

MAYOR'S OFFICE OF MEDIA AND ENTERTAINMENT

Notice of Opportunity to Comment on Proposed Rules

What are we proposing? The Mayor's Office of Media and Entertainment ("MOME") is considering amending its Marketing Credit Program Rules.

When and where is the Hearing? MOME will hold a public hearing, at which the public and interested parties are invited to submit comments and testimony on the proposed rule revisions, at 2:00PM on January 12, 2018. This hearing will be held at the Film Office at 1697 Broadway, 6th floor, New York, New York 10019.

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

- **Mail.** You can mail written comments to MOME at 1697 Broadway, Suite 602, New York, New York 10019.
- **Email.** You can email written comments to MOME at rules@media.nyc.gov.
- **Fax.** You can fax written comments to MOME at 212-307-6237.
- **Website.** You can submit comments to MOME through the NYC rules Website at www.nyc.gov/nycrules.
- **By Speaking at the Hearing.** Anyone who wants to comment on the proposed rule revisions at the public hearing must sign up to speak. You can sign up before the hearing by calling 212-489-6710. You can also sign up in the hearing room before the session begins on January 12, 2018. You can speak for up to three minutes.

Is there a deadline for submitting written comments? Yes, you must submit written comments by January 5, 2018.

What if I need assistance to participate in the Hearing? You must tell MOME if you need a reasonable accommodation of a disability at the Hearing. You must tell us if you need a sign language interpreter. You can tell us by email at the address given above. You may also tell us by telephone at 212-489-6710. Advance notice is requested to allow sufficient time to arrange the accommodation. Please us by December 29, 2017.

This location has the following accessibility option(s) available: Wheelchair Accessible.

Can I review the comments made on the proposed rules? A few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at MOME.

What authorizes MOME to promulgate this rule revision? Sections 389 (b) and 1043 of the City Charter authorize MOME to issue this proposed rule revision. This rule amendment was included in MOME's regulatory agenda.

Where can I find MOME's rules? MOME's rules are found in Title 43 of the Rules of the City of New York.

What laws govern the rulemaking process? MOME 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(b) of the City Charter.

STATEMENT OF BASIS AND PURPOSE

The Mayor's Office of Media and Entertainment ("MOME"), which includes the Office of Film, Theatre and Broadcasting, supports various media and entertainment industries in New York City. Since its creation over 40 years ago, thousands of television shows, feature films, commercials, music videos, documentaries, print ad campaigns and theatrical projects have been made in New York City, the entertainment capital of the world. The local entertainment production industry contributes nearly \$9 billion a year to the City's economy and employs over 130,000 New Yorkers. A primary goal of MOME is to both support and grow this dynamic local industry. The "Made in NY" branding initiative was created as part of this goal, and includes the logo and credit attribution by production companies in their final filming products.

In 2013, the "Made in NY" Marketing Credit Program ("the Program") was formally established by rule. The Program offers to "Made in NY" film and television productions a number of opportunities to promote their project in New York City, the top media market in the country. The Marketing Credit Program offers eligible "Made in NY" productions marketing opportunities at various media outlets, including bus stops and City-owned television stations. The amount of media advertising to eligible productions is based on certain production costs as defined in the current rule.

To receive the marketing credit, Program participants must financially contribute a "Cultural Benefit," which is a financial donation given to a non-profit entity that has been chosen by the production and approved by the New York City Department of Cultural Affairs (DCLA). The total cost of the monetary contribution is determined by certain production costs as defined in the current rule. Donations provided under this rule support theatrical, film, writing and other local art institutions that nurture upcoming talent and strengthen the City's creative community.

Because the Program recognizes that the "Made in NY" logo has become a mark of distinction in the industry as well as among New Yorkers, the current rule requires that the logo be included in all media used by the marketing credit recipients. By featuring the logo graphic in the media, projects both promote that they were shot in New York City and showcase MOME's and the City's efforts as a production center.

Based on its years of experience administering the Program, MOME proposes to amend the rules governing this program. The proposed amendments add or revise definitions to reflect

program changes and current operating practices, and update definitions and clarify terms to ensure that program participants understand all program requirements.

