



## Promulgation Details for 1 RCNY 101-07

This rule became effective on July, 1, 2008.

Since such date, one or more amendments have been made to this rule. Each rule amendment has its own effective date and Statement of Basis and Purpose.

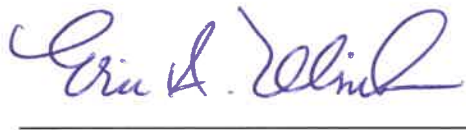
Below you will find one or more rule amendments (the most recent appearing at the top), followed by the original rule.

The effective date of each amendment and the original rule can be found at the top of each "NOTICE OF ADOPTION OF RULE."

**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 Title 28 of the Administrative Code of the City of New York, and in accordance with Section 1043 of the Charter, that the Department of Buildings (DOB) hereby adopts amendments to its rules regarding fees for filing parking structure compliance reports and adding requirements for qualified parking structure inspectors. DOB also adopts new section 103-13 regarding periodic inspections of parking structures. This rule was first published on January 26, 2022, and a public hearing thereon was held on February 25, 2022.

Dated: 5/11/2022  
New York, New York

  
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Eric Ulrich  
Commissioner

**Statement of Basis and Purpose of Rule**

Local Law 126 of 2021 added a new Article 323 regarding periodic inspections of parking structures to Title 28 of the Administrative Code. Article 323 sets out requirements for a condition assessment of a parking structure that is to be conducted at periodic intervals as set forth by rule of the commissioner. This rule sets out the timing and specific requirements for these inspections, as well as civil penalties for failure to file and late filing of reports, and for failing to correct conditions found during the inspections.

Section 101-03 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding fees for initial and amended/subsequent filings of the parking structure compliance reports, as well as for applications for extensions of time to complete any necessary repairs.

In addition, Section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to add language regarding qualified parking structure inspectors and inspections.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and Article 323 of Title 28 of the New York 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.

Section 1. Section 101-03 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding the following entry at the end of the table set forth in that section:

<u>Parking structure compliance reports</u>	
• <u>Initial filing</u>	<u>\$305</u>
• <u>Amended/subsequent filing</u>	<u>\$85</u>
• <u>Application for extension of time to complete repairs</u>	<u>\$65</u>

§2. Paragraphs (14) through (18) of subdivision (a) of section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York are renumbered (15) through (19), respectively, and a new paragraph (14) is added to read as follows:

- (14) Qualified parking structure inspector. An engineer as defined in section 28-101.5 of the administrative code with three years of relevant experience with parking structures.

§3. Subdivision (c) of section 101-07 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 (11) to read as follows:

(11) Parking structure inspections.

- (i) Inspection of a parking structure and appurtenances pursuant to section 28-323 of the Administrative Code must be performed by or under the direct supervision of a qualified parking structure inspector.
- (ii) The qualified parking structure inspector applicant must provide a detailed résumé indicating relevant work experience obtained in any US city or jurisdiction. When relevant experience is obtained while employed by another registered design professional who was signing and sealing such relevant work, a letter must be provided indicating length of the qualified parking structure inspector applicant's employment and his or her responsibilities.
- (iii) A qualified parking structure inspector applicant must demonstrate to the commissioner's satisfaction, including performance on any written or oral tests the commissioner may require, that he or she is sufficiently familiar with the Construction Codes, laws and rules pertaining to parking structures and engineering concepts related to parking structures.

§4. Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new section 103-13 to read as follows:

**§ 103-13 Periodic Inspection of Parking Structures.**

(a) Definitions. For the purposes of this section, the following terms have the following meanings.

**Acceptable report.** A compliance report filed by a qualified parking structure inspector, as defined in section 101-07 of the rules of the Department, that meets the requirements of Article 323 of Title 28 of the Administrative Code and this rule as determined by the Department.

**Amended report.** A compliance report filed by a qualified parking structure inspector (1) certifying that the unsafe conditions identified in the most recent report have been repaired and that no unsafe conditions exist at the parking structure or (2) attesting, within three years of the most recent safe with repair and/or engineering monitoring (SREM) filing, to the current status of the building based on a condition assessment.

**Appurtenance.** An element including, but not limited to, rolldown gates, attendant booths, lighting fixtures, gates, staircases, fire protection, column protection, signs, parapets, railings, guard rails, enclosures, antennae, bollards, vehicle barriers, vehicle impact protection, electric vehicle charging stations, and any other equipment attached to the parking structure. Appurtenance does not include mechanical devices for vehicles moving from and to street levels or within the structure such as parking machines, lifts, mechanical stackers, automated parking systems, and elevators in which public occupancy is prohibited.

**Compliance Report.** A report prepared by a qualified parking structure inspector summarizing the condition assessment of the subject parking structure and attesting to its accompanying classification.

**Condition assessment.** An examination conducted to review a parking structure and all parts thereof, as defined in Article 323 of title 28 of the Administrative Code, to determine whether the parking structure and all parts thereof are either safe, unsafe, or safe with repairs and/or engineering monitoring and whether, in the judgment of a qualified parking structure inspector, remedial work is required.

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

**Filing window.** The two-year period during which a compliance report for a particular parking structure may be filed without penalty.

**Parking structure.** A building or portion of a building used for the parking or storage of motor vehicles and an open or enclosed parking garage as defined in the New York City Building Code. A parking structure does not include an autobody repair shop, an automotive showroom, a garage with occupancy of fewer than three cars, unenclosed and unattached lots, an automotive service station, an automotive repair shop, or a private garage as such term is defined in the building code.

**Physical Examination.** Hands-on engineering inspection of parking structure systems and elements applying various methods of examination other than visual, including, but not limited to, sounding, probing or testing.

**Qualified Parking Structure Inspector (hereinafter “QPSI”).** A qualified parking structure inspector as defined in section 101-07 of the rules of the Department.

**Report filing cycle.** The six-year time interval established by the Commissioner for the filing of each successive compliance report for every parking structure subject to the requirements of Article 323 of Title 28 of the Administrative Code.

**Safe condition.** A condition of a parking structure, any appurtenances thereto or any part thereof not requiring repair or maintenance to sustain the structural integrity of the parking structure and that is to remain safe during the next six years.

**Safe with repairs and/or engineering monitoring (hereinafter “SREM”).** A condition of a parking structure, any appurtenances thereto or any part thereof that is safe at the time of inspection but requires repairs or maintenance during the next one to six years in order to prevent its deterioration into an unsafe condition during that six-year period.

**Staggered filing cycle.** The separate time intervals for filing compliance reports as determined by borough beginning January 1, 2022 and continuing thereafter for each subsequent report filing cycle.

**Subsequent report.** A compliance report that is filed by a QPSI after an acceptable report in order to change the status of the parking structure for that report filing cycle to reflect changed conditions or the recommended time frame for repairs of SREM or unsafe conditions.

**Unsafe condition.** A condition of a parking structure, any appurtenances thereto, or any part thereof that is hazardous to persons or property and requires repair within one year of completion of condition assessments. In addition, any condition that was reported as SREM in a previous compliance report and that is not corrected at the time of the current inspection must be reported as an unsafe condition.

(b) Responsibilities of qualified parking structure inspectors.

- (1) A QPSI must conduct condition assessments and file compliance reports in accordance with this section and Article 323 of Title 28 of the Administrative Code.
- (2) A QPSI must maintain records of inspections and tests for at least six years and must make such records available to the Department upon request.
- (3) A QPSI must maintain insurance coverage as set forth in paragraph (7) of subdivision (b) of section 101-07 of these rules. Copies of such insurance policies must be made available to the Department upon request.

(c) Condition Assessments.

- (1) Periodic inspection requirements. In order to maintain a parking structure and its appurtenances in a safe condition, and in accordance with Article 323 of Title 28 of the Administrative Code, a condition assessment of all components of a parking structure must be conducted at periodic intervals specified herein.

Exceptions: The façade of the structure does not need to be included in the parking structure compliance report if:

1. the building is subject to the Façade Inspection Safety Program (FISP) ; or
2. the parking structure occupies less than 50% of the total square footage of the building.

(2) Inspection procedures.

- (i) Before any parking structure is inspected, the QPSI retained by or on behalf of the owner of the building in which the parking structure is located must carefully review the most recent compliance report and any available previous reports, all annual observation checklists, as defined in section 28-323.2 of the Administrative Code, for the prior cycle, any available structural design or repair drawings, violations, and FISP reports where applicable.
- (ii) A condition assessment of a parking structure and appurtenances thereof pursuant to section 28-323.3 of the Administrative Code must be performed by or under the direct supervision of a QPSI retained by the owner of the building in which the parking structure is located or his or her representative.
- (iii) The QPSI must design a condition assessment program for the specific structure to be inspected, which must include, but not be limited to, inspection methods to be employed in the assessment. The program must be based on the considerations of the type of construction of the parking structure, age of the material components, the parking structure's specific exposure to environmental conditions and the presence of specific details and appurtenances. Consideration must be given to the structure's history of maintenance and repairs. Professional Engineers, individuals with a bachelor's degree in engineering and three years of relevant experience, or individuals with five years of relevant building experience,

working under the QPSI's direct supervision, may be delegated to perform selected inspection tasks other than the final inspection.

- (iv) The methods used to evaluate the parking structure in question must permit a complete physical examination of the structure, including, but not limited to, sounding, load tests, optical survey, non-invasive scanning, and cores. The QPSI must identify the most deleterious locations and perform physical examinations at those locations. Physical examinations as described in this rule must be performed on a minimum of 10% of each structural element including, but not limited to, beams, columns, and slabs.
- (v) The known history of the parking structure, the nature of the materials used, and the conditions observed will dictate the extent of the condition assessment. The QPSI must apply a professional standard of care to assess the structure's condition and the individual building systems that comprise the structure including, but not limited to, the building's structural components, waterproofing systems, fire proofing and fire stopping systems, and wearing surfaces. When the QPSI finds any deficiencies, he/she must ascertain the cause of these and any other possible building defects detected. The QPSI must order any special or additional inspections, probes, and/or tests, including sounding procedures, that may be required to support the condition assessment and to determine the causes of any defects.
- (vi) The QPSI must develop a unique annual observation checklist, as defined in 28-323.2 of the Administrative Code, during each condition assessment.
- (vii) Photographs must be taken, sketches made and/or any other methods of documentation utilized to properly document the location of all conditions observed during the course of the condition assessment, that are either unsafe or SREM.
- (viii) Upon discovery of any unsafe condition, the QPSI must immediately notify the Department and the owner of the building in which the parking structure is located. The QPSI must identify the location of any unsafe condition, advise the owner on the appropriate protective measures to be taken, and include the recommended type and location of public protection in the notification to the Department.
- (ix) Completion of a condition assessment means that the QPSI has conducted a final inspection to determine that the parking structure conditions as described in the compliance report are consistent with the actual conditions. Such final inspection must, at a minimum, include an actual visual assessment and a complete walkthrough of each level dedicated to parking with inspectorial equipment. A drive-by inspection is not acceptable.

(3) Report requirements.

- (i) The QPSI must file with the Department a written compliance report describing the result of the condition assessment, clearly documenting all conditions noted during the inspection, including the physical examination, and stating that the inspection was performed and completed in accordance with Article 323 of Title 28 of the Administrative Code and this rule. The QPSI must also submit a copy of the report to the owner of the building in which the parking structure is located.

- (ii) Technical information in the report must adhere to and follow the sequence and the labeling of the report requirements as listed in subparagraph (iii) of this paragraph and must be provided on such forms and in such format as the Department requires. Additional information may be provided. If a requirement is not applicable, this must be indicated on the report.
- (iii) The report must include an executive overview that consists of a summary of findings and recommendations, a concise statement of the scope of the inspection and findings, the conclusions and recommendations and a determination as to whether the parking structure is categorized as "safe," "SREM," or "unsafe." The report must also include, but not be limited to:
- (A) The address, any a.k.a. addresses, Block and Lot number, the Building Identification Number ("BIN"), the landmark status of the building in which the parking structure is located, and the location from the nearest cross street;
- (B) The name, mailing address and telephone number of the owner of the building in which the parking structure is located, or, if the owner is not an individual, the name, mailing address, telephone number, position/title of a principal of the owner;
- (C) A description of the building, including the total number of stories, the number of stories and/or locations occupied by the parking structure, plan dimensions, Certificate of Occupancy number if available, usage, and age and type of construction, specifying all materials present in the parking structure;
- (D) A description of the all components of the parking structure's gravity and lateral load carrying systems specific to the area being used as a parking structure or the entirety of the building if its sole use is as a parking structure. Where applicable, areas to be included are:
1. Ramps and other spaces used to access parking areas;
  2. In the case of a parking structure located at a floor or floors above floors of other occupancies, the slab and columns immediately below the lowest level of the parking structure;
  3. In the case of a parking structure located at a floor or floors below floors of other occupancies, the slab and beams/joists forming the ceiling of the topmost level of the parking structure;
  4. Any area outside of that described in 1, 2 and 3 that may exhibit deterioration extending from or caused by the structure comprising the parking area.
- (E) A detailed description of any distress, settlements, repairs, or revisions to the structure since the previous compliance report, including, but not limited to, deteriorated framing members, deteriorated joint material,



displacement, cracking, spalling of parking structure components, or other defects or changes;

(F) A detailed description of the procedures used in making the condition assessment;

(G) The following information:

1. The extent and location of all physical examinations performed;

2. The names, addresses, telephone numbers, and license or registration numbers for contractors and consultants involved in the condition assessment;

3. A location diagram of a discernable scale and with a north arrow, indicating the main entrance, locations of other entrances, and nearest cross street and locations and dates of physical examinations; and

4. Dates of the start and completion of the condition assessment.

(H) A description, classification, and mapping of each significant condition observed including deterioration and any movement detected and the apparent integrity of the joints and wearing surfaces. The description must also include a list of all appurtenances and their condition. Each condition must be classified as safe, unsafe or SREM. If the parking structure is classified as unsafe or SREM, the compliance report must include the locations and descriptions of all unsafe or SREM conditions. If unsafe conditions are noted, the report must recommend the type and location of public protection or clearly delineate the extent of areas that have been cordoned off and the methods used. Photographs must be labelled and the report must include key plans and locator drawings documenting these conditions. Guards and railings must be inspected to ensure that their components (balusters, intermediate railings and panel fillers) are positively secured against movement (e.g. by welds, bolts or screws). If any guard or railing is found not to be positively secured, the condition is classified as unsafe and must be made safe pursuant to the requirements of paragraph (5) of subdivision (c) of this section;

(I) An analysis of the causes of the conditions reported as unsafe or SREM;

(J) A detailed status report of maintenance work performed up to the date of submission of the report and the maintenance plan implemented for the parking structure;

(K) A blank annual observation checklist as described in section 28-323.2 of the Administrative Code prepared by the QPSI specifically for the parking structure in question

(L) Where a parking structure is categorized with a final rating SREM:

1. A plan detailing the proposed monitoring program;
2. The name of the engineer performing the monitoring;
3. A stability analysis of the parking structure that reports the required structural loading conditions and the calculated load carrying capacity of typical and worst case structural framing members which shows that the structure is stable under current and expected loading conditions; and
4. It is to be explicitly stated if only repairs are required with no monitoring.

(M) A comparison of currently observed conditions with conditions observed during the previous report filing cycle condition assessments, including the status of the repairs or maintenance performed with respect to the prior conditions. The following must be included and discussed:

1. Work permit numbers relating to parking structure repairs;
2. Job numbers, status and sign-off dates for any parking structure repair related jobs, where applicable; and
3. Violation numbers of any open Environmental Control Board (“ECB”) violations and the status of the repairs of the conditions cited in the ECB violations that are directly associated with the parking structure;

(N) Recommendations for repairs or maintenance of SREM and unsafe conditions, including:

1. If a parking structure is categorized as SREM:
  - A. The recommended time frame for such repairs or maintenance to be performed, which must indicate the date by which the work must be performed (MM/DD/YYYY) to prevent the conditions from becoming unsafe and not the date on which work is planned or scheduled;
  - B. Time frames of less than one year, “ASAP,” or “immediately,” shall not be accepted.
2. If a parking structure is categorized as unsafe:
  - A. The QPSI must provide a recommended time frame for repairs to be performed to bring the parking structure to SREM or safe status, and must indicate the date by which the work will be completed (MM/DD/YYYY);
  - B. Time frames of more than six years will not be accepted.

(O) A list and description of the work permits required to accomplish the necessary work. If no work permits will be required, the reason must be indicated;

(P) All photographs must be color, clearly legible, dated, and high resolution. Digital photos must be a minimum of 800 x 600 pixels. Photographs must be arranged into PDF uploads of no larger than 11" x 17". The following photos must be submitted:

1. Elevation photos. Color photographs of all entrances, the primary address and at least one view of each entire street front elevation.

2. Representative photos of each parking level showing general conditions.

3. Detailed condition photos. Color photographs of specific conditions must be clearly labeled and indicate the status designation. Detailed conditions must be located on the mapping of the parking structure required by item H of this subparagraph (iii).

A. All SREM and unsafe conditions must be catalogued.

B. If parking structure status is safe, submit a minimum of one representative photograph for each structural element and appurtenance.

(Q) The classification of the parking structure for the current report filing cycle, as determined by the following guidelines:

1. If there are no unsafe conditions and no conditions that are SREM, then the parking structure shall be classified as safe;

2. If there is at least one unsafe condition, then the parking structure must be classified as unsafe.

3. If there is at least one condition that is SREM and there are no unsafe conditions, then the parking structure shall be classified as SREM. A compliance report may not be filed describing the same condition at the same location as SREM for two consecutive report filing cycles. The QPSI must certify that all of the conditions identified in the previous report as requiring repair have been corrected or the parking structure shall be classified as unsafe;

(R) The seal and signature of the QPSI under whose direct supervision the condition assessment was performed.

(4) Report filing requirements.

- (i) The requirements of this rule apply to all parking structures. The Commissioner shall determine which additional buildings and/or parts thereof are required to file in accordance with this rule.
- (ii) Owners of buildings in which parking structures are located are required to file a compliance report at least once during each six-year report filing cycle established by the Department.
- (iii) An acceptable report must be filed within the applicable two-year filing window to avoid a late filing penalty.
- (iv) The report must be submitted to the Department along with a filing fee as specified in the rules of the Department.
- (v) Staggered filing cycle: Beginning January 1, 2022 an acceptable report for each parking structure to which this rule applies is due in accordance with the following filing windows:
  - (A) For parking structures located within the Borough of Manhattan Community Districts 1 through 7 an acceptable report must be filed within the two-year filing window starting January 1, 2022, and every sixth year thereafter.
  - (B) For parking structures located within all Community Districts in the Borough of Manhattan not listed in (A), above, and all Community Districts in the Borough of Brooklyn, an acceptable report must be filed within the two-year filing window starting January 1, 2024, and every sixth year thereafter.
  - (C) For parking structures located within all Community Districts in the Boroughs of Queens, the Bronx and Staten Island an acceptable report must be filed within the two-year filing window starting January 1, 2026, and every sixth year thereafter .

Exceptions:

- 1. Starting in Cycle 2, owners whose buildings have their most recent status as “No Report Filed” may file a report prior to the start of their designated filing window provided that all applicable civil penalties set out in subdivision (e) of this section are paid at the time of filing.
  - 2. If the building in which the parking structure is located is included in the FISP, the owner may choose to change the assigned filing window of the parking structure compliance report to a parking structure filing window that corresponds with the next FISP filing window so that both reports may be filed at the same time. This shall be the reassigned parking structure filing window. The owner must inform the Department 180 days prior to the end of the assigned parking structure filing window if this option is chosen. If an owner chooses this option, the owner must continue to file under the reassigned parking structure filing window.
- (vi) Initial compliance reports for new buildings in which parking structures that must comply with this rule are located must be filed as follows:

- (A) The report must be filed six years from the date the first Temporary Certificate of Occupancy, Interim Certificate of Occupancy or Certificate of Occupancy was issued, if that date falls within the applicable filing window as provided in subparagraph (v) of this paragraph; or
- (B) If six years from the date the first Temporary Certificate of Occupancy, Interim Certificate of Occupancy or Certificate of Occupancy was issued falls outside the applicable filing window as provided in subparagraph (v) of this paragraph, then the initial report must be filed within the applicable two-year filing window for the next six-year cycle.
- (vii) A report must be filed within 60 days of the date on which the QPSI completed the condition assessment (final inspection date), as described in subparagraph (ix) of paragraph (2) of subdivision (c) of this section. Failure to file a report within 60 days of the completed condition assessment requires a new condition assessment.
- (viii) If the report is not acceptable and is rejected by the Department, a revised report must be filed within 45 days of the date of the Department's rejection, after which the original file date will no longer be valid.
- (ix) If the report is not acceptable after two rejections, a new initial filing fee as specified in the rules of the Department is required.
- (x) Failure to submit a revised report addressing the Department's objections within one year of the initial filing requires a new condition assessment, including a new physical examination.
- (xi) A subsequent report indicating revised conditions may be filed within the six-year report filing cycle to change a parking structure's filing status or the recommended time frame for repairs of SREM or unsafe conditions for that cycle.

(5) *Unsafe conditions.*

- (i) Upon filing a report of an unsafe condition with the Department, the owner of the building in which the parking structure is located, his or her agent, or the person in charge of the building in which the parking structure is located must immediately commence such repairs or reinforcements and any other appropriate measures such as cordoning off areas that may be dangerous, erecting fences, sidewalk sheds and safety netting as may be required to secure the safety of the public and to make the building's structure and appurtenances conform to the provisions of the Administrative Code.
- (ii) All unsafe conditions must be corrected within 90 days from the submission of the compliance report.
- (iii) If, due to the scope of the repairs, the unsafe conditions cannot be corrected within the required 90 days, the QPSI must recommend a timeframe for repairs as noted in item (N) of subparagraph (iii) of paragraph (3) of subdivision (c). The owner of the building in which the parking structure is located is responsible for ensuring that the conditions described in the compliance report as unsafe are corrected and

all actions recommended by the QPSI are completed within this timeframe. The owner must notify the Department of any deviation from the timeframe to make corrections as specified in the QPSI's report. The subsequent report must include supporting documents from the QPSI justifying the request for a new time frame.

(iv) Within two weeks after repairs to correct the unsafe condition have been completed, the QPSI must inspect the premises. The QPSI must promptly file with the Department a detailed amended report stating the revised report status of the parking structure, along with a filing fee as specified in the rules of the Department and the owner must obtain permit sign-offs as appropriate. If the report is not acceptable and is rejected by the Department, a revised report must be filed within 45 days of the date of the Department's rejection after which the original filing date will no longer be valid. If the report is not acceptable after two rejections, a new amended filing fee as specified in the rules of the Department is required. Protective measures must remain in place until an amended report is accepted; however, the QPSI may request permission for the removal of the protective measures, shoring or any other public safety measures upon submission of a signed and sealed statement certifying that an inspection was conducted, the conditions were corrected, and the protective measures are no longer required.

(v) The Commissioner may grant extensions of up to 90 days to complete the repairs required to correct an unsafe condition upon receipt and review of an extension application submitted by the QPSI, together with:

(A) Notice that the premises have been secured for public safety by means of a fence or other appropriate measures as may be required;

(B) A copy of the contract indicating scope of work to correct unsafe conditions;

(C) The QPSI's estimate of length of time required for repairs;

(D) A statement of all applicable permit requirements;

(E) A fee as specified in the rules of the Department;

(F) An unforeseen delay or circumstance (e.g., weather, labor strike, fire) affecting the substantially completed work; and

(G) Progress photos showing current repairs.

Note: Financial considerations shall not be accepted as a reason for granting an extension.

(6) *Conditions that are safe with repairs and/or engineering monitoring (SREM).*

(i) The owner of the building in which the parking structure is located is responsible for ensuring that the conditions described in the compliance report as SREM are corrected and all actions recommended by the QPSI are completed within the time frame recommended by the QPSI and are not left to deteriorate into unsafe conditions. It is the owner's responsibility to notify the Department of any deviation from the timeframe to make corrections as specified in the QPSI's report. The

subsequent report must include supporting documents from the QPSI justifying the request for a new time frame.

(ii) A condition assessment is required within three years of the initial filing date and an amended report detailing the results of that assessment must be filed with the Department in accordance with section 28-323.9.1 of the Administrative Code within 60 days of the final inspection date. The amended report must include, but not be limited to:

(A) The scope of the monitoring campaign, if applicable, including but not limited to the name of the engineer performing the monitoring, the type and frequency of monitoring, and all findings;

(B) The status of the conditions identified in the most recent compliance report classifying the building as SREM, including any maintenance and repairs undertaken; and

(C) A description and classification of any new conditions identified and how they have been or will be addressed, including any repairs or maintenance.

Exception: If the SREM compliance report is filed less than 1 year from the start of the next cycle filing window, a condition assessment is not required and an amended report does not need to be filed with the Department.

(iii) A report may not be filed describing the same condition and pertaining to the same location on the parking structure as SREM for two consecutive report filing cycles.

(iv) The QPSI must certify the correction of each condition reported as requiring repair in the previous report filing cycle, report conditions that were reported as SREM in the previous report filing cycle as unsafe if not corrected at the time of the current inspection, or report corrections that were made in the previous cycle as unsafe if they need further or repeated repair at the time of the current cycle.

(d) Annual observation. A building owner is responsible to have an annual observation performed in accordance with the provisions of section 28-323.4 of the Administrative Code. Such annual observation must be based on the checklist included in the most recent compliance report accepted by the Department and as described in section 28-323.2 of the Administrative Code.

(1) This checklist is to be completed annually by the owner or by a competent person on behalf of the owner each year after submission of the current cycle's report has been accepted and until the next cycle's report has been accepted.

(2) The completed checklists must be kept on site and be made available to the Department and the QPSI upon request.

(3) The person performing the annual observation shall notify the owner and the Department immediately upon discovering any conditions that may be hazardous to the public.

(e) Civil Penalties.

- (1) Late filing. An owner who submits a late filing shall be liable for a civil penalty of one thousand dollars (\$1,000) per month, commencing on the day following the filing deadline of the applicable filing window period and ending on the filing date of an acceptable initial compliance report.
- (2) Failure to file. In addition to the late filing penalty, an owner who fails to file the required acceptable compliance report shall be liable for a civil penalty of five thousand dollars (\$5,000) per year beginning one year after the end of the applicable filing window.
- (3) Failure to correct unsafe conditions. In addition to the penalties provided in this section, an owner who fails to correct an unsafe condition within 90 days shall be liable for a civil penalty of one thousand dollars (\$1,000) per month 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 compliance report by the Department indicating the unsafe conditions were corrected, or an extension of time is granted by the Commissioner.
- (4) Failure to correct SREM conditions. An owner who fails to correct a SREM condition reported as requiring repair in the previous report filing cycle and subsequently files the condition as unsafe shall be liable for a one-time civil penalty of two thousand dollars (\$2,000).
- (5) 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. Such proof must include, but not be limited to, a copy of an acceptable initial compliance 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 QPSI that the unsafe conditions observed at the parking structure were corrected and the violation was dismissed.
- (ii) Challenges must be made in writing within 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.

(f) Full or partial penalty waivers; eligibility and evidentiary requirements. Owners may request a full or partial waiver of penalties assessed for violation of Article 323 of Title 28 of the Administrative Code, and/or rules enforced by the Department. Requests must be made in writing and must meet eligibility and evidentiary requirements as follows:

(1) Owner status.

- (i) A new owner requesting a waiver due to change in ownership must submit proof of a recorded deed evidencing transfer of ownership to the current owner after penalties were incurred, as well as any other documentation requested by the Department, and only in one of the following circumstances:
  - (A) A new owner of a property previously owned by a government entity requesting a waiver due to change in ownership must submit official



documentation from the government entity affirming that the premises was entirely owned by the government entity during the period for which a waiver is requested.

(B) A new owner who receives a notice of violation for failure to comply with the requirements of this section or Article 323 of Title 28 of the Administrative Code that was issued to the property after the transfer of ownership must submit a recorded deed showing the date that the property was acquired or transferred. The waiver period shall be from the date of the deed to the date of the violation issuance.

(ii) An owner may be granted a waiver of penalties upon submission of a copy of an order signed by a bankruptcy court judge.

(iii) If a state of emergency is declared that prevents an owner from conducting an inspection, filing a report or correcting unsafe conditions, an owner may be granted a waiver of penalties.

(2) *Building status.* An owner requesting a waiver because the parking structure was demolished must submit city or departmental records evidencing the demolition of the parking structure prior to the filing deadline.

**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, that the Department of Buildings hereby adopts the amendments to section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York regarding approved agencies, and sections 103-01, 103-02 and 103-05 of Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York regarding low-pressure boilers, elevators, and high-pressure boilers, respectively.

This rule was first published on October 28, 2021 and a public hearing thereon was held on November 29, 2021.

Dated: 12/03/2021  
New York, New York

  
\_\_\_\_\_  
Melanie E. La Rocca  
Commissioner

## Statement of Basis and Purpose of Rule

Boilers are regulated by Article 303 of Title 28 of the New York City Administrative Code. Elevator provisions are found in Articles 304, 401, 421 and 422 of Title 28.

Chapters 750 of 2019 and 55 of 2020 of the laws of the State of New York amended some terminology in Articles 401, 421 and 422 of Title 28 of the New York City Administrative Code. Local Law 126 of 2021, which was passed by the City Council on October 7, 2021 and became law after it was returned unsigned by the Mayor, further amends the articles listed above. Those amendments relate to filing timeframes for inspection and test reports and affirmations of correction and clarifying the difference between elevator inspections and tests and are effective January 1, 2022. These rules are amended to reflect the changes made by those laws.

In addition, these rules are amended to align the procedures and filing requirements among low- and high-pressure boilers and elevators.

Specific changes, apart from those described above, include

### Rule 101-07 – Approved Agencies:

- The heading of subdivision (c) is amended to reflect that the provisions of the subdivision that are not amended also cover responsibilities of approved agencies.
- Obsolete provisions and language that is now in rule 103-02 and Article 304, 421 or 422 of Title 28 are deleted from paragraph (4) of subdivision (c).
- Language is added to paragraph (4) of subdivision (c) to require the immediate reporting to the department of a fatality or injury related to an elevator agency's work.
- Language that has been moved to rule 103-01 is deleted from paragraph (5) of subdivision (c).

### Rule 103-01 – Low-pressure boilers:

- Language is added to subdivision (d) to clarify an owner must hire a qualified boiler inspector.
- The requirements from rule 101-07 are moved to subdivision (d), where they are more appropriate.
- Language is added to subdivision (d) to specify that the acceptance of a boiler filing is contingent on the fee and any civil penalty payment being honored.
- A new penalty of \$1,000 per boiler for failure to file an affirmation of correction is added to subdivision (f).
- The grounds for waiver of penalties in paragraph (6) of subdivision (f) is amended to remove limits on new owners and language is added to specify what proof is required for new owners and work in progress.
- Subdivision (g) is amended to clarify when penalties accrue for failure to file a notice of removal or disconnection of a boiler. In addition, the penalty for such failure to file is increased from \$500 to \$1,000 per boiler to match the penalty for failure to file a report.
- The reference to Table 28-112.7.2 of the Administrative Code is removed from subdivision (h) as Local Law 126/21 has removed boiler filing fee amounts from that table and has added a reference to department rules.

### Rule 103-02 – Elevators

- The term “final certificate” in subdivision (c) is renamed “certificate of compliance” to match the language in section 28-116.4.1 of the Administrative Code.
- Language is added to subdivision (d) to specify that the acceptance of an elevator filing is contingent on the fee and any civil penalty payment being honored.
- Language is added to subdivision (d) to state that periodic inspection reports for private residence elevators do not need to be filed with the department but must be kept by the owner for six years.
- Language is added to subdivisions (h) and (i) regarding requesting extensions of the filing deadline in accordance with Article 304 of Title 28 of the Administrative Code.
- A new penalty of \$3,000 per elevator for failure to file periodic inspection reports is added to subdivision (i).
- The grounds for waiver of penalties in subdivision (k) is amended to remove limits on new owners and to add what proof is required for this waiver.
- The reference to the Table 28-112.7.2 of the Administrative Code is removed from subdivision (l) as Local Law 126/21 has removed elevator filing fee amounts from that table and has added a reference to department rules.

### Rule 103-05 – high-pressure boilers:

- The reference to Table 28-112.7.2 of the Administrative Code is removed from subdivision (d) as Local Law 126/21 has removed boiler filing fee amounts from that table and has added a reference to department rules.
- Language is added to subdivision (e) to specify that the acceptance of a boiler filing is contingent on the fee and any civil penalty payment being honored.
- Subdivision (h) is deleted as it contains an obsolete provision regarding notice of address changes.
- A timeframe for required 48-hour notice of a planned boiler shutdown is added to re-lettered subdivision (h).
- A new penalty of \$1,000 per boiler for failure to file an affirmation of correction is added to subdivision (i).
- The grounds for waiver of penalties in subdivision (i) is amended to remove limits on new owners and to add what proof is required for this waiver.
- Subdivision (j) is amended to clarify when penalties accrue for failure to file a notice of removal or disconnection of a boiler. In addition, the penalty for such failure to file is increased from \$500 to \$1,000 per boiler to match the penalty for failure to file a report.

The Department of Buildings’ authority for these rules is found in sections 643 and 1043 of the New York City Charter and Articles 303 and 304 of Title 28 of the New York 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.

Section 1. Paragraphs (11) and (12) of subdivision (a) of section 101-07 of subchapter A of chapter 100 of Title 1 of the rules of the City of New York are amended to read as follows:

- (11) *Qualified elevator [inspector]director.* An individual [who has obtained a Qualified Elevator Inspector (“QEI”) Certificate from an American National Standards Institute (“ANSI”)-accredited agency to witness elevator inspections and tests] licensed in accordance with Article 421 of Title 28 of the Administrative Code.
- (12) *Qualified elevator inspector [supervisor].* An individual [who has obtained a Qualified Elevator Inspector Supervisor (“QEIS”) Certificate from an ANSI-accredited agency to supervise a QEI’s witnessing and/or to witness directly elevator inspections and tests] licensed in accordance with Article 422 of Title 28 of the Administrative Code.

§2. The title and paragraphs (4) and (5) of subdivision (c) of section 101-07 of subchapter A of chapter 100 of Title 1 of the rules of the City of New York are amended to read as follows:

- (c) Qualifications and responsibilities of approved agencies.
  - (4) Elevator [inspection] agencies.
    - (i) Notwithstanding anything to the contrary set forth herein, elevator [inspection] agencies, including their directors and inspectors [that] who currently hold or hereafter secure a [Certificate of Approval]license from the department issued pursuant to [Chapter 11 of Title 1 of the Rules of the City of New York] Article 421 or 422 of Title 28 of the Administrative Code shall be deemed approved elevator [inspection] agencies without further requirement of registration or accreditation, for the purpose of conducting the periodic elevator inspections and tests required by section 28-304.6 of the Administrative Code.
    - [(ii)] Written or oral tests required by 1 RCNY 11-01(a)(2)(ii) shall require familiarity with the standards set forth in section 3001.2 and appendix K of the Building Code, including chapter K3, pertaining to existing elevators, as set forth in the rules of the department.]
    - [(iii)](ii) Tests and inspections performed by an approved elevator [inspection] agency on behalf of the owner [after the effective date of this section] shall be performed in compliance with [section 3014.1 of the Building Code and the reference standards set forth in Appendix K of the Building Code] Article 304 of Title 28 of the Administrative Code and section 103-02 of this chapter.
    - [(iv)](iii) Periodic elevator inspections and tests performed by an approved elevator [inspection] agency on behalf of the owner as required by section 28-304.6.1 [and Section 3.10.12 of chapter K3 of Appendix K] of the Administrative Code shall be performed in compliance with [the following requirements:] section 103-02 of this chapter.
    - [(A)] The test must be performed by an approved elevator inspection agency and witnessed by an approved elevator inspection agency or a QEI or QEIS authorized pursuant to clause (C) of this subparagraph that is not affiliated with the agency performing the test.

- (B) The approved elevator inspection agency responsible for performing the test shall designate skilled elevator trade personnel in its employment to perform the test under the direct supervision of a director who holds a Certificate of Approval from the department issued pursuant to the 1968 Building Code and 1 RCNY 11-01. Such designation by the director shall be in writing and shall indicate the director's endorsement of the qualification of the personnel designated to conduct the test. Such personnel may perform the test through December 31, 2011. Thereafter, the test shall be performed by an inspector or director who holds a Certificate of Approval from the department.
- (C) The approved elevator inspection agency responsible for witnessing the test shall designate an inspector in its employment who holds a Certificate of Approval from the department issued pursuant to the 1968 Building Code and 1 RCNY 11-01 to witness such test. Individuals who have applied for and passed a department-sponsored/administered examination for a Private Elevator Inspection Agency Director or Private Elevator Inspection Agency Inspector Certificate of Approval examination by July 1, 2010 may continue to witness the test based on satisfaction of the qualifications set forth in items 1 through 3 below, through December 31, 2011 or until the issuance or denial of a Certificate of Approval from the department, whichever is sooner.
1. A valid QEI or QEIS Certificate;
  2. A minimum of five (5) years of satisfactory experience, within the last seven (7) years immediately preceding the date of affirmation from the director of the agency as prescribed in item 3 below, in the assembly, installation, repair, design, or inspection of elevators, or as an elevator mechanic;
  3. An affirmation from the director of the agency, on such form as the commissioner shall require, attesting that the QEI or QEIS
    - A. Is familiar with the construction and maintenance of elevators, escalators and related equipment and the standards set forth in Chapter 30 and appendix K of the Building Code, including appendix K3, pertaining to existing elevators, in the rules of the department; and
    - B. Is of good moral character so as not to adversely impact upon his or her fitness to witness elevator inspections.

