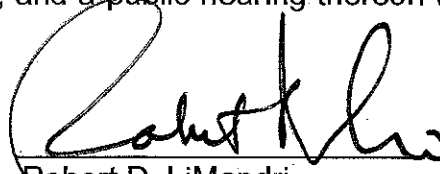


NOTICE OF ADOPTION OF RULE

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter and Article 303 of Title 28 of the New York City Administrative Code, that the Department of Buildings hereby repeals Chapter 2 of Title 1 of the Rules of the City of New York and adds a new Subchapter C and a new Section 103-01 to Chapter 100 of Title 1 of the Rules of the City of New York, relating to low pressure boiler inspection and filing requirements, penalties and waivers.

This rule was first published on May 13, 2009, and a public hearing thereon was held on June 18, 2009.

Dated: 4/6/10
New York, New York


Robert D. LiMandri
Commissioner

Section 1. Chapter 2 of Title 1 of the Rules of the City of New York, relating to Boiler Inspections, is REPEALED.

§2. Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new subchapter C and a new Section 103-01 to read as follows:

Subchapter C
Maintenance of Buildings

§103-01 Low pressure boiler inspection and filing requirements, penalties and waivers.

(a) Scope. This rule implements Article 303 of Title 28 of the New York City Administrative Code (“Administrative Code”) by specifying the low pressure boiler annual inspection requirements, the processes through which the department shall regulate the filings of low pressure boiler annual inspection reports and shall issue penalties and waivers for failure to file and/or late filing, and the penalties for failure to file and/or untimely filing of a written notice of removal or disconnection of a low pressure boiler.

(b) References. See Sections 28-201.2.2, 28-202.1 and Article 303 of Title 28 of the Administrative Code and Section 101-07 of this chapter.

(c) Definitions. For the purposes of this section, the following terms shall have the following meanings:

(1) Filing deadline. For the low pressure boiler annual inspection report or any part thereof, forty-five (45) days from the date of the inspection, but in no event later than December 31st of each calendar year.

(2) First Test. An inspection of a newly installed or replaced boiler required for the department to approve its use and operation.

(3) Inspection cycle. November 16th of the preceding calendar year through November 15th of the calendar year for which the report is being submitted. Annual inspections must be at least six (6) months apart.

(4) Late filing. An inspection report or any part thereof that is filed after the filing deadline.

(5) Owner. Any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of, the premises and/or boiler.

(6) Removal or disconnection. Removal or discontinuance, pursuant to Section 28-303.8 of the Administrative Code.

(7) Waiver. Removal of the obligation to pay a penalty associated with a violation. A waiver does not result in dismissal of the violation.

(d) Owner's responsibilities.

(1) Inspection and report filing. An owner shall comply with the inspection requirements and shall file low pressure boiler annual inspection reports as provided for in Section 101-07 of this chapter.

(2) Notification. An owner shall notify the department's Boiler Division within thirty (30) days of the owner's change of address or sale of the premises housing the boiler. The owner must reference the department's boiler number in all correspondence.

(3) New owner. A new owner is responsible for inspection in the year that he or she purchases the building, only if he or she purchases the building on or before June 30 of that year.

(e) Civil penalties, low pressure boiler annual inspection report.

(1) Failure to file. An owner who fails to file the low pressure boiler annual inspection report or any part thereof for each boiler, pursuant to Article 303 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of not less than one thousand dollars (\$1000.00) per boiler. In accordance with Section 101-07 of this chapter, a low pressure boiler annual inspection report not filed within twelve (12) months from the date of the inspection shall be deemed expired and shall not be accepted by the department.

(2) Late filing. An owner who submits a late filing, but who provides proof that the inspection took place within the inspection cycle for which the report was due, shall be liable for a civil penalty of not less than fifty dollars (\$50.00) per month, per boiler, commencing on the day following the filing deadline and ending on the date of submission of a complete report, including a late filing of the boiler certificate of affirmation. The total penalty shall not exceed six hundred dollars (\$600.00) per boiler. For the purposes of this paragraph, "proof" shall mean a notarized affidavit from the approved boiler inspector who conducted the inspection with his or her seal stating that the inspection was completed within the inspection cycle for which the report was due.

(3) Challenge of civil penalty. An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this subdivision

by providing written proof of a timely and complete inspection and filing to the department. Challenges shall be made in writing within thirty (30) days from the date of service of the violation by the department and sent to the office/unit of the department that issued the violation. The decision to dismiss or uphold the penalty shall be at the sole discretion of the department. Examples of such proof shall include, but are not limited to, the following:

(i) A copy of the boiler inspection report for the inspection performed during the applicable inspection cycle and a copy of the front and back of the canceled check or money order to the department for the boiler inspection report fee; or

(ii) The department-assigned transmittal number for the electronic disk filing report.

(4) Extension of the filing deadline. An owner may request an extension of the filing deadline in order to correct low pressure boiler defects and file a certification that identified defects have been corrected in accordance with Section 101-07 of this chapter, upon submission of proof that the request is based on extraordinary circumstances and/or that the delay in correction is beyond the owner's control, not including financial or administrative hardship. The request shall be made prior to the expiration of the filing deadline and shall be made on such forms and in such manner as required by the commissioner.

(5) Waiver of penalties. An owner may request a waiver of penalties assessed for violation of Section 28-303.2 of the Administrative Code, Section 27-793 of the 1968 Building Code and/or related rules enforced by the department. Requests shall be made in writing.

(i) Owner status.

