

NEW YORK CITY FIRE DEPARTMENT

Notice of Opportunity to Be Heard on
Proposed New Rule
3 RCNY §104-04, entitled
“Certification of Corrected Defects in Fire Alarm System Installations”

Notice of Public Hearing and Opportunity to Comment on Proposed Rule

What are we proposing? The Fire Department proposes to establish a certification program by which licensed professionals may certify correction of certain fire alarm system defects and eliminate the need for FDNY re-inspections of these conditions. The requirements and procedures for such a program would be set forth in a new rule, Section 104-04 of Title 3 of the Rules of the City of New York (RCNY).

When and where is the hearing? In the interest of public safety, an in-person public hearing on the proposed rule will not be held. Instead, the Fire Department will conduct an on-line public hearing, using the “Go To Meeting” application, as set forth below. The public hearing will take place at 11:00 a.m., on Tuesday, August 25, 2020.

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

- **Website** - You can submit comments to the Fire Department through the NYC rules website at <http://rules.cityofnewyork.us>, or on the “FDNY Rules” page of the Fire Department’s website, <http://www1.nyc.gov/site/fdny/codes/fire-department-rules/fire-dept-rules.page>.
- **Mail** - You can mail written comments to Code Development Unit, Bureau of Fire Prevention, New York City Fire Department, 9 MetroTech Center, Room 3N2, Brooklyn, NY 11201.
- **Speaking at the hearing** - **Anyone who wants to comment on the proposed rule at the on-line public hearing must sign up by emailing code.develop@fdny.nyc.gov. You will receive by reply email a link to the GoToMeeting and call-in information.** The time that you can speak at the hearing may be limited.

Join through Internet:

To join the hearing, use your Internet browser to click on the URL link that will be sent to you (or copy the link and paste it into your browser’s address bar). Then follow the prompts to enter the meeting password and attendee ID.

When joining the meeting choose either “use computer for audio” or “call in” for the audio portion of the public hearing. The information needed to connect (phone number, access code and/or attendee ID) will be provided after you join the Go To Meeting. If you have low bandwidth or inconsistent Internet connection, we suggest you use the “call-in” option.

Join by phone only (conference call):

To join the hearing only by phone, use the phone number and access code that you will receive by reply email.

Is there a deadline to submit written comments? Yes, written comments must be submitted by August 25, 2020.

What if I need assistance to participate in the hearing? You must notify the Bureau of Fire Prevention if you need a sign language interpreter or other reasonable accommodation for a disability at the hearing. Write to us at the address above or telephone us at (718) 999-2042. Advance notice is requested to allow sufficient time to arrange the accommodation. Please notify us by August 5, 2020.

Can I review the comments made on the proposed rule? 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, a record of the hearing and copies of the written comments will be available to the public at the Bureau of Fire Prevention.

What authorizes the Fire Department to make this rule? Section 1043(a) of the New York City Charter and Sections FC102.6.2 and FC102.6.3 of the New York City Fire Code (Title 29 of Administrative Code of the City of New York) authorize the Fire Department to propose this rule. The proposed rule was not included in the Department's Regulatory Agenda because it was not anticipated at time of publication.

Where can I find the Fire Department rules? The Fire Department rules are codified in Title 3 of the Rules of the City of New York and can be viewed on the Fire Department's website, <http://www.nyc.gov/fdny>, or at <http://rules.cityofnewyork.us>.

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

STATEMENT OF BASIS AND PURPOSE

The New York City Fire Department is responsible for approving the installation of fire alarm systems, including inspecting and witnessing an acceptance test of such systems. If, upon such inspection and testing, Fire Department personnel finds that the fire alarm installation is not in compliance with the New York City Building Code, New York City Fire Code, NFPA Standard 72 or other applicable laws, rules, regulations or approvals, a notice of defect (currently referred to as a "letter of defect") is issued to the owner and applicant setting forth such defects.

In many cases, the defects are relatively minor and can be corrected by the applicable licensed professional – a fire alarm system installer or an electrician – without undue delay. Currently, however, there is no procedure for accepting certification of the correction of such defects by a licensed professional, as is done for Fire Code violations cited by FDNY Summonses (formerly known as Notices of Violation) returnable before the NYC Office of Administrative Trials and

Hearings. Acceptance of the corrected defects – and issuance of a Letter of Approval for the fire alarm system – must await a re-inspection by the Fire Department.

New York City has been currently experiencing a construction boom and the number of requests for Fire Department inspections of fire alarm system installations is constantly increasing. The Fire Department has not been able to keep up with the demand for re-inspections and there are now substantial delays in scheduling them. This can result in significant delay costs for owners, as well as delaying payment to the companies that perform the work. The Coronavirus emergency compounded the problem and increased the backlogs.

