

NOTICE OF PUBLIC HEARING

- Subject:** Opportunity to comment on proposed amendments to rule 103-04 relating to façade inspections
- Date / Time:** **January 10, 2013 / 10am**
- Location:** Department of Buildings
280 Broadway, 6th Floor
New York, NY 10007
- Contact:** Timothy D. Lynch, P.E.
Executive Director
Forensic Engineering Unit
New York City Department of Buildings
280 Broadway, 4th floor
New York, NY 10007

Proposed Rule Amendment

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, the Department of Buildings proposes to amend Section 103-04 of Chapter 100 of Title 1 of the Rules of the City of New York. The rule was included in the agency's most recent regulatory agenda.

Instructions

- Prior to the hearing, you may submit written comments about the proposed amendment to Mr. Lynch by mail or electronically through the [NYC Rules](http://www.nyc.gov/nycrules) website at <http://www.nyc.gov/nycrules> by January 10, 2013
- To request a sign language interpreter or other reasonable accommodation for a disability at the hearing, please contact Mr. Lynch by December 21, 2012.
- Written comments and a summary of oral comments received at the hearing will be available until February 11, 2013 between the hours of 9:00 a.m. and 5:00 p.m. at the Office of the Commissioner, Department of Buildings, 280 Broadway, 7th floor, New York, NY 10007.

STATEMENT OF BASIS AND PURPOSE

The following rule amendments are proposed pursuant to the authority of the Commissioner of Buildings under Sections 643 and 1043(a) of the New York City Charter and Article 302 of Title 28 of the New York City Administrative Code. Article 302 requires inspection, maintenance, repair and reporting of the conditions of exterior walls (façades).

With these proposed amendments to the rule regarding the periodic inspection of façades of buildings 7 stories or higher, the Department is addressing some administrative issues that are not covered in the current requirements. The proposed amendments would do the following:

- Delete the prohibition on designating the condition of an air conditioner as Safe with a Repair and Maintenance Program (SWARMP). These automatic “unsafe” designations were being applied to the entire building even where the only issue was a minor air conditioner defect. This deletion will allow air conditioner conditions to be designated as SWARMP and repaired in the next cycle.
- Add a requirement that the Qualified Exterior Wall Inspector (QEWI) must inspect the structural soundness and connections of the balcony enclosures even if a report for cycle seven, which runs from February 21, 2010 to February 20, 2015, has been filed for the building. A recent balcony accident highlighted that many balcony railings are uninspected and may be unsafe. With this rule, the Department specifically requires all owners to periodically check the adequacy and structural integrity of all of their balcony railings.
- Clarify that if the QEWI does not file a report within 60 days of a critical examination, a new examination is required. This will ensure the information on the report is recent and accurate.
- Allow the Department to charge a new, separate filing fee that owners must pay to the Department's Façade Unit. If the Department has rejected a façade inspection report twice previously, the Department will review it completely upon the third resubmission. The fee covers the administrative cost of that third review of the report.
- Fix some minor citation issues.

“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].

Section 1. The definition of filed report in subdivision (a) of section 103-04 of Title 1 of the Rules of the City of New York is amended to read as follows:

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

§2. Subparagraph (iii) of paragraph (2) of subdivision (b) of section 103-04 of Title 1 of the Rules of the City of New York is amended to read as follows:

(iii) The QEWI shall design an inspection program for the specific building to be inspected, which shall include, but not be limited to, the methods to be employed in the examination. The inspection program shall be based on considerations of the type of construction of the building's envelope, age of the material components, the facade's specific exposure to environmental conditions and the presence of specific details and appurtenances. Consideration shall be given to the facade's history of maintenance and repairs as described in previous reports and submittals to the department.

Except as provided in subparagraph (viii) of paragraph (2) of this subdivision [b of this section], the QEWI need not be physically present at the location when the examination is made. Architects, engineers, tradesmen and technicians, working under the QEWI's direct supervision, may be delegated to perform selected inspection tasks only when they are employees or subcontractors of the QEWI.

§3. Subparagraph (ii) of paragraph (3) of subdivision (b) of section 103-04 of Title 1 of the Rules of the City of New York is amended to read as follows:

(ii) Technical information in the report shall adhere to and follow the sequence and the labeling of the report requirements as listed in [paragraph] subparagraph (iii) of this [subdivision] paragraph, and shall be provided on such forms and in such format as the Department shall require. Additional information may be provided. All letters (A-[P] O) shall be listed in the report. If a requirement is not applicable, this shall be indicated on the report under the relevant letter.

§4. Clause (G) of subparagraph (iii) of paragraph (3) of subdivision (b) of section 103-04 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (G) A description and classification of each significant condition observed, including[:
1.] deterioration and any movement detected[;] and
[2.] the apparent water-tightness of the exterior surfaces.

[Each condition shall be classified as safe, unsafe or SWARMP. If the building is classified as "safe," all conditions noted during examination that require monitoring and/or routine maintenance, including, but not limited to, minor rusting at ground floor exit door, caulking exterior joints and repair of flashing at cant strip shall be included. If the building is classified as "SWARMP" or unsafe, the report shall include the locations and descriptions of all SWARMP or unsafe conditions.]

The [observation shall] description must also include [the condition of the] a list of all exterior appurtenances[, including] and their condition. Appurtenances include, but are not limited to, exterior fixtures, flagpoles, signs, parapets, copings, guard rails, window frames (including hardware and lights), balcony enclosures, window guards, window air conditioners, flower boxes and any equipment attached to or protruding from the facade. [The condition of window air conditioners may not be designated as SWARMP.]

