

## 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 section 101-07 of Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York regarding approved agencies, and sections 103-01, 103-02 and 103-05 of Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York regarding low-pressure boilers, elevators, and high-pressure boilers, respectively.

Due to the current health emergency, the public hearing for this rule is being scheduled as a virtual hearing, which may be accessed according to the information given below in this Notice.

**When and where is the hearing?** DOB will hold a public hearing on the proposed rule online. The public hearing will take place at 11am on 11/29/21.

- **Join through Internet:**

To join the hearing via your browser either click on the following URL link or copy and paste it into your browser's address bar. Then follow the prompts.  
<https://buildings.webex.com/buildings/j.php?MTID=ma725bea4037588d3972deafa67c7363b>

When prompted, enter the following meeting password: 10007

When joining the meeting choose either **“Use computer for audio”** or **“Call in”** for the audio portion of the public hearing. If you choose the **“Call in”** option, the information needed to connect (**phone number, Access Code and Attendee ID**) will automatically be presented to you immediately **after** you join the Webex meeting.

If you have low bandwidth or inconsistent Internet connection, we suggest you use the **“Call-in”** option for the hearing. This will reduce the possibility of dropped audio and stutters.

- **Join via phone only:**

To join the meeting only by phone, use the following information to connect:

Phone: 646-992-2010  
Access code: 230 237 49043  
Password (if requested): 10007

**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](mailto: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 by emailing [dobrules@buildings.nyc.gov](mailto:dobrules@buildings.nyc.gov) by 11/22/21, and including your name and affiliation. While you will be given the opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes, you must submit comments by 11/29/21.

**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 can tell us by email at [dobrules@buildings.nyc.gov](mailto:dobrules@buildings.nyc.gov). Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us by 11/15/21.

This location has the following accessibility option(s) available: Simultaneous transcription for people who are hearing impaired, and audio only access for those who are visually impaired.

**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/>. 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 and may be requested by email at [dobrules@buildings.nyc.gov](mailto:dobrules@buildings.nyc.gov).

**What authorizes DOB to make this rule?** Sections 643 and 1043(a) of the City Charter and Articles 303 and 304 of Title 28 of the City Administrative Code authorize DOB to make this proposed rule. This proposed rule was not included in DOB's regulatory agenda for this Fiscal Year because it was not contemplated when DOB published the agenda.

**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 Proposed Rule**

Boilers are regulated by Article 303 of Title 28 of the New York City Administrative Code. Elevator provisions are found in Articles 304, 401, 421 and 422 of Title 28.

Chapters 750 of 2019 and 55 of 2020 of the laws of the State of New York amended some terminology in Articles 401, 421 and 422 of Title 28 of the New York City Administrative Code. On October 7, 2021, the New York City Council passed legislation, designated as Intro. 2261-A of 2021, which further amends the articles listed above. Those amendments relate to filing timeframes for inspection and test reports and affirmations of correction and clarifying the difference between elevator inspections and tests. These rules are being amended to reflect the changes made by those laws.

In addition, these rules are being amended to align the procedures and filing requirements among low- and high-pressure boilers and elevators.

Specific changes, apart from those described above, include

Rule 101-07 – Approved Agencies:

- The heading of subdivision (c) is being amended to reflect that the provisions of the subdivision that are not being amended also cover responsibilities of approved agencies.
- Obsolete provisions and language that is now in rule 103-02 and Article 304, 421 or 422 of Title 28 are being deleted from paragraph (4) of subdivision (c).
- Language is being added to paragraph (4) of subdivision (c) to require the immediate reporting to the department of a fatality or injury related to an elevator agency's work.
- Language that has been moved to rule 103-01 is being deleted from paragraph (5) of subdivision (c).

Rule 103-01 – Low-pressure boilers:

- Language is being added to subdivision (d) to clarify an owner must hire a qualified boiler inspector.
- The requirements from rule 101-07 are being moved to subdivision (d), where they are more appropriate.
- Language is being added to subdivision (d) to specify that the acceptance of a boiler filing is contingent on the fee and any civil penalty payment being honored.
- A new penalty of \$1,000 per boiler for failure to file an affirmation of correction is being added to subdivision (f).
- The grounds for waiver of penalties in paragraph (6) of subdivision (f) is being amended to remove limits on new owners and language is being added to specify what proof is required for new owners and work in progress.
- Subdivision (g) is being amended to clarify when penalties accrue for failure to file a notice of removal or disconnection of a boiler. In addition, the penalty for such failure to file is being increased from \$500 to \$1,000 per boiler to match the penalty for failure to file a report.
- The reference to Table 28-112.7.2 of the Administrative Code is being removed from subdivision (h) as Intro 2261-A has removed boiler filing fee amounts from that table and has added a reference to department rules.

