

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 promulgating rules that would update the Facility Inventory Form which is filed with DEP under the Community Right-to-Know Law.

When and where is the hearing? DEP will hold a public hearing on the proposed rule. The public hearing will take place at 11 a.m. on December 10, 2018. The hearing will be in DEP's 1st floor hazmat conference 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 DEP 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 DEP at Department of Environmental Protection, Bureau of Legal Affairs, Att: Rulemaking Attorney, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax comments to DEP's 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 December 10, 2018. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit written comments by December 10, 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 requested to allow sufficient time to arrange the accommodation. Please tell us by December 3, 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 DEP to make this rule? Sections 1043 of the City Charter and Section 24-705 of the Administrative Code authorize DEP to make this proposed rule. This proposed rule was not 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

Section 24-705 of the New York City Administrative Code (Ad Code) provides that DEP "by regulation shall develop a facility inventory form" (FIF) which is to be filed annually with DEP by facilities in accordance with Ad Code section 24-706 in order to report the presence of certain hazardous substances in facilities.

DEP complied with section 24-705 by promulgating an FIF as Appendix A to the Community Right-to-Know Rules, which are found at Title 15, Chapter 41 of the Rules of the City of New York. However, the FIF which currently appears in Appendix A has not been revised since 1990.

The current FIF needs to be updated for two reasons: First, the United States Environmental Protection Agency (EPA) has amended its hazardous chemical reporting regulations (40 CFR Part 370) to implement the Emergency Planning and Community Right-to-Know Act (EPCRA), as a result of changes to the Occupational Safety and Health Administration (OSHA) Hazard Communication Standard (HCS). Following EPCRA, to incorporate the adoption of the OSHA HCS in 40 CFR Part 370, the U.S. EPA is replacing the existing five federal hazard categories for list reporting (Section 311) and annual inventory reporting (Section 312) with 24 new physical and health hazard categories. Since the FIF must reflect EPA's reporting requirements, it must be changed to accommodate these new categories.

Second, Local Law Number 143 for the year 2013 amended Title 24 of the Ad Code by requiring the department to promulgate rules amending the FIF to include (1) any applicable special flood hazard area zone, as established by the Building Code, and Office of Emergency Management coastal storm and hurricane evacuation zone; (2) a certification that hazardous substance storage is in compliance with department rules and all other applicable federal, state, and local laws, rules and regulations; and (3) a description of how such storage takes into account potential flooding and other extreme weather events.

This proposed rule also would make technical corrections to 15 RCNY §§ 41-03 (definitions), 41-05(a) and 41-12(b)(1).

DEP's authority for these rules is found in sections of the New York City Charter section 1043 and Section 24-705 of the New York City Administrative Code.

New material is underlined.
[Deleted material is in brackets.]

“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.

The text of the Rule follows.

Section 1. The definitions of HAZARDOUS SUBSTANCE LIST and ONE TENTH OF ONE PERCENT SUBSTANCES LIST contained in section 41-03 of chapter 41 of title 15 of the Rules of the City of New York are amended to read as follows:

Hazardous substance list. “Hazardous substance list” shall mean a list of hazardous substances established pursuant to 15 RCNY § [41-02] 41-04.

One tenth of one percent substances list. “One tenth of one percent substances list” shall mean a list of hazardous substances compiled pursuant to § 24-703 of the New York City Administrative Code [set forth in Appendix B to these Regulations].

§ 2. The opening paragraph of subdivision (a) of section 41-05 of chapter 41 of title 15 of the Rules of the City of New York is amended to read as follows:

A responsible party of a facility shall file a Facility Inventory Form (FIF) for such facility pursuant to § 24-705 of the New York City Administrative Code and Appendix A of this chapter, which shall include:

§ 3. The opening paragraph of paragraph (1) of subdivision (b) of section 41-12 of chapter 41 of title 15 of the Rules of the City of New York is amended to read as follows:

A general site plan which shall consist of a general site map layout. A general site map example and list of map symbols is set forth in Appendix [A] B of this [Rule] chapter. If it becomes necessary to use any other symbol on such map, the preparer shall include a reference of the symbol. Colors shall not be used on the site map. For sites with more than one building, a general layout on one page and separate map pages for floor or area shall be used. An 8-1/2” by 11” size map on grid paper shall be used only. The following elements shall be included as part of the general site map layout:

§ 4. Appendix A of chapter 41 of title 15 of the Rules of the City of New York is REPEALED and new appendix A is added to read as follows:

APPENDIX A
NEW YORK CITY RIGHT-TO-KNOW FACILITY INVENTORY FORM, TIER TWO

**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 rules to update the Facility Inventory Form filed with the Department of Environmental Protection DEP under the Community Right-to-Know Law.

REFERENCE NUMBER: DEP-48

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/ Francisco X. Navarro
Mayor's Office of Operations

October 29, 2018
Date

**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 rules to update the Facility Inventory Form filed with the Department of Environmental Protection DEP under the Community Right-to-Know Law.

REFERENCE NUMBER: 2018 RG 047

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: 10/29/2018