

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 the course provider rule to address site safety training, add penalties relating to site safety training and add a new rule regarding site safety training.

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 3/8/18. The hearing will be in the 2nd floor auditorium at 125 Worth Street.

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 3/8/18. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit comments by 3/8/18.

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 2/22/18.

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 sections BC 3302.1 and 3321 of the New York City Building Code authorize DOB to make this proposed rule. This proposed rule was not included in the agency's regulatory agenda because the need for such rule was not anticipated at the time the agenda was published.

Where can I find DOB's rules? 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 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.

The rule would:

- add six new penalties for violating section BC 3321 to rule section 102-01;
- amend the course provider rule (section 105-03) to add requirements for site safety training course providers and course completion cards; and
- add a new rule section 3321-01 regarding the type and time frames for construction site safety training.

New material is underlined.

[Deleted material is in brackets.]

Section 1. Subdivision (k) of Section 102-01 of Subchapter B of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding, in numerical order by section of law, six new entries relating to Section 3321 of the New York City Building Code, to read as follows:

| Section of Law | Classification | Violation Description | Cure | Stipulation | Standard Penalty | Mitigated Penalty | Default Penalty | Aggravated I Penalty | Aggravated I Default Penalty | Aggravated II Penalty | Aggravated II Default - Max Penalty |
|----------------------------|-------------------------|---|---------------------|---------------------|--------------------------|---------------------|--------------------------|--------------------------|------------------------------|--------------------------|-------------------------------------|
| BC3321.1 | Class 1 | Failed to ensure each worker has successfully completed the required training | No | No | \$5,000 | No | \$25,000 | \$12,500 | \$25,000 | \$25,000 | \$25,000 |
| BC3321.1 | Class 2 | Failed to ensure each worker has successfully completed the required training | No | No | \$2,500 | Yes | \$10,000 | \$5,000 | \$10,000 | \$10,000 | \$10,000 |
| BC3321.2.1 | Class 1 | Failed to ensure each worker is in compliance with BC3321.1 | No | No | \$10,000 | No | \$25,000 | \$25,000 | \$25,000 | \$25,000 | \$25,000 |
| BC3321.2.2 | Class 2 | Failed to certify with the department that requirements of 3321.1 have been met | Yes | Yes | \$2,500 | No | \$10,000 | \$5,000 | \$10,000 | \$10,000 | \$10,000 |
| BC3321.2.3 | Class 1 | Failed to have or maintain the required daily log | No | No | \$5,000 | No | \$25,000 | \$12,500 | \$25,000 | \$25,000 | \$25,000 |
| BC3321.2.4 | Class 1 | Failed to produce daily log for inspection | No | No | \$ 2,500 | No | \$12,500 | \$6,250 | \$25,000 | \$12,500 | \$25,000 |

§ 2. 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, 2019.
- (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 rejected.

(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, and 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.

[(7)] (8) 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 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 the Administrative Code.

(h) Site Safety Training (SST) Course Providers. A site safety training (SST) provider as defined in item 2 of 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 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) Beginning on May 1, 2019, or such later date as determined by the Department, but in no event 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) Beginning July 1, 2018, and on October 1, January 1, April 1 and July 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. Such card must be wallet-sized and must contain the following information and security features:

- (1) Document security features designed to deter forgery and counterfeiting, promote an adequate level of confidence in the authenticity of cards, and facilitate detection of fraudulent cards. These cards must not be capable of being reproduced using technologies that are commonly used and made available to the general public.

- (2) Unique identification card number. This cannot be an individual's Social Security Number.

- (3) Photographs of the person to whom it was issued (may be in black and white or in color);

- (4) The printed name and signature of the card holder;
- (5) Date of course completion;
- (6) Expiration date;
- (7) Name and address of provider of issuance;
- (8) A summary description of the type of training and number of credit hours completed; and
- (9) Any additional information the Department may require.

(j) 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.
- (2) The SST course provider or, if applicable, a third party, must maintain a secure on-line 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, 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, or for failure to comply 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.

§3. 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.

(a) Required training. Permit holders at buildings 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, as follows:

- (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, 2018, or June 1, 2019 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 Site Safety Training (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 Site Safety Training (SST) Card as defined in section 3302.1 of the Building Code;
 - (iii) Site Safety Training (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 at such site, a Site Safety Training Supervisor Card as defined in section 3302.1 of the Building Code.

(3) By May 1, 2019, or September 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 either (i), (ii), or (iii):

(i) Site Safety Training (SST) Card;

(ii) Temporary Site Safety Training (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, a Site Safety Training Supervisor Card as defined in section 3302.1 of the Building Code.

(b) Additional training. By December 1, 2018, workers must also have completed any additional training recommended by the SST Task Force established by section 28-103.28 of the Administrative Code and approved by the Commissioner.

**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: Construction Site Safety Training Rules

REFERENCE NUMBER: DOB-107

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) The violation for failure to certify that the training requirements have been met is curable by providing proof of such training.

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

January 18, 2018
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: Construction Site Safety Training Rules

REFERENCE NUMBER: 2018 RG 001

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: January 18, 2018