

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 105-03 of Subchapter E of Chapter 1 of Title 1, and the addition of a new section 3321-01 to such title of the Official Compilation of the Rules of the City of New York, regarding construction site safety training.

This rule was published in the City Record on February 5, 2018 and a public hearing was held on March 8, 2018.

Dated: 12/12/19

New York, New York



Melanie E. La Rocca
Commissioner

Statement of Basis and Purpose of Rule

Local Law 196 of 2017 went into effect on October 16, 2017. It created new requirements for construction site safety training courses and course completion cards, beginning March 1, 2018.

Local Law 119 of 2019 went into effect on June 8, 2019 and changed some of the compliance dates in Local Law 196. This rule has been amended to reflect those changes.

This rule

- amends the existing course provider rule (section 105-03) to add requirements for site safety training course providers and course completion cards; and
- adds a new rule section 3321-01 regarding the type of and time frames for construction site safety training.

The amendments to the Department's penalty schedule (§ 102-01(k)), which appeared in the proposed rule, are no longer part of this rule. They were promulgated as part of a larger set of amendments to §102-01 that became effective on November 10, 2018.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Section 105-03 of Subchapter E of Chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

§ 105-03 Department-Approved Courses.

(a) **Scope.** This section outlines the requirements for Department-approved courses required by the Administrative Code and Department rules for training, license qualification and licensee continuing education. Unless otherwise authorized under the Administrative Code or Department rules, only Department-approved courses may be offered to fulfill Department course requirements.

(b) Course Provider Application Process.

- (1) The course provider applicant must submit:
 - (i) an application form provided by the Department; [and]
 - (ii) proof that the applicant has met the requirements of paragraph (2) of subdivision [(d)] (e) of this section[. Prior to the date provided in

that paragraph, an applicant that does not meet the requirements of that paragraph must submit upon application all documentation necessary for the department to determine whether the course would meet all the requirements of this section.]; and

(iii) a statement attesting that the applicant will ensure that all instructors comply with the requirements of subdivision (d) of this section and, if applicable, subdivision (g) of this section. Course providers who are already approved as of the effective date of this subparagraph must comply with its provisions by January 1, 2020.

(2) A listing of the providers of the approved courses will be available through the Department's website.

(3) Incomplete or inaccurate applications will be returned to the applicant and may be resubmitted once complete or corrected.

(c) Approved Courses. The course provider must ensure compliance with the provisions of this subdivision (c).

(1) Course Requirements.

(i) All courses must comply with the Department's course curricula published on its website, which lists the relevant citations for statutory or other requirements listed in this paragraph.

(ii) No more than four (4) hours of any curriculum may consist of course materials or credits to be applied to multiple license types.

Exception: Subparagraph (ii) does not apply to course curricula for Master and Special Electrician, Master Plumber and Master Fire Suppression Piping Contractor.

(iii) All curricula must include the following information as applicable to the relevant construction trade:

(A) Business practices;

(B) Relevant [building code] Building Code provisions, rules, and policy and procedure notices enacted or promulgated by the Department;

(C) Administrative [code] Code provisions, rules and policy and procedure notices enacted or promulgated by any other [city] City agency;

(D) Overview of Occupational Safety and Health Standards ("OSHS") for the Construction Industry;

- (E) Relevant Department of Buildings filing and inspection requirements;
 - (F) Safety/hazardous materials;
 - (G) New technology;
 - (H) Corruption prevention standards; and
 - (I) Other subjects identified by the Commissioner.
- (iv) All courses must reflect any changes in the Department's published course curricula or any applicable laws, rules and regulations within ninety (90) days.
- (2) Notification of Approved Courses.
- (i) The course provider must have a website and must publish course schedules on its website, including dates, times, [and] locations, the cost of the training and whether such cost includes the cost of issuing the identification card or site safety training card required by this section, the cost of such card if it is not included in the training cost, and must otherwise make all course schedules available in writing to the Department upon request. The course provider must also notify the Department of a scheduled course at least three (3) business days prior to it being offered. All information on the course provider's website, including the location of courses and the courses taught, must be current.
 - (ii) The course provider must notify the Department of any changes to the course within fourteen (14) days of such change.
- (3) Course Review. At the end of each course, the instructor(s) must conduct a review of the materials taught. The Department may require that a hands-on or written performance evaluation be given to attendees.
- [(4) Course Instructor(s). Course providers must require that the course instructor(s) demonstrate that he or she is credentialed or trained in instructional methods and learning processes. The instructor(s) must also successfully demonstrate to the course provider his or her ability to solve or resolve problems relating to the subject matter by possession of a recognized degree, certificate, licensure or professional standing, or by extensive knowledge, training, and experience, in the subject matter being taught. To the extent that the course instructor(s) holds, or has held, a trade license issued by the Department, it must be in good standing and not be surrendered to, suspended by or revoked by the Department.
- (i) For Supported Scaffold, Suspended Scaffold and Mast-Climber training courses, the instructor(s) must also be authorized by the

Occupational Safety and Health Administration ("OSHA") as a trainer(s) for its Construction and Outreach Program.