Rule 103-02 – Elevators

- The term “final certificate” in subdivision (c) is being renamed “certificate of compliance” to match the language in section 28-116.4.1 of the Administrative Code.

- Language is being added to subdivision (d) to specify that the acceptance of an elevator filing is contingent on the fee and any civil penalty payment being honored.
- Language is being added to subdivision (d) to state that periodic inspection reports for private residence elevators do not need to be filed with the department but must be kept by the owner for six years.
- Language is being added to subdivisions (h) and (i) regarding requesting extensions of the filing deadline in accordance with Article 304 of Title 28 of the Administrative Code.
- A new penalty of \$3,000 per elevator for failure to file periodic inspection reports is being added to subdivision (i).
- The grounds for waiver of penalties in subdivision (k) is being amended to remove limits on new owners and to add what proof is required for this waiver.
- The reference to the Table 28-112.7.2 of the Administrative Code is being removed from subdivision (l) as Intro. 2261-A has removed elevator filing fee amounts from that table and has added a reference to department rules.

Rule 103-05 – high-pressure boilers:

- The reference to Table 28-112.7.2 of the Administrative Code is being removed from subdivision (d) as Intro. 2261-A has removed boiler filing fee amounts from that table and has added a reference to department rules.
- Language is being added to subdivision (e) to specify that the acceptance of a boiler filing is contingent on the fee and any civil penalty payment being honored.
- Subdivision (h) is being deleted as it contains an obsolete provision regarding notice of address changes.
- A timeframe for required 48-hour notice of a planned boiler shutdown is being added to re-lettered subdivision (h).
- A new penalty of \$1,000 per boiler for failure to file an affirmation of correction is being added to subdivision (i).
- The grounds for waiver of penalties in subdivision (i) is being amended to remove limits on new owners and to add what proof is required for this waiver.
- Subdivision (j) is being amended to clarify when penalties accrue for failure to file a notice of removal or disconnection of a boiler. In addition, the penalty for such failure to file is being increased from \$500 to \$1,000 per boiler to match the penalty for failure to file a report.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and Articles 303 and 304 of Title 28 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

“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. Paragraphs (11) and (12) of subdivision (a) of section 101-07 of subchapter A of chapter 100 of Title 1 of the rules of the City of New York are amended to read as follows:

- (11) *Qualified elevator [inspector]director.* An individual [who has obtained a Qualified Elevator Inspector (“QEI”) Certificate from an American National Standards Institute (“ANSI”)-accredited agency to witness elevator inspections and tests] licensed in accordance with Article 421 of Title 28 of the Administrative Code.
- (12) *Qualified elevator inspector [supervisor].* An individual [who has obtained a Qualified Elevator Inspector Supervisor (“QEIS”) Certificate from an ANSI-accredited agency to supervise a QEI’s witnessing and/or to witness directly elevator inspections and tests] licensed in accordance with Article 422 of Title 28 of the Administrative Code.

§2. The title and paragraphs (4) and (5) of subdivision (c) of section 101-07 of subchapter A of chapter 100 of Title 1 of the rules of the City of New York are amended to read as follows:

