

**City of New York
Office of Administrative Trials and Hearings
Environmental Control Board**

Notice of Promulgation of Rule

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED in the Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) in accordance with Sections 1049-a and 1043 of the New York City Charter. OATH ECB repeals 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, 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 proposed rule repeal was published in *The City Record* on July 6, 2018, and a public hearing was held on August 7, 2018.

No one attended or testified at the public hearing concerning this rule repeal and OATH did not receive any written comments.

Statement of Basis and Purpose of Rule

The Office of Administrative Trials and Hearings' Environmental Control Board (OATH ECB) repeals 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 §§ 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 it contains penalties for violations of provisions in Title 17 of the Administrative Code of the City of New York, New York State Public Health Law, the New York City Health Code and Chapter 6 of Title 24 of the RCNY. At the same time, the Department of Health and Mental Hygiene (DOHMH) adopts rules, adding similar penalty schedules to Chapters 6 and 7 of Title 24 of the Rules of the City of New York.

The context for this 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 the violations.

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 of the laws within their jurisdiction based on the severity of each violation and its effect on City residents. Moving the penalty schedule 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 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 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.



THE CITY OF NEW YORK
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Hon. Fidel Del Valle
Commissioner
Office of Administrative Trials and Hearings

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

No. 2018 RG 078

Dear Commissioner Del Valle:

Pursuant to New York City Charter § 1043 subd. c, the above-referenced rule has been reviewed and determined to be within the authority delegated by law to your agency.

Sincerely,

A handwritten signature in blue ink that reads "Steven L. Goulden".

STEVEN GOULDEN
Senior Counsel
Division of Legal Counsel

cc: Simone Salloum (OATH)