

NEW YORK CITY DEPARTMENT OF ENVIRONMENTAL PROTECTION

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Environmental Protection is promulgating rules that would amend the existing construction noise rules relating to the submission of noise mitigation plans and interior noise construction.

When and where is the hearing? The Department of Environmental Protection will hold a public hearing on the proposed rule. The public hearing will take place from 2:00pm until 3:00pm on July 23rd, 2018. The hearing will be in the Department's 8th floor hearing room at 59-17 Junction Boulevard, Flushing NY 11373.

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

- **Website.** You can submit comments to the Department of Environmental Protection through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to nycrules@dep.nyc.gov.
- **Mail.** You can mail comments to Department of Environmental Protection, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373. Attention: Rule Making Attorney
- **Fax.** You can fax comments to the Department of Environmental Protection, Bureau of Legal Affairs, at 718-595-6543.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling 718-595-6531. You can also sign up in the hearing room before the hearing begins on July 23, 2018. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by July 23, 2018.

What if I need assistance to participate in the hearing? You must tell the Office of Legal Affairs 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 mail at the address given above. You may also tell us by telephone at 718-595-6531. Advance notice is required to allow sufficient time to arrange the accommodation. Please tell us by July 18, 2018.

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

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days

after the hearing, copies of all comments submitted online, copies of all written comments, and a summary of oral comments concerning the proposed rule will be available to the public at a few days after the hearing, a transcript of the hearing and copies of the written comments will be available to the public at the Bureau of Legal Affairs, 59-17 Junction Boulevard, Flushing, NY, 11373.

What authorizes the Department of Environmental Protection (DEP) to make this rule? Sections 1043 of the City Charter and Sections 24-219, and 24-220 of the Administrative Code authorize DEP to make this proposed rule. This proposed rule was included in DEP's regulatory agenda for this Fiscal Year.

Where can I find the DEP's rules? The DEP's rules are in Title 15 of the Rules of the City of New York.

What laws govern the rulemaking process? DEP must meet the requirements of Section 1043(c) 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 of Proposed Rule

Local Laws 10 and 53 of 2018 amended Section 24-219 and 24-220 of the Administrative Code, require the filing of noise mitigation plans that must be made publicly available on the department's website, as well as requiring noise mitigation rules for interior renovation.

DEP is proposing these rules, as required by section 24-219 and 24-220 to clarify and revise the existing noise construction rules as set forth in 15 RCNY 28-100 et seq. to require that noise mitigation plans must be filed with the department and add a section to the rules that will provide for mitigation techniques to control for interior renovation noise.

Consistent with the above, DEP promulgates the following new Rule, to be found Chapter 28 of Title 15 of the Rules of the City of New York.

The Rule is authorized by Section 1043 of the Charter and sections 24-219 and 24-220 of the Administrative Code.

The test of the rule follows.

Section 1. Section 28-100 of Title 15 of the Rules of the City of New York is amended to read as follows:

§ 28-100 General Construction Noise Mitigation Plan.

In accordance with § 24-219 and § 24-220 of the New York City Noise Code, every construction site where construction activities take place shall have, conspicuously posted and filed with the Department of Environmental Protection (DEP), a complete and accurate Construction Noise

Mitigation Plan, except such sites that will have emergency work completed within three days or less, shall not be required to file the plan. [So long as the plan complies with this chapter, it need not be filed with the Department of Environmental Protection (DEP); however, such] Such plan must be readily available for inspection at the construction site. The Construction Noise Mitigation Plan Form is available at: [<http://www.nyc.gov/dep> or at DEP's Offices at:

New York City Department of Environmental Protection
Bureau of Environmental Compliance, 9th Floor
59-17 Junction Blvd.
Flushing, NY 11373] [<http://www.nyc.gov/html/dep/html/noise/construction-noise.shtml>].

§ 2. Subdivision n of Section 28-101 of Title 15 of the Rules of the City of New York is amended to read as follows:

n. Responsible parties conducting construction and roadway work that will commence and be completed within a continuous period of no longer than 24 hours or for emergency work that will last no longer than three consecutive days, [that occurs between the hours of 7:00 a.m. and 6:00 p.m. on weekdays,] need not [post or] file with DEP a Construction Noise Mitigation Plan. However, the responsible party for such construction work shall not create unreasonable noise. In addition, if the work occurs near or adjacent to a sensitive receptor as defined in § 28-101(i) of this chapter, then the responsible party shall make modifications including scheduling changes or employing additional noise mitigation methods listed in §§ 28-102, 28-107, and 28-108. This subdivision shall not apply to construction work that occurs after hours.

§ 3. Section 28-105 of Title 15 of the Rules of the City of New York is amended to read as follows:

§ 28-105 Utility Noise Mitigation Plan.

