

## **NOTICE OF OPPORTUNITY TO COMMENT**

Subject: Opportunity to Comment on Proposed Repeal of Chapter 5 (Inhalation Therapy Service) and of Chapter 8 (Examination, Licensing and Procedure Relating to Motion Picture Theatre Matrons) of Title 24 of the Rules of the City of New York.

### **Proposed Rule**

The Department of Health and Mental Hygiene (the “Department”) is proposing to repeal Chapter 5 (Inhalation Therapy Service) and Chapter 8 (Examination, Licensing and Procedure Relating to Motion Picture Theatre Matrons) of Title 24 of the Rules of the City of New York.

### **No Public Hearing**

Pursuant to section 1043(e) of the New York City Charter, no public hearing is being held because it has been determined that a public hearing would serve no public purpose.

### **Instructions**

You may submit written comments about the proposed amendment by mail to:

New York City Department of Health and Mental Hygiene  
Attention: Rena Bryant, Secretary to the Department  
Gotham Center 42-09 28th Street  
14th Floor, WS 14-55  
Long Island City, NY 11101

or electronically through NYC RULES to [www.nyc.gov/nycrules](http://www.nyc.gov/nycrules)  
or by email to [RESOLUTIONCOMMENTS@HEALTH.NYC.GOV](mailto:RESOLUTIONCOMMENTS@HEALTH.NYC.GOV)  
or online (without attachments) at <http://www.nyc.gov/html/doh/html/about/notice.shtml>  
on or before 5:00 P.M. on April 9, 2013.

The Department’s general policy is to make written comments available for public viewing on the internet. The comments it receives, including any personal information provided with the comment, will be posted without change to <http://www.nyc.gov/html/doh/html/about/comment.shtml> .

Copies of written comments will be available within a reasonable time after receipt between the hours of 9:00 A.M. and 5:00 P.M. at the contact address above.

## Statement of Basis and Purpose

### Statutory Authority

The repeal of Chapter 5 and Chapter 8 of Title 24 of the Rules of the City of New York is authorized by §§556 and 1043 of the New York City Charter (the “Charter”).

- Section 556 of the Charter authorizes the Department of Health and Mental Hygiene (the “Department”) to regulate all matters affecting health in the city of New York.
- Section 1043 of the Charter gives the Department rulemaking powers.

### Background

The Department is proposing to repeal as outdated and no longer needed Chapter 5 (Inhalation Therapy Service) and Chapter 8 (Examination, Licensing and Procedure Relating to Motion Picture Theatre Matrons) of Title 24 of the Rules of the City of New York.

### Repeal Chapter 5 of Title 24 of the Rules of the City of New York

Chapter 5, licensing suppliers (‘purveyors’) and persons who administer “inhalation therapy” and regulating how equipment containing medical gases is to be safely used and maintained was added to the Department’s rules in 1943 to implement §17-335 (formerly §561-3.0) of the Administrative Code of the City of New York (Administrative Code). At the time the law was enacted and these rules were adopted there were no other applicable federal and state laws and regulations. This is no longer the case, and both the manufacturer and administration of medical gases are regulated by the federal and state governments. Currently manufacturing of containers and gases used for medical purposes is regulated by the U.S. Food and Drug Administration and the quality standards of the gases must conform to the standards established in the US Pharmacopeia. People qualified to administer medical gases to patients are licensed professionals, respiratory therapists and respiratory therapy technicians, regulated in New York State by Article 164 of the State Education Law. Use and handling of tanks holding gases for medical uses is regulated in hospitals by the State Department of Health, and flammable gases must be used in accordance with applicable fire codes. Although the Department continues to issue a small number -- less than a dozen – inhalation therapy purveyor and therapist licenses per year, it has not had the expertise or resources to enforce its rules for many years, and as they are no longer current, are duplicative of other law, and no longer necessary they should be repealed.

### Repeal Chapter 8 of Title 24 of the Rules of the City of New York

In 1937, Chapter 2 of Title 20 (Consumer Affairs) of the City’s Administrative Code was amended to add a new Subchapter 1 (Motion Picture Exhibitions), licensing motion picture theatres, and a new Subchapter 2 (Admission of Children) to regulate admission of children to motion picture theatres without adult escorts. Chapter 8 of the Department’s rules was adopted in 1943 to provide for examination and licensing requirements for motion picture theatre matrons to implement Administrative Code §20-209 (formerly §B 32-30.0) of Subchapter 2. After both subchapters were repealed in 1995, no further matron licenses were issued by the Department. Accordingly, this chapter should also be repealed.

Statement pursuant to Charter §1043

Through an oversight, the proposed repeal of these rules was not included in the Department's Regulatory Agenda.

The rule is as follows:

Section 1. Chapter 5 (Inhalation Therapy Service) of Title 24 of the Rules of the City of New York is repealed.

§2. Chapter 8 (Examination, Licensing and Procedure Relating to Motion Picture Matrons) of Title 24 of the Rules of the City of New York, is repealed.

**NEW YORK CITY LAW DEPARTMENT  
100 CHURCH STREET  
NEW YORK, NY 10007  
212-788-1087**

**CERTIFICATION PURSUANT TO  
CHARTER §1043(d)**

**RULE TITLE: Repeal of Rules Relating to Licensing of Inhalation Therapists and Motion Picture Theaters**

**REFERENCE NUMBER: 2013 RG 002**

**RULEMAKING AGENCY: Department of Health and Mental Hygiene**

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: January 15, 2013

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION/ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Repeal of Rules Relating to Licensing of Inhalation Therapists and Motion Picture Theaters**

**REFERENCE NUMBER: 2013 RG 002**

**RULEMAKING AGENCY: Department of Health and Mental Hygiene**

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/ Hunter Gradie  
Mayor's Office of Operations

January 17, 2013  
Date