- (c) Qualifications and responsibilities of approved agencies.
  - (4) Elevator [inspection] agencies.
    - (i) Notwithstanding anything to the contrary set forth herein, elevator [inspection] agencies, including their directors and inspectors [that] who currently hold or hereafter secure a [Certificate of Approval]license from the department issued pursuant to [Chapter 11 of Title 1 of the Rules of the City of New York] Article 421 or 422 of Title 28 of the Administrative Code shall be deemed approved elevator [inspection] agencies without further requirement of registration or accreditation, for the purpose of conducting the periodic elevator inspections and tests required by section 28-304.6 of the Administrative Code.
    - [(ii)] Written or oral tests required by 1 RCNY 11-01(a)(2)(ii) shall require familiarity with the standards set forth in section 3001.2 and appendix K of the Building Code, including chapter K3, pertaining to existing elevators, as set forth in the rules of the department.]
    - [(iii)](ii) Tests and inspections performed by an approved elevator [inspection] agency on behalf of the owner [after the effective date of this section] shall be performed in compliance with [section 3014.1 of the Building Code and the reference standards set forth in Appendix K of the Building Code] Article 304 of Title 28 of the Administrative Code and section 103-02 of this chapter.
    - [(iv)](iii) Periodic elevator inspections and tests performed by an approved elevator [inspection] agency on behalf of the owner as required by section 28-304.6.1 [and Section 3.10.12 of chapter K3 of Appendix K] of the Administrative Code shall be performed in compliance with [the following requirements:] section 103-02 of this chapter.
    - [(A)] The test must be performed by an approved elevator inspection agency and witnessed by an approved elevator inspection agency or a QEI or QEIS authorized pursuant to clause (C) of this subparagraph that is not affiliated with the agency performing the test.

- (B) The approved elevator inspection agency responsible for performing the test shall designate skilled elevator trade personnel in its employment to perform the test under the direct supervision of a director who holds a Certificate of Approval from the department issued pursuant to the 1968 Building Code and 1 RCNY 11-01. Such designation by the director shall be in writing and shall indicate the director's endorsement of the qualification of the personnel designated to conduct the test. Such personnel may perform the test through December 31, 2011. Thereafter, the test shall be performed by an inspector or director who holds a Certificate of Approval from the department.
- (C) The approved elevator inspection agency responsible for witnessing the test shall designate an inspector in its employment who holds a Certificate of Approval from the department issued pursuant to the 1968 Building Code and 1 RCNY 11-01 to witness such test. Individuals who have applied for and passed a department-sponsored/administered examination for a Private Elevator Inspection Agency Director or Private Elevator Inspection Agency Inspector Certificate of Approval examination by July 1, 2010 may continue to witness the test based on satisfaction of the qualifications set forth in items 1 through 3 below, through December 31, 2011 or until the issuance or denial of a Certificate of Approval from the department, whichever is sooner.
1. A valid QEI or QEIS Certificate;
  2. A minimum of five (5) years of satisfactory experience, within the last seven (7) years immediately preceding the date of affirmation from the director of the agency as prescribed in item 3 below, in the assembly, installation, repair, design, or inspection of elevators, or as an elevator mechanic;
  3. An affirmation from the director of the agency, on such form as the commissioner shall require, attesting that the QEI or QEIS
    - A. Is familiar with the construction and maintenance of elevators, escalators and related equipment and the standards set forth in Chapter 30 and appendix K of the Building Code, including appendix K3, pertaining to existing elevators, in the rules of the department; and
    - B. Is of good moral character so as not to adversely impact upon his or her fitness to witness elevator inspections.
- The commissioner may refuse to accept such certification for any of the reasons specified as grounds for revocation or suspension set forth in subdivision (d) of this section.
- (D) The witnessing inspector shall affix the test/inspection date and his or her agency's Certificate of Approval number to the inspection certificate at the site. The witnessing inspector and the director of

the witnessing agency shall further sign and indicate that agency's Certificate of Approval number in the test report.]

~~[(v)](iv)~~ Agency employee restriction. An employee of an elevator [inspection] agency may work only for such agency and for one agency director at a time.

~~(v)~~ Reporting of incidents. The elevator agency director, on behalf of the elevator agency, must immediately report to the department any fatality or injury of any individual that occurs in connection with the elevator agency's operations. Such reporting shall be in a form and manner prescribed by the department.

(5) Boiler inspection agencies.

(i) Notwithstanding anything to the contrary set forth herein, a qualified boiler inspector shall be deemed an approved boiler inspection agency, without further requirement of registration or accreditation, for the purpose of conducting the periodic inspections required by section 28-303.2 of the Administrative Code.

(ii) Periodic boiler inspections required by section 28-303.2 of the Administrative Code shall be performed in compliance with [the following requirements:] sections 103-01 and 103-05 of this chapter.

