payment of restitution, the Respondent must, prior to or at the time of filing the appeal, submit proof that the Respondent has deposited the amount of restitution with the agency responsible for collecting payment, pending determination of the appeal.]