

## NOTICE OF ADOPTION OF RULE

**NOTICE IS HEREBY GIVEN**, pursuant to the authority vested in the Commissioner of the Department of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter, that the Department of Buildings hereby adopts the amendments to Section 101-06 of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding Special inspectors and special inspection agencies.

This rule was first published on November 15, 2017 and a public hearing thereon was held on December 18, 2017.

Dated: 1-26-18  
New York, New York

  
Rick D. Chandler, P.E.  
Commissioner

## Statement of Basis and Purpose of Rule

The Department of Buildings (DOB) is amending Section 101-06 of Title 1 of the Rules of the City of New York relating to the duties, registration, renewal and discipline of special inspectors and special inspection agencies. The amendments address the following:

- 1) Clarify definitions of personnel within a special inspection agency;
- 2) Require that all applicants associated with a special inspection agency are subject to the provisions of Article 401 of Chapter 4 of Title 28 of the City Administrative Code;
- 3) Clarify the special inspection agency structure;
- 4) Clarify requirements and limitations for renewal applications of special inspection agencies; and
- 5) Direct that suspension or revocation of registration of a special inspection agency and the refusal to accept filings by a special inspection agency will be in accord with Article 401 of Chapter 4 of Title 28 of the City Administrative Code.

DOB's authority for these rules is found in Sections 643 and 1043(a) of the City Charter and Section 28-115.1 of the 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. Subdivision (a) of Section 101-06 of Title 1 of the Rules of the City of New York is amended to read as follows:

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

- (1) *Accreditation.* Evaluation of agencies, including testing and calibration laboratories, fabricators and inspection bodies, against internationally acceptable standards to demonstrate their performance capability. Such accreditation is required to be conducted by a nationally recognized accreditation agency accrediting to [ASTM E329-14 or ISO 17020-98] ISO 17020-12 international standard, the requirements of this rule, and approved by the department.

(2) Applicant. An owner, primary director or technical director.

- ~~(2)~~3 *Approved Construction Documents.* For the purpose of this rule approved construction documents will include any and all documents that set forth the location and entire nature and extent of the “work” proposed with sufficient clarity and detail to show that the proposed work conforms to the provisions of this code and other applicable laws and rules. Such documents will include but not be limited to shop drawings, specifications,

manufacturer's instructions and standards that have been accepted by the design professional of record or such other design professional retained by the owner for this purpose.

- ([3]4) *Approved Inspection Agency*. This term has the same definition as established in section 28-101.5 of the Administrative Code.
- ([4]5) *Certification*. Documented acknowledgment by a nationally recognized organization of a technician's competency to perform certain functions.
- ([5]6) *Commissioner*. This term has the same definition as established in section 28-101.5 of the Administrative Code.
- ([6]7) *Department*. This term has the same definition as established in section 28-101.5 of the Administrative Code.
- ([7]8) *Floor Area, Gross*. This term has the same definition as established in section 1002.1 of the Building Code.
- ([8]9) *Full Demolition*. This term has the same definition as established in section 3302.1 of the Building Code (Demolition, Full).
- ([9]10) *Job*. A construction project that is the subject of one (1) or more department-issued permits.
- ([10]11) *Major Building*. This term has the same definition as established in section 3302.1 of the Building Code.
- ([11]12) *Materials*. This term has the same definition as established in section 28-101.5 of the Administrative Code.
- ([12]13) *New York City Construction Codes*. The New York City Plumbing Code, the New York City Building Code, the New York City Mechanical Code, the New York City Fuel Gas Code, the New York City Energy Code, and Title 28, chapters 1 through 5 of the Administrative Code. Any reference to "this code" or "the code" will be deemed a reference to the New York City Construction Codes as here defined.
- (14) Owner. Any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in or control of the special inspection agency.
- ([13]15) *Partial Demolition*. This term has the same definition as established in section 3302.1 of the Building Code (Demolition, Partial).
- (16) Primary Director. An individual possessing one or more of the following licenses: Master Electrician, Master Fire Suppression Piping Contractor, Oil Burning Equipment Installer, Master Plumber, or Registered Design Professional and designated as "Director" in the Department's Special Inspection Agency registration.