[(A)] Low pressure boiler annual inspection reports shall be submitted for each calendar year on such forms and in such manner as required by the department. The report shall include:

1. An inspection report for each boiler identifying the inspector or inspection agency;
2. The owner's annual statement completed in compliance with section 28-303.67 of the Administrative Code; and
3. A certification by the owner that identified defects have been corrected. The report must be filed within 45 days from the date of the inspection but in no event later than December 31<sup>st</sup> of each calendar year. Any required part of the report not filed within 45 days from the date of the inspection and on or before December 31<sup>st</sup> shall be deemed late and shall subject the owner to penalties as provided in Administrative Code sections 28-201.2.2 and 28-202.1 and the rules of the department.

(B) A low pressure boiler annual inspection must be conducted between January 1<sup>st</sup> and December 31<sup>st</sup> of the calendar year for which an owner submits the report. Low pressure boiler annual inspections must be conducted at least six months apart. The inspector must verify that a valid department-issued boiler number is affixed to the boiler and such number must be used in all correspondence between the inspector and the department. If an inspection reveals any dangerous condition in a boiler that threatens life or safety and that requires an immediate shut down of the boiler, or reveals an unregistered boiler, the inspector must immediately notify the boiler division at the department of the condition via fax or email at the number or address provided on the department's website, <http://www.nyc.gov/buildings>.

- (C) Low pressure boiler annual inspection reports not filed within 12 months from the date of the inspection will be deemed expired. Expired inspection reports will not be accepted by the department to satisfy the annual inspection report filing requirement as prescribed by section 28-303.7 of the Administrative Code and this section.]

§3. Subdivisions (c) through (h) of section 103-01 of subchapter C of chapter 100 of Title 1 of the rules of the City of New York are amended to read as follows:

(c) Definitions. For the purposes of this section, the following terms shall have the following meanings:

(1) Filing deadline. For the low pressure boiler annual inspection report or any part of that report, [forty-five (45)] fourteen (14) days from the inspection date.

(2) First [Test]test. An inspection of a newly installed or replaced boiler required for the department to approve its use and operation.

(3) Inspection cycle. January 1<sup>st</sup> through December 31<sup>st</sup> of the calendar year for which the report is being submitted. Annual inspections must be at least six (6) months apart.

(4) Late filing. An inspection report or any part of that report filed after the [forty-five (45)] fourteen (14) day filing deadline but in no event [more than twelve (12) months from the date of the inspection]later than January 14<sup>th</sup> of the calendar year immediately following the inspection cycle.

(5) Owner. Any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of, the premises and/or boiler.

(6) Qualified boiler inspector. A qualified boiler inspector as defined in Section 101-07 of these rules.

[(6)](7) Removal or disconnection. Removal or discontinuance, pursuant to Section [28-303.8]28-303.9 of the Administrative Code.

[(7)](8) Waiver. Removal of the obligation to pay a penalty associated with a violation. A waiver does not result in dismissal of the violation.

(d) [Owner's responsibilities.

(1)] Inspection and report filing. [An owner must comply with the inspection requirements and must] The owner shall be responsible for hiring a qualified boiler inspector to conduct inspections and file low pressure boiler annual inspection reports pursuant to Article 303 of Title 28 of the Administrative Code and in accordance with [Section 101-07 of this chapter.]the following provisions:

(1) Low pressure boiler annual inspection reports must be submitted for each inspection cycle on such forms and in such manner as required by the department. The report must include:

(i) An inspection report for each boiler identifying the qualified boiler inspector or inspection agency;

(ii) An affirmation of correction that identified defects that have been corrected, if applicable; and

(iii) The filing fee as provided in subdivision (h).



[(2) Notification. An owner shall notify the department's Boiler Division within thirty (30) days of the owner's change of address or sale of the premises housing the boiler. The owner must reference the department's boiler number in all correspondence.

(3) New owner. A new owner is responsible for inspection in the year that he or she purchases the building, only if he or she purchases the building on or before June 30 of that year.]

(2) If an inspection reveals any dangerous condition in a boiler that threatens life or safety and that requires an immediate shut down of the boiler, the inspector must immediately notify the department's boiler division of the condition via email at the address provided on the department's website, [www.nyc.gov/buildings](http://www.nyc.gov/buildings). Notification of an unregistered boiler must be made by filing a report electronically in a form and manner required by the department.

