

NOTICE OF ADOPTION OF FINAL RULE
New York City Mayor’s Office of Media and Entertainment

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE MAYOR’S OFFICE OF MEDIA AND ENTERTAINMENT by Executive Order 21 of 2022, that the Mayor’s Office of Media and Entertainment promulgates and adopts a rule to establish the Made in NY Marketing Credit Program for Digital Gaming Media Production.

The proposed Rules were published in the City Record on December 15, 2022, and a public hearing was held on January 24, 2023. One comment was received in total: The commentor testified in favor of the proposed rule and did not suggest changes.

MOME is making the following change to clarify provisions in the proposed Rules:

- In section 19-02, the definitions of “digital gaming media production costs” and “qualified digital gaming media production costs” were revised for clarity, consistency, and to include certain “property” in the costs.

The Mayor’s Office of Media and Entertainment now adopts the following Rule.

STATEMENT OF BASIS AND PURPOSE

The mission of the Mayor’s Office of Media and Entertainment (“MOME”) is to support and strengthen New York City’s creative economy and make it accessible to all. MOME comprises five divisions: the Film Office, which coordinates film and television production throughout the five boroughs; NYC Media, the largest municipal television and radio broadcasting entity in the country with a reach of 18 million viewers within a 50-mile radius; the Creative Industries division, which supports industry and workforce development in film, television, theater, music, publishing, advertising, and digital content; the Office of Nightlife, supporting the sustainable development of New York City’s nightlife industry; and the Press Credentials Office, which issues access credentials to news media. Overall, MOME programs support the employment of nearly half a million workers in an industry that generates over \$104B in economic activity annually.

The “Made in NY” logo is a federally registered trademark. The City created the “Made in NY” branding initiative as part of the goal to support and grow the media and entertainment industries, and the initiative includes the logo and credit attribution. In 2013, MOME formally established the “Made in NY” Marketing Credit Program for film and television (the “Film and Television Marketing Credit Program”) by rule. The Film and Television Marketing Credit

Program offers to “Made in NY” film and television productions opportunities to promote their project in New York City, the top media market in the country. The “Made in NY” logo has also become a mark of distinction in the film and television industry, as well as among New Yorkers.

The global digital gaming industry is projected to record revenues of \$180 billion in global sales, making the digital gaming industry larger than the global film and North American sports industries combined, with New York State ranking fifth in total in-state game industry-related economic output across the country. New York City is among the top ten cities in terms of industry presence and number of digital game developers and publishers. According to MOME’s *New York City Digital Game Industry 2021 Economic Impact Study*, the digital game industry provides 7,600 jobs in New York City, \$762 million in wages, and \$2 billion in total economic output (business revenues and self-employment receipts).

Given the tremendous potential for the development of this creative industry in New York City, MOME seeks to offer incentives for the production of new digital games in New York City. To that end, this rule establishes a Made in NY Marketing Credit Program for Digital Gaming Media Production. Like the Film and Television Marketing Credit Program, the rule provides digital game companies with opportunities to promote their projects in New York City, the top media market in the country.

Specifically, the rule is set forth in a new chapter and:

- Establishes the Made in NY Marketing Credit Program for Digital Gaming Media Production.
- Outlines the application process.
- Provides standards for assessing applications.
- Requires that recipients provide a cultural benefit in the form of a monetary contribution to a non-profit entity that is on a list established by the New York City Department of Cultural Affairs or has been identified through the New York City Council’s Participatory Budget process.
- Sets forth reporting and record keeping requirements.

Final 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.

Section 1. Title 43 of the Rules of the City of New York is amended by adding a new Chapter 19 to read as follows:

CHAPTER 19: NEW YORK CITY “MADE IN NY” MARKETING CREDIT PROGRAM FOR DIGITAL GAMING MEDIA PRODUCTIONS

§ 19-01 Purpose and general description.

§ 19-02 Definitions.