The commissioner may refuse to accept such certification for any of the reasons specified as grounds for revocation or suspension set forth in subdivision (d) of this section.
- (D) The witnessing inspector shall affix the test/inspection date and his or her agency's Certificate of Approval number to the inspection certificate at the site. The witnessing inspector and the director of

the witnessing agency shall further sign and indicate that agency's Certificate of Approval number in the test report.]

[(v)](iv) Agency employee restriction. An employee of an elevator [inspection] agency may work only for such agency and for one agency director at a time.

(v) Reporting of incidents. The elevator agency director, on behalf of the elevator agency, must immediately report to the department any fatality or injury of any individual that occurs in connection with the elevator agency's operations. Such reporting shall be in a form and manner prescribed by the department.

(5) Boiler inspection agencies.

(i) Notwithstanding anything to the contrary set forth herein, a qualified boiler inspector shall be deemed an approved boiler inspection agency, without further requirement of registration or accreditation, for the purpose of conducting the periodic inspections required by section 28-303.2 of the Administrative Code.

(ii) Periodic boiler inspections required by section 28-303.2 of the Administrative Code shall be performed in compliance with [the following requirements:] sections 103-01 and 103-05 of this chapter.

[(A) Low pressure boiler annual inspection reports shall be submitted for each calendar year on such forms and in such manner as required by the department. The report shall include:

1. An inspection report for each boiler identifying the inspector or inspection agency;
2. The owner's annual statement completed in compliance with section 28-303.67 of the Administrative Code; and
3. A certification by the owner that identified defects have been corrected. The report must be filed within 45 days from the date of the inspection but in no event later than December 31<sup>st</sup> of each calendar year. Any required part of the report not filed within 45 days from the date of the inspection and on or before December 31<sup>st</sup> shall be deemed late and shall subject the owner to penalties as provided in Administrative Code sections 28-201.2.2 and 28-202.1 and the rules of the department.

(B) A low pressure boiler annual inspection must be conducted between January 1<sup>st</sup> and December 31<sup>st</sup> of the calendar year for which an owner submits the report. Low pressure boiler annual inspections must be conducted at least six months apart. The inspector must verify that a valid department-issued boiler number is affixed to the boiler and such number must be used in all correspondence between the inspector and the department. If an inspection reveals any dangerous condition in a boiler that threatens life or safety and that requires an immediate shut down of the boiler, or reveals an unregistered boiler, the inspector must immediately notify the boiler division at the department of the condition via fax or email at the number or address provided on the department's website, <http://www.nyc.gov/buildings>.

- (C) Low pressure boiler annual inspection reports not filed within 12 months from the date of the inspection will be deemed expired. Expired inspection reports will not be accepted by the department to satisfy the annual inspection report filing requirement as prescribed by section 28-303.7 of the Administrative Code and this section.]

§3. Subdivisions (c) through (h) of section 103-01 of subchapter C of chapter 100 of Title 1 of the rules of the City of New York are amended to read as follows:

(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 of that report, [forty-five (45)] fourteen (14) days from the inspection date.

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

(3) Inspection cycle. January 1<sup>st</sup> through December 31<sup>st</sup> 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 of that report filed after the [forty-five (45)] fourteen (14) day filing deadline but in no event [more than twelve (12) months from the date of the inspection]later than January 14<sup>th</sup> of the calendar year immediately following the inspection cycle.

(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) Qualified boiler inspector. A qualified boiler inspector as defined in Section 101-07 of these rules.

~~[(6)](7)~~ Removal or disconnection. Removal or discontinuance, pursuant to Section [28-303.8]28-303.9 of the Administrative Code.

~~[(7)](8)~~ 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 must comply with the inspection requirements and must] The owner shall be responsible for hiring a qualified boiler inspector to conduct inspections and file low pressure boiler annual inspection reports pursuant to Article 303 of Title 28 of the Administrative Code and in accordance with [Section 101-07 of this chapter.]the following provisions:

(1) Low pressure boiler annual inspection reports must be submitted for each inspection cycle on such forms and in such manner as required by the department. The report must include:

(i) An inspection report for each boiler identifying the qualified boiler inspector or inspection agency;

(ii) An affirmation of correction that identified defects that have been corrected, if applicable; and

(iii) The filing fee as provided in subdivision (h).



[(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.]

(2) If an inspection reveals any dangerous condition in a boiler that threatens life or safety and that requires an immediate shut down of the boiler, the inspector must immediately notify the department's boiler division of the condition via email at the address provided on the department's website, [www.nyc.gov/buildings](http://www.nyc.gov/buildings). Notification of an unregistered boiler must be made by filing a report electronically in a form and manner required by the department.

(3) The filing is deemed accepted upon payment of the fee(s) and any civil penalties due. If the payment is not honored, the filing will be deemed invalid and the owner may receive a violation for failure to file and be subject to all applicable penalties as set forth in subdivision (f).

(e) Acceptance of filings. Inspection reports filed after the [forty-five (45)] fourteen (14) day filing deadline but [within twelve (12) months of the inspection date]on or before January 14<sup>th</sup> of the calendar year immediately following the inspection cycle will be considered late filings and will be subject to the appropriate civil penalties as set forth in subdivision (f) of this section. Reports filed after such [twelve (12) month]late filing period will be considered expired. In such cases, owners will be subject to the appropriate civil penalties for failure to file an inspection report, as set forth in subdivision (f) of this section, and the department will require a new inspection to be performed for the current inspection cycle and a new report filed in accordance with this section.

(f) Civil penalties, low pressure boiler annual inspection report and affirmation of correction.

(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]A low pressure boiler annual inspection report not filed within [twelve (12) months from the date of the inspection]the late filing period 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 of correction. 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] copy of the filed inspection report from the [approved] qualified boiler inspector who conducted the inspection [with his or her seal stating] indicating that the inspection was completed within the inspection cycle for which the report was due.

(3) Failure to file the affirmation of correction. An owner who fails to correct the defects within the applicable time after the inspection and to file the affirmation of correction by the date the affirmation was due, stating that all defects found during the inspection have been corrected pursuant to Section 28-303.5 of the Administrative Code shall be liable for a civil penalty of one thousand dollars (\$1000.00) per boiler.

~~[(3)]~~(4) 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 proof of electronic payment of such fee; or

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

~~[(4)]~~(5) 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] an affirmation of correction stating that identified defects have been corrected in accordance with [Section 101-07 of this chapter, upon submission of] Article 303 of Title 28 of the Administrative Code, by submitting 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, submitted with the filing fee and shall be made on such forms and in such manner as required by the commissioner.

~~[(5)]~~(6) Waiver of penalties. An owner may request a waiver of penalties assessed for violation of [Section 28-303.2] Article 303 of Title 28 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 and submitted with the filing fee.

(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. Proof includes a recorded deed evidencing transfer of ownership to the current owner after penalties were incurred, as well as any other documentation requested by the Department. [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”] and a decision from the bankruptcy court.

(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] submission for removal or disconnection of the boiler.

(B) New or replaced. That the [First Test]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. For the purposes of this subparagraph, “proof” means the filing of a boiler application including a projected date of completion of work. Upon completion of such work, a new inspection and test report must be filed in accordance with this section.

(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]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.

(g) 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)] with the filing fee in accordance with Section [28-303.8] 28-303.9 of the Administrative Code, or filing [of] such [form past] notice more than thirty (30) days [of] after 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,] by thirty (30) days after the end of the inspection cycle shall be liable for a civil penalty of not less than [five hundred]one thousand dollars [(\$500.00)](\$1,000) per boiler.

(2) Untimely filing. An owner who files such notice [past] more than thirty (30) days [from] after the date of removal or disconnection, but [within twelve (12) months from such date,] by thirty (30) days after the end of the inspection cycle 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] the submission for removal or disconnection of the boiler 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 filing fee [for the filing of a Self-Certification of Removed or Existing Boiler(s) form] or proof of electronic payment of such fee.

(h) 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].

§4. Section 103-02 of subchapter C of chapter 100 of Title 1 of the rules of the City of New York is amended to read as follows:

§103-02 Elevator inspections and tests, filing requirements, penalties and waivers.

(a) Scope. This rule implements Article 304 of Title 28 of the New York City Administrative Code (“Administrative Code”) by specifying the periodic elevator inspection and testing requirements to be conducted by an approved elevator [inspection] agency on behalf of the owner and the processes through which the department shall regulate the filings of elevator inspection and test reports and elevator affirmations of correction and issue penalties and waivers for failure to file and/or late and untimely filing.

(b) References. See Sections 28-201.2.2, 28-202.1 and Article 304 of Title 28 of the Administrative Code.

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

(1) Approved elevator [inspection] agency. An elevator [inspection] agency as defined in Section 28-401.3 of the Administrative Code, including its directors and inspectors[, that currently holds or hereafter secures a Certificate of Approval from the department] who are licensed pursuant to Articles 421 and 422 of Title 28 of the Administrative Code.

(2) Certificate of compliance. A certificate issued by the department authorizing the operation of an elevator following the satisfactory report of an inspection and test.

~~[(2)]~~(3) Elevator. For the purposes of this rule, such term shall include elevators, escalators, moving walkways, material lifts, vertical reciprocating conveyors (“VRC”), dumbwaiters and other conveying systems.

~~[(3)]~~(4) Filing deadline. For category 1, 3, and 5 [periodic elevator inspection and] test reports, [sixty (60)] twenty-one (21) days from the date of the [inspection and] test. For periodic inspection reports, fourteen (14) days from the date of the inspection.

- [(4) Final certificate. A certificate issued by the department authorizing the operation of an elevator following the satisfactory completion of an inspection and test.]
  - (5) Inspection and test cycle.
    - (i) Category 1. Except as otherwise provided by the commissioner, January first through December thirty-first of each year.
    - (ii) Category 3. Except as otherwise provided by the commissioner, within three (3) years from the month of issuance of a [final] certificate of compliance for a new elevator or within three (3) years from the month of the most recent category 3 periodic inspection and test performed on an existing elevator.
    - (iii) Category 5. Except as otherwise provided by the commissioner, within five (5) years from the month of issuance of a [final] certificate of compliance for a new elevator or within five (5) years from the month of the most recent category 5 periodic inspection and test performed on an existing elevator.
    - (iv) Periodic inspection. Except as otherwise provided by the commissioner, January first through December thirty-first of each year at a minimum of three months from the date of any Category 1 testing or previous periodic inspection. Initial periodic inspections on new installations must be performed in the calendar year following the final acceptance test. For private residence elevators, the periodic inspection and category testing may be performed on the same date.
  - (6) Late filing. An inspection and test report that is filed after the filing deadline.
  - (7) 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 elevator.
  - (8) Periodic inspection and test. For the purposes of this rule, such term shall mean an elevator inspection and test to be conducted in accordance with Table N 1 of Appendix K of the New York City Building Code ("Building Code") and this section by an approved elevator [inspection] agency on behalf of the owner.
  - (9) Waiver. Removal of the obligation to pay a penalty associated with a violation. A waiver does not result in dismissal of the underlying violation.
- (d) Inspection and tests, reports and filing requirements. Periodic elevator inspections and tests conducted by approved elevator[ inspection] agencies on behalf of the owner and reports filed by such agency or owner shall comply with Article 304 of Title 28 of the Administrative Code[, paragraph (4) of subdivision (c) of Section 101-07 of Title 1 of these rules] and the following:
- (1) Category 1, 3 and/or 5 [periodic inspections and] tests and periodic inspections shall be conducted during the inspection and test cycle.
  - (2) Category 1, 3 and/or 5 [periodic inspection and] test reports and periodic inspection reports shall be submitted on forms supplied by the department and in such a manner as required by the commissioner by the filing deadline.
  - (3) Test reports must be filed with the filing fee as provided in subdivision (l).
  - (4) The filing is deemed accepted upon payment of the fee(s) and any civil penalties due. If the payment is not honored, the filing will be deemed invalid and the owner may receive a violation for failure to file and be subject to all applicable penalties as set forth in subdivisions (h) and (i).

(5) Periodic inspection reports for private elevators need not be filed with the department but must be kept for six (6) years and made available to the department upon request.

(e) Correction of defects and affirmation of correction filing requirements. In accordance with Section 28-304.6.6 of the Administrative Code, all defects found on a category [1 periodic inspection and] test or a periodic inspection shall be corrected within [one hundred twenty (120)] ninety (90) days of the inspection [and] or test conducted by an approved elevator [inspection]agency [or owner], with the exception of all hazardous conditions[,] and defects related to firefighters' Phase I emergency recall operations or Phase II emergency in-car operation as required by section 3003.2 of the New York city building code, which shall be corrected immediately. Within [sixty (60)] fourteen (14) days of the date of correction, an affirmation of correction stating that all found and reported defects have been corrected shall be filed [by same] with the department on such forms and in such a manner as prescribed by the commissioner. Failure to comply with this subdivision shall be deemed a major violation.

(f) Acceptance of filings. Late filings of inspection and test reports and/or untimely filings of affirmations of correction shall be accepted by the department as filed upon payment of the appropriate civil penalties as set forth in subdivisions (h) and (i) of this section, if filed within [twelve (12) months of the date the inspection and test was conducted or the date the affirmation was due]the timeframes set forth in subdivisions (h) and (i) of this section. Reports and affirmations filed after such [twelve (12) month period]timeframe shall be deemed expired. In such cases, the appropriate civil penalties shall be paid, a new inspection and test shall be performed for the current inspection and test cycle and a new report filed in accordance with this section.

(g) [Ten-(10) day]Test notifications. In accordance with Section 28-304.6.1.1 of Title 28 of the Administrative Code, the department shall be notified by an approved elevator [inspection]agency on behalf of the owner at least [ten (10)] five (5) calendar days prior to the category 1 (escalators only), 3 and/or 5 [periodic inspection and] testing to be conducted by such approved elevator [inspection] agency. The commissioner may require that such agency provide [ten- (10)] five- (5) calendar day notifications to the department's Elevator Division for all periodic inspections [and tests] if he or she deems it necessary.

(h) Civil penalties – owners of buildings that contain (1) or two (2) single residential units.

(1) Failure to file the [inspection and] test report. An owner who fails to file the category 1, 3 and/or 5 [periodic inspection and] test report for each elevator [within twelve (12) months from the date of the inspection and test] by twenty-one (21) days after the end of the inspection and test cycle, pursuant to Article 304 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of one thousand dollars (\$1000.00) per elevator.

(2) Late filing of the [inspection and] test report. An owner who submits a late filing, but who provides proof that the [inspection and] test took place within the period for which the report was due, shall be liable for a civil penalty of fifty dollars (\$50.00) per month, per elevator, commencing on the day following the filing deadline and ending on the date of submission of [an inspection and]a test report. The total penalty shall not exceed six hundred dollars (\$600.00) per elevator. For the purposes of this paragraph, "proof" shall mean a copy of the elevator [inspection and] test report for the [inspection and] test conducted during the applicable period and, if applicable, a copy of the front and back of a canceled check(s) to the department for [an elevator inspection and test] the filing fee or proof of electronic payment of such fee.

- (3) Failure to file the affirmation of correction. An owner who fails to correct the defects within the applicable time after the [inspection and] test and to file the affirmation of correction [within twelve (12) months from] by the date the affirmation was due, stating that all [category 1] defects found and indicated on the [inspection and] test report have been corrected pursuant to Section 28-304.6.6 of the Administrative Code and subdivision (e) of this section, shall be liable for a civil penalty of one thousand dollars (\$1000.00) per elevator.
- (4) Untimely filing of the affirmation of correction. An owner who fails to correct the defects within the applicable time after the inspection and test and to file such affirmation within [sixty (60) business] fourteen (14) days from the date of correction in accordance with subdivision (e) of this section, shall be liable for a civil penalty of fifty dollars (\$50.00) per month, per elevator, commencing on the day following the date the affirmation was due and ending on the date of submission of the affirmation. The total penalty shall not exceed six hundred dollars (\$600.00) per elevator.
- (5) Extension of the filing deadline. An owner may request an extension of the filing deadline in order to correct defects found during category testing and to file an affirmation of correction stating that identified defects have been corrected in accordance with Article 304 of Title 28 of the Administrative Code by submitting 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 must be made prior to the expiration of the filing deadline, submitted with the filing fee and made on such forms and in such manner as required by the commissioner.

(i) Civil penalties – owners of commercial buildings, mixed use buildings or buildings that contain more than two (2) residential units.

- (1) Failure to file the inspection and test report. An owner who fails to file a category 1 [periodic inspection and] test report for each elevator [within twelve (12) months from the date of the inspection and test] on or by twenty-one (21) days after the end of the inspection and test cycle, pursuant to Article 304 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of three thousand dollars (\$3000.00) per elevator. An owner who fails to file a category 3 or 5 [periodic inspection and] test report for each elevator [within twelve (12) months from the date of the inspection and test] on or by twenty-one (21) days after the end of the inspection and test cycle, pursuant to Article 304 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of five thousand dollars (\$5000.00) per elevator. An owner who fails to file the periodic inspection report for each elevator on or by fourteen (14) days after the end of the inspection and test cycle, pursuant to Article 304 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of three thousand dollars (\$3000.00) per elevator.
- (2) Late filing of the inspection and test report. An owner who submits a category 1 late filing or periodic inspection late filing, but who provides proof that the inspection and test took place within the period for which the report was due, shall be liable for a civil penalty of one hundred and fifty dollars (\$150.00) per month, per elevator, commencing on the day following the filing deadline and ending on the date of submission of a complete report. The total penalty shall not exceed one thousand eight hundred dollars (\$1800.00) per elevator. An owner who submits a

category 3 or 5 late filing, but who provides proof that the inspection and test took place within the period for which the report was due, shall be liable for a civil penalty of two hundred and fifty dollars (\$250.00) per month, per elevator, commencing on the day following the filing deadline and ending on the date of submission of a complete report. The total penalty shall not exceed three thousand dollars (\$3000.00) per elevator. For the purposes of this paragraph, "proof" shall mean a copy of the elevator inspection and test report for the inspection and test conducted during the applicable period and, if applicable, a copy of the front and back of a canceled check(s) to the department for an elevator inspection/test report fee or proof of electronic payment of such fee.

- (3) Failure to file the affirmation of correction. An owner who fails to correct the defects within the applicable time after the inspection and test and to file the affirmation of correction [within twelve (12) months from] by the date the affirmation was due, stating that all [category 1] defects found [on] during the inspection and test and indicated on the report have been corrected pursuant to Section 28-304.6.6 of the Administrative Code and subdivision (e) of this section, shall be liable for a civil penalty of three thousand dollars (\$3000.00) per elevator.
- (4) Untimely filing of the affirmation of correction. An owner who fails to correct the defects within the applicable time after the inspection and test and to file such affirmation within [sixty (60) business] fourteen (14) days from the date of correction in accordance with subdivision (e) of this section, shall be liable for a civil penalty of one hundred and fifty dollars (\$150.00) per month, per elevator, commencing on the day following the date the affirmation was due and ending on the date of submission of the affirmation. The total penalty shall not exceed one thousand eight hundred dollars (\$1800.00) per elevator.
- (5) Extension of the filing deadline. An owner may request an extension of the filing deadline in order to correct defects found during category testing and to file an affirmation of correction stating that identified defects have been corrected in accordance with Article 304 of Title 28 of the Administrative Code by submitting 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 must be made prior to the expiration of the filing deadline, submitted with the filing fee and made on such forms and in such manner as required by the commissioner.

(j) Challenge of a civil penalty. An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this section by providing written proof of a timely and complete inspection and test and filing and/or correction of defects and filing to the department. Examples of such proof shall include, but are not limited to a copy of the elevator inspection/test report for the inspection and test conducted during the applicable period and, if applicable, a copy of the front and back of a canceled check(s) to the department for an elevator inspection and test report fee or proof of electronic payment of such fee. Challenges shall be made in writing within thirty (30) calendar 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.

(k) Waiver of penalties. An owner may request a waiver of penalties assessed for violation of Article 304 of Title 28 of the Administrative Code, [predecessor provisions of the 1968 New York City Building Code] and/or related rules enforced by the department. Requests shall be made in writing and submitted with the filing fee.



- (1) Owner status.
  - (i) 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. Proof includes a recorded deed evidencing transfer of ownership to the current owner after penalties were incurred, as well as any other documentation requested by the Department. [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.]
  - (ii) 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.
  - (iii) 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." ] and a decision from the bankruptcy court.
- (2) Device status. An owner may be granted a waiver of penalties contingent upon the department's acceptance of proof of the following:
  - (i) Removed or dismantled. That a permit was issued by the department for the removal or dismantling of the elevator(s) and that there was department sign-off, [for removal only,] indicating that the elevator was removed or dismantled prior to the inspection and test cycle for which the report was due.
  - (ii) New or replaced. That a [final] certificate of compliance was issued by the department as part of a new installation during the inspection and test cycle for which the report was due.
  - (iii) Work in progress. That there is work in progress for the replacement or installation of a new elevator or a major renovation requiring that the elevator be deactivated during the work. For the purposes of this subparagraph, "proof" shall mean the filing of an elevator application including a projected date of completion of work. Upon completion of such work, a new category 1 [inspection and] test report shall be filed in accordance with this section.
- (3) Building status. An owner may be granted a waiver of penalties contingent upon the department's confirmation of the following:
  - (i) Demolished. That the full demolition of the building occurred prior to the inspection and test cycle for which the report was due and that such demolition was [signed-off]signed off by the department [and/]or that a new building permit has been issued for the property.

- (ii) Sealed or vacated. That the building was ordered to be sealed or vacated by a government agency (i.e. DOB, HPD, FDNY or OEM) or by court order prior to the expiration of the inspection and test cycle for which the report was due.

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

§5. Subdivisions (c) through (f) of section 103-05 of subchapter C of chapter 100 of Title 1 of the rules of the City of New York are amended to read as follows:

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

- (1) Department. The department of buildings.
- (2) External high-pressure boiler annual inspection. An inspection made while the boiler is in operation.
- (3) Filing deadline. For the high-pressure boiler annual inspection report or any part thereof, [forty-five (45)] fourteen (14) days from the date of the inspection.
- (4) First test. An inspection of a newly installed or replaced boiler required for the department to approve its use and operation.
- (5) Inspection cycle. January 1<sup>st</sup> through December 31<sup>st</sup> of the calendar year for which an owner submits the report.
- (6) Inspection type. [There are two inspection types, an] An external high-pressure boiler annual inspection [and] or an internal high-pressure boiler annual inspection.
- (7) Internal high-pressure boiler annual inspection. An inspection made when the boiler is shut down and handholes and manholes or other inspection openings are opened or removed for inspection of the interior.
- (8) Late filing. An inspection report or any part of that report filed after the [forty-five (45)] fourteen (14) day filing deadline but in no event [more than twelve (12) months from the date of the inspection]later than January 14<sup>th</sup> of the calendar year immediately following the inspection cycle.
- (9) 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.
- (10) Qualified boiler inspector. [An] A qualified boiler inspector [who has been issued a certificate of competence by the State Department of Labor and who is employed by an authorized insurance company as a high pressure boiler inspector] as defined in Section 101-07 of these rules.
- (11) Removal or disconnection. Removal or disconnection shall have the same meaning as the term “removal or discontinuance” as used in Section [28-303.8] 28-303.9 of the Administrative Code.
- (12) Waiver. Removal of the obligation to pay a penalty associated with a violation. A waiver does not result in dismissal of the violation.

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

(e) Inspections, tests and filing requirements. The owner shall be responsible for hiring a qualified boiler inspector to conduct [such] inspections [during such upcoming inspection cycle] and tests and file high pressure boiler annual inspection reports pursuant to Article 303 of Title 28 of the Administrative Code. Such inspections shall comply with Article 303 [of Title 28 of the Administrative Code], applicable provisions of the New York State Labor Law and the following:

(1) Internal and external high-pressure boiler annual inspection reports along with the appropriate filing fee(s) shall be submitted for each inspection cycle on such forms and in such manner as required by the department. The reports shall include:

(i) An inspection report for each boiler identifying the qualified boiler inspector; [and]

(ii) An affirmation of correction [from the owner] along with the filing fee stating that identified defects have been corrected, if applicable; and

(iii) The filing fee as provided in subdivision (d).

(2) The reports shall be filed by the filing deadline. Any required part of the report not filed by the filing deadline shall be deemed late and shall subject the owner to penalties as set forth in subdivision [(j)](i) of this section.

(3) The filing is deemed accepted upon payment of the fee(s) and any civil penalties due. If the payment is not honored, the filing will be deemed invalid and the owner may receive a violation for failure to file and be subject to all applicable penalties as set forth in subdivision (i).

~~[(3)]~~(4) High-pressure boiler annual inspections shall be conducted twelve (12) months from the preceding annual inspection of the same inspection type.

~~[(4)]~~(5) Internal and external high-pressure boiler annual inspections shall be performed approximately six (6) months from each other during the inspection cycle.

~~[(5)]~~(6) The inspector must verify that a valid department-issued boiler number is affixed to the boiler, and this number must be used in all correspondence between the inspector and the department.

(7) If an inspection reveals any dangerous condition in a boiler that threatens life or safety and that requires an immediate shutdown of the boiler, [or reveals an unregistered boiler,] the inspector must immediately notify the department's boiler division of the condition via [fax or] email at the [number or] address provided on the department's website, <http://www.nyc.gov/buildings>. Notification of an unregistered boiler must be made by filing a report electronically in a form and manner required by the department.

(f) Acceptance of filings. Inspection reports filed after the [forty (45)] fourteen (14) day filing deadline but [within twelve (12) months of the date the inspection was conducted] on or before January 14<sup>th</sup> of the calendar year immediately following the inspection cycle will be considered late filings and will be subject to the appropriate civil penalties as set forth in subdivision [(j)](i) of this section. Reports filed after such [twelve (12) month]late filing period will be considered expired. In such cases, owners will be subject to the appropriate civil penalties for failure to file a

report as set forth in subdivision [(j)](i) of this section, and the department will require a new inspection to be performed for the current inspection cycle and a new report filed in accordance with this section.

§6. Subdivision (h) of section 103-05 of subchapter C of chapter 100 of Title 1 of the rules of the City of New York is deleted and subdivisions (i) through (k) are re-lettered (h) through (j).

§7. Subdivisions (h) through (j) of section 103-05 of subchapter C of chapter 100 of Title 1 of the rules of the City of New York, as re-lettered by this rule, are amended to read as follows:

(h) Tenant notification. An owner of a building containing a high-pressure boiler(s) shall notify any affected tenants of the [requirements set forth in this section]planned shutdown of the boiler for inspection at least forty-eight (48) hours prior to such shutdown by (i) distributing a notice regarding such plan to each occupied dwelling unit and (ii) posting a notice regarding such plan in a conspicuous manner in the building lobby.

(i) Civil penalties, high-pressure boiler annual inspection report and affirmation of correction.

(1) 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, per inspection type, 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 affirmation of correction. The total penalty shall not exceed six hundred dollars (\$600.00) per boiler, per inspection type. For the purposes of this paragraph, "proof" shall mean a [notarized affidavit] copy of the filed inspection report from the qualified boiler inspector who conducted the inspection [stating] indicating that the inspection was completed within the inspection cycle for which the report was due [and including his or her license number].

(2) Failure to file. An owner who fails to file the high-pressure boiler annual inspection report or any part thereof for each boiler and inspection type [within twelve (12) months from the date of the inspection], 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, per inspection type. A high-pressure boiler annual inspection report not filed within the late filing period shall be deemed expired and shall not be accepted by the department.

(3) Failure to file the affirmation of correction. An owner who fails to correct the defects within the applicable time after the inspection and to file the affirmation of correction by the date the affirmation was due, stating that all defects found during the inspection have been corrected pursuant to Section 28-303.5 of the Administrative Code shall be liable for a civil penalty of one thousand dollars (\$1000.00) per boiler.

[(3)](4) Challenge of civil penalty. An owner may challenge the imposition of any civil penalty authorized 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 high-pressure boiler annual 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 high-pressure boiler annual inspection report fee or proof of electronic payment of such fee; or
- (ii) The department-assigned transmittal number for the electronic disk filing report or DOB NOW tracking number.

~~[(4)]~~(5) Extension of the filing deadline. An owner may request an extension of the filing deadline in order to correct high-pressure boiler defects and to file an affirmation of correction stating that identified defects have been corrected in accordance with Article 303 of Title 28 of the Administrative Code by submitting 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, submitted with the filing fee and made on such forms and in such manner as required by the commissioner.

~~[(5)]~~(6) Waiver of penalties. An owner may request a waiver of penalties assessed for violation of ~~[Section 28-303.7]~~ Article 303 of Title 28 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 and submitted with the filing fee.

(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. Proof includes a recorded deed evidencing transfer of ownership to the current owner after penalties were incurred, as well as any other documentation requested by the Department. [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”] and a decision from the bankruptcy court.

(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 high-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]submission for removal or disconnection of the boiler.

(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. For the purposes of this clause, “proof” shall mean the filing of a boiler [extension request with the department by the filing deadline] application including a projected date of completion of work. Upon completion of such work, [an affirmation of correction] a new inspection and test report shall be filed[with the department] in accordance with this section.

(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]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.

(j) Civil penalties, written notice of removal or disconnection of a high-pressure boiler. Failure to file a written notice of removal or disconnection [(a Self-Certification of Removed or Existing Boiler(s) form)]with the filing fee in accordance with Section [28-303.8] 28-303.9 of the Administrative Code, or filing [of] such notice more than thirty (30) days after the date of the removal or disconnection of a high-pressure boiler shall be deemed a lesser violation and shall subject the owner to penalties as set forth in this subdivision.

(1) Untimely filing. An owner who files such notice more than thirty (30) days after the date of removal or disconnection, but [within twelve (12) months from the end of such thirty (30) days]by thirty (30) days after the end of the inspection cycle, 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 thirty-first (31) day after

the date of removal or disconnection and ending on the date of submission of the notice. The total penalty shall not exceed five hundred dollars (\$500.00) per boiler.

- (2) Failure to file. An owner who fails to file such notice [within twelve (12) months from the end of the thirty (30) days after the date of removal or disconnection]by thirty (30) days after the end of the inspection cycle, shall be liable for a civil penalty of [five hundred] one thousand dollars [~~(\$500.00)~~] (\$1,000) 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] the submission for removal or disconnection of the boiler 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 filing fee [for the filing of a Self-Certification of Removed or Existing Boiler(s) form] or proof of electronic payment of such fee.

**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, that the Department of Buildings hereby adopts the amendments to Section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, and Section 103-09 of Subchapter C of Chapter 100 of Title 1, regarding approved agencies and retaining wall inspections.

This rule was first published on March 3, 2021 and a public hearing thereon was held on April 5, 2021.

Dated: 4/15/2021  
New York, New York

  
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Melanie E. La Rocca  
Commissioner



## **Statement of Basis and Purpose**

The purpose of these rule amendments is to clarify the qualifications and responsibilities of qualified retaining wall inspectors and bring them in line with those of qualified exterior wall inspectors.

The rule adds new requirements regarding the experience and responsibilities of the Qualified Retaining Wall Inspector (QRWI) to ensure inspectors have appropriate knowledge of retaining walls and how to conduct inspections of those walls.

The Department of Buildings' authority for this rule is found in sections 643 and 1043 of the New York City Charter and Article 305 of Title 28 of the 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.

Section 1. Paragraphs (14) through (17) of subdivision (a) of section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York are renumbered paragraphs (15) through (18), and a new paragraph (14) is added, to read as follows:

(14) Qualified retaining wall inspector. An engineer as defined in section 28-101.5 of the administrative code with three years of relevant experience with retaining walls over 10 feet.

§2. Subdivision (c) of section 101-07 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) Retaining wall inspections.

- (i) Inspection of a retaining wall and appurtenances pursuant to section 28-305.4 of the Administrative Code must be performed by or under the direct supervision of a qualified retaining wall inspector.
- (ii) The qualified retaining wall inspector applicant must provide a detailed résumé indicating relevant work experience obtained in any US city or jurisdiction. When relevant experience is obtained while employed by another registered design professional who was signing and sealing such relevant work, a letter must be provided indicating length of the qualified retaining wall inspector applicant's employment and his or her responsibilities.
- (iii) A qualified retaining wall inspector applicant must demonstrate to the commissioner's satisfaction, including performance on any written or oral tests the commissioner may require, that he or she is sufficiently familiar with the Construction Codes, laws and rules pertaining to retaining walls and engineering concepts related to retaining walls.

§3. Paragraph (11) of subdivision (a) of section 103-09 of Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (11) Qualified Retaining Wall Inspector (“QRWI”). [An engineer as defined in section 28-101.5 of the administrative code with three years relevant experience as such experience is] A qualified retaining wall inspector as defined in section 101-07 of the rules of the Department.

§4. Subdivisions (b) through (j) of section 103-09 of Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York are relettered subdivisions (c) through (k), and a new subdivision (b) is added, to read as follows:

(b) Responsibilities of qualified retaining wall inspectors.

- (1) A QRWI must conduct condition assessments and file reports in accordance with this section and section 28-305.4 of the Administrative Code.
- (2) A QRWI must maintain records of inspections and tests for at least six years and must make such records available to the Department upon request.
- (3) A QRWI must maintain insurance coverage as set forth in paragraph (7) of subdivision (b) of section 101-07 of these rules. Copies of such insurance policies must be made available to the Department upon request.

**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 amendments to Sections 5000-01, 5000-02, and 101-07 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding the implementation of the New York City Energy Conservation Code to conform to changes in the New York City Energy Conservation Code that were necessitated by updates to the New York State Energy Code.

This rule was published in the City Record on June 1, 2020 and a virtual public hearing was held on July 1, 2020.

Dated: 7/16/2020  
New York, New York



Melanie E. La Rocca  
Commissioner

## Statement of Basis and Purpose

New York City Council’s Local Law 48 of 2020 (LL 48) was enacted on March 29, 2020, and went into effect on May 12, 2020. LL 48 updates the New York City Energy Conservation Code (“City Energy Code”) to comply with the requirements of the State Energy Law and the 2020 updates to the New York State Energy Conservation Construction Code (“State Energy Code”).

This rule amends 1 RCNY 5000-01, 5000-02 and 101-07 to conform to the City Energy Conservation Code and to implement code requirements.

This rule amends the referenced rules as follows:

### 1 RCNY 5000-01

- adds and removes progress inspections to correspond to City Energy Code requirements that come into effect with Local Law 48 of 2020, including two new required progress inspections related to electric vehicle equipment-ready requirements and expanded air sealing and insulation testing.
- clarifies which versions of REScheck and COMcheck may be used to demonstrate compliance with the City Energy Code.
- clarifies the requirements for submitting supporting documentation.

### 1 RCNY 5000-02

- clarifies that 1 RCNY 5000-02 only applies to the 2016 NYCECC Appendix CA, which are the NYC amendments to ASHRAE 90.1-2013.

### 1 RCNY 101-07

- provides a definition for a qualified commissioning agent.
- clarifies the required documentation for progress inspection reports.
- clarifies that progress inspectors are not required to revise approved construction documents where the performance value of a given space or system is more efficient than the performance value on the approved construction documents.
- clarifies the requirements for approved agencies performing commissioning in accordance with the City Energy Code.

The proposed rule also includes plain language revisions.

References in this proposed rule to the Administrative Code or the New York City Energy Conservation Code mean the Administrative Code of the City of New York or the New York City Energy Conservation Code, respectively, as amended by Local Law 48.

The Department of Buildings’ authority for this rule is found in sections 643 and 1043 of the New York City Charter. Section 5 of Local Law 48 authorizes DOB to promulgate rules implementing the changes to the City Energy Code. Section 3 of Local Law 48 repeals and replaces section 28-1001.2 of the Administrative Code, and includes authority for DOB to issue this proposed rule.

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.

## Proposed Rule Amendment

Section 1. Subdivision (b) of section 5000-01 of Chapter 5000 of title 1 of the rules of the city of New York is amended to read as follows:

(b) *References.* See 2020 New York City Energy Conservation Code (Administrative Code Sections 28-1001.1 et seq.); 2020 New York State Energy Conservation Construction Code (19 NYCRR part 1240); Administrative Code Section 28-104.7.9, Sections BC107.13 and BC110.3.5, Mechanical Code, and Fuel Gas Code; 1 RCNY §101-07 (“Approved Agencies”).

§2. Subdivision (c) of section 5000-01 of Chapter 5000 of title 1 of the rules of the city of New York is amended to read as follows:

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

**ABOVE-GRADE WALL.** An above-grade wall as defined in the Energy Code. This definition differs in the residential provisions and the commercial provisions of the Energy Code.

**ADDITION.** An addition as defined in the Energy Code.

**APPROVED PROGRESS INSPECTION AGENCY.** An approved progress inspection agency as described in subparagraph (iii) of paragraph (3) of subdivision (c) of section 101-07 of the rules of the Department.

