

NEW YORK CITY FIRE DEPARTMENT

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Fire Department is proposing to amend § 3405-01 of Title 3 of the Rules of the City of New York to clarify and revise the permit and supervision requirements for mobile trailers for heating and power generation and to allow storage and use of a larger amount of combustible fuel (fuel oil) on such trailers. Portions of the proposed changes to this rule were identified as part of a comprehensive rules review initiative undertaken by the NYC Mayor's Office of Operations working with the City's rulemaking agencies, the Law Department, and the Office of Management and Budget.

When and where is the hearing? The Fire Department will hold a public hearing on the proposed rule. The public hearing will take place at 11:00 a.m. on Tuesday, January 3, 2017. The hearing will be in the Fire Department Auditorium at 9 MetroTech Center, Brooklyn, NY 11201. The Auditorium is wheelchair accessible.

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

- **Website.** You can submit comments to the Fire Department through the NYC rules Web site at <http://rules.cityofnewyork.us>, or through the Fire Department's Web site at www.nyc.gov/fdny using the "FDNY Rule" link.
- **Mail.** You can mail written comments to Code Development Unit, Bureau of Fire Prevention, New York City Fire Department, 9 MetroTech Center, Room 3E2, Brooklyn, NY 11201.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak at the hearing. The time that you can speak may be limited.

Is there a deadline to submit written comments? Yes, you must submit written comments by Tuesday, January 3, 2017.

Do you need assistance to participate in the hearing? You must notify the Bureau of Fire Prevention if you need a sign language interpreter or other reasonable accommodation for a disability at the hearing. Write to us at the address above or telephone us at (718) 999-2042. You must notify us by Tuesday, December 13, 2016.

Can I review the comments made on the proposed rule? 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, a record of the hearing and copies of the written comments will be available to the public at the Bureau of Fire Prevention.

What authorizes the Fire Department to make this rule? Sections 489 and 1043 of the New York City Charter, and Sections FC102.6.3 and FC3405 of the New York City Fire Code (Title 29 of Administrative Code of the City of New York) authorize the Fire Department to propose this rule.

Where can I find the Fire Department rules? The Fire Department rules are codified in Title 3 of the Rules of the City of New York.

What rules govern the rulemaking process? The Fire Department must meet the requirements of Section 1043 of the New York City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the New York City Charter. This rule was not included in FDNY's rulemaking agenda because the need for it was not anticipated.

Statement of Basis and Purpose of Proposed Rule

The Fire Code regulates the manufacturing, storage, handling, use and transportation of hazardous materials in New York City, including fuel oil, a combustible liquid.

Currently, Section 3405-01 of the Fire Department's rules (Title 3 of the Rules of the City of New York) allows mobile heating and power generating trailers to operate with a citywide permit, and sets forth permit, supervision, and design and installation requirements. The rule was originally developed in response to the use of these trailers to serve buildings whose heating or electrical systems were undergoing major repairs or replacement and were taken out of service. The trailers are typically parked on the street and connected to building utilities by piping or electrical lines.

Permitting of Mobile Trailers for Outdoor Gatherings

When the current rule was promulgated, the Fire Department did not envision that these trailers would be used at public gatherings like street fairs and festivals near large numbers of people, cooking operations, and other activities where their presence may potentially pose a danger to others. In response to this unanticipated use of these trailers, the Fire Department is proposing to amend the rule to clarify when the citywide permit may be used and what it authorizes, and to specifically provide that a site-specific permit, different from the one used for building heating and electrical systems, is required for mobile heating and power generating trailers used at street fairs, bazaars, carnivals, concerts, festivals, and similar outdoor gatherings.