Specifically, the proposed rules would:

- Expand the list of organizations eligible for the Cultural Benefit
- Rename the Cultural Benefit as “Community Benefit” to reflect the composition of the expanded list
- Revise the timing requirement of payment of the Community Benefit to occur after completion of the media campaign
- Expand the list of cultural institutions identified by DCLA to include non-profit organizations with proposals for program funding on a Participatory Budgeting (PB) New York City ballot. The PB process allows members of the community to decide on the allocation of budgets set aside by local elected officials.
- Add a new definition of “end credit requirements”
- Add a requirement regarding the authorized applicant’s intention to comply with end credit requirements
- Amend the definition of “qualified film” by eliminating “television pilots” from the type of productions that qualify to participate in the Program (because television pilots do not qualify unless they are part of a television series, which is already included in the definition)
- Require that “qualified films” have production costs of at least \$400,000 to ensure that the productions in the Program are generating economic activity for the City
- Require that “qualified films” distributed exclusively over the Internet must be distributed through a paid subscription-based service in order to distinguish between professionally produced projects and amateur videos
- Amend the definitions of “television film”, “television special” and “television series” to clarify that they also include productions intended for distribution through the Internet
- Repeal the definition of “television pilot” because television pilots are not distributed as stand-alone projects and would therefore not be eligible for the marketing credit
- Revise the application process to limit to once per year the number of times that someone can apply for marketing credit and require that applications for the marketing credit be received at least 60 days prior to the release date of the qualified film, thus simplifying the allocation of the marketing credit to a “first come, first served” basis
- Clarify that when a marketing credit recipient may need to change its release date, their marketing credit would be reallocated based on availability and may not be guaranteed
- Clarify the meaning of “qualified production costs” as related to (1) eligibility for the credit, (2) the obligation to assume printing costs in connection with the media campaign, and (3) the consequences of a marketing credit recipient’s failure to pay the Community Benefit, and
- Clarify the terminology used regarding entities participating in the marketing credit program (i.e., “authorized applicant” and “marketing credit recipient”)

Proposed Rule

“Shall” and “must” denote mandatory requirements and may be used interchangeably unless otherwise specified or unless the context clearly indicates otherwise.

New material is underlined.

[Material inside brackets indicates deleted material.]

Section 1. Subdivisions (a) and (c) of § 15-01 of Chapter 15 of Title 43 of the Rules of the City of New York are amended to read as follows:

(a) The “Made in New York Marketing Credit Program” (“the Program”), established and administered by the Mayor’s Office of Media and Entertainment (“MOME”), offers “Made in New York” film and television productions a number of opportunities to promote their project in major media markets that are City-owned assets or are privately owned and operated media outlets with which the City has established relationships. Qualified “Made in New York” productions that apply and are approved for this Program will be provided media outlets including, but not limited to, bus shelters, subway cars, and broadcasts on New York City Media group television stations. The amount of media advertising offered will be determined by certain production costs as defined in this rule. In exchange for the marketing credits, recipients will be required to make a monetary contribution to a New York City [Cultural Institution identified] cultural institution approved by the New York City Department of Cultural Affairs or a non-profit organization with proposals for program funding on a Participatory Budgeting New York City ballot. The “Made in NY” logo must be included in all media advertising.

* * *

(c) In order to receive the marketing credit, [an authorized applicant] a marketing credit recipient must donate a [Cultural] Community Benefit to a New York City [Cultural Institution] cultural institution or non-profit organization within thirty (30) days of [approval of an application] completion of the authorized applicant’s media campaign.

§ 2. Subdivisions (a) and (f) of § 15-02 of Chapter 15 of Title 43 of the Rules of the City of New York are amended to read as follows:

(a) **Application form.** “Application form” means the document created by the Office that is submitted by an authorized applicant to receive “Made in New York Marketing Credit Program” credit after it has completed production of a qualified film. The application form will include a list of non-profit [organization] cultural institutions and community organizations [identified] approved by the New York City Department of Cultural Affairs and Participatory Budgeting New York City, respectively, as eligible for Program donations.

* * *

(f) **[Cultural benefit] Community Benefit.** “[Cultural benefit] Community Benefit” means a monetary contribution to a New York City [Cultural Institution] cultural institution or community organization of (1) a minimum of \$10,000 (ten thousand dollars) for any qualified film with qualified production costs equal to \$10,000,000 (ten million dollars) or more, or (2) 0.1 % (one-tenth per cent) of the qualified production costs for any qualified film having qualified production costs less than \$10,000,000 (ten million dollars).