Pursuant to § 24-219 and § 24-220 of the Administrative Code, every authorized publicly franchised New York City utility company that provides gas, electric, steam and telecommunication services, except when emergency work will be performed in three days or less, shall have conspicuously posted, a complete and accurate Utility Noise Mitigation Plan at all sites where construction activities take place. A generic plan per borough may be used to satisfy the filing and posting requirement, provided such plan is posted and filed with the department and otherwise complies with the requirements for a Utility Noise Mitigation Plan. Although the plan need not be filed with DEP, it shall be readily available for inspection should a complaint be filed or during a routine inspection. The Utility Noise Mitigation Plan Form is available at: [<http://www.nyc.gov/dep> or at DEP's Offices at:

New York City Department of Environmental Protection
Bureau of Environmental Compliance, 9th Floor
59-17 Junction Blvd.
Flushing, NY 11373] [<http://www.nyc.gov/html/dep/html/noise/construction-noise.shtml>].

§ 4. Subdivision p of section 28-106 of Title 15 of the Rules of the City of New York relating to non-emergency, long-term projects by utilities, is REPEALED.

§ 5. Title 15 of the Rules of the City of New York is amended by adding a new Section 28-110 to read as follows:

§ 28-110 Interior Renovation Work Noise Measures.

Pursuant to Administrative Code § 24-219(a)(6), the responsible party performing interior renovation work, defined as work within an existing building, must utilize noise mitigation strategies and techniques to reduce noise from such interior renovation work.

a. GENERAL RULES OF OPERATION. It shall be unlawful to engage in or to cause or permit any person to engage in interior renovation work other than on weekdays between the hours of 7 a.m. and 6 p.m. A person may however perform interior renovation work in connection with the alteration or repair of an existing one or two family owner-occupied dwelling classified in occupancy group J-3 or a convent or rectory on Saturdays and Sundays between the hours of 10 a.m. and 4 p.m. provided that such dwelling is located more than 300 feet from a house of worship.

b. SOURCE AND PATHWAY CONTROLS. Build sound barriers around noisy tool tasks as per below.

1. Noise Barriers

A. Acceptable examples include but are not limited to:

- Carsonite Sound Barrier www.carsonite.com
- Sound Fighter LSE Sound Barrier www.soundfighter.com
- Kinetics Noise Block www.kineticsnoise.com
- one inch plywood rated at 30 STC

B. Place noise curtains on the walls of rooms where noisy operations are being performed.

Acceptable examples include but are not limited to:

- Sound Seal BBC-13-2 www.soundseal.com
- Illbruck Acoustic SONEX Curtain www.illbruck-sonex.com
- McGill AirSilence Fibersorb Curtains www.mcgillairsilence.com
- Acoustiblok, Acoustiblok-Wallcover www.acoustiblok.com
- AcoustiGuard, GenieClip, Mass Loaded Vinyl, Barrer Material, Iso-sill www.acoustiguard.com
- Kinetics Model ICC, KSCH, IsoGrid, IsoMax, PSB, Wallmat, IPRB www.kineticsnoie.com

C. Floor Sound Isolation. Acceptable examples include but are not limited to:

- Acoustiblok, Acoustiwool, Acoustipad www.acoustiblok.com

- AcoustiGuard, OT 4005& 4010, Duraoustic, Barrier Material, Iso Sep 25HD
www.kineticsnoise.com
- Kinetics, Model RIM, SR Floorboard, Soundmatt, FC Isolayment BR www.kineticsnoise.com

2. Tools

A. Drills. The responsible party should select drills with the lowest loaded A-weighted sound power level (SWLA) that meet their needs. Acceptable examples include but are not limited to:

| <u>Manufacturer brand name</u> | <u>Model number</u> |
|--------------------------------|---------------------|
| <u>Milwaukee</u> | <u>0302-20</u> |
| <u>Milwaukee</u> | <u>0299-20</u> |
| <u>Milwaukee</u> | <u>0300-20</u> |
| <u>Makita</u> | <u>6303H</u> |
| <u>Hitachi</u> | <u>D10VH</u> |
| <u>Makita</u> | <u>6408</u> |

B. Circular Saws. The responsible party should select saws with the lowest loaded A-weighted sound power level (SWLA) that meet their needs. Acceptable examples include but are not limited to:

| <u>Manufacturer brand name</u> | <u>Model number</u> |
|--------------------------------|---------------------|
| <u>Porter Cable</u> | <u>345</u> |
| <u>Milwaukee</u> | <u>6370-20</u> |
| <u>Porter Cable</u> | <u>314</u> |
| <u>Makita</u> | <u>5277NB</u> |
| <u>Makita</u> | <u>5057KB</u> |
| <u>Hitachi</u> | <u>C7SB2</u> |
| <u>Porter Cable</u> | <u>743</u> |
| <u>Bosch</u> | <u>CS20</u> |