**ASHRAE 90.1.** [American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., Standard 90.1-2013 as defined in the New York State Energy Conservation Construction Code and amended by Appendix CA of the Energy Code] ASHRAE 90.1-2016 (as amended) as defined in the Energy Code.

**COMMERCIAL BUILDING.** A commercial building as defined in the Energy Code.

**DESIGN APPLICANT.** An applicant of record who develops, signs and seals the construction drawings. The design applicant may be someone other than the registered design professional who prepares, signs and seals the energy analysis.

**ENERGY CODE.** The New York City Energy Conservation Code (“ECC”), as defined in Chapter 10 of Title 28 of the Administrative Code.

**GRADE PLANE.** A grade plane as defined in the Energy Code. This definition differs from the Building Code definition of Grade Plane.

**HISTORIC BUILDING.** An historic building as [described] defined in the Energy Code.

**PROJECT.** A project as defined in the Energy Code.

**REGISTERED DESIGN PROFESSIONAL.** A registered design professional as defined in the Energy Code.

**RESIDENTIAL BUILDING.** A residential building as defined in the Energy Code.

**STORY.** A story as defined in the Energy Code. This definition differs from the Building Code definition of Story.

**STORY ABOVE GRADE PLANE.** A story above grade plane as defined in the Energy Code. This definition differs from the Building Code definition of Story Above Grade Plane.

**SUSTAINABLE ROOFING ZONE.** A sustainable roofing zone as defined in Chapter 15 of the Building Code. Note that this is a Building Code requirement and not an Energy Code requirement.

**THERMAL BRIDGE.** A thermal bridge as defined in the Energy Code.

§3. Subdivision (d) of section 5000-01 of Chapter 5000 of title 1 of the rules of the city of New York is amended to read as follows:

(d) *Applicability.*

(1) *Applicable version and edition of Energy Code.* Applications must comply with the Energy Code version and edition in effect when the application is filed, continuing through construction and sign-off of the application by the Department.

(2) Residential building projects. All applications related to a single residential building project must follow ECC Chapters R2 through R6.

[(2)](3) Commercial building projects. All applications related to a single commercial building project must follow either ECC Chapters C2 through C6 or ASHRAE 90.1 in its entirety [ and as modified by ECC Appendix CA].

(i) *ECC Compliance Path.* Vertical fenestration is allowed up to 30% of the gross above-grade wall area, prescriptively. Commercial buildings with vertical fenestration exceeding 30% of the above-grade wall must provide daylighting controls in required daylight zones in accordance with ECC provisions to a maximum fenestration area of 40% of the gross above-grade wall area. Alternatively, commercial buildings with vertical fenestration exceeding the prescriptive requirements for maximum vertical fenestration area may show compliance using the Component Alternative Method in Section C402.1.5, through the use of COMcheck.

(ii) *ASHRAE 90.1 Compliance Path.* Vertical fenestration is allowed up to 40% of the gross wall area, prescriptively. If the vertical fenestration exceeds 40% of the gross wall area, the design team must use energy modeling in accordance with Section 11 of ASHRAE 90.1 (“Energy Cost Budget Method”) or Appendix G of ASHRAE 90.1 (“Performance Rating Method”) and as provided in subparagraph (iv) of paragraph (1) of subdivision (f) of this section or Section 5.6 of ASHRAE 90.1 (“Building Envelope Trade-off Option”).

(iii) Additional requirements in Section 11 and Appendix G. For new buildings 25,000 square feet and greater in area, and which follow Section 11 or Appendix

G. additional requirements must be satisfied to demonstrate compliance with Section 5.2.3. The building envelope must comply with either Section 5.5 of ASHRAE 90.1 (“Prescriptive Building Envelope”) or the applicant must calculate an envelope performance factor in accordance with Appendix C of ASHRAE 90.1 that meets certain thresholds dependent on the occupancy of the building.

[(3)](4) *Identification of related applications.* Applicants must indicate in the application form all applications related to the project or, if an application has not yet been filed, the name of the applicant or the applicant’s firm and discipline for any anticipated related applications.

§4. Paragraph (2) of subdivision (e) of section 5000-01 of Chapter 5000 of title 1 of the rules of the city of New York is amended to read as follows:

(2) *Exemption.* Only applications that consist entirely of work exempt from the Energy Code may indicate exemption in the professional statement. The application must state one of the following bases for exemption:

(i) *Historic building.* Any alteration to an historic building is exempt. Any addition to an historic building is not exempt, and must meet the requirements of the ECC for new construction.

(ii) *Envelope of low-energy building.* All the proposed work is related to the envelope system of a low-energy, [ or ] unconditioned building, or equipment building as described in ECC Chapter C4 or ECC Chapter R4.

(iii) *Categories of work not affecting energy use.* Temporary structures (as described in sections 28-111 and BC 3103) are exempt from compliance with the Energy Code. In addition, the following work types are exempt: fire alarm, fire suppression in a range hood, standpipe, sprinkler, fuel storage, construction equipment, curb cut, fire protection plan, sidewalk shed, supported scaffold, fence, place of assembly, temporary place of assembly, earthwork, support of excavation, builder’s pavement plan, protection means and methods, suspended scaffold, subdivision, full demolition, and cranes. Other work types are not exempt.

- (A) FA (fire alarm)
- (B) FP (fire suppression in a range hood)
- (C) SD (standpipe)
- (D) SP (sprinklers)
- (E) FS (fuel storage)
- (F) EQ (construction equipment)
- (G) CC (curb cut)
- (H) OT/BPP (builder’s pavement plan)
- (I) OT/FPP (fire protection plan)]

(iv) *Post-approval amendment.* A post-approval amendment for a job that was exempt under a prior edition of the Energy Code.

§5. Subdivision (f) of section 5000-01 of Chapter 5000 of title 1 of the rules of the city of New York is amended to read as follows:

(f) *Energy analysis.* An energy analysis is required for every project that is not entirely exempt. The energy analysis [shall]must identify the compliance path followed, demonstrate how the project design complies with the Energy Code and, for commercial projects, indicate whether the project is designed in accordance with ECC Chapters C2 through C6 or with ASHRAE 90.1.

(1) *Accepted formats for energy analysis.* [One of the]Tabular analysis along with COMcheck or REScheck may be used for different disciplines in the same application, as long as the compliance paths are identical. The following formats may be used to present the energy analysis:

(i) *Tabular analysis.* For new buildings, additions and/or alterations to existing residential or commercial buildings for which either ECC Chapters R2 through R6, ECC Chapters C2 through C6 or ASHRAE 90.1 has been used, and the applicant is complying prescriptively, the applicant may [create] include a table entitled “Energy Analysis” as described in figure 1.

Such table [shall]must compare the proposed values of each Energy Code regulated item in the scope of work with the respective prescriptive values required by the Energy Code. The items [shall]must be organized by discipline, including Envelope Systems, Mechanical and Service Water Heating Systems, Lighting and Electrical Systems, Additional Efficiency Options, and Commissioning as applicable.

For commercial building additions and/or alterations involving lighting, the applicant may choose to utilize the Lighting Application Worksheet from COMcheck for the lighting part of the analysis in lieu of including lighting in the tabular analysis; however, the supporting documentation index must provide a breakdown of each lighting fixture to clarify the location per room type or floor. See subparagraph (iii) of this paragraph and Figure 2 in subdivision (g) of this section.

Figure 1: Sample tabular energy analysis:

<b>ENERGY ANALYSIS</b>			
Code chapter and/or standard used for design Climate Zone 4A			
<b>Item Description</b>	<b>[Proposed Design Value]Code Prescriptive Value &amp; Citation</b>	<b>[Code Prescriptive Value &amp; Citation] Proposed Design Value</b>	<b><u>Supporting Documentation</u></b>
(List all elements of the scope of work in the detail that they are addressed by the energy code.)	[(List the value used in the design.)] <u>List the prescriptive value required by the Energy Code and provide the citation for such value.</u>	[(List the prescriptive value required by the Energy Code and provide the citation for such value.)] <u>List the value used in the design.</u>	<u>Indicate where in the drawing set the information is to be found.</u>



(ii) *REScheck Software Program*. The REScheck software program available from the United States Department of Energy website may be used for residential buildings as follows:

- (A) *New buildings*. REScheck may be used for new residential buildings.
- (B) *Additions*. REScheck may be used for additions [only where a whole-building analysis, including the existing building and the addition, is performed]. Only the new portions of the building shall be input into the software.
- (C) *Alterations and repairs*. REScheck may be used for alterations and repairs [only where a whole-building analysis, including the existing-to-remain and altered envelope and mechanical systems, is performed]. Only the components being altered shall be input into the software.
- (D) *REScheck version*.

[1. Only the New York City version of the REScheck form is permitted.]

[2.]1. For applications filed on or after [October 3, 2016] May 12, 2020, the report must specify the [2016] 2020 New York City Energy Conservation Code.

[3.]2. For applications filed before [October 3, 2016] May 12, 2020, the report must specify the edition of REScheck that matches the edition of the [Energy Conservation Construction Code of New York State] New York City Energy Conservation Code in effect when the application was filed. If a New York City-specific version is no longer supported, the report must specify the applicable IECC version of the software.

(iii) *COMcheck Software Program*. The COMcheck software program available from the United States Department of Energy website may be used for commercial buildings as follows:

- (A) *New buildings*. COMcheck may be used for new commercial buildings.
- (B) *Additions*. COMcheck may be used for additions [only as follows:
  - 1. Where a whole-building analysis, including the existing building and the addition, is performed; or
  - 2. Where the COMcheck report states “addition” as the project type].Only the new portions of the building shall be input into the software.
- (C) *Alterations and repairs*. COMcheck may be used for alterations and repairs [only as follows:
  - 1. Where a whole-building analysis, including the existing-to-remain and altered parts of the building, is performed; or
  - 2. Where the COMcheck report states “alteration” as the project type].Only the components being altered shall be input into the software.
- (D) *COMcheck version*.

1. [Only the New York City version of the COMcheck form is permitted when following the New York City Energy Conservation Code. Only the 90.1 (2013) Standard version of the COMcheck form is permitted when following ASHRAE 90.1, provided that a New York City version of COMcheck for ASHRAE is unavailable.] For applications filed on or after May 12, 2020, the report must specify the edition of COMcheck that matches the edition of the

New York City Energy Conservation Code or ASHRAE 90.1 in effect when the application was filed.

2. For applications filed [on or after October 3, 2016,] before May 12, 2020, the report must specify the edition of COMcheck that matches the edition of the New York City Energy Conservation Code [or New York City amended ASHRAE 90.1.] in effect when the application was filed. [In the event that] if a New York City-specific version is no longer supported, the report must specify the applicable IECC or ASHRAE 90.1 version of the software, as determined by the Department.

(iv) *Energy modeling [based on DOE2].* For new commercial buildings and additions or alterations to commercial buildings, where [trade-offs among disciplines and/or] the performance path [are] is used in accordance with ASHRAE 90.1 section 11 or Appendix G, an energy modeling program developed by the United States Department of Energy, including DOE2 or updates of DOE2, shall be used; such updates include DOE2.1E, VisualDOE, EnergyPlus and eQuest.

Other energy modeling programs must be approved by the Secretary of State of New York State and the commissioner. The commissioner may at his or her discretion require the energy modeling report to be submitted to the Department.

All applications must provide a Supporting Documentation Index indicating the mandatory measures, an energy modeling form, and energy modeling reports.

Additional envelope requirements for buildings 25,000 square feet and greater. Additionally, for applications 25,000 square feet and greater, a ComCheck Envelope Compliance Certificate, using ASHRAE 90.1, must be submitted along with the energy modeling reporting to ensure compliance with additional envelope provisions.

(v) *Alternative formats.* Formats other than those listed in subparagraphs (i) through (iv) of this paragraph, including, but not limited to, the home energy software programs described in section ECC 101.5.1, may be used for a project only if they are approved in advance by both the Secretary of State of New York State and the commissioner.

(2) *Mixed-occupancy buildings three stories or fewer.* In accordance with section ECC 101.4.1, buildings three stories or fewer above grade plane with mixed residential and non-residential occupancies must comply with the respective requirements of Chapters R2 through R6 and Chapters C2 through C6 or ASHRAE 90.1, and must have separate energy analyses, except that a tabular analysis format or energy modeling may be used to show both the residential and non-residential requirements.

(3) *Build-outs of tenant space prior to issuance of new building certificate of occupancy.* The energy analysis for any alteration application for a build-out of a new building tenant space before the final certificate of occupancy is issued must be consistent with the [energy analysis] compliance path for the new building. Such energy analysis for the new building must be provided upon request.

(4) *Professional responsibility for energy analysis.* The energy analysis [shall]must be signed and sealed by registered design professional(s).

(i) *Election.* The project team must elect one of the following methods for performing the energy analysis:

(A) *Responsibility by discipline.* Where each system of the energy analysis – envelope, mechanical/service water heating and lighting/power – meets the prescriptive requirements of the Energy Code individually, different registered design professionals may sign and seal their respective parts of the energy analysis report and include them as follows:

1. If all such systems are filed with the Department under the same application number, each registered design professional may include his or her part of the energy analysis in his or her respective parts of the project construction drawings.

2. If such systems are filed with the Department under different application numbers, [all] each part[s] of the energy analysis [shall be filed in the initial application for the project] in the related applications must utilize the same compliance path; except that in the case of foundation and earthwork permits issued pursuant to section 28-104.2.5, the energy analysis for the new building project must be submitted with subsequent construction documents. Refer also to paragraph (5) of this subdivision.

(B) *Lead professional.* Where energy modeling (whole-building analysis) is performed for the energy analysis [or where the project design uses tradeoffs among disciplines such that one or more systems of the energy analysis –] and the envelope, mechanical/service water heating and lighting/power [– could] do not meet the prescriptive [or performance] requirements of the Energy Code on [its]their own, a lead professional must be identified who must sign and seal the entire energy analysis for all systems involved.

The energy modeling program must be based on [the DOE2] energy modeling software in accordance with subparagraph (iv) of paragraph (1) of this subdivision. The energy analysis must be presented in the construction drawings for one application only. The lead professional must be a registered design professional and need not be a design applicant.

(ii) *Registered design professional other than a design applicant.* A registered design professional other than a design applicant may prepare, sign and seal the energy analysis, either as lead professional or for individual discipline(s) in accordance with subparagraph (i) of this paragraph. [Such registered design professional shall file a PW1 form as a subsequent filing and indicate “Energy” or “Electrical” as applicable in Section 6D, OT – Other.]

(5) *Foundation and earthwork permits.* When phased or partial approval is requested by the applicant for the purpose of issuance of a foundation and earthwork permit in accordance with §28-104.2.5 of the Administrative Code, a tabular analysis must be filed showing the foundation insulation requirements of the ECC. Refer also to subclause 2 of clause (A) of subparagraph (i) of paragraph (4) of this subdivision.

§6. Subdivision (g) of section 5000-01 of Chapter 5000 of title 1 of the rules of the city of New York is amended to read as follows:

(g) *Supporting documentation.* The construction drawings submitted for approval [shall] must provide all energy design elements and [shall] must match or exceed the energy efficiency of each value in each part of the energy analysis – envelope, mechanical/service water heating and lighting/power. The supporting documentation [shall] must be listed in a table that serves as an indexing guide to the construction document set. Such table [shall] must list the proposed values of each Energy Code-regulated item in the scope of work with the respective location in the drawing set. Such table is not required if the location of the supporting documentation is included in a column [added to] as shown in the Tabular Analysis described in figure 1.

**Figure 2: Sample Supporting Documentation Index:**

<b>SUPPORTING DOCUMENTATION INDEX</b>		
Code chapter and/or standard used for design Climate Zone 4A		
<b>Code Section</b>	<b>Item Description</b>	<b>Supporting Documentation Location</b>
[List specific code section.]	[List all elements of the scope of work in the detail that they are addressed by the energy code.]	[List the drawing page number and/or section title.]

[In addition, other mandatory Energy Code requirements shall be provided as described in paragraphs 1 through 5 of this subdivision.]

For additions, the construction documents must clearly show in the supporting documentation, the new construction as it relates to existing conditions. For alterations, the construction documents must clearly show in the supporting documentation those physical portions of the systems that are being brought up to code and those that are not being altered.

Further, supporting documentation [shall] must provide all information necessary for a progress inspector to verify during construction that the building has been built in accordance with the approved construction documents to meet the requirements of the Energy Code.

[For additions and alterations, the applicant must clearly show those physical portions of the systems that are being brought up to code and those that are not being upgraded.]

In addition, other mandatory Energy Code requirements must be provided as described in paragraphs (1) through (7) of this subdivision. This is not an exhaustive list.

(1) *Envelope.* Building wall sections and details [shall] must be provided for each unique type of roof/ceiling, wall, and either the foundation, slab-on-grade, basement or cellar assembly. Such building wall sections shall show each layer of the assembly, including, but not limited to, insulation, moisture control and air barriers. If continuous insulation is indicated, it must be fully continuous, uninterrupted by framing, slab edges, shelf angles, or any other continuous breaks in the insulation. The insulation in each case [shall] must be labeled and [shall] must be equal to or greater than the R values, and an assembly in each case [shall] must be equal to or less than the assembly U-factors, in the energy analysis.

(i) *Fenestration.* Door, window and skylight schedules [shall] must include columns for U-factor, VT<sub>g</sub> and SHGC values for each fenestration assembly type, and such values [shall] must be equal to or less than those in the energy analysis. For commercial buildings, the building elevation must indicate a demarcation line at 95 feet. Fenestration located below 95 feet must be clearly identified on construction

documents. For any portion of a fenestration assembly that is above 95 feet, the entire fenestration assembly may comply with the U-factor requirements for fenestration 95 feet and above. Mandatory requirements to prevent air leakage shall be detailed.

(ii) Spandrel assemblies. Spandrel assemblies are considered opaque walls. The U-factor for the proposed design must be that which is defined in the Energy Code, according to the frame type, spandrel assembly, and rated R-value of insulation between framing members. If a spandrel assembly is not described within the Energy Code, or contains insulation values outside of the range of rated R-values, the designer will be required to provide simulation of the wall assembly, using software such as THERM.

(iii) Thermal bridging. Construction documents must include information on clear field, point, and linear thermal bridges. Clear field thermal bridges, such as brick ties, cladding, studs, must be de-rated using Appendix A of ASHRAE 90.1. If the assembly is not identified in Appendix A of 90.1, such as Z-girts, then these assemblies must be noted in the drawings, accompanied by supporting documentation indicating the de-rated value. Individual point thermal bridges, such as structural beam penetration through insulation, larger than 12in<sup>2</sup> in commercial buildings and larger than 8in<sup>2</sup> in residential buildings must be identified on the construction documents. Linear thermal bridges specifically identified in the ECC, such as shelf angles, slab edges, balconies, parapets, window interfaces, must be identified both on elevation plans and in a tabular format as shown in figure 3. Each linear thermal bridge type must have a relevant detail showing the cross-section through the thermal bridge.

**Figure 3: Sample Linear Thermal Bridge Documentation**

<b>Linear Thermal Bridge Type</b>	<b>Total Length</b>	<b>Detail Location</b>	<b>Ψ-value</b>
List all applicable thermal bridges that are identified in Table C402.6, R402.6 or 90.1 Table 5.4.4	List aggregate length of each type of thermal bridge.	List the drawing page number and/or section title.	List unmitigated Ψ-value directly from Table C402.6, R402.6 or 90.1 Table 5.4.4. Alternatively, provide Ψ-value with supporting documentation and/or calculations, if differing from default value above.

(2) Mechanical/service water heating. Mechanical system design criteria, and mechanical and service water heating system and equipment types, sizes and efficiencies shall be provided with coordinated naming convention between the mechanical schedule and the

energy analysis. For commercial buildings, the total installed space cooling capacity, the total installed space heating capacity, and the total installed service hot water capacity must be listed on the drawings. For all new construction, the ventilation system design must be included in the construction documents in accordance with the requirements in the ECC.

Space heating and cooling equipment, energy recovery equipment, economizers, ventilation equipment, service water heating equipment, and mandatory requirements including control systems, duct sealing and duct and piping insulation [shall] must be shown on the construction drawings and [shall] must be equal to or greater than the energy efficiency requirements established in the energy analysis, the Energy Code and/or this section, as applicable. A narrative [shall] must be provided for each mandatory control system describing its function and operation and specifying proper setpoints of equipment and controls.

For new buildings, the construction documents must indicate the method of compliance for the supply of heated water and clearly show the service water heating distribution system meeting the specified requirements. Sloped drain water heat recovery units that comply with IAPMO PS 92 and are tested and labeled in accordance with IAPMO 346, are deemed to comply.

(3) *Electrical*. The applicant must provide supporting documents for lighting, power and controls on either electrical drawings or drawings of other disciplines as appropriate. Such documents must:

- support the energy analysis;
- satisfy mandatory requirements of the Energy Code, such as controls, transformers, metering, voltage drop, elevator, commercial kitchen equipment, and electric motor requirements; and
- support progress inspections required by this section.

The drawings must be numbered with an “E,” “EN” or other discipline designator and must be signed and sealed by a registered design professional. If the registered design professional is an electrical engineer, the engineer must file [a PW1 form as an initial or subsequent filing and indicate either “Electrical” or “Energy” in Section 6D, OT – Other.] in a form and manner prescribed by the commissioner.

(i) *Interior and exterior lighting*. Supporting documentation for lighting must be as follows:

(A) *Commercial buildings, except within dwelling units*. The applicant [shall] must provide reflected ceiling plans, floor plans and/or electrical drawings with lighting layouts for each floor or space in the project, and for exterior lighting as applicable. Control devices and zones shall be indicated on drawings.

The lighting fixtures [shall] must be described and keyed to the lighting plans, including type designation, brief description, locations, lamp type, ballast/transformer type, watts per lamp, quantity of lamps per fixture, and system input watts per fixture, such that the drawings support the energy analysis.

[In addition, mandatory lighting and power] Lighting controls [shall] must be shown and described on a schedule, and a narrative provided describing their function and operation.

[Control devices and zones shall be indicated on drawings.]

(B) *Dwelling units in residential and commercial buildings.* In homes and dwelling units, the applicant must indicate on floor plans what fixtures are to be installed with high-efficacy lamps, and where the separate meter for each dwelling unit is located.

(ii) *Exterior lighting zones.* Exterior lighting zones as set forth in ECC [Table C405.5.2(1)] Table C405.4.2(1) correspond with the following zoning districts in the New York City Zoning Resolution:

Lighting zone 1:	Park land.
Lighting zone 2:	All R districts, R districts with C overlays and MX districts.
Lighting zone 3:	M districts, except MX; C districts, except C5, C6 and C overlays on R districts.
Lighting zone 4:	C5 and C6 districts.

(iii) *Electrical motors and controls.* Electrical motor horsepower and controls must be shown on the drawings and described.

(iv) [*Electrical submetering*]Metering. Projects requiring electrical submetering and/or monitoring must clearly indicate on the drawings that submetering and/or monitoring will be provided in accordance with the Energy Code. Projects requiring whole building fuel use metering must clearly indicate on the drawings that whole building fuel use metering will be provided in accordance with the Energy Code.

(v) *Automatic receptacle controls.* For applications using ASHRAE 90.1, [50 percent of the] certain receptacles must be automatically controlled and clearly shown on the drawings in accordance with ASHRAE 90.1.

(vi) *Electric vehicle service equipment capable.* New residential buildings with parking areas must indicate on the construction documents the method of compliance for the future installation of electric vehicle service equipment in accordance with the Energy Code and the Building Code, as applicable.

(vii) *Elevators and escalators.* For applications with elevators, the construction documents must provide the efficiency class and usage category. For new building applications with elevator shafts rising 75 feet or more must provide documentation showing compliance with regenerative drives, as applicable. For applications with escalator installations must provide documentation showing compliance with regenerative drives, as applicable.

(viii) *Commercial kitchen equipment.* For applications with certain commercial kitchen equipment, the construction documents must provide the type of equipment, the minimum performance value, and the design specification value in accordance with the ECC.

(4) Permanent certificate in residential buildings. For residential buildings and commercial R-3 buildings, the construction documents must indicate the following in accordance with Section ECC R401.3:

(i) New buildings. For new buildings, a permanent certificate must be installed indoors and in accordance with Sections ECC R401.3, except that it may be posted near the electrical distribution panel at eye level and in plain sight.

(ii) Additions and alterations. For additions and alterations affecting information on an existing permanent certificate, such permanent certificate must be updated, initialed where changed and reposted such that the values on the posted permanent certificate remain current. For additions and alterations where a permanent certificate was not previously required, a new permanent certificate must be provided with the values applicable to the scope of work and posted on a permanent certificate that complies with the new building requirements.

~~[(4) Mandatory]~~(5) Other mandatory requirements. The construction documents ~~[shall]~~must comply with all mandatory requirements of the Energy Code.

(i) For residential buildings, references for such requirements are listed throughout Chapters R2 through ~~[R5]~~R6.

(ii) For commercial buildings complying with the provisions of ECC Chapters C2 through ~~[C5]~~C6, references for such requirements are ~~[listed]~~set forth throughout Chapters C2 through ~~[C5]~~C6; for commercial buildings complying with ASHRAE 90.1, such requirements are set forth throughout the ~~[referenced]~~ standard.

(iii) Commissioning [statement.]documentation requirements. The construction documents for each commercial building must show the following:

(A) Professional statement. Every application filed by a registered design professional for approval of construction documents for a new building or alteration under the commercial provisions of ECC or ASHRAE 90.1 ~~[shall]~~must include a statement of either compliance with or exemption from the commissioning requirements of the Energy Code, as described in ECC C408.] The total installed space cooling capacity, the total installed space heating capacity and the total installed service hot water capacity must be listed on the drawings, as well as all the building systems that require commissioning, as applicable. For alteration applications, the total connected load of the HVAC distribution equipment that is within the scope of work must be listed on the drawings.

(B) Commissioning Plan. The commissioning plan requirements may be described in the construction documents, or the construction documents may refer to specifications. The specifications may be requested by the department.

(C) Equipment specifications. The construction documents must show the location of all equipment requiring commissioning, along with the performance data for each piece of equipment.



(D) *Operating and maintenance manual.* A statement that the owner shall receive an operating and maintenance manual for the HVAC equipment requiring commissioning within 90 days of the date of receipt of the Certificate of Occupancy or letter of completion.

(E) *Balancing report.* A statement that the owner shall receive a systems balancing report for the HVAC equipment requiring commissioning within 90 days of the date of receipt of the Certificate of Occupancy or letter of completion.

(iv) *Air leakage and air barrier testing statement.* [Every application filed by a registered design professional for approval of construction documents for a new building under the residential provisions of the ECC must include a statement of compliance with the testing requirements of the Energy Code as described in ECC R402.4.1.2 or R402.4.1.3. Every application filed by a registered design professional for approval of construction documents for a new building under the commercial provisions of the ECC must include a statement of either compliance with or exemption from the air barrier testing requirements of the Energy Code as described in ECC C402.5.1.3. Applications indicating compliance with the air barrier testing requirements under the commercial provisions must be tested in accordance with ASTM E 779 at a pressure differential of 0.3 inch water gauge (75 Pa) or an equivalent method approved by the code official and deemed to comply with the air leakage requirements when the tested air leakage rate of the building thermal envelope is not greater than 0.4 cfm/ft<sup>2</sup>. Air barrier testing, when required, must be performed by a third-party independent of the contractor and acceptable to the department.] The construction documents for each new building or additions greater than 10,000 square feet in area must provide information relating to the air barrier testing compliance with the Energy Code. A continuous air barrier location be shown on the elevation and section drawings and in each envelope assembly detail.

(A) *Residential buildings.* New buildings required to comply with the residential provisions of the Energy Code, must include a statement of compliance with the air leakage rate testing requirements of the Energy Code.

(B) *Commercial buildings.* New buildings or additions, required to comply with the commercial provisions of the Energy Code, must indicate compliance with one of the following three air barrier requirements:

1. *Visual inspection.* Only commercial buildings less than 10,000 square feet may comply with visual inspection. The continuous air barrier for the opaque envelope must indicate compliance with the material or assemblies in the Energy Code.

2. *Whole building air barrier testing.* Buildings 10,000 square feet and greater, but less than 50,000 square feet and 75 feet in height or less must include a statement of compliance with the air leakage rate testing requirements of the Energy Code. For buildings not required to comply with testing, and instead choose to comply voluntarily with whole building air barrier testing must include a statement of compliance with the air leakage rate testing requirements of the Energy Code.

3. *Air barrier continuity plan.* Buildings 10,000 square feet and greater but less than 50,000 square feet, which are greater than 75 feet in height, and for buildings greater than 50,000 square feet

must include a statement of compliance with the Air Barrier Continuity Plan requirements of the Energy Code. The construction documents must indicate each unique air barrier joint or seam to be tested along with the recommended method of testing.

[(5) *Permanent certificate in residential buildings.* For residential buildings, the construction documents shall indicate the following in accordance with Section ECC R401.3:

(i) *New buildings.* For new buildings regulated under ECC Chapter R4, a permanent certificate shall be required to be installed indoors and in accordance with Sections ECC R401.3 and RB103.8, except that it may be posted near the electrical distribution panel at eye level and in plain sight.

(ii) *Additions and alterations.* For additions and alterations affecting information on an existing permanent certificate, such permanent certificate shall be updated, initialed where changed and reposted such that the values on the posted permanent certificate remain current.]

(6) *Deferred submittals.* Drawings showing design intent and performance criteria matching those in the energy analysis may be submitted as supporting documentation provided that, in accordance with Section 28-104.2.6 of the Administrative Code, the applicant lists such deferred submittals in the construction drawings and submits them for approval prior to installation or construction. If required, the energy analysis must be updated when deferred submittals are provided for approval.

(7) *Required progress inspections.* Supporting documentation [shall also] must set forth all applicable required progress inspections in accordance with the Energy Code, 1 RCNY §101-07 and this section.

(i) Applicant's instructions regarding required progress inspections. Progress inspections required to be performed during construction for any new building, addition or alteration project [shall] must be identified by the design applicant according to the scope of work and listed and described in the approved construction drawings as required progress inspections.

The description [shall set forth] must show the standard of construction and the inspection criteria as appropriate for the scope of work in accordance with Table I or Table II of subdivision (h) of this section, as applicable; simple reference to the citations provided, without such description, is not sufficient.

The applicant [shall] must include the instruction that, in accordance with [Section BC 110.9] Chapter 1 of the Building Code and ECC 104.2.3, where an inspection or test fails, the construction [shall] must be corrected and must be made available for reinspection and/or retesting by the progress inspector until it complies.

For additions and alterations, the applicant must clearly indicate what portions of the altered systems [should] must be inspected and/or tested, and what inspection and/or testing may be outside the scope of the work.

(ii) *Construction scheduling instructions.* The drawings [shall] must state that, in accordance with Article 116 of Title 28 and Section BC 110, construction

[shall]must be scheduled to allow required progress inspections to take place, and that roofs, ceilings, exterior walls, interior walls, floors, foundations, basements and any other construction shall not be covered or enclosed until required progress inspections are completed or the progress inspector indicates that such covering or enclosure may proceed, at each stage of construction, as applicable.

(iii) Commercial building reference standards and citations. Progress inspection reference standards and citations [shall]must conform to the respective requirements of ECC Chapters C2 through C5 or ASHRAE 90.1 as used for design, in accordance with the following:

(A) When ECC Chapters C2 through C5 have been used for the project design, as reflected in the energy analysis, the applicant [shall]must list on the drawings the respective references and citations for ECC for the progress inspection.

(B) When ASHRAE 90.1 has been used for the project design, as reflected in the energy analysis, the applicant [shall]must list on the drawings the respective references and citations for ASHRAE 90.1 for the progress inspection.

§7. Paragraph (1) and Table I of subdivision (h) of section 5000-01 of Chapter 5000 of title 1 of the rules of the city of New York are amended to read as follows:

(1) *Residential buildings.* The progress inspections and tests described in Table I [shall]must be performed for buildings regulated by ECC Chapters [R4]R2 through R6. For heating, cooling and/or service hot water systems in multiple dwellings, including where such systems serve a single dwelling unit, the applicant [shall]must list inspections, tests and citations from Table II, in accordance with Section ECC R403.8.

