

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 proposing to amend various rules to help make them easier to read and understand. This rule was identified as part of a comprehensive rules review initiative undertaken by the NYC Mayor's Office of Operations.

When and where is the hearing? DEP has determined, pursuant to New York City Charter section 1043(e) that a public hearing on the proposed rule would serve no public purpose.

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

- **Website.** You can submit comments to the DEP 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 DEP Bureau of Legal Affairs, 59-17 Junction Boulevard, 19th Floor, Flushing, NY 11373.
- **Fax.** You can fax written comments to the DEP Bureau of Legal Affairs, at 718-595-6543.

Is there a deadline to submit written comments? Yes, you must submit written comments by March 6, 2017.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rule by going to the website at <http://rules.cityofnewyork.us/>. 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 1043(a) of the City Charter and sections 24-105, 24-204 and 24-611 of the City Administrative Code authorize the department to make this proposed rule. This proposed rule was not included in the department's regulatory agenda for this fiscal year because it was not contemplated when DEP published the agenda.

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

Working with the City's rulemaking agencies, the Law Department, the Mayor's Office of Management and Budget, and the Mayor's Office of Operations conducted a retrospective review of the City's existing rules, identifying those rules that will be repealed or modified to reduce regulatory burdens, increase equity, support small businesses, and simplify and update content to help support public understanding and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. DEP is proposing various plain language changes in various chapters to help make them easier to read and understand.

DEP's authority for these rules is found in Section 1043(a) of the City Charter and sections 24-105, 24-204, and 24-611 of the 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. Subparagraph (ii) of paragraph 1 of subdivision (c) of Section 2-11 of Title 15 of the Rules of the City of New York is amended to read as follows:

(ii) When mechanical ventilation is not utilized, the minimum requirement for combustion air entrance must be a louvered opening in a wall to the outside air. The louvered opening must have a net free area of 86 square inches for every one million Btu per hour (based on the maximum heat input rating) and must never be less than the average internal cross-sectional area of the chimney. In addition, the net free area of the louver must be increased in size equivalent to the opening of a barometric damper or dampers, when provided, for bypass air. When necessary, a [subway type] metal grate over a vault below the sidewalk may be permitted as long as the net free area requirement is met and suitable drainage facilities are provided. The net free area when the actual louver efficiency is unknown must be based on a maximum efficiency of 60 percent for both motorized and fixed metal single vane louvers and 50 percent for fixed metal double vane louvers. Where the efficiency of the louver can be demonstrated by the manufacturer to be greater than the above, the greater value may be used. The area of the louver is to be based on the inside frame dimensions and not the outside or nominal dimensions. The louver must be so constructed or suitably located or protected (i.e., cinder blocks, metal bars) so that it cannot be crushed or deformed since this would diminish the free area. Furthermore, any [diminution] reduction of free area due to protective devices must be considered. Screening over louvers, if provided, must be not smaller than 1/4 inch mesh and must be readily accessible for cleaning.

§2. Section 11-02 of Title 15 of the Rules of the City of New York is amended to add the following definition:

C.F.R. “C.F.R.” shall mean the Code of Federal Regulations.

§3. Section 15-04 of Title 15 of the Rules of the City of New York is amended to add the following definitions:

CARB. “CARB” shall mean the California Air Resources Board.

EPA. “EPA” shall mean the United States Environmental Protection Agency.

§4. Paragraph 5 of subdivision (g) of Section 24-06 of Title 15 of the Rules of the City of New York is amended to read as follows:

(5) Maps of the tax lots (1"=50') including but not limited to: [USGS] United States Geological Survey quadrangle map, name of quad and north arrow, on which the following is clearly indicated:

§5. Subdivision (b) of Section 25-07 of Title 15 of the Rules of the City of New York is amended to read as follows:

(b) The application shall be submitted to:
Director of the Division of Air and Noise Programs, Enforcement and Policy
Bureau of Environmental Compliance
New York City Department of Environmental Protection
59-17 Junction Blvd.
Flushing, NY 11373
or by email to bartwaivers@dep.nyc.gov.

§6. Subdivision (b) of Section 26-08 of Title 15 of the Rules of the City of New York is amended to read as follows:

(b) Applications should be sent to:
Director of the Division of Air and Noise Programs, Enforcement and Policy
Bureau of Environmental Compliance
New York City Department of Environmental Protection
59-17 Junction Blvd.
Flushing, NY 11373
or by email to bartwaivers@dep.nyc.gov.

§7. Subdivision (b) of Section 27-09 of Title 15 of the Rules of the City of New York is amended to read as follows:

(b) Applications should be sent to:
Director of the Division of Air and Noise Programs, Enforcement and Policy
Bureau of Environmental Compliance
New York City Department of Environmental Protection
59-17 Junction Blvd.
Flushing, NY 11373
or by email to bartwaivers@dep.nyc.gov.

§8. Subdivision (a) of Section 28-107 of Title 15 of the Rules of the City of New York is amended to read as follows:

- a. Perimeter Noise Barriers - Noise barriers, positioned between construction equipment and receptors, [shall] must be used [whenever practicable] for all construction projects. Such barriers may be semi-permanent given the time and space requirements of the job site. They may be made of wood, plastic, Plexiglas, precast concrete or steel panels, or where work site space permits, natural materials, such as dirt piles or earthen berms.

§9. Section 28-109 of Title 15 of the Rules of the City of New York is amended by adding a new definition to read as follows:

§ 28-109 Definitions.

ASTM. “ASTM” shall mean ASTM International, the international standards organization.

**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: Miscellaneous Rule Amendments

REFERENCE NUMBER: 2017 RG 004

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: January 26, 2017

**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: Miscellaneous Rule Amendments

REFERENCE NUMBER: DEP-32

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

January 26, 2016
Date