- (14)17 *Registered Design Professional*. A New York State licensed and registered architect (RA) or a New York State licensed and registered professional engineer (PE).
- (15)18 *Registered Design Professional of Record*. The registered design professional who prepared or supervised the preparation of applicable construction documents filed with the department.
- (16)19 *Relevant Experience*. Direct participation and practice related to the underlying construction activities that are the subject of the special inspection where such participation has led to accumulation of knowledge and skill required for the proper execution of such inspection.
- (17)20 *Special Inspection*. Inspection of selected materials, equipment, installation, methods of construction, fabrication, erection or placement of components and connections, to ensure compliance with approved construction documents and referenced standards as required by Chapter 17 of the Building Code or elsewhere in the code or its referenced standards.
- (18)21 *Special Inspection Agency*. An approved inspection agency employing one (1) or more persons who are special inspectors and that has met all requirements of this rule.
- (19)22 *Special Inspection Category*. The specific type(s) of special inspection(s) that a special inspection agency may perform in accordance with Appendix A of this rule.
- (20)23 *Special Inspector*. An individual employed by a special inspection agency, who has the required qualifications set forth in this rule to perform or witness particular special inspections required by the code or by the rules of the department, including but not limited to a qualified registered design professional.
- (21)24 *Supervise/Supervision*. With respect to a designated Primary Inspector or Inspection Supervisor as indicated in Appendix A, supervision will mean oversight and responsible control by a registered design professional having the necessary qualifications and relevant experience to perform responsibilities associated with the special inspection. Such supervision will include ensuring training and/or education necessary to qualify the special inspector for his or her duties, including continued training and education necessary to keep pace with developing technology.
- [Field supervision will include responsibility for determining competence of special inspectors for the work they are authorized to inspect and on-site monitoring of the special inspection activities at the job site to assure that the qualified special inspector is performing his or her duties when work requiring inspection is in progress.]

Field supervision by the primary inspector or inspection supervisor, per Appendix A, will include responsibility for determining competence of special inspectors for the work they are authorized to inspect and on-site monitoring of the special inspection activities at the job site to ensure that a qualified special inspector is performing his or her duties when work requiring inspection is in progress.

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

If the primary director or technical director of a special inspection agency is not a registered design professional, that special inspection agency shall be limited to performing only those special inspections, per Appendix A, that the special inspection agency's primary director or technical director possesses a department-issued license to perform.

(25) *Technical Director.* An individual possessing one or more of the following licenses: Master Electrician, Master Fire Suppression Piping Contractor, Oil Burning Equipment Installer, Master Plumber, or Registered Design Professional and designated as "Director" in the Department's Special Inspection Agency registration.

([22]26) *Technician.* A person employed by the special inspection agency assigned to perform the inspection or testing of construction activities or materials used in construction or both. See ASTM E 329-14, paragraph 3.1.8.

([23]27) *Work.* The construction activity including techniques, tests, materials and equipment that is subject to special inspection.

§2. Paragraph (4) of subdivision (b) of section 101-06 of Title 1 of the Rules of the City of New York is amended to read as follows:

(4) Documentation. A special inspection agency shall maintain records of special inspections on a job-by-job basis for at least six (6) years or for such period as the commissioner shall determine, and shall make such records available to the department upon request. Such records shall include field logs, test results, laboratory reports, notes, noted deficiencies and dates of cures of such deficiencies, photographs and such other information as may be appropriate to establish the sufficiency of the special inspection[.] as per Chapter 17 of the Building Code or elsewhere in the New York City Construction Codes or their referenced standards.



- (i) The [supervisor] primary inspector or inspection supervisor, per Appendix A, shall review special inspection progress reports and final reports for conformance with the approved plans, specifications and workmanship provisions of chapter 17 of the New York City Building Code or elsewhere in the construction codes or their referenced standards. Such supervision and control shall be evidenced by the supervisor's signature and seal upon any required statements, applications and/or reports.
- (ii) The [principal] primary director or technical director of the special inspection agency shall file with the department within ten (10) days of satisfactory completion of any special inspection, notice of such completion on the forms and in the manner required by the department.