(3) The filing is deemed accepted upon payment of the fee(s) and any civil penalties due. If the payment is not honored, the filing will be deemed invalid and the owner may receive a violation for failure to file and be subject to all applicable penalties as set forth in subdivision (f).

(e) Acceptance of filings. Inspection reports filed after the [forty-five (45)] fourteen (14) day filing deadline but [within twelve (12) months of the inspection date] on or before January 14<sup>th</sup> of the calendar year immediately following the inspection cycle will be considered late filings and will be subject to the appropriate civil penalties as set forth in subdivision (f) of this section. Reports filed after such [twelve (12) month] late filing period will be considered expired. In such cases, owners will be subject to the appropriate civil penalties for failure to file an inspection report, as set forth in subdivision (f) of this section, and the department will require a new inspection to be performed for the current inspection cycle and a new report filed in accordance with this section.

(f) Civil penalties, low pressure boiler annual inspection report and affirmation of correction.

(1) Failure to file. An owner who fails to file the low pressure boiler annual inspection report or any part thereof for each boiler, pursuant to Article 303 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of not less than one thousand dollars (\$1000.00) per boiler. [In accordance with Section 101-07 of this chapter, a] A low pressure boiler annual inspection report not filed within [twelve (12) months from the date of the inspection] the late filing period shall be deemed expired and shall not be accepted by the department.

(2) Late filing. An owner who submits a late filing, but who provides proof that the inspection took place within the inspection cycle for which the report was due, shall be liable for a civil penalty of not less than fifty dollars (\$50.00) per month, per boiler, commencing on the day following the filing deadline and ending on the date of submission of a complete report, including a late filing of the [boiler certificate of] affirmation of correction. The total penalty shall not exceed six hundred dollars (\$600.00) per boiler. For the purposes of this paragraph, "proof" shall mean a [notarized affidavit] copy of the filed inspection report from the [approved] qualified boiler inspector who conducted the inspection [with his or her seal stating] indicating that the inspection was completed within the inspection cycle for which the report was due.

(3) Failure to file the affirmation of correction. An owner who fails to correct the defects within the applicable time after the inspection and to file the affirmation of correction by the date the affirmation was due, stating that all defects found during the inspection have been corrected pursuant to Section 28-303.5 of the Administrative Code shall be liable for a civil penalty of one thousand dollars (\$1000.00) per boiler.

~~[(3)]~~(4) Challenge of civil penalty. An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this subdivision by providing written proof of a timely and complete inspection and filing to the department. Challenges shall be made in writing within thirty (30) days from the date of service of the violation by the department and sent to the office/unit of the department that issued the violation. The decision to dismiss or uphold the penalty shall be at the sole discretion of the department. Examples of such proof shall include, but are not limited to, the following:

(i) A copy of the boiler inspection report for the inspection performed during the applicable inspection cycle and a copy of the front and back of the canceled check or money order to the department for the boiler inspection report fee or proof of electronic payment of such fee; or

(ii) The department-assigned transmittal number for the electronic disk filing report or DOB NOW tracking number.

~~[(4)]~~(5) Extension of the filing deadline. An owner may request an extension of the filing deadline in order to correct low pressure boiler defects and file [a certification] an affirmation of correction stating that identified defects have been corrected in accordance with [Section 101-07 of this chapter, upon submission of] Article 303 of Title 28 of the Administrative Code, by submitting proof that the request is based on extraordinary circumstances and/or that the delay in correction is beyond the owner's control, not including financial or administrative hardship. The request shall be made prior to the expiration of the filing deadline, submitted with the filing fee and shall be made on such forms and in such manner as required by the commissioner.

~~[(5)]~~(6) Waiver of penalties. An owner may request a waiver of penalties assessed for violation of [Section 28-303.2] Article 303 of Title 28 of the Administrative Code[, Section 27-793 of the 1968 Building Code] and/or related rules enforced by the department. Requests shall be made in writing and submitted with the filing fee.

(i) Owner status.

