

NEW YORK CITY DEPARTMENT OF BUILDINGS

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Buildings (DOB) is proposing to amend 1 RCNY 104-09 to update the physical fitness, experience, and national certification requirements for licensed hoisting machine operators.

When and where is the hearing? DOB will hold a public hearing on the proposed rule. The public hearing will take place at 10am on 3/12/18. The hearing will be in the 3rd floor conference room at 280 Broadway.

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the DOB through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to dobrules@buildings.nyc.gov.
- **Mail.** You can mail comments to the New York City Department of Buildings, Office of the General Counsel, 280 Broadway, 7th floor, New York, NY 10007.
- **Fax.** You can fax comments to the New York City Department of Buildings, Office of the General Counsel, at 212-566-3843.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up in the hearing room before the hearing begins on 3/12/18. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit comments by 3/12/18.

What if I need assistance to participate in the hearing? You must tell the Office of the General Counsel if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail or email at the addresses given above. You may also tell us by telephone at 212-393-2085. You must tell us by 2/26/18.

This location has the following accessibility option(s) available: Wheelchair accessibility.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments and a summary of oral comments concerning the proposed rule will be available to the public at the Office of the General Counsel.

What authorizes DOB to make this rule? Sections 643 and 1043(a) of the City Charter and section 28-401.14 and article 405 of chapter 4 of title 28 of the New York City Administrative Code authorize DOB to make this proposed rule. This proposed rule was not included in DOB’s regulatory agenda for this Fiscal Year because it was not contemplated when DOB published the agenda.

Where can I find DOB’s rules? DOB’s rules are located in Title 1 of the Rules of the City of New York.

What rules govern the rulemaking process? DOB must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose of Rule

1 RCNY 104-09 establishes licensing criteria for hoisting machine operators, including relating to physical fitness, experience, and national certification.

The proposed amendments:

- Update the physical fitness requirements to conform to the latest requirements in ASME B 30.5-2014
- Consolidate existing national certification requirements into a new subdivision (d). 1 RCNY 104-09 currently requires Class A and C licensed hoisting machine operators to possess “one or more” certifications, and requires Class B licensed hoisting machine operators to possess “all” certifications. In the years since 1 RCNY 104-09 was first promulgated, the number of available national certifications has increased
- Provide further specificity (in subdivision (d)) as to exactly which certifications are required for each licensing class
- Add language regarding derricks, for which no national certification is currently available
- Specify that applicants for a Class A or Class C hoisting machine operator license must obtain experience on specific relevant types of machinery
- Incorporate a recent New York State Supreme Court ruling in *Christian v. City et al.* that Class A experience must be obtained within New York City
- Clarify that experience for a Class A hoisting machine operator license must have been obtained under the supervision of a Class A or Class B licensed hoisting machine operator

- Make editorial clarifications throughout the document

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and section 28-401.14 and article 405 of chapter 4 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. Subdivision (a) of section 104-09 of Title 1 of the Rules of the City of New York is amended to read as follows:

§104-09 Hoisting Machine Operators.

(a) Qualifications. In addition to the qualification requirements set forth in the Administrative Code, an applicant for a [Class A, B or C] Hoisting Machine Operator license shall satisfy the following requirements:

(1) Driver's license. An applicant for a [Class A, B or C] Hoisting Machine Operator license shall possess a valid driver's license, without conditions or restrictions which the Department has determined may impact the safe operation of hoisting machinery, effective for the term of the Hoisting Machine Operator license sought.

(2) Physical fitness. An applicant for a [Class A, B or C] Hoisting Machine Operator license shall provide evidence on a form prescribed by the Commissioner that he or she [has passed a physical exam that complies with the standards of ASME B 30.5-2007, or the most recent version approved by the Department, and that he or she has complied with the substance abuse testing provisions and standards of ASME B 30.5-2007, or the most recent version approved by the Department] meets the physical qualifications of section 5-3.1.2(a) of ASME B 30.5-2014, and has passed a physical exam and a substance abuse test to verify such physical qualification. Such evidence shall include the name, address and telephone number of the laboratory that performed the tests and consent to the release by such laboratory of the test results to the Department upon request of the Department.

