

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 §101-06 (“Special Inspectors and Special Inspection Agencies”) to include audits and 1 RCNY §101-07 (“Approved Agencies”) to update reference standards and cross references.

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 1/13/16. 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 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.
- **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 1/13/16. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit comments by 1/13/16.

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 or email at the addresses given above. You may also tell us by telephone at 212-393-2085. You must tell us by 1/6/16.

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, 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 28-114.1 and 28-115.1 of the Administrative Code of the City of

New York authorize DOB to make this proposed rule. This proposed rule was included in DOB's regulatory agenda for this Fiscal Year.

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

The proposed rule amends 1 RCNY §101-06 to clarify that special inspectors and special inspection agencies must cooperate with all Department of Buildings investigations, including audit investigations.

The proposed rule also amends 1 RCNY §101-07 to update reference standards and cross references in accordance with amendments made by Local Law 141 for the year 2013.

The Department of Buildings' authority for these rules is found in Section 643 and 1043(a) of the New York City Charter and sections 28-114.1 and 28-115.1 of the Administrative Code of the City of New York.

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. Paragraph (5) 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:

- (5) Obligation to Cooperate with Inquiries. All special inspectors and/or special inspection agencies shall cooperate [in] with any investigation, including any audit investigation, by the department, or other city or law enforcement agency, into the activities at any job site or fabricating/manufacturing facility for which they have been designated a special inspector or special inspection agency and shall provide prompt, accurate and complete responses to reasonable inquiries by the department and other appropriate agencies about the conduct of such business.

§2. Paragraph (16) of subdivision (a) of Section 101-07 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (16) *Technician.* An employee of the inspection or testing agency assigned to perform the actual operations of inspection or testing. See ASTM [E329-07] E329-14a, paragraph [3.1.17] 3.1.9.

§3. Paragraph (2) of subdivision (c) of Section 101-07 of Title 1 of the Rules of the City of New York is amended to read as follows:

(2) Testing and inspection agencies for product certification.

- (i) A testing agency shall be deemed an approved testing agency for testing materials to specified standards in accordance with the Construction Codes and their referenced standards where such agency has achieved accreditation for such testing from International Accreditation Service, Inc. or an equivalent accrediting agency accrediting to the standards set forth in International Standards Organization ("ISO") 17025, 2005 edition (General Requirements for the Competence of Testing and Calibration Laboratories) or a federal agency. Accrediting agencies, other than federal agencies, must be members of an internationally recognized cooperation of laboratory and inspection
- (ii) An inspection and/or product certification agency shall be deemed an approved inspection and/or approved product certification agency for listing and labeling materials to specified standards in accordance with the Construction Codes and their referenced standards where such agency has achieved accreditation for such listing and labeling from International Accreditation Service, Inc. or an equivalent accrediting agency accrediting to the standards set forth in ISO 17020, [1998] 2012 edition (General Criteria for the Operation of Various Types of Bodies Performing Inspection), [ISO Guide 65, 1996] ISO 17065, 2012 edition (General Requirements for Bodies Operating Product Certification Systems) or a federal agency. Accrediting agencies, other than federal agencies, must be members of an internationally recognized cooperation of laboratory and inspection accreditation bodies subject to a mutual recognition agreement.
- (iii) An approved testing and/or approved inspection agency shall have in responsible charge a director who shall be qualified by education and relevant experience to undertake the tests or inspections performed. Qualification may be based on the standards set forth in ASTM [E329-07] E329-14a. The director shall personally supervise the testing and/or inspection of materials for compliance with prescribed nationally recognized standards. Concrete testing laboratories shall follow the provisions of paragraph (6) of subdivision (c) of this section.
- (iv) Technicians shall be qualified by education and relevant experience to perform all tests or inspections they may be required to conduct under the supervision of the director. Qualification may be based on the standards set forth in ASTM [E329-07] E329-14a.

