

May 27th, 2025

NYC Department of Buildings

280 Broadway

New York, New York

Hello,

I am writing to provide public comment on the proposed amendment to Subdivision (f) of section 104-20 of Subchapter D of Chapter 100 of Title 1 of the Rules of the City of New York which will have a public hearing on May 29th 2025 as item number 3 of the Amendment of Rules Relating to Permitting Requirements for Rotating Telehandlers and Articulating Boom Cranes. The proposed amendment will require a letter from a Master Rigger onsite stating that all members of the rigging crew are under the “direct and continuing supervision” of the licensee. I myself am a licensed Master Rigger in the City of New York and a licensed Professional Engineer in New York State.

Subdivision (f) of RCNY104-20 proposed edits

Subdivision (f) of RCNY104-20 currently states:

“(f) *Rigging Crew*. Except as otherwise provided in subdivision (g) of this section, all members of the rigging crew must be under the direct and continuing supervision of the licensee.”

I propose the following edits to the wording of the new paragraphs proposed in the rule amendment (new wording is underlined in red, removed wording is in brackets []):

“(1) For work conducted by a master rigger, other than the erection, jumping, or dismantling of a tower crane, the master rigger must provide a letter, signed and dated by the licensee, attesting that all members of the rigging crew are under the direct employ of the place of business associated with his or her license as required by Section 28-404.4.2 of the Administrative Code [direct and continuing supervision of the licensee]. The letter must be maintained at the site by the master rigger and made available to the commissioner upon request. In addition, where the work requires a certificate of on-site inspection or a permit,

including but not limited to an on-site waiver, the letter must be submitted with the application for the certificate of on-site inspection or permit, and the plans for the certificate of on-site inspection or permit must be stamped or otherwise clearly marked, in a format acceptable to the commissioner, indicating the work will be performed under the direct and continuing supervision of the master rigger.

(2) For the erection, jumping, or dismantling of a tower crane, the master or tower crane rigger must provide a letter, signed and dated by the licensee, attesting that all members of the “jumping” crew are under the direct employ of the place of business associated with his or her license as required by Section 28-404.4.2 of the Administrative Code [direct and continuing supervision of the licensee]. The letter must be submitted as part of the plan required by Section 3319.8.1 of the New York City Building Code. “

There are a number of valid reasons to make these edits as I will explain. There are some Master Riggers who will send out one of their “rigging foreman” to supervise crews that are not under their direct employ and are ignorant (or feign ignorance) of what the definition of “direct and continuing supervision” as stated in Section 28-401.3 of the Administrative Code entails, claiming that their foreman just needs to be there to supervise the work, even if performed by others (which is against the definition of “direct and continuing supervision”). With the wording I have proposed they will no longer be able to claim they did not know better, and if they supervise someone on another business’s payroll they will be making a false statement in the letter that they have signed.

The ability to word these new paragraphs as I have stated is justified by the following sections of the Administrative Code and the Rules of the City of New York:

-“Direct and Continuing Supervision” is defined in RCNY 104-20 to have the same definition as in Section 28-401.3 of the Administrative Code.

-28-401.3 of the Administrative Code Defines “Direct and Continuing Supervision” as :

“Responsible control exercised by a licensed individual, either personally or through one or more, but no more than three, levels of competent supervision over individuals performing the actual work of the licensee's trade who are (i) in the **direct employ** of an individual who is a licensee, or (ii) in the **direct employ** of the city agency employing the licensee or (iii) in the **direct employ** of a business employing the licensee, as allowed by the department, or (iv) where

the licensee uses his or her license on behalf of a business, in the **direct employ** of such business provided that such business is disclosed to the department pursuant to this chapter.”

-Direct employ is also defined in Section 28-401.3 as “An individual is in the direct employ of a licensee or business or a city agency when such individual is on the payroll of such licensee or business or city agency”.

-28-401.17 Use on behalf of a business (from the administrative code) states that additional requirements may be set forth for a particular license beyond this section.

-28-404.4.2 Rigger Place of business (from the administrative code) places additional requirements on a licensed rigger, stating that a licensee must have a place of business in the city and must be an owner, partner or officer of a corporation and may only associate their license with two(2) rigger businesses and they must be located at the same address.

-The requirements of 28-404.4.2 Rigger Place of Business therefore restricts the ways that someone may be under the “direct and continuous supervision” of a licensee.

-Provision (i) of the definition of “Direct and Continuing Supervision” doesn’t apply to licensed riggers as a licensee may not use their license freelance and hire individuals to supervise without being associated with the business on their license.

-Provision (ii) could apply if the licensee is employed by a city agency, but it will be listed on their license as their “place of business”.

-Provision (iii) does not apply to licensed riggers, again because a random business may not just employ the individual as a licensed rigger if the license is not associated with the business.

-Provision (iv) is how all licensed riggers are supposed to work because our licenses are required to be associated with a place of business and this provision states that the individuals must be in the “direct employ” of the business (the only other situation is if that place of business is a city agency in which case provision (ii) would apply).

