



Promulgation Details for 1 RCNY 103-05

This rule became effective on November, 15, 2010.

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.

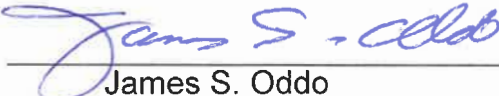
The effective date of each amendment and the original rule can be found at the top of each "NOTICE OF ADOPTION OF RULE."

NEW YORK CITY DEPARTMENT OF BUILDINGS

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 Sections 102-04, 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 waiver of civil penalties for work without a permit and failure to file annual low pressure and high pressure boiler reports with respect to small businesses. This rule was first published on August 12, 2024, and a public hearing thereon was held on September 12, 2024.

Dated: 9/18/24
New York, New York



James S. Oddo
Commissioner

STATEMENT OF BASIS AND PURPOSE OF RULE

The Department amends its rules regarding waiver of civil penalties for work without a permit and failure to file low and high pressure boiler reports with respect to small businesses. The amendments to the definition and waiver provisions provide clarity to the public as to who is eligible for the small business waivers.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and Articles 213 and 303 of Title 28 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

Asterisks (***) indicate unamended text.

Section 1. Paragraph (10) of subdivision (d) of section 102-04 of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(d) Waiver of civil penalty for work without a permit. Notwithstanding any penalty waiver, a permit must be obtained for the unpermitted work. The Department may waive a civil penalty for work without a permit in the following instances:

* * *

(10) Where an owner of a business that employs fewer than one hundred employees (small business) has been issued a violation for unpermitted work and [such owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business, except that such waiver does not apply to a sidewalk shed that was installed without a permit or installed with a valid permit and the permit has expired] all of the following conditions are met:

- (i) The violation for which the waiver is requested was not issued for a sidewalk shed installed without a permit or a sidewalk shed installed with a valid permit and the permit has expired;
- (ii) The applicant demonstrates, in a form and manner determined by the Department, that the individual or entity requesting the waiver is the owner of the small business;
- (iii) The business provides goods or services onsite;
- (iv) The work without a permit violation was issued on or after November 20, 2022;
- (v) The applicant demonstrates, in a form and manner determined the by the Department, that the space in which the unpermitted work was performed is occupied exclusively by the small business;

- (vi) A small business waiver was not previously granted to the small business owner for unpermitted work performed on behalf of or for the benefit of such business; and
- (vii) The sole or primary purpose of the business is not filing representative or expeditor services, real estate, real estate development, property management, construction or other related services as determined by the Department.

§2. Paragraph (8) of subdivision (c) of section 103-01 of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(8) Small business. A business that employs fewer than one hundred persons and provides goods or services onsite.

§3. Clause (D) of subparagraph (i) of paragraph (6) of subdivision (f) of section 103-01 of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(D) Small business. An owner of a small business may be granted a [first-time] one-time waiver of [penalties where the owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business] the civil penalty for a violation issued for failure to file an annual boiler inspection report where all of the following conditions are met:

1. The applicant demonstrates, in a form and manner determined by the Department, that the individual or entity requesting the waiver is the owner of the small business;
2. The failure to file for which the violation was issued occurred on or after November 20, 2022;
3. The applicant demonstrates, in a form and manner determined by the Department, that the owner of the small business owns or has responsibility for the boiler and such boiler exclusively serves the space occupied by the small business;
4. A small business waiver was not previously granted to the small business owner for any boiler at the subject building that is owned by the small business or for which the small business is responsible;
5. A small business waiver was not previously granted to any small business for the boiler for which the waiver is being requested; and
6. The sole or primary purpose of the business is not filing representative or expeditor services, real estate, real estate development, property management, construction or other related services as determined by the Department.

§4. Paragraph (12) of subdivision (c) of section 103-05 of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(12) Small business. A business that employs fewer than one hundred persons and provides goods or services onsite.

§5. Clause (D) of subparagraph (i) of paragraph (6) of subdivision (i) of section 103-05 of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(D) Small business. An owner of a small business may be granted a [first-time] one-time waiver of [penalties where the owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business] the civil penalty for a violation issued for failure to file an annual boiler inspection report where all of the following conditions are met:

1. The applicant demonstrates, in a form and manner determined by the Department, that the individual or entity requesting the waiver is the owner of the small business;
2. The failure to file for which the violation was issued occurred on or after November 20, 2022;
3. The applicant demonstrates, in a form and manner determined by the Department, that the owner of the small business owns or has responsibility for the boiler and such boiler exclusively serves the space occupied by the small business;
4. A small business waiver was not previously granted to the small business owner for any boiler at the subject building that is owned by the small business or for which the small business is responsible;
5. A small business waiver was not previously granted to any small business for the boiler for which the waiver is being requested; and
6. The sole or primary purpose of the business is not filing representative or expeditor services, real estate, real estate development, property management, construction or other related services as determined by the Department.