§3. Paragraphs (1), (3), (4), (5), (6) and (10) of Subdivision (c) of Section 101-06 of Title 1 of the Rules of the City of New York are amended to read as follows:

- (1) General. All agencies performing special inspections must be registered with the department as special inspection agencies. Applicants, both at the time of their approval and at the time of all subsequent renewals, are subject to the provisions of Article 401 of Chapter 4 of Title 28 of the Administrative Code.

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- (3) Agency Accreditation. For class 1 special inspection agencies only, accreditation is required by the accreditation deadline in order to maintain their class 1 registration status. These agencies will be required to demonstrate accreditation for their intended scope of work by an approved accrediting body accrediting to the standards set forth in this rule and [either ASTM E329-14 or] ISO 17020-12. Accrediting bodies other than federal agencies are required to operate in accordance with ISO 17011-04 and must be members of an internationally recognized cooperation of laboratory and inspection accreditation bodies subject to a mutual recognition agreement.

[Exception: For the following special inspection categories, the accreditation deadline shall be twelve months from the effective date of this rule amendment:

- (i) Mastic and Intumescent Fire-resistant Coatings;
- (ii) High Temperature Hot Water Piping;
- (iii) Post-Installed Anchors (Concrete & Masonry); and
- (iv) Raising and Moving of a Building.]

- (4) Qualifications. All special inspection [agencies] agency primary directors and technical directors must ensure that the special inspectors employed by the agency meet the qualification requirements set forth in Appendix A of

this rule and perform special inspections only within the area of expertise for which such special inspectors are qualified. A Professional Engineer who is listed in Appendix A as requiring qualification in civil, structural, mechanical, electrical, fire protection, geotechnical or such other designation must have had the education, training and experience that has led to an accumulation of knowledge and skill required for the New York State-licensed Professional Engineer to hold himself/herself out as a professional practicing in that field.

(5) Insurance. All special inspection agencies must have the following insurance coverage:

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

Exception: An agency that is limited to performing:

- (1) fuel-oil storage and fuel-oil piping inspections,
- (2) sprinkler system[s] inspections,
- (3) standpipe system[s] inspections,
- (4) emergency and standby power system[s] inspections,
- (5) private on-site storm water disposal and detention system installation, and/or
- (6) individual on-site private sewage disposal system installation special inspections,

and whose primary director or technical director is not a registered design professional, will be exempt from obtaining professional liability insurance coverage. This exception applies so long as the primary director or technical director maintains the insurance requirements required for his/her respective license in accordance with Chapter 4 of Title 28 of the Administrative Code.

(ii) Insurance required by the provisions of the New York State Workers' Compensation and disability benefits laws.

(6) Agency Structure. A special inspection agency must have one primary director and up to four (4) alternative full-time technical directors who are registered design professionals in charge and all special inspections must be performed under their direct supervision. [The] Neither the primary director nor the technical directors [must not] may be retained by any other agency that provides special inspection or testing services[.], nor shall they be an owner of another special inspection or testing agency or be involved in the supervision of such an agency. The primary director or technical directors must possess relevant experience in the inspection and testing industry and hold management positions in the agency. The agency structure must comply with all relevant New York State and Federal laws. Notwithstanding anything to the contrary set forth in this paragraph, an agency that is limited to performing:

- (1) fuel-oil storage and fuel-oil piping inspections,
- (2) sprinkler system[s] inspections,
- (3) standpipe system[s] inspections,
- (4) emergency and standby power system[s] inspections,
- (5) private on-site storm water disposal and detention system installation, or
- (6) individual on-site private sewage disposal system installation special inspections

may have a primary director and technical directors who satisfy the requirements of primary inspector or inspection supervisor for such tests and inspections as set forth in Appendix A of this rule.