**TABLE I – PROGRESS INSPECTIONS FOR ENERGY CODE COMPLIANCE – RESIDENTIAL BUILDINGS**

Inspection/Test	Frequency (minimum)	Reference Standard (See ECC Chapter R6) or Other Criteria	ECC or Other Citation
<b>IA</b>	<b>Envelope Inspections</b>		
IA1	<b>Protection of exposed foundation insulation:</b> Insulation [shall]must be visually inspected to verify proper protection where applied to the exterior of basement or cellar walls, crawl-space walls and/or the perimeter of slab-on-grade floors.	Prior to backfill	Approved construction documents  R303.2.1

IA2	<b>Insulation placement and R-values:</b> Installed insulation for each component of the conditioned space envelope and at junctions between components, <u>including thermal bridges and heated slab insulation</u> , [shall] <u>must</u> be visually inspected to ensure that the R-values are marked, that such R-values conform to the R-values identified in the construction documents and that the insulation is properly installed. Certifications for unmarked insulation [shall] <u>must</u> be similarly visually inspected.	As required to verify continuous enclosure while walls, ceilings and floors are open	Approved construction documents	R303.1, [R303.1.1,] [R303.1.2,] <u>R303.2</u> , [R402.1,] <u>R402.1.2</u> R402.2, Table R402.4.1.1, R402.4.4, R402.6
IA3	<b>Fenestration and door U-factor and product ratings:</b> U-factors, SHGC and VT values of installed fenestration [shall] <u>must</u> be verified by visual inspection for conformance with the U-factors, SHGC and VT values identified in the construction drawings, either by verifying the manufacturer's NFRC labels or, where not labeled, using the ratings in ECC Tables R303.1.3(1), [and] (2), and (3).	As required during installation	Approved construction drawings; NFRC 100, <u>NFRC 200</u> , <u>ANSI/DASMA 105</u>	R303.1, R303.1.3, R402.1, R402.3, R402.5
IA4	<b>Fenestration air leakage:</b> Windows, skylights and sliding glass doors, except site-built windows, skylights and doors, [shall] <u>must</u> be visually inspected to verify that installed assemblies are listed and labeled to the referenced standard.	As required during installation	NFRC 400, AAMA/WDMA /CSA 101/I.S.2/A44 0	R402.4.3
IA5	<b>Fenestration areas:</b> Dimensions of windows, doors and skylights [shall] <u>must</u> be verified by visual inspection.	Prior to final construction inspection	Approved construction documents	R402.3
IA6	<b>Air [sealing and insulation] barrier – visual inspection:</b> Openings and penetrations in the building envelope, including site-built fenestration and doors, [shall] <u>must</u> be visually inspected to verify that they are properly sealed, in accordance with Table R402.4.1.1.	As required during envelope construction	Approved construction documents; ASTM E283;	R402.4.1, R402.4.4, R402.4.5, R402.4.6
IA7	<b>Air [sealing and insulation] barrier – testing:</b> Testing [shall] <u>must</u> be performed in accordance with section ECC R402.4.1.2 or R402.4.1.3 and shall be accepted if the building meets the requirements detailed in such section. Test results [shall] <u>must</u> be retained in accordance with the provisions of Title 28 of the Administrative Code. Testing must be performed by a third-party	Prior to final construction inspection	ASTM E779; ASTM 1827; <u>ANSI/BOMA Z65.1</u> ; <u>RESNET/ICC 380</u> ; Approved construction documents	R402.4.1.2, <u>R402.4.1.3</u>

	independent of the contractor and acceptable to the department.			
<b>IB</b>	<b>Mechanical and Plumbing Inspections</b>			
IB1	<b>Fireplaces:</b> Provision of combustion air and tight-fitting fireplace doors [shall] <u>must</u> be verified by visual inspection.	Prior to final construction inspection	Approved construction documents; UL 127[, UL 907, ANSI Z21.60 (see also MC 904), ANSI Z21.50]	R402.4.2[;] BC 2111; MC Chapters 7, 8, 9; FGC Chapter 6
IB2	<b>[Shutoff dampers] Ventilation and air distribution system:</b> <u>Ventilation system must be verified to comply with the ERV/HRV requirements or balanced ventilation system.</u>  <u>Whole-house ventilation fan efficacy must be verified by visual inspection.</u>  Not less than 20% of installed automatic or gravity dampers, and a minimum of one of each type, [shall] <u>must</u> be visually inspected and physically tested for proper operation.	Prior to final construction inspection	Approved construction documents; <u>HVI Standard 916;</u> <u>ANSI/ACCA 9Qlvp-2016</u>	R403.6, R403.8, C403, C404
IB3	<b>HVAC and service water heating equipment:</b> Heating and cooling equipment [shall] <u>must</u> be verified by visual inspection for proper sizing. Pool heaters and covers shall be verified by visual inspection.	Prior to final plumbing and construction inspection	ACCA Manuals J and S; Approved construction documents, including energy analysis	[R403] <u>R403.7,</u> <u>R403.8,</u> <u>R403.10,</u> <u>R403.11,</u> <u>R403.12,</u> C403, C404
IB4	<b>HVAC and service water heating system controls:</b> System controls [shall] <u>must</u> be inspected to verify that each dwelling is provided with at least one individual programmable thermostat with capabilities as described in ECC R403.1.1, and that such controls are set and operate as specified in ECC R403.1.1. Controls for supplementary electric-resistance heat pumps [shall] <u>must</u> be inspected to verify that such controls prevent supplemental heat operation when the heat pump compressor can meet the heating load.	Prior to final electrical and construction inspection	Approved construction documents, including control system narratives	[R403,] <u>R403.1,</u> <u>R403.2,</u> <u>R403.5,</u> C403, C404

	<p><u>Controls for whole-house mechanical ventilation (balanced ventilation option) shall enable manual override.</u></p> <p>Controls for snow- and ice-melting systems and pools [shall]<u>must</u> be inspected for proper operation. Not less than 20% or one of each control type, whichever is more, [shall]<u>must</u> be inspected.</p> <p>Controls for turning off circulating hot water pumps when not in use [shall]<u>must</u> be inspected for an automatic or manual switch.</p>			
IB5	<p><b><u>HVAC and service water piping design and insulation [and sealing]:</u></b> Installed [duct and] piping insulation [shall]<u>must</u> be visually inspected to verify correct insulation placement and values. [Ducts, air handlers, filter boxes and building cavities used as ducts shall be visually inspected for proper sealing.]</p> <p><u>Service hot water distribution systems must be inspected to verify the supply of heated water.</u></p>	Prior to closing ceilings and walls and prior to final construction inspection	Approved construction documents; NYC Mechanical Code	[R403.3] R403.4, R403.5, R403.8, C403, C404; [MC 603.9] <u>MC 1204</u>
IB6	<p><b><u>Duct leakage testing, insulation and design:</u></b> <u>All ductwork and air handlers must be inspected to verify that the system is entirely within conditioned space.</u></p> <p><u>Ducts must be verified by visual inspection for proper sizing.</u></p> <p><u>Ducts, air handlers, filter boxes and building cavities used as ducts must be visually inspected for proper sealing.</u></p> <p>[Where the]For alterations, where the air handler and/or some ductwork is in unconditioned space, duct-leakage testing [shall]<u>must</u> be performed either after rough-in or post-construction to ensure compliance with ECC R403.3.3 and R403.3.4. Not less than 20% of such ductwork [shall]<u>must</u> be tested.</p>	Prior to closing ceilings and walls and prior to final construction inspection	Approved construction documents; <u>ASHRAE 193;</u> <u>ASHRAE Manual D</u>	[R403.3.3, R403.3.4,] <u>R403.3,</u> [R403.8, ]C403; <u>MC603.9</u>
<b>IC</b>	<b>Electrical Power and Lighting Systems</b>			
IC1	<p><b><u>[Electrical energy consumption]Metering:</u></b> The presence and operation of individual meters</p>	Prior to final electrical and	Approved construction documents	R404.2

	[shall]must be verified by visual inspection for all dwelling units.	construction inspection		
IC2	<b>Interior lighting power:</b> Lamps in permanently installed lighting fixtures [shall]must be visually inspected to verify compliance with high-efficacy requirements.	Prior to final electrical and construction inspection	Approved construction documents	R404.1
<b>ID</b>	<b>Other</b>			
ID1	<b>Maintenance information:</b> Maintenance manuals for equipment and systems requiring preventive maintenance [shall]must be reviewed for applicability to installed equipment and systems before such manuals are provided to the owner. Labels required for such equipment or systems [shall]must be inspected for accuracy and completeness.	Prior to sign-off or issuance of Certificate of Occupancy	Approved construction documents	R303.3
ID2	<b>Permanent certificate:</b> The installed permanent certificate [shall]must be visually inspected for location, completeness and accuracy.	Prior to final plumbing, electrical and/or construction inspection as applicable	Approved construction documents	R401.3, [RB103.8;]  1RCNY 5000-01(g)[(5)](4)
ID3	<b>[Solar-ready]Electric vehicle service equipment requirements:</b> [Solar-ready zone area]Electric vehicle outlet or conduit and electrical service reserved space must be visually inspected to verify compliance. Location [shall]must be noted on the permanent certificate.	Prior to final construction inspection	Approved construction documents	[RB103.3, RB103.7, RB103.8] <u>R404.3</u>

§8. Table II of subdivision (h) of section 5000-01 of Chapter 5000 of title 1 of the rules of the city of New York is amended to read as follows:

**TABLE II – PROGRESS INSPECTIONS FOR ENERGY CODE COMPLIANCE – COMMERCIAL BUILDINGS**

	<b>Inspection/Test</b>	<b>Periodic (minimum)</b>	<b>Reference Standard (See ECC Chapter C6) or Other Criteria</b>	<b>ECC or Other Citation</b>
<b>IIA</b>	<b>Envelope Inspections</b>			
IIA1	<b>Protection of exposed foundation insulation:</b> Insulation [shall]must be visually inspected to verify proper protection where applied to the exterior of basement or cellar walls, crawl-space	As required during foundation work and prior to backfill	Approved construction documents, <u>ASTM C272</u>	C303.2.1; ASHRAE 90.1 – [5.8.1.7] <u>5.8.1, 5.9</u>

	walls and/or the perimeter of slab-on-grade floors.			
IIA2	<b>Insulation placement and R-values:</b> Installed insulation for each component of the conditioned space envelope and at junctions between components, <u>including thermal bridges and heated slab insulation</u> , [shall] <u>must</u> be visually inspected to ensure that the R-values are marked, that such R-values conform to the R-values identified in the construction documents and that the insulation is properly installed. Certifications for unmarked insulation [shall] <u>also</u> be [similarly] visually inspected.	As required to verify continuous enclosure while walls, ceilings and floors are open	Approved construction documents	C303.1, [C303.1.1,] [C303.1.2,] <u>C303.2</u> , C402.1, C402.2, [C402.5.3,] <u>C402.6</u> , <u>C406</u> ; ASHRAE 90.1 –5.5, 5.6, [5.8.1] <u>5.8</u> , <u>5.9</u> , 11 or Appendix G <sub>1</sub> , Appendix I
IIA3	<b>Fenestration and door U-factor and product ratings:</b> U-factors, SHGC and VT values of installed fenestration [shall] <u>must</u> be visually inspected for conformance with the U-factors, SHGC and VT values identified in the construction drawings by verifying the manufacturer's NFRC labels or, where not labeled, using the ratings in ECC Tables C303.1.3(1), (2) and (3).	As required during installation	Approved construction documents; NFRC 100, NFRC 200, <u>NFRC 300</u> , <u>ANSI/DASMA 105</u> , <u>ASTM E972</u>	C303.1, C303.1.3, <u>C402.1.4</u> , C402.4, <u>C406</u> ; ASHRAE 90.1 – <u>5.4.2</u> , 5.5, 5.6, 5.8.2, <u>5.9</u> , 11 or Appendix G <sub>1</sub> , Appendix I
IIA4	<b>Fenestration air leakage:</b> Windows and [sliding or swinging] door assemblies, except site-built windows and/or doors, [shall] <u>must</u> be visually inspected to verify that installed assemblies are listed and labeled by the manufacturer to the referenced standard. For curtain wall, storefront glazing, commercial entrance doors and revolving doors, the testing reports [shall] <u>must</u> be reviewed to verify that the installed assembly complies with the standard cited in the approved plans. <u>Weatherseals at loading docks must be visually verified.</u>	As required during installation; prior to final construction inspection	NFRC 400, AAMA/WDMA/CSA 101/I.S.2/A440, ASTM E283; ANSI/DASMA 105	C402.5.2, <u>C402.5.6</u> ; ASHRAE 90.1 –5.4.3.2, <u>5.4.3.3</u> , [5.8.2.2] <u>5.8.2</u> , <u>5.9</u>
IIA5	<b>Fenestration areas:</b> Dimensions of windows, doors and skylights [shall] <u>must</u> be verified by visual inspection.	Prior to final construction inspection	Approved construction documents	C402.4; ASHRAE 90.1 – <u>5.4</u> , [5.5.4.2,] 5.5.4, 5.6, 5.9



				11 or Appendix G
IIA6	<p><b>Air [sealing and insulation –]barrier visual inspection:</b> Openings and penetrations in the building envelope, including site-built fenestration and doors, [shall]must be visually inspected to verify that a continuous air barrier around the envelope forms an air-tight enclosure. The progress inspector [shall]must visually inspect to verify that materials and/or assemblies have been tested and meet the requirements of the respective standards, or must observe the testing of the building and/or assemblies and verify that the building and/or assemblies meet the requirements of the standard, in accordance with the standard(s) cited in the approved plans.</p>	As required during construction	Approved construction documents; ASTM E2178, ASTM E2357, ASTM E1677, ASTM E779, ASTM E283.	C402.5; ASHRAE 90.1 – 5.4.3.1, 5.4.3.5, 5.9
IIA7	<p><b>Air [sealing and insulation]barrier testing:</b> Testing [must] must be performed in accordance with section ECC [C402.5.1.3]C402.5.1.3.1 or ASHRAE 90.1 section [5.4.3.5]5.4.3.1.3, and shall be accepted if the building [and/or its air-barrier assemblies] meets the requirements detailed in such section. <u>Test results shall be retained in accordance with the provisions of Title 28 of the Administrative Code.</u> Testing must be performed by a third-party independent of the contractor and acceptable to the department.</p>	As required during construction, or prior to final construction inspection	Approved construction documents; ASTM E 779, ANSI/BOMA Z65.1, ASTM E3158, RESNET/ICC 380	C402.5, C402.5.1.3, C406; ASHRAE 90.1 – [5.4.3.5]5.4.3.1.3, 5.9, Appendix I
IIA8	<p><b>[Loading dock weatherseals:</b> Weatherseals at loading docks shall be visually verified.]  <b>Air barrier continuity plan testing:</b> <u>Each unique air barrier joint or seam must be tested or inspected for compliance. Documentation includes the method of test performed on each unique air barrier joint or seam and the results of the test. If an air barrier joint or seam has a deficiency, the deficiency must be noted, and retested until it complies with the testing requirements. Test results must be retained in accordance with the provisions of Title 28 of the Administrative Code.</u></p>	[Prior to final construction inspection]As required during construction	Approved construction documents; ASTM E779, ASTM E1186, ASTM E2813, ASTM E3158	[C402.5.6; ASHRAE 90.1 – 5.4.3.3] C402.5.1.3; ASHRAE 90.1 – 5.4.3.1.3, 5.9

	<u>Testing must be performed by a third-party independent of the contractor and acceptable to the department.</u>			
IIA9	<b>Vestibules:</b> Required entrance vestibules [shall] <u>must</u> be visually inspected for proper operation.	Prior to final construction inspection	Approved construction documents	C402.5.7; ASHRAE 90.1 – 5.4.3.4
<b>IIB</b>	<b>Mechanical and Service Water Heating Inspections</b>			
IIB1	<b>Fireplaces:</b> Provision of combustion air and tight-fitting fireplace doors [shall] <u>must</u> be verified by visual inspection.	Prior to final construction inspection	Approved construction documents; [ANSI Z21.60 (see also MC 904), ANSI Z21.50]JUL 127	[C402.2.7;] <u>C402.2.8</u> ; BC 2111; MC Chapters 7, 8, 9; FGC Chapter 6
IIB2	<b>Shutoff dampers:</b> Dampers for stair and elevator shaft vents and other outdoor air intakes and exhaust openings integral to the building envelope [shall] <u>must</u> be visually inspected to verify that such dampers, except where permitted to be gravity dampers, comply with approved construction drawings. Manufacturer's literature [shall] <u>must</u> be reviewed to verify that the product has been tested and found to meet the standard.	As required during installation	Approved construction documents; AMCA 500D	[C403.2.4.3;] <u>C402.5.5</u> , <u>C403.7.7</u> ; ASHRAE 90.1 – 6.4.3.4
IIB3	<b>HVAC-R, commercial kitchen equipment, and service water heating equipment:</b> Equipment sizing, efficiencies, pipe sizing and other performance factors of all major equipment units, as determined by the applicant of record, and no less than 15% of minor equipment units, [shall] <u>must</u> be verified by visual inspection and, where necessary, review of manufacturer's data.  Pool heaters and covers [shall] <u>must</u> be verified by visual inspection.	Prior to final plumbing and construction inspection	Approved construction documents, ASHRAE 183, ASHRAE HVAC Systems and Equipment Handbook	<u>C403.1</u> , <u>C403.2</u> , <u>C403.3</u> , <u>C403.7.5</u> , <u>C404.2</u> , <u>C404.5</u> , <u>C404.9</u> , <u>C405.10</u> , [C406.2;] <u>C406</u> ; ASHRAE 90.1 – 6.3, [6.4.1, 6.4.2, 6.4.5, 6.4.6,] <u>6.4</u> , [6.5.11,

				6.8,]6.5, 6.7, 7.4, <u>7.5</u> , 7.8, <u>10.4.6</u> , <u>Appendix I</u>
IIB4	<p><b>HVAC-R and service water heating system controls:</b> No less than 20% of each type of required controls [shall]<u>must</u> be verified by visual inspection and tested for functionality and proper operation. Such controls [shall]<u>must</u> include, but are not limited to:</p> <ul style="list-style-type: none"> <li>• Thermostatic</li> <li>• Off-hour</li> <li>• Zones</li> <li>• Freeze protection/Snow- and ice-melt system</li> <li>• Ventilation System and Fan Controls</li> <li>• Energy recovery systems</li> <li>• Kitchen/lab exhaust systems</li> <li>• Fan systems serving single and multiple zones</li> <li>• Outdoor heating systems</li> <li>• HVAC control in hotel/motel guest rooms</li> <li>• Air/Water Economizers &amp; controls</li> <li>• Hydronic systems</li> <li>• Heat rejection systems</li> <li>• Hot gas bypass limitation</li> <li>• Refrigeration systems</li> <li>• Door switches</li> <li>• Computer room systems</li> <li>• Service water heating systems</li> <li>• Pool heater and time switches</li> </ul> <p>Controls with seasonally dependent functionality: Controls whose complete operation cannot be demonstrated due to prevailing weather conditions typical of the season during which progress inspections will be performed shall be permitted to be signed off for the purpose of a Temporary Certificate of Occupancy with only a visual inspection, provided, however, that the progress inspector</p>	After installation and prior to final electrical and construction inspection, except that for controls with seasonally dependent functionality, such testing [shall] <u>must</u> be performed before sign-off for issuance of a Final Certificate of Occupancy	Approved construction documents, including control system narratives; ASHRAE Guideline 1: The HVAC Commissioning Process where applicable	[C403.2, C403.3, C403.4, C403.5,] <u>C403</u> , [C404.6, C404.7, C404.9,] <u>C404, C406</u> ; ASHRAE 90.1 – 6.3, 6.4, 6.5, 6.6, [7.4.4, 7.4.5] <u>7.4, 7.5</u> , <u>Appendix I</u>

	<p>[shall]must perform a supplemental inspection where the controls are visually inspected and tested for functionality and proper operation during the next immediate season thereafter.</p> <p>The owner [shall]must provide full access to the progress inspector within two weeks of the progress inspector's request for such access to perform the progress inspection.</p> <p>For such supplemental inspections, the Department [shall]must be notified by the approved progress inspection agency of any unresolved deficiencies in the installed work within 180 days of such supplemental inspection.</p>			
IIB5	<p><b><u>HVAC-R and service water piping design and insulation [and sealing]:</u></b>  Installed [duct and] piping insulation [shall]must be visually inspected to verify proper insulation placement and values.</p> <p><u>Service hot water distribution systems must be inspected to verify the supply of heated water.</u></p> <p>[Joints, longitudinal and transverse seams and connections in ductwork shall be visually inspected for proper sealing.]</p>	<p>After installation and prior to closing shafts, ceilings and walls</p>	<p>Approved construction documents; [SMACNA Duct Construction Standards, Metal and Flexible]</p>	<p>[C403.2.9, C403.2.10,] <u>C403.11</u>, C404.4, <u>C404.5</u>; MC 603.9; ASHRAE 90.1 – 6.3, 6.4.4, 6.8.2, 6.8.3; 7.4.3</p>
IIB6	<p><b><u>Duct leakage testing, insulation and design:</u></b> For duct systems designed to operate at static pressures in excess of 3 inches w.g. (747 Pa), representative sections, as determined by the progress inspector, totaling at least 25% of the duct area, [per ECC C403.2.9.1.3 or ASHRAE 90.1 6.4.4.2.2, shall] must be tested to verify that actual air leakage is below allowable amounts.</p> <p>Installed duct insulation must be visually inspected to verify proper insulation placement and values.</p>	<p>After installation and sealing and prior to closing shafts, ceilings and walls</p>	<p>Approved construction documents; SMACNA HVAC Air Duct Leakage Test Manual; <u>SMACNA Duct Construction Standards, Metal and Flexible</u></p>	<p>[C403.2.9.1.3] <u>C403.11</u>;ASHRAE 90.1 – 6.4.4.2.2</p>

	<u>Joins, longitudinal and transverse seams and connections in ductwork must be visually inspected for proper sealing.</u>			
<b>IIC</b>	<b>Electrical Power and Lighting Systems</b>			
IIC1	<b>[Electrical energy consumption] Metering:</b> The presence and operation of all required meters for monitoring total electrical energy usage and/or total fuel use, system energy usage, tenant energy usage, or electrical energy usage in the building, in individual dwelling units, or in tenant spaces [shall] <u>must</u> be verified by visual inspection.	Prior to final electrical and construction inspection	Approved construction documents	[C405.6;] <u>C405.5</u> , <u>C405.11</u> , <u>C405.12</u> ; ASHRAE 90.1 – 8.4.3, 8.4.5, <u>8.4.6</u> , 10.4.5
IIC2	<b>Lighting in dwelling units:</b> Lamps in permanently installed lighting fixtures [shall] <u>must</u> be visually inspected to verify compliance with high-efficacy requirements.	Prior to final electrical and construction inspection	Approved construction documents	C405.1; ASHRAE 90.1 – 9.1.1
IIC3	<b>Interior lighting power:</b> Installed lighting [shall] <u>must</u> be verified for compliance with the lighting power allowance by visual inspection of fixtures, lamps, ballasts and transformers.	Prior to final electrical and construction inspection	Approved construction documents	[C405.4.2, C405.9.1, C406.3;] <u>C405.3</u> , <u>C406</u> ; ASHRAE 90.1 – 9.1, 9.2, 9.5, 9.6, <u>9.7</u> ; 1RCNY §101-07(c)(3)(v)(C) 4, Appendix I
IIC4	<b>Exterior lighting power:</b> Installed lighting [shall] <u>must</u> be verified for compliance with source efficacy and/or the lighting power allowance by visual inspection of fixtures, lamps, ballasts and relevant transformers.	Prior to final electrical and construction inspection	Approved construction documents	[C405.6;] <u>C405.4</u> ; ASHRAE 90.1 – 9.4.2; 1RCNY §101-07(c)(3)(v)(C) 4
IIC5	<b>Lighting controls:</b> Each type of required lighting controls, including: <ul style="list-style-type: none"> <li>• occupant sensors</li> <li>• manual interior lighting controls</li> <li>• light-reduction controls</li> <li>• automatic lighting shut-off</li> <li>• daylight zone controls</li> <li>• sleeping unit controls</li> <li>• exterior lighting controls</li> <li>• <u>egress illumination controls</u></li> </ul>	Prior to final electrical and construction inspection	Approved construction documents, including control system narratives	[C402.4.2.1,] <u>C405.2</u> , <u>C406</u> ; ASHRAE 90.1 – 9.4.1, 9.4.3, <u>9.7</u> , Appendix I

	[shall]must be verified by visual inspection and tested for functionality and proper operation.			
IIC6	<b>Electric motors and elevators[(including but not limited to fan motors)]:</b> Where required by the construction documents for energy code compliance, motor listing or labels [shall] be visually inspected to verify that they comply with the respective energy requirements in the construction documents. <u>Elevators and escalators must be inspected for compliance with regenerative drive requirements.</u>	Prior to final electrical and construction inspection	Approved construction documents	[C403.2.12, C405.8;] <u>C403.8,</u> <u>C405.6,</u> <u>C405.7,</u> <u>C405.8,</u> <u>C405.9;</u> ASHRAE 90.1 – <u>8.4.4,</u> <u>10.4,</u> <u>10.8</u>
IID	<b>Other</b>			
IID1	<b>Maintenance information:</b> Maintenance manuals for mechanical, service hot water and electrical equipment and systems requiring preventive maintenance [shall]must be reviewed for applicability to installed equipment and systems before such manuals are provided to the owner. Labels required for such equipment or systems [shall]must be inspected for accuracy and completeness.	Prior to sign-off or issuance of Final Certificate of Occupancy	Approved construction documents, including electrical drawings where applicable; ASHRAE Guideline 4: Preparation of Operating and Maintenance Documentation for Building Systems	[C303.3,] <u>C408.1.1,</u> <u>C408.2.5.2,</u> <u>C408.3.2;</u> ASHRAE 90.1 – 4.2.2.3, 6.7.2.2, <u>6.7.2.3.5.2,</u> 8.7.2, 9.7.2.2, <u>9.4.3.2.2</u>

§9. The introductory paragraph of section 5000-02 of Chapter 5000 of title 1 of the rules of the city of New York is amended to read as follows:

**§ 5000-02 Amendment to ASHRAE 90.1 Relating to Lighting Controls and Modeling Requirements.**

Pursuant to Section 28-103.19 of the Administrative Code of the City of New York, ASHRAE 90.1, as modified by Section ECC CA102.1 of the 2016 New York City Energy Conservation Code, [appendix CA of Section 28-1001.2.2 of such code,] is hereby amended to read as follows:

§10. Paragraphs (10) through (16) of subdivision (a) of section 101-07 of Subchapter A of Chapter 100 of title 1 of the rules of the city of New York are renumbered (11) through (17) and subdivision (a) is amended by adding a new paragraph (10) to read as follows:

(10) Qualified commissioning agent. An individual with at least 3 years of relevant experience.

§11. Clause (C) of subparagraph (v) of paragraph (3) of subdivision (c) of section 101-07 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) *Energy code verifications.* Progress inspectors for Energy Code compliance shall perform inspections in accordance with the following:

1. Reports. The progress inspector is required to compile all documentation, as required in paragraph (3) of subdivision (b) of this section, into a report. The report must also include, but shall not be limited to:

i. Identification of the Energy Code Progress Inspections performed;

ii. A list of the approved construction documents referenced for each inspection performed;

iii. Identification of any inspections performed where the built conditions observed were not in compliance with the energy code as documented in the approved construction documentation;

iv. Identification of any inspections performed where non-compliant built conditions, documented in accordance with Item iii above, were corrected and made in compliance with the energy code as documented in the approved construction documentation;

v. Photographic documentation. Each report must include a dated photo sufficient to identify the building, a dated photo of the progress inspector and/or his or her employees performing physical inspections, and a dated photo for each inspection performed. All photographs must be date-stamped, clearly legible, labeled indicating the related inspection, and include enough visible evidence to support the determinations contained in the report, including but not limited to scale reference demonstrating insulation depths, insulation installer certificate.

vi. Signed and sealed by the Progress Inspection Agency with a statement of approval such as “To the best of my knowledge, belief, and professional judgement, all work performed substantially conforms to the latest relevant approved construction documents and has been performed in accordance with applicable provisions of the New York City Energy Conservation Code and other designed rules and regulations.”

[1.] 2. Sampling. Unless noted otherwise in the Inspection/Test columns of Tables I and II of 1 RCNY §5000-01 (h), required

inspections or tests [shall]must be performed on not less than 15% of each relevant construction item in the scope of work as listed in the applicable table, and on not less than one of each type where applicable. Selection of such sample construction shall be at the sole discretion of the progress inspector. Nothing in this item shall prevent the progress inspector from determining that, in his or her professional judgment, more than 15% of a given type of construction item [shall]must be inspected.

[2.] 3. Phased inspection for temporary certificates of occupancy. Prior to issuance of a temporary certificate of occupancy for less than the total scope of work, [inspection shall be required for ]all work serving the portion of the building for which the temporary certificate of occupancy is to be issued must be inspected. Where a practical difficulty for some inspections is demonstrated to the commissioner, the commissioner may grant a waiver of those inspections for a specified time or until final inspection for the final certificate of occupancy.

[3.] 4. Phased inspection of controls. Notwithstanding item [2] 3 of this clause, where inspection of the HVAC and lighting controls for central head-end systems and communication networks depends upon completion of installation of all related end devices and components located in the building, such inspection of such controls for head-end systems and communication networks [shall]must be completed prior to issuance of a final certificate of occupancy.

[4.] 5. [Lighting] Installed value more efficient than approved energy analysis. Where the progress inspector verifies that, for any given space or system, the [lighting power density is less] installed performance value is more efficient than the [lighting power density for such space] performance value on the approved construction documents, the progress inspector may approve such space without the need for revised construction documents to be submitted to and approved by the Department. [For the purposes of this item, a space shall mean an area within the building separated by floor-to-ceiling partitions from all other spaces within the building.]

§12. Subdivision (c) of section 101-07 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 (9) to read as follows:

(9) Commissioning approved agencies. An agency shall be deemed an approved agency for performing commissioning in accordance with the Energy Conservation Code, where such agency complies with the following:

(i) Responsibility of owner. It shall be the responsibility of the owner to retain an approved agency to perform commissioning for a new building or alteration.



(ii) Obligation to avoid conflict of interest. A commissioning approved agency must not engage in any activities that may conflict with their objection 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.

(iii) Agency qualifications. Commissioning and related testing pursuant to section C408 of the Energy Conservation Code shall be performed by or under the direct supervision of a qualified commissioning agent.

(iv) A qualified commissioning agency must maintain records of inspections and tests for at least 6 years and must make such records available to the department upon request.

(v) A qualified commissioning agency must maintain insurance coverage as set forth in paragraph (7) of subdivision (b) above.

(vi) All commissioning and test reports must be presented in a form acceptable to the department and must bear the name of the commissioning agency and the name of the qualified commissioning agent who supervised each inspection or test.

**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 amendments to section 101-07 of Subchapter A of Chapter 1 of Title 1 and section 103-04 of Subchapter C of Chapter 1 of such title of the Official Compilation of the Rules of the City of New York, regarding approved agencies and façade inspections.

This rule was published in the City Record on November 27, 2019 and a public hearing was held on December 30, 2019.

Dated: 01/14/20  
New York, New York

  
Melanie E. La Rocca  
Commissioner

## Statement of Basis and Purpose of Rule

The purpose of these rule amendments is to clarify the qualifications and responsibilities of qualified exterior wall inspectors, as well as the requirements for exterior wall inspections and repairs. Recent inspections have revealed significant deficiencies in façade compliance reporting by registered design professionals; therefore, the Department is enhancing the qualified exterior wall inspector qualifications, inspection requirements and civil penalties against owners to ensure public safety.

The rule:

- adds new requirements regarding the experience and responsibilities of the Qualified Exterior Wall Inspector (QEWI) to ensure inspectors have appropriate knowledge of exterior walls and how to conduct inspections of those walls;
- expands the list of who can perform inspection tasks;
- adds a new requirement that owners post and maintain the building facade status in the lobby in a manner similar to elevator certificates, to alert the building occupants of the exterior wall status;
- adds a new requirement for close-up inspections to be performed at intervals of not more than 60'-0" fronting each public right-of-way in order to allow for more thorough inspections of the exterior wall;
- clarifies which façade elevations are required to have close-up inspections;
- adds a new requirement that the QEWI probes whether ties are present and in good condition at cavity wall buildings in every odd cycle because there have been recent failures of cavity walls due to missing or deficient ties;
- adds exceptions to the requirement for probes;
- requires photographic evidence of close-up inspections in progress to guard against false filings;
- increases civil penalties because the increased responsibilities for the building owners require corresponding increases in the penalties. Comments received at the public hearing favored the Department's taking additional enforcement actions against noncompliant owners by increasing penalties from what they were in the proposed rule. In response, the penalty for failure to file is being increased from \$2,000 to \$5,000 and the monthly penalty for late filing is doubled;
- adds a new civil penalty for failure to correct "safe with a repair and maintenance program" (SWARMP) conditions to compel owners to maintain exterior walls in a safe condition;
- modifies the criteria for waiving civil penalties; and
- makes plain language revisions throughout.

The Department of Buildings' authority for this rule is found in sections 643 and 1043 of the New York City Charter and Article 302 of Title 28 of the New York 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.

Section 1. Paragraph (12) of subdivision (a) of section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (12) *Qualified exterior wall inspector.* A registered design professional with at least [1 year] seven years of relevant experience with facades over six stories.

§ 2. Paragraph (7) of subdivision (c) of section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(7) *Exterior wall inspections.*

- (i) Examination of a building's exterior walls and appurtenances [thereof ]pursuant to section 28-302.2 of the Administrative Code [shall] must be performed by or under the direct supervision of a qualified exterior wall inspector.
- [(ii) A qualified exterior wall inspector shall maintain records of inspections and tests for at least 6 years and shall make such records available to the department upon request.
- (iii) A qualified exterior wall inspector shall maintain insurance coverage as set forth in paragraph (7) of subdivision (b) above.
- (iv) Except as modified by the building code and this section, the provisions of 1 RCNY 103-04 shall apply.]
- (ii) The qualified exterior wall inspector applicant must provide a detailed résumé indicating relevant work experience obtained in any US city or jurisdiction. When relevant experience is obtained while employed by another registered design professional who was signing and sealing such relevant work, a letter must be provided indicating length of the qualified exterior wall inspector applicant's employment and his or her responsibilities.
- (iii) A qualified exterior wall inspector applicant must demonstrate to the commissioner's satisfaction, including performance on any written or oral tests the commissioner may require, that he or she is sufficiently familiar with the Construction Codes, laws and rules pertaining to facades and concepts specific to the science of buildings as it relates to facades.

§ 3. Section 103-04 of Title 1 of Subchapter C of Chapter 100 of the Rules of the City of New York is amended to read as follows:

### **§ 103-04 Periodic Inspection of Exterior Walls and Appurtenances of Buildings.**

(a) *Definitions.* For the purposes of this section, the following terms have the following meanings.

**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 by the Department.

**Amended report.** A technical examination report filed by a Qualified Exterior Wall Inspector who certifies that the unsafe conditions reported in the initial report have been repaired and that no unsafe conditions exist at the building.

**Appurtenance.** An exterior wall element including, but not limited to, fire escapes, exterior fixtures, ladders to rooftops, flagpoles, signs, parapets, railings, copings, guard rails, window frames (including hardware and lites), balcony and terrace enclosures, including greenhouses or solariums, window guards, window air conditioners, flower boxes, satellite dishes, antennae, cell phone towers, and any equipment attached to or protruding from the facade.

**Cavity wall construction.**

An exterior wall system consisting of an exterior veneer with a backup wall whereby the exterior veneer relies on a grid of metal ties to the backup wall for lateral stability. The two layers of wall are separated by an air cavity which may or may not be filled with insulation.

**Critical examination.** An examination conducted to review the exterior of a building and all parts thereof to determine whether the exterior walls (facades) and the appurtenances [thereto] are either safe, unsafe, or safe with a repair and maintenance program (SWARMP) and whether, in the judgment of a Qualified Exterior Wall Inspector, they require remedial work.

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

**Filing window.** The two-year period during which a report for a particular building may be filed without penalty.

**Public right-of-way.** A public street, avenue, sidewalk, roadway or any other public place or public way.

**Qualified Exterior Wall Inspector (hereinafter “QEWI”).** A qualified exterior wall inspector as defined in section 101-07 of the rules of the [department]Department.

**Report filing cycle.** The five-year time interval established by the Commissioner for the filing of each successive report for each successive critical examination of every building subject to the requirements of Article 302 of Title 28 of the Administrative Code.

**Safe condition.** A condition of a building wall, any appurtenances thereto or any part thereof not requiring repair or maintenance to sustain the structural integrity of the exterior of the building and that will not become unsafe during the next five years.

**Safe with a repair and maintenance program (hereinafter “SWARMP”).** A condition of a building wall, any appurtenances thereto or any part thereof that is safe at the time of inspection, but requires repairs or maintenance during the next five years, but not less than one year, in order to prevent its deterioration into an unsafe condition during that five-year period.

**Staggered inspection cycle.** The separate time intervals for filing reports of critical examinations as determined by the last digit of the building’s block number, beginning February 21, 2010, and continuing thereafter for each subsequent report filing cycle.

**Subsequent report.** A technical examination report that is filed by a QEWI after an acceptable report in order to change the status of the building for that report filing cycle to reflect changed conditions or the recommended time frame for repairs of SWARMP or unsafe conditions.

**Unsafe condition.** A condition of a building wall, any appurtenances thereto, or any part thereof that is hazardous to persons or property and requires [prompt] repair within one (1) year of completion of critical examinations. In addition, any condition that was reported as SWARMP in a previous report and that is not corrected at the time of the current inspection [shall] must be reported as an unsafe condition.

(b) Responsibilities of qualified exterior wall inspectors.

- (1) A QEWI must conduct critical examinations and file reports in accordance with this section and Article 302 of Title 28 of the Administrative Code.
- (2) A QEWI must maintain records of inspections and tests for at least six years and must make such records available to the Department upon request.
- (3) A QEWI must maintain insurance coverage as set forth in paragraph (7) of subdivision (b) of section 101-07 of these rules. Copies of such insurance policies must be made available to the Department upon request.

~~[(b)]~~ (c) Critical examinations.

- (1) *Periodic inspection requirements.* In order to maintain a building's exterior walls and appurtenances [thereto] in a safe condition, and in accordance with Article 302 of Title 28 of the Administrative Code, a critical examination of all parts of all exterior walls and any appurtenances [thereto] of all existing buildings greater than six stories in height or buildings hereafter erected that are greater than six stories in height, except for those parts of any exterior wall that are less than twelve inches (305 millimeters) from the exterior wall of an adjacent building, [shall] must be conducted at periodic intervals.
- (2) *Inspection procedures.*
  - (i) Before any exterior wall for any building is critically examined, the QEWI retained by or on behalf of the owner of the building [shall] must carefully review the most recent report and any available previous reports. The Department will maintain a file of such reports submitted in conformance [with the law in effect prior to July 1, 2008 and] with Article 302 of Title 28 of the New York City Administrative Code, and furnish copies upon payment of fees set forth in the rules of the Department.
  - (ii) [Such examination shall be conducted and witnessed] Examination of a building's exterior walls and appurtenances thereof pursuant to section 28-302.2 of the Administrative Code must be performed by or under the direct supervision of a QEWI retained by the owner of the building or his or her representative.
  - (iii) The QEWI [shall] must design an inspection program for the specific building to be inspected, which [shall] must include, but not be limited to, the methods to be employed in the examination. The inspection program shall be based on the considerations of the type of construction of the building's envelope, age of the material components, the facade'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]Department.

[Except as provided in subparagraph (viii) of paragraph (2) of this subdivision, the QEWI need not be physically present at the location when the examination is made.] Architects, engineers, [tradesmen and technicians,] individuals with a bachelor's degree in architecture or engineering and three (3) years of relevant FISP inspection experience, or individuals with five (5) years of relevant FISP inspection experience working under the QEWI's direct supervision, may be delegated to perform selected inspection tasks [only when they are employees or subcontractors of the QEWI].

- (iv) The methods used to examine the building [shall] must 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] Physical examinations from [a scaffold] scaffolding or other observation platform ([a "close-up inspection"] "close-up inspections") [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] must be performed at intervals of not more than 60'-0", with the minimum number of physical examinations per total length of facade elevation noted in the table below. All physical examinations shall occur along a path from grade to top of an exterior wall [on a street front] fronting each public right-of-way, using at least one scaffold drop or other observation platform configuration, including all exterior wall setbacks. The QEWI shall determine the most deleterious locations and perform physical examinations at those locations. The use of drones, high resolution photography, non-destructive testing, or other similar methods does not eliminate the requirements for close-up inspections.

<u>Length of Facade Elevation Fronting Public Right of Way (L)</u>	<u>Minimum # of Physical Examinations</u>
<u>L &lt; 60'-0"</u>	<u>1</u>
<u>60'-0" ≤ L &lt; 120'-0"</u>	<u>2</u>
<u>120'-0" ≤ L &lt; 180'-0"</u>	<u>3</u>
<u>180'-0" ≤ L &lt; 240'-0"</u>	<u>4</u>
<u>240'-0" ≤ L &lt; 300'-0"</u>	<u>5</u>
<u>300'-0" ≤ L &lt; 360'-0"</u>	<u>6</u>
<u>For every additional 60'-0" of length of facade, one additional close-up inspection is required.</u>	

- (v) The known history of the building, the nature of the materials used and the conditions observed will dictate the extent of the critical examination. The QEWI [shall utilize] must apply a professional standard of care to assess the building's condition and the individual building systems that comprise the facades, including splitting or fracturing of terra cotta on buildings, cracking of masonry and brick work in brick faced buildings, mortar and other joint materials, loosening or corrosion of metal anchors and supports, water entry or flow within cavities, mineral build-up, coping materials, movement of [lintel] lintel/shelf angles, and [shall] must ascertain the cause of these and such other conditions detected.



The QEWI [shall] must order any special or additional inspections and/or tests, including sounding procedures, that may be required to support investigations and to determine the causes of any defects. Starting with the ninth cycle, probes must be performed on all cavity wall construction, and, at a minimum, during every subsequent odd-numbered cycle. The QEWI shall determine the location of the probes, which shall be in areas not previously renovated. At a minimum, a single probe must be completed along each required close-up inspection interval. The QEWI must ensure that the number and size of the probes are sufficient to report the presence, condition, and spacing of wall ties. The removal of portions of the facade in order to facilitate the performance of tests may require a permit from the Landmarks Preservation Commission.