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 Sections 102-01, 102-04, 103-01, 103-05 of Chapter 100 of Title 1 of the City of New York, regarding the implementation of the Mayor's Executive Order 2 titled, "Small Business Forward: Review and Reform of Compliance Costs on Businesses."

This rule was first published on August 19, 2022 and a public hearing thereon was held on September 19, 2022.

Dated: 10/13/22
New York, New York



Eric A. Ulrich
Commissioner

Statement of Basis and Purpose

The COVID-19 global pandemic caused financial instability for many small businesses in the City of New York. On January 4, 2022, in response to this crisis, the Mayor signed Executive Order 2 “Small Business Forward: Review and Reform of Compliance Costs on Businesses” (“EO2”). One goal of the reform was ensuring that small businesses face fewer unnecessary fines. EO2 called for the reform of existing violations and penalties issued by several city agencies.

The Department of Buildings was one of seven enforcement agencies which conducted a review of its existing violations that are most frequently enforced through the issuance of notices of violations, and to the extent practicable, identified those violations most frequently issued to small businesses that could be repealed or modified to reduce regulatory burdens, increase equity, and support small businesses. A total of 26 reforms for DOB were identified which required amendments to rules.

The specific proposed rules would (by relevant section):

Rule 102-01 – Enforcement of violations:

- Extend the cure period for violations of the New York City Construction Codes, Electrical Code, Zoning Resolution and rules that are classified as Class 2 “Major” and Class 3 “Lesser” violations from 40 to 60 days from the date of service of a Notice of Violation.
- Eliminate the following violations:
 - “Approved Place of Assembly plans not available for inspection” (Class 2).
 - “Failure to conspicuously post electrical work permit while work is in progress” (Class 3).
 - “Place of Assembly contrary to Approved construction documents” (Class 2).
 - “Electrical closet not dedicated to electrical distribution equipment only” (Class 2 and 3).
 - “Failure to provide cover/faceplate/lampholder/luminaire canopy for electrical outlet” (Class 2).
- Reduce the penalties for the following violations:
 - “Electrical work without a permit” (Class 3).
 - “Work without a permit” (Class 3).
 - “Failure to post or properly post permit for work at premises” (Class 2).
 - “Change in occupancy/use of C of O as per §28-118.3.1 - §28-118.3.2 by operating a Place of Assembly as per when current C of O does not allow such occupancy” (Class 2).
 - “Luminaires and Lampholders not installed in an approved manner” (Class 2).

Rule 102-04 – Civil penalties for work without a permit:

- Amend the grounds for waiver of civil penalties for work without a permit in subdivision (d) to specify that small businesses may receive a waiver of civil penalties for work without a permit after demonstrating, in a form and manner determined that by the Department, that it is a small business.

Rule 103-01 – Low-pressure boilers:

- Add a definition for “small business” to subdivision (c).
- Amended the grounds for waiver of penalties in paragraph (6) of subdivision (f) to specify that a small business may be granted a first-time waiver of penalties for failure

to file an annual boiler inspection report.

Rule 103-05 – High-pressure boilers:

- Add a definition for “small business” to subdivision (c).
- Amend the grounds for waiver of penalties in paragraph (6) of subdivision (i) to specify that a small business may be granted a first-time waiver of penalties for failure to file an annual boiler inspection report.

DOB’s authority for this rule is found in Sections 643 and 1043(a) of the New York City Charter and Articles 105, 201, 213 and 303 of Title 28 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. Paragraphs (2) and (9) of subdivision (c) of section 102-01 of the rules of the City of New York are amended to read as follows:

(c) *Correction and certification of correction.*

- (2) Violations classified as major or lesser must be corrected within [forty] sixty days from the date of service of the NOV [, except that such violations issued to one- or two-family homes must be corrected within sixty days of service of the NOV].
- (9) For violations classified as Class 3 or for those Class 2 violations eligible for a cure, respondents may avoid a hearing by submitting a certification of correction acceptable to and received by the Department no later than [forty] sixty days from the date of service of the NOV. [For such violations issued to one- or two-family homes, a certificate of correction acceptable to the Department must be submitted and received no later than sixty days from the date of service of the NOV.] For violations classified as Class 1, a certification acceptable to the Department must be received by the Department forthwith.

