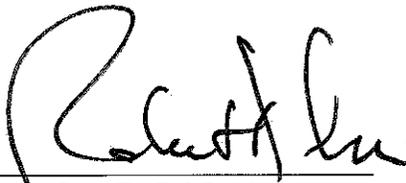


NOTICE OF ADOPTION OF RULE

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of the Department of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter, that the Department of Buildings hereby adopts the repeal of sections 32-01, 32-02 and 32-04 and renumbering and amendment of section 32-03 of Title 1 of the Official Compilation of the Rules of the City of New York regarding façade inspections.

This rule was first published on October 15, 2010 and a public hearing thereon was held on November 15, 2010.

Dated: Dec 20, 2010
New York, New York



Robert D. LiMandri
Commissioner

Section 1. Sections 32-01, 32-02 and 32-04 of title 1 of the rules of the city of New York, relating to the design and installation of curtain walls and panel walls, dangerous conditions of a building's exterior walls and appurtenances, and masonry parapet walls are hereby REPEALED.

§2. Section 32-03 of title 1 of the rules of the city of New York is hereby renumbered section 103-04.

§[32-03] 103-04 **Periodic Inspection of Exterior Walls and Appurtenances of Buildings.**

§3. The definition of *Acceptable report* set forth in subdivision a of section 103-04 of title 1 of the rules of the city of New York, as renumbered by this rule, is amended as follows and a new definition of *Filed report* is added between the definitions of *Critical examination* and *Filing window*, as follows:

Acceptable report. A technical examination report filed by a Qualified Exterior Wall Inspector that meets the requirements of the Administrative Code and this rule as determined and approved by the Department. [A report shall be deemed filed with the Department only when it has been submitted to, received, reviewed, and accepted by the Department.]

Filed report. A report shall be deemed filed with the Department when it has been received by the Department. The filed report shall be completed in accordance with the provisions of paragraph 3 of subdivision b of this section.

§4. Subparagraphs ii, iii and iv of paragraph 2 of subdivision b of section 103-04 of title 1 of the rules of the city of New York are amended as follows:

(ii) Such examination shall be conducted and witnessed by or under the direct supervision of a QEWI retained by [or on behalf of] the owner of the building or his or her representative.

(iii) The QEWI shall [determine] design an inspection program for the specific building to be inspected, which shall include, but not be limited to, the methods to be employed in the examination.[, but he/she] The inspection program shall be based on considerations of the type of construction of the building's envelope, age of the material components, the façade's specific exposure to environmental conditions and the presence of specific details and appurtenances. Consideration shall be given to the facade's history of maintenance and repairs as described in previous reports and submittals to the department.

Except as provided in subparagraph viii of paragraph 2 of subdivision b of this section, the QEWI need not be physically present at the location [where]when the examination is made. [Under] Architects, engineers, tradesmen and technicians, working under the QEWI's direct supervision, [technicians, tradesmen, contractors, and engineers-in-training] may be delegated to perform selected inspection tasks[. These individuals need not be in the QEWI's employ] only when they are employees or subcontractors of the QEWI.

(iv) The methods used to examine the building shall permit a complete inspection of same. Except as herein required, the use of a scaffold or other observation platform is preferred, but the QEWI may use other methods of inspection as he/she deems appropriate. A physical examination from a scaffold or other observation platform (a “close-up inspection”) is required for a representative sample of the exterior wall. The QEWI shall determine what constitutes a representative sample. The representative sample shall include at least one physical examination along a path from grade to top of an exterior wall on a street front using at least one scaffold drop or other observation platform configuration, including all setbacks.

§5. Paragraph 2 of subdivision b of section 103-04 is amended by adding a new subparagraph viii to read as follows:

(viii) Completion of a critical examination shall mean that the QEWI has conducted a final physical inspection to determine that the building conditions as described in the report are consistent with the actual conditions. Such final inspection shall, at a minimum, include an actual visual examination and a walk around with binoculars or other inspectorial equipment. A drive-by inspection is not acceptable.

§6. Subparagraph i of paragraph 3 of subdivision b of section 103-04 is amended as follows:

(i) The QEWI shall [submit to] file with the Department and submit a copy to the owner of the building a written report [as to] describing the result of the critical examination, clearly documenting all conditions noted during the inspection and stating that the inspection was performed and completed in accordance with the Administrative Code and this rule. A separate acceptable report must be prepared and filed for each building, even if it shares a Block and Lot number with other structures.

§7. Items D, G, I, J, M(1), O and P of subparagraph iii of paragraph 3 of subdivision b of section 103-04 are amended as follows:

(D) A detailed description of any settlements, repairs, or revisions to exterior enclosures since the previous report[, if available];

(G) A [report of all]description and classification of each significant condition[s] observed, including:

1. [Significant] deterioration and any movement detected; and
2. [A statement concerning] the apparent water-tightness of the exterior surfaces[;].

[3. A classification of each]Each condition shall be classified as safe, unsafe or SWARMP[;]. If the building is classified as “safe,” all conditions noted during examination that require monitoring and/or routine maintenance, including, but not limited to, minor rusting at ground floor exit door, caulking exterior joints and repair of flashing at cant strip shall be included. If the building is classified as “SWARMP” or unsafe, the report shall include the locations and descriptions of all SWARMP or unsafe conditions.

[4. The deleterious effect, if any, of]The observation shall also include the condition of the exterior appurtenances, including, but not limited to, exterior fixtures, flagpoles, signs, parapets, copings, guard rails, window frames (including hardware and lights), balcony enclosures, window guards, window air conditioners, flower boxes[,] and [communications] any equipment attached to or protruding from the façade. The condition of window air conditioners may not be designated as SWARMP[; and].

[5. If the classification of the building is “safe,” all conditions noted during examination that require monitoring and/or routine maintenance, including, but not limited to, minor rusting at ground floor exit door, caulking exterior joints and repair of flashing at cant strip.]

[6. A list of locations and descriptions of all SWARMP and unsafe conditions.]

(I) [The] A detailed status [of the exterior maintenance] report of maintenance work performed up to the date of submission of the report;

(J) A comparison of currently observed conditions with conditions observed during the previous report filing cycle examinations, including the status of the repairs or

maintenance performed with respect to the prior conditions. The following shall be [listed in the comparison] included and discussed:

1. Work permit numbers relating to façade repairs, including permits for sheds;
2. Job numbers, status and sign-off dates for any façade related jobs, where applicable; and
3. Violation numbers of any open Environmental Control Board (“ECB”) façade violations and the status of the repairs of the conditions cited in the ECB violations;

(M) 1. Color [P]photographs of the primary house number and at least one view of the entire street front elevation for all reports regardless of the building’s filing condition, and color photographs and sketches documenting [the location of] any conditions that are either unsafe or SWARMP and their locations. Photographs shall be at least 3” x 5” (76mm x 127mm) in size, unless otherwise requested by the Department. The photographs shall be dated and both the original photographs and all required copies shall be in color.

(O) The seal and signature of the QEWI under whose direct supervision the critical examination was performed.

[P] Appendices.

1. BIS Property Profile Overview
2. ECB facade violation summary
3. ECB violation details for any facade-related violations
4. BIS Document Overview for facade-related alteration and shed applications]

§8. Subparagraphs i and iii, items A and B of subparagraph viii and subparagraph ix of paragraph 4 of subdivision b of section 103-04 are amended as follows:

- (i) The requirements of this rule shall apply to all buildings with exterior walls or parts thereof that are greater than six stories in height, including the basement, but not the cellar, as defined in the building code, and regardless of the information in the Certificate of

Occupancy. For buildings constructed on sloped sites that contain six (6) full stories plus one partial story where more than half the height of that partial story is above existing grade and/or adjacent to open areas (e.g., areaways, yards, ramps), the wall containing that partial story shall be subject to façade inspection. Conditions requiring façade inspections may also include other structures that add to the height of the building as per section BC 504. The Commissioner shall determine which additional buildings and/or parts thereof are required to file in accordance with this rule.

(iii) An acceptable report shall be filed within the applicable two-year filing window to avoid a late filing penalty, except for cycle seven, during which the applicable filing window shall be:

(A) two years for buildings that meet the requirements of item (A) of clause (v) of this paragraph,

(B) eighteen months for buildings that meet the requirements of item (B) of clause (v) of this paragraph and

(C) twelve months for buildings that meet the requirements of item (C) of clause (v) of this paragraph.

[The late filing penalty shall be two hundred fifty dollars (\$250) for each month until the report is accepted by the Department.]

(viii) If contiguous zoning lots under single ownership or management contain multiple buildings that are considered one complex where at least two buildings of more than six stories in height fall into different filing windows as described above in items (A), (B) and (C) of clauses (v) and (vi) of this paragraph, the owner or management shall choose one of the following report filing options:

(A) An acceptable report for each building to which this rule applies may be filed separately according to the filing window corresponding to the last digit of that individual building's block number; or

(B) The owner or his or her representative may choose one of the applicable filing windows and file a report for all of the buildings within that filing window, regardless of that building's individual filing window. The owner or his or her representative shall

inform the Department 180 days prior to the end of the assigned filing window if this option is chosen. If an owner or [management] representative chooses this option, the owner or [management] representative shall continue to file under this same filing window for the duration of [his, her or its control] the owner's ownership of the property.

(ix) A report shall be filed within sixty (60) days of the date on which the QEWI completed the critical examination, as defined in subparagraph viii of paragraph 2 of subdivision b of this section, but not more than one (1) year after completion of the close-up inspection. If the report is not acceptable and is rejected by the Department, a revised report shall be filed within forty-five (45) days of the date of the Department's rejection. Failure to submit a revised report addressing the Department's objections within one (1) year of the initial filing shall require a new critical examination, including a new close-up inspection.

§9. Subparagraphs i, ii and iii of paragraph 5 of subdivision b of section 103-04 are amended as follows:

(i) Upon filing a report of an unsafe condition with the Department, the owner of the building, his or her agent, or the person in charge of the building shall immediately commence such repairs or reinforcements and any other appropriate measures such as erecting sidewalk sheds, fences, and safety netting as may be required to secure the safety of the public and to make the building's walls and appurtenances thereto conform to the provisions of the Administrative Code.

(ii) All unsafe conditions shall be corrected within thirty (30) days from the [filing] submission of the critical examination report.

(iii) Within two weeks after repairs to correct the unsafe condition have been completed, the QEWI shall inspect the premises. The QEWI shall obtain permit sign-offs as appropriate and shall promptly file with the Department a detailed amended report stating the revised report status of the building, along with a filing fee as specified in the rules of the Department. Sheds or other protective measures shall remain in place until an amended report is accepted; however, the QEWI may request permission for the removal of the shed upon submission of a signed and sealed statement certifying that an inspection was conducted, the conditions were

corrected and the shed is no longer required. Permission to remove the shed may be granted in the Commissioner's sole discretion.

§10. Subparagraphs i and ii of paragraph 6 of subdivision b of section 103-04 are amended as follows:

(6) Conditions that are safe with a repair and maintenance program.

(i) The owner of the building is responsible for ensuring that the conditions described in the critical examination report as SWARMP are repaired and all actions recommended by the QEWI are completed within the time frame recommended by the QEWI, and are not left to deteriorate into unsafe conditions before the next critical examination. It is the owner's responsibility to notify the Department of any deviation from the timeframe to make corrections as specified in the QEWI's report. Such notification shall be accompanied by supporting documents from the QEWI justifying the request for a new time frame. The department may approve or disapprove such request.

(ii) A report may not be filed describing the same condition and pertaining to the same location on the building as SWARMP [for the same building] for two consecutive report filing cycles.

§11. Subdivision c of section 103-04 is re-lettered subdivision d and a new subdivision c is added to read as follows:

(c) Civil penalties.

(1) Failure to file. An owner who fails to file the required acceptable inspection report shall be liable for a civil penalty of one thousand dollars (\$1,000) per year immediately after the end of the applicable filing window.

(2) Late filing. In addition to the penalty for failure to file, an owner who submits a late filing shall be liable for a civil penalty of two hundred fifty dollars (\$250.00) per month, commencing on the day following the filing deadline of the assigned filing window period and ending on the filing date of an acceptable initial report.

(3) In addition to the penalties provided in this section, an owner who fails to correct an unsafe condition shall be liable for a civil penalty of one thousand dollars (\$1,000) per month, pro-rated daily, until the unsafe condition is corrected, unless the commissioner grants an extension of time to complete repairs pursuant to this section. This penalty shall be imposed until receipt of an acceptable amended report by the department indicating the unsafe conditions were corrected or an extension of time is granted.

(4) Challenge of civil penalty.

(i) An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this subdivision by providing proof of compliance. Examples of such proof shall include, but are not limited to, a copy of an acceptable initial report, a copy of the acceptable amended report, copies of approved extension of time requests while work was/is in progress or written proof from a QEWI that the unsafe conditions observed at the building were corrected and the violation was dismissed.

(ii) 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.

§12. Paragraph 1 of subdivision d of section 103-04 is amended by adding a new subparagraph iii to read as follows:

(iii) 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.”

§13. Section 101-03 of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York is amended to add the following fees at the end of the table set forth in that section, to read as follows:

§101-03 Fees payable to the Department of Buildings. The department shall be authorized to charge the following fees:

<u>Façade inspection reports</u>	
• <u>Initial filing</u>	<u>\$265</u>
• <u>[Application for amendment]Amended/subsequent filing</u>	<u>\$100</u>
• <u>Application for extension of time to complete repairs</u>	<u>\$135</u>

STATEMENT OF BASIS AND PURPOSE

The foregoing rule amendments are adopted pursuant to the authority of the Commissioner of Buildings under Sections 643 and 1043(a) of the New York City Charter and section 28-302.2 of the New York City Administrative Code.

Sections 32-01, 32-02 and 32-04 are being repealed because their provisions are now covered in the building code or in this rule.

Rule 32-03 is renumbered to conform to the new rule numbering scheme the department is now using. It is also amended to clarify some provisions that were unaddressed in the previous amendment. These include: separating filing of a report from acceptance of a report by the department in order to clarify that the reporting requirement is satisfied when the department determines the report meets all Code requirements, as opposed to being satisfied upon the mere filing of the report, which could contain errors or omissions; specifying the duties of a QEWI; defining what constitutes a critical examination and when a new one should be performed; and clarifying how stories are counted on buildings constructed on sloped sites, for the purpose of determining the applicability of this rule. These changes address issues that have arisen since the rule was amended in 2009.

The rule replaces Technical Policy and Procedure Notice #5/99, which addresses which exterior building walls are exempt from or subject to inspections.

The rule is also amended to add penalties for failure to file a report and a penalty for failure to correct an unsafe condition. In addition, filing fees are added to cover the administrative costs of the program.