§ 19-03 Application process.

§ 19-04 Evaluation of applications.

§ 19-05 Allocation of Made in NY marketing credit for digital gaming media production.

§ 19-06 In-credit requirement; logo; printing costs.

§ 19-07 Appeal process.

§ 19-08 Final report.

§ 19-09 Record retention.

§ 19-01 Purpose and general description.

(a) The “Made in NY” Marketing Credit Program for Digital Gaming Media Productions (“Program”), established and administered by the Mayor’s Office of Media and Entertainment (“MOME”), offers opportunities to “Made in NY” digital gaming media production entities to promote their projects in major media markets that are City-owned assets or are privately owned and operated media outlets with which the City has established relationships. “Made in NY” digital gaming media production entities that apply and are approved for this Program will be provided marketing opportunities through media outlets including, but not limited to, bus shelters and subway cars.

(b) The purpose of this rule is to outline the application process for the Program. These procedures govern the allocation of marketing credits, standards for assessing evaluations and other provisions necessary and appropriate for administering and fulfilling the purposes of the Program.

(c) An approved applicant must make a monetary contribution to a listed cultural institution or community organization as a condition for receiving a marketing credit.

§ 19-02 Definitions.

As used in this rule, the following terms have the following meanings:

Application form. “Application form” means the document made available by MOME that requests information necessary to evaluate an applicant’s qualifications for the Program.

Applicant. “Applicant” means a digital gaming media production entity that submits a completed application form to MOME.

Certificate of marketing credit. “Certificate of marketing credit” means a certificate issued by MOME that reflects an agreement between MOME and an approved applicant establishing the amount of media assets for which the approved applicant has qualified and the dates such media assets will run, and that sets forth the terms and conditions for receiving the allocated marketing credit. The certificate of marketing credit includes such information as name and address of the approved applicant; name of the qualified digital gaming media production in connection with which the credit applies; the amount of media assets to be received by the approved applicant and the dates such media assets will run; requirements regarding the submission of artwork for the media assets; representations, warranties, and indemnification clauses; the in-credit requirement; reporting requirements; and a disclaimer stating that actual receipt of the marketing credit is subject to availability of media assets for the Program.

Commissioner. “Commissioner” means the Commissioner of the New York City Mayor’s Office of Media and Entertainment.

Community benefit. “Community benefit” means a monetary contribution to a listed cultural institution or community organization of (1) a minimum of \$10,000 (ten thousand dollars) for any qualified digital gaming media production with qualified digital gaming media production costs equal to \$10,000,000 (ten million dollars) or more, or (2) 0.1 % (one-tenth per cent) of the qualified digital gaming media production costs for any qualified digital gaming media production having qualified digital gaming media production costs less than \$10,000,000 (ten million dollars).

“Digital gaming media production” means (1) a website, the digital media production costs of which are paid or incurred predominately in connection with (A) video simulation, animation, text, audio, graphics or similar gaming related property embodied in digital format, and (B) interactive features of digital gaming (e.g., links, message boards, communities or content manipulation); (2) video or interactive games produced primarily for distribution over the internet, wireless network or successors thereto; and (3) animation, simulation or embedded graphics digital gaming related software intended for commercial distribution regardless of medium. Some examples of a digital gaming media production include, but are not limited to, the following:

- (i) video or interactive games, including extensions of video games, provided their content is new and playable for an end-user;
- (ii) simulation software;
- (iii) interactive educational or training products; and
- (iv) software applications that provide connectivity and communications between mobile devices and digital gaming media production web platforms.

Digital gaming media production costs. “Digital gaming media production costs” means

- (i) any costs for wages or salaries paid to individuals directly employed for services performed by those individuals directly and predominantly in the creation of a digital gaming media production or productions, not exceeding \$100,000 per individual; and
- (ii) payments for services performed or property used directly and predominantly in the development (including concept creation), design, production (including testing), editing (including encoding), and compositing (including the integration of digital files for interaction by end users) of digital gaming media.