[(3) An applicant for a Class A, B or C Hoisting Machine Operator license shall satisfy the examination requirements of the Administrative Code by complying with the following requirements:

(i) For a Class A or C applicant, providing to the Department one or more

certifications issued by an organization accredited to offer crane certifications by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) and acceptable to the Commissioner. The certification shall authorize operation of the type of equipment for which the applicant seeks a license. The applicant shall provide to the Department a copy of the certification, a copy of future re-certifications and documentation of new specialties acquired. The applicable certification shall be maintained continuously for the duration of the license term.

- (ii) For a class B applicant, providing to the Department all crane operator certifications issued by an organization accredited to offer tower, mobile, and crawler crane operator certifications by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) and acceptable to the Commissioner. The applicant must have passed at least one of the certification exams on a friction crane. The applicant must provide to the Department a copy of the certifications, a copy of future re-certifications and documentation of new specialties acquired. The applicable certifications must be maintained continuously for the duration of the license term.]

(3) Certifications. An applicant for a hoisting machine operator license must provide copies of certifications required by subdivision (d) of this section.

(4) Experience qualifications. In order to satisfy the experience qualifications as set forth in Section 28-405.3 of the New York city administrative code, the experience must have been obtained in accordance with the following:

(i) Class A license applicants. An applicant for a Class A Hoisting Machine Operator license must provide proof demonstrating that the three (3) years of experience required by Section 28-405.3 of the New York city administrative code was acquired operating hoisting machines in New York City under the supervision of a licensed Class A or Class B Hoisting Machine Operator. The experience must have been obtained on hoisting machines of a type, size, and capacity authorized to be operated by a Class A licensed hoisting machine operator. For applications submitted on or after July 1, 2019, at least two (2) years of the required three (3) years of experience must have been in the operation of mobile cranes with a manufacturer's rated capacity in excess of 50 tons (45.36 t) or in the operation of tower cranes.

(ii) Class C license applicants. An applicant for a Class C Hoisting Machine Operator license must provide proof [of experience] demonstrating [at least] that the two (2) years of [work within the three (3) years prior to application under the direct and continuing] experience required by Section 28-405.3 of the New York city administrative code was acquired

operating hoisting machines under the supervision of a Hoisting Machine Operator licensed by the Department or by another jurisdiction within the United States that regulates crane operators. The experience must have been obtained on hoisting machines of a type, size, and capacity authorized to be operated by the Class C Hoisting Machine Operator license sought. At least one (1) year of the [qualifying work] experience must have been undertaken in the City of New York or in an urban area of comparable density within the United States, as determined by the Commissioner, and, for applications for a Class C1 Hoisting Machine Operator license submitted on or after July 1, 2019, have been in the operation of wheel mounted cranes with a manufacturer's rated capacity in excess of 3 tons (2.72 t).

- (5) Outrigger setup. For a Class A or C Hoisting Machine Operator license, the qualifying [work] experience as specified in paragraph (4) of this subdivision shall include outrigger placement incorporating at least one hundred (100) crane set-ups. Such set-ups must occur at a jobsite, crane yard, training center, or other location acceptable to the commissioner. For a Class A Hoisting Machine Operator license, at least 25 of the set-ups must have occurred on machinery for which a Class A license is required. Where an applicant for a Class A Hoisting Machine Operator license already possesses a Class C Hoisting Machine Operator license, the requirement for the remaining 75 set-ups on non Class A machinery is waived.
- (6) Additional qualification requirements. In addition to the qualification requirements set forth in the Administrative Code and in this subdivision (a), all Hoisting Machine Operator [Class A, B, and C] license applicants shall complete a forty- (40) hour training course, approved by the Department, covering those provisions of local law and regulation that are unique to New York City for the operation of a hoisting machine and the unique hazards of operating a hoisting machine within New York City.