(A) New owner. A new owner may be granted a waiver of penalties contingent upon the department's acceptance of the owner's proof that transfer of ownership to the new owner occurred after penalties were incurred. Proof includes a recorded deed evidencing transfer of ownership to the current owner after penalties were incurred, as well as any other documentation requested by the Department. [Such a waiver is limited to one of the following circumstances:

((a)) The new owner has obtained full tax exemption status from the New York City Department of Finance; or

((b)) The new owner submits proof to the department (such as a certificate from the Department of Housing Preservation and Development) that he or she took title to the property as part of an economic development program sponsored by a government agency.]

(B) Government ownership. An owner may be granted a waiver of penalties upon submission of official documentation from a government entity affirming that the premises was owned in its entirety by the entity during the period for which a waiver is requested.

(C) Bankruptcy. An owner may be granted a waiver of penalties upon submission of a copy of a bankruptcy petition[, together with proof that

either the department or the New York City Law Department was served with a “Notice of Bar Date”] and a decision from the bankruptcy court.

(ii) Device status. An owner may be granted a waiver of penalties contingent upon the department’s acceptance of proof of the following:

(A) Removed or disconnected. That the low pressure boiler was removed from the building or disconnected prior to the inspection cycle for which the report was due. In the event that proof of removal or disconnection has not yet been entered into the department’s database at the time of the request for a waiver, the owner shall submit to the department a copy of the [Self-Certification of Removed or Existing Boiler(s) form] submission for removal or disconnection of the boiler.

(B) New or replaced. That the [First Test]first test was performed during the inspection cycle for which the report was due.

(C) Work in progress. That there is work in progress for the replacement or installation of a new boiler or burner or a major renovation requiring that the boiler or burner be deactivated during the work. For the purposes of this subparagraph, “proof” means the filing of a boiler application including a projected date of completion of work. Upon completion of such work, a new inspection and test report must be filed in accordance with this section.

(iii) Building status. An owner may be granted a waiver of penalties contingent upon the department’s confirmation of the following:

(A) Demolished. That the full demolition of the building occurred prior to the inspection cycle for which the report was due and that such demolition was [signed-off]signed off by the department [and/]or that a new building permit has been issued for the property.

(B) Sealed or vacated. That the building was ordered to be sealed or vacated by a government agency (e.g. Department of Buildings, Department of Housing Preservation and Development, Fire Department of New York or Office of Emergency Management) or by court order prior to the expiration of the inspection cycle for which the report was due.

(g) Civil penalties, written notice of removal or disconnection of a low pressure boiler. Failure to file a written notice of removal or disconnection [(a Self-Certification of Removed or Existing Boiler(s) form)] with the filing fee in accordance with Section [28-303.8] 28-303.9 of the Administrative Code, or filing [of] such [form past] notice more than thirty (30) days [of] after the date of the removal or disconnection of a low pressure boiler shall be deemed a lesser violation and shall subject the owner to penalties as set forth in this subdivision.

(1) Failure to file. An owner who fails to file such notice [within twelve (12) months from the date following thirty (30) days from the removal or disconnection,] by thirty (30) days after the end of the inspection cycle shall be liable for a civil penalty of not less than [five hundred]one thousand dollars [(\$500.00)](\$1,000) per boiler.

(2) Untimely filing. An owner who files such notice [past] more than thirty (30) days [from] after the date of removal or disconnection, but [within twelve (12) months from such date,] by thirty (30) days after the end of the inspection cycle may submit an untimely filing and shall be liable for a civil penalty of not less than fifty dollars (\$50.00) per month, per boiler, commencing on the day following the date the notice was due and ending on the date of

submission of the notice. The total penalty shall not exceed five hundred dollars (\$500.00) per boiler.

(3) Challenge of civil penalty. An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this subdivision by providing proof of a timely filing to the department. Challenges shall be made in writing within thirty (30) days from the date of service of the violation by the department and sent to the office/unit of the department that issued the violation. The decision to dismiss or uphold the penalty shall be at the sole discretion of the department. An example of such proof shall include, but is not limited to, the following: a stamped and dated copy of [a Self-Certification of Removed or Existing Boiler(s) form] the submission for removal or disconnection of the boiler filed with the department, which may be supported by a copy of the front and back of a canceled check(s) to the department for the filing fee [for the filing of a Self-Certification of Removed or Existing Boiler(s) form] or proof of electronic payment of such fee.

(h) Fees. Fees for filings related to boilers shall be as set forth in Section 101-03 of these rules [and Table 28-112.7.2 of the Administrative Code].

