

**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 Hudson River Park Trust (HRPT) Penalty Schedule. This rule is found in Section 3-113 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). The Hudson River Park Trust Penalty Schedule contains penalties for summonses issued by HRPT for violations of Section 751 of Chapter 16 of Title 21 of the New York Code of Rules and Regulations (NYCRR). The Hudson River Park Trust is proposing to adopt substantially all of OATH's HRPT Penalty Schedule into its own rules, by amending Section 751 of Chapter 16 of Title 21 of the NYCRR.

When and where is the Hearing? OATH ECB will hold a public hearing on the proposed rule. The public hearing will take place from **1100 a.m. through 12:00 p.m.** on **July 21, 2020**. The hearing will be conducted by video conference and is accessible by:

- **Internet Video and Audio.** For access, visit:
<https://nyc-oath.webex.com/nyc-oath/j.php?MTID=mb8b6eb017c93c366e345291285711f13>
When prompted, enter **Meeting ID: 129 094 1501**
Password: OATH
- **Phone.** For access, dial: 1-646-992-2010 or 1-408-418-9388.
When prompted, enter **Meeting ID: 129 094 1501**

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: Nicholas Dietz, Assistant General Counsel, 100 Church Street, 12th Floor, New York, NY 10007.
- **Fax.** You can fax written comments to OATH, Attention: Nicholas Dietz, Assistant General Counsel, at 212-361-1900.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rules at the public hearing may speak for up to three minutes. Please access the

public hearing by internet video and audio or by telephone using the instructions above.

Is there a deadline to submit written comments? You may submit written comments until **5:00 p.m. on July 21, 2020.**

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 may contact us by mail at 100 Church Street, 12th Floor, New York, NY 10007 or by telephone at (212) 436-0708 to request a reasonable accommodation. Please tell us by Monday, **July 20, 2020.**

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/>. Shortly after the public 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 New York 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 New York City Charter when creating or changing rules. This notice is made according to the requirements of sections 1043(b) and 1049-a of the New York 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 Hudson River Park Trust Rules Penalty Schedule. This rule is currently found in Section 3-113 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY). It contains penalties for violations of Section 751 of Chapter 16 of Title 21 of the New York Code of Rules and Regulations (NYCRR). The Hudson River Park Trust is proposing the adoption of significant portions of OATH's Hudson River Park Trust Penalty Schedule in an amendment to Section 751 of Chapter 16 of Title 21 of the NYCRR.

OATH ECB is currently in the process of repealing all penalty schedules in its rules, codified in Subchapter G of Chapter 3 of Title 48 of the RCNY, with the intent that the penalty schedules be incorporated into the rules of the applicable agencies. This is being done because it is the agencies, not OATH ECB, that possess the rule- and policy-making authority over the laws which underlie the violations detailed in the penalty schedules. In addition, such repeals

will serve OATH's core function as an adjudicatory body, as well as help to alleviate any false public perceptions that OATH is an enforcement agency, rather than a neutral arbiter.

Although OATH ECB is empowered to impose penalties under the New York City Charter and has, until now, promulgated penalty schedules, the City's regulatory and enforcement agencies have the necessary expertise to determine appropriate penalties for violations of their own rules and laws, based on the severity of each violation and its effect on City residents. The shifting of penalty schedules from OATH ECB to the rules of the enforcement agency will also make it easier for the public to find these penalties, as they will be located within the same chapter as the agency rules that support the violations alleged in their summonses. (Unlike previous similar rule proposals, where the penalty schedule affected was moved to the Rules of the City of New York (RCNY), pursuant to the City Administrative Procedure Act, the HRPT penalty schedule will be promulgated under the State Administrative Procedure Act and will reside in the New York Code of Rules and Regulations (NYCRR).) Finally, the proposed rule repeal will speed up the rulemaking process by eliminating the need for OATH ECB to approve proposed or amended penalties for agency rules that have already been adopted by the City legislature and/or completed the steps required by the City Administrative Procedure Act, during which the public still has the opportunity to comment on proposed penalties.

Working with the City's rulemaking agencies, the NYC Law Department, the Mayor's Office of Management and Budget, and the Mayor's Office of Operations conducted a retrospective 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 increase public understanding and compliance. OATH's proposed rule repeal was identified as meeting the criteria for this initiative.

Section 1. Section 3-113 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 OATH/ECB Penalty Schedule for Hudson River Park Trust

REFERENCE NUMBER: 2020 RG 062

RULEMAKING AGENCY: Office of Administrative Trials and Hearings

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: 6/5/2020

**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 OATH/ECB Penalty Schedule for Hudson River Park Trust

REFERENCE NUMBER: OATH-ECB-97

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 5, 2020
Date