

Is the charge imposed by this rule a fee or a penalty?

I am a New York State licensed professional engineer, License No. 107881, commenting in an individual capacity on proposed rule DOB-216 / 2026 RG 048. No allegation of misconduct by any individual is made or implied.

This is a threshold question and the answer determines what showing the Department must make before adoption. I raise it because the rule as drafted does not commit to an answer, and the two halves of it behave differently.

Under New York law a municipal charge falls into one of three categories, and each carries a different requirement. A fee must bear a reasonable relationship to the cost of the regulatory activity it funds. A tax requires State authorization, which a city cannot supply to itself. A penalty requires a violation, notice, and an opportunity to be heard.

By citing Article 112 of Title 28, the fee article, the Department is asserting that these charges are fees. Three features of the rule do not behave like fees.

First, the renewal charge is not tied to an identifiable service. An initial application involves resume review, verification, and under this proposal an interview. A renewal, as the rule describes it, involves confirming that the registrant's State license remains current and in good standing. The rule identifies no other renewal activity, and proposes to charge \$320 a year for it.

Second, the consequence of non-completion is loss of the credential rather than a debt. Where a fee goes unpaid, the ordinary consequence is that the service is not rendered. Here, under subparagraph (v) of paragraph (7) of subdivision (c), failure to complete an interview results in expiration of the registration, and under subparagraph (i) an unregistered person may not perform the inspection at all. Loss of the ability to practice a regulated specialty is the consequence structure of a disciplinary sanction, not of an unpaid invoice.

Third, the rule builds two routes to the same outcome and gives process to only one of them. Subparagraphs (viii) and (ix) provide for denial of renewal and for suspension or revocation under Administrative Code Sections 28-401.19 and 28-401.19.1, expressly following notice and an opportunity to be heard. Subparagraphs (v) and (vii) produce the identical outcome, in that the registrant may no longer perform inspections, by automatic operation of the rule, with no violation alleged, no notice, no hearing, and no determination. The route without process is the one triggered by failure to complete an interview that the Department schedules.

Stated plainly, the money in this rule is justified as a fee and the consequence operates as a penalty, and the rule never reconciles the two.

I am not asking the Department to abandon either the fee or the disciplinary framework. I am asking it to pick a characterization for each provision and accept the corresponding obligation.

If these are fees, publish the cost basis, and make non-payment a curable lapse rather than an event that terminates a professional authorization. Credential loss should not attach to an administrative step whose timing the Department controls.

If the credential-loss provisions are disciplinary, identify the violation and supply the notice and hearing that Sections 28-401.19 and 28-401.19.1 themselves require. The Department cannot import the sanction without importing the process.

If the amounts are not derived from cost, then the charges are revenue measures rather than fees, and Article 112 does not authorize them.

I made this same three-way request to the Department on proposed rule DOB-210, the incomplete inspections rule, in my comment filed August 5, 2026, where the same ambiguity appears between a charge described as cost recovery and a certification stating that the rule establishes no violation. I support DOB-210. I made the request anyway. The standard should not vary with whether I favor the rule.

REQUESTS

State in the final Statement of Basis and Purpose whether each charge imposed by Section 1 is a fee within the meaning of Article 112 of Title 28.

State separately whether expiration under subparagraphs (v) and (vii) is intended as an administrative lapse or as a disciplinary sanction.

If it is an administrative lapse, provide expressly in the rule text that it does not constitute discipline, is not reportable as discipline to any licensing authority, and does not require reinstatement proceedings.

If it is a sanction, provide the notice, hearing, written determination, and review that a sanction requires.