§ 3. Subdivisions (h) through (s) of § 15-02 of Chapter 15 of Title 43 of the Rules of the City of New York are re-lettered (i) through (t), subdivision (t) is REPEALED, and a new subdivision (h) is added to read as follows:

(h) End credit requirements. “End credit requirements” means those acknowledgements that an authorized applicant agrees to include in each qualified film as a condition for participation in the Program. Each qualified film must include in the end credits: (1) the “Made in NY” logo; and (2) a “special thanks” credit using text provided by the New York City Mayor’s Office of Media and Entertainment.

§ 4. Subdivisions (l), (p) and (t) of § 15-02 of Chapter 15 of Title 43 of the Rules of the City of New York, as re-lettered by section 5 of this rule amendment, and subdivisions (u) and (v) of such § 15-02, are amended to read as follows:

(l) New York City cultural institution or community organization. “New York City cultural institution or non-profit community organization” means an Internal Revenue Code §501(c)(3) non-profit organization identified by the New York City Department of Cultural Affairs or through Participatory Budgeting New York City as an organization which supports [theatrical, film, writing, and other local arts or cultural institutions that nurture emerging talent] and [strengthen] strengthens New York City’s creative community or neighborhoods.

* * *

(p) Qualified film. “Qualified film” means a feature-length film, television film, television special, [television pilot] and/or [each episode of a] television series, regardless of the medium by means of which [the film, pilot special or episode series] it is created or conveyed, of which: (1) 75% of its total shooting days take place in New York City, or (2) 75% of its production costs are “qualified production costs.” A “qualified film” must have production costs of at least \$400,000 and must have completed production no earlier than twenty-four (24) months prior to the date of application to the Program. A “qualified film”, if distributed exclusively over the Internet, must be distributed through a paid subscription-based service. “Qualified film” does not include a production for which records are required under § 2257 of Title 18, United States Code, to be maintained with respect to any performer in such production (reporting of books, films, etc. with respect to sexually explicit conduct).

* * *

(t) Television film. “Television film”, also known as “movie-of-the-week,” “MOW,” “made for television movie,” or “mini-series,” means a production intended for [broadcast] distribution on television, whether free or through a subscription-based service, or on the Internet[, whether free or] through a subscription-based service, that has a running time of at

least [ninety (90)] sixty (60) minutes in length ([inclusive] exclusive of commercial advertisement and interstitial programming).

(u) **Television special.** “Television special” means a production intended for [broadcast] distribution on television, whether free or through a subscription-based service, or on the Internet[, whether free or] through a subscription-based service, that has a running time of at least [thirty (30)] twenty (20) minutes in length ([inclusive] exclusive of commercial advertisement and interstitial programming). “Television special” includes, but is not limited to, an awards show and a telethon.

(v) **Television series.** “Television series” means a regularly occurring production on television, whether free or through a subscription-based service, or on the Internet[, whether free or] through a subscription-based service, that has a running time of at least [thirty (30)] twenty (20) minutes in length per episode ([inclusive] exclusive of commercial advertisement and interstitial programming). “Television series” includes, but is not limited to, late-night variety series, daily news series, situation comedies, single camera comedies, reality series, game shows, morning news and newsmagazine shows.

§ 5. Subdivisions (b) through (e) of § 15-03 of Chapter 15 of Title 43 of the Rules of the City of New York are re-lettered (c) through (f), and a new subdivision (b) is added to read as follows:

(b) An authorized applicant may submit an application for a qualified film that is a television series no more than once a year.

§ 6. Subdivision (c) of § 15-03 of Chapter 15 of Title 43 of the Rules of the City of New York, as re-lettered by section 7 of this rule amendment, is amended to read as follows:

(c) The authorized applicant must include information about the date that the qualified film [or television series] is set to make its debut in theatres, on television, online, on DVD or any and all media. The application must be received at least sixty (60) days prior to the release date.

§ 7. Subdivision (a) of § 15-04 of Chapter 15 of Title 43 of the Rules of the City of New York is amended to read as follows:

(a) In order to be approved for marketing credit, each of the following requirements must be satisfied:

- (1) the application is substantially complete;
- (2) the authorized applicant is a producer and/or distributor with a qualified film or television series;
- (3) the authorized applicant's qualified production costs paid or incurred are attributable to the use of tangible property or the performance of services in the production of a qualified film; [and]

(4) the authorized applicant has identified the cultural institution or community organization to which it will make a payment as part of the Program; and

(5) the authorized applicant intends to comply with the end credit requirements set forth in section 15-02(h) of this chapter.