- (ii) For Hoist Machine Operator courses, the instructor(s) must also hold a valid New York City Hoist Machine Operator's license or hold a national certification for crane operation.
- (iii) For Master and Special Electrician courses, the instructor(s) must demonstrate credentials or training in instructional methods and learning processes through licensure or certification, including but not limited to, certification as an electrical course provider in jurisdictions following the National Electrical Code/NFPA 70.]

[(5)] (4) Course Facilities. The course facilities must:

- (i) Have sufficient room to accommodate all expected attendees and the equipment needed to perform hands-on exercises where required as part of the course;
- (ii) Make provisions for the presentation of training material in all media types (e.g., computer, projectors, video/DVD players[, etc]); and
- (iii) Comply with all applicable laws, rules and regulations relating to occupancy, zoning, egress, fire detection, fire suppression, light, ventilation, cleanliness, sanitary facilities, emergency notification and evacuation procedures.

[(6)] (5) Attendance Record. The course provider must have in place fraud-resistant procedures for confirming the identity and attendance of individuals taking any course(s), including logs reflecting those in attendance at different times during the course, and be able to produce the logs and any other documentation demonstrating that an attendee attended the course(s).

[(7)] (6) Course Completion.

- (i) For training courses, the course provider must issue a wallet-size identification card to attendees upon course completion. Such card must contain the following information:
 - (A) The name of the person to whom it was issued;
 - (B) A photograph of the person to whom it was issued;
 - (C) The name and address of the issuing organization;
 - (D) The date of issuance;
 - (E) An indication of the type of training and the number of credit hours completed; and

(F) The signature of the course [administrator] provider.

(ii) For qualification and continuing education courses, the course provider must issue a certificate of completion to the attendees upon course completion. Such certificate must contain the following information:

- (A) The name of the person to whom it was issued;
- (B) The name and address of the issuing organization;
- (C) The date of issuance;
- (D) An indication of the type of course and the number of credit hours completed; and
- (E) The signature of the course [administrator] provider.

(iii) The course provider must maintain a record of all the [names of course attendees and the course they completed] information required on the identification cards and the certificates of completion for a minimum period of seven (7) years from the date of completion. The course provider must make these records available to the Department upon request.

[(8)] (7) Department Observation and Evaluation. The Department may observe any Department-approved course without prior notification to the course provider or instructor. The Department may evaluate courses taught by course providers through audit or other means at such intervals as it deems necessary and may require additional information as it deems necessary.

(d) Course Instructor(s). Course providers must require that course instructor(s) demonstrate that they are credentialed or trained in instructional methods and learning processes. Course providers must also require that the instructor(s) successfully demonstrate their ability to solve or resolve problems relating to the subject matter by possession of a recognized degree, certificate, licensure or professional standing, or by extensive knowledge, training, and experience, in the subject matter being taught. To the extent that the course instructor(s) holds, or has held, a trade license issued by the Department, such license must be in good standing and not be surrendered to, suspended by or revoked by the Department.

(1) For Supported Scaffold, Suspended Scaffold and Mast-Climber training courses, the instructor(s) must also be authorized by the Occupational Safety and Health Administration ("OSHA") as a trainer(s) for its Construction and Outreach Program.

(2) For Hoisting Machine Operator courses, the instructor(s) must also hold a valid New York City Hoisting Machine Operator's license or hold a national certification for crane operation.

- (3) For Master and Special Electrician courses, the instructor(s) must demonstrate credentials or training in instructional methods and learning processes through licensure or certification, including but not limited to, certification as an electrical course provider in jurisdictions following the National Electrical Code/NFPA 70.
- (4) The course instructor(s) must comply with all applicable Federal, State and local laws, rules and regulations.
- (5) The course instructor(s) must be in compliance with the Department's Industry Code of Conduct.

[(d)] (e) Course Provider Requirements.