C. Portable Generators. The responsible party should select models with the lowest levels (dBA) that meet their needs. Acceptable examples include but are not limited to:

| <u>Manufacturer brand name</u> | <u>Model number</u> |
|--------------------------------|----------------------|
| <u>Honda</u> | <u>EU3000isAN</u> |
| <u>Honda</u> | <u>EU1000iAN</u> |
| <u>Honda</u> | <u>EU2000 series</u> |
| <u>Honda</u> | <u>EU6500isA</u> |

D. Orbital Sanders. The responsible party should select orbital sanders with the lowest loaded A-weighted sound power level (SWLA) that meet their needs. Acceptable examples include but are not limited to:

| <u>Manufacturer brand name</u> | <u>Model number</u> |
|--------------------------------|---------------------|
|--------------------------------|---------------------|

| | |
|-------------------------|----------------|
| <u>Black and Decker</u> | <u>MS500K</u> |
| <u>Black and Decker</u> | <u>MS550GB</u> |

E. Power Screw Drivers. The responsible party should select power screw drivers with the lowest loaded A-weighted sound power level (SWLA) that meet their needs. Acceptable examples include but are not limited to:

| <u>Manufacturer brand name</u> | <u>Model number</u> |
|--------------------------------|---------------------|
| <u>Hitachi</u> | <u>W6V3</u> |
| <u>DeWalt</u> | <u>DW272</u> |

F. Reciprocating Saws. The responsible party should select reciprocating saws with the lowest loaded A-weighted sound power level (SWLA) that meet their needs. Acceptable examples include but are not limited to:

| <u>Manufacturer brand name</u> | <u>Model number</u> |
|--------------------------------|---------------------|
| <u>DeWalt</u> | <u>DW309K</u> |
| <u>Milwaukee</u> | <u>6519-22</u> |
| <u>Milwaukee</u> | <u>6509-22</u> |
| <u>Milwaukee</u> | <u>6524-21</u> |

G. Miter Saws. The responsible party should select miter saws with the lowest loaded A-weighted sound power level (SWLA) that meet their needs. Acceptable examples include but are not limited to:

| <u>Manufacturer brand name</u> | <u>Model number</u> |
|--------------------------------|---------------------|
| <u>Delta</u> | <u>MS250</u> |
| <u>Hitachi</u> | <u>C10FCE</u> |
| <u>DeWalt</u> | <u>DW706</u> |

H. Grinders. The responsible party should select grinders with the lowest loaded A-weighted sound power level (SWLA) that meet their needs. Acceptable examples include but are not limited to:

| <u>Manufacturer brand name</u> | <u>Model number</u> |
|--------------------------------|---------------------|
| <u>Ryobi</u> | <u>AG401</u> |
| <u>Ryobi</u> | <u>AG451</u> |
| <u>Hitachi</u> | <u>G12SR2</u> |
| <u>Ridgid</u> | <u>R1000</u> |
| <u>Milwaukee</u> | <u>6148-6</u> |
| <u>DeWalt</u> | <u>DW402</u> |
| <u>Bosch</u> | <u>1700A</u> |

I. Jig Saws. The responsible party should select jig saws with the lowest loaded A-weighted sound power level (SWLA) that meet their needs. Acceptable examples include but are not limited to:

| <u>Manufacturer brand name</u> | <u>Model number</u> |
|--------------------------------|---------------------|
| <u>Skil</u> | <u>4380</u> |
| <u>Milwaukee</u> | <u>6266-22</u> |
| <u>Black and Decker</u> | <u>JS600</u> |

J. Hammer Drills. The responsible party should select hammer drills with the lowest loaded A-weighted sound power level (SWLA) that meet their needs. Acceptable examples include but are not limited to:

| <u>Manufacturer brand name</u> | <u>Model number</u> |
|--------------------------------|---------------------|
| <u>Hitachi</u> | <u>DH24PE</u> |
| <u>DeWalt</u> | <u>D25103</u> |
| <u>Bosch</u> | <u>11224VSR</u> |
| <u>DeWalt</u> | <u>DW505</u> |

**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: Amendment of existing construction noise rules relating to the submission of noise mitigation plans and interior noise construction.

REFERENCE NUMBER: 2018 RG 062

RULEMAKING AGENCY: Department of Environmental Protection

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: 6/8/2018

**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: Amendment of existing construction noise rules relating to the submission of noise mitigation plans and interior noise construction.

REFERENCE NUMBER: DEP-49

RULEMAKING AGENCY: Department of Environmental Protection

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/ Joss Milloz

Mayor's Office of Operations

June 13, 2018

Date