§ 2. Paragraph (1) of subdivision (d) of section 102-01 of the rules of the City of New York is amended to read as follows:

(d) *Mitigated and zero penalties.* Mitigated or zero penalties are available in the following circumstances under the following conditions.

(1) *Cure.*¹ An eligible violation may be cured by correction before the first scheduled hearing date at ECB. All violations that are designated as Class 3 violations are eligible for cure. Some, but not all, types of violations that are designated as Class 2 violations are eligible for cure. Those types of Class 2 violations that are eligible for cure will be indicated within the Buildings Penalty Schedule found below. In order to cure, a certificate of correction acceptable to the Department must be filed at the Department within [forty] sixty days from the date of service of the NOV. [For violations issued to one- or two-family homes, a certificate of correction acceptable to the Department must be submitted and received no later than sixty days from the date of service of the NOV.] A cure constitutes an admission of the violation; dispenses with the need for a hearing at ECB; constitutes a predicate violation for subsequent violations; and, consistent with the provisions of Section 28- 204.2, and with the provisions of the Buildings Penalty Schedule, results in a zero penalty. A violation that has been charged as an Aggravated I or Aggravated II violation is never eligible for a cure, even if there is a “Yes” in the “Cure” column in the Buildings Penalty Schedule for that violation description.

¹ Section 28-204.2 of the Administrative Code provides for a zero penalty for Lesser violations that are corrected within the prescribed, or cure, period. For purposes of this rule, certain Major violations will also be treated as eligible for cure to the extent that section 28-202.1 of the Administrative Code specifies no minimum penalty for such violations.

§ 3. Penalties for violations of 27-528, 27-3018(b), 28-105.1, 28-105.11, 28-105.12.2, 28-118.3, EC 110.25, EC 314.25, and EC 410.30 as set forth in section 102-01 of Title 1 of the Rules of the City of New York are repealed or amended to read as follows:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default – Max Penalty
[27-528, BC 1024.1.3 (2008 code) & BC 1028.1.3 (2014 code)]	[Class 2]	[Approved Place of Assembly plans not available for inspection.]	[Yes]	[No]	[\$500]	[Yes]	[\$2,500]	[\$1,250]	[\$5,000]	[\$2,500]	[\$10,000]
27-3018(b)	Class 3	Electrical work without a permit.	Yes	Yes	[\$400] \$200	Yes	\$500	\$500	\$500	\$500	\$500
[27-3018(b)]	[Class 3]	[Failure to conspicuously post electrical work permit while work is in progress.]	[Yes]	[Yes]	[\$400]	[Yes]	[\$500]	[\$500]	[\$500]	[\$500]	[\$500]
28-105.1	Class 3	Work without a permit.	Yes	Yes	[\$500] \$250	Yes	\$500	\$500	\$500	\$500	\$500
28-105.11	Class 2	Failure to post or properly post permit for work at premises.	Yes	Yes	[\$625] \$300	Yes	[\$3,125] \$ 1,500	[\$1,563] \$750	[\$6,250] \$ 3,750	[\$3,125] \$1, 500	[\$10,000] \$7, 500
[28-105.12.2]	[Class 2]	[Place of Assembly contrary to Approved construction documents.]	[Yes]	[Yes]	[\$500]	[Yes]	[\$2,500]	[\$1,250]	[\$5,000]	[\$2,500]	[\$10,000]

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard Penalty	Mitigated Penalty	Default Penalty	Aggravated I Penalty	Aggravated I Default Penalty	Aggravated II Penalty	Aggravated II Default – Max Penalty
28-118.3	Class 2	Change in occupancy/use of C of O as per §28-118.3.1 - §28-118.3.2 by operating a Place of Assembly as per when current C of O does not allow such occupancy.	Yes	No	[\$500] <u>\$250</u>	Yes	[\$2,500] <u>\$1,250</u>	[\$1,250] <u>\$625</u>	[\$5,000] <u>\$3,125</u>	[\$2,500] <u>\$1,250</u>	[\$10,000] <u>\$6,250</u>
[EC 110.25]	[Class 2]	[Electrical closet not dedicated to electrical distribution equipment only.]	[Yes]	[Yes]	[\$600]	[Yes]	[\$3,000]	[\$1,500]	[\$6,000]	[\$3,000]	[\$10,000]
[EC 110.25]	[Class 3]	[Electrical closet not dedicated to electrical distribution equipment only.]	[Yes]	[Yes]	[\$300]	[Yes]	[\$500]	[\$500]	[\$500]	[\$500]	[\$500]
[EC 314.25]	[Class 2]	[Failure to provide cover/faceplate/lampholder/luminaire canopy for electrical outlet.]	[Yes]	[Yes]	[\$500]	[Yes]	[\$2,500]	[\$1,250]	[\$5,000]	[\$2,500]	[\$10,000]
EC 410.30	Class 2	Luminaires and Lampholders not installed in an approved manner.	Yes	Yes	[\$500] <u>\$250</u>	Yes	[\$2,500] <u>\$1,250</u>	[\$1,250] <u>\$625</u>	[\$5,000] <u>\$3,125</u>	[\$2,500] <u>\$1,250</u>	[\$10,000] <u>\$6,250</u>