- (1) The course provider must be a sole proprietorship, a partnership or a [corporate officer of a course provider] corporation that provides training, [a partner of a course provider partnership,] an educational institution, a governmental agency or authority, a trade union, or a trade association, provided that a governmental agency or authority need not comply with paragraph (2) of this subdivision.
- (2) [Beginning on August 31, 2014, the] The course provider must provide proof that it is:
 - (i) approved by the New York State Department of Education, such as through a registered New York State Department of Labor vocational, trade or apprenticeship program;
 - (ii) licensed as an educational institution by the New York State Department of Education;
 - (iii) accredited by an accrediting organization recognized by the United States Department of Education or the Council for Higher Education Accreditation; or
 - (iv) certified by an organization accredited by the American National Standards Institute (ANSI) as a Standards Developing Organization with published standards for continuing education and training.

[Upon a determination of good cause, including but not limited to the absence of approved courses needed to meet a Department requirement, the Commissioner may extend the time to meet the requirements of this paragraph beyond August 31, 2014.]

For alternative Mast-Climbing work platform training course provider requirements to those listed in [(d)(2)] paragraph (2) of subdivision (e), herein, see section 3314-01(m).

- (3) Course providers must continuously maintain the qualifications required by paragraphs (1) and (2) of this subdivision and by subdivision (h), if applicable, and must provide a copy of such approval, license, accreditation or certification to the Department upon request. The course provider must immediately notify the Department of any lapse or expiration of its approval, license, accreditation or certification, including any qualification required by subdivision (h).
- (4) The [individual] course provider[, the principals or partners of the course provider corporation or partnership and all course instructors] must comply with all applicable Federal, State and local laws, rules and regulations.
- (5) The course provider must notify the Department of any changes to the course provider's name within fourteen (14) days of such change.
- (6) Course providers must ensure that all their instructors comply with all applicable provisions of this section.
- (7) Course providers must be in compliance with the Department's Industry Code of Conduct.

(f) Notwithstanding the [forgoing] foregoing, the Department may act as a provider, or the sole provider, of any course offered to fulfill a Department course requirement. A listing of available Department courses will be posted on the Department's website.

(g) Site Safety Training (SST) Course Instructors. For the purposes of providing training in accordance with section 3321.1 of the Building Code and this section 105-03, a site safety training (SST) provider, as defined in item 1 of the definition of "Site Safety Training (SST) Provider" in section 3302.1 of the Building Code, means a course instructor as used in this section 105-03. In addition to the foregoing requirements for course instructors, an SST course instructor must meet one of the following requirements:

- (1) has successfully completed all applicable OSHA or Department requirements for conducting OSHA 10-hour classes and OSHA 30-hour classes and is authorized to conduct such classes, except that such course instructor is not required to possess a degree, certificate, licensure or demonstrate any professional standing as required by subdivision (d), beyond what is required in this paragraph;
- (2) is providing training through a 100-hour training program; or

- (3) is approved by the Department to conduct a 40-hour Site Safety Manager training course in accordance with Article 402 of Chapter 4 of Title 28 of the Administrative Code.

(h) Site Safety Training (SST) Course Providers. A site safety training (SST) provider as defined in item 2 of the definition of "Site Safety Training (SST) Provider" in section 3302.1 of the Building Code must comply with the requirements for course providers in this section 105-03 as well as with the applicable requirements of this subdivision (h).

- (1) If a not-for-profit organization or a governmental agency or authority is an SST provider, it must meet the standards set forth by the Department instead of the requirement in paragraph (2) of subdivision (e).
- (2) Not later than September 1, 2020, an SST provider must certify to the Department that it has a language access plan that complies with requirements established by another City agency or office designated by the Mayor.
- (3) Training may be conducted in person or in an actively proctored online format and must comply with the following:
- (i) If conducted in person in a classroom setting, the SST provider must confirm the identification of the individual taking such training and must ensure that the site of such training is actively observed for the duration of the training.
- (ii) If the online training is not performed in person, the SST provider must confirm the identification of the individual prior to providing secure access to the online training. The individual must attest that he/she is the individual who received the online access and will complete the training without assistance. The online program must have secure access and monitor participation during the course of training to ensure that the individual receiving the training is present for the entirety of the training.
- (4) Upon completion of the SST course, the SST provider or, if applicable, a third party, must issue an SST card in accordance with subdivision (i) of this section. The provisions of paragraph (6) of subdivision (c) of this section do not apply to SST courses.
- (5) If the SST provider is not the provider of the OSHA course that is required for an SST card, as defined in section 3302.1 of the Building Code, the SST provider must ensure that the OSHA course was conducted either in person or, if online, was actively proctored before issuing an SST card as provided in subdivision (i) of this section.

