

1 RCNY §103-02

CHAPTER 100

Subchapter C Maintenance of Buildings

§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 agency. An elevator agency as defined in Section 28-401.3 of the Administrative Code, including its directors and inspectors 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.
 - (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.
 - (4) Filing deadline. For category 1, 3, and 5 test reports, twenty-one (21) days from the date of the test. For periodic inspection reports, fourteen (14) days from the date of the inspection.
 - (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 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 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 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 and the following:
- (1) Category 1, 3 and/or 5 tests and periodic inspections shall be conducted during the inspection and test cycle.
 - (2) Category 1, 3 and/or 5 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 test or a periodic inspection shall be corrected within ninety (90) days of the inspection or test conducted by an approved elevator agency, 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 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 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 the timeframes set forth in subdivisions (h) and (i) of this section. Reports and affirmations filed after such 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) 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 agency on behalf of the owner at least five (5) calendar days prior to the category 1 (escalators only), 3 and/or 5 testing to be conducted by such approved elevator agency. The commissioner may require that such agency provide five- (5) calendar day notifications to the department's Elevator Division for all periodic inspections 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 test report. An owner who fails to file the category 1, 3 and/or 5 test report for each elevator 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 test report. An owner who submits a late filing, but who provides proof that the 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 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 test report for the 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 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 test and to file the affirmation of correction by the date the affirmation was due, stating that all defects found and indicated on the 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 fourteen (14) business 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 test report for each elevator 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 test report for each elevator 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 by the date the affirmation was due, stating that all defects found 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 fourteen (14) business 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, 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.
 - (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 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, 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 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 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 by the department 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.