“Digital gaming media production costs” do not include:

- (i) wages, salaries, or other income distribution paid to any person who serves in the role of chief executive officer, chief financial officer, president, treasurer, or similar position if the applicant has more than ten employees.

- (ii) any income or other distribution including, but not limited to, licensing or royalty fees, to any individual who holds an ownership interest in the applicant, whether or not such individual is serving in the role of chief executive officer, chief financial officer, president, treasurer, or similar position.
- (iii) costs incurred for the acquisition of intellectual property rights of a character from a third party,
- (iv) distribution costs,
- (v) costs incurred in the marketing, promotion or advertising of a digital game, and
- (vi) other costs not directly and predominantly related to the creation, development, design, production, editing, or compositing of a qualified digital gaming media production.

Digital gaming media production entity. “Digital gaming media production entity” means the person who is directly responsible for payment of the direct production expenses of a qualified digital gaming media production.

In-credit requirements. “In-credit requirements” means those acknowledgements within the qualified digital gaming media production that an applicant agrees to provide as a condition for participation in the Program.

Listed cultural institution or community organization. “Listed cultural institution or community organization” means an organization that is recognized by the Internal Revenue Service as tax-exempt pursuant to Internal Revenue Code section 501(c)(3) that is located in New York City and has been identified, either by the New York City Department of Cultural Affairs or through New York City Council Participatory Budgeting, as an organization that supports and strengthens New York City’s creative community or neighborhoods.

“Made in NY” logo. ““Made in NY’ logo” means the City’s federally registered trademark that consists of the words “Made in NY” within a circle.

Marketing credit. “Marketing credit” means an allocation of media assets made available through the Program, that is free of charge to an approved qualified digital gaming media production.

Media asset. “Media asset” means available advertising media including, but not limited to, bus shelters and subway cars that MOME makes available to an approved applicant for a qualified digital gaming media production.

MOME. “MOME” means the New York City Mayor’s Office of Media and Entertainment.

Person. “Person” means an individual, partnership, corporation or other type of legal entity.

Program. “Program” refers to the “Made in NY” Marketing Credit Program for Digital Gaming Media Production.

Qualified digital gaming media production. “Qualified digital gaming media production” means a digital gaming media production that meets the following qualifications: (1) at least 75% of its digital gaming media production costs are qualified digital gaming media production costs; (2) its digital gaming media production costs are at least \$100,000 per production; and (3) the production was completed no more than twenty-four months prior to the date of application to the Program and is scheduled for its first release no less than 60 days from the date of application.

A “qualified digital gaming media production” does not include a website, video, interactive game or software that is:

- (i) used predominantly for electronic commerce (retail or wholesale purposes other than the sale of video or interactive games),
- (ii) used predominantly for gambling (including activities regulated by a New York gaming agency),
- (iii) used for predominantly for political advocacy purposes, or
- (iv) depicts obscene material as defined in section 235 of the New York Penal Law.

Qualified digital gaming media production costs. “Qualified digital gaming media

production costs” means digital gaming media production costs incurred directly in New York City and are attributable to work performed, the use of property, or the performance of services within New York City.

§ 19-03 Application process.

(a) The Program application form and directions for applying are available on MOME’s website.

(b) In accordance with MOME’s application instructions, an applicant must submit a completed application form after its qualified digital gaming media production was completed and no more than 24 months after completion and at least sixty days prior to the first release date. The applicant must include information about the first date that the qualified digital gaming media production is set to be released either in stores, on digital platforms or through any and all other media.

(c) The application form is not deemed complete until all questions have been fully addressed by the applicant and any additional supporting documents requested by MOME have been provided in a manner sufficient to allow MOME to properly evaluate the application.

(d) Applications that are complete will be reviewed by MOME in the order they are received. If MOME receives more than one application on the same date, priority will be given to the applicant having the earliest anticipated date of first release of the qualified digital gaming media production.

