

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 3 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 June 17, 2020. A public hearing was held on July 21, 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 Section 3-113 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York (RCNY) to repeal its Hudson River Park Trust Rules Penalty Schedule. It contained 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 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 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.