To address these issues, the Fire Department proposes to establish a certification program by which licensed professionals may certify correction of certain fire alarm system defects. The certifications will be filed with and reviewed by the Fire Department, and if accepted, will eliminate the need for a re-inspection and expedite issuance of a Letter of Approval.

To ensure the integrity of this process, the proposed rule includes the following limitations and protections:

- Not all fire alarm system defects may be certified as corrected by licensed professionals. Defects considered to be more serious, and minor defects if too numerous, would remain subject to Fire Department re-inspection. The proposed rule lists the prerequisites for certification, including a list of defects excluded from the certification program.
- All certifications would have to be submitted by licensed professionals, namely, fire alarm installers, professional engineers and registered architects, who are licensed by New York State, and electricians, who are licensed by the NYC Department of Buildings.
- All of these licensed professionals would additionally have to hold a Fire Department Certificate of Fitness pursuant to Fire Code Section 113 and be a principal or employee of a company holding a Company Certificate pursuant to Fire Code Section 115. This would serve to ensure that if any licensed professional abuses their ability to certify correction of fire alarm system defects they are subject to Fire Department disciplinary action.
- At least two licensed professionals would be required to certify correction of the fire alarm system defects: the licensed professional(s) who corrected the defect (a fire alarm installer and/or an electrician, depending on the type of work that is required to correct the defects); and a licensed professional (professional engineer, registered architect, fire alarm installer or electrician) who verifies that the system is functioning properly based on an in-person functionality test. The proposed rule elaborates upon what the certification of correction of defects represents in terms of the work done and verification thereof. (There is one exception to the two-signature rule: when there are no defects in the design or installation of the fire alarm system, but as-built plans and/or other forms or documentation required to correct and complete the application have not been filed. A single signature is required in this circumstance because the required documentation itself must be signed and sealed by licensed professionals.)

- All certifications are subject to audit. The Fire Department maintains an audit program that would professionally audit the certification program and determine whether any false or fraudulent certifications had been submitted. Any licensed professional who engages in such misconduct is subject to a wide range of penalties, including those applicable to Company Certificate holders and Certificate of Fitness holders, as set forth in Fire Department rules 3 RCNY 115-01(i) and 113-01(g).

The Fire Department proposes to adopt a \$210 administrative fee for processing the certifications. This represents the time spent in reviewing the certification and administratively processing correction of the defects or, if the certification is not accepted, processing the response setting forth the grounds for denial.

The Fire Department additionally proposes to amend Section 115-01 of its rules to incorporate the company certificate for fire alarm installation, inspection, testing and servicing company certificate into the list of company certificates set forth in that section, including the special qualifications required for that company certificate.

The Department did not include this proposed rule in its FY2020 regulatory agenda because the need for such rule was not anticipated at the time.

New text is underlined. Text proposed to be deleted is [bracketed].

“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. Section 104 of Chapter 1 of Title 3 of the Rules of the City of New York, is proposed to be amended to add a new section, §104-04, to read as follows:

§ 104-04 Certification of Corrected Defects in Fire Alarm System Installations

(a) Scope. This section sets forth the standards, requirements and procedures for certification of correction of defects in the design and installation of newly-installed and altered *fire alarm systems*, when such defective conditions are cited by the *Department* upon inspection or acceptance testing of such a system.

(b) Definitions. The following terms, for purposes of this section and as used elsewhere in the *rules*, have the meanings shown herein:

Certification of corrected defects. Certification by licensed professionals, in accordance with R104-04, that a defect cited by the *Department* in the design and/or installation of a *fire alarm system* has been corrected, as follows:

(1) certification by the *fire alarm system* installer who personally corrected the defect. Such person shall either be:

(A) a principal of a company to which the Department has issued a company certificate for *fire alarm system* installation, inspection, testing and

servicing who holds a *certificate of fitness for fire alarm system installation, inspection, testing and servicing and for certification of corrected defects*; or

(B) a technician employed by such a company who holds a *certificate of fitness for fire alarm system installation, inspection, testing and servicing, and for certification of corrected defects*; and

(2) if correction of the defect necessitated the installation of electrical wiring or other work requiring the services of a licensed electrician, certification by the licensed master electrician or licensed special electrician who holds a *certificate of fitness for certification of corrected defects* who personally corrected the defect or supervised the work of a qualified electrical technician under such licensed electrician's direction and control; and

(3) the licensed professional who personally verified the functionality of the *fire alarm system* following correction of the defect. Such person shall hold a *certificate of fitness for verification of corrected fire alarm system defects*. Such person shall not be one of the licensed professionals who certified correction of the *fire alarm system* defects.