Exceptions:

The requirement for probes may be waived in the following cases:

1. When a repair campaign addressing cavity wall ties has been completed within ten (10) years of the filing deadline and the owner or QEWI provides proof of such repair including, but not limited to, photographs, special inspection reports, and construction documents, which must be submitted and found acceptable by the Department.
2. When the first Temporary Certificate of Occupancy or Certificate of Occupancy for a new building was issued within ten (10) years of the filing deadline and the owner or QEWI provides evidence of tie installation including, but not limited to, photographs, special inspection reports, and construction documents, which must be submitted and found acceptable by the Department.
3. Where a QEWI proposes an alternate method of determining tie condition and spacing, which must be submitted and found acceptable by the Department.

(vi) [During the course of the critical examination, photographs shall] Photographs must be taken and/or sketches made during the course of the Critical Examination to properly document the location of all conditions observed that are either unsafe or SWARMP.

(vii) Upon discovery of any unsafe condition, the QEWI [shall] must immediately notify the Department and the owner of the building [by letter or fax, in a form and manner as provided by the Department]. The QEWI must identify the location of any unsafe condition, advise the owner on the appropriate protective measures to be taken, and include the recommended type and location of public protection in the notification to the Department.

(viii) Completion of a critical examination [shall mean] means 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] must, 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.

(3) *Report requirements.*

- (i) The QEWI [shall] must file with the Department [and submit a copy to the owner of the building] a written report 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 with a control number, as provided by the Department, even if it shares a Block and Lot number with other structures. The QEWI must also submit a copy of the report to the owner of the building.
- (ii) Technical information in the report [shall] must adhere to and follow the sequence and the labeling of the report requirements as listed in subparagraph (iii) of this paragraph, and [shall] must be provided on such forms and in such format as the Department [shall require] requires. Additional information may be provided. [All letters (A-O) shall be listed in the report.] If a requirement is not applicable, this [shall] must be indicated on the report [under the relevant letter].
- (iii) The report [shall] must include an executive overview that [shall consist] consists of a summary of findings and recommendations, a concise statement of the scope of the inspection and findings, the conclusions and recommendations and a determination as to whether the building is categorized as “safe,” “SWARMP,” or “unsafe.” The report [shall] must also include, but [shall] not be limited to:
  - (A) The address, any a.k.a. addresses, Block and Lot number, the Building Identification Number (“BIN”), the landmark status of the building, and the location from the nearest cross street[, and a copy of the Property Profile Overview from the Buildings Information System (“BIS”) found on the Department’s website];
  - (B) The name, mailing address and telephone number of the owner of the building, or, if the owner is not an individual, the name, mailing address, telephone number, position/title of a principal of the owner;
  - (C) A description of the building, including the number of stories, height, plan dimensions, Certificate of Occupancy number if available, usage, and age and type of exterior wall construction, specifying all materials present in the exterior wall;
  - (D) A detailed description of any distress, settlements, repairs, or revisions to exterior enclosures since the previous report, including, but not limited to, settlement, splitting or fracturing, displacement, bulging, cracking of any exterior wall elements, loosening of metal anchors and supports, water entry, movement of lintel or shelf angles, or other defects or changes;
  - (E) A detailed description of the procedures used in making the critical examination;
  - (F) [A detailed description of] The following information:
    1. The extent and location of all physical examinations performed, including odd-numbered cycle cavity wall probes;

2. The names, addresses, telephone numbers, and license or registration numbers for riggers, contractors, and [other] consultants involved in the critical examination;
  3. A location diagram of a discernable scale and with a north arrow, indicating the main entrance, dimensions of the length of each façade elevation, including all setbacks and returns, and nearest cross street and locations and dates of close-up inspections; [and]
  4. Dates of the start and completion of the critical examination; and
  5. Dated photo documentation of the QEWI and/or his or her employees performing physical (“close-up”) inspections.
- (G) A description, [and] classification, and mapping of each significant condition observed including deterioration and any movement detected and the apparent water-tightness of the exterior surfaces. The description must also include a list of all the exterior appurtenances and their condition. [Appurtenances include, but are not limited to, exterior fixtures, flagpoles, signs, parapets, railings, copings, guard rails, window frames (including hardware and lights), balcony enclosures, window guards, window air conditioners, flower boxes, and any equipment attached to or protruding from the facade.] Each condition must be classified as safe, unsafe or SWARMP. If the building is classified as unsafe or SWARMP, the report must include the locations and descriptions of all unsafe or SWARMP conditions. If unsafe conditions are noted, the report must recommend the type and location of public protection. Photographs must be labeled and the report must include key plans, key elevations and locator drawings documenting these conditions. [Balcony] Guards and railings, including, but not limited to, balconies, must be inspected to ensure that their components (balusters, intermediate railings and panel fillers) are positively secured against [upward] movement (e.g. by welds, bolts or screws). If any [balcony enclosure] guard or railing, balcony enclosure, or greenhouse structure is found not to be positively secured, the condition is classified as unsafe and must be made safe pursuant to the requirements of paragraph (5) of subdivision [b] (c) of this section. [In the event a cycle seven report has already been filed with the Department pursuant to paragraph (4) of this subdivision, a separate report regarding the condition of the balcony enclosures must be filed within cycle seven.]
- (H) An analysis of the causes of the conditions reported as unsafe or SWARMP.
- (I) A detailed status report of maintenance work performed up to the date of submission of the report and the maintenance plan implemented for building facades;
- (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] must be included and discussed:

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

(K) [Detailed recommendations] Recommendations for repairs or maintenance of SWARMP [items] and unsafe conditions, including:

1. If a building is categorized as SWARMP:

[1.] A. The recommended time frame for such repairs or maintenance to be performed, which [shall] must indicate the date by which the work [shall] must be performed [(MM/YYYY)] (MM/DD/YYYY) to prevent the conditions from becoming unsafe and not the date on which work is planned or scheduled;

[2.] B. Time frames of less than one (1) year, “ASAP,” or “immediately,” shall not be accepted.

2. If a building is categorized as unsafe:

A. The QEWI must provide a recommended time frame for repairs to be performed to bring the building to SWARMP or safe status, and must indicate the date by which the work will be completed (MM/DD/YYYY);

B. Time frames of more than five (5) years will not be accepted.

(L) A list and description of the work permits required to accomplish the necessary work. If no work permits will be required, the reason [shall] must be indicated;

(M) All photographs must be color, clearly legible, dated, and high resolution. Digital photos must be a minimum of 800 x 600 pixels. Photographs must be arranged into PDF uploads of no larger than 11” x 17”. The following photos must be submitted:

1. Elevation photos. Color 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 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].

2. [The page/sheet size for attachments shall not exceed 11" x 17" (280mm x 430mm).] Detailed condition photos. Color photographs of specific conditions must be clearly labeled and indicate the status designation. Detailed conditions must be located on the mapping of the building's facade required by item G of this subparagraph (iii).

A. All SWARMP and unsafe must be catalogued.

B. If building status is safe, submit a minimum of three typical conditions.

3. Cavity wall probe photos. Color photographs of the following items:

A. each probe opening showing the location and size of the probes;

B. the interior of the probe showing the cross section of the wall;

C. the measurement of the spacing of the wall ties;

D. a close-up of the wall tie type and installation;

E. any other condition that indicates the soundness of the wall ties and cavity wall;

F. condition of relieving angle, including flashing and connection; and

G. condition of substrate.

(N) The classification of the building for the current report filing cycle, as determined by the following guidelines:

1. If there are no unsafe conditions and no conditions that are SWARMP, then the building shall be classified as safe;

2. If there is at least one unsafe condition, then the building shall be classified as unsafe.

3. If there is at least one condition that is SWARMP and there are no unsafe conditions, then the building shall be classified as SWARMP. A report may not be filed describing the same

condition at the same location as SWARMP for two consecutive report filing cycles. The QEWI [shall] must certify that all of the conditions identified in the previous report as requiring repair have been corrected or the building shall be classified as unsafe;

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

(4) *Report filing requirements.*

- (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] all walls shall be subject to facade inspection. Conditions requiring facade 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.
- (ii) Buildings required to file a report [shall] must do so at least once during each five-year report filing cycle established by the Department. [The next complete report filing cycle, cycle seven, runs from February 21, 2010 to February 20, 2015.]
- (iii) An acceptable report [shall] must 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 subparagraph (v) of this paragraph,
  - (B) eighteen months for buildings that meet the requirements of item (B) of subparagraph (v) of this paragraph and
  - (C) twelve months for buildings that meet the requirements of item (C) of subparagraph (v) of this paragraph].
- (iv) The report [shall] must be submitted to the Department along with a filing fee as specified in the rules of the Department.
- [(v) Beginning with cycle seven, which runs from February 21, 2010 to February 20, 2015, an acceptable report for each building to which this rule applies is due in accordance with the following filing windows:
  - (A) For buildings located within a block ending with the number four (4), five (5), six (6), or nine (9), an acceptable report shall be filed within the filing window starting February 21, 2010 and ending February 21, 2012.

- (B) For buildings located within a block ending with the number zero (0), seven (7), or eight (8), an acceptable report shall be filed within the filing window starting February 21, 2011 and ending August 21, 2012.
  - (C) For buildings located within a block ending with the number one (1), two (2), or three (3), an acceptable report shall be filed within the filing window starting February 21, 2012 and ending February 21, 2013.
- [(vi)] (v) Staggered inspection cycle: For every five-year report filing cycle [thereafter] an acceptable report is due in accordance with the following filing windows:
- (A) For buildings located within a block ending with the number four (4), five (5), six (6), or nine (9), an acceptable report [shall] must be filed within the two-year filing window starting February 21 of years ending in zero (0) and five (5) and ending February 21 of years ending in two (2) and seven (7).
  - (B) For buildings located within a block ending with the number zero (0), seven (7), or eight (8), an acceptable report [shall] must be filed within the two- year filing window starting February 21 of years ending in one (1) and six (6) and ending February 21 of years ending in three (3) and eight (8).
  - (C) For buildings located within a block ending with the number one (1), two (2), or three (3), an acceptable report [shall] must be filed within the two-year filing window starting February 21 of years ending in two (2) and seven (7) and ending February 21 of years ending in four (4) and nine (9).
- [(vii)] (vi) Initial reports for new buildings greater than six stories in height [shall] must be filed as follows:
- (A) The report [shall] must be filed five years from the date the first Temporary Certificate of Occupancy or Certificate of Occupancy was issued, if that five year date falls within the applicable filing window according to the last digit of the building's block number as provided in subparagraph (v) [or (vi)] of this paragraph; or
  - (B) If five years from the date the first Temporary Certificate of Occupancy or Certificate of Occupancy was issued falls outside the applicable filing window according to the last digit of the building's block number as provided in subparagraph (v) [or (vi)] of this paragraph, then the initial report [shall] must be filed within the applicable two-year filing window for the next five-year cycle.
- [(viii)] (vii) 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 [subparagraphs] subparagraph (v) [and (vi)] of this paragraph, the owner or management [shall] must 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] must inform the Department 180 days prior to the end of the assigned filing window if this option is chosen. If an owner or representative chooses this option, the owner or representative [shall] must continue to file under this same filing window for the duration of the owner's ownership of the property.

[(ix)] (viii) A report [shall] must be filed within sixty (60) days of the date on which the QEWI completed the critical examination (final inspection date), as defined in subparagraph (viii) of paragraph (2) of subdivision [(b)] (c) of this section. Failure to file a report within sixty (60) days of the completed critical examination requires a new critical examination.

[(x)] (ix) A report may not be filed more than one (1) year after completion of the close-up inspection.

[(xi)] (x) If the report is not acceptable and is rejected by the Department, a revised report must be filed within forty-five (45) days of the date of the Department's rejection, after which the original file date will no longer be valid. If the report is not acceptable after two (2) rejections, a new initial filing fee as specified in the rules of the [department]Department is required. Failure to submit a revised report addressing the Department's objections within one (1) year of the initial filing requires a new critical examination, including a new close-up inspection.

[(xii)] (xi) A subsequent report indicating revised conditions may be filed within a five-year report filing cycle to change a building's filing status or the recommended time frame for repairs of SWARMP or unsafe conditions for that cycle.

[(xiii)] The Department retains the right to destroy any copy of reports not picked up by the owner within thirty (30) days after the date of its acceptance or rejection by the Department.]

(5) *Unsafe conditions.*

- (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] must 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] must be corrected within [thirty (30)] ninety (90) days from the submission of the critical examination report.



(iii) If, due to the scope of the repairs, the unsafe conditions cannot be corrected within the required 90 days, the QEWI must recommend a timeframe for repairs as noted in item (K) of subparagraph (iii) of paragraph (3) of subdivision (c). The owner of the building is responsible for ensuring that the conditions described in the critical examination report as unsafe are corrected and all actions recommended by the QEWI are completed within this timeframe. The owner must notify the Department of any deviation from the timeframe to make corrections as specified in QEWI's report. The subsequent report must include supporting documents from the QEWI justifying the request for a new time frame.

[(iii)] (iv) Within two weeks after repairs to correct the unsafe condition have been completed, the QEWI [shall] must inspect the premises. The QEWI [shall obtain permit sign-offs as appropriate and shall] must 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 and the owner must obtain permit sign-offs as appropriate. If the report is not acceptable and is rejected by the Department, a revised report must be filed within forty-five (45) days of the date of the Department's rejection. If the report is not acceptable after two (2) rejections, a new amended filing fee as specified in the rules of the [department]Department is required. Sheds or other protective measures [shall] must 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.

[(iv)] (v) The Commissioner may grant an extension [of time] of up to ninety (90) days to complete the repairs required to remove an unsafe condition upon receipt and review of an initial extension application submitted by the QEWI, together with:

[(A)] (A) A copy of the original report for that report filing cycle and all required documentation submitted with such report;

[(B)] (A) Notice that the premises have been secured for public safety by means of a shed, fence, or other appropriate measures as may be required;

[(C)] (B) A copy of the contract indicating scope of work to remedy unsafe conditions;

[(D)] (C) The QEWI's estimate of length of time required for repairs;

[(E)] (D) A statement of all applicable permit requirements;

[(F)] (E) A notarized affidavit by the owner of the building that work will be completed within the time of the QEWI's stated estimate; and

[(G)] a) (F) A fee as specified in the rules of the Department.

Note: Financial considerations shall not be accepted as a reason for granting an extension.

[(v)] (vi) A further extension will be considered only upon receipt and review of a further extension application, together with notice of:

- (A) An unforeseen delay (e.g., weather, labor strike) affecting the substantially completed work; or
- (B) Unforeseen circumstances (e.g., fire, building collapse); or
- (C) The nature of the hazard that requires more than ninety (90) days to remedy (e.g., new wall to be built); or
- (D) Progress photos showing current facade repairs.

Note: Financial considerations shall not be accepted as a reason for granting an extension.

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

- (i) The owner of the building is responsible for ensuring that the conditions described in the critical examination report as SWARMP are [repaired] corrected 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 QEWI's report. [Such notification shall be accompanied by] The subsequent report must include 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 two consecutive report filing cycles.
- (iii) The QEWI [shall] must certify the correction of each condition reported as requiring repair in the previous report filing cycle, [or] report conditions that were reported as SWARMP in the previous report filing cycle as unsafe if not corrected at the time of the current inspection, or report corrections that were made in the previous cycle as unsafe if they need further or repeated repair at the time of the current cycle.

[(c)] (d) *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] five thousand dollars [(\$1,000)] (\$5,000) 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] one thousand dollars [(\$250.00)] (\$1,000.00) 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,] as detailed in the table below, until the unsafe condition is corrected[, unless]. Unless the [commissioner] Commissioner grants an extension of time to complete repairs pursuant to this section, the penalties will be incurred as detailed in the table below. This penalty shall be imposed until receipt of an acceptable amended report by the [department]Department indicating the unsafe conditions were corrected, the sidewalk shed has been removed and the associated permits are signed off with the Department, including shed permits, or an extension of time is granted by the Commissioner.

	<u>Base penalty</u>	<u>Plus</u>
<u>Year 1</u>	<u>\$1000/month</u>	<u>NA</u>
<u>Year 2</u>	<u>\$1000/month</u>	<u>\$10/linear foot (l.f.)of shed/month</u>
<u>Year 3</u>	<u>\$1000/month</u>	<u>\$20/l.f. shed/month</u>
<u>Year 4</u>	<u>\$1000/month</u>	<u>\$30/l.f. shed/month</u>
<u>Year 5</u>	<u>\$1000/month</u>	<u>\$40/l.f. shed/month</u>

- ~~(4)~~ Failure to correct SWARMP conditions. An owner who fails to correct a SWARMP condition reported as requiring repair in the previous report filing cycle and subsequently files the condition as unsafe shall be liable for a civil penalty of two thousand dollars (\$2,000).

~~[(4)]~~ (5) 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] must 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] must be made in writing within thirty (30) days from the date of service of the violation by the [department]Department and send to the office/unit of the [department]Department that issued the violation. The decision to dismiss or uphold the penalty shall be at the sole discretion of the [department]Department.

~~[(d) Penalty]~~ (e) Full or partial penalty waivers; eligibility and evidentiary requirements. Owners may request a full or partial waiver of penalties assessed for violation of Article 302 of Title 28 of the Administrative Code, the [1968] New York City Building Code and/or rules enforced by the Department. Requests [shall] must be made in writing and [shall] must meet eligibility and evidentiary requirements as follows:

- (1) Owner status.

- (i) [New] A new owner requesting a waiver due to change in ownership [shall] must submit proof of a recorded deed evidencing transfer of ownership to the current owner after penalties were incurred, as well as any other documentation requested by the Department, and only in 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 took title of the property as part of an economic development program sponsored by a government agency.
- (ii) (A) A new owner of a [government-owned] property previously owned by a government entity requesting a waiver due to change in ownership [shall] must submit official documentation from the government entity affirming that the premises was entirely owned by the government entity during the period for which a waiver is requested.
- (B) A new owner who receives a notice of violation for failure to comply with the requirements of this section or Article 302 of Title 28 of the Administrative Code that was issued to the property after the transfer of ownership must submit a recorded deed showing the date that the property was acquired or transferred. The waiver period shall be from the date of the deed to the date of the violation issuance.
- [(iii)] (ii) 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.”] an order signed by a bankruptcy court judge.
- (iii) If a state of emergency is declared that prevents an owner from conducting an inspection, filing a report or correcting unsafe conditions, an owner may be granted a waiver of penalties.
- (2) *Building status.* An owner requesting a waiver because the building was demolished [shall] must submit city or departmental records evidencing the demolition of the building prior to the filing deadline.

(f) Posting of Conditions Certificate. A conditions certificate issued by the Commissioner must be posted in a frame with a transparent cover in the lobby or vestibule of the subject building within thirty (30) days of issuance. The certificate must indicate the most recent condition of the building’s exterior walls and appurtenances.

**NEW YORK CITY DEPARTMENT OF BUILDINGS**

**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 amendments to Sections 101-02 and 101-07 of Chapter 100 of the Rules of the City of New York, regarding Waiver of Certain Construction Documents Required to be Submitted by Registered Design Professionals for Certain Work and Approved Agencies, respectively.

This rule was first published on February 13, 2018 and a public hearing thereon was held on March 16, 2018.

Dated: 4.6.18  
New York, New York

  
Rick D. Chandler, P.E.  
Commissioner

## Statement of Basis and Purpose

This rule amends portions of 1 Rules of the City of New York (RCNY) §§ 101-02 and 101-07 to allow Approved Elevator Agency Directors, rather than Registered Design Professionals, to file elevator door monitoring work. The rule also allows approved elevator inspection agencies, rather than DOB inspectors, to inspect the installation of elevator door monitoring systems. The Department makes these changes in order to reduce the burden on owners who must – pursuant to section 3.10.12 of chapter K3 of Appendix K of the New York City Building Code – retrofit existing elevators to include elevator door monitoring systems by January 1, 2020.

This rule also corrects a citation error in 1 RCNY § 101-07.

The Department of Buildings' authority for this rule is found in sections 643 and 1043 of the New York City Charter.

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.

**Section 1.** Paragraphs (2) and (3) of subdivision (a) of section 101-02 of Title 1 of the Rules of the City of New York are renumbered (3) and (4), respectively. The introductory paragraph of subdivision (a) is amended and a new paragraph (2) is added to read as follows:

(a) Pursuant to section 28-104.6[, Exception 4,] of the administrative code, the commissioner is authorized to allow persons other than registered design professionals to be the applicant for the approval of construction documents. Pursuant to section 28-104.7.12 of the administrative code, the commissioner is authorized to waive the submission of any of the required construction documents. The commissioner can waive this submission [and other data] if review of such documents is not necessary to ascertain compliance with [this code] the Construction Codes or is not required for the phase of work for which a permit is sought. Notwithstanding the following provisions, the commissioner reserves the right to require the filing of narratives or sketches showing compliance with the provisions of this code for the categories of work described below.

(2) Selected elevator work. In connection with the filing of applications for construction document approval, the Applicant is not required to be a registered design professional and design drawings are not required to be submitted for work performed pursuant to section 3.10.12 of chapter K3 of Appendix K of the New York City Building Code. This update applies to the following items (i) through (v) below:

- (i) Elevator Agency Director required. The installation application shall be filed by a Department approved elevator agency director (“Applicant”);
- (ii) Design Approval. The controller manufacturer or a registered design professional approves the design and/or controller modifications in accordance with § 3.10.12 of chapter K3 of Appendix K, and the Applicant must submit with the application proof, in a form and manner acceptable to the commissioner, of such approval.
- (iii) Design drawings and any controller modifications must be dated, contain unique drawing numbers, and specify the relevant premises and elevator device number.
- (iv) The following documents must be maintained in the subject premises’ machine room and made available to the Department upon request:
  - (A) A copy of the design drawings and any controller modifications with the controller manufacturer’s stamp;
  - (B) A letter on the controller manufacturer or registered design professional’s business letterhead, attesting that the door monitoring system’s design and any controller modifications comply with the Construction Codes and all ANSI requirements.

(v) Inspection. The Applicant inspects and tests such work on behalf of the owner and in the presence of an independent approved elevator inspection agency not affiliated with the Applicant, which witnesses the test (“witnessing agency”) with following conditions:

(A) The Applicant must notify the department at least 48 hours prior to such inspection and testing.

(B) Pursuant to section 28-304.6.3 of the administrative code, the Applicant must report any unsafe or hazardous conditions to the department.

(C) Provided there are no unsafe or hazardous conditions, both the Applicant and the witnessing agency inspector(s) must sign the inspection certificate at the site before returning the device to service.

(D) Pursuant to section 28-304.6.5 of the administrative code, the Applicant submits an inspection and test report to the department.

§ 2. Subparagraphs (iii) and (iv) of paragraph (4) of subdivision (c) of Section 101-07 of Title 1 of the Rules of the City of New York are amended to read as follows:

**§101-07 Approved Agencies.**

(iii) Tests and inspections performed by an approved elevator inspection agency on behalf of the owner after the effective date of this section shall be performed in compliance with section [3012.1 ] 3014.1 of the Building Code and the reference standards set forth in [appendix] Appendix K of the Building Code.

(iv) [Effective January 1, 2009, periodic] Periodic elevator inspections and tests performed by an approved elevator inspection agency on behalf of the owner as required by section 28-304.6.1 and Section 3.10.12 of chapter K3 of Appendix K of the Administrative Code shall be performed in compliance with the following requirements:

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This amendment has an effective date of 03-02-16.


**NEW YORK CITY DEPARTMENT OF BUILDINGS**

**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 amendments to Sections 101-06 and 101-07 of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding special inspectors and special inspection agencies, and approved agencies, respectively.

This rule was first published on December 10, 2015 and a public hearing was held on January 13, 2016.

Dated: 1.22.16  
New York, New York

  
Rick D. Chandler, P.E.  
Commissioner



## Statement of Basis and Purpose

This rule amends 1 RCNY §101-06 to clarify that special inspectors and special inspection agencies must cooperate with all Department of Buildings investigations, including audit investigations.

This rule also amends 1 RCNY §101-07 to update reference standards and cross references in accordance with amendments made by Local Law 141 for the year 2013.

The Department of Buildings' authority for these rules is found in Section 643 and 1043(a) of the New York City Charter and sections 28-114.1 and 28-115.1 of the Administrative Code of the City of New York.

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.

**Section 1.** Paragraph (5) of subdivision (b) of Section 101-06 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (5) **Obligation to Cooperate with Inquiries.** All special inspectors and/or special inspection agencies shall cooperate [in] with any investigation, including any audit investigation, by the department, or other city or law enforcement agency, into the activities at any job site or fabricating/manufacturing facility for which they have been designated a special inspector or special inspection agency and shall provide prompt, accurate and complete responses to reasonable inquiries by the department and other appropriate agencies about the conduct of such business.

**§2.** Paragraph (16) of subdivision (a) of Section 101-07 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (16) *Technician.* An employee of the inspection or testing agency assigned to perform the actual operations of inspection or testing. See ASTM [E329-07] E329-14a, paragraph [3.1.17] 3.1.9.

**§3.** Paragraph (2) of subdivision (c) of Section 101-07 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (2) **Testing and inspection agencies for product certification.**
  - (i) A testing agency shall be deemed an approved testing agency for testing materials to specified standards in accordance with the Construction Codes and their referenced standards where such agency has achieved accreditation for such testing from International Accreditation Service, Inc. or an equivalent accrediting agency accrediting to the standards set forth in International Standards Organization ("ISO") 17025, 2005 edition (General Requirements for the Competence of Testing and Calibration Laboratories) or a federal agency. Accrediting agencies, other than federal agencies, must be members of an internationally recognized cooperation of laboratory and inspection

- (ii) An inspection and/or product certification agency shall be deemed an approved inspection and/or approved product certification agency for listing and labeling materials to specified standards in accordance with the Construction Codes and their referenced standards where such agency has achieved accreditation for such listing and labeling from International Accreditation Service, Inc. or an equivalent accrediting agency accrediting to the standards set forth in ISO 17020, [1998] 2012 edition (General Criteria for the Operation of Various Types of Bodies Performing Inspection), [ISO Guide 65, 1996] ISO 17065, 2012 edition (General Requirements for Bodies Operating Product Certification Systems) or a federal agency. Accrediting agencies, other than federal agencies, must be members of an internationally recognized cooperation of laboratory and inspection accreditation bodies subject to a mutual recognition agreement.
- (iii) An approved testing and/or approved inspection agency shall have in responsible charge a director who shall be qualified by education and relevant experience to undertake the tests or inspections performed. Qualification may be based on the standards set forth in ASTM [E329-07] E329-14a. The director shall personally supervise the testing and/or inspection of materials for compliance with prescribed nationally recognized standards. Concrete testing laboratories shall follow the provisions of paragraph (6) of subdivision (c) of this section.
- (iv) Technicians shall be qualified by education and relevant experience to perform all tests or inspections they may be required to conduct under the supervision of the director. Qualification may be based on the standards set forth in ASTM [E329-07] E329-14a.

**§4.** The table in subparagraph (iv) of paragraph (3) of subdivision (c) of Section 101-07 of Title 1 of the Rules of the City of New York is amended to read as follows:

Progress Inspection Category	[2008] <u>2014</u> Code Section	Qualifications	
		Primary Inspector or Inspection Supervisor	Supplemental Inspector under direct supervision of Inspection Supervisor
Preliminary Inspection	AC 28-116.2.1	<ul style="list-style-type: none"> <li>• Registered design professional with relevant experience</li> </ul>	<ul style="list-style-type: none"> <li>• A person with relevant experience</li> </ul>
Compliance inspections	AC 28-116.2.2	<ul style="list-style-type: none"> <li>• Registered design professional with relevant experience</li> </ul>	<ul style="list-style-type: none"> <li>• A person with relevant experience</li> </ul>
Footing and foundation	BC [109.3.1] <u>110.3.1</u>	<ul style="list-style-type: none"> <li>• Registered design professional with relevant experience</li> </ul>	<ul style="list-style-type: none"> <li>• A person with relevant experience</li> </ul>
Lowest floor elevation	BC [109.3.2] <u>110.3.2</u> ; BC G105.3, Item 1	<ul style="list-style-type: none"> <li>• Engineer with relevant experience or licensed professional land surveyor with relevant experience</li> </ul>	<ul style="list-style-type: none"> <li>• A person with relevant experience</li> </ul>

<u>Structural Wood Frame</u>	BC [109.3.3] <u>110.3.3</u>	<ul style="list-style-type: none"> <li>Registered design professional with relevant experience</li> </ul>	<ul style="list-style-type: none"> <li>A person with relevant experience</li> </ul>
Fire-resistance-rated construction	BC [109.3.4] <u>110.3.4</u>	<ul style="list-style-type: none"> <li>Registered design professional with relevant experience</li> </ul>	<ul style="list-style-type: none"> <li>A person with relevant experience</li> </ul>
Energy code compliance – “residential” <sup>1</sup> buildings	BC [109.3.5] <u>110.3.5</u>	<ul style="list-style-type: none"> <li>Registered design professional of record for the respective work; or</li> <li>Registered design professional with five [years] <u>years</u>’ experience in the design, construction, construction observation and/or inspection of Energy Code-regulated systems for buildings</li> </ul>	<ul style="list-style-type: none"> <li>3 [years] <u>years</u>’ experience in the inspection or construction observation of buildings for Energy Code-regulated systems</li> </ul>
Energy code compliance – “commercial” <sup>2</sup> buildings	BC [109.3.5] <u>110.3.5</u>	<ul style="list-style-type: none"> <li>Registered design professional of record for the respective work; or</li> <li>Registered design professional with five [years] <u>years</u>’ experience in the design, construction, construction observation and/or inspection of Energy Code-regulated systems for buildings, at least three years of which shall be for the system type(s) for which he/she performs progress inspections</li> </ul>	<ul style="list-style-type: none"> <li>3 [years] <u>years</u>’ experience in the inspection or construction observation of buildings for Energy Code-regulated systems in commercial buildings for which he/she performs progress inspections</li> </ul>
Other	BC [109.3.6] <u>110.3.6</u>	<ul style="list-style-type: none"> <li>Registered design professional with relevant experience</li> </ul>	<ul style="list-style-type: none"> <li>A person with relevant experience</li> </ul>
Final	AC 28- 116.2.4.2	<ul style="list-style-type: none"> <li>Registered design professional with relevant experience</li> </ul>	<ul style="list-style-type: none"> <li>A person with relevant experience</li> </ul>
Place of assembly emergency lighting	AC 28- 116.2.2	<ul style="list-style-type: none"> <li>Registered design professional with relevant experience</li> </ul>	<ul style="list-style-type: none"> <li>A person with relevant experience</li> </ul>

<sup>1</sup> As such term “residential” is defined in the New York City Energy Conservation Code.

<sup>2</sup> As such term “commercial” is defined in the New York City Energy Conservation Code.

**§5.** Clause (B) of subparagraph (i) of paragraph (6) of subdivision (c) of Section 101-07 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (B) Achieved accreditation from AASHTO Accreditation Program, the National Voluntary Laboratory Accreditation Program, or an equivalent accrediting agency accrediting to the standards set forth in ASTM Designations: C1077, C1093 and [E 329-07] E329-14a or a federal agency. Accrediting agencies, other than federal agencies, must be members of an internationally recognized cooperation of laboratory and inspection accreditation bodies subject to a mutual recognition agreement.

**§6.** Subparagraph (iv) of paragraph (6) of subdivision (c) of Section 101-07 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (iv) Laboratory technicians shall be certified as ACI Concrete Testing Laboratory Technician – Level 1, or other equivalent certification acceptable to the commissioner. Qualification may be based on the standards set forth in ASTM C1077, C1093 and [E 329-07] E329-14a.

**NEW YORK CITY DEPARTMENT OF BUILDINGS**

**NOTICE OF ADOPTION OF RULE AMENDMENT**

**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 amendments to Sections 12-01, 101-06, 101-07, 102-01, 104-08, 3500-01, and 3500-02 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding extending the effective dates of such rule sections.

This rule was first published on October 1, 2014. The Department did not hold a public hearing on the proposed rule amendment on the grounds that a hearing would have served no public purpose.

Dated: 11.10.14  
New York, New York

  
Rick D. Chandler, P.E.  
Commissioner

This amendment has an effective date of 12-19-14.

### **Statement of Basis and Purpose**

Local Law 52 of 2014 changed the effective dates of amendments of the New York City Construction Codes pursuant to Local Law 141 of 2013 and certain other local laws as set forth in Local Law 52 from October 1, 2014 to December 31, 2014. These amendments together are commonly referred to as “the 2014 NYC Construction Codes”.

Therefore, the Department of Buildings (DOB) is amending rules previously adopted pursuant to the 2014 NYC Construction Codes to conform the effective dates of such rules to the new effective date of such code (December 31, 2014) as set forth in Local Law 52 of 2014.

In accordance with Section 1043(e)(iii) of the City Charter, DOB did not hold a public hearing on this rule amendment on the grounds that a hearing would have served no public purpose.

Further, in accordance with Section 1043(d)(4)(iii) of the City Charter, this rule is not subject to review pursuant to Section 1043(d) of same.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 2 of the rule which repealed Section 12-01 of Chapter 12 of Title 1 of the Rules of the City of New York, regarding emergency power system requirements, as adopted on August 29, 2014, is amended to read as follows:

§2. This rule shall take effect on [October 1, 2014] December 31, 2014.

§2. Section 22 of the rule which promulgated Section 101-06 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York, regarding special inspectors and special inspection agencies, as adopted on August 1, 2014, is amended to read as follows:

§ 22. This rule amendment shall take effect on [October 1, 2014] December 31, 2014.

§3. Section 2 of the rule which promulgated Section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York, regarding pipe welder certifying agencies, as adopted on July 16, 2014, is amended to read as follows:

§2. This rule shall be effective on [October 1, 2014] December 31, 2014.

§4. Paragraphs (9) and (10) of Subdivision (i) of Section 102-01 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York, regarding the classification of violations, as adopted on August 4, 2014, are amended to read as follows:

(9) 2008 code. References to the 2008 code pertain to the New York City Construction Codes effective on July 1, 2008 and any applicable subsequent amendments prior to [October 1, 2014] December 31, 2014.

(10) 2014 code. References to the 2014 code pertain to the amendments and additions to the New York City Construction Codes effective on [October 1, 2014] December 31, 2014 and any applicable subsequent amendments.

§5. Section 3 of the rule which promulgated Section 102-01 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York, regarding the classification of violations, as adopted on August 4, 2014, is amended to read as follows:

§3. This rule shall take effect on [October 1, 2014] December 31, 2014.

§6. Section 104-08 of Subchapter D of Chapter 100 of Title 1 of the Rules of the City of New York, regarding the qualification of site safety managers and site safety coordinators, as adopted on September 11, 2014, shall take effect on December 31, 2014.

§7. Section 2 of the rule which promulgated Sections 3500-01 and 3500-02 of Chapter 3500 of Title 1 of the Rules of the City of New York, regarding ACI and ANSI reference standards, as adopted on August 29, 2014, is amended to read as follows:

§2. This rule takes effect on [October 1, 2014] December 31, 2014.

This amendment has an effective date of 10-01-14.

**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 amendments to Section 101-07 of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding pipe welder certifying agencies.

This rule was first published on June 6, 2014 and a public hearing thereon was held on July 8, 2014.

Dated: 7/8/14  
New York, New York

  
\_\_\_\_\_  
Thomas Fariello, R.A.  
Acting Commissioner



## Statement of Basis and Purpose of Rule

On December 30, 2013, Local Law 141 was signed by the Mayor. Local Law 141 amends the Administrative Code of the City of New York, the New York City Plumbing Code, the New York City Building Code, the New York City Mechanical Code and the New York City Fuel Gas Code to bring these codes up to date with the 2009 editions of the International Building, Mechanical, Fuel Gas and Plumbing Codes. That local law goes into effect on October 1, 2014.

Among the changes made by Local Law 141 were amendments to portions of section 1210.2.2 of the Mechanical Code and additions to section 406.1.1.1 of the Fuel Gas Code. These amendments address welder qualification testing and approved agencies. Rule 101-07 is amended to reflect the new provisions enacted by Local Law 141.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter, section 1210.2.2 of the New York City Mechanical Code and section 406.1.1.1 of the New York City Fuel Gas 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.

Section 1. Paragraph (8) and subparagraphs (i) and (ii) of paragraph (8) of subdivision (c) of section 101-07 of the rules of the City of New York are amended to read as follows:

(8) Pipe welder qualifying agencies. An agency shall be deemed an approved agency for qualifying welders of gas piping installations in accordance with section 406.1.1.1 of the Fuel Gas Code and high pressure steam and high temperature hot water piping systems in accordance with section 1210 of the Mechanical Code, where such agency complies with the following:

- (i) The testing administrator for the pipe welder qualifying agency shall be an employee of such agency and [either] an AWS Certified Welding Inspector [or Senior Certified Welding Inspector or a quality control manager of a manufacturer or contractor holding an ASME Certificate of Authorization].
- (ii) A pipe welder qualifying agency shall be responsible for the following:
  - (A) [Verifying that welder performance qualifications are in accordance with ASME Boiler and Pressure Vessel Code Section IX] Complying with the requirements of section 406.1.1.1 of the Fuel Gas Code and section 1210.2.2 of the Mechanical Code;

- (B) Positively identifying each welder or welding operator being qualified;
- (C) Observing the welder or welding operator during the qualification test[;
- (D) Verifying that all welder qualification records (e.g., QW-484 forms or equivalent) accurately record the data required by ASME Boiler and Pressure Vessel Code Section IX and are certified by the manufacturer or contractor; and
- (E) Signing the welder qualification record and submitting a copy to the department when required].