§4. Section 103-02 of subchapter C of chapter 100 of Title 1 of the rules of the City of New York is amended to read as follows:

§103-02 Elevator inspections and tests, filing requirements, penalties and waivers.

(a) Scope. This rule implements Article 304 of Title 28 of the New York City Administrative Code (“Administrative Code”) by specifying the periodic elevator inspection and testing requirements to be conducted by an approved elevator [inspection] agency on behalf of the owner and the processes through which the department shall regulate the filings of elevator inspection and test reports and elevator affirmations of correction and issue penalties and waivers for failure to file and/or late and untimely filing.

(b) References. See Sections 28-201.2.2, 28-202.1 and Article 304 of Title 28 of the Administrative Code.

(c) Definitions. For the purposes of this rule, the following terms shall have the following meanings:

(1) Approved elevator [inspection] agency. An elevator [inspection] agency as defined in Section 28-401.3 of the Administrative Code, including its directors and inspectors[, that currently holds or hereafter secures a Certificate of Approval from the department] who are licensed pursuant to Articles 421 and 422 of Title 28 of the Administrative Code.

(2) Certificate of compliance. A certificate issued by the department authorizing the operation of an elevator following the satisfactory report of an inspection and test.

~~[(2)]~~(3) Elevator. For the purposes of this rule, such term shall include elevators, escalators, moving walkways, material lifts, vertical reciprocating conveyors (“VRC”), dumbwaiters and other conveying systems.

~~[(3)]~~(4) Filing deadline. For category 1, 3, and 5 [periodic elevator inspection and] test reports, [sixty (60)] twenty-one (21) days from the date of the [inspection and] test. For periodic inspection reports, fourteen (14) days from the date of the inspection.

- [(4) Final certificate. A certificate issued by the department authorizing the operation of an elevator following the satisfactory completion of an inspection and test.]
  - (5) Inspection and test cycle.
    - (i) Category 1. Except as otherwise provided by the commissioner, January first through December thirty-first of each year.
    - (ii) Category 3. Except as otherwise provided by the commissioner, within three (3) years from the month of issuance of a [final] certificate of compliance for a new elevator or within three (3) years from the month of the most recent category 3 periodic inspection and test performed on an existing elevator.
    - (iii) Category 5. Except as otherwise provided by the commissioner, within five (5) years from the month of issuance of a [final] certificate of compliance for a new elevator or within five (5) years from the month of the most recent category 5 periodic inspection and test performed on an existing elevator.
    - (iv) Periodic inspection. Except as otherwise provided by the commissioner, January first through December thirty-first of each year at a minimum of three months from the date of any Category 1 testing or previous periodic inspection. Initial periodic inspections on new installations must be performed in the calendar year following the final acceptance test. For private residence elevators, the periodic inspection and category testing may be performed on the same date.
  - (6) Late filing. An inspection and test report that is filed after the filing deadline.
  - (7) Owner. Any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of the premises and/or elevator.
  - (8) Periodic inspection and test. For the purposes of this rule, such term shall mean an elevator inspection and test to be conducted in accordance with Table N 1 of Appendix K of the New York City Building Code (“Building Code”) and this section by an approved elevator [inspection] agency on behalf of the owner.
  - (9) Waiver. Removal of the obligation to pay a penalty associated with a violation. A waiver does not result in dismissal of the underlying violation.
- (d) Inspection and tests, reports and filing requirements. Periodic elevator inspections and tests conducted by approved elevator[ inspection] agencies on behalf of the owner and reports filed by such agency or owner shall comply with Article 304 of Title 28 of the Administrative Code[, paragraph (4) of subdivision (c) of Section 101-07 of Title 1 of these rules] and the following:
- (1) Category 1, 3 and/or 5 [periodic inspections and] tests and periodic inspections shall be conducted during the inspection and test cycle.
  - (2) Category 1, 3 and/or 5 [periodic inspection and] test reports and periodic inspection reports shall be submitted on forms supplied by the department and in such a manner as required by the commissioner by the filing deadline.
  - (3) Test reports must be filed with the filing fee as provided in subdivision (l).
  - (4) The filing is deemed accepted upon payment of the fee(s) and any civil penalties due. If the payment is not honored, the filing will be deemed invalid and the owner may receive a violation for failure to file and be subject to all applicable penalties as set forth in subdivisions (h) and (i).