§ 8. Section 15-05 of Chapter 15 of Title 43 of the Rules of the City of New York is amended to read as follows:

§15-05 Allocation of New York City Made in New York marketing credit.

(a) When an application has been approved [by the Office, if the qualified production's release date is within sixty (60) days of the submission of the application,] the Office will allocate the credit in order of priority based upon submission date of an application and subject to the availability of media assets. In the event that an [applicant's qualified production is not actually released within sixty (60) days of the submission of the application] marketing credit recipient is unable to use the media assets after the credit has been allocated, [the applicant] such recipient will lose its "first come, first served" status and will be accommodated subject to availability without guarantee of reallocation.

(b) The Office will allocate the credit based on a project's qualified production costs. The amount of qualified production costs will determine which of the following three tiers an applicant would qualify for:

Tier 1: Qualified production costs of \$10 million (ten million dollars) or more

Tier 2: Qualified production costs of at least \$5 million (five million dollars) and less than \$10 million (ten million dollars)

Tier 3: Qualified production costs of at least \$400,000 (four hundred thousand dollars) and less than \$5 million (five million dollars)

(c) Depending on the availability of media assets, the Office will determine the amount and type of media assets assigned to each tier, which will be allocated to [applicants] marketing credit recipients according to their tier category.

(d) Productions that have qualified production costs of \$10 million or more, or are produced (i) by a company of which more than 5 percent of the beneficial ownership is owned directly or indirectly by a publicly traded entity, or (ii) by a company having more than \$35 million in annual revenue, must pay for the costs, if any, of printing materials for distribution through the media assets assigned under the credit.

(e) If a marketing credit recipient does not pay the Community Benefit within thirty (30) days of the completion of such recipient's media campaign, such recipient may be required to make a payment to MOME in an amount equivalent to 100% of the value of the media assets received, as determined by MOME.

§ 9. Section 15-06 of Chapter 15 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 15-06 Appeal process.

(a) If an authorized applicant's application is disapproved by the Office, or if [an approved applicant] a marketing credit recipient disagrees with the amount of the media assets granted by the Office, each such [applicant] person or entity may appeal such determination.

(b) In the case of an appeal from a disapproval of an application, an authorized applicant can request an appeal by sending a letter to the Mayor's Office of Media and Entertainment, Attn: Commissioner, to the address and by the means specified in the application form, within thirty (30) days from the date of the denial letter issued by the Office.

(c) In the case of an appeal from a determination of the amount of media assets, [an applicant] a marketing credit recipient can request an appeal by sending a letter to the Commissioner as provided in subdivision (b), within thirty (30) days from the date of issuance of the certificate of marketing credit.

(d) If an authorized applicant or a marketing credit recipient fails to request an appeal within thirty (30) days of the Office's denial decision and/or allocated amount of media assets, such decision will be deemed final.

(e) Upon receipt of a timely letter of appeal, the Commissioner will appoint an appeal officer within the Office to review the matter. The appeal officer may reverse, affirm or modify the original determination and provide a written explanation of his or her finding in a report to the Commissioner. The Commissioner or his or her designee must issue a final order within sixty (60) days of the report. A copy of the final order will be issued to the appealing [applicant] person or entity within ten (10) days after the date the Commissioner or his or her designee renders the final order.

§ 10. Section 15-07 of Chapter 15 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 15-07 Final report.

As part of the [cultural] community benefit component of the Program, within thirty (30) days after the completion of [an authorized applicant's] a marketing credit recipient's media campaign, [an approved applicant] such recipient must submit to the Office by U.S. mail, email or fax, proof of payment to the identified New York City cultural institution, in the form of a cancelled check or letter of acknowledgment. [Applicants] Such recipients who have not satisfied this component of the Program will be required to make a payment to MOME in an amount equivalent to 100% of the value of the media assets received, as determined by MOME.

§ 11. Section 15-08 of Chapter 15 of Title 43 of the Rules of the City of New York is amended to read as follows:

§ 15-08 Record retention.

Each [authorized and approved applicant] marketing credit recipient must maintain records, in paper or electronic form, of any qualified productions costs used to calculate the media assets received through this Program for a minimum of three years from the date of filing of the tax return applicable to the time period for which [the applicant] such recipient claims the marketing credit. The Office has the right to request such records upon reasonable notice.