§2. This rule shall be effective on October 1, 2014.


This rule has an effective date of 12-29-13.

**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 amendments to Sections 101-07, 103-01 and 103-05 of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding boiler inspection and reporting deadlines.

This rule was first published on October 8, 2013 and a public hearing thereon was held on November 8, 2013.

Dated: 11/20/13  
New York, New York

  
\_\_\_\_\_  
Robert D. LiMandri  
Commissioner

## STATEMENT OF BASIS AND PURPOSE

The following rule amendments are promulgated pursuant to the authority of the Commissioner of Buildings under Section 643 and 1043(a) of the New York City Charter and Article 303 of Title 28 of the New York City Administrative Code. Article 303 requires annual inspections of boilers. Section 28-303.4 authorizes the Commissioner to set the inspection cycle, and section 28-303.7 allows rules regarding the filing of inspection reports.

With the amendments to these rules regarding the annual inspection cycles for boilers, the Department is addressing some administrative issues that affect the deadlines for inspection and submitting reports for high-pressure and low-pressure boilers. The amendments do the following:

- Allow the current inspection cycle that started on January 1, 2013, as a result of the 2012 inspection cycle extension due to Hurricane Sandy, to end on December 31, 2013. All subsequent inspection cycles for years after 2013 will start on January 1 and end on December 31 of the calendar year. These changes establish the same annual inspection cycle that was used prior to the Department's cycle change in 2009.
- Create a conventional annual inspection cycle within a single calendar year that makes it easier for boiler owners to follow. These amendments will make it administratively easier for boiler owners and Department staff to identify the particular inspection cycle that the inspections and/or violations were filed and/or issued.
- Allow the Department to more easily calculate fees. The Department charges monthly late fees for inspection reports filed after the inspection cycle deadline. Adjusting the annual boiler inspection cycle period to start on January 1 and end on December 31 allows the Department to more easily calculate and determine when it should assess monthly late fees.
- Make sure that the boiler owner is properly filing records with the Department that are consistent with the active boilers present in the building. These amendments will allow inspection records to be maintained more accurately and the Department to account for boilers in use in city buildings.
- Alert the Department to the dangerous conditions caused by unregistered boilers. The Department deems unregistered boilers to be a dangerous condition that could threaten the life and safety of building occupants. These amendments allow the Department to be more aware of unregistered boilers by requiring inspectors to immediately notify the Department upon discovering an unregistered boiler during an inspection.
- Add to the low pressure boiler rule a provision regarding expired inspections that is in the high pressure boiler rule.

"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.

New text is underlined; deleted material is in [brackets].

This rule was not included in the agency's most recent regulatory agenda as it was not contemplated at the time the agenda was published.

Section 1. Subparagraph (ii) of paragraph 5 of subdivision (c) of section 101-07 of title 1 of the rules of the city of New York is amended to read as follows:

(ii) [Effective January 1, 2009, periodic] Periodic boiler inspections required by section 28-303.2 of the Administrative Code shall be performed in compliance with the following requirements:

§2. Clause (B) of subparagraph (ii) of paragraph 5 of subdivision (c) of section 101-07 of title 1 of the rules of the city of New York is amended to read as follows:

(B) A low pressure boiler annual inspection must be conducted between [November 16th of the preceding calendar year through November 15th] January 1st and December 31st of the calendar year for which an owner submits the report [is being submitted at a date that follows the preceding annual inspection by 6 months or more]. Low pressure boiler annual inspections must be conducted at least six months apart. The inspector must verify that a valid department-issued boiler number is affixed to the boiler and such number must be used in all correspondence between the inspector and the department. If an inspection reveals any dangerous condition in a boiler that threatens life or safety and that requires an immediate shut down of the boiler, or reveals an unregistered boiler, the inspector must immediately notify the boiler division at the department of the condition via fax or email at the number or address provided on the department's website, <http://www.nyc.gov/buildings>.

§3. Paragraphs 1, 3 and 4 of subdivision (c) of section 103-01 of title 1 of the rules of the city of New York are amended to read as follows:

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

(3) Inspection cycle. [November 16th of the preceding calendar year] January 1st through [November 15th] December 31st 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] of that report filed after the forty-five (45) day filing deadline but in no event more than twelve (12) months from the date of the inspection.

§4. Paragraph 1 of subdivision (d) of section 103-01 of title 1 of the rules of the city of New York is amended to read as follows:

(1) Inspection and report filing. An owner [shall] must comply with the inspection requirements and [shall] must file low pressure boiler annual inspection reports [as provided for in §101-07] pursuant to Article 303 of Title 28 of the Administrative Code and in accordance with Section 101-07 of this chapter.

§5. Subdivisions (e), (f) and (g) of section 103-01 of title 1 of the rules of the city of New York are relettered as subdivisions (f), (g) and (h), respectively, and a new subdivision (e) is added to read as follows:

(e) Acceptance of filings. Inspection reports filed after the forty-five (45) day filing deadline but within twelve (12) months of the inspection date will be considered late filings and will be subject to the appropriate civil penalties as set forth in subdivision (f) of this section. Reports filed after such twelve (12) month period will be considered expired. In such cases, owners will be subject to the appropriate civil penalties for failure to file an inspection report, as set forth in subdivision (f) of this section, and the department will require a new inspection to be performed for the current inspection cycle and a new report filed in accordance with this section.

§6. Paragraphs 5 and 8 of subdivision (c) of section 103-05 of title 1 of the rules of the city of New York are amended to read as follows:

(5) Inspection cycle. [November 16th of the preceding calendar year] January 1st through [November 15th] December 31st of the calendar year for which an owner submits the report [is being submitted].

(8) Late filing. An inspection report or any part [thereof that is] of that report filed after the forty-five (45) day filing deadline but in no event more than twelve (12) months from the date of the inspection.

§7. Paragraph 5 of subdivision (e) of section 103-05 of title 1 of the rules of the city of New York is amended to read as follows:

(5) The inspector [shall] must verify that a valid department-issued boiler number is affixed to the boiler, and [such] this number [shall] must be used in all correspondence between the inspector and the department. If an inspection reveals any dangerous condition in a boiler that threatens life or safety and that requires an immediate shutdown of the boiler, or reveals an unregistered boiler, the inspector [shall] must immediately notify the department's boiler division of the condition via fax or email at the number or address provided on the department's website, <http://www.nyc.gov/buildings>.

§8. Subdivision (f) of section 103-05 of title 1 of the rules of the city of New York is amended to read as follows:

(f) Acceptance of filings. Inspection reports filed after the forty-five (45) day filing deadline but within twelve (12) months of the date the inspection was conducted [shall] will be considered late filings [upon payment of] and will be subject to the appropriate civil penalties as set forth in subdivision [(i)] (j) of this section. Reports filed after such twelve (12) month period [shall] will be [deemed] considered expired. In such cases, [the appropriate civil penalties shall be paid,] owners will be subject to the appropriate civil penalties for failure to file a report as set forth in subdivision (j) of this section, and the department will require a new inspection [shall] to be performed for the current inspection cycle and a new report filed in accordance with this section.

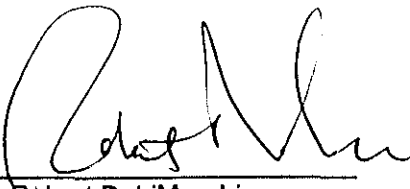
This amendment has an effective date of 10-30-11.

## 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 amendment of section 101-07 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding elevator inspection agencies.

This rule was first published on August 4, 2011, and a public hearing thereon was held on September 9, 2011.

Dated: 9/23/11  
New York, New York

  
\_\_\_\_\_  
Robert D. LiMandri  
Commissioner

## STATEMENT OF BASIS AND PURPOSE

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

Under the current rule, inspectors who have passed a department examination by July 1, 2010 can only witness elevator tests until July 1, 2011.

The amendments:

- Extend the time during which an elevator inspection agency may continue to witness required periodic elevator tests pending the issuance or denial of a certificate of approval from the department. This amendment allows elevator inspectors or agency directors who have applied for and passed a department examination by July 1, 2010 to continue to witness the tests until December 31, 2011 while the department conducts background investigations. Without this extension there would be an insufficient number of inspectors who would be able to witness the mandatory periodic elevator tests required by the Administrative Code. This extension will enhance the safety and reliability of elevators and escalators by ensuring that appropriate inspections are conducted and that elevators are maintained in a safe condition.
- Eliminate some outdated provisions and make a few minor corrections to numbering and cross references.



**Section 1. Paragraph 1 of subdivision c of section 101-07 of chapter 100 of title 1 of the rules of the city of New York is amended to read as follows:**

- (1) [Except as otherwise provided in subdivisions (c)(8)(vi) and (d) of this section, on or after the effective date of this section, all] All approved agencies, including single person approved agencies, shall comply with the requirements of this section and [Title 28-] Article 114 of Title 28 of the Administrative Code and shall meet the qualifications set forth herein.

**§2. Subparagraph iii of paragraph 2 of subdivision c of section 101-07 is amended to read as follows:**

- (iii) An approved testing and/or approved inspection agency shall have in responsible charge a director who shall be qualified by education and relevant experience to undertake the tests or inspections performed. Qualification may be based on the standards set forth in ASTM E329-07. The director shall personally supervise the testing and/or inspection of materials for compliance with prescribed nationally recognized standards. Concrete testing laboratories shall follow the provisions of paragraph (6) of subdivision (c) [(6)] of this section.

**§3. Subparagraphs ii and iii of paragraph 4 of subdivision c of section 101-07 are amended to read as follows:**

- (ii) Written or oral tests required by 1 RCNY 11-01(a)(2)(ii) shall require familiarity with the standards set forth in section 3001.2 and appendix K of the Building Code, including chapter K3, pertaining to existing elevators, as set forth in the rules of the department.
- (iii) Tests and inspections performed by an approved elevator inspection agency on behalf of the owner after the effective date

of this section shall be performed in compliance with section 3012.1 of the Building Code and the reference standards set forth in [section 3012.1 and] appendix K of the Building Code[, provided that for the period from January 1, 2008 through September 15, 2008, inspections and tests need not be witnessed by another approved elevator inspection agency, QEI or QEIS authorized pursuant to clause (C) of subparagraph (iv)].

**§4. Clause C of subparagraph iv of paragraph 4 of subdivision c of section 101-07 is amended and a new clause D is added to read as follows:**

- (C) The approved elevator inspection agency responsible for witnessing the test shall designate [to witness such test] an inspector in its employment who holds a Certificate of Approval from the department issued pursuant to the 1968 Building Code and 1 RCNY 11-01 to witness such test. [Individuals who do not hold a Certificate of Approval, but who possess the qualifications set forth in items ((a)) through ((c)) below, may witness such test through July 1, 2010. No such individual shall witness the test beyond such date unless he or she has by July 1, 2010 applied for and passed a department-sponsored/administered examination for a Private Elevator Inspection Agency Director or Private Elevator Inspection Agency Inspector Certificate of Approval.] Individuals who have applied for and passed [such] a department-sponsored/administered examination for a Private Elevator Inspection Agency Director or Private Elevator Inspection Agency Inspector Certificate of Approval examination by July 1, 2010 may continue to witness the test based on satisfaction of the qualifications set forth in items [((a))] 1 through [((c))] 3, below, through [July 1]December 31, 2011 or until the issuance or denial of a Certificate of Approval from the department, whichever is sooner.

[((a))] 1. A valid QEI or QEIS Certificate;

[(b)] 2. A minimum of five (5) years of satisfactory experience, within the last seven (7) years immediately preceding the date of affirmation from the director of the agency as prescribed in item [(c)] 3. below, in the assembly, installation, repair, design, or inspection of elevators, or as an elevator mechanic;

[(c)] 3. An affirmation from the director of the agency, on such form as the commissioner shall require, attesting that the QEI or QEIS

A. [is] is familiar with the construction and maintenance of elevators, escalators and related equipment and the standards set forth in Chapter 30 and appendix K of the Building Code, including appendix K3, pertaining to existing elevators, [as set forth] in the rules of the department; and

B. [a determination by the director that the QEI or QEIS is] is of good moral character so as not to adversely impact upon his or her fitness to witness elevator inspections.

The commissioner may refuse to accept such certification for any of the reasons specified as grounds for revocation or suspension set forth in subdivision [(e)d] of this section.

(D) The witnessing inspector shall affix the test/inspection date and his or her agency's Certificate of Approval number to the inspection certificate at the site. The witnessing inspector and the director of the witnessing agency shall further sign and indicate that agency's Certificate of Approval number in the test report.

**§5. Subparagraph v of paragraph 4 of subdivision c of section 101-07 is amended to read as follows:**

(v) *Agency employee restriction.* An employee of an elevator inspection agency may work only for such agency and for one agency director at a time.

[(D) The witnessing inspector shall affix the test/inspection date and his or her agency's Certificate of Approval number to the inspection certificate at the site. The witnessing inspector and the director of the witnessing agency shall further sign and indicate that agency's Certificate of Approval number in the test report.]

**§6. Subparagraph i of paragraph 5 of subdivision c of section 101-07 is amended to read as follows:**

(i) Notwithstanding anything to the contrary set forth herein, a qualified boiler inspector shall be deemed an approved boiler inspection agency, without further requirement of registration or accreditation, for the purpose of conducting the periodic inspections required by section 28-303.2 of the Administrative Code. [Such approved boiler inspection agencies may complete required periodic boiler inspections for the period from January 1, 2008 through December 31, 2008 in compliance with the requirements of the 1968 Building Code and 1 RCNY 2-01. Notwithstanding the above, reports of periodic boiler inspections for the period January 1, 2008 to December 31, 2008 shall be accompanied by a certification that identified defects have been corrected. The inspection report must be submitted to the department prior to December 31, 2008.]

**§7. Items ((a)), ((b)) and ((c)) of clause A of subparagraph ii of paragraph 5 of subdivision c of section 101-07 relating to low pressure boiler annual inspection reports are renumbered 1., 2. and 3., respectively.**

**§8. Clause C of subparagraph ii of paragraph 5 of subdivision c of section 101-07 is amended to read as follows:**

- (C) Low pressure boiler annual inspection reports not filed within 12 months from the date of the inspection will be deemed expired. Expired inspection reports will not be accepted by the department to satisfy the annual inspection report filing requirement as prescribed by section 28-303.7 of the Administrative Code and this section.

**§9. Subparagraph i of paragraph 6 of subdivision c of section 101-07 is amended to read as follows:**

- (i) [Except as provided in subdivision (d) of this rule, a] A concrete testing laboratory shall be deemed an approved agency for purposes of testing and inspecting concrete-related construction activities in accordance with the Building Code and its referenced standards where such laboratory has:

**§10. Clauses B and C of subparagraph ii of paragraph 6 of subdivision c of section 101-07 are amended to read as follows:**

- (B) Be a full-time employee of the laboratory and shall not serve as the director of more than one licensed laboratory at a time[. Laboratories in good standing with the department that are licensed prior to July 1, 2008, shall be required to comply with this requirement by July 1, 2010];
- (C) Be a registered design professional with at least five years of experience in the testing and inspection of concrete materials[. Laboratories in good standing with the department that are licensed prior to July 1, 2008, shall be

required to comply with this requirement by July 1, 2010];  
and

**§11. Subparagraph vii of paragraph 6 of subdivision c of section 101-07 is amended to read as follows:**

- (vii) A concrete testing laboratory shall maintain a New York City address or agent for the acceptance of service. A Post Office Box shall not be acceptable for such purposes. [A laboratory approved by the department prior to the effective date of this subparagraph shall comply with such requirement by July 1, 2010.]

**§12. Subparagraphs i, iii and iv of paragraph 7 of subdivision c of section 101-07 are amended to read as follows:**

- (i) Examination of a building's exterior walls and appurtenances thereof pursuant to section 28-302.2 of the Administrative Code shall be performed by or under the direct supervision of a qualified exterior wall inspector.
- (iii) A qualified exterior wall inspector shall maintain insurance coverage as set forth in paragraph (7) of subdivision (b) [(7)] above.
- (iv) Except as modified by the building code and this section, the provisions of 1 RCNY [32-02] 103-04 shall apply.

**§13. Subparagraph i of paragraph 8 of subdivision c of section 101-07 is amended to read as follows:**

- (i) The testing administrator for the pipe welder qualifying agency shall be an employee of such agency and either an AWS Certified Welding Inspector or Senior Certified Welding Inspector or a

quality control manager of a manufacturer or contractor holding an ASME Certificate of Authorization.

**§14. Subparagraph vi of paragraph 8 of subdivision c of section 101-07 regarding re-approval of qualifying agencies is repealed and subparagraph vii is renumbered vi and amended to read as follows:**

(~~vii~~vi) A pipe welder qualifying agency shall maintain a New York City address for the acceptance of service. A Post Office Box shall not be acceptable for such purposes. [An agency approved by the department prior to the effective date of this subparagraph shall comply with such requirement by July 1, 2010.]

**§15. Subdivision d of section 101-07 relating to interim status and application deadlines is repealed.**

**§16. Subdivision e of section 101-07 relating to suspension or revocation and reinstatement of approved agency status and subdivision f of section 101-07 relating to obligations of others are re-lettered d and e, respectively, and paragraph 2 of re-lettered subdivision d is further amended to read as follows:**

(2) Invalidation of tests and inspections upon suspension or revocation of approved agency status. Upon any suspension or revocation of approved agency approval pursuant to this subdivision [(e)], the owner of a building at which such approved agency was required or scheduled to perform special, progress or periodic inspections shall immediately designate another approved agency to re-do such tests or inspections performed by the disciplined agency. Any periodic inspections performed by a disciplined agency shall be rejected in the current cycle of such inspections and any owner of a building requiring such periodic inspection shall, upon notice of such disciplinary action, retain another approved agency to perform the periodic inspection.

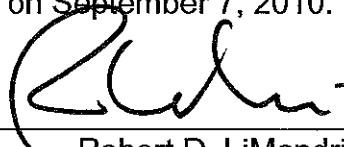
This amendment has an effective date of 01-01-11.

### 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, that the Department of Buildings hereby adopts amended Section 101-07 of Chapter 100 of Title 1 of the Rules of the City of New York, regarding approved progress inspection agencies, and new Chapter 5000 of Title 1 of the Rules of the City of New York, regarding construction documents approval requirements for compliance with the New York City Energy Code.

This rule was first published on April 16, 2010, and a public hearing thereon was held on May 18, 2010. This rule shall take effect on September 7, 2010.

Dated: 6/17/10  
New York, New York

  
\_\_\_\_\_  
Robert D. LiMandri  
Commissioner



**Section 1.** Paragraph 3 of subdivision c of section 101-07 of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

**(3) Progress inspection agencies.**

**(i) Responsibility of owner.** It shall be the responsibility of the owner to retain an approved agency to perform all required progress inspections for a new building or alteration project.

**(ii) Obligation to avoid conflict of interest.** A progress inspector and/or a progress inspection agency shall 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.

**(i)iii) Agency qualifications.** Registered design professionals with relevant experience shall be deemed approved progress inspection agencies, without further requirement of registration or accreditation, for the purpose of conducting the progress inspections required by section BC 109.3 [of the building code]. [Such progress inspections shall include the following:

- (A) Preliminary. See section 28-116.2.1 of the New York City Administrative Code and section 109.2 of the building code.
- (B) Footing & foundation. See section 109.3.1 of the building code.
- (C) Lowest floor elevation. See section 109.3.2 of the building code.
- (D) Frame inspection. See section 109.3.3 of the building code.
- (E) Energy Code Compliance Inspections. See section 109.3.5 of the building code.
- (F) Fire-resistant rated construction. See section 109.3.1 of the building code.
- (G) Final. See section 28-116.2.4.2 of the New York City Administrative Code and section 109.5 of the building code.

(H) Public assembly emergency lighting. See sections 1006 and 1024 of the building code and section 28-116.2.2 of the Administrative Code. ]

**(ii)iv) Inspector qualifications.** A progress inspection agency shall conduct required progress inspections, provided such inspections are conducted by a registered design professional with relevant experience or [a person under such design professional’s direct supervision.] an otherwise qualified individual pursuant to the following table:

<b><u>Progress Inspection Category</u></b>	<b><u>2008 Code Section</u></b>	<b><u>Qualifications</u></b>	
		<b><u>Primary Inspector or Inspection Supervisor</u></b>	<b><u>Supplemental Inspector</u></b> <b><u>under direct supervision</u></b> <b><u>of Inspection Supervisor</u></b>
<u>Preliminary inspection</u>	<u>AC 28-116.2.1</u>	<ul style="list-style-type: none"> <li>• <u>Registered design professional with relevant experience</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>A person with relevant experience</u></li> </ul>
<u>Compliance inspections</u>	<u>AC 28-116.2.2</u>	<ul style="list-style-type: none"> <li>• <u>Registered design professional with relevant experience</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>A person with relevant experience</u></li> </ul>
<u>Footing and foundation</u>	<u>BC 109.3.1</u>	<ul style="list-style-type: none"> <li>• <u>Registered design professional with relevant experience</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>A person with relevant experience</u></li> </ul>
<u>Lowest floor elevation</u>	<u>BC 109.3.2;</u> <u>BC G105.3. Item 1</u>	<ul style="list-style-type: none"> <li>• <u>Engineer with relevant experience or licensed professional land surveyor with relevant experience</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>A person with relevant experience</u></li> </ul>
<u>Frame</u>	<u>BC 109.3.3</u>	<ul style="list-style-type: none"> <li>• <u>Registered design professional with relevant experience</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>A person with relevant experience</u></li> </ul>
<u>Fire-resistance-rated construction</u>	<u>BC 109.3.4</u>	<ul style="list-style-type: none"> <li>• <u>Registered design professional with relevant experience</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>A person with relevant experience</u></li> </ul>
<u>Energy code compliance – “residential”<sup>1</sup> buildings</u>	<u>BC 109.3.5</u>	<ul style="list-style-type: none"> <li>• <u>Registered design professional of record for the respective work;</u> <u>or</u></li> <li>• <u>Registered design professional with five years experience in the design, construction, construction observation and/or inspection of Energy Code-</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>3 years experience in the inspection or construction observation of buildings for Energy Code-regulated systems</u></li> </ul>

<sup>1</sup> As such term “residential” is defined in the New York City Energy Conservation Code.

		<u>regulated systems for buildings</u>	
<u>Energy code compliance – “commercial”<sup>2</sup> buildings</u>	<u>BC 109.3.5</u>	<ul style="list-style-type: none"> <li>• <u>Registered design professional of record for the respective work;</u></li> </ul> <u>or</u> <ul style="list-style-type: none"> <li>• <u>Registered design professional with five years experience in the design, construction, construction observation and/or inspection of Energy Code-regulated systems for commercial buildings, at least three years of which shall be for the system type(s) for which he/she performs progress inspections</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>3 years experience in the inspection or construction observation of the system type(s) for Energy Code-regulated systems in commercial buildings for which he/she performs progress inspections</u></li> </ul>
<u>Other</u>	<u>BC 109.3.6</u>	<ul style="list-style-type: none"> <li>• <u>Registered design professional with relevant experience</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>A person with relevant experience</u></li> </ul>
<u>Final</u>	<u>AC 28-116.2.4.2</u>	<ul style="list-style-type: none"> <li>• <u>Registered design professional with relevant experience</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>A person with relevant experience</u></li> </ul>
<u>Place of assembly emergency lighting</u>	<u>AC 28-116.2.2</u>	<ul style="list-style-type: none"> <li>• <u>Registered design professional with relevant experience</u></li> </ul>	<ul style="list-style-type: none"> <li>• <u>A person with relevant experience</u></li> </ul>

**(iii)y Verifications by progress inspector.** In addition to all other items required to be inspected in accordance with applicable laws and rules, the progress inspector shall verify the following:

**(A) Completion of related special inspections.** A progress inspection agency’s performance of a progress inspection shall include verification that any special inspections that were required to have been conducted prior to the progress inspection have been documented as completed.

**(B) Updated approved documents.** Prior to performing a progress inspection, the progress inspection agency shall verify that the relevant approved construction documents, for the purpose of the progress inspection, represent the built conditions. If changes are required in the approved construction documents for the purpose of the progress inspection, the progress inspector shall

<sup>2</sup> As such term “commercial” is defined in the New York City Energy Conservation Code.

wait to perform the inspections until the updated construction documents have been approved, including the energy analysis, where applicable.

**(C) Energy code verifications.** Progress inspectors for Energy Code compliance shall perform inspections in accordance with the following:

**1. Sampling.** Unless noted otherwise in the Inspection/Test columns of Tables I and II of 1 RCNY §5000-01 (h), required inspections or tests shall be performed on not less than 15% of each relevant construction item in the scope of work as listed in the applicable table, and on not less than one of each type where applicable. Selection of such sample construction shall be at the sole discretion of the progress inspector. Nothing in this item shall prevent the progress inspector from determining that, in his or her professional judgment, more than 15% of a given type of construction item shall be inspected.

**2. Phased inspection for temporary certificates of occupancy.** Prior to issuance of a temporary certificate of occupancy for less than the total scope of work, inspection shall be required for all work serving the portion of the building for which the temporary certificate of occupancy is to be issued. Where a practical difficulty for some inspections is demonstrated to the commissioner, the commissioner may grant a waiver of those inspections for a specified time or until final inspection for the final certificate of occupancy.

**3. Phased inspection of controls.** Notwithstanding item 2 of this clause, where inspection of the HVAC and lighting controls for central head-end systems and communication networks depends upon completion of installation of all related end devices and components located in the building, such inspection of such controls for head-end systems and communication networks shall be completed prior to issuance of a final certificate of occupancy.

**4. Lighting.** Where the progress inspector verifies that, for any given space, the lighting power density is less than the lighting power density for such space on the approved construction documents, the progress inspector may approve such space without the need for revised construction documents to be submitted to and approved by the Department. For the purposes of this item, a space shall

mean an area within the building separated by floor-to-ceiling partitions from all other spaces within the building.

§2. Title 1 of the Rules of the City of New York is amended by adding a new Chapter 5000 to read as follows:

**Chapter 5000 – New York City Energy Conservation Code**

**§5000-01 Construction document approval requirements for compliance with the New York City Energy Conservation Code**

**(a) Purpose.** This section sets forth the requirements for filing and approval of construction documents and the universe of progress inspections during construction, in accordance with the New York City Energy Conservation Code.

**(b) References:** See New York City Energy Conservation Code (Administrative Code Sections 28-1001.1 et seq.); New York State Energy Conservation Construction Code (19 NYCRR part 1240); Administrative Code Section 28-104.7.9, Sections BC106.13 and BC109.3.5; 1 RCNY §101-07 (“Inspections and Approved Agencies”).

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

**(1) ADDITION.** An addition as defined in the Energy Code.

**(2) COMMERCIAL BUILDING.** A commercial building as defined in the Energy Code.

**(3) ENERGY CODE.** The New York City Energy Conservation Code (“ECC”).

**(4) PROJECT.** A design and construction undertaking comprised of work related to one or more buildings and the site improvements. A project is represented by one or more plan/work applications, including construction documents compiled in accordance with Section BC 106 of the New York City Building Code, that relate either to the construction of a new building or buildings or to the demolition or alteration of an existing building or buildings. Applications for a project may have different registered design professionals and different job numbers, and may result in the issuance of one or more permits.

**(5) RESIDENTIAL BUILDING.** A residential building as defined in the Energy Code.

**(d) Professional statement.** Every application filed by a registered design professional for approval of construction documents, shall include a professional statement of compliance with the Energy Code as set forth in Section BC 106.13; however, if the project is exempt from the requirements of the Energy Code in accordance with Section ECC 101, the professional shall include a statement of exemption instead and provide the citation to the provision that allows the exemption.

**(e) Owner statement.** The owner of the property for which an application for construction document approval is being filed shall attest on the application form that he or she shall not knowingly authorize construction documents or construction work that fail to comply with the Energy Code.

**(f) Energy analysis.** The applicant shall include an energy analysis on a sheet in the construction drawing set in the initial application filing. The energy analysis shall demonstrate how the applicant intends to comply with the Energy Code.

**Exception:** An energy analysis is not required for a project that is exempt from the Energy Code.

**(1) Accepted formats for energy analysis.** One of the following formats may be used to present the energy analysis:

**(i) Tabular analysis.** For new buildings, additions and/or alterations to existing residential or commercial buildings for which either ECC Chapter 4 or 8 has been used, the applicant may create a table entitled “Energy Analysis” as described in figure 1. Such table shall compare the proposed values of each Energy Code-regulated item in the scope of work with the respective prescriptive values required by the Energy Code. The items shall be organized by discipline, including Envelope Systems, Mechanical and Service Water Heating Systems, and Lighting and Electrical Systems, as applicable. Commercial building alterations and additions involving lighting may utilize the Lighting Application Worksheet from COMcheck and the tenant-area or portion-of-building method for the lighting analysis in lieu of including it in the tabular analysis. See subparagraph iii of this paragraph.

**Figure 1: Sample tabular energy analysis:**

<b>ENERGY ANALYSIS</b>		
Code chapter and/or standard used for design		
Climate Zone XXX (climate zone shall be identified here)		
<b>Item Description</b>	<b>Proposed Design Value</b>	<b>Code Prescriptive Value and Citation</b>
(list all elements of the	(list the value used in the	(list the prescriptive value

<u>scope of work in detail that are addressed by the energy code)</u>	<u>design)</u>	<u>required by the Energy Code)</u>
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**(ii) REScheck.** The REScheck software program available from the United States Department of Energy website may be used for residential buildings as follows:

**(A) New buildings.** REScheck may be used for new residential buildings.

**(B) Additions.** REScheck may be used for additions only where a whole-building analysis, including the existing building and the addition, is performed.

**(C) Alterations and repairs.** REScheck may be used for alterations and repairs only where a whole-building analysis, including the existing-to-remain and altered envelope and mechanical systems, is performed.

**(D) New York State form.** Only the New York State REScheck form shall be permitted.

**(iii) COMcheck.** The COMcheck software program available from the United States Department of Energy website may be used for commercial buildings as follows:

**(A) New buildings.** COMcheck may be used for new commercial buildings.

**(B) Additions.** COMcheck may be used for additions only as follows:

- 1.** Where a whole-building analysis, including the existing building and the addition, is performed; or
- 2.** Where the COMcheck report states “addition” as the project type.

**(C) Alterations and repairs.** COMcheck may be used for alterations and repairs only as follows:

- 1.** Where a whole-building analysis, including the existing-to-remain and altered parts of the building, is performed; or
- 2.** Where the COMcheck report states “alteration” as the project type.

**(D) COMcheck versions.** Only the New York State COMcheck form shall be permitted, except that where ASHRAE 90.1 is used in accordance with ECC Chapter 8, the comparable ASHRAE 90.1 COMcheck form shall be used instead. All three parts of the COMcheck report – the envelope, the mechanical/service water heating and the lighting/power parts – shall be presented, except where the

project type is an addition or alteration as described above and some parts of the report are not relevant to the scope of work.

**(iv) Energy cost budget worksheet.** For new commercial buildings and additions or alterations to commercial buildings, where the Energy Cost Budget Method of ASHRAE 90.1 is used in accordance with ECC Chapter 8, an energy modeling program developed by the United States Department of Energy, including DOE2 or updates of DOE2, shall be used; such updates include DOE2.1E, VisualDOE, EnergyPlus and eQuest. Other energy modeling programs approved by the Secretary of State of New York State may also be used. The lead energy professional shall identify the software and report inputs and outputs on a Department form.

**(v) Alternative formats.** Formats other than those listed in subparagraphs i through iv of this paragraph, including, but not limited to, the simulated performance alternative set forth in Section ECC 404 or the total building performance method set forth in Section ECC 806, may be used only if they are approved in advance by the commissioner. Use of these performance methods, when approved by the commissioner, shall utilize software programs acceptable to the commissioner. The applicant shall provide the project-relevant utility company energy cost rate structure in effect on January 1 of the calendar year in which the initial submission of the project application(s) is filed, and shall utilize the electricity, gas and steam prices from the rate structure in the energy model. Fuel oil prices used in the model shall be supported by comparable local supplier information from the provider in effect on January 1 of such calendar year.

**(2) Professional responsibility for energy analysis.** The energy analysis shall be signed and sealed by registered design professional(s) as follows:

**(i) Lead professional.** Where a whole-building analysis is performed for the energy analysis or where the design uses tradeoffs such that one or more systems of the energy analysis – envelope, mechanical/ service water heating and lighting/power – could not meet the prescriptive requirements of the Energy Code on its own, a lead professional shall be identified who shall sign and seal the entire energy analysis for all systems involved. Such lead professional shall be a registered design professional and may or may not be an applicant of record.



**(ii) Responsibility by discipline.** Where each system of the energy analysis – envelope, mechanical/service water heating and lighting/power – meets the prescriptive requirements of the Energy Code individually, different registered design professionals may sign and seal their respective parts of the energy analysis report individually; however, all parts of the energy analysis report shall be presented together on a sheet in the drawing set of the initial filing.

**(iii) Registered design professional other than an applicant of record.** A registered design professional other than an applicant of record may prepare, sign and seal the energy analysis, either as lead professional or for individual discipline(s) in accordance with subparagraph ii of this paragraph. Such registered design professional shall file a PW1 form as a subsequent filing to the initial application document.

**(g) Supporting documentation.** The construction drawings submitted for approval shall provide all energy design elements and shall match or exceed the energy efficiency of each value in each part of the energy analysis – envelope, mechanical/service water heating and lighting/power. In addition, other mandatory Energy Code requirements shall be provided as described in paragraphs 1 through 4 and as referenced in paragraph 5 of this subdivision. Further, supporting documentation shall provide all information necessary for a progress inspector to verify during construction that the building has been constructed in accordance with the approved construction documents and subdivision h of this section to meet the requirements of the Energy Code.

**(1) Envelope.** Building wall sections and details shall be provided for each unique type of roof/ceiling, wall, and either the foundation, slab-on-grade, basement or cellar assembly. Such building wall sections shall show each layer of the assembly, including, but not limited to, insulation, moisture control and vapor retarders, and the insulation in each case shall be labeled and shall be equal to or greater than the R values in the energy analysis. Door, window and skylight schedules shall include columns for U and SHGC values for each assembly type, and such values shall be equal to or less than those in the energy analysis. Mandatory requirements to prevent air and moisture leakage shall be detailed.

**(2) Mechanical/service water heating.** Space heating and cooling equipment, energy recovery equipment, ventilation equipment, service water heating equipment, and mandatory requirements including control systems, duct sealing and duct and piping insulation shall be shown on the construction drawings and shall be equal to or greater than the energy efficiency requirements established in the energy analysis, the Energy Code and/or this section, as applicable. A narrative shall be provided for

each mandatory control system describing its function and operation and specifying proper setpoints of equipment and controls.

**(i) Joints and sealing in residential buildings.** In accordance with the New York State Residential Code as referenced in the Energy Code, joints of duct systems in residential buildings shall be made substantially airtight by means of tapes, mastics or gasketing. Closure systems used with rigid fibrous glass ducts shall comply with UL 181A and shall be marked "181A-P" for pressure-sensitive tape, "181A-M" for mastic or "181A-H" for heat-sensitive tape. Closure systems used with flexible air ducts and flexible air connectors shall comply with UL 181B and shall be marked "181B-FX" for pressure-sensitive tape or "181B-M" for mastic. Duct connections to flanges of air distribution system equipment or sheet metal fittings shall be mechanically fastened. Crimp joints for round ducts shall have a contact lap of at least 1.5 inches (38 mm) and shall be mechanically fastened by means of at least three sheet metal screws or rivets equally spaced around the joint.

**(3) Lighting/power.** The applicant shall provide reflected ceiling plans, floor plans and/or electrical drawings with lighting layouts for each floor or space in the project, and for exterior lighting as applicable. The lighting fixtures shall be described and keyed to the lighting plans, including type designation, brief description, lamp type, watts per lamp, quantity of lamps per fixture, ballast/transformer type, and system input watts per fixture, such that the drawings support the energy analysis. In addition, mandatory lighting and power controls shall be shown and described, and a narrative provided describing their function and operation. Control devices and zones shall be indicated on drawings. Lighting documentation shall not be required within dwelling units as such term is defined in the Energy Code and for buildings regulated by ECC Chapter 4.

**(4) Electrical construction drawings required.** Construction documents, including a single-line diagram of the building or tenant electrical distribution system and other relevant electrical construction drawings, shall be submitted as supporting documentation if required for any of the following: to support the energy analysis; to satisfy mandatory requirements of the Energy Code, such as controls, transformer, metering, voltage drop and electric motor requirements; or to support progress inspections required by this section. Such drawings shall be numbered with an "EN" discipline designator and shall be signed and sealed by a registered design professional. Such registered design professional, if not an applicant of record, shall file a PW1 form as a subsequent filing to the initial application document.