§4. The table in subparagraph (iv) of paragraph (3) of subdivision (c) of Section 101-07 of Title 1 of the Rules of the City of New York is amended to read as follows:

Progress Inspection Category	[2008] <u>2014</u> Code Section	Qualifications	
		Primary Inspector or Inspection Supervisor	Supplemental Inspector under direct supervision of Inspection Supervisor
Preliminary Inspection	AC 28-116.2.1	<ul style="list-style-type: none"> • Registered design professional with relevant experience 	<ul style="list-style-type: none"> • A person with relevant experience

Compliance inspections	AC 28-116.2.2	<ul style="list-style-type: none"> Registered design professional with relevant experience 	<ul style="list-style-type: none"> A person with relevant experience
Footing and foundation	BC [109.3.1] <u>110.3.1</u>	<ul style="list-style-type: none"> Registered design professional with relevant experience 	<ul style="list-style-type: none"> A person with relevant experience
Lowest floor elevation	BC [109.3.2] <u>110.3.2</u> ; BC G105.3, Item 1	<ul style="list-style-type: none"> Engineer with relevant experience or licensed professional land surveyor with relevant experience 	<ul style="list-style-type: none"> A person with relevant experience
<u>Structural Wood Frame</u>	BC [109.3.3] <u>110.3.3</u>	<ul style="list-style-type: none"> Registered design professional with relevant experience 	<ul style="list-style-type: none"> A person with relevant experience
Fire-resistance-rated construction	BC [109.3.4] <u>110.3.4</u>	<ul style="list-style-type: none"> Registered design professional with relevant experience 	<ul style="list-style-type: none"> A person with relevant experience
Energy code compliance – “residential” ¹ buildings	BC [109.3.5] <u>110.3.5</u>	<ul style="list-style-type: none"> Registered design professional of record for the respective work; or Registered design professional with five [years] <u>years</u>’ experience in the design, construction, construction observation and/or inspection of Energy Code-regulated systems for buildings 	<ul style="list-style-type: none"> 3 [years] <u>years</u>’ experience in the inspection or construction observation of buildings for Energy Code-regulated systems
Energy code compliance – “commercial” ² buildings	BC [109.3.5] <u>110.3.5</u>	<ul style="list-style-type: none"> Registered design professional of record for the respective work; or Registered design professional with five [years] <u>years</u>’ experience in the design, construction, construction observation and/or inspection of Energy Code-regulated systems for buildings, at least three years of which shall be for the system 	<ul style="list-style-type: none"> 3 [years] <u>years</u>’ experience in the inspection or construction observation of buildings for Energy Code-regulated systems in commercial buildings for which he/she performs progress inspections

¹ As such term “residential” is defined in the New York City Energy Conservation Code.

² As such term “commercial” is defined in the New York City Energy Conservation Code.

		type(s) for which he/she performs progress inspections	
Other	BC [109.3.6] <u>110.3.6</u>	<ul style="list-style-type: none"> Registered design professional with relevant experience 	<ul style="list-style-type: none"> A person with relevant experience
Final	AC 28- 116.2.4.2	<ul style="list-style-type: none"> Registered design professional with relevant experience 	<ul style="list-style-type: none"> A person with relevant experience
Place of assembly emergency lighting	AC 28- 116.2.2	<ul style="list-style-type: none"> Registered design professional with relevant experience 	<ul style="list-style-type: none"> A person with relevant experience

§5. Clause (B) of subparagraph (i) of paragraph (6) of subdivision (c) of Section 101-07 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (B) Achieved accreditation from AASHTO Accreditation Program, the National Voluntary Laboratory Accreditation Program, or an equivalent accrediting agency accrediting to the standards set forth in ASTM Designations: C1077, C1093 and [E 329-07] E329-14a or a federal agency. Accrediting agencies, other than federal agencies, must be members of an internationally recognized cooperation of laboratory and inspection accreditation bodies subject to a mutual recognition agreement.

§6. Subparagraph (iv) of paragraph (6) of subdivision (c) of Section 101-07 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (iv) Laboratory technicians shall be certified as ACI Concrete Testing Laboratory Technician – Level 1, or other equivalent certification acceptable to the commissioner. Qualification may be based on the standards set forth in ASTM C1077, C1093 and [E 329-07] E329-14a.

**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 Obligations of Special Inspectors and Technical Amendments

REFERENCE NUMBER: 2015 RG 090

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: November 25, 2015

**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 Obligations of Special Inspectors and Technical Amendments

REFERENCE NUMBER: DOB-73

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;
- (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.

/s/ Francisco X. Navarro
Mayor's Office of Operations

November 25, 2015
Date