



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Health and Mental Hygiene (the Department) is proposing the repeal of section 10-15 of Chapter 10 to Title 24 of the Rules of the City of New York (Smoking and the Use of Electronic Cigarettes Under the New York City Smoke-Free Air Act). This rule describes how to apply for a waiver of certain State anti-smoking laws enforced by the Department. Because the Department will no longer be considering such waivers, the rule is no longer needed. This rule was identified as one that should be repealed as part of a comprehensive rules review initiative undertaken by the NYC Mayor's Office of Operations.

When and where is the hearing? The Department has determined that there is no public purpose to holding a hearing.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the Department through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to resolutioncomments@health.nyc.gov
- **Mail.** You can mail comments to:

New York City Department of Health and Mental Hygiene
Gotham Center
42-09 28th Street, CN 31
Long Island City, NY 11101-4132

- **Fax.** You can fax comments to the Department at 347-396-6087.

Is there a deadline to submit comments? Written comments must be received on or before 5:00 p.m. on May 15, 2017.

Can I review the comments made on the proposed rules? You may review the comments made online at <http://rules.cityofnewyork.us/> on the proposed amendments by going to the website at <http://rules.cityofnewyork.us/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time by the Department's Office of the General Counsel.

What authorizes the Department to make this rule? Sections 556 and 1043 of the City Charter authorize the Department to make this proposed rule. This proposed rule was not included in the Department's regulatory agenda for this Fiscal Year because it was not contemplated when it published the agenda.

Where can I find the Department's rules? The Department's rules are in title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

Smoking is banned in certain indoor and outdoor locations both by the City's Smoke-Free Air Act (SFAA) and by New York State's Clean Indoor Air Act (CIAA). These laws are enforced in New York City by the Department. Pursuant to New York State Public Health Law §1399-u, the Department has the discretion to waive in a specific instance any provision of the CIAA if satisfied that its application will cause undue hardship or that there are other factors that make compliance with the provision unreasonable.

The Department enacted section 24 RCNY §10-15 in 2004 setting forth how the Department would consider requests for such waivers. The rule allows any entity where smoking is permitted by the CIAA, but allowed by the SFAA, to request a waiver. Requests based on financial hardship must include financial records and demonstrate financial losses attributable to the State restriction. If claiming that compliance with the State provision is otherwise unreasonable, an applicant must clearly demonstrate the existence of factors that make this so. The rule also imposes a fee for an application and limits the term of a waiver to two years.

The stated basis and purpose of § 10-15 was to provide a mechanism for harmonizing enforcement of the CIAA, which had just taken effect, with the restrictions on smoking that were already in place in New York City under the SFAA.¹ In fact, the CIAA and SFAA are largely harmonious and there are no waivers currently in place. While one was granted to a tobacco company operating a product testing room in 2005, and renewed thereafter until 2012, no other entity has even requested a waiver. The Department does not foresee any situation in the future where it would waive a provision of the CIAA and thus is proposing to repeal § 10-15 as unnecessary.

Working with the City's rulemaking agencies, the Law Department, and OMB, the Office of Operations conducted a retrospective rules review of the City's existing rules, identifying those rules that will 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 proposed rule repeal was identified as one that should be repealed through this initiative.

The Department's authority for this repeal is found in section 1043 of the New York City Charter. Because the Department is not required to provide waivers under the CIAA, there is no reason to have public testimony on whether this rule should be repealed.

¹ City Record, March 24, 2004. RCNY Volume 8, Statements of Basis and Purpose at page 492.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 10-15 of chapter 10 in Title 24 of the Rules of the City of New York, relating to requests to waive provisions of the New York State Clean Indoor Air Act, is hereby repealed.

**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 Anti-Smoking Law Waiver Provisions

REFERENCE NUMBER: DOHMH-77

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/ Francisco X. Navarro
Mayor's Office of Operations

April 6, 2017
Date

**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 Anti-Smoking Law Waiver Provisions

REFERENCE NUMBER: 2017 RG 032

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: April 6, 2017