

New York City Department of Transportation
Notice of Adoption

NOTICE OF ADOPTION relating to the update of the New York City Department of Transportation’s (DOT) “Highway Rules” contained in Chapter 2 of Title 34 of the Rules of the City of New York.

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN the Commissioner of the New York City Department of Transportation (DOT) by Sections 1043 and 2903(b) of the New York City Charter and in accordance with the requirements of Section 1043 of the New York City Charter that DOT hereby amends Sections 2-02 of Title 34 of the Rules of the City of New York.

This rule was first published in the City Record on January 4, 2023 and a public hearing was held on February 9, 2023. DOT received verbal and written comments from the public.

Statement of Basis and Purpose of Adopted Rule

The Commissioner of the New York City Department of Transportation (DOT) is authorized to promulgate rules regarding highway operations in the City pursuant to Section 2903(b) of the City Charter. The rule that DOT is amending is contained within Chapter 2 of Title 34 of the Rules of the City of New York, relating to its “Highway Rules”.

The purpose of the adopted rule is to update section 2-02 of the Highway Rules to resolve a potential ambiguity and make clear that for DOT permits, including street opening permits, the insurance policy or self-insurance provided by the permittee must provide coverage for damage arising from the permitted operations, whether at, below or above the street surface. Thus, for street opening permits, the insurance or self-insurance must provide coverage for the opening of the street itself, as well as for any street-level, above-ground or underground work performed pursuant to the permit.

In response to comments received on the proposed rule, this adopted rule requires permit applicants to submit fully-executed forms regarding the applicant’s insurance information, which will assist the Department in ensuring that applicants have met all applicable insurance requirements.

Specifically, the adopted amendments are as follows:

- Sections 2-02(a)(1) and 2-02(a)(2) are amended to provide that insurance information must be included in the initial application to register an authorized DOT permittee and must be maintained to apply for individual permits.
- Section 2-02(a)(3) is amended to make clear that the Commercial General Liability insurance policy obtained in advance of applying for a street opening permit, or coverage by self-insured or uninsured entities, must provide coverage for all damage arising from all work done pursuant to that permit, above and below ground, not only damage to the street surface arising from the opening of the street.

- Section 2-02(a)(3) is amended to make clear that City officials and employees are named as Additional Insureds with respect to the insurance coverage obtained.
- The amended rule also provides for a broader range of accepted ratings agencies consistent with current City practice.
- Section 2-02(a)(3) is amended to add a requirement that permit applicants submit specified forms reflecting their insurance information.
- Section 2-02(a)(3) is amended to remove references to “combined single limit” in reference to the required Commercial General Liability insurance.

New material is underlined.

[Deleted material is in brackets.]

Asterisks (***) indicate unamended text.

Section 1. Subparagraph (ix) of paragraph 1 of subdivision (a) of section 2-02 of Title 34 of the Rules of the City of New York is amended and a new subparagraph (x) of such paragraph is added, all to read as follows:

(ix) e-mail address, if any ; and

(x) insurance information, as set forth in subparagraphs (i) through (viii) of paragraph 3 of subdivision (a).

§ 2. Subparagraph (vi) of paragraph 2 of subdivision (a) of section 2-02 of Title 34 of the Rules of the City of New York is amended and a new subparagraph (vii) of such paragraph is added, all to read as follows:

(vi) names of two agents/employees designated to receive summonses or notices of violation or other notices required by these rules or other provisions of law ; and

(vii) insurance information, as set forth in subparagraphs (i) through (viii) of paragraph 3 of subdivision (a).

§ 3. Subparagraphs (i), (vi), and (vii) of paragraph 3 of subdivision (a) of section 2-02 of Title 34 of the Rules of the City of New York are amended to read as follows:

(i) Each applicant shall, before applying for a permit, obtain a Commercial General Liability (CGL) insurance policy or policies satisfying the requirements of this subparagraph and any self-insured or uninsured entity must provide coverage that satisfies the requirements of this subparagraph. All [CGL insurance policies, whether primary, excess or umbrella, shall] coverage, whether a CGL policy or as provided by a self-insured or uninsured entity must:

(A) 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] A-7, [or] a Standard and Poor's rating of at least A[.], a Moody's Investor's Service rating of at least A3, a Fitch Ratings rating of at least A-, or a

similar rating by any other nationally recognized statistical rating organization acceptable to the New York City Law Department unless prior written approval is obtained from the New York City Law Department;

(B) provide coverage to protect the City of New York ("City"), and its officials and employees, and the applicant from claims for property damage and/or bodily injury, including death, which may, pursuant to a permit to be issued by the Department, including but not limited to a street opening permit, arise from any operations performed by or on behalf of the applicant [for which the Department has issued it a permit], whether at, above, or below the surface of the street(s);

(C) provide coverage at least as broad as that provided by the most recent edition of ISO Form CG 00 01;

(D) provide coverage for completed operations;

(E) provide coverage of at least \$1,000,000 [combined single limit] per occurrence and in the aggregate, with a products-completed operations aggregate of at least \$1,000,000, except that with respect to applications for permits to place a crane on a street, such minimum amount shall be no less than \$3,000,000 [combined single limit] per occurrence and in the aggregate, with a products-completed operations aggregate of at least \$3,000,000;

(F) provide that the City and its officials and employees are Additional Insureds with coverage at least as broad as set forth in the most recent editions of ISO Form CG 20 26 and CG 20 37;

(G) provide that the limit of coverage applicable to the Named Insured is equally applicable to the City and its officials and employees as Additional [Insured] Insureds.

(H) This policy shall not be cancelled or terminated, or modified or changed in a way that affects the City or its officials or employees by the issuing insurance company unless thirty (30) days prior written notice is sent to the Named Insured and the Commissioner of the New York City Department of Transportation, except that notice of termination for non-payment may be made on only ten (10) days written notice.

(I) If the permit applicant has applied for more than one thousand permits in the previous calendar year, the insurance policy shall contain each of the following endorsements[;]:

(1) If and insofar as knowledge of an "occurrence", "claim", or "suit" is relevant to the City as Additional Insured under this policy, such knowledge by an agent, servant, official or employee of the City of New York will not be considered knowledge on the part of the City of the "occurrence", "claim", or "suit" unless notice thereof is received by the: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department; and

(2) Any notice, demand or other writing by or on behalf of the Named Insured to the insurance company shall also be deemed to be a notice, demand or other writing on behalf of the City and its officials and employees as Additional [Insured] Insureds. Any response by the Insurance Company to such notice, demand or other writing shall be addressed to the Named Insured and to the City and its officials and employees at the following address: Insurance

Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, New York 10007.

(vi) In its sole discretion, the Department may allow applicants that frequently seek permits to self-insure, provided that the applicant:

(A) presents proof of excess or umbrella CGL coverage applicable to its operations under such permits;

(B) certifies that it has a self-insurance program in place that satisfies the requirements contained in subparagraph (i) of this paragraph (3) and will continue it for the life of the permit and the Guarantee Period, as defined in subparagraph (ii) of paragraph (16) of subdivision (e) of 34 RCNY § 2-11;

(C) agrees to provide the same defense of any suit against the City and its officials and employees that alleges facts that bring the suit within the scope of the coverage required in subparagraph (i) as an insurer would be obligated to provide under the laws of New York;

(D) submits a statement, signed by a person authorized to bind the applicant and acknowledged by a notary public, in which the applicant agrees to assume full liability for satisfying all obligations set forth in this subparagraph (vi), and

(E) provides the Department with the name and address of the office or official of its self-insurance program who is responsible for satisfying the self insurance obligations.

(vii) The permittee shall maintain insurance throughout the Guarantee Period, as defined in subparagraph (ii) of paragraph (16) of subdivision (e) of 34 RCNY § 2-11, satisfying the requirements in subparagraph (i) of this paragraph (3) and providing coverage to protect the City and its officials and employees, the Department and the applicant from all claims for property damage and/or bodily injury, including death, which may arise from any defects discovered during such Guarantee Period.

§ 4. Paragraph (3) of subdivision (a) of section 2-02 of Title 34 of the Rules of the City of New York is amended by adding a new subparagraph (xi), to read as follows:

(xi) The applicant shall submit to the department proof of its insurance on fully-executed ACORD 25 and ACORD 855 forms, or equivalent forms containing the same information, regarding applicant's insurance.