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

(i) Renewal will be precluded where there has been a finding by the commissioner that any special inspection or test conducted by the special inspector or special inspection agency has not been performed in accordance with the requirements set forth in the code, applicable reference standards or the rules of the department, or where there has been a finding by the commissioner of fraud or misrepresentation on any document or report submitted to the department by the special inspector or special inspection agency[.], or where there has been a finding by the commissioner that any special inspection has been performed by an inspector who does not possess the proper qualifications.

(ii) Renewal will be precluded where there has been a finding by the commissioner that the owner, primary director or technical director has not demonstrated good moral character.

(iii) Renewal will be precluded where there has been a finding that the owner or primary director or technical director, after an opportunity to be heard, knowingly or negligently made a false statement or knowingly or negligently falsified or allowed to be falsified any certificate, form, signed statement, application, report or certification of the correction of a violation required under the provisions of this chapter, the code or any rule or regulation of any agency.

(iii)iv) No special inspector or special inspection agency will perform an inspection or test with an expired or lapsed New York State license or department registration. The filing of any report with an expired or lapsed registration, or the filing of any report for



any inspection performed with an expired or lapsed registration, shall be considered a false filing, per Article 211 of Chapter 2 of Title 28 of the Administrative Code.

(v) If, after a period of one year from the date of the expiration of its registration, the special inspection agency has failed to apply for late renewal of its registration, the special inspection agency shall be required to register anew subject to the provisions of this Rule.

§4. Paragraphs (1) and (2) of subdivision (d) of section 101-06 of Title 1 of the Rules of the City of New York are amended to read as follows:

- (1) Suspension or revocation of registration and refusal to accept filings. The commissioner may, in accordance with the provisions of Article 401 of Chapter 4 of Title 28 of the Administrative Code and the rules of the department, suspend or revoke a special inspection agency registration, with or without the imposition of penalties, for violation of any provision of the [code] New York City Construction Codes or the rules of the department, or any other applicable laws or rules. The commissioner may refuse to accept any application or other document submitted pursuant to or in satisfaction of any requirement of this rule or of chapter 17 of the New York City Building Code or any rule or regulation of any agency that bears the signature of any [special inspector] primary director or technical director who has been found, after an opportunity to be heard, to have knowingly or negligently made a false statement or to have knowingly or negligently falsified or allowed to be falsified any certificate, form, signed statement, application, report or certification of the correction of a violation required under the provisions of this chapter, the code or any rule or regulation of any agency.
- (2) Stop [work] Work and Suspension of Permits. Upon any suspension or revocation of registration pursuant to paragraph (d)(1) of this rule, unless replaced by another registered [special inspector and/or] special inspection agency within five (5) business days of such suspension or revocation, all jobs on which the [special inspector and/or] special inspection agency whose registration was suspended or revoked is designated, shall be stopped and the permits shall be suspended until such time as a duly registered [special inspector and/or] special inspection agency is designated to reinspect such tests or such inspections performed by the disciplined special inspection agency, or until such permits expire.

§5. The row of Section 4 of Appendix A of Section 101-06 of Title 1 of the Rules of the City of New York, relating to Excavation - Sheeting, Shoring, and Bracing, is amended to read as follows:

Special Inspection Category	2014 Code Section	Qualifications <sup>1,2</sup>		
		Primary Inspector or Inspection Supervisor	Supplemental Inspector (Alternative 1) – under direct supervision of Inspection Supervisor	Supplemental Inspector (Alternative 2) – under direct supervision of Inspection Supervisor

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<b>4. Structural Materials &amp; Construction Operations</b>
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Excavation - Sheeting, Shoring, and Bracing	BC 1704.[19]20.2, 3304.4.1	<ul style="list-style-type: none"> <li>• PE – Geotechnical, Civil, or Structural; and</li> <li>• 1 year relevant experience</li> </ul>	<ul style="list-style-type: none"> <li>• Bachelor's degree in Geotechnical, Civil or Structural; and</li> <li>• 3 years relevant experience</li> </ul>	<ul style="list-style-type: none"> <li>• Technician with 5 years relevant experience</li> </ul>
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