(c) **Applicability.** In lieu of *Department* re-inspection, *owners* may elect to certify correction of defects in newly-installed or altered *fire alarm system* installations that have not yet been *approved* by the *Department*, when all of the following conditions have been met:

(1) **Approved design documents.** The *owner* submitted *design and installation documents* with the *Department* and obtained *Department* approval of the design of the system;

(2) **Acceptance test.** The *owner's* representatives conducted the required acceptance test of the system before *Department* representatives;

(3) **System defects.** The *Department* identified defects in the design and installation of the system, including whether it operates as designed, as set forth in a notice of defect or other *Department* documentation issued after the effective date of this section, and such defects cited prior to the effective date of this section as the *Department* may determine to allow to be certified pursuant to this section, consistent with the standards, requirements and procedures of this section;

(4) **Ineligible defects.** The notice of defect does not identify more than 10 fire alarm system defects in a low-rise building or more than 20 fire alarm system defects in a high-rise building, and/or does not identify any defects in the design and installation of any of the following system components (when required), including whether they operate as designed:

(A) *Emergency alarm systems*;

(B) *Emergency power switchover*;

- (C) Firefighter service (Phase 1 and Phase 2), including elevator recall operation;
 - (D) Fan shut down affecting the operation of more than 20% of fan systems;
 - (E) Fire shutter operation;
 - (G) Power riser (including fire rating requirements);
 - (H) Primary power supply connection (including connection after building disconnect);
 - (I) Smoke control operation;
 - (J) Sprinkler water flow switches and other non-sprinkler fire extinguishing system activation devices; and
 - (K) Stair pressurization; and
- (5) **Timely submission.** *Certification of corrected defects* is submitted to the *Department* within 90 days of the date the notice of defect was issued.
- (d) Eligibility for Certificate of Fitness for Certification of Corrected Defects. The following licensed professionals may obtain a *certificate of fitness* for verification of corrected *fire alarm system* defects:
- (1) a registered design professional;
 - (2) a principal of a company for which a company certificate for *fire alarm system* installation, inspection, testing and servicing has been issued, who is a fire alarm system installer registered with or licensed by the State of New York; and
 - (3) a master electrician or special electrician licensed by the *Department of Buildings*.
- (e) Scope of Certification of Licensed Professional Correcting Defects. *Certification of corrected defects* constitutes a representation by the licensed professional correcting the defects, made under the authority granted to the licensed professional by his or her professional license and the applicable *Department* certificate, that the defect in the design or installation of the *fire alarm system*, identified in the applicable notice of defect, has been corrected, in accordance with the applicable requirements of the *Building Code*, *Fire Code*, *Electrical Code*, *NFPA 72* and/or other law, rule, regulation, standard or component listing, as follows:
- (1) **Types of defects.** *Certification of corrected defects* constitutes a representation that each defect has been corrected as follows:

- (A) **Missing component.** If the defect was a system component that was not installed, the component has been installed and connected to the requisite power source, and operates as designed.
- (B) **Non-approved component.** If the defect was a system component that was not *listed* or otherwise not *approved* for use in New York City, the component has been replaced with a *listed* or *approved* component, and operates as designed.
- (C) **Non-working component.** If the defect was a system component that was not working or not working properly, the condition has been corrected, and the component is in good working order and operates as designed.
- (2) **Operates as designed.** For purposes of *certification of corrected defects*, “operates as designed” means that the system component performs the function for which it has been designed and installed, in accordance with the manufacturer’s specifications and the *approved design and installation documents* for the system, as amended by any as-built *design and installation documents* and (with respect to electrical work) any A-433 form, including activating or shutting down all devices the system component is designed to activate or shut down.
- (3) **Minimum duration of testing.** *Certification of corrected defects* of a system component shall be based on operation of the device for the period of time necessary to assure its proper operation.
- (4) **Inspection of other system components.** *Certification of corrected defects* includes a representation that other system components, within the scope of work performed, have been inspected and tested, including inspection and testing of devices that activate such component and devices activated or shut down by the component. The certification does not include a representation that wiring and/or other inaccessible components have been inspected and tested, except for certifications by the licensed professional who, to correct the defect, installed such wiring and/or performed work on such other inaccessible components.
- (f) Scope of Certification of Licensed Professional Verifying System Functionality. *Certification of corrected defects* constitutes a representation by the licensed professional verifying the functionality of the *fire alarm system* following correction of defects, made under the authority granted to the licensed professional by his or her professional license and the applicable *Department* certificate, that a defect involving a missing or non-working component has been corrected and the *fire alarm system* is operating as designed in accordance with the approved plans for the *fire alarm system*, as amended by any as-built *design and installation documents*, including the Input/Output programming matrix that defines the sequence of operation (as set forth in Annex A to Section A.14.6.2.4 of NFPA Standard 72).
- (g) Submission and Acceptance of Certification of Corrected Defects. *Certification of corrected defects* shall be submitted to the *Department*, and, if satisfactory, accepted by the *Department*, in the following manner:

- (1) **Submission.** Certification of corrected defects shall be submitted on the form approved by the Department for this purpose.
 - (2) **Required signatures.** The approved form for certification of corrected defects shall be personally signed by all parties required for the certification. As such, except as otherwise provided in R104-04(g)(3), it shall bear the signatures of up to three separate licensed professionals: the signature of the one or two licensed professional(s) who corrected the defect(s) and the signature of the licensed professional who verified the functionality of the fire alarm system following correction of defects.
 - (3) **As-built plans and A-433 forms.** To complete a fire alarm system application, any changes to a fire alarm system from the original approved design must be reflected on the applicable Department A-433 form, as-built design and installation documents and/or other required documentation and submitted to the Department prior to, or at the time of, the Department inspection. When a notice of defect directs the filing of an A-433 form, as-built design and installation documents and/or other documentation, such documentation shall be submitted together with a certification of corrected defects. If there are no defects in the design or installation of the fire alarm system and the notice of defect requires submission of the applicable A-433 form, as-built design and installation documents or other documentation solely to complete the application, the certification of corrected defects requires only a single signature, that of the licensed professional verifying the functionality of the fire alarm system.
 - (4) **Acceptance and letter of approval.** Upon acceptance of certification of corrected defects, including, where required, acceptance of the as-built design and installation documents, A-433 forms and/or other documentation, the Department will deem the defective condition corrected. If there are no other outstanding defects or other considerations preventing its issuance, a letter of approval will be issued for the fire alarm system.
- (h) **False Certification.** All certifications of corrected defects are subject to audit. Any licensed professional and certificate holder found to have submitted false or fraudulent certification shall be subject to the penalties provided therefor in the Fire Code and rules, and any other applicable law, rule or regulation, including the penalties for misconduct set forth in R113-01(g) and R115-01(i), as applicable. False certification of corrected defects may also be considered in connection with the false certifier's fitness to hold other certificates of fitness or company certificates.

§2. Subdivisions (a) and (d) of Section 115-01 of Title 3 of the Rules of the City of New York are amended by amending subdivision (a) and adding a new paragraph 10 to subdivision (d), to read as follows:

§ 115-01 Company Certificates

- (a) Scope. This section sets forth standards, requirements and procedures for issuance of company certificates, including blasting contractor, central station, commercial cooking exhaust system servicing, fireworks contractor, fumigation and insecticidal fogging operation, portable fire extinguisher sales, portable fire extinguisher servicing, pyrotechnic supplier, smoke detector maintenance company certificates, [and] *ARC system testing, and fire alarm system installation, inspection, testing and servicing.*

* * *

- (d) Special Qualifications. In addition to general qualifications set forth in R115-01(c), applicants for the following company certificates shall possess and satisfactorily demonstrate to the *Department* that the company, its principals and officers, possess the following qualifications:

* * *

(10) *fire alarm system installation, inspection, testing and servicing.*

(A) One (1) or more principals of the company shall be a *fire alarm system installer registered with or licensed by the State of New York, who is certified by the National Institute for Certification in Engineering Technologies (NICET) to at least Level II in fire alarm systems; or*

(B) One (1) or more principals of the company shall be a *fire alarm system installer registered with or licensed by the State of New York, who holds a certificate of fitness as a fire alarm system installation, inspection, testing and servicing principal; or*

(C) One (1) or more principals of the company shall be a *master electrician or special electrician licensed by the Department of Buildings.*

* * *

§ 3. Subdivision (f) of §4601-01 of Title 3 of the Rules of the City of New York, is proposed to be amended to add a new paragraph (10) to read as follows:

- (f) Administrative Services Fees (FC A04). FC A04 is amended to read as follows:

* * *

10. Certification of corrected defects in fire alarm system installations
(per certification) \$210.00

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 Rules Governing Installation of Fire Alarm Systems

REFERENCE NUMBER: 2020 RG 041

RULEMAKING AGENCY: Fire Department

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

Date: July 8, 2020

Acting Corporation Counsel

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 Rules Governing Installation of Fire Alarm Systems

REFERENCE NUMBER: FDNY-25

RULEMAKING AGENCY: Fire Department

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

July 9, 2020

Date