**(5) Mandatory requirements.** The construction documents shall comply with all mandatory requirements of the Energy Code. For residential buildings, references for such requirements are listed in Section ECC 404.2. For commercial buildings complying with ECC Chapter 8 provisions, references for such requirements are listed as the Exceptions to Section ECC 801.2; for commercial buildings complying with ASHRAE 90.1, such requirements are set forth in Sections 5.4, 6.4, 7.4, 8.4, 9.4 and 10.4.

**(6) Permanent certificate in residential buildings.** For residential buildings, the construction documents shall indicate the following with regard to the permanent certificate required in accordance with Section ECC 401.3:

**(i) New buildings.** For new buildings regulated under ECC Chapter 4, a permanent certificate shall be required to be installed indoors and in accordance with Section ECC 401.3, except that it may be posted near the electrical distribution panel at eye level and in plain sight.

**(ii) Additions and alterations.** For additions and alterations affecting information on an existing permanent certificate, such permanent certificate shall be updated, initialed where changed and reposted such that the values on the posted permanent certificate remain current.

**(7) Deferred submittals.** Drawings showing design intent and performance criteria matching those in the energy analysis may be submitted as supporting documentation for the initial construction document approval provided that, in accordance with Section 28-104.2.6 of the Administrative Code, the applicant elects to defer any additional drawings that may be required by Section 28-104.7.1.

**(8) Required progress inspections.** Supporting documentation shall also set forth all applicable required progress inspections in accordance with the Energy Code, 1 RCNY §101-07 and this section.

**(i) Applicant's instructions regarding required progress inspections.** Progress inspections required to be performed during construction for any new building, addition or alteration project shall be identified by the applicant according to the scope of work and listed and described in the approved construction drawings as required progress inspections. The description shall set forth the standard of construction and the inspection criteria in accordance with the cited section(s) as appropriate for the scope of

work in accordance with Table I or Table II of subdivision h of this section, as applicable; simple reference to the citations provided is not sufficient. The applicant shall include the instruction that, in accordance with Section BC 109.9, where an inspection or test fails, the construction shall be corrected.

**(ii) Construction scheduling instructions.** The drawings shall state that, in accordance with Article 116 of Title 28 and Section BC 109, construction shall be scheduled to allow required progress inspections to take place, and that roofs, ceilings, exterior walls, interior walls, floors, foundations, basements and any other construction shall not be covered or enclosed until required progress inspections are completed or the progress inspector indicates that such covering or enclosure may proceed, at each stage of construction, as applicable.

**(iii) Commercial building reference standards and citations.** Progress inspection reference standards and citations shall conform to the respective requirements of ECC Chapter 8 or ASHRAE 90.1 as used for design, in accordance with the following:

**(A)** When ECC Chapter 8 has been used for design, as reflected in the energy analysis, the applicant shall direct on the drawings that the respective references and citations for ECC shall be used for the progress inspection.

**(B)** When ASHRAE 90.1 has been used for design, as reflected in the energy analysis, the applicant shall direct on the drawings that the respective references and citations for ASHRAE 90.1 shall be used for the progress inspection.

**(h) List of progress inspections required.** The following progress inspections and/or testing set forth in Tables I and II shall be required when applicable to the scope of work and shall be identified/described in the supporting documentation. Energy Code sections cited in Tables I and II of this section shall be understood to include the section, all subsections and all tables related to the cited Energy Code section.

**(1) Residential buildings.** The progress inspections and tests described in Table I shall be performed for buildings regulated by ECC Chapter 4.

**TABLE I – PROGRESS INSPECTIONS FOR ENERGY CODE COMPLIANCE – RESIDENTIAL BUILDINGS**

	<u>Inspection/ Test</u>	<u>Frequency (minimum)</u>	<u>Reference Standard (See ECC Chapter 10) or Other Criteria</u>	<u>ECC or Other Citation</u>
<b>IA</b>	<b><u>Envelope Inspections</u></b>			
<u>IA1</u>	<u>Protection of exposed foundation insulation: Insulation shall be visually inspected to verify proper protection where applied to the exterior of basement or cellar walls, crawl-space walls and/or the perimeter of slab-on-grade floors.</u>	<u>Prior to backfill</u>	<u>Approved construction documents</u>	<u>102.2.1</u>
<u>IA2</u>	<u>Insulation placement and R-values: Installed insulation for each component of the conditioned space envelope and at junctions between components shall be visually inspected to ensure that the R-values are marked, that such R-values conform to the R-values identified in the construction documents and that the insulation is properly installed. Certifications for unmarked insulation shall be similarly visually inspected.</u>	<u>As required to verify continuous enclosure while walls, ceilings and floors are open</u>	<u>Approved construction documents</u>	<u>102.1, 402.1, 402.2, 402.2.5</u>
<u>IA3</u>	<u>Fenestration values and product ratings for U-factors: U-factors of installed fenestration shall be verified by visual inspection for conformance with the U-factors identified in the construction drawings, either by verifying the manufacturer's NFRC labels or, where not labeled, using the ratings in ECC Tables 102.1.3(1) and (2).</u>	<u>As required during installation</u>	<u>Approved construction drawings; NFRC 100, Tables 102.1.3</u>	<u>102.1.3, 402.1, 402.3</u>
<u>IA4</u>	<u>Fenestration product ratings for air leakage: Windows, skylights and sliding glass doors, except site-built windows, skylights and doors, shall be visually inspected to verify that installed assemblies are listed and labeled to the referenced standard.</u>	<u>As required during installation</u>	<u>NFRC 400, AAMA/WDMA 101/I.S.2, or AAMA/WDMA 101/I.S.2/NAF S</u>	<u>402.4.2</u>

<u>IA5</u>	<u>Fenestration areas: Dimensions of windows, doors and skylights shall be verified by visual inspection.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents</u>	<u>402.3, 402.5.1</u>
<u>IA6</u>	<u>Sealing: Openings and penetrations in the building envelope, including site-built fenestration and doors, shall be visually inspected to verify that they are properly sealed.</u>	<u>As required during envelope construction</u>	<u>Approved construction documents</u>	<u>402.4.1, 402.4.3</u>
<u>IA7</u>	<u>Whole building envelope infiltration testing: When the R values of ECC Table 402.1(2) are used for the design, and ECC 402.1, Exception 3.1 is utilized as a result, the results of the air change test shall be reviewed for compliance with ECC 402.4.4.</u>	<u>Prior to final inspection</u>	<u>ASHRAE/ASTM E779; Approved construction documents</u>	<u>402.4.4</u>
<u>IA8</u>	<u>Moisture control, vapor retarder: Construction, including, but not limited to, above-grade frame walls, floors and ceilings that are not ventilated to allow moisture to escape, shall be visually inspected for installation of vapor retarder.</u>	<u>As required during envelope construction and prior to covering vapor retarder</u>	<u>Approved construction documents</u>	<u>402.5</u>
<b><u>IB Mechanical and Plumbing Inspections</u></b>				
<u>IB1</u>	<u>Fireplaces: Provision of combustion air and tight-fitting fireplace doors shall be verified by visual inspection.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents; ANSI Z21.60 (see also MC 904), ANSI Z21.50</u>	<u>102.5; BC 2111; MC Chapters 7, 9; FGC Chapter 6</u>
<u>IB2</u>	<u>Fresh air intake and exhaust dampers: Not less than 20% of installed dampers, and a minimum of one of each type, shall be visually inspected and physically tested for proper operation.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents</u>	<u>403.5</u>

<u>IB3</u>	<u>Equipment efficiencies: When the R values of ECC Table 402.1(2) are used for the design, and ECC 402.1, Exception 3.3 is utilized as a result, the efficiencies of all installed mechanical equipment shall be verified by visual inspection.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents, including energy analysis</u>	<u>403.7</u>
<u>IB4</u>	<u>Controls: System controls shall be inspected to verify that each dwelling is provided with individual programmable thermostats and that such controls operate as specified in ECC 403.1. Not less than 20% or one of each control type, whichever is more, shall be inspected.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents, including control system narratives</u>	<u>403.1, 403.1.1</u>
<u>IB5</u>	<u>Duct and piping insulation and duct sealing: Installed duct and piping insulation shall be visually inspected to verify insulation placement and values. Ducts, air handlers, filter boxes and building cavities used as ducts shall be visually inspected for proper sealing.</u>	<u>Prior to closing ceilings and walls and prior to final inspection</u>	<u>Approved construction documents</u>	<u>403.2.1, 403.2.2, 403.3, 403.4; MC Section 603; 1RCNY §5000-01</u>
<u>IB6</u>	<u>Duct leakage testing: When the R values of ECC Table 402.1(2) are used for the design, and ECC 402.1, Exception 3.2 is utilized as a result, the results of the duct leakage tests shall be reviewed for compliance with ECC 403.2.4. Not less than 20% of such ductwork shall be tested.</u>	<u>Prior to closing ceilings and walls and prior to final inspection</u>	<u>Approved construction documents; ANSI/ASHRAE 152, ASTM E1554 Test Method A</u>	<u>403.2.4</u>
<b><u>IC</u></b>	<b><u>Other</u></b>			
<u>IC1</u>	<u>Electrical metering: The presence and operation of individual meters or other means of monitoring individual dwelling units shall be verified by visual inspection for all dwelling units.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents</u>	<u>102.4</u>
<u>IC2</u>	<u>Transformers: Single-phase and three phase dry-type and liquid-filled distribution transformers installed as part of the scope of</u>	<u>Prior to final inspection</u>	<u>Approved construction documents; NEMA TP1</u>	<u>102.6, 805.7</u>

	<u>work (and not by the utility) shall be visually inspected to ensure that the installed transformers are listed and labeled to the referenced standard, or that associated product literature confirms that the transformers meet the referenced standard.</u>			
<u>IC3</u>	<u>Permanent certificate: The installed permanent certificate shall be visually inspected for location, completeness and accuracy.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents</u>	<u>401.3; 1RCNY 5000-01</u>
<u>IC4</u>	<u>Maintenance information: Maintenance manuals for equipment and systems requiring preventive maintenance shall be reviewed for applicability to installed equipment and systems before such manuals are provided to the owner. Labels required for such equipment or systems shall be inspected for accuracy and completeness and for compliance with ECC 102.3.</u>	<u>Prior to sign-off or issuance of Certificate of Occupancy</u>	<u>Approved construction documents</u>	<u>102.3</u>

**(2) Commercial buildings.** The progress inspections and tests described in Table II shall be performed for buildings regulated by ECC Chapter 8, including ASHRAE 90.1 where applicable.

**TABLE II – PROGRESS INSPECTIONS FOR ENERGY CODE COMPLIANCE – COMMERCIAL BUILDINGS**

	<u>Inspection/ Test</u>	<u>Periodic (minimum)</u>	<u>Reference Standard (See ECC Chapter 10) or Other Criteria</u>	<u>ECC or Other Citation</u>
<b><u>IIA Envelope Inspections</u></b>				
<u>IIA1</u>	<u>Protection of exposed foundation insulation: Insulation shall be visually inspected to verify proper protection where applied to the exterior of basement or cellar walls, crawl-space</u>	<u>As required during foundation work and prior to</u>	<u>Approved construction documents</u>	<u>102.2.1</u>



	walls and/or the perimeter of slab-on-grade floors.	backfill		
<u>IIA2</u>	<u>Insulation placement and R-values: Installed insulation for each component of the conditioned space envelope and at junctions between components shall be visually inspected to ensure that the R-values are marked, that such R-values conform to the R-values identified in the construction documents and that the insulation is properly installed. Certifications for unmarked insulation shall be similarly visually inspected.</u>	<u>As required to verify continuous enclosure while walls, ceilings and floors are open</u>	<u>Approved construction documents</u>	<u>102.1, 802.2, Tables 802.2; ASHRA E 90.1 – 5.4.1, 5.5, 5.6, 5.8.1</u>
<u>IIA3</u>	<u>Fenestration values and product ratings for U-factors and SHGC values: U-factors and SHGC values of installed fenestration shall be visually inspected for conformance with the U-factors and SHGC values identified in the construction drawings by verifying the manufacturer’s NFRC labels or, where not labeled, using the ratings in ECC Tables 102.1.3(1), (2) and (3). Where ASHRAE 90.1 is used, visible light transmittance values shall also be verified.</u>	<u>As required during installation</u>	<u>Approved construction documents; NFRC 100, NFRC 200, Tables 102.1.3</u>	<u>102.1.3, Tables 802.2, ASHRA E 90.1 – 5.4.2, 5.5.4, Tables 5.5; 5.6, 5.8.2</u>
<u>IIA4</u>	<u>Fenestration and door assembly product ratings for air leakage: Windows, skylights and sliding or swinging door assemblies, except site-built windows, skylights and/or doors, shall be visually inspected to verify that installed assemblies are listed and labeled by the manufacturer to the referenced standard.</u>	<u>As required during installation</u>	<u>NFRC 400, AAMA/WDMA 101/I.S.2, AAMA/WDMA 101/I.S.2/NAF S-02; ASTM E283</u>	<u>802.3.1, 802.3.2; ASHRA E 90.1 – 5.4.3.1, 5.4.3.2, 5.5.4, 5.6, 5.8.2</u>
<u>IIA5</u>	<u>Fenestration areas: Dimensions of windows, doors and skylights shall be verified by visual inspection.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents</u>	<u>802.2; ASHRA E 90.1 – 5.5.4.1</u>

IIA6	<u>Sealing: Openings and penetrations in the building envelope, including site-built fenestration and doors, shall be visually inspected to verify that they are properly sealed.</u>	<u>As required during construction</u>	<u>Approved construction documents</u>	<u>802.3.3, 802.3.5, 802.3.6, 802.3.7; ASHRA E 90.1 – 5.4.3.1, 5.4.3.3 5.4.3.4</u>
IIA7	<u>Projection factors: Where the energy analysis utilized a projection factor &gt; 0, the projection dimensions of overhangs, eaves or permanently attached shading devices shall be verified against approved plans by visual inspection.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents, including energy analysis</u>	<u>Tables 802.2; 802.2.3</u>
IIA8	<u>Moisture control, vapor retarder: Framed walls, floors and ceilings that are not ventilated to allow moisture to escape, shall be visually inspected for installation of a vapor retarder for moisture control.</u>	<u>As required during construction of envelope and prior to covering vapor barrier</u>	<u>Approved construction documents; ASTM E96 Procedure A</u>	<u>802.1.2</u>
<b><u>IIB Mechanical and Service Water Heating Inspections</u></b>				
IIB1	<u>Fireplaces: Provision of combustion air and tight-fitting fireplace doors shall be verified by visual inspection.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents; ANSI Z21.60 (see also MC 904), ANSI Z21.50</u>	<u>102.5; BC 2111; MC Chapters 7, 9; FGC Chapter 6</u>
IIB2	<u>Dampers integral to the building thermal envelope: Dampers shall be visually inspected to verify that such openings are equipped with motorized dampers that have been tested and listed or labeled. If such dampers are not listed or labeled, they shall be tested and shall meet</u>	<u>As required during installation</u>	<u>Approved construction documents; AMCA 500</u>	<u>802.3.4; ASHRA E 90.1 – 6.4.3.4.4</u>

	<u>the requirements to the satisfaction of the progress inspector.</u>			
<u>IIB3</u>	<u>HVAC and service water heating equipment performance: Equipment efficiencies and other performance factors of all major equipment units, as determined by the applicant of record, and no less than 15% of minor equipment units, shall be verified by visual inspection and, where necessary, review of manufacturer's data.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents</u>	<u>803.2.2, Tables 803.2.2; 803.3.2, Tables 803.3.2; 804.2, Table 804.2; ASHRA E 90.1 – 6.1, 6.3, 6.4.1, 6.8, Tables 6.8.1; 7.4.2, Table 7.8</u>
<u>IIB4</u>	<u>HVAC system controls and economizers and service hot water system controls: No less than 20% of each type of required controls and economizers shall be verified by visual inspection and tested for functionality and proper operation. Such controls shall include, but are not limited to, Thermostatic; Set point overlap restriction; Off-hour; Shutoff damper; Economizers; Variable air volume fan; Hydronic systems; Heat rejection equipment fan speed; Complex mechanical systems serving multiple zones; Ventilation; Energy recovery systems; Service water heating; Hot water system; Exhaust hoods; Radiant heating systems; and Hot gas bypass systems.</u>  <u>Controls with seasonally dependent functionality: Controls whose complete operation cannot be demonstrated due to prevailing</u>	<u>After installation and before final inspection, except that for controls with seasonally dependent functionality, such testing shall be performed before sign-off or issuance of a Final Certificate of Occupancy</u>	<u>Approved construction documents, including control system narratives; ASHRAE Guideline 1: The HVAC Commissioning Process where applicable</u>	<u>803.2.3, 803.2.4, 803.2.5, 803.2.6, 803.2.7, 803.3.3, 803.3.4, 803.3.5, 803.3.9, 804.3, 804.6; ASHRA E 90.1 – 6.3, 6.4.3, 6.5, 6.7.2.4, 7.4.4, Appendix E; 1RCNY 5000-01(g)(2)</u>

	<p><u>weather conditions typical of the season during which progress inspections will be performed shall be permitted to be signed off for the purpose of a Temporary Certificate of Occupancy with only a visual inspection, provided, however, that the progress inspector shall perform a supplemental inspection where the controls are visually inspected and tested for functionality and proper operation during the next immediate season thereafter. The owner shall provide full access to the progress inspector within two weeks of the progress inspector's request for such access to perform the progress inspection. For such supplemental inspections, the Department shall be notified by the progress inspection approved agency of any unresolved deficiencies in the installed work within 180 days of such supplemental inspection.</u></p>			
IIB5	<p><u>Duct, plenum and piping insulation and sealing: Installed duct and piping insulation shall be visually inspected to verify proper insulation placement and values. Joints, longitudinal and transverse seams and connections in ductwork shall be visually inspected for proper sealing.</u></p>	<p><u>After installation and prior to closing shafts, ceilings and walls</u></p>	<p><u>Approved construction documents; SMACNA Duct Construction Standards, Metal and Flexible; UL 181A or UL 181B</u></p>	<p><u>803.2.8, 803.2.9, 803.3.6, 803.3.7, 804.5; ASHRA E 90.1 – 6.3, 6.4.4.1, 6.4.4.2.1, Tables 6.8.2 and 6.8.3; 7.4.3</u></p>

IIB6	Air leakage testing for duct systems designed to operate at static pressures in excess of 3 inches w.g. (746 Pa): Representative sections totaling at least 25% of the duct area, per ECC 803.3.6, shall be tested to verify that actual air leakage is below allowable amounts.	After installation and sealing and prior to closing shafts, ceilings and walls	Approved construction documents; SMACNA HVAC Air Duct Leakage Test Manual	803.2.8.1.1, 803.3.6; ASHRA E 90.1 – 6.4.4.2.2
<b>IIC Electrical Power and Lighting Systems</b>				
IIC1	Electrical metering: The presence and operation of individual meters or other means of monitoring individual apartments shall be verified by visual inspection for all apartments.	Prior to final inspection	Approved construction documents	102.4; 805.8
IIC2	Transformers: Single-phase and three phase dry-type and liquid-filled distribution transformers shall be visually inspected to ensure that the installed transformers are listed and labeled to the referenced standard, or that associated product literature confirms that the transformers meet the referenced standard.	Prior to final inspection	Approved construction documents; NEMA TP1	102.6, 805.7
IIC3	Electric motors: Where required by the construction documents for energy code compliance, motor listing or labels shall be visually inspected to verify that they comply with the respective energy requirements in the construction documents.	Prior to final inspection	Approved construction documents	ASHRA E 90.1 – 10.4.1
IIC4	Lighting controls: Not less than 15% of each type of required lighting controls, including manual interior lighting controls, light-reduction controls, automatic lighting shut-off, guestroom controls, exterior building lighting controls and exterior grounds lighting controls, shall be verified by visual inspection and tested for functionality and proper operation.	Prior to final inspection	Approved construction documents, including control system narratives	805.2; ASHRA E 90.1 – 9.1, 9.4.1; 1RCNY 5000-01(g)(3)

IIC5	<u>Tandem wiring: Tandem wiring shall be tested for functionality.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents</u>	<u>805.3; ASHRA E 90.1 – 9.4.2</u>
IIC6	<u>Exit signs: Installed exit signs shall be visually inspected to verify that the label indicates that they do not exceed maximum permitted wattage.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents</u>	<u>805.4; ASHRA E 90.1 – 9.4.3</u>
IIC7	<u>Interior lighting power: Installed lighting shall be verified for compliance with the lighting power allowance by visual inspection of fixtures, lamps, ballasts and relevant transformers.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents</u>	<u>805.5; ASHRA E 90.1 – 9.1.3, 9.1.4, 9.2.1, 9.5, 9.6; 1RCNY 5000-01(i)</u>
IIC8	<u>Exterior lighting power: Installed lighting shall be verified for compliance with source efficacy and/or the lighting power allowance by visual inspection of fixtures, lamps, ballasts and relevant transformers.</u>	<u>Prior to final inspection</u>	<u>Approved construction documents</u>	<u>805.6; ASHRA E 90.1 – 9.1.1, 9.4.4, 9.4.5</u>
<b><u>IID Other</u></b>				
IID1	<u>Maintenance information: Maintenance manuals for equipment and systems requiring preventive maintenance shall be reviewed for applicability to installed equipment and systems before such manuals are provided to the owner. Labels required for such equipment or systems shall be inspected for accuracy and completeness and for compliance with ECC 102.3.</u>	<u>Prior to sign-off or issuance of Final Certificate of Occupancy</u>	<u>Approved construction documents, including electrical drawings; ASHRAE Guideline 4: Preparation of Operating and Maintenance Documentation for Building Systems</u>	<u>102.3; 803.3.8.3; ASHRA E 90.1 – 6.7.2.2, 8.7.2</u>

**(i) Energy Analysis of Constructed Conditions.** In accordance with Section 28-104.3 of the Administrative Code, if constructed work differs from the

last-approved full energy analysis, an as-built energy analysis shall be submitted as a post-approval amendment, listing the actual values used in the building for all applicable Energy Code-regulated items and demonstrating that the building complies with the Energy Code. Such energy analysis shall be signed and sealed by a registered design professional, who shall certify that to the best of his or her knowledge and belief the building as built complies with the Energy Code; where no trade-offs have been used among disciplines, more than one registered design professional may sign and seal the energy analysis. The energy analysis shall be approved by the Department prior to sign-off or issuance of the certificate of occupancy.

**§3. Effective date.** (a) Section 1 of this rule shall take effect on January 1, 2011.

(b) Section 2 of this rule shall take effect on September 7, 2010, and shall apply to applications for approval of construction documents that are submitted to the Department on and after such date.

## **STATEMENT OF BASIS AND PURPOSE**

This rule is promulgated pursuant to the authority of the Commissioner of Buildings under Sections 643 and 1043 of the New York City Charter.

Article 104 of Title 28 of the Administrative Code establishes the requirement for construction drawings, and the Department's approval of such drawings, as a condition of obtaining a permit for a building construction project. Such construction drawings must be created under the direct supervision of a registered design professional (architect or engineer licensed and registered in New York State), who must sign and seal each drawing as the applicant for the construction permit. Such registered design professional is obligated by the conditions of his or her license and by this article to certify that the construction drawings, to the best of his or her knowledge and belief, comply with the provisions of the New York City Construction Codes or the 1968 building code and of all other applicable laws and rules.

Article 116 of Title 28 allows required inspections during the construction period, other than special inspections, to be performed by approved agencies. Such approved agencies are established in Article 114 of Title 28 and elaborated in 1 RCNY §101-07, which also sets forth the powers, responsibilities and qualifications for progress inspectors. In part, the rule requires that progress inspectors have "relevant experience." The work of progress inspectors is established in Section BC 109.3 and involves the detailed inspection of the built work throughout the construction process to ensure that it complies with the approved construction documents, which, as stated above, must comply with all applicable laws and rules, including the New York City Construction Codes.

In December 2009, the City Council and the Mayor enacted Local Law No. 85 of 2009, which establishes the New York City Energy Conservation Code (the "Energy Code") as Chapter 10 of Title 28 of the Administrative Code. The establishment of the Energy Code is in accordance with Article 11 of the New York State Energy Law, which allows a local jurisdiction to establish its own energy code, provided that it is at least as stringent as the State's energy code. Under Local Law No. 85, the New York City Energy Conservation Code utilizes the technical provisions of the Energy Conservation Construction Code of New York State, but amends the administrative provisions to include all alterations within the applicability of the code; the State's energy code exempts alterations that do not affect at least 50% of any building system or subsystem from its provisions. The New York City Energy Conservation Code goes into effect on July 1, 2010 .



This rule amends 1 RCNY §101-07(c)(3) to clarify the role of the progress inspector in a design and construction project and to describe the relevant experience required for progress inspectors for compliance with the Energy Code.

Progress inspections to ensure compliance with the Energy Code are required by §BC 109.3.5, and progress inspections are described generally in §28-116.2.3 as “inspections required...to be made during the progress of the work” without further specifying what those inspections entail or who is authorized to perform them. The general requirements for such inspectors are set forth in the existing rule; however special expertise is required for compliance with the Energy Code beyond the fundamental requirement for professional licensure and therefore such “relevant experience” in this area, as provided in the existing rule, is detailed in this amendment. In addition, the paragraph of the rule relating to progress inspections, 1 RCNY §101-07(c)(3), is reorganized for greater clarity.

The rule adds 1 RCNY §5000-01 to define the requirements for construction document approval with regard to the Energy Code as set forth in §28-104.7.9 and §BC 106.13. It also establishes the universe of progress inspections required to satisfy BC §109.3.5 and the Energy Code. Depending on the scope of work of a particular project, whether a new building or an alteration, the applicant can select from this list the progress inspection(s) that is (are) applicable to the particular construction project.

Specifically, section 5000-01:

- Codifies current submission requirements for compliance with the Energy Code as they relate to Local Law No. 85 of 2009, which codified the New York City Energy Conservation Code.
- Adds the new submission requirement for progress inspections to be listed and described in the approved construction drawings.
- Describes what the applicant must include for the new submission requirement.
- Provides a new definition for “project”, which requires that a building or renovation construction project be addressed as a whole for purposes of compliance with the Energy Code, regardless of how it may be split up for filing purposes. (A project may be filed so that it has more than one job number – e.g., one for the general construction, one for mechanical work, one for plumbing work.)
- Requires electrical drawings to be submitted if required for compliance with the Energy Code. Currently electrical drawings are not submitted for construction drawing approval.
- Allows a professional who is not the applicant of record to prepare some documentation required for compliance with the Energy Code, and describe what such a professional must do to be entered into the Department’s records in association with the project.

- Lists the types of progress inspections and define, for each inspection, what the progress inspector is expected to inspect and what the standard is for construction compliance.

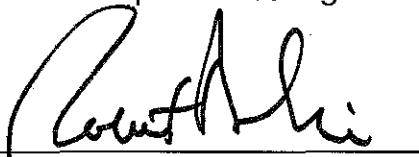
This amendment has an effective date of 04-03-10.

### 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 and Section 28-114.1 of the New York City Administrative Code, that the Department of Buildings hereby amends Section 101-07 of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, relating to Approved agencies.

This rule was first published on October 7, 2009 and a public hearing thereon was held on November 10, 2009.

Dated: FEB 22, 2010  
New York, New York

  
\_\_\_\_\_  
Robert D. LiMandri  
Commissioner

Section 1. The title of Section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

§101-07 [Inspections and] [a] Approved [a] Agencies.

§ 2. Subdivision (a) of Section 101-07 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 section, all terms used herein shall have the same meanings as set forth in the New York City [b] Building [c] Code ("Building Code"). In addition, the following terms shall have the following meanings:

[(1) Approved construction documents. 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 the Building Code and other applicable laws and rules. Such documents shall include 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.]

[(2)1] Approved boiler inspection agency. An agency employing qualified boiler inspectors [, as defined below].

[(3)2] Approved inspection agency. An agency that is approved by the department as qualified to [inspect at regular intervals the material that is to be or is listed and labeled, to verify that the labeled material is representative of the material tested. Such term shall include, when approved pursuant to department rules, a third party testing or certification agency, evaluation agency, testing laboratory, testing service or other entity concerned with product evaluation] perform one or more of the inspections required by the New York City Construction Codes ("Construction Codes").

(3) Approved pipe welder qualifying agency. An agency that is approved by the department to qualify welders of gas piping installations in accordance with section 406.1.1.1 of the New York City Fuel Gas Code ("Fuel Gas Code") and high pressure steam piping systems in accordance with section 1210 of the New York City Mechanical Code ("Mechanical Code").

(4) Approved product certification agency. An inspection agency that is approved by the department as qualified to inspect at regular intervals the material that is to be or is listed and labeled, to verify that the labeled material is representative of the material tested.

([4]5) Approved progress inspection agency. An agency that is approved by the department as qualified to perform one or more of the progress inspections required by section BC 109 of the [b] Building [c] Code.

([5]6) Approved testing agency. An agency that is approved by the department as qualified to test and evaluate the performance of one or more of the materials regulated in its use by the [building code] Construction Codes. Such term shall include, when approved pursuant to department rules, a third party testing or certification agency, evaluation agency, testing laboratory, testing service or other entity concerned with product evaluation. Such term shall also include a licensed concrete testing laboratory.

([6]7) Certificate of compliance. A certificate stating that materials meet specified standards or that work was done in compliance with approved construction documents and other applicable provisions of law.

(8) Construction documents. Plans and specifications and other written, graphic and pictorial documents, prepared or assembled for describing the design, location and physical characteristics of the elements of the project necessary for obtaining a building permit.

([7]9) Qualified boiler inspector. An inspector who has been issued a certificate of competence by the State Department of Labor and who is employed by an authorized insurance company, a high pressure boiler operating engineer licensed pursuant to the provisions of the New York City Administrative Code ("Administrative Code"), a class A or class B oil burning equipment installer licensed pursuant to the provisions of such Code, a master plumber licensed pursuant to the provisions of such Code, or a journeyman plumber acting under the direct and continuing supervision of a master plumber licensed pursuant to the provisions of such Code. For inspection of boilers at properties owned or managed by the Department of Education, such term shall include an individual who has passed the National Board Commission examination and who has 5 years relevant experience, as defined below, approved by the department.

(10) Qualified elevator inspector. An individual who has obtained a Qualified Elevator Inspector ("QEI") Certificate from an ASME-accredited agency to witness elevator inspections and tests.

(11) Qualified elevator inspector supervisor. An individual who has obtained a Qualified Elevator Inspector Supervisor ("QEIS") Certificate from an ASME-accredited agency to supervise a QEI's witnessing and/or to witness directly elevator inspections and tests.

([8]12) Qualified exterior wall inspector. A [New York State licensed civil or structural engineer with 1 year relevant experience or a New York State registered architect with 1 year relevant experience] registered design professional with at least 1 year of relevant experience.

(13) Registered design professional. A New York State licensed and registered architect (RA) or a New York State licensed and registered professional engineer (PE).

([9]14) Relevant experience. Direct participation and practice related to the underlying construction activities that are the subject of the special or other inspection where such participation has led to accumulation of knowledge and skill required for the proper execution of the special or other inspection.

([10]15) Supervision. Oversight and responsible control by a registered design professional having the necessary qualifications and relevant experience to effectively perform responsibilities associated with the inspection being supervised. Field supervision shall include responsibility for determining competence of special inspectors for the work they are authorized to inspect and monitoring the inspection activities at the jobsite to assure that the qualified inspector is performing his or her duties when work requiring inspection is in progress. The supervisor shall review inspection progress reports and final reports for conformance with the approved plans, specifications and workmanship provisions of the [b] Building [c] Code. Such supervision and control shall be evidenced by the supervisor's signature and seal upon any required statements, applications and/or reports.

([11]16) 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.

§ 3. Paragraph (2) of Subdivision (b) of Section 101-07 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) Duties. Except as provided for in paragraph (8) of subdivision (c) of this section, [T] the approved agency shall:

§ 4. Paragraph (5) of Subdivision (b) of Section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(5) Limitation of duties. An approved agency shall not engage in any activity for which it has not been approved, registered, licensed or accredited. An

inspector or technician employed by an approved agency shall not perform inspections or tests beyond the area of expertise for which he or she is qualified in accordance with the standards set by the department, the accrediting agency, if applicable, and the agency supervisor.

§ 5. Paragraph (7) of Subdivision (b) of Section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(7) [Insurance] Maintenance of insurance. Every approved agency shall maintain the following insurance coverage:

(i) A general liability policy [for] in the amount of one million dollars. Where a registered design professional of record for an application for construction document approval also serves personally, without relying on persons under his or her supervision, as the progress inspector for such application in accordance with paragraph (3) of subdivision (c) of this section, a general liability policy shall not be required.

(ii) Insurance required by the provisions of the New York State [Worker's] Workers' Compensation and Disability Benefits Laws; and

(iii) For progress inspection agencies [and], qualified exterior wall inspectors and licensed concrete testing laboratories only, in addition to the requirements of (i) and (ii) above, a Professional Liability/Errors and Omissions insurance policy in the amount of at least three hundred thousand dollars[, occurrence based, for the term of the registration or accreditation].

§ 6. Paragraphs (1) and (2) of Subdivision (c) of Section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York are amended to read as follows:

(1) Except as otherwise provided in subdivisions (c)(8)(vi) and (d) of this section, on or after the effective date of this section, all approved agencies, including single person approved agencies, shall comply with the requirements of this section and Title 28-114 of the [New York City] Administrative Code and shall meet the qualifications set forth herein.

(2) Testing and inspection agencies for product certification.

(i) A testing [and/or inspection] agency shall be deemed an approved testing [and/or approved inspection] agency for [such] testing [and/or inspecting] materials [and listing and labeling materials] to specified standards in accordance with [the building code] the Construction Codes and [its] their referenced standards where such agency has achieved

accreditation for such testing [and/or inspections] from International Accreditation Service, Inc. or an equivalent accrediting agency accrediting to the standards set forth in [ASTM Designation: E 329-07] International Standards Organization (“ISO”) 17025, 2005 edition (General Requirements for the Competence of Testing and Calibration Laboratories) or a federal agency. Accrediting agencies, other than federal agencies, must be members of an internationally recognized cooperation of laboratory and inspection accreditation bodies subject to a mutual recognition agreement.

(ii) An inspection and/or product certification agency shall be deemed an approved inspection and/or approved product certification agency for listing and labeling materials to specified standards in accordance with the Construction Codes and their referenced standards where such agency has achieved accreditation for such listing and labeling from International Accreditation Service, Inc. or an equivalent accrediting agency accrediting to the standards set forth in ISO 17020, 1998 edition (General Criteria for the Operation of Various Types of Bodies Performing Inspection), ISO Guide 65, 1996 edition (General Requirements for Bodies Operating Product Certification Systems) or a federal agency. Accrediting agencies, other than federal agencies, must be members of an internationally recognized cooperation of laboratory and inspection accreditation bodies subject to a mutual recognition agreement.

([ii] iii) An approved testing and/or approved inspection agency shall have in responsible charge a director who shall be qualified by education and relevant experience to undertake the tests or inspections performed. Qualification may be based on the standards set forth in ASTM E329-07. The director shall personally supervise the testing and/or inspection of materials for compliance with prescribed nationally recognized standards. Concrete testing laboratories shall follow the provisions of subdivision (c)(6) of this section.

([iii] iv) Technicians shall be qualified by education and relevant experience to perform all tests or inspections they may be required to conduct under the supervision of the director. Qualification may be based on the standards set forth in ASTM E329-07.

([iv] v) An approved testing agency shall furnish to the department such proof of qualifications of all personnel and information regarding the equipment used to perform tests as the department may from time to time request, and any other such information that the commissioner deems appropriate in assessing the competency of the agency's operations.

([v] vi) All approved testing and approved inspection agency inspection and test reports shall be retained in a form acceptable to the department



and shall bear the name of the approved agency, its accreditation, license or department acceptance identification information where applicable, the name of the director who supervised the inspection or test, the names of all personnel who performed the inspection or test, and the names of all witnesses to such inspection or test.

§ 7. Paragraph (4) of Subdivision (c) of Section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(4) Elevator inspection agencies.

(i) Notwithstanding anything to the contrary set forth herein, elevator inspection [companies] agencies, including their [agency] directors and [agency] inspectors that currently hold or hereafter secure a Certificate of Approval from the department issued pursuant to Chapter 11 of Title 1 of the Rules of the City of New York shall be deemed approved elevator inspection agencies without further requirement of registration or accreditation, for the purpose of conducting the periodic elevator inspections and tests required by section 28-304.6 of the Administrative Code.

(ii) Written or oral tests required by 1 RCNY 11-01(2)(ii) shall require familiarity with the standards set forth in section 3001.2 and appendix K of the [b] Building [c] Code, including chapter K3, pertaining to existing elevators, as set forth in the rules of the department.

(iii) Tests and [I] inspections performed by an approved elevator inspection agency on behalf of the owner after the effective date of this section shall be performed in compliance with reference standards set forth in section 3012.1 and appendix K of the [b] Building [c] Code, provided that for the period from January 1, 2008 through September 15, 2008, inspections and tests need not be witnessed by another approved elevator inspection agency, QEI or QEIS authorized pursuant to clause (C) of subparagraph (iv).

