

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 (“DEP”) is considering changing its rules. The changes would establish standards and requirements concerning Asbestos Handler Supervisor Certificates, as set forth in 15 RCNY 1-14 (b)(5); Asbestos Investigator Certificates, 15 RCNY 1-16 (d) and Adjudications, 15 RCNY 32-01(e) and 15 RCNY 32-02 (b).

When and where is the hearing? The department will hold a public hearing on the proposed rule amendments. The public hearing will take place at 10 a.m. on July 20, 2015. The hearing will be held in the 8th floor conference room at 59-17 Junction Boulevard, Flushing, New York.

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 web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to nycrules@dep.nyc.gov.
- **Mail.** You can mail written comments to the Department of Environmental Protection, Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax written 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 20, 2015. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by July 20, 2015.

Do you need assistance to participate in the hearing? You must tell the Bureau 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 postal mail or email to the addresses given above. You may also tell us by telephone at 718-595-6531. You must tell us by July 13, 2015.

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, a transcript of the hearing and copies of the written comments will be available to the public at the Bureau of Legal Affairs.

What authorizes the Department to make this rule? Section 1403(c) of the City Charter and sections 24-105, and 24-146.1 of the City Administrative Code authorize the Department to make this proposed rule, which was included in the Department’s regulatory agenda for this fiscal year.

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

What rules govern the rulemaking process? The Department 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 of Proposed Rule

Section 1403(c) of the New York City Charter and Section 24-105 of the City Administrative Code authorize the Commissioner of Environmental Protection to regulate and control the emission of harmful air pollutants into the open air.

Section 24-146.1(d)(1) of the Administrative Code authorizes the Commissioner to make rules establishing criteria for certifying individuals to receive an asbestos handling certificate and for certifying programs as approved safety and health programs. The commissioner may restrict the asbestos handling certificate as to certain functions and responsibilities. Section 24-163.1(d)(2) authorizes the Commissioner to make rules establishing criteria for certifying individuals as asbestos investigators.

The proposed changes would codify the existing practices of the Asbestos Control Program. The New York State-approved training courses for asbestos handler supervisors and asbestos investigators are administered only in English, so the DEP examination for these certificates is also given only in English. Asbestos handler supervisors need to speak and understand English to ensure that there is someone at the work site who can communicate with a DEP inspector. Asbestos investigators must speak English to perform their responsibilities, which includes communicating with DEP inspectors at office and field audits.

The proposed changes to the Adjudications chapter would provide that translation services will be made available for all hearings held under that chapter except for those related to the possible suspension or revocation of asbestos handler supervisor and asbestos investigator certificates. As holders of those certificates must pass a training course and a certification exam in English, it would not be necessary to provide translation services for those hearings. Subdivision (e) of Section 32-01 of Chapter 32 of Title 15 of the Rules of the City of New York would be repealed because Local Law 38 of 2015 includes the repeal of Administrative Code § 24-133 (from the Air Pollution Control Code).

“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.

New text is underlined; deleted material is in [brackets].

The text of the proposed Rule amendments follows.

Section 1. Subdivision (b) of Section 1-14 of Part 1 of Subchapter B of Chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(b) The department shall issue an asbestos handler supervisor certificate[,] in the form of a photo identification card, which shall be valid for two years from the date of issuance, to applicants who meet the following conditions:

* * *

(5) Applicant shall achieve a passing grade on a departmental examination, which shall be given in English.

§ 2. Subdivision (d) of Section 1-16 of Part 1 of Subchapter B of Chapter 1 of Title 15 of the Rules of the City of New York is amended to read as follows:

(d) Applicant shall achieve a passing grade on a departmental examination, which shall be given in English.

§ 3. Subdivision (e) of Section 32-01 of Chapter 32 of Title 15 of the Rules of the City of New York is REPEALED.

§ 4. Subdivision (b) of Section 32-02 of Chapter 32 of Title 15 of the Rules of the City of New York is amended by adding a new paragraph (5) to read as follows:

(b) Hearing procedures.

* * *

(5) Translation services shall be made available for all hearings held under this chapter except for hearings regarding the possible suspension or revocation of an asbestos handler supervisor certificate or an asbestos investigator certificate, which shall be held in English only.

§ 5. This rule shall take effect immediately except that Section 3 shall take effect on May 6, 2016.

**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: Amendments to the Rules regarding Asbestos Handler Supervisor Certificates

REFERENCE NUMBER: 2015 RG 50

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: June 5, 2015

**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: Amendments to the Rules regarding Asbestos Handler Supervisor Certificates

REFERENCE NUMBER: 2015 RG 50

RULEMAKING AGENCY: DEP

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/ Gregory Schwartz
Mayor's Office of Operations

June 5, 2015
Date