(e) MOME will approve or disapprove the application based upon criteria set forth in §19-04(a) of these rules.

(f) No later than twenty business days from receipt of the application, MOME will inform the applicant in writing if its request has been approved or denied. If approved, the notification will include a certificate of marketing credit. MOME will not provide the allocated marketing credits unless and until the certificate is signed and returned by the applicant within five business days.

§ 19-04 Evaluation of applications.

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

- (1) the application is complete;
- (2) MOME has determined that the applicant's project is a qualified digital gaming media production;
- (3) the application was received by MOME no more than twenty-four months after the qualified digital gaming media production was completed and at least sixty days prior to the first release date;
- (4) the applicant has identified a listed cultural institution or community organization as the recipient of its Community Benefit;
- (5) the applicant agrees to comply with Program requirements, including the in-credit requirement; and
- (6) the digital gaming media production entity has not been awarded Program marketing credits within the 365 days preceding submission of its application.

(b) If all of the requirements set forth in this section are not met, or if MOME concludes that the applicant has knowingly submitted false or misleading information, MOME will disapprove the application.

§19-05 Allocation of "Made in NY" marketing credit for digital gaming media.

(a) When an application has been approved, MOME will issue the certificate of marketing credit to the approved applicant.

(b) MOME will allocate the credit based on a project's qualified digital gaming media production costs, tiers to be established by the Commissioner and posted on MOME's website, and MOME's availability of media assets.

(c) If the approved applicant is unable to use the media assets for the dates specified in the certificate after the credit has been allocated or does not sign and return the certificate of marketing credit within five business days of MOME's issuance, such approved applicant will lose its "first come, first served" status and will be accommodated subject to availability without guarantee of reallocation.

§19-06 In-credit requirement; logo; printing costs.

(a) In-credit requirement. Each recipient of a marketing credit must include the "Made in NY" logo in a qualified digital gaming media production in a location readily accessible and easily readable by the end user or in another manner acceptable to the Commissioner. The phrase "The 'Made in NY' logo is a trademark of the City of New York and

is used with the City’s permission” must appear along with the “Made in NY” logo unless waived by the Commissioner.

(b) the “Made in NY” logo in all artwork provided for bus shelters, subway cars, and other media assets provided pursuant to this Program.

(c) An approved applicant must pay for the costs, if any, of printing materials for distribution through the media assets assigned under the Program if (1) the qualified digital gaming media production costs are \$10 million or more; or (2) more than five percent of the beneficial ownership of the qualified digital media production entity is owned directly or indirectly by a publicly traded entity; or (3) the qualified digital media production entity has more than \$35 million in annual revenue.

§19-07 Appeal process.

(a) If an applicant’s application is disapproved by MOME, or if an approved applicant disagrees with the amount of the media assets granted by MOME, such person may appeal such determination.

(b) In the case of an appeal from a disapproval of an application, an 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 days from the date of the denial letter issued by MOME.

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

(d) If an applicant fails to request an appeal within thirty days of MOME’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 MOME to review the matter. The appeal officer may reverse, affirm or modify the original determination and provide a written explanation of their finding in a report to the Commissioner. The Commissioner or their designee must issue a final order in writing within sixty days of the report. A copy of the final order will be issued to the appellant within ten days after the date the Commissioner or their designee renders the final order.

§19-08 Final report.

As part of the Community Benefit component of the Program, within thirty days after the completion of a marketing credit recipient's media campaign, such recipient must submit to MOME by U.S. mail or email proof of payment to a listed cultural institution or community organization, in the form of a cancelled check or letter of acknowledgment. A recipient that has 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.

§19-09 Record retention.

Each marketing credit recipient must maintain records, in paper or electronic form, of any qualified digital gaming media production's 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 such recipient claims the marketing credit. MOME may request such records upon reasonable notice.