Additional Capacity Permitted

The Fire Department additionally proposes to amend the rule to increase from 550 gallons to 1200 gallons the fuel oil storage capacity permitted on mobile heating and power generating trailers. Trailers with 1200-gallon tanks have become the industry standard; use of such trailers has been allowed by the Fire Department by modification (variance) without incident. Although the rule would allow the on-site storage of a substantial additional amount of fuel, the risk of fire and fuel spills is greatest when the tanks are being filled. During peak usage, when the equipment is in constant operation, a 550 gallon tank may need to be refueled daily. The larger

tank reduces the need for frequent fueling and therefore reduces the risk of fire or spills. Accordingly, the Fire Department has concluded that 1200-gallon capacity trailers should be allowed, eliminating the need for special applications and additional fees to obtain permission to use larger tanks.

Elimination of Certificate of Fitness Requirement For Most Uses

The Fire Department further proposes to amend the rule to provide that mobile heating and power-generating trailers only need to be supervised when connected to a high-pressure boiler. Personal supervision of most residential heating systems is no longer required by the New York City Department of Buildings (DOB) now that use of #6 fuel oil has been virtually eliminated for environmental reasons and replaced by fuels that do not require pre-heating. Personal supervision by a DOB-licensed operating engineer continues to be required by DOB for high-pressure boilers. Accordingly, under this proposal, the requirement of a certificate of fitness would be eliminated where no high-pressure boiler is involved.

Rule Clarifications

The proposed rule includes two clarifications. First, the section would be amended to make clear that it applies only to mobile heating and power generating trailers with storage for more than 10 gallons of combustible liquid fuel on the trailer or in the equipment mounted thereon, which require a permit as set forth in FC105.6 .

Second, the scope of the rule would be amended to clarify that a mobile trailer with heating and power generating equipment that stores 10 gallons or less of combustible liquid fuel (or no fuel) in or upon the trailer, but is fueled by an off-vehicle temporary tank, is subject to the permit requirement applicable to combustible liquid fuel storage in the tank (also set forth in FC105.6), rather than the permit requirement applicable to mobile trailers.

To summarize, the proposed rule:

1. Clarifies the authorization granted to operate mobile trailers under a citywide permit and makes clear that use at a street fair requires a site-specific permit to address the fire safety concerns associated with operation at such an event;
2. Allows larger (1200-gallon) tanks to be installed on such mobile trailers instead of the current 550 gallon tanks;
3. Eliminates the supervision requirement except for use of such mobile trailers in connection with high-pressure boilers;
4. Clarifies that the rule applies only to mobile heating and power generating trailers that require a permit – that is, trailers with storage for more than 10 gallons of combustible liquid fuel on the trailer or in the equipment mounted thereon; and

5. Clarifies that a mobile trailer with heating and power generating equipment that stores 10 gallons or less of combustible liquid fuel (or no fuel) in or upon the trailer, but is fueled by an off-vehicle temporary tank, is subject to the permit requirement applicable to combustible liquid fuel storage in the tank, not the permit requirement applicable to mobile trailers.

Working with the City’s rulemaking agencies, the Law Department, and the Office of Management and Budget, 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. Portions of this proposed rule amendment were identified through this initiative.

Text that has been deleted is indicated by [brackets]. Text that has been added is underlined.

“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.

Guidance with respect to the interpretation of the Fire Code and Fire Department rules may be obtained using the Public Inquiry Form on the Fire Department’s website, <http://www1.nyc.gov/site/fdny/about/resources/code-and-rules/nyc-fire-code.page>.

Section 1. Section 3405-01 of Chapter 34 of Title 3 of the Rules of the City of New York is proposed to be amended, to read as follows:

§ 3405-01 Storage and Use of Fuel Oil on Mobile Trailers for Heating and Power Generation

(a) Scope[.]

(1) This section sets forth standards, requirements and procedures for mobile trailers that store and use fuel oil for heating and generation of electrical power.

(2) A mobile trailer equipped with a boiler, generator, or other equipment used for heating and power generation, upon which ten gallons or less of fuel oil (or no fuel oil) is stored (including within the heating or power generating equipment) is not subject to the provisions of this section. When the heating or power generating equipment on such a mobile trailer is fueled from an off-vehicle temporary fuel tank, the applicable *permit* requirement is the one for storage of combustible liquids generally (the third listed *permit* requirement for *flammable or combustible liquid* fuel set forth in FC105.6), rather than the one applicable to mobile heating and generating trailers.