§ 4. Subdivision (d) of section 102-04 of subchapter B 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) Where an owner of a business that employs fewer than one hundred employees has been issued a violation for unpermitted work and such owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business.

§ 5. Paragraph 8 of subdivision (c) of section 103-01 of Title 1 of the rules of the City of New York is renumbered as paragraph (9), and a new paragraph (8) is added to read as follows:

(8) Small business. A business that employs fewer than one hundred persons.

§ 6. Subparagraph (i) of paragraph (f) of section 103-01 of Title 1 of the rules of the City of New York is amended by adding a new item (D), to read as follows:

(D) Small business. An owner of a small business may be granted a first-time waiver of penalties where the owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business.

§ 7. Paragraph 12 of subdivision (c) of section 103-05 of the rules of the City of New York is renumbered as paragraph (13), and a new paragraph (12) is added to read as follows:

(12) Small business. A business that employs fewer than one hundred persons.

§ 8. Subparagraph (i) of paragraph 6 of subdivision (i) of section 103-05 of the rules of the City of New York is amended by adding a new item (D), to read as follows:

(D) Small business. An owner of a small business may be granted a first-time waiver of penalties where the owner has demonstrated, in a form and manner determined by the Department, that they are the owner of the business.

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 31st 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 31st 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 1st and December 31st 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 1st through 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 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 14th 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. 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 14th 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 1st through December 31st 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 14th 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 14th 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.

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 Section 103-05 of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding high-pressure boiler inspection and filing requirements, penalties and waivers.

This rule was first published on September 10, 2015, and a public hearing thereon was held on October 14, 2015.

Dated: 11.19.15
New York, New York


Rick D. Chandler, P.E.
Commissioner

Statement of Basis and Purpose of Proposed Rule

The proposed rule removes language referencing high-pressure boiler inspections conducted by the Department of Buildings because the 2014 Administrative Code amendments transferred this responsibility to the building owner.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and section 28-303.2 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.

Subdivision (e) of section 103-05 of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

§103-05 High-pressure boiler inspection and filing requirements, penalties and waivers.

- (e) Inspections, tests and filing requirements. [Upon the department's mailing of a notification to an owner stating that the department will not be conducting high-pressure boiler annual inspections for the upcoming inspection cycle, the] The owner shall be responsible for hiring a qualified boiler inspector to conduct such inspections during such upcoming inspection cycle. 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.
 - (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) of this section.

- (3) High-pressure boiler annual inspections shall be conducted twelve (12) months from the preceding annual inspection of the same inspection type.
- (4) Internal and external high-pressure boiler annual inspections shall be performed approximately six (6) months from each other during the inspection cycle.
- (5) 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. 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>.


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:

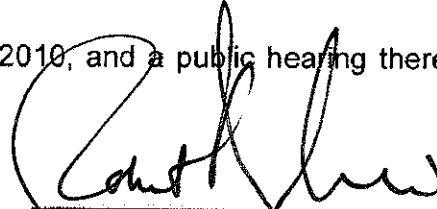
(f) Acceptance of filings. Inspection reports filed after the forty-five (45) day filing deadline but within twelve (12) months of the date the inspection was conducted [shall] will be considered late filings [upon payment of] and will be subject to the appropriate civil penalties as set forth in subdivision [(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.

NOTICE OF ADOPTION OF RULE

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter and Article 303 of Title 28 of the New York City Administrative Code, that the Department of Buildings hereby adds a new Section 103-05 to Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York, relating to high-pressure boiler inspection and filing requirements, penalties and waivers.

This rule was first published on August 30, 2010, and a public hearing thereon was held on September 30, 2010.

