



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Adoption of an Amendment Repealing a Rule Governing Requests for Waivers of Anti-Smoking Laws

NOTICE IS HEREBY GIVEN that pursuant to the authority vested in the Commissioner of the Department of Health and Mental Hygiene (the Department) by Section 556 of the New York City Charter, and in accordance with the requirements of Section 1043 of the City Charter, the Department hereby repeals 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 This rule was identified as one that should be repealed as part of a comprehensive rules review initiative undertaken by the NYC Mayor's Office of Operations. The Department determined that pursuant to New York City Charter section 1043(e) that a public hearing on the proposed repeal would not serve any public purpose. The proposed rule was published in the City Record on April 14, 2017. There were no written comments.

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

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

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.

New material is underlined.

[Deleted material is in brackets.]

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.