(b) General Provisions

- (1) Applicability. Mobile trailers that store and use more than 10 gallons of fuel oil for heating, including steam and hot water, and generation of electrical power, shall be designed, installed and operated in compliance with the requirements of the *construction codes* and this section.
- (2) Permit. [Each] A permit must be obtained for each mobile heating or power generating trailer [shall obtain a] as follows:
 - (A) A citywide permit must be obtained for the [citywide] transportation, storage, handling and use of combustible liquid on any mobile heating or power generating trailer that will be used at a location for 30 days or less, except as otherwise provided below. Issuance of a citywide permit for a mobile heating or power generating trailer allows the trailer to be parked at any lawful location (subject to any applicable Fire Code or rule restrictions) and to remain overnight at such location.
 - (B) A site-specific permit must be obtained for the storage, handling and use of combustible liquid on any [Mobile] mobile heating and power generating [trailers utilized] trailer that will be used at [one (1) site] a location for more than 30 days [shall] must obtain a site-specific permit for the storage and use of combustible liquid at that location].
 - (C) A site-specific permit must be obtained for the storage, handling and use of combustible liquid on any mobile heating and power generating trailer that will be used at a street fair, bazaar, carnival, concert, festival or similar public outdoor gathering.
- (3) Supervision. While in operation, mobile emergency heating and power generating trailers connected to a high pressure boiler [shall] must be under the *personal supervision* of [a *certificate of fitness* holder or] a person holding a high pressure boiler operating engineer's license issued by the *Department of Buildings*.
- (4) Delivery of fuel oil. Only *cargo tanks* for which a *permit* has been issued may be used to deliver fuel oil to mobile heating and power generating trailers.

(c) Design and Installation Requirements. Mobile heating and power generating trailers using fuel oil shall be designed and installed in compliance with the following requirements:

- (1) Fuel oil piping systems and boilers shall be designed and installed in compliance with the requirements of the *Mechanical Code*. The power generating equipment, and all electrical devices, equipment and systems on the trailer shall be designed and installed in compliance with the requirements of the *Building Code* and the

Electrical Code. Documentation of compliance with such codes shall be submitted to the *Department* in an *approved* form.

- (2) Fuel oil storage tanks shall be constructed in accordance with the requirements of the *Mechanical Code*. No more than [550] 1200 gallons of fuel oil shall be stored on the trailer.
- (3) A clearly identified and readily accessible remote control shut-down switch for the oil burning equipment shall be provided inside the trailer, immediately accessible upon entry.
- (4) The chassis shall be designed and constructed to support the total load supported by the trailer, including all heating or power generating equipment. The *Department* may require a letter from the chassis manufacturer confirming such design capacity.
- (5) Fuel oil storage tanks shall be provided with secondary containment of *liquid-tight construction*. Such containment shall be constructed of metal, and [shall] have a capacity of not less than the maximum capacity of the fuel oil storage tanks.
- (6) Signs shall be posted on both sides of the trailer that read: “Mobile Heating Trailer” or “Mobile Power Generator”, as applicable, in six (6) inch letters, and bear the name and address of the owner in two (2) inch letters.
- (7) The trailer and equipment shall be electrically grounded in an *approved* manner.
- (8) Each fuel oil storage tank fill line shall be provided with both a shut-off valve and a check valve.
- (9) *Department of Buildings* permits or other approvals shall be posted at a conspicuous location inside the trailer.

**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: Storage and Use of Fuel Oil on Mobile Trailers
for Heating and Power Generation

REFERENCE NUMBER: 2016 RG 075

RULEMAKING AGENCY: Fire Department

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: November 14, 2016

**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: Storage and Use of Fuel Oil on Mobile Trailers for Heating and Power Generation

REFERENCE NUMBER: FDNY-11

RULEMAKING AGENCY: Fire Department of New York

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

November 14, 2016
Date