- (6) The SST provider or, if applicable, a third party, must accept documentation, including identification cards or certificates of completion, from a Department-approved SST course equivalent, as set out on the Department's website, and must apply such course hours to satisfy the training requirements of this section and section BC 3321 of the Building Code.
- (7) Beginning October 1, 2019, and on January 1, April 1, July 1 and October 1 of each year thereafter, the course provider must report the number of SST, temporary SST, limited SST and supervisory SST cards issued each quarter in a format required by the Department.

(i) SST cards to be issued upon course completion. The Department may require SST course completion cards to be issued by a third party. Until such time as a third party process is instituted, an SST provider must, upon completion of the SST course, issue a temporary SST card, limited SST card, SST card, or SST supervisor card, in accordance with subdivision (h), this subdivision and section 3302.1 of the Building Code.

- (1) Such card must be wallet-sized and must conform to the guidelines posted on the Department's website.
- (2) Any SST card issued prior to the effective date of this rule must conform to the guidelines posted on the Department's website. The course provider who issued such SST card must replace non-conforming cards by April 1, 2020 with cards that comply.

(i) Record-keeping and verification of SST Cards.

- (1) The SST course provider or, if applicable, a third party, must maintain a record of all temporary SST cards, limited SST cards, SST cards, or SST supervisor cards issued for a minimum of seven years. The SST course provider or, if applicable, a third party, must make these records available to the Department or its designee upon request.
- (2) The SST course provider or, if applicable, a third party, must maintain a secure online verification system containing an up-to-date list of the name of the card holder, the unique identification card number, and the issuance and expiration date of the card. Such verification must be available to the City, including the Department or its designee, and contractors, to enable readily accessible confirmation of the names of SST card holders who have completed the SST training through the particular course provider.

[(e)] (k) Suspension and Revocation of Approval.

- (1) Following notice and an opportunity to be heard, the Department may [suspend or revoke approval of a course provider's courses based on the failure to comply with a Department requirement] take corrective action, including probation, suspension, or revocation of a course provider's authority to conduct classes and to distribute course completion cards, for failure to comply with the requirements of this section or with the requirements of any applicable law, rule, or regulation. However, when the public safety may be imminently jeopardized, the Commissioner may, pending an opportunity to be heard and Department determination, suspend approval for a period not exceeding thirty (30) days.
- (2) The basis for the suspension or revocation of a course approval may form the basis for the suspension or revocation of any or all of that course provider's approved courses.
- (3) The Department will post on its website that the approval of a course or course provider has been suspended or revoked.

§2. Chapter 3300 of Title 1 of the Rules of the City of New York is amended by adding a new section 3321-01 to read as follows:

§3321-01 Construction Site Safety Training (SST).

(a) Required training. Permit holders at building sites for which a construction superintendent, site safety manager or site safety coordinator is required must ensure that each worker at the site has completed the site safety training provided by approved course providers pursuant to section 105-03 of these rules and as required by section 3321 of the Building Code.

(b) Training deadlines. The required training must be completed in accordance with the following deadlines:

- (1) Beginning March 1, 2018, workers must have completed either:
 - (i) An OSHA 10-hour class, as defined in section 3302.1 of the Building Code;
 - (ii) An OSHA 30-hour class, as defined in section 3302.1 of the Building Code; or

- (iii) A 100-hour training program that DOB determines meets or exceeds the training in (i) or (ii).
- (2) By December 1, 2019, or June 1, 2020 if the Department determines that there is insufficient capacity to provide the training required by section 3321 of the Building Code, workers must have completed either (i), (ii), (iii), or (iv) of this paragraph (2):
- (i) Temporary SST Card as defined in section 3302.1 of the Building Code, for workers who provide a written statement that they have not ever been issued a Limited SST, Temporary SST or SST Card;
 - (ii) Limited SST Card as defined in section 3302.1 of the Building Code;
 - (iii) SST Card as defined in section 3302.1 of the Building Code; or
 - (iv) If serving as a site safety manager, site safety coordinator, concrete safety manager, construction superintendent or a competent person designated by the construction superintendent at such site, an SST Supervisor Card as defined in section 3302.1 of the Building Code.
- (3) By September 1, 2020, workers must have either (i), (ii), or (iii) of this paragraph (3):
- (i) SST Card;
 - (ii) Temporary SST Card as defined in section 3302.1 of the Building Code, for workers who provide a written statement that they have not ever been issued a Limited SST, Temporary SST or SST Card;
or
 - (iii) If serving as a site safety manager, site safety coordinator, concrete safety manager, construction superintendent or a competent person at such site, an SST Supervisor Card as defined in section 3302.1 of the Building Code.