§2. Subdivision (b) of section 104-09 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (b) Fitness requirements for renewal and reinstatement. As a condition of license renewal or reinstatement, a licensed or previously licensed [Class A, B or C] Hoisting Machine Operator shall provide evidence of fitness to perform the work authorized to be performed by a holder of the license held or once held by the applicant. Such evidence shall consist of:
 - (1) [For Class A, B and C Hoisting Machine Operators, evidence] Physical fitness. Evidence on a form prescribed by the Commissioner that the licensee [has passed a physical exam that complies with the standards of ASME B 30.5-2007, or the most recent version approved by the Department, and that the licensee has

complied with the substance abuse testing provisions and standards of ASME B 30.5-2007, or the most recent version approved by the Department] meets the physical qualifications of section 5-3.1.2(a) of ASME B 30.5-2014, and has passed a physical exam and a substance abuse test to verify such physical qualification. Such evidence shall include the name, address and telephone number of the laboratory that performed the tests and consent to the release by such laboratory of the test results to the Department upon request of the Department.

- [(2) Valid national certification(s) as follows:
- (i) For Class A Hoisting Machine Operators whose license is renewed or reinstated on or after July 1, 2015, one or more valid certification(s) issued by an organization accredited to offer crane operator certifications by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) and acceptable to the Commissioner. For Class A Hoisting Machine Operators with licenses renewed or reinstated prior to July 1, 2015, such certification must be obtained within one year of renewal. The certification(s) shall authorize the operation of the type of equipment for which the license is held or sought and the licensee shall provide to the Department a copy of the certification(s), a copy of future re-certifications and documentation of new specialties acquired. The applicable certification(s) must be maintained continuously for the duration of the license term.
 - (ii) For Class B Hoisting Machine Operators whose license is renewed or reinstated on or after July 1, 2015, all crane operator certifications issued by an organization accredited to offer tower, mobile and crawler crane operator certifications by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) and acceptable to the Commissioner. For Class B Hoisting Machine Operators with licenses renewed or reinstated prior to July 1, 2015, such certification must be obtained within one year of renewal. The applicant must have passed at least one of the certification exams on a friction crane. The licensee must provide to the Department a copy of the certifications, a copy of future re-certifications and documentation of new specialties acquired. The applicable certifications must be maintained continuously for the duration of the license term.
 - (iii) For Class C Hoisting Machine Operators, one or more valid certification(s) issued by an organization accredited to offer crane operator certifications by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) and acceptable to the Commissioner. The certification(s) shall authorize the operation of the type of equipment for which the license is held or sought and the licensee shall provide to the Department a copy of the

certification(s), a copy of future re-certifications and documentation of new specialties acquired. The applicable certification(s) must be maintained continuously for the duration of the license term.]

- (2) Certifications. Copies of certifications as required by subdivision (d) of this section.
- (3) Driver's license. A renewal applicant shall possess a valid driver's license, without conditions or restrictions which the Department has determined may impact the safe operation of hoisting machinery, effective for the term of the renewal sought.
- (4) Renewal. A renewal applicant shall satisfy the requirements of this rule at every subsequent renewal.

§3. Subdivision (c) of section 104-09 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (c) [Hoisting Machine Operator Class A and B licensees shall provide to the Department no later than six months after the effective date of this section, or upon application, renewal, or reinstatement, as applicable, the information required in paragraph (1) of subdivision (b) of this section. The Commissioner may for cause, following notice and an opportunity to be heard, accelerate the date by which holders of Hoisting Machine Operator Class A and B licenses must satisfy the requirements of this subdivision and in such case, upon failure to satisfy such condition, the license shall lapse.] Reserved.

§4. Subdivision (d) of section 104-09 of Title 1 of the Rules of the City of New York is repealed and a new subdivision (d) is added to read as follows:

- (d) Certifications for a hoisting machine operator license. Where a certification for the operation of a type of hoisting machine has been established by Table 1 of this subdivision, no licensed hoisting machine operator may operate such type of machinery until the licensee possesses a certification for that type of hoisting machine and such certification has been listed on the hoisting machine operator's license by the department.

Exception: The licensee is operating the hoisting machine as a learner in accordance with section 104-23 of these rules.

- (1) Certifications to be acceptable and accredited. The certification must be acceptable to the commissioner and be issued by a hoisting machine operator certification program that is accredited by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) for the specific type of hoisting machine to be operated.

(2) Licensee to inform department of changes to certification. The licensed hoisting machine operator must immediately notify the department if a certification identified in Table 1 of this subdivision and held by the licensee is suspended, revoked, not renewed, or otherwise lapses. The licensed hoisting machine operator must provide a copy of recertifications and new certifications identified in Table 1 of this subdivision to the department within 30 days.

(3) Friction cranes or derricks. No person who holds a Class A or Class C hoisting machine operator license may operate a friction crane or a friction derrick, or supervise the operation of a learner on a friction crane or a friction derrick, until the licensee has passed at least one of the practical certification exams listed in Table 1 on a friction crane, and such authorization to operate a friction crane or a friction derrick has been listed on the hoisting machine operator’s license by the department. For a Hoisting Machine Operator Class B applicant, one of the practical certification exams must, in accordance with the requirements of Table 1 of this subdivision, be on a friction crane.

(4) Derricks. No licensed hoisting machine operator may operate a derrick, or supervise the operation of a learner on a derrick, unless the licensee possesses a tower crane certification (not self-erecting), and such certification has been listed on the hoisting machine operator’s license by the department.

Table 1: Certifications by licensing class

<u>Certification name</u>	<u>Hoisting machine operator licensing class</u>				
	<u>A</u>	<u>B</u>	<u>C1</u>	<u>C2</u>	<u>C3</u>
<u>Fix cab telescopic boom mobile crane¹</u>	<u>Required</u>	<u>Required</u>	<u>Required</u>		
<u>Swing cab telescopic boom mobile crane</u>	<u>Required</u>	<u>Required</u>	<u>Required</u>		
<u>Lattice boom truck crane²</u>	<u>Required</u>	<u>Required</u>			
<u>Lattice boom crawler crane²</u>	<u>Required</u>	<u>Required</u>			
<u>Tower crane³</u>	<u>Additional</u>	<u>Required</u>			
<u>Self-erecting tower crane⁴</u>	<u>Additional</u>	<u>Additional</u>			
<u>Articulating boom mobile crane⁵</u>	<u>Additional</u>	<u>Additional</u>	<u>Additional</u>		
<u>Dedicated pile driver</u>	<u>Additional</u>	<u>Additional</u>	<u>Additional</u>		
<u>Boom truck¹</u>				<u>Required⁶</u>	<u>Required⁶</u>

Legend to Table 1:

- “Required” means must possess.

- “Additional” means not mandated, but required if licensee intends to operate listed type of hoisting machinery.
- Blank indicates not authorized for the class of license, except where otherwise indicated by footnote 1.

Footnotes to Table 1:

- ¹ Individuals who hold a “Fix cab telescopic boom mobile crane” certification can also operate “boom trucks” and do not need a separate certification.
- ² For a Hoisting Machine Operator Class B applicant, the practical certification exam for either the lattice boom truck crane or the lattice boom crawler crane must be on a friction crane.
- ³ The practical certification exam cannot be on a self-erecting tower crane.
- ⁴ The practical certification exam must be on a self-erecting tower crane.
- ⁵ The certification exam must include a component on the operation of an articulating boom crane with a winch.
- ⁶ Licensees who prior to the effective date of this section hold a certification for a “Fix cab telescopic boom mobile crane” must provide a certification for “Boom truck” upon renewal or reinstatement of their license.

§5. Subdivision (e) of section 104-09 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (e) Additional requirements. The provisions of this rule shall be in addition to the qualification, renewal and reinstatement requirements prescribed by articles 401 and 405 of title 28 of the Administrative Code.

§6. Subdivision (f) of section 104-09 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (f) Obligation to keep documents. In addition to any other documents required to be maintained on site by a licensed [Class A, B or C] Hoisting Machine Operator, such Operator shall have on site at all times the following documents:
- (1) The certification(s) issued to him or her by [an organization accredited by the National Commission for Certifying Agencies (NCCA) or the American National Standards Institute (ANSI) and acceptable to the Commissioner] the certifying entity; and
 - (2) The hoisting machine operator license issued to him or her by the Department.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

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

RULE TITLE: Amendment of Licensing Requirements for Hoisting Machine Operators

REFERENCE NUMBER: 2017 RG 106

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.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: 1/10/18

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

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

RULE TITLE: Amendment of Licensing Requirements for Hoisting Machine Operators

REFERENCE NUMBER: DOB-104

RULEMAKING AGENCY: Department of Buildings

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;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because a cure period is not practicable under the circumstances.

/s/ Lindsay Fuller
Mayor's Office of Operations

January 10, 2018
Date