(A) New owner. A new owner may be granted a waiver of penalties contingent upon the department's acceptance of the owner's proof that transfer of ownership to the new owner occurred after penalties were incurred. Such a waiver is limited to one of the following circumstances:

((a)) The new owner has obtained full tax exemption status from the New York City Department of Finance; or

((b)) The new owner submits proof to the department (such as a certificate from the Department of Housing Preservation and Development) that he or

she took title to the property as part of an economic development program sponsored by a government agency.

(B) Government ownership. An owner may be granted a waiver of penalties upon submission of official documentation from a government entity affirming that the premises was owned in its entirety by the entity during the period for which a waiver is requested.

(C) Bankruptcy. An owner may be granted a waiver of penalties upon submission of a copy of a bankruptcy petition, together with proof that either the department or the New York City Law Department was served with a "Notice of Bar Date".

(ii) Device status. An owner may be granted a waiver of penalties contingent upon the department's acceptance of proof of the following:

(A) Removed or disconnected. That the low pressure boiler was removed from the building or disconnected prior to the inspection cycle for which the report was due. In the event that proof of removal or disconnection has not yet been entered into the department's database at the time of the request for a waiver, the owner shall submit to the department a copy of the Self-Certification of Removed or Existing Boiler(s) form.

(B) New or replaced. That the First Test was performed during the inspection cycle for which the report was due.

(C) Work in progress. That there is work in progress for the replacement or installation of a new boiler or burner or a major renovation requiring that the boiler or burner be deactivated during the work.

(iii) Building status. An owner may be granted a waiver of penalties contingent upon the department's confirmation of the following:

(A) Demolished. That the full demolition of the building occurred prior to the inspection cycle for which the report was due and that such demolition was signed-off by the department and/or that a new building permit has been issued for the property.

(B) Sealed or vacated. That the building was ordered to be sealed or vacated by a government agency (e.g. Department of Buildings, Department of Housing Preservation and Development, Fire Department of New York or Office of Emergency Management) or by court order prior to the expiration of the inspection cycle for which the report was due.

(f) Civil penalties, written notice of removal or disconnection of a low pressure boiler. Failure to file a written notice of removal or disconnection (a Self-Certification of Removed or Existing Boiler(s) form) in accordance with Section 28-303.8 of the Administrative Code, or filing of such form past thirty (30) days of the date of the removal or disconnection of a low pressure boiler shall be deemed a lesser violation and shall subject the owner to penalties as set forth in this subdivision.

(1) Failure to file. An owner who fails to file such notice within twelve (12) months from the date following thirty (30) days from the removal or disconnection, shall be liable for a civil penalty of not less than five hundred dollars (\$500.00) per boiler.

(2) Untimely filing. An owner who files such notice past thirty (30) days from the date of removal or disconnection, but within twelve (12) months from such date, may submit an untimely filing and shall be liable for a civil penalty of not less than fifty dollars (\$50.00) per month, per boiler commencing on the day following the date the notice was due and ending on the date of submission of the notice. The total penalty shall not exceed five hundred dollars (\$500.00) per boiler.

(3) Challenge of civil penalty. An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this subdivision by providing proof of a timely filing to the department. Challenges shall be made in writing within thirty (30) days from the date of service of the violation by the department and sent to the office/unit of the department that issued the violation. The decision to dismiss or uphold the penalty shall be at the sole discretion of the department. An example of such proof shall include, but is not limited to, the following: a stamped and dated copy of a Self-Certification of Removed or Existing Boiler(s) form filed with the department, which may be supported by a copy of the front and back of a canceled check(s) to the department for the fee for the filing of a Self-Certification of Removed or Existing Boiler(s) form.

(g) Fees. Fees for filings related to boilers shall be as set forth in Section 101-03 of these rules and Table 28-112.7.2 of the Administrative Code.

STATEMENT OF BASIS AND PURPOSE

The foregoing rule is promulgated pursuant to the authority of the Commissioner of Buildings under Sections 643 and 1043(a) of the New York City Charter.

This rule repeals Chapter 2 of Title 1 of the Rules of the City of New York, relating to boiler inspections, and implements Article 303 of Title 28 of the New York City Administrative Code by specifying the low pressure boiler annual inspection requirements, and the processes through which the department will regulate the filings of low pressure boiler annual inspection reports and issue penalties and waivers for failure to file and/or late filing.

Under current law, building owners are required to file low pressure boiler annual inspection reports and to certify that any defects identified in the reports have been corrected. This rule sets forth the manner by which the reports shall be filed and the penalties that will be imposed for failure to comply. Section 28-201.2.2 of the Administrative Code specifies that failure to perform boiler inspections and to file required reports is a major violation and Section 28-202.1(2) of the Administrative Code sets the limits on civil penalties for major violations.

This rule replaces and alters the terms of the department's Procedure & Policy Notice (PPN) 1/05, which governs the granting of waivers of assessed civil penalties to building owners.

This rule sets out new criteria under which new owners may be granted waivers. In order to qualify for a waiver of penalties that were issued prior to the owner taking title to the property, there must be evidence of a broader community benefit. Examples of evidence of a broader community benefit are that the new owner has obtained full tax exemption status from the New York City Department of Finance or has taken title to the property as part of an economic development program. By limiting the availability of waivers, the department hopes to eliminate a loophole in current law allowing a simple transfer of property to qualify as a basis for a waiver of penalties.

The rule also establishes as a lesser violation the failure to file and/or untimely filing of a written notice of removal or disconnection of a low pressure boiler (a Self-Certification of Removed or Existing Boiler(s) form) in accordance with Sections 28-202.1 and 28-303.8 of the Administrative Code, and sets the penalties for the violation.