Based on these relevant sections of the Administrative Code and Rules of the City of New York, there exists no scenario where a licensed Master Rigger may supervise crew members who are not in the direct employ of the business listed on their license. The only exception is subdivision (g) of RCNY 104-20 for a Specialty Crew, which has its own requirements and must be applied for on a form provided by the department (as stated in RCNY104-20) and permission must be granted by the commissioner on each occasion.

Further supporting this point is that prior to the edits made in 2015, the rule regarding Supervisory Responsibilities of a Rigger used to be numbered RCNY 9-01, and the wording of subdivision (f) used to state:

“(f) Rigging Crew. Except as otherwise provided in subdivision (g) of this section, all members of the rigging crew must be employees on the payroll of such licensee or where the license is used by the holder thereof for or on a behalf of a partnership, corporation or other business association as provided for in section 26-138(b) of the administrative code such members must be employees on the payroll of such partnership, corporation or business association.”

By wording it the way I propose section 3316.9.1 of the building code would still state “direct and continuing supervision” and RCNY 104-20 subdivision (f) would also still say all members of the rigging crew must be under the “direct and continuing supervision”, but then the required letter onsite, signed by the licensee would then clarify the meaning by stating that all members of the rigging crew are in fact in the “direct employ” of the business listed in their license.

It would eliminate the ability for any licensee to claim ignorance to what “direct and continuing supervision” means, and eliminate them from telling other contractors that their foremen could “supervise” their crews.

This wording is also supported by the Service Update issued by the Department of Buildings in May 2015 which I have attached. In the service update it uses the words “Rigging crew members must be employed by the licensee”. This service update is a little dated now as it still uses the requirements for “competent person” instead of a lift director on new construction and demolition work, but neither the requirements of 3316.9.1 of the building code, nor RCNY104-20 have changed since it was issued. It could be helpful to the industry if this Service Update were updated with the current requirements for lift directors and Master Riggers, and to include how articulating boom cranes and rotating telehandlers fit with it.

Definition of a "Rigging Crew" (and definition of "Direct Employ")

Additionally, there exists no official definition of a "Rigging Crew" in either the Administrative Code or in the Rules of the City of New York, I propose that a formal definition be added to the rules to prevent any confusion. In discussing who is considered part of the "rigging crew" with several different License holders I received different opinions, therefore adding an official definition would remove this confusion.

Therefore, I propose the following additions to subdivision (b) "Definitions" of section 104-20 of Subchapter D of Chapter 100 of Title 1 of the Rules of the City of New York (new wording is in red and underlined):

(4) For the purpose of this section, the term "direct employ" shall have the same meaning as set forth in § 28-401.3 of the Administrative Code.

(5) For the purpose of this section the term "rigging crew" shall mean the following:

_____ (i) all individuals who attach or detach rigging equipment to a hook or load.

_____ (ii) all individuals who handle or manipulate a load or tagline while it is suspended by a crane, derrick, or other hoisting device.

_____ (iii) all operators of cranes, derricks or other hoisting devices.

_____ (iv) all signalmen for cranes, derricks or other hoisting devices.

_____ (v) all individuals actively engaged in the assembly or disassembly of a crane, derrick, or other hoisting device.

I believe these definitions are valid for the reason that by requiring all these individuals to be in the "direct employ" of the licensee's business it will ensure that they are covered by the general liability insurance that the licensee has on file with the department. If any of these individuals were not to be considered part of the "rigging crew" (such as the crane operators) and were not in the "direct employ" of the licensee then they would not be covered by the general liability insurance policy that the licensed Master Rigger has on file with the Department of Buildings, and it would be unknown what, if any, insurance the individuals' actions are covered by as section 28-405.5 of the Administrative code exempts licensed hoist machine operators from

following the insurance requirements of section 28-401.9, this is because they are assumed to be working under the coverage of the licensed Rigger they are working for.

Specifically, I believe that the operator of a crane, derrick or other hoisting machines must be considered part of the rigging crew and thus under the "direct and continuing supervision" of the licensee specifically due to the fact that Section 3316.9.1 of the Building Code states : "The hoisting or lowering of any suspended article on the outside of any building in the city shall be performed by or under the direct and continuing supervision of a licensed rigger." If the operator of the hoisting machine (crane, derrick, or other) is not under the "direct and continuing supervision"(direct employ) of the Licensed Rigger then the hoisting of the suspended article is not being performed under the direct and continuing supervision of the Licensed Rigger.

Additionally, if these individuals were not in the "direct employ" of the licensee and instead worked for another business the licensee would not have any direct authority over them, and would not possess the ability to fire the individual for not following his instruction on the job, this lack of authority over any of these individuals listed above could place the public in danger.

Adding the definition for "direct employ" to RCNY104-20 as stated would bring it in line with the definition set forth in the administrative code, and defining who is considered part of the "rigging crew" will prevent any debate between the department and individual licensees over who exactly is regulated by subdivision (f) of RCNY 104-20.

Thank you for your time,



Alex Simmons, P.E.

NYC Master Rigger #209