(iv) Effective January 1, 2009, periodic elevator inspections and tests performed by an approved elevator inspection agency on behalf of the owner as required by section 28-304.6.1 of the Administrative Code shall be performed in compliance with the following requirements:

(A) The test must be performed by an approved elevator inspection agency and witnessed by an approved elevator inspection agency or a QEI or QEIS authorized pursuant to clause (C) of this subparagraph that is not affiliated with the agency performing the test.

(B) The approved elevator inspection agency responsible for performing the test shall designate skilled elevator trade personnel in its employment to perform the test under the direct supervision of a director who holds a Certificate of Approval from the department issued pursuant to the 1968 Building Code and 1 RCNY 11-01. Such designation by the director shall be in writing and shall indicate the director's endorsement of the qualification of the personnel designated to conduct the test. Such personnel may perform the test through December 31, 2011. Thereafter, the test shall be performed by an inspector or director who holds a Certificate of Approval from the department.

(C) The approved elevator inspection agency responsible for witnessing the test shall designate to witness such test an inspector in its employment who holds a Certificate of Approval from the department issued pursuant to the 1968 Building Code and 1 RCNY 11-01. Individuals who do not hold a Certificate of Approval, but who possess the qualifications set forth in items ((a)) through ((c)) below, may witness such test through July 1, 2010. No such individual shall witness the test beyond such date unless he or she has by July 1, 2010 applied for and passed a department-sponsored/administered examination for a Private Elevator Inspection Agency Director or Private Elevator Inspection Agency Inspector Certificate of Approval. Individuals who have passed such examination by July 1, 2010 may continue to witness the test based on satisfaction of the qualifications set forth in items ((a)) through ((c)) below through July 1, 2011 or until the issuance or denial of a Certificate of Approval from the department, whichever is sooner.

((a)) A valid QEI or QEIS Certificate;

((b)) A minimum of five (5) years of satisfactory experience, within the last seven (7) years immediately preceding the date of affirmation from the director of the agency as prescribed in item ((c)) below in the assembly, installation, repair, design, or inspection of elevators, or as an elevator mechanic;

((c)) An affirmation from the director of the agency, on such form as the commissioner shall require, attesting that the QEI or QEIS is familiar with the construction and maintenance of elevators, escalators and related equipment and the standards set forth in Chapter 30 and appendix K of the Building Code, including appendix K3, pertaining to existing elevators, as set forth in the rules of the department and a determination by the director that the QEI or QEIS is of good moral character so as not to adversely impact upon

his or her fitness to witness elevator inspections. The commissioner may refuse to accept such certification for any of the reasons specified as grounds for revocation or suspension set forth in subdivision (e) of this section.

(v) Agency employee restriction. An employee of an elevator inspection agency may work only for such agency and for one agency director at a time.

(D) The witnessing inspector shall affix the test/inspection date and his or her agency's Certificate of Approval number to the inspection certificate at the site. The witnessing inspector and the director of the witnessing agency shall further sign and indicate that agency's Certificate of Approval number in the test report.

§ 8. Item ((c)) of Clause (A) of Subparagraph (ii) of Paragraph (5) of Subdivision (c) of Section 101-07 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)) A certification by the owner that identified defects have been corrected. The report must be filed within 45 days from the date of the inspection but in no event later than December 31<sup>st</sup> of each calendar year. Any required part of the report not filed within 45 days from the date of the inspection and on or before December 31<sup>st</sup> shall be deemed late and shall subject the owner to penalties as provided in Administrative Code sections 28-201.2.2 and 28-202.1 and the rules of the department.

§ 9. Paragraph (6) of Subdivision (c) of Section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of is amended New York to read as follows:

(6) Concrete testing laboratories.

(i) Except as provided in subdivision (d) of this rule, a concrete testing laboratory shall be deemed an approved agency [and a licensed concrete testing laboratory pursuant to the provisions of Article 406 of Title 28 of the Administrative Code] for purposes of testing and inspecting concrete-related construction activities in accordance with the [b] Building [c] Code and its referenced standards where such laboratory has; [achieved accreditation from AASHTO Accreditation Program or an equivalent accrediting agency accrediting to the standards set forth in ASTM Designations: C1077, C1093 and E 329-07 or a federal agency. Accrediting agencies, other than federal agencies, must be members of an internationally recognized cooperation of laboratory and inspection accreditation bodies subject to a mutual recognition agreement.]

(A) Obtained a license as a concrete testing laboratory pursuant to Article 406 of Title 28 of the Administrative Code; and

(B) Achieved accreditation from AASHTO Accreditation Program, the National Voluntary Laboratory Accreditation Program, or an equivalent accrediting agency accrediting to the standards set forth in ASTM Designations: C1077, C1093 and E 329-07 or a federal agency. Accrediting agencies, other than federal agencies, must be members of an internationally recognized cooperation of laboratory and inspection accreditation bodies subject to a mutual recognition agreement.

(ii) A licensed concrete testing laboratory shall have in responsible charge a director who shall be qualified by education and relevant experience to undertake the tests or inspections performed. [Qualification may be based on the standards set forth in ASTM C1077, C1093 and E 329-07. The director shall personally supervise the inspection and tests for compliance with prescribed nationally recognized standards. The director shall be a registered design professional.] Such director shall:

(A) Personally supervise inspections and tests to ensure compliance with prescribed nationally recognized standards. Such supervision shall include ensuring that inspectors and technicians are properly trained and educated as necessary in order to perform their duties and shall include planning for continued training related to developing technology;

(B) Be a full-time employee of the laboratory and shall not serve as the director of more than one licensed laboratory at a time. Laboratories in good standing with the department that are licensed prior to July 1, 2008, shall be required to comply with this requirement by July 1, 2010;

(C) Be a registered design professional with at least five years of experience in the testing and inspection of concrete materials. Laboratories in good standing with the department that are licensed prior to July 1, 2008, shall be required to comply with this requirement by July 1, 2010; and

(D) Submit proof of qualification to the department with any application for the initial licensing of a laboratory and when there is a change in director for an existing licensed laboratory.

(iii) Technicians shall be qualified by education and relevant experience to perform all tests or inspections they may be required to conduct under the supervision of the director. Field technicians shall be certified as ACI

Field Testing Technician – Grade I, or other equivalent certification acceptable to the commissioner.

(iv) Laboratory technicians shall be certified as ACI Concrete Testing Laboratory Technician – Level 1, or other equivalent certification acceptable to the commissioner. Qualification may be based on the standards set forth in ASTM C1077, C1093 and E 329-07.

(v) The concrete testing laboratory shall furnish to the department such proof of qualifications of all personnel and information regarding the equipment used to perform tests as the department may from time to time request, and any other such information that the commissioner deems appropriate in assessing the competency of the laboratory's operations.

(vi) All concrete testing laboratory inspection and test reports shall be presented in a form acceptable to the department and shall bear the name of the laboratory or service and its accreditation and department-issued license number where applicable, the name of the director who supervised the inspection or test, the names of all personnel who performed the inspection or test, and the names of all witnesses. Reports shall be signed and sealed by the director who supervised the inspection or test.

(vii) A concrete testing laboratory shall maintain a New York City address or agent for the acceptance of service. A Post Office Box shall not be acceptable for such purposes. A laboratory approved by the department prior to the effective date of this subparagraph shall comply with such requirement by July 1, 2010.

(viii) A concrete testing laboratory's facilities and equipment shall be used exclusively for its own concrete testing and quality control and shall not be shared with other entities.

(ix) A concrete testing laboratory shall 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.

(x) A concrete testing laboratory testing for the acceptance of concrete as part of a special inspection, shall be employed by the owner in accordance with section 1704.1 of the Building Code.

§ 10. Subdivision (c) of Section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a paragraph (8) to read as follows:

(8) Pipe welder qualifying agencies. An agency shall be deemed an approved agency for qualifying welders of gas piping installations in accordance with section 406.1.1.1 of the Fuel Gas Code and high pressure steam piping systems in accordance with section 1210 of the Mechanical Code, where such agency complies with the following:

(i) The testing administrator for the pipe welder qualifying agency shall be an employee of such agency and either a AWS Certified Welding Inspector or Senior Certified Welding Inspector or a quality control manager of a manufacturer or contractor holding an ASME Certificate of Authorization.

(ii) A pipe welder qualifying agency shall be responsible for the following:

(A) Verifying that welder performance qualifications are in accordance with ASME Boiler and Pressure Vessel Code Section IX;

(B) Positively identifying each welder or welding operator being qualified;

(C) Observing the welder or welding operator during the qualification test;

(D) Verifying that all welder qualification records (e.g., QW-484 forms or equivalent) accurately record the data required by ASME Boiler and Pressure Vessel Code Section IX and are certified by the manufacturer or contractor; and

(E) Signing the welder qualification record and submitting a copy to the department when required.

(iii) No pipe welder qualifying agency shall engage in any activities that may conflict with its objective judgment and integrity, including but not limited to having a financial or other interest in the qualification of the welder. A quality control manager or his or her designee shall be considered sufficiently independent to satisfy this requirement when a manufacturer or contractor has an ASME Certificate of Authorization.

(iv) A letter requesting pipe welder qualifying agency approval and attesting to compliance with this section, signed by the owner of the agency, accompanied by any related fees set forth in the rules of the department, shall be mailed to the Department of Buildings, 280 Broadway, 7<sup>th</sup> Floor, New York, NY, 10007, Attn: The Office of Technical Certification and Research ("OTCR").

(v) A pipe welder qualifying agency's approval shall be renewed every three years.

(vi) An agency previously approved to qualify welders in accordance with the 1968 New York City Building Code shall be required to request re-approval in accordance with subparagraph (iv) above by July 1, 2010 in order maintain its ability to qualify pipe welders beyond that date.

(vii) A pipe welder qualifying agency shall maintain a New York City address for the acceptance of service. A Post Office Box shall not be acceptable for such purposes. An agency approved by the department prior to the effective date of this subparagraph shall comply with such requirement by July 1, 2010.

§ 11. Subdivision (e) of Section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(e) Suspension or revocation and reinstatement of approved agency status.

(1) In accordance with department rules, the commissioner may suspend or revoke an approved agency's approval, with or without the imposition of penalties, for violation of any provision of Title 28 of the Administrative Code or the [b] Building [c] Code or the rules of the department, or any other applicable law or rule. The commissioner may refuse to accept any application or other document submitted pursuant to or in satisfaction of any requirement of law or rule that bears the signature of any approved agency or director that has been found, after notice and an opportunity to be heard, to have knowingly or negligently made a false statement or to have knowingly or negligently falsified or allowed to be falsified any certificate, form, signed statement, application, report or certification of the correction of a violation required under the provisions of Title 28 of the Administrative Code or the [b] Building [c] Code or any rule of any agency.

(2) Invalidation of tests and inspections upon suspension or revocation of approved agency status. Upon any suspension or revocation of approved agency approval pursuant to subdivision (e), the owner of a building at which such approved agency was required or scheduled to perform special, progress or periodic inspections shall immediately designate another approved agency to re-do such tests or inspections performed by the disciplined agency. Any periodic inspections performed by a disciplined agency shall be rejected in the current cycle of such inspections and any owner of a building requiring such periodic inspection shall, upon notice of such disciplinary action, retain another approved agency to perform the periodic inspection.

(3) Reinstatement of approval. Upon expiration of a suspension or no sooner than one (1) year from the date of revocation, an agency shall be eligible for reinstatement of approval. Such agency shall submit to OTCR the following for review:

(i) Documentation that addresses corrections to the conduct or practices that formed the basis for the suspension or revocation.

(ii) Documentation that establishes procedures to prevent the conduct or practices that formed the basis for the suspension or revocation.

(iii) A reinstatement application.



## STATEMENT OF BASIS AND PURPOSE

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

The amendments to Section 101-07 of the Department's rules are derived from a number of sources: (1) Department determinations of modifications required in light of the first several months of enforcement of the new codes; and (2) correction of inadvertent errors. Specific explanations follow:

Section 1. This section amends the title of this rule section to minimize confusion with the "Special inspectors and special inspection agencies" rule (1 RCNY 101-06) by removing the term "Inspection".

Section 2. This section adds new definitions "Approved pipe welder qualifying agency", "Approved product certification agency", "Construction documents", "Qualified elevator inspector", "Qualified elevator inspector supervisor" and "Registered design professional". These are new entities being added to this rule by this amendment. In addition, some definitions have been modified for clarity and consistency.

Section 3. This section exempts pipe welder qualifying agencies from the approved agency general duties set forth in paragraph (2) of subdivision (b) of this rule. Pipe welder qualifying agencies do not perform inspection activities.

Section 4. This section corrects the inadvertent error of having omitted the term "approved" from the original rule.

Section 5. This section corrects an inadvertent error in the original rule by adding licensed concrete testing laboratories to the list of approved agencies that are required to carry a Professional Liability/Errors and Omissions insurance policy and sets the minimum amount of insurance required. This section also exempts certain individuals from the requirement to maintain a general liability policy. This exemption is important in order to allow small firms to continue to offer basic services to clients during construction in accordance with practice standards. It is estimated that single practitioners constitute approximately 40% of all architecture and engineering firms in New York City. The elimination of this insurance requirement for registered design professionals who want to conduct progress inspections on work they have prepared and submitted for approval and permit will allow the single practitioner to continue to offer clients construction contract administration services without additional cost.

Section 6. This section exempts existing pipe welder qualifying agencies from the effective date requirements set forth in paragraph (1) of subdivision (c) of this rule. Such agencies previously approved to qualify welders in accordance with

the 1968 New York City Building Code shall not be required to comply with certain provisions of this rule and shall be re-approved in accordance with this rule prior to July 1, 2010. This section also corrects, clarifies and separates the standards to be used for the accreditation of approved testing, inspection and product certification agencies. These new standards are those used by nationally recognized accrediting bodies.

Section 7. This section adds the requirement that written and oral tests required by 1 RCNY 11-01 (2)(ii) shall require familiarity with chapter K3 (Safety Code for Existing Elevators and Escalators) as set forth in the rules of the department. Familiarity with chapter K3 is required as it contains all existing elevator and escalator minimum requirements. This section also clarifies that it is the owner's and not the department's periodic elevator inspections and tests being addressed by paragraph (4) of subdivision (c) of this rule. This section additionally limits the length of time for which skilled elevator trade personnel may perform tests to December 31, 2011. Beyond such date, tests must be performed by an inspector or director who holds a Certificate of Approval. Such proposal will ensure that individuals performing tests have been fully examined by the department. This section further allows qualified elevator inspectors ("QEI") and qualified elevator inspector supervisors ("QEIS") (individuals who do not hold a Certificate of Approval) to witness tests performed by approved elevator inspection agencies through July 1, 2010 and allows such individuals to witness tests for up to one year longer as QEI's or QEIS's only if they have passed a department-sponsored/administered examination by July 1, 2010. The purpose of this amendment is to encourage QEI's and QEIS's to obtain Private Elevator Inspection Agency Director or Private Elevator Inspection Agency Inspector Certificates of Approval. This section also adds the restriction that an employee of an elevator inspection agency may work for only one agency or one agency director at a time. Elevator licenses issued by the department allow elevator inspectors to work for only one agency/entity at a time unless they work for a city agency.

Section 8. This section clarifies the filing requirements for low pressure boiler annual inspection reports.

Section 9. This section lists the National Voluntary Laboratory Program ("NVLAP") as an additionally named accreditation agency, sets forth the qualifications for concrete testing laboratory directors and supervisors, and adds various new requirements for concrete testing laboratories. These new provisions require that concrete testing laboratories maintain a New York City address or agent for the acceptance of service, that a concrete testing laboratory's facilities and equipment shall be used exclusively for its own concrete testing, that such laboratories shall not engage in any activities that may conflict with their objective judgment and integrity, and that such laboratories testing for the acceptance of concrete as part of a special inspection, shall be employed by the owner. Such

requirements will close certain loopholes that the department discovered during the investigation of concrete testing laboratories.

Section 10. This section adds pipe welder qualifying agencies to this rule and establishes qualifications, duties, application requirements and address requirements for pipe welder qualifying agencies. These agencies were inadvertently omitted from the original rule.

Section 11. This section establishes reinstatement provisions for all approved agencies listed in the rule. This is a necessary mechanism for approved agencies that was inadvertently omitted from the original rule.



NYC Department of Buildings  
280 Broadway, New York, NY 10007

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**Acting Commissioner**

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Statement of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and hereby represent to the Mayor, that there is substantial need for the implementation of new Section §101-07 of Title 1 of the Rules of the City of New York, regarding the qualification and approval of special inspection and other agencies, upon the publication in the City Record of its Notice of Adoption.

This is one of the rules needed to implement the City's new Construction Codes. Under current law, third parties performing tests or inspections of materials, equipment, construction-related activities, and periodic maintenance are required to be licensed or accepted by the Department, as recognition of their competence. This rule sets forth such competency requirements and designates such third parties as approved agencies when they meet the prescribed standards. Previously, the requirements were subject to different interpretations by practitioners. This inconsistency of interpretation has enabled inspections and tests to be performed by those who may not necessarily have the appropriate knowledge to evaluate the subject of the inspection and tests in light of technical standards.

The rule addresses that problem. It defines qualifications and competencies to ensure consistency and enhance the standards in practice. By setting consistent standards for testing and inspecting agencies, the rule will ultimately enhance the safety and integrity of buildings.

A handwritten signature in black ink, appearing to read "Robert D. LiMandri", written over a horizontal line.

Robert D. LiMandri  
Acting Commissioner  
Department of Buildings

APPROVED:

A handwritten signature in black ink, appearing to read "Michael R. Bloomberg", written over a horizontal line.

Michael R. Bloomberg  
Mayor

DATE:

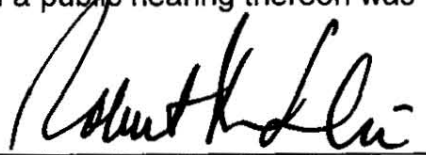
6/30/2008

**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 addition of Section 101-07 to Subchapter A of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding the qualification and approval of special inspection and other agencies.

This rule was first published on May 22, 2008 and a public hearing thereon was held on June 23, 2008.

Dated: 6/26/08, 2008  
New York, New York

  
Robert D. LiMandri  
Acting Commissioner

Section 1. Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new section 101-07 to read as follows:

§101-07 Inspections and approved agencies.

(a) Definitions. For the purposes of this section, all terms used herein shall have the same meanings as set forth in the building code. In addition, the following terms shall have the following meanings:

(1) Approved construction documents. 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 the building code and other applicable laws and rules. Such documents shall include 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.

(2) Approved boiler inspection agency. An agency employing qualified boiler inspectors, as defined below.

(3) Approved inspection agency. An agency that is approved by the department as qualified to inspect at regular intervals the material that is to be or is listed and labeled, to verify that the labeled material is representative of the material tested. Such term shall include, when approved pursuant to department rules, a third party testing or certification agency, evaluation agency, testing laboratory, testing service or other entity concerned with product evaluation.

(4) Approved progress inspection agency. An agency that is approved by the department as qualified to perform one or more of the progress inspections required by section BC 109 of the building code.

(5) Approved testing agency. An agency that is approved by the department as qualified to test and evaluate the performance of one or more of the materials regulated in its use by the building code. Such term shall include, when approved pursuant to department rules, a third party testing or certification agency, evaluation agency, testing laboratory, testing service or other entity concerned with product evaluation. Such term shall also include a licensed concrete testing laboratory.

(6) Certificate of compliance. A certificate stating that materials meet specified standards or that work was done in compliance with approved construction documents and other applicable provisions of law.

(7) Qualified boiler inspector. An inspector who has been issued a certificate of competence by the State Department of Labor and who is employed by an authorized insurance company, a high pressure boiler operating engineer licensed pursuant to the provisions of the New York City Administrative Code, a class A or class B oil burning equipment installer licensed pursuant to the provisions of such Code, a master plumber licensed pursuant to the provisions of such Code, or a journeyman plumber acting under the direct and continuing supervision of a master plumber licensed pursuant to the provisions of such Code. For inspection of boilers at properties owned or managed by the Department of Education, such term shall include an individual who has passed the National Board Commission examination and who has 5 years relevant experience, as defined below, approved by the department.

(8) Qualified exterior wall inspector. A New York State licensed civil or structural engineer with 1 year relevant experience or a New York State registered architect with 1 year relevant experience.

(9) Relevant experience. Direct participation and practice related to the underlying construction activities that are the subject of the special or other inspection where such participation has led to accumulation of knowledge and skill required for the proper execution of the special or other inspection.

(10) Supervision. Oversight and responsible control by a registered design professional having the necessary qualifications and relevant experience to effectively perform responsibilities associated with the inspection being supervised. Such supervision shall include ensuring the inspector's training/education through whatever arrangements are necessary to the inspector's duties and shall also include plans for continued training to keep pace with developing technology. Field supervision shall include responsibility for determining competence of special inspectors for the work they are authorized to inspect and monitoring the inspection activities at the jobsite to assure that the qualified inspector is performing his or her duties when work requiring inspection is in progress. The supervisor shall review inspection progress reports and final reports for conformance with the approved plans, specifications and workmanship provisions of the building code. Such supervision and control shall be evidenced by the supervisor's signature and seal upon any required statements, applications and/or reports.

(11) 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.

(b) General requirements for approved agencies.

(1) Availability and compliance. An approved agency shall have responsibilities set forth in this rule and in the building code. Such agency shall employ experienced personnel qualified to conduct, supervise and evaluate the tests or inspections that it undertakes.

(2) Duties. The approved agency shall:

(i) Examine all relevant documents, including approved construction documents and/or manufacturers' instructions that define and describe requirements in connection with the test or inspection to be performed.

(ii) Confirm that the documents are sufficient to enable the proper performance of the test or inspection.

(iii) Confirm that any relevant approved construction documents are acceptable to the registered design professional of record or another design professional retained by the owner for the purpose of accepting shop drawings and that the manufacturers' instructions are current. Acceptance shall be demonstrated in writing on the drawing by the registered design professional.

(iv) Confirm through the test or inspection that the installation and materials are in compliance with all relevant documents, reference standards and the building code.

(3) Documentation. An approved agency shall maintain records of inspections and tests for at least 6 years or for such shorter period as the commissioner shall determine and shall make such records available to the department upon request. Such records shall include field logs, test results, laboratory reports, notes, photographs and such other information as may be necessary or appropriate to establish the sufficiency of the inspection. The principal of the approved agency shall furnish to the department upon request such records of any inspection or test, in the manner required by the department.

(4) Obligation to cooperate with inquiries. All approved agencies shall cooperate with any investigation by the department, or other city or law enforcement agency, into the activities at any job site or fabricating/manufacturing/testing facility for which such agencies have undertaken any inspections or tests and shall provide prompt, accurate and complete responses to reasonable inquiries by the department and other such city or law enforcement agencies about the conduct of such activities.



(5) Limitation of duties. An approved agency shall not engage in any activity for which it has not been registered, licensed or accredited. An inspector or technician employed by an approved agency shall not perform inspections or tests beyond the area of expertise for which he or she is qualified in accordance with the standards set by the department, the accrediting agency, if applicable, and the agency supervisor.

(6) Obligation to comply with an order of the commissioner. All approved agencies shall comply with an order of the commissioner.

(7) Insurance. Every approved agency shall maintain the following insurance coverage:

(i) A general liability insurance policy for the amount of one million dollars;

(ii) Insurance required by the provisions of the New York State Worker's Compensation and Disability Laws; and

(iii) For progress inspection agencies and qualified exterior wall inspectors only, in addition to the requirements of (i) and (ii) above, a Professional Liability/Errors and Omissions insurance policy, occurrence based, for the term of the registration or accreditation.

(8) Agency structure. An approved agency's structure shall comply with all applicable New York State and Federal laws.

(9) Audits. The operations of approved agencies shall be subject to audit at any time. Audits may examine applications for registration or accreditation as well as the performance and documentation of inspections and tests. Audits may also be conducted upon receipt of complaints or evidence of falsification, negligence or incompetence.

(c) Qualifications of approved agencies.

(1) Except as otherwise provided in subdivision (d) of this section, on or after the effective date of this section, all approved agencies, including single person approved agencies, shall comply with the requirements of this section and Title 28-114 of the New York City Administrative Code and shall meet the qualifications set forth herein.

(2) Testing and inspection agencies.

(i) A testing and/or inspection agency shall be deemed an approved testing and/or approved inspection agency for testing and/or inspecting materials and listing and labeling materials to specified standards in accordance with the building code and its

referenced standards where such agency has achieved accreditation for such testing and/or inspections from International Accreditation Service, Inc. or an equivalent accrediting agency accrediting to the standards set forth in ASTM Designation: E 329-07 or a federal agency. Accrediting agencies, other than federal agencies, must be members of an internationally recognized cooperation of laboratory and inspection accreditation bodies subject to a mutual recognition agreement.

(ii) An approved testing and/or approved inspection agency shall have in responsible charge a director who shall be qualified by education and relevant experience to undertake the tests or inspections performed. Qualification may be based on the standards set forth in ASTM E329-07. The director shall personally supervise the testing and/or inspection of materials for compliance with prescribed nationally recognized standards. Concrete testing laboratories shall follow the provisions of subdivision (c)(6) of this section.

(iii) Technicians shall be qualified by education and relevant experience to perform all tests or inspections they may be required to conduct under the supervision of the director. Qualification may be based on the standards set forth in ASTM E329-07.

(iv) An approved testing agency shall furnish to the department such proof of qualifications of all personnel and information regarding the equipment used to perform tests as the department may from time to time request, and any other such information that the commissioner deems appropriate in assessing the competency of the agency's operations.

(v) All approved testing and approved inspection agency inspection and test reports shall be retained in a form acceptable to the department and shall bear the name of the approved agency, its accreditation, license or department acceptance identification information where applicable, the name of the director who supervised the inspection or test, the names of all personnel who performed the inspection or test, and the names of all witnesses to such inspection or test.

(3) Progress inspection agencies.

(i) Registered design professionals with relevant experience shall be deemed approved progress inspection agencies, without further requirement of registration or accreditation, for the purpose of conducting the progress inspections required by section BC 109

of the building code. Such progress inspections shall include the following:

(A) Preliminary. See section 28-116.2.1 of the New York City Administrative Code and section 109.2 of the building code.

(B) Footing & foundation. See section 109.3.1 of the building code.

(C) Lowest floor elevation. See section 109.3.2 of the building code.

(D) Frame inspection. See section 109.3.3 of the building code.

(E) Energy Code Compliance Inspections. See section 109.3.5 of the building code.

(F) Fire-resistant rated construction. See section 109.3.1 of the building code.

(G) Final. See section 28-116.2.4.2 of the New York City Administrative Code and section 109.5 of the building code.

(H) Public assembly emergency lighting. See section 1006 and 1024 of the building code and section 28-116.2.2 of the Administrative Code.

(ii) A progress inspection agency shall conduct required progress inspections, provided such inspections are conducted by a registered design professional with relevant experience or a person under such design professional's direct supervision.

(iii) A progress inspection agency's performance of a progress inspection shall include verification that any special inspections that were required to have been conducted prior to the progress inspection have been documented as completed.

(4) Elevator inspection agencies.

(i) Notwithstanding anything to the contrary set forth herein, elevator inspection companies, including their agency directors and agency inspectors that currently hold or hereafter secure a Certificate of Approval from the department issued pursuant to

Chapter 11 of Title 1 of the Rules of the City of New York shall be deemed approved elevator inspection agencies without further requirement of registration or accreditation, for the purpose of conducting the periodic elevator inspections and tests required by section 28-304.6 of the Administrative Code.

(ii) Written or oral tests required by 1 RCNY 11-01(2)(ii) shall require familiarity with the standards set forth in section 3001.2 and appendix K of the building code.

(iii) Tests and inspections performed after the effective date of this section shall be performed in compliance with reference standards set forth in section 3012.1 and appendix K of the building code, provided that for the period from January 1, 2008 through September 15, 2008, inspections and tests need not be witnessed by another approved elevator inspection agency.

(iv) Effective January 1, 2009, periodic elevator inspections and tests required by section 28-304.6.1 of the Administrative Code shall be performed in compliance with the following requirements:

(A) The test must be performed by an approved elevator inspection agency and witnessed by an approved elevator inspection agency not affiliated with the agency performing the test.

(B) The approved elevator inspection agency responsible for performing the test shall designate skilled elevator trade personnel in its employment to perform the test under the direct supervision of a director who holds a Certificate of Approval from the department issued pursuant to the 1968 Building Code and 1 RCNY 11-01. Such designation by the director shall be in writing and shall indicate the director's endorsement of the qualification of the personnel designated to conduct the test.

(C) The approved elevator inspection agency responsible for witnessing the test shall designate to witness such test an inspector in its employment who holds a Certificate of Approval from the department issued pursuant to the 1968 Building Code and 1 RCNY 11-01.

(D) The witnessing inspector shall affix the inspection date and his or her agency's Certificate of Approval number to the inspection certificate at the site. The witnessing inspector and the director of the witnessing

agency shall further sign and indicate that agency's Certificate of Approval number in the test report.

(5) Boiler inspection agencies.

(i) Notwithstanding anything to the contrary set forth herein, a qualified boiler inspector shall be deemed an approved boiler inspection agency, without further requirement of registration or accreditation, for the purpose of conducting the periodic inspections required by section 28-303.2 of the Administrative Code. Such approved boiler inspection agencies may complete required periodic boiler inspections for the period from January 1, 2008 through December 31, 2008 in compliance with the requirements of the 1968 Building Code and 1 RCNY 2-01. Notwithstanding the above, reports of periodic boiler inspections for the period January 1, 2008 to December 31, 2008 shall be accompanied by a certification that identified defects have been corrected. The inspection report must be submitted to the department prior to December 31, 2008.

(ii) Effective January 1, 2009, periodic boiler inspections required by section 28-303.2 of the Administrative Code shall be performed in compliance with the following requirements:

(A) Low pressure boiler annual inspection reports shall be submitted for each calendar year on such forms and in such manner as required by the department. The report shall include:

((a) An inspection report for each boiler identifying the inspector or inspection agency;

((b) The owner's annual statement completed in compliance with section 28-303.6 of the Administrative Code; and

((c) A certification by the owner that identified defects have been corrected. The report must be filed within 45 days of the inspection but in no event later than December 31<sup>st</sup> of each calendar year. Any required part of the report not filed within 45 days of the inspection and on or before December 31<sup>st</sup> shall be deemed late and shall subject the owner to penalties as provided in Administrative Code sections 28-201.2.2 and 28-202.1.



(B) A low pressure boiler annual inspection must be conducted between November 16<sup>th</sup> of the preceding calendar year through November 15<sup>th</sup> of the calendar year for which the report is being submitted at a date that follows the preceding annual inspection by 6 months or more. The inspector must verify that a department-issued boiler number is affixed to the boiler and such number must be used in all correspondence between the inspector and the department. If an inspection reveals any dangerous condition in a boiler that threatens life or safety and that requires an immediate shut down of the boiler, the inspector must immediately notify the boiler division at the department of the condition via fax or email at the number or address provided on the department's website, <http://www.nyc.gov/buildings>.

(C) Low pressure boiler annual inspection reports not filed within 12 months from the date of the inspection will be deemed expired. Expired inspection reports will not be accepted by the department to satisfy the annual inspection report filing requirement as prescribed by section 28-303 of the Administrative Code and this section.

(6) Concrete testing laboratories.

(i) Except as provided in subdivision (d) of this rule, a concrete testing laboratory shall be deemed an approved agency and a licensed concrete testing laboratory pursuant to the provisions of Article 406 of Title 28 of the Administrative Code for purposes of testing and inspecting concrete-related construction activities in accordance with the building code and its referenced standards where such laboratory has achieved accreditation from AASHTO Accreditation Program or an equivalent accrediting agency accrediting to the standards set forth in ASTM Designations: C1077, C1093 and E 329-07 or a federal agency. Accrediting agencies, other than federal agencies, must be members of an internationally recognized cooperation of laboratory and inspection accreditation bodies subject to a mutual recognition agreement.

(ii) A licensed concrete testing laboratory shall have in responsible charge a director who shall be qualified by education and relevant experience to undertake the tests or inspections performed. Qualification may be based on the standards set forth in ASTM C1077, C1093 and E 329-07. The director shall personally supervise the inspection and tests for compliance with

prescribed nationally recognized standards. The director shall be a registered design professional.

(iii) Technicians shall be qualified by education and relevant experience to perform all tests or inspections they may be required to conduct under the supervision of the director. Field technicians shall be certified as ACI Field Testing Technician – Grade I, or other equivalent certification acceptable to the commissioner.

(iv) Laboratory technicians shall be certified as ACI Concrete Testing Laboratory Technician – Level 1, or other equivalent certification acceptable to the commissioner. Qualification may be based on the standards set forth in ASTM C1077, C1093 and E 329-07.

(v) The concrete testing laboratory shall furnish to the department such proof of qualifications of all personnel and information regarding the equipment used to perform tests as the department may from time to time request, and any other such information that the commissioner deems appropriate in assessing the competency of the laboratory's operations.

(vi) All concrete testing laboratory inspection and test reports shall be presented in a form acceptable to the department and shall bear the name of the laboratory or service and its accreditation and department-issued license number where applicable, the name of the director who supervised the inspection or test, the names of all personnel who performed the inspection or test, and the names of all witnesses. Reports shall be signed and sealed by the director who supervised the inspection or test

(7) Exterior wall inspections.

(i) Examination of a building's exterior walls and appurtenances thereof pursuant to section 28-302 of the Administrative Code shall be performed by or under the direct supervision of a qualified exterior wall inspector.

(ii) A qualified exterior wall inspector shall maintain records of inspections and tests for at least 6 years and shall make such records available to the department upon request.

(iii) A qualified exterior wall inspector shall maintain insurance coverage as set forth in subdivision (b)(7) above.

(iv) Except as modified by the building code and this section, the provisions of 1 RCNY 32-02 shall apply.

(d) Interim status and application deadlines. An approved agency that is required to achieve accreditation shall be entitled, until July 1, 2010, to perform those inspections and tests for which it is seeking accreditation, provided that the following are true:

(1) The agency is diligently pursuing accreditation by the required accreditation services or an equivalent accreditation agency approved by the department.

(2) The agency is in good standing with the department and is licensed and/or accepted by the department pursuant to the laws in effect prior to July 1, 2008 to perform specific tests and inspections. Such agencies shall be limited to the performance of those tests for which they are under such prior law specifically licensed or accepted to perform.

(3) On or before July 1, 2010, an agency with interim status as an approved agency shall achieve accreditation as set forth in this rule. In the event the approved agency has failed by July 1, 2010 to achieve such accreditation, the agency may apply to the commissioner who may, upon a showing of good cause, grant an extension of time to achieve accreditation and allow the continuance of the interim status.

(e) Suspension or revocation of approved agency status.

(1) In accordance with department rules, the commissioner may suspend or revoke an approved agency's approval, with or without the imposition of penalties, for violation of any provision of Title 28 of the Administrative Code or the building code or the rules of the department, or any other applicable law or rule. The commissioner may refuse to accept any application or other document submitted pursuant to or in satisfaction of any requirement of law or rule that bears the signature of any approved agency or director that has been found, after notice and an opportunity to be heard, to have knowingly or negligently made a false statement or to have knowingly or negligently falsified or allowed to be falsified any certificate, form, signed statement, application, report or certification of the correction of a violation required under the provisions of Title 28 of the Administrative Code or the building code or any rule of any agency.

(2) Invalidation of tests and inspections upon suspension or revocation of approved agency status. Upon any suspension or revocation of approved agency approval pursuant to subdivision (e), the owner of a building at which such approved agency was required or scheduled to perform special, progress or periodic inspections shall immediately



designate another approved agency to re-do such tests or inspections performed by the disciplined agency. Any periodic inspections performed by a disciplined agency shall be rejected in the current cycle of such inspections and any owner of a building requiring such periodic inspection shall, upon notice of such disciplinary action, retain another approved agency to perform the periodic inspection.

(f) Obligations of others. Nothing in this section is intended to alter or diminish any obligation otherwise imposed by law on others, including but not limited to, the owner, construction manager, general contractor, contractor, materialman, architect, engineer, site safety manager, land surveyor, superintendent of construction or other party involved in a construction project, to engage in sound engineering, design, and construction practices, and to act in a reasonable and responsible manner to maintain a safe construction site.

§ 2. Subdivision a of section 13-11 of chapter 13 of Title 1 of the Rules of the City of New York is amended by adding a new paragraph 17 to read as follows:

(17) A petition by which the department seeks an order of suspension or revocation of the approval of an approved agency.

## **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. The rule implements section 28-114.1 of the New York City Administrative Code by specifying the qualifications of approved agencies and qualified inspectors and the processes through which the Department will regulate their activities.

Under current law, third parties performing tests or inspections of materials, equipment, construction-related activities, and periodic maintenance are required to be licensed or accepted by the Department, as recognition of their competence. This rule sets forth such competency requirements and designates such third parties as approved agencies when they meet the prescribed standards. Previously, the requirements were subject to different interpretations by practitioners. This inconsistency of interpretation has enabled inspections and tests to be performed by those who may not necessarily have the appropriate knowledge to evaluate the subject of the inspection and tests in light of technical standards.

The rule addresses that problem. It defines qualifications and competencies to ensure consistency and enhance the standards in practice. By setting consistent standards for testing and inspecting agencies, the rule will ultimately enhance the safety and integrity of buildings.