Each condition must be classified as safe, unsafe or SWARMP. If the building is classified as unsafe or SWARMP, the report must include the locations and descriptions of all unsafe or SWARMP conditions.

Balcony railings must be inspected to ensure that their components (balusters, intermediate railings and panel fillers) are positively secured against upward movement (e.g. by welds, bolts or screws). The inspection does not need to include more than one hands-on inspection per each balcony line of a building. If any balcony enclosure is found not to be properly secured, the condition is

classified as unsafe. In the event a cycle seven report has already been filed with the Department pursuant to paragraph (4) of this subdivision, a separate report regarding the condition of the balcony enclosures must be filed within cycle seven.

§5. Clauses (A), (B) and (C) of subparagraph (iii) of paragraph (4) of subdivision (b) of section 103-04 of Title 1 of the Rules of the City of New York are amended to read as follows:

(A) two years for buildings that meet the requirements of item (A) of [clause] subparagraph (v) of this paragraph,

(B) eighteen months for buildings that meet the requirements of item (B) of [clause] subparagraph (v) of this paragraph and

(C) twelve months for buildings that meet the requirements of item (C) of [clause] subparagraph (v) of this paragraph.

§6. Clauses (A) and (B) of subparagraph (vii) of paragraph (4) of subdivision (b) of section 103-04 of Title 1 of the Rules of the City of New York are amended to read as follows:

(A) The report shall be filed five years from the date the first Temporary Certificate of Occupancy or Certificate of Occupancy was issued, if that five year date falls within the applicable filing window according to the last digit of the building's block number as provided in [clause] subparagraph (v) or (vi) of this paragraph; or

(B) If five years from the date the first Temporary Certificate of Occupancy or Certificate of Occupancy was issued falls outside the applicable filing window according to the last digit of the building's block number as provided in [clause] subparagraph (v) or (vi) of this paragraph, then the initial report shall be filed within the applicable two-year filing window for the next five-year cycle.

§7. Subparagraphs (viii) and (ix) of paragraph (4) of subdivision (b) of section 103-04 of Title 1 of the Rules of the City of New York are amended to read as follows:

(viii) If contiguous zoning lots under single ownership or management contain multiple buildings that are considered one complex where at least two buildings of more than six stories in height fall into different filing windows as described above in items (A), (B) and (C) of [clauses] subparagraphs (v) and (vi) of this paragraph, the owner or management shall choose one of the following report filing options:

(ix) A report shall be filed within sixty (60) days of the date on which the QEWI completed the critical examination (final inspection date), as defined in subparagraph (viii) of paragraph (2) of subdivision (b) of this section[, but not more than one (1) year after completion of the close-up inspection. If the report is not acceptable and is rejected by the Department, a revised report shall be filed within forty-five (45) days of the date of the Department's rejection. Failure to submit a revised report addressing the Department's objections within one (1) year of the initial filing shall require a new critical examination, including a new close-up inspection]. Failure to file a report within sixty (60) days of the completed critical examination requires a new critical examination.

§8. Subparagraphs (x) and (xi) of paragraph (4) of subdivision (b) of section 103-04 of Title 1 of the Rules of the City of New York are renumbered subparagraphs xii and xiii, and new subparagraphs x and xi are added, to read as follows:

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

(xi) If the report is not acceptable and is rejected by the Department, a revised report must be filed within forty-five (45) days of the date of the Department's rejection. If the report is not acceptable after two (2) rejections, a new initial filing fee as specified in the rules of the department is required. Failure to submit a revised report addressing the Department's objections within one (1) year of the initial filing requires a new critical examination, including a new close-up inspection.

§9. Subparagraph (iii) of paragraph (5) of subdivision (b) of section 103-04 is amended to read as follows:

(iii) Within two weeks after repairs to correct the unsafe condition have been completed, the QEWI shall inspect the premises. The QEWI shall obtain permit sign-offs as appropriate and shall promptly file with the Department a detailed amended report stating the revised report status of the building, along with a filing fee as specified in the rules of the Department. If the report is not acceptable and is rejected by the Department, a revised report must be filed within forty-five (45) days of the date of the Department's rejection. If the report is not acceptable after two (2) rejections, a new amended filing fee as specified in the rules of the department is required. Sheds or other protective measures shall remain in place until an amended report is accepted; however, the QEWI may request permission for the removal of the shed upon submission of a signed and sealed statement certifying that an inspection was conducted, the conditions were corrected and the shed is no longer required. Permission to remove the shed may be granted in the Commissioner's sole discretion.

§10. The concluding sentence of subparagraph (iv) of paragraph (5) of subdivision (b) of section 103-04 is amended to read as follows:

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

§11. The concluding sentence of subparagraph (v) of paragraph (5) of subdivision (b) of section 103-04 is amended to read as follows:

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

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-788-1087**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Amendment of Façade Rules

REFERENCE NUMBER: 2012 RG 62

RULEMAKING AGENCY: Department of Buildings

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

STEVEN GOULDEN
Acting Corporation Counsel

November 21, 2012
Date

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Amendment of Façade Rules

REFERENCE NUMBER: DOB - 34

RULEMAKING AGENCY: DOB

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities; and
- (ii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

Kelly Shultz
Mayor's Office of Operations

11/26/12
Date

