

## NOTICE OF PUBLIC HEARING

**Subject:** Opportunity to Comment on the proposed amendment of Article 165 of the New York City Health Code.

**Date / Time:** July 26, 2011 / 2:00 P.M. to 4:00 P.M.

**Location:** New York City Department of Health and Mental Hygiene  
42-09 28<sup>th</sup> Street  
14<sup>th</sup> Floor, Room 14-33  
Queens, NY 11101

**Contact:** Rena Bryant  
(347) 396-6071

### Proposed Rule

The Department of Health and Mental Hygiene is proposing that the Board of Health amend §§ 165.03 and 165.15 of Article 165 of the New York City Health Code to expand the range of course options for certified pool operators in New York City.

### Instructions

Prior to the hearing, you may submit written comments about the proposed amendment by mail to:

New York City Department of Health and Mental Hygiene  
Board of Health  
Office of the Secretary to the Board  
Attention: Rena Bryant  
42-09 28<sup>th</sup> Street, WS 14-55  
Queens, NY 11101

or electronically through NYC RULES at <http://www.nyc.gov/html/nycrules/html/proposed/proposed.shtml> 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/notice/notice.shtml> on or before 5:00 P.M., on July 26, 2011.

If you are interested in pre-registering to speak please notify Rena Bryant by July 25, 2011. Please include a phone where, if necessary, you may be reached during normal business hours. You can speak for up to five minutes.

You can also register at the door until 4:00 PM; however, preference will be given to those who pre-register.

To request a sign language interpreter or other form of reasonable accommodation for a disability at the hearing, please contact Rena Bryant at the phone number shown above by July 12, 2011.

Copies of written comments and a summary of oral comments received at the hearing will be available for public inspection within a reasonable time after the hearing between the hours of 9:00 A.M. and 5:00 P.M. at the

New York City Department of Health and Mental Hygiene  
Board of Health  
Office of the Secretary to the Board  
Attention: Rena Bryant  
42-09 28<sup>th</sup> Street, WS 14-55  
Queens, NY 11101

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

### **STATUTORY AUTHORITY**

These amendments to the New York City Health Code ("Health Code") are proposed pursuant to Sections 556, 558 and 1043 of the New York City Charter ("Charter").

- Section 556 of the Charter grants the New York City Department of Health and Mental Hygiene ("Department") jurisdiction to regulate all matters affecting health in the City of New York.
  - Section 556 (a)(3) requires the Department to, "exercise its functions, powers and duties in the area extending over the city, and over the waters adjacent thereto...."
- Sections 558 (b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends.
- Section 1043 of the Charter grants rule-making powers to the Department.

### **STATEMENT OF BASIS AND PURPOSE**

The purpose of the proposed rule is to expand the options for pool operators who are currently only allowed to take the New York City Department of Health and Mental Hygiene's pool operation course.

The Department is responsible for protecting the health and safety of the public that uses permitted bathing establishments, such as public pools, by assuring their proper construction, operation and maintenance. Article 165 of the Health Code provides the standards for operating and maintaining permitted bathing establishments.

Currently the City's Health Code requires that bathing establishments be managed by a certified pool operator who has successfully completed a course in swimming pool technology administered only by the Department. The State's Sanitary Code (10 NYCRR §§ 6-1.2, 6-3.2) requires qualified swimming pool treatment operators to complete an adequate course of instruction regarding the safe and effective operation and maintenance of pool treatment equipment. With this rule change, the Department seeks to expand the range of course options for certified pool operators in New York City.

The proposal is as follows:

Note - Matter in brackets [ ] is to be deleted.

Matter underlined is new.

**RESOLVED**, that §165.03 and subdivision (b) of § 165.15 of Article 165 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, as last amended by resolution on March 27, 2009, be and the same hereby is amended to expand the options for certified pool operators who are currently only allowed to take the New York City Department of Health and Mental Hygiene's pool operation course,, to be printed together with explanatory notes, to read as follows:

## **ARTICLE 165 BATHING ESTABLISHMENTS**

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### **§165.03      Definitions.**

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Building code. "Building code" means the Building Code of the City of New York.

Certified pool operator. "Certified pool operator" means an individual possessing a current certification of the successful completion of [a course in swimming pool technology administered by the Department.] either of the following courses: (1) a New York State Department of Health Water Treatment Plant Operator Certification Course Type A or B; or (2) an adequate course of instruction, as determined by the Department, regarding the safe and effective operation and maintenance of pool treatment equipment.

Combined chlorine. "Combined chlorine" means the part of the total chlorine existing in water in chemical combination with ammonia, nitrogen, or organic compounds, mostly comprised of chloramines. Combined chlorine plus free chlorine equals total chlorine. Combine chlorine is calculated from the results of measuring the free and total chlorine with an appropriate test kit.

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**§ 165.15 Certifications, Supervision Coverage and Surveillance Requirements.**

(a) All bathing establishments shall be maintained and operated in a safe, clean and sanitary condition at all times.

(b) **Certifications.** All bathing establishments shall be operated and supervised by the required certified personnel. The pool operator shall not hire or retain any person who does not have verifiable aquatic supervisory staff qualifications. Copies of the certificates or other documents showing possession of such qualifications shall be kept on file at the facility and shall be readily available for inspection by the Department.

(1) **Pool operator.** A certified pool operator shall be designated and shall be responsible for the operation of the bathing establishment in compliance with this Article. No person who is charged with the operation of a bathing establishment shall engage in or be employed in such capacity unless the person obtains a certificate indicating successful completion of [a] either of the following courses [in swimming pool technology administered by the department]: (1) a New York State Department of Health Water Treatment Plant Operator Certification Course Type A or B; or (2) an adequate course of instruction regarding the safe and effective operation and maintenance of pool treatment equipment. “Adequate” is defined in §165.03 of this Article. An adequate course of instruction shall be determined by the Department. A refresher course [in swimming pool technology] may be required for a licensed pool operator whenever deemed necessary by the [d]Department. The [d]Department may require that a refresher course be taken when continuing violations of the Article are found, when a water borne disease outbreak implicates the pool and/or spray ground water or sanitary conditions at the pool and/or spray ground, or when the [d]Department requires such a course to acquaint the operator with current developments in pool operation [technology].

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Notes: The Department proposes that the Board of Health amend §§ 165.03 and 165.15 of Article 165 of the New York City Health Code to expand the options for certified pool operators who are currently only allowed to take the New York City Department of Health and Mental Hygiene’s pool operation course.

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

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

**RULE TITLE: Amendment of Pool Operator Rules (Health Code Article 165)**

**REFERENCE NUMBER: 2011 RG 053**

**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: June 7, 2011

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1526**

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

**RULE TITLE: Amendment of Pool Operator Rules (Health Code Article 165)  
REFERENCE NUMBER: DOHMH-6  
RULEMAKING AGENCY: DOHMH**

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 Navarro  
Mayor's Office of Operations

June 07, 2011  
Date