Dated: 10/12/10
New York, New York


Robert D. LiMandri
Commissioner

Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new Section 103-05 to read as follows:

§103-05 High-pressure boiler inspection and filing requirements, penalties and waivers.

(a) Scope. This rule implements Article 303 of Title 28 of the New York City Administrative Code (“Administrative Code”) by specifying the high-pressure boiler annual inspection requirements, the processes through which the department shall regulate the filings of high-pressure boiler annual inspection reports and shall issue penalties and waivers for failure to file and/or late filing, and the penalties for failure to file and/or untimely filing of a written notice of removal or disconnection of a high-pressure boiler.

(b) References. See Sections 28-201.2.2, 28-202.1 and Article 303 of Title 28 of the Administrative Code.

(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) 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. November 16th of the preceding calendar year through November 15th of the calendar year for which the report is being submitted.

(6) Inspection type. There are two inspection types, an external high-pressure boiler annual inspection and 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 thereof that is filed after the filing deadline.

(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 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.

(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 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. Upon the department's mailing of a notification to an owner stating that the department will not be conducting high-pressure boiler annual inspections for the upcoming inspection cycle, the owner shall be responsible for hiring a qualified boiler inspector to conduct such inspections during such upcoming inspection cycle. 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.

(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) of this section.

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

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

(5) The inspector shall verify that a department-issued boiler number is affixed to the boiler, and such number shall 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, the inspector shall 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>.

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

(g) Ten- (10) day notifications. The inspector shall notify the department at least ten (10) days prior to the performance of an internal high-pressure boiler annual inspection.

(h) Notification of change of address or sale of premises. 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 shall reference the department's boiler number in all correspondence.

(i) 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.

(j) Civil penalties, high-pressure boiler annual inspection report.

(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 from the qualified boiler inspector who conducted the inspection stating 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.

(3) 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

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

(4) 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 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) Waiver of penalties. An owner may request a waiver of penalties assessed for violation of Section 28-303.7 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. 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".

(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.

(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. Upon completion of

such work, an affirmation of correction shall be filed with the department.

(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 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.

(k) 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 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, 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, shall be liable for a civil penalty of 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 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 fee for the filing of a Self-Certification of Removed or Existing Boiler(s) form.

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.

In accordance with Section 204 of the New York State Labor Law and Section 14-1.2 of Industrial Code Rule No. 14, this rule implements Article 303 of Title 28 of the New York City Administrative Code by specifying the high-pressure boiler annual inspection requirements, and the processes through which the department will regulate the filings of high-pressure boiler annual inspection reports and issue penalties and waivers for failure to file and/or late filing.

Subdivision (e) of this rule states that if an owner is notified by the department that the department will not be conducting high-pressure boiler annual inspections for the upcoming inspection cycle, that such inspections must be conducted by a qualified boiler inspector in the employ of a duly authorized insurance company. The choice to have high-pressure boiler annual inspections performed by either the department or an inspector employed by an insurance company, as provided by Section 28-303.3 of the Administrative Code, is only available to the owner if the department has the resources to conduct such inspections in a timely fashion.

Under current law, building owners are required to file high-pressure boiler annual inspection reports and to certify that any defects identified in the reports have been corrected. This rule sets forth the manner by which the reports shall be filed and the penalties that will be imposed for failure to comply. Section 28-201.2.2 of the Administrative Code specifies that failure to perform boiler inspections and to file required reports is a major violation and Section 28-202.1(2) of the Administrative Code sets the limits on civil penalties for major violations.

This rule replaces and alters the terms of the department's Administrative Procedure & Policy Notice (APPN) 1/05, which governs the granting of waivers of assessed civil penalties to building owners.

This rule generally maintains the waiver guidelines set forth in the APPN in relation to government ownership, bankruptcy, device status and building status and sets out new criteria under which new owners may be granted waivers. In order to qualify for a waiver of penalties that were issued prior to the owner

taking title to the property, there must be evidence of a broader community benefit. The new owner shall have obtained full tax exemption status from the New York City Department of Finance or shall have taken title to the property as part of an economic development program. By limiting the availability of waivers, the department hopes to eliminate a loophole in current law allowing a simple transfer of property to qualify as a basis for a waiver of penalties.

The rule also establishes as a lesser violation the failure to file and/or untimely filing of a written notice of removal or disconnection of a high-pressure boiler (a Self-Certification of Removed or Existing Boiler(s) form) in accordance with Sections 28-202.1 and 28-303.8 of the Administrative Code, and sets the penalties for the violation.