(5) Periodic inspection reports for private elevators need not be filed with the department but must be kept for six (6) years and made available to the department upon request.

(e) Correction of defects and affirmation of correction filing requirements. In accordance with Section 28-304.6.6 of the Administrative Code, all defects found on a category [1 periodic inspection and] test or a periodic inspection shall be corrected within [one hundred twenty (120)] ninety (90) days of the inspection [and] or test conducted by an approved elevator [inspection]agency [or owner], with the exception of all hazardous conditions[,] and defects related to firefighters' Phase I emergency recall operations or Phase II emergency in-car operation as required by section 3003.2 of the New York city building code, which shall be corrected immediately. Within [sixty (60)] fourteen (14) days of the date of correction, an affirmation of correction stating that all found and reported defects have been corrected shall be filed [by same] with the department on such forms and in such a manner as prescribed by the commissioner. Failure to comply with this subdivision shall be deemed a major violation.

(f) Acceptance of filings. Late filings of inspection and test reports and/or untimely filings of affirmations of correction shall be accepted by the department as filed upon payment of the appropriate civil penalties as set forth in subdivisions (h) and (i) of this section, if filed within [twelve (12) months of the date the inspection and test was conducted or the date the affirmation was due]the timeframes set forth in subdivisions (h) and (i) of this section. Reports and affirmations filed after such [twelve (12) month period]timeframe shall be deemed expired. In such cases, the appropriate civil penalties shall be paid, a new inspection and test shall be performed for the current inspection and test cycle and a new report filed in accordance with this section.

(g) [Ten-(10) day]Test notifications. In accordance with Section 28-304.6.1.1 of Title 28 of the Administrative Code, the department shall be notified by an approved elevator [inspection]agency on behalf of the owner at least [ten (10)] five (5) calendar days prior to the category 1 (escalators only), 3 and/or 5 [periodic inspection and] testing to be conducted by such approved elevator [inspection] agency. The commissioner may require that such agency provide [ten- (10)] five- (5) calendar day notifications to the department's Elevator Division for all periodic inspections [and tests] if he or she deems it necessary.

(h) Civil penalties – owners of buildings that contain (1) or two (2) single residential units.

(1) Failure to file the [inspection and] test report. An owner who fails to file the category 1, 3 and/or 5 [periodic inspection and] test report for each elevator [within twelve (12) months from the date of the inspection and test] by twenty-one (21) days after the end of the inspection and test cycle, pursuant to Article 304 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of one thousand dollars (\$1000.00) per elevator.

(2) Late filing of the [inspection and] test report. An owner who submits a late filing, but who provides proof that the [inspection and] test took place within the period for which the report was due, shall be liable for a civil penalty of fifty dollars (\$50.00) per month, per elevator, commencing on the day following the filing deadline and ending on the date of submission of [an inspection and]a test report. The total penalty shall not exceed six hundred dollars (\$600.00) per elevator. For the purposes of this paragraph, "proof" shall mean a copy of the elevator [inspection and] test report for the [inspection and] test conducted during the applicable period and, if applicable, a copy of the front and back of a canceled check(s) to the department for [an elevator inspection and test] the filing fee or proof of electronic payment of such fee.

- (3) Failure to file the affirmation of correction. An owner who fails to correct the defects within the applicable time after the [inspection and] test and to file the affirmation of correction [within twelve (12) months from] by the date the affirmation was due, stating that all [category 1] defects found and indicated on the [inspection and] test report have been corrected pursuant to Section 28-304.6.6 of the Administrative Code and subdivision (e) of this section, shall be liable for a civil penalty of one thousand dollars (\$1000.00) per elevator.
- (4) Untimely filing of the affirmation of correction. An owner who fails to correct the defects within the applicable time after the inspection and test and to file such affirmation within [sixty (60) business] fourteen (14) days from the date of correction in accordance with subdivision (e) of this section, shall be liable for a civil penalty of fifty dollars (\$50.00) per month, per elevator, commencing on the day following the date the affirmation was due and ending on the date of submission of the affirmation. The total penalty shall not exceed six hundred dollars (\$600.00) per elevator.
- (5) Extