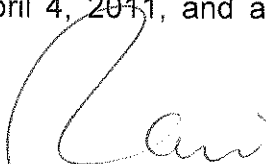


NOTICE OF ADOPTION OF RULE

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 Section 28-115.1 of the New York City Administrative Code, that the Department of Buildings hereby amends Sections 101-03 and 101-06 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York, relating to special inspectors and special inspection agencies.

This version of the rule was published on April 4, 2011, and a public hearing thereon was held on May 11, 2011.

Dated: 4/5/12
New York, New York



Robert D. LiMandri
Commissioner

Statement of Basis and Purpose of Adopted Rule

Section 101-06 was originally promulgated in July, 2008, and it specified the qualifications of special inspectors and the processes through which the Department would regulate their activities.

Amendments to the rule were initially published for comment in the City Record on June 7, 2010. A public hearing was held on July 8, 2010, and comments were received prior to, during and after that hearing. The Department again published the rule for comment in the City Record on April 4, 2011, having received significant input in connection with the initial comment period that resulted in changes to the proposed amendments. A second public hearing was held on May 11, 2011.

These amendments accomplish the following:

- Special Inspection classes: They add the concept of special inspection classes in § 101-06(c), which will better address the level of qualification necessary to perform the various types of special inspections. There is currently only one registration class and all special inspection agencies must be accredited. This rule amendment establishes three different classes (class 1, class 2, and class 3, based on the scope of work the special inspection agency is performing) instead of the pre-existing one class, and requires only class 1 special inspection agencies (typically agencies that work on large-scale projects) to pursue accreditation.

- Definitions: The following new definitions were previously published in June, 2010 : “Accreditation Deadline”, “Full Demolition”, “Major Building”, “Partial Demolition”, “Registration Deadline” and “Special Inspection Category” and two additional new definitions have subsequently been added: “Floor Area, Gross” and “Approved Inspection Agency”, for the purposes of clarity and ease of use. In response to agency comments and to ensure consistency, several definitions were amended to cross-reference the NYC Administrative Code. Also in response to agency comments, the definition of “Registration Deadline” was modified to give agencies more time to register.

The new deadline definitions help clarify when registration and accreditation will occur and allow for timely and proper enforcement of the proposed three-class registration system described more fully below.

- Service of process: As a result of public comments received, the rule adds a requirement that special inspection agencies must have an agent for the acceptance of service or maintain a New York City address. In addition, this requirement will be applicable by or upon the time the agencies register (§ 101-06 (b)(10)).

- Conflict of Interest: Also as a result of comments, the conflict of interest provisions set forth in § 101-06(b)(2) have been revised to clarify that it is not automatically assumed to be a conflict for a registered design professional to perform a special inspection(s) on a project or portion of work that he or she designed.

- Accreditation: The amendments expand the choice of recognized national standards that an approved accrediting body may accredit to, to include ISO 17020-98 (§ 101-06(c)(3)). The deadline for agencies to be accredited is set for twelve months from the effective date of this rule.

- Insurance: As amended, the rule's insurance requirements more accurately reflect what is necessary for these inspection entities (§ 101-06(c)(5)). The requirement for general liability insurance for the special inspection agencies was removed because these agencies would either be required to obtain professional liability insurance which would cover their technical duties, or if other than a PE or RA, the special inspection agency already would have general liability insurance as part of their trade license requirements. Further, in response to input from insurance companies, the type of policies required have been changed from “occurrence-based” to “claim-based.”

- Agencies' composition: The amendments allow for up to four alternative full-time directors because many companies that provide special inspection services are constituted as partnerships (§ 101-06(c)(6)).

- Registration term: The amendments remove dates and references that are no longer relevant and change the term of registration from three (3) years from the date of registration issuance to three (3) years from the applicant's birthday following the date of registration. This second amendment will make the registration renewal process easier for all parties involved (§ 101-06(c)(9)).

- New "Small Projects" category: The "Small Building" Special Inspection Category in Appendix A of this rule is replaced with a "Small Projects" category, allowing Class 3 special inspection agencies to perform identified inspections on 1-, 2- and 3-family buildings, as well as alterations of 10,000 square feet or less, without special qualification other than being registered as a New York State licensed PE or RA.

- Fees: Fees are established for special inspection agency registration.

* * *

"Shall" and "must" denote mandatory requirements and may be used interchangeably in the rules of this department.

Matter underlined is new. Matter [in brackets] is deleted.

* * *

Section 1. Subdivision (a) of Section 101-06 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(a) **Definitions.** For the purposes of this chapter, the following terms [shall] will have the following meanings:

(1) **Accreditation.** Evaluation of agencies, including testing and calibration laboratories, fabricators and inspection bodies, against internationally acceptable standards to demonstrate their performance capability. Such accreditation is required to be conducted by a nationally recognized accreditation agency accrediting to the ASTM E329-07 or ISO 17020-98 international standard, the requirements of this rule, and approved by the department.

(2) **Accreditation Deadline.** Twelve months from the effective date of this rule.

(3) **Approved Construction Documents.** For the purpose of this rule approved construction documents [shall] will include any and all

documents that set forth the location and entire nature and extent of the "work" proposed with sufficient clarity and detail to show that the proposed work conforms to the provisions of this code and other applicable laws and rules. Such documents [shall] will include but not be limited to shop drawings, specifications, manufacturer's instructions and standards that have been accepted by the design professional of record or such other design professional retained by the owner for this purpose.

[(4)] (5) **Approved Inspection Agency.** This term has the same definition as established in section 28-101.5 of the Administrative Code

[(3)] (5) **Certification.** Documented acknowledgment by a nationally recognized organization of a technician's competency to perform certain functions.

[(4)] (6) **Commissioner.** [The commissioner of buildings or his or her designee] This term has the same definition as established in section 28-101.5 of the Administrative Code.

[(5)] (7) **Department.** [The department of buildings] This term has the same definition as established in section 28-101.5 of the Administrative Code.

[(7)] (8) **Floor Area, Gross.** This term has the same definition as established in section 1002.1 of the Building Code.

[(8)] (9) **Full Demolition.** This term has the same definition as established in section 3302.1 of the Building Code (Demolition, Full).

[(6)] (10) **Initial [acceptable qualifications] Acceptable Qualifications.** With respect to supplemental special inspectors for which Appendix A of this rule requires a certification, such technician [shall] will be deemed qualified without such certification provided that such individual has the underlying skills, education and training for which such certification would provide validation, and the relevant experience prescribed by Appendix A of this rule or by the certifying body.

[(7)] (11) **Job.** A construction project that is the subject of one (1) or more department-issued permits.

[(11)] (12) **Major Building.** This term has the same definition as established in section 3310.2 of the Building Code.

[(8)] (13) **Materials.** Materials, assemblies, appliances, equipment, devices, systems, products and methods of construction regulated in their use by this code or regulated in their use by the 1968 building code.

[(9)] (14) **New York City Construction Codes.** The New York City Plumbing Code, the New York City Building Code, the New York City Mechanical Code, the New York City Fuel Gas Code, and Title 28, chapters 1 through 5 of the Administrative Code. Any reference to “this code” or “the code” [shall] will be deemed a reference to the New York City Construction Codes as here defined.

[(14)] (15) **Partial Demolition.** This term has the same definition as established in section 3302.1 of the Building Code (Demolition, Partial).

[(10)] (16) **Registered Design Professional.** A New York State licensed and registered architect (RA) or a New York State licensed and registered professional engineer (PE).

[(11)] (17) **Registered Design Professional of Record.** The registered design professional who prepared or supervised the preparation of applicable construction documents filed with the department.

[(17)] (18) **Registration Deadline.** Six months from the effective date of this rule.

[(12)] (19) **Relevant Experience.** Direct participation and practice related to the underlying construction activities that are the subject of the special inspection where such participation has led to accumulation of knowledge and skill required for the proper execution of such inspection.

[(13)] (20) **Special Inspection.** Inspection of selected materials, equipment, installation, methods of construction, fabrication, erection or placement of components and connections, to ensure compliance with [the code] approved construction documents and referenced standards as required by Chapter 17 of the Building Code or elsewhere in the code or its referenced standards.

[(14)] (21) **Special Inspection Agency.** An approved inspection agency employing one (1) or more persons who are special inspectors and that has met all requirements of this rule.

[(21)] (22) **Special Inspection Category.** The specific type(s) of special inspection(s) that a special inspection agency may perform in accordance with Appendix A of this rule.

[(15)] (23) **Special Inspector.** An individual employed by a special inspection agency, who has the required qualifications[,] set forth in this rule to perform or witness particular special inspections required by the

code or by the rules of the department, including but not limited to a qualified registered design professional.

[(16)] **(24) Supervise/Supervision.** With respect to a designated Primary Inspector or Inspection Supervisor as indicated in Appendix A, supervision [shall] will mean oversight and responsible control by a registered design professional having the necessary qualifications and relevant experience to perform responsibilities associated with the special inspection. Such supervision [shall] will include ensuring training and/or education necessary to qualify the special inspector for his or her duties, including continued training and education necessary to keep pace with developing technology.

Field supervision [shall] will include responsibility for determining competence of special inspectors for the work they are authorized to inspect and on-site monitoring of the special inspection activities at the job site to assure that the qualified special inspector is performing his or her duties when work requiring inspection is in progress.

With respect to a [Director] director of a Special Inspection Agency, supervision [shall] will mean oversight and responsible control by a registered design professional who [shall] must ensure that qualified inspectors are dispatched for special inspections, that such special inspectors properly document their activities, and that reports and logs are prepared in accordance with section 28-114.2 of the Administrative Code. Such supervision [shall] will include ensuring training and/or education necessary to qualify the special inspector for his or her duties, including continued training and education necessary to keep pace with developing technology.

[(17)] **(25) Technician.** An employee of the inspection or testing agency assigned to perform the actual operations of inspection or testing. See ASTM E 329-07, paragraph 3.1.17.

[(18)] **(26) Work.** The construction activity including techniques, tests, materials and equipment that is subject to special inspection.

§ 2. Paragraph (2) of Subdivision (b) of Section 101-06 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(2) **Obligation to Avoid Conflict of Interest.** A special inspector and/or a special inspection agency [shall] must not engage in any activities that may conflict with their objective judgment and integrity, including but not limited to having a financial and/or other interest in the construction, installation, manufacture or maintenance of structures or components that they inspect. It is

not, in and of itself, a conflict of interest for a registered design professional of record to perform a special inspection(s) on the project he or she designed.

§ 3. Subdivision (b) of Section 101-06 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new paragraph (10) to read as follows:

(10) **Service of process.** All special inspection agencies must have an agent for the acceptance of service or maintain a New York City address. A Post Office Box will not be acceptable for such purposes. All agencies must comply with the requirements of this paragraph upon registration.

§ 4. Subdivision (c) of Section 101-06 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(c) **Registration of Special Inspection Agencies.**

(1) [Effective Date. On or after the effective date of this rule, all agencies including single person agencies performing special inspections must comply with the requirements of this section.] **General.** All [such] agencies performing special inspections must be registered with the department as special inspection agencies by [January 1, 2009] the registration deadline unless extended by the commissioner, as provided in paragraph (c)(9) of this rule.

(2) **Form and Manner of Registration.** An application for registration [shall] must be submitted in a form and manner determined by the commissioner, including electronically, and [shall] must provide such information as the commissioner may require. Such registration [shall] will be deemed an acknowledgement by the special inspection agency of its obligations hereunder.

(i) **Registration of Special Inspection Categories.** Agencies must register for each special inspection category that the agency intends to perform.

(ii) **Registration of Special Inspection Classes.** Agencies must register as class 1, class 2, or class 3 special inspection agencies for each special inspection category for which the agency registers.

(A) **Class 1.** An agency registered as a Class 1 special inspection agency for a special inspection category will be permitted to perform the work associated with such special inspection category on any project.

(B) Class 2. An agency registered as a Class 2 special inspection agency for a special inspection category will be permitted to perform the work associated with such special inspection category on any project, except those involving:

1. The construction of a new major building;
2. The full demolition of a major building;
3. The alteration of a major building including:
 - a. The removal of an entire story or more;
 - b. The partial demolition of twenty thousand (20,000) square feet or more of gross floor area; or
 - c. The partial demolition of twenty (20) percent or more of the gross floor area.
4. The enlargement of a major building by more than ten thousand (10,000) square feet of gross floor area.

(C) Class 3. An agency registered as a Class 3 special inspection agency for a special inspection category will be permitted to perform the work associated with this category on the following projects only:

1. The construction, demolition, or alteration of a one-, two-, or three-family dwelling; or
2. The alteration of any building, including partial demolition, of less than ten thousand (10,000) square feet of gross floor area in total.

Exception: The special inspection categories of underpinning, mechanical means and methods of demolition, and the protection of the sides of excavations greater than ten (10) feet in depth must be performed only by special inspection agencies registered as either class 1 or class 2 special inspection agencies for such categories.

(3) [Qualifications. Special inspection] Agency Accreditation. For class 1 special inspection agencies only, accreditation is required by the

accreditation deadline in order to maintain their class 1 registration status. [Such] These agencies [shall] will be required to demonstrate accreditation for their intended scope of work by [International Accreditation Service, Inc. or] an [equivalent accreditation agency] approved accrediting body accrediting to the standards set forth in this rule and either ASTM E329-07 or [a federal agency] ISO 17020-98. Accrediting [agencies] bodies[,] other than federal agencies [must] are required to operate in accordance with ISO 17011 and must be members of an internationally recognized cooperation of laboratory and inspection accreditation bodies subject to a mutual recognition agreement.

[Agencies must insure] (4) **Qualifications.** All special inspection agencies must ensure that the special inspectors employed by the agency meet the qualification requirements set forth in Appendix A of this rule and perform special inspections only within the area of expertise for which such special [inspector is] inspectors are qualified. A Professional Engineer who is listed in Appendix A as requiring qualification in civil, structural, mechanical, electrical, fire protection, geotechnical or such other designation [shall] must have had the education, training and experience[, including having passed the Principles and Practice of Engineering examination offered by the National Council of Examiners for Engineering and Surveying (NCEES) in the specific discipline or having obtained a bachelors degree in the specific field,] that has led to an accumulation of knowledge and skill required for the Professional Engineer to hold himself/herself out as a professional practicing in that field.

[(4)] (5) **Insurance.** [A] All special inspection [agency] agencies must have the following insurance coverage:

- (i) Professional liability/errors and omissions insurance policy[, for the minimum amount of five hundred thousand dollars (\$500,000.00), [occurrence] claim-based, for the term of the registration.

Exception: An agency that is limited to performing fuel-oil storage and fuel-oil piping inspections, fire alarm tests, sprinkler systems, standpipe systems, emergency power systems and/or site storm drainage disposal and detention system installation special inspections, and whose director is not a registered design professional, will be exempt from obtaining professional liability insurance coverage. This exception applies so long as the director maintains the insurance requirements required for his/her respective license in accordance with Chapter 4 of Title 28 of the Administrative Code.

(ii) [General liability insurance policy for the minimum amount of one million dollars (\$1,000,000.00) and] Insurance required by the provisions of the New York State Workers' Compensation and disability benefits [law and other applicable provisions of the workers' compensation law] laws.

[(5)] (6) **Agency Structure.** [The] A special inspection agency [shall] must have [a] one primary and up to four (4) alternative full-time [director] directors who [is a] are registered design [professional] professionals in [responsible] charge and all special inspections [shall] must be performed under [his or her] their direct supervision. The [director] directors [shall] must not be retained by any other agency that provides special inspection or testing services. The [director shall] directors must possess relevant experience in the inspection and testing industry and hold [a] management [position] positions in the agency. The agency structure [shall] must comply with all relevant New York State and Federal laws. Notwithstanding anything to the contrary set forth in this paragraph, an agency that is limited to conducting fuel-oil storage and fuel-oil piping inspections [(BC1704.16)], fire alarm tests, sprinkler systems [(BC1704.21)], standpipe systems [(BC1704.22)], emergency power systems or site storm drainage disposal and detention [(BC1704.20)] may have [a director] directors who [satisfies] satisfy the requirements of inspection supervisor for such tests and inspections as set forth in Appendix A of this rule.

[(6)] Small Building Exception. Notwithstanding anything to the contrary set forth in the provisions of this rule and its appendix, with respect to jobs in connection with the construction or alteration of Occupancy Group R-3 buildings, 3 stories or less in height, a registered design professional with relevant experience shall be qualified to perform special inspections other than inspections involving soils investigations, pier and pile installation, underpinning of structures, and protection of the sides of excavations greater than 10 feet in depth.]

(7) **Audits.** The operations of special inspectors and special inspection agencies [shall] will be subject to audit by the department at any time. Audits may [examine] involve the examination of applications for registration as well as the performance and documentation of special inspections. Audits may also be conducted upon receipt of complaints or evidence of falsification, negligence or incompetence.

(8) [Interim Status and Application Deadlines. An] **Performance of Special Inspections Prior to Registration Deadline.** Except as otherwise determined by the commissioner, an agency [employing special inspector(s) with initial acceptable qualifications shall] will be entitled until

[July 1, 2010] the registration deadline to perform those special inspections for which it is qualified, subject to the following requirements:

(i) The agency must certify compliance with this rule on such form as the commissioner may require and must file such certification with the department prior to performing any special inspections after the effective date of this rule and until the registration deadline.

(ii) [The agency] Class 1 special inspection agencies only must diligently pursue accreditation as a special inspection agency [pursuant to the provisions of section] in accordance with subdivision (c)(3) of this rule.

(iii) [Notwithstanding anything to the contrary set forth in this rule and Appendix A, an individual who satisfies all requirements set forth in Appendix A to qualify as a special inspector except for the required national certification shall be deemed a special inspector until July 1, 2009 provided that such individual meets the initial acceptable qualifications. In order to continue as a special inspector beyond July 1, 2009, such individual shall obtain the certification required in Appendix A.] Special inspectors employed by a special inspection agency must satisfy all requirements in Appendix A.

[(iv) The agency shall certify such initial acceptable qualifications on such form as the department may require and shall file such certification with the department prior to performing any special inspections after the effective date of this rule.]

(9) [Additional Powers of the Commissioner. Notwithstanding anything to the contrary set forth in the provisions of this rule, the commissioner may upon a determination of good cause extend the interim status of qualifications for any specific special inspection agency to a date beyond July 1, 2010 but in no event later than July 1, 2011.

(i) In the event the agency has failed by January 1, 2010 to receive the accreditation required by section (c)(8)(i) of this rule, the agency may apply to the commissioner who may, upon the showing of good cause by the agency, grant an extension of time and allow the continuance of the interim status of such agency, but in no event later than January 1, 2011.

(ii) The requirements and standards prescribed in this rule shall be subject to variation in specific cases by the commissioner, or by the Board of Standards and Appeals, under and pursuant to the provisions of paragraph two of subdivision (b) of section six

hundred forty-five and section six hundred sixty-six of the New York City Charter, as amended.]

[(10)] **Registration Term.** [An initial registration issued under this rule is valid until July 1, 2010 unless otherwise extended by the commissioner in accordance with section (c)(9) of this rule. A renewal or initial registration issued after July 1, 2010 is valid for three years from the date of issuance] The term of an initial registration is three (3) years, beginning on the applicant's birthday following the date of registration, and may be renewed for additional three (3) year periods after such initial registration.

[(11)] (10) **Registration Fees.** [The department shall charge the following registration fees:] Fees will be those set forth in section 101-03 of these rules.

- (i) A one (1) year initial fee of \$35;
- (ii) A triennial renewal fee of \$35; and
- (iii) A later renewal surcharge of \$35.]

[(12)] (11) **Renewals.** A renewal application [shall] must be submitted between [thirty] sixty [(30)] (60) and [sixty] ninety [(60)] (90) days prior to the expiration date of the registration and [shall] must be accompanied by proof that the agency has, during the one (1) year period immediately preceding renewal, maintained all certifications/accreditations and other requirements set forth in this rule and its Appendix.

- (i) Renewal [shall] will be precluded where there has been a finding by the commissioner that any special inspection or test conducted by the special inspector or special inspection agency has not been performed in accordance with the requirements set forth in the code, applicable reference standards or the rules of the department, or where there has been a finding by the commissioner of fraud or misrepresentation on any document or report submitted to the department by the special inspector or special inspection agency.
- (ii) No special inspector or special inspection agency [shall] will perform an inspection or test with an expired or lapsed registration.

§ 5. The “Small Building Special Inspections” Special Inspection Category of Appendix A of Section 101-06 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

<p>[Small Building] Class 3 Special Inspections ([Group R-3, 3 stories or less in height] Small Projects)³</p>		<ul style="list-style-type: none"> • PE or RA; and • relevant experience 	<p>[N/A] See <u>Technician requirements for relevant inspection.</u></p>	<ul style="list-style-type: none"> • [Technician with relevant experience] See <u>Technician requirements for relevant inspection.</u>
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§ 6. The Notes to Appendix A of Section 101-06 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York are amended to read as follows:

Notes:

1. Abbreviations in the qualifications descriptions:
ACI – American Concrete Institute
AWS – American Welding Society
ICC – International Code Council
NEBB – National Environmental Balancing Bureau
NICET – National Institute for Certification in Engineering Technologies
PE – A New York State Licensed and Registered Professional Engineer
RA – A New York State Licensed and Registered Architect

2. Bachelor's Degrees must be from an accredited institution or equivalent
3. [Small Building Inspections - For Group R-3 buildings, 3 stories or less in height, all special inspections may be performed by a qualified PE or RA or a qualified person under their direct supervision without the need for certification by the department, with the exception of the special inspection of the following operations:
 - a. Soils Investigations
 - b. Pier and Pile installation
 - c. Underpinning of structures
 - d. Protection of the sides of excavations greater than 10 feet in depth]Class 3 Special Inspections. An agency registered as a Class 3 special inspection agency for a special inspection category will be permitted to perform the work associated with such special inspection category on the following projects only:

- a. The construction, demolition, or alteration of a one-, two-, or three-family dwelling; or
- b. The alteration of any building, including partial demolition, altering less than ten thousand (10,000) square feet of gross floor area in total.

Exception: The special inspection categories of underpinning, mechanical means and methods of demolition, and the protection of the sides of excavations greater than ten (10) feet in depth will be performed only by special inspection agencies registered as either class 1 or class 2 special inspection agencies for such categories.

§7. Section 101-03 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

<u>Special inspection agency registration.</u>	<u>Initial:</u> \$200 plus a \$30 endorsement fee per special inspection category	<u>Renewal:</u> \$90 plus a \$30 endorsement fee per special inspection category
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