

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 the following changes to Title 1 of the Rules of the City of New York: the repeal of sections 19-02, 19-03, and 19-04, relating to master plumbers and master fire suppression piping contractors, and amendments to section 104-01, relating to the examination and investigation of Department-licensed trades, and section 104-02, relating to required insurance for trade licensees.

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 6/17/14. 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 Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to dobrules@buildings.nyc.gov.
- **Mail.** You can mail written 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 written comments to the New York City Department of Buildings, Office of the General Counsel, at 212-566-3843.
- **By 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 before the hearing by calling 212-393-2085. You can also sign up in the hearing room before the hearing begins on 6/17/14. You can speak for up to three minutes.

Is there a deadline to submit written comments? Yes, you must submit written comments by 6/17/14.

Do you 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 at the address given above. You may also tell us by telephone at 212-393-2085. You must tell us by 6/10/14.

Can I review the comments made on the proposed rules? You can review online the comments made to the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, written comments and a summary of oral comments received at the hearing 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 sections 27-3005, 28-401.5, 28-401.6, 28-401.7, 28-401.8, and 28-401.9 of the City Administrative Code authorize DOB to propose these amendments. These amendments were not included in DOB's regulatory agenda for this Fiscal Year because they were not contemplated when DOB published the agenda.

Where can I find the DOB's rules? The DOB's rules are 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 Proposed Rule

The Department of Buildings (“Department”) is proposing to amend sections 104-01 and 104-02, and to repeal sections 19-02, 19-03, and 19-04, of Title 1 of the Rules of the City of New York (“Rules”).

The Department proposes to amend section 104-01, regarding examination and investigation requirements for Department licenses, by clarifying examination and investigation procedures. Some Department license examinations were previously administered by the Department of Citywide Administrative Services, but all such examinations are now being administered by the Department. These amendments accommodate the additional license examinations.

The Department proposes to amend section 104-02, regarding required insurance for trade licensees, by clarifying the requirements for commercial general liability insurance.

The Department also proposes to repeal sections 19-02, 19-03, and 19-04, as these provisions are addressed elsewhere in the New York City Administrative Code (“Administrative Code”) or the Rules.

- Section 19-02 concerns continuing education requirements for master plumbers and master fire suppression piping contractors. The substance of this rule is now addressed in section 105-03 of the Rules, effective September 15, 2013, which outlines the requirements for Department-approved courses.
- Section 19-03 concerns exemptions from Department inspection and testing requirements for minor plumbing work. These exemptions are provided by section 28-105.4.4 of the Administrative Code.
- Section 19-04 concerns the master plumber and master fire suppression piping contractor license board’s authority to review master plumber and master fire suppression piping contractor license applications. The substance of this rule has been already codified under Article 417 of Chapter 4 of the Administrative Code and section 104-01(c) of Title 1 of the Rules.

The Department’s authority for these rules is found in sections 643 and 1043 of the New York City Charter and sections 27-3005, 28-401.5, 28-401.6, 28-401.7, 28-401.8, and 28-401.9 of the 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. Sections 19-02, 19-03, and 19-04 of title 1 of the rules of the City of New York are REPEALED.

§2. Section 104-01 of title 1 of the rules of the City of New York is amended to read as follows:

§ 104-01 Examinations and Other Qualifications

(a) Applicability. This subchapter shall apply to all licenses issued by the Department, except where otherwise specified.

(b) Definitions.

(1) For purposes of this subchapter, the terms "City," "Commissioner" and "Department" shall have the same meanings as set forth in §28-101.5 of the Administrative Code.

(2) For purposes of this subchapter, the term "license" shall [have the same meaning as is set forth] include any license as defined in §28-401.3 of the Administrative Code, except that the term shall include "certificate of competence" whenever such a certificate is required by Chapter 4 of title 28 of the Administrative Code, and any Master Electrician's License and Special Electrician's License as defined in §27-3004 of the Administrative Code.

[(b)] (c) Examinations.

(1) **Applicability.** This subdivision [(b)] shall apply to Department-sponsored examinations administered for the following licenses:

- (i) Electrician (Master/Special)
- (ii) High Pressure Boiler Operating Engineer
- (iii) Master Fire Suppression Piping Contractor (Classes A, B and C)
- (iv) Master Plumber
- (v) Oil Burning Equipment Installer (Classes A and B)
- (vi) Portable High Pressure Boiler Operating Engineer
- (vii) Private Elevator Inspection Agency Director

- (viii) Private Elevator Inspection Agency Inspector
- (ix) Rigger (Master/Special/Climber or Tower Crane)
- (x) Sign Hanger (Master/Special)
- (xi) Site Safety Manager

(2) Examination procedures.

- (i) The examination shall consist of a written [and/or a] test, practical test, [and a background investigation of the applicant's character and fitness and training/experience] or a combination of such tests. The practical test may include oral, reading, and/or practical components. Admission to a test does not imply that the applicant possesses the minimum qualifications required. License applicants may not release or otherwise make public the questions and answers for such tests.
- (ii) [Candidates] Applicants must [first] apply for [the written examination] any test by submitting an application on a form prescribed by the Department to the Department's Licensing Unit or its designee. The application must be accompanied by the examination fee and any other required documents as set forth in the Department's rules. Applicants reapplying to take any test, including after a failure, must do so in accordance with the requirements in this paragraph.
- (iii) Where either a written or practical test, but not both, is required, applicants have six (6) months from submission of the application to take the test. Where both written and practical tests are required, applicants have six (6) months from submission of the application to take the written test, two (2) months from notification of passing the written test to submit an application for the practical test, and six (6) months from submission of that application to take the practical test.
- (iv) Failed written test.
 - (A) [Candidates] Applicants who fail the written test must wait at least fourteen (14) days before [retaking it] reapplying to take the test.
 - (B) Each time [a candidate] an applicant wishes to take the written test, including after a failure, the [candidate] applicant must reapply to the Department and pay the required fee as set forth in the Department's rules.
 - (C) [Candidates] Applicants may take the written test no more than three (3) times within a six (6) month period.
 - (D) [Candidates] Applicants who fail the written test three (3) times within six (6) months must wait six (6) months from the date of the third failed written test before [applying again] reapplying to take the written test[, in accordance with the procedure in paragraph (c) of this rule].
- (v) Failed practical test.

- (A) Applicants who fail the practical test must wait at least ninety (90) days before reapplying to take the test.
- (B) Each time an applicant wishes to take the practical test, including after a failure, the applicant must reapply to the Department and pay the required fee as set forth in the Department's rules.
- (C) Applicants may take the practical test no more than two (2) times within a twelve (12) month period.
- (D) Applicants who fail the practical test two (2) times within twelve (12) months must wait six (6) months from the date of the second failed practical test before reapplying to take the practical test.

[(iv)] (vi) [A candidate] An applicant who has been notified of failure to pass the written or practical test may appeal such failure only if the [candidate] applicant has failed by not more than five (5) points. Such appeal must be in writing with an original signature and addressed as the Commissioner may require. The appeal must state the title of the license examination, the applicant's name, return address and social security number, the date of the test and a detailed statement of the grounds for appeal. The appeal must be received not later than thirty (30) days from the date of notification of failure to pass the [license exam] test.

(vii) Impersonating and cheating.

- (A) A person who impersonates another person, allows himself or herself to be impersonated, or otherwise cheats in a license examination shall be disqualified from receiving a license issued by the Department, and may be disqualified from receiving a license issued by another City department or agency and from holding any position with the City of New York.
- (B) A person disqualified for impersonating or otherwise cheating may submit a written request to the Commissioner to appeal the disqualification. The written request must set forth reasons to substantiate the request and must be received not later than thirty (30) days from the date of notification of disqualification.

(3) [Issuance of license after examination.

(i) A candidate who passes the required examination as provided in this rule and who is found to have met the qualifications of §28-401.6 of the Administrative Code, after an investigation, shall receive a notice of qualification from the Department.

(ii) Upon receipt of the notice of qualification, the applicant must contact the Department's Licensing Unit to schedule an appointment to obtain the license.

(iii) The applicant shall appear and furnish to the Department all requested original forms, documents and fees within one (1) year of the date of the Department's notice of qualification. Failure to do so within the time specified will result in the denial of the license and will require a re-examination and reapplication.

(iv) License examinations administered by other agencies. License examinations administered by other agencies for licenses regulated by the Department shall continue to be subject to such other agency's rules and regulations regarding examinations and investigations until the responsibility for administering particular licensing examinations is transferred to the Department, at which point the provisions of this rule shall apply.

[(c)] **(d) Education, training and experience.**

An applicant must possess the minimum education, training and/or experience [requirements specified] required by the Administrative Code at the time of filing the application. For purposes of this subdivision [(c)], the term "experience" refers to that experience gained in the relevant trade as the result of full-time compensated employment, unless otherwise determined by the Commissioner. An applicant shall verify the claimed experience by submitting documentation[, including, but not limited to,] with the application, unless the applicant is required to pass an examination in which case the documentation shall be submitted upon passage of such examination. Such documentation shall include but not be limited to the following:

- (1) Notarized affidavits from all past or current employers under whom experience is claimed. Affidavits from New York City licensees shall be sealed where applicable. Affidavits shall include the following information:
 - (i) Applicant's job title (helper, journeyman, etc.);
 - (ii) A detailed description of applicant's duties;
 - (iii) When applicant worked with the licensee (employment dates shall be in mm/dd/yyyy format);
 - (iv) Whether employment was on a full or part-time basis, detailing the average weekly hours; and
 - (v) Where license supervision is required, a statement by the licensee that he or she directly supervised applicant's work.
- (2) Social Security History of Earnings for the years applicant is claiming as experience reflecting wages appropriate for the trade.
- (3) Where the code requires supervision in the design and installation of plumbing or fire suppression systems, evidence that the supervising licensees performed such work as demonstrated by permits, completed contracts or such other documentation as the Department may require.

- (4) Where the applicant is self-employed, the applicant shall verify that he or she performed qualifying work by submitting documentation, including but not limited to personal and business tax returns, route sheets or work logs from the supervising licensee, contracts with customers, and statements from customers detailing the work the applicant performed and when that work was performed.
- (5) Where the applicant did not receive monetary compensation from his or her employer as evidenced by payroll records, such as social security payments, income tax withholding or the disbursement of other funds as required by law for the benefit of such employee, the Department may consider such experience if the applicant can provide evidence of an employer-employee relationship. The applicant must provide a detailed explanation of the nature of the employer-employee relationship, which may include, but is not limited to, written agreements between the applicant and the employer, the employer's workers compensation records, time-keeping records, work logs, or other documentation as the Department may require.

[(d)] **(e) Investigation.**

- (1) The Department or its designee shall conduct an investigation of each [candidate] applicant to determine the [candidate's] applicant's fitness and qualification for the license. The burden of proving that an applicant meets the required qualifications is on the applicant. An applicant's failure to meet the requirements specified by the Administrative Code or by the Department's rules, and/or an applicant's refusal to cooperate with an investigation, will result in denial of the license or certificate of competence.
- (2) [Candidates] Applicants who refuse to provide all requested documents within six (6) months of the date of request shall be denied a license or certificate of competence.
- (3) [A candidate] An applicant who has been notified of failure to meet the fitness and qualification requirements and who has additional relevant information or documentation for the Department's review shall request reconsideration. Such appeal shall be in writing with an original signature and addressed as the Commissioner may require. The request for reconsideration shall state the title of the license examination, the applicant's name and return address, the date of the Department's denial and a detailed statement of the grounds for reconsideration with any supporting documentation. The request for reconsideration shall be received not later than sixty (60) days from the date of notification of the denial of the license.

(f) Issuance of license after approval.

- (1) An applicant who passes an examination required pursuant to this rule, is found to have met the qualifications of §28-401.6 of the Administrative Code, and has been investigated by the Department or its designee, shall receive a notice of approval from the Department.
- (2) Upon receipt of the notice of approval, the applicant must contact the Department's Licensing Unit to schedule an appointment to obtain the license.
- (3) The applicant must appear and furnish to the Department all requested original forms, documents, and fees within one (1) year of the date of the Department's notice of approval. Failure to do so within the time specified will result in the denial of license issuance and will require a re-examination and reapplication.

[(e)] (g) Change of address.

- (1) [Candidates] Applicants shall promptly notify the Department in writing of any address change that occurs after filing the license application.
- (2) Failure to furnish such notification may result in denial of the license and the loss of the opportunity to complete subsequent portions of the license examination, including any tests or investigation.

§ 3. Subdivision b of section 104-02 of title 1 of the rules of the City of New York is amended to read as follows:

(b) Commercial general liability insurance.

- (1) Each applicant for and holder of a license shall, at its expense, procure and maintain commercial general liability (CGL) insurance [satisfying] covering the types and scope of work performed under the license, which satisfies the requirements of this subdivision. All CGL insurance policies shall:
 - (i) Be issued by a company or companies that may lawfully issue the required policy and has an A.M. Best rating of at least A-VII or a Standard and Poor's rating of at least A;
 - (ii) Provide coverage at least as broad as set forth in the most recent edition of Insurance Services Office (ISO) Form CG 0001; and
 - (iii) Provide coverage of at least \$1,000,000 (one million dollars) combined single limit per occurrence [; and].
 - [(iv) Contain the following endorsement: This policy shall not be cancelled or terminated, or modified or changed unless thirty (30) days' prior written notice is sent to the Named Insured and the New York City Department of Buildings, Licensing Unit, 280 Broadway, 6th Floor, New York, NY 10007, except that termination for non-payment may be made on only ten (10) days' written notice.]

- (2) Each applicant for and holder of a license shall provide proof of CGL insurance by submission of a certificate of insurance in a form satisfactory to the Department that:
 - (i) satisfies the requirements of subdivision (e) of this section;
 - (ii) identifies the insurance company that issued such insurance policy, the policy number, limit(s) of insurance, and expiration date; and
 - (iii) is accompanied by a sworn statement in a form prescribed by the Department from a licensed insurance broker certifying that the insurance certificate may be relied upon as accurate in all respects and that the insurance certificate thereon is in force.
- (3) Any holder of a license who, during the term of the license, is issued any permit of the types set forth in Administrative Code §28-105.2 shall cause the City, together with its officials and employees, to be named as an additional insured on the insurance required under this subdivision with regard to all [operations] work to be performed pursuant to all such permits. The City's coverage shall be at least as broad as set forth in the most recent edition of ISO Form CG 2012 or CG 2026.

**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 Licensing Rules

REFERENCE NUMBER: DOB-49

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 it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

Sabrina Fong
Mayor's Office of Operations

5/1/2014
Date

**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 Rules

REFERENCE NUMBER: 2014 RG 005

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: May 2, 2014