

NOTICE OF PUBLIC HEARING

Subject: Opportunity to comment on proposed amendment to sections 104-06 and 104-09 of Title 1 of the Rules of the City of New York relating to hoist machine operator training and examinations.

Date / Time: February 3, 2012 / 10am

Location: Department of Buildings
280 Broadway, 3rd Floor
New York, NY 10007

Contact: Aisha Norflett
Director of Licensing
New York City Department of Buildings
280 Broadway, 6th floor
New York, NY 10007

Proposed Rule Amendment

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, the Department of Buildings proposes to amend Sections 104-06 and 104-09 of Chapter 100 of Title 1 of the Rules of the City of New York relating to hoist machine operator training and examinations. Matter underlined is new; matter [in brackets] is deleted. The rule was not included in the agency's most recent regulatory agenda because it was not anticipated at the time the agenda was published.

Instructions

- Prior to the hearing, you may submit written comments about the proposed amendment to Ms. Norflett by mail or electronically through the NYC Rules website at <http://www.nyc.gov/nycrules> by February 3, 2012.
- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Ms. Norflett by January 13, 2012.
- Written comments and a summary of oral comments received at the hearing will be available until March 5, 2012 between the hours of 9:00 a.m. and 5:00 p.m. at the Office of the Commissioner, Department of Buildings, 280 Broadway, 7th floor, New York, NY 10007.

STATEMENT OF BASIS AND PURPOSE

Sections 104-06 and 104-09 of Chapter 100 of Title 1 of the Rules of the City of New York are being amended pursuant to the authority of the Commissioner of Buildings under sections 643 and 1043(a) of the New York City Charter and sections 28-401.5, 28-401.6, 28-401.7, 28-401.14, and Article 405 of Title 28 of the New York City Administrative Code (Administrative Code).

For the purposes of this rule, “shall” and “must” have the same meaning.

Rule changes pertaining to operators of power operated hoisting machines:

New OSHA Licensing Requirements

Section 28-405.1 of the Administrative Code requires the operators of power operated hoisting machines (including cranes and derricks) with a rated capacity of over one ton to hold a valid Hoisting Machine Operators (HMO) license from the New York City Department of Buildings (the Department). HMO licenses are divided into three classes, class A, B, and C. Section 28-401.7 further requires all applicants for a license to pass an examination.

In November 2010, new rules promulgated by the Occupational Safety and Health Administration (OSHA) governing the operation of cranes and derricks became effective (29 CFR 1926 Subpart CC). Section 1926.1427 of the OSHA rule requires all crane operators in the United States to be certified. Licenses issued by a state or local government are recognized as fulfilling the OSHA certification requirement, if the “testing meets industry recognized criteria for written testing materials, practical examinations, test administration, grading, facilities/equipment and personnel,” and the licensees are retested at least every five years.

Examination

Section 104-09 of Title 1 of the Rules of the City of New York requires applicants for a Class C HMO license to pass an examination administered by “an organization accredited by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) and acceptable to the Commissioner.” Such an organization meets the OSHA requirement for testing. Section 104-09 further requires Class C HMO licensees to maintain their national certification for the license period. To maintain their national certification, licensees are subject to retesting every five years, which satisfies the OSHA retesting requirement.

The amendment to section 104-09 will bring the examinations for Class A and Class B HMO licenses in line with the new OSHA requirements by requiring applicants to pass an examination administered by the same type of organization as Class C examinations. The exams for Class A and B HMO applicants are currently administered through the New York City Department of Citywide Administrative Services (DCAS).

Section 28-405.2 of the Administrative Code establishes a Class B HMO license as authorizing the “operation of hoisting machine without limitation or restriction.” Accordingly, the amendment to section 104-09 requires Class B applicants to be certified to operate all classes of cranes. Further, the examination currently administered through the DCAS occurs on a friction crane. The amendment requires at least one of the certification exams for a Class B applicant to have been passed on a friction crane. Similarly, where a Class A or C applicant seeks to operate a friction crane, the amendment requires that such applicant pass a certification exam on a friction crane.

Years of Experience

Section 28-405.3 of the Administrative Code further requires applicants for a Class A, B or C HMO license to possess a number of years of experience operating a hoisting machine under the direct and continuing supervision of a licensed operator before applying for their license. Section 104-09 clarifies that for a Class C HMO, the experience may be obtained within New York City or in an “urban area of comparable density,” under the supervision of a hoisting machine operator licensed by that jurisdiction. The amendment to section 104-09 expands this provision to Class A HMO license applicants, and clarifies that the experience must have been within the United States. Section 104-09 also requires applicants for a Class C HMO license to have performed “outrigger placement incorporating at least 100 crane set-ups.” The amendment to section 104-09 expands this requirement to Class A HMO applicants.

Training Course

Section 104-09 specifies that applicants for a Class C HMO license are to complete a 40-hour training course. The amendment to section 104-09 expands this requirement to Class A and B HMO applicants.

Section 28-401.14 of the Administrative Code authorizes the Commissioner to require applicants for the renewal of a license to complete education courses approved by the Department. Section 104-06 requires individuals applying to renew other licenses issued by the Department, including but not limited to electricians, plumbers, and site safety managers, to complete a refresher course. The amendment to section 104-06 requires individuals seeking to renew a Class A, B, or C HMO license to complete an 8-hour refresher course.

Section 1. Subdivision a of section 104-06 of subchapter D of chapter 100 of title 1 of the rules of the City of New York is amended by adding a new paragraph 5 to read as follows:

(5) Hoisting Machine Operator

§2. Paragraphs 5 through 9 of subdivision a of section 104-06 are renumbered 6 through 10, respectively.

§3. Subdivision b of section 104-06 is amended by adding a new paragraph 5 to read as follows:

(5) Hoisting Machine Operator. Beginning January 1, 2013, during the one (1) year immediately prior to renewal, the licensee must have successfully completed a Department-approved eight- (8) hour course covering those provisions of the administrative code and regulations that are unique to New York City for the operation of a hoisting machine and the unique hazards to operating a hoisting machine within New York City.

§4. Paragraphs 5 through 10 of subdivision b of section 104-06 are renumbered 6 through 11, respectively.

§5. Paragraph 3 of subdivision a of section 104-09 of subchapter D of chapter 100 of title 1 of the rules of the City of New York is amended to read as follows:

(3) An applicant for a Class A, B or C Hoisting Machine Operator license shall satisfy the [qualification and] examination requirements of the Administrative Code by complying with the following requirements:

(i) [An applicant shall] For a Class A or C applicant, [furnish]providing to the Department [a] one or more certifications issued by an organization accredited to offer crane certifications by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) and acceptable to the Commissioner. The certification shall authorize operation of the type of equipment for which the applicant seeks a license. The applicant shall provide to the Department a copy of the certification, a copy of future re-certifications and documentation of new specialties acquired. The applicable certification shall be maintained continuously for the duration of the license term.

- (ii) For a class B applicant, providing to the Department all crane operator certifications issued by an organization accredited to offer tower, mobile, and crawler crane operator certifications by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) and acceptable to the Commissioner. The applicant must have passed at least one of the certification exams on a friction crane. The applicant must provide to the Department a copy of the certifications, a copy of future re-certifications and documentation of new specialties acquired. The applicable certifications must be maintained continuously for the duration of the license term.

[(ii)](4) An applicant for a Class A or C Hoisting Machine Operator license shall provide proof of experience demonstrating [two (2) years of work, within the three (3) years prior to application, under the direct and continuing supervision of a Hoisting Machine Operator licensed by the Department or by another jurisdiction that regulates crane operators.]the years of experience required by the Administrative Code and compliance with the following requirements:

- (i) For a Class A Hoisting Machine Operator license at least three (3) years of work within the five (5) years prior to application must have been under the direct and continuing supervision of a Hoisting Machine Operator licensed by the Department or by another jurisdiction within the United States that regulates crane operators. At least two (2) years of the qualifying experience must have been undertaken in the City of New York or in an urban area of comparable density within the United States, as determined by the Commissioner.
- (ii) For a Class C Hoisting Machine Operator license at least two (2) years of work within the three (3) years prior to application must have been under the direct and continuing supervision of a Hoisting Machine Operator licensed by the Department or by another jurisdiction within the United States that regulates crane operators. At least one (1) year of the qualifying work must have been undertaken in the City of New York or in an urban area of comparable density within the United States, as determined by the Commissioner.

(5) [The] For a Class A or C Hoisting Machine Operator license, the qualifying work shall include [instruction in] outrigger placement incorporating at least 100 crane set-ups. [At least one (1) year of the qualifying work must have been undertaken in the city of New York or in an urban area of comparable density, as determined by the Commissioner.] For a Class A Hoisting Machine Operator license, at least 25 of the set-ups

must have occurred on machinery for which a Class A license is required. Where an applicant for a Class A Hoisting Machine Operator license already possesses a Class C Hoisting Machine Operator license, the requirement for the remaining 75 set-ups on non Class A machinery is waived.

- [(iii)](6) Additional qualification requirements. In addition to the qualification requirements set forth in the Administrative Code and in this subdivision (a), all Hoisting Machine Operator Class A, B, and C license applicants shall complete a forty- (40) hour training course, approved by the Department, covering those provisions of local law and regulation that are unique to New York City for the operation of a hoisting machine and the unique hazards of operating a hoisting machine within New York City.

§6. Paragraph 2 of subdivision b of section 104-09 is amended to read as follows:

- (2) Valid national certification(s) as follows:
- (i) For Class A Hoisting Machine Operators whose license is renewed or reinstated on or after January 1, 2013, one or more valid certification(s) issued by an organization accredited to offer crane operator certifications by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) and acceptable to the Commissioner. The certification(s) shall authorize the operation of the type of equipment for which the license is held or sought and the licensee shall provide to the Department a copy of the certification(s), a copy of future re-certifications and documentation of new specialties acquired. The applicable certification(s) must be maintained continuously for the duration of the license term.
 - (ii) For Class B Hoisting Machine Operators whose license is renewed or reinstated on or after January 1, 2013, all crane operator certifications issued by an organization accredited to offer tower, mobile and crawler crane operator certifications by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) and acceptable to the Commissioner. The applicant must have passed at least one of the certification exams on a friction crane. The licensee must provide to the Department a copy of the certifications, a copy of future re-certifications and documentation of new specialties acquired. The applicable certifications must be maintained continuously for the duration of the license term.

- (iii) For Class C Hoisting Machine Operators, [a] one or more valid certification(s) issued by an organization accredited to offer crane operator certifications by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) and acceptable to the Commissioner. The certification(s) shall authorize the operation of the type of equipment for which the license is held or sought and the licensee shall provide to the Department a copy of the certification(s), a copy of future re-certifications and documentation of new specialties acquired. The applicable certification(s) must be maintained continuously for the duration of the license term.

§7. Subdivision d of section 104-09 is amended to read as follows:

- (d) A Class A, B or C Hoisting Machine Operator license issued following compliance with this rule shall authorize the operation of only that type of [equipment] crane for which Department records indicate the licensee is qualified or certified. For a Class A or C Hoisting Machine Operator license, where the applicant or licensee wishes to operate a friction crane, the applicant must have passed at least one of the certification exams on a friction crane.

§8. Paragraph 1 of subdivision f of section 104-09 is amended to read as follows:

- (1) [For a Class C licensee only, the] The certification(s) issued to him or her by an organization accredited by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) and acceptable to the Commissioner; and

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**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Hoisting Machine Operator Rules

REFERENCE NUMBER: 2011 RG 051

RULEMAKING AGENCY: Department of Buildings

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

December 9, 2011
Date

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1526**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Hoisting Machine Operator Rules

REFERENCE NUMBER: DOB-11

RULEMAKING AGENCY: Department of Buildings

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/ Ruby B. Choi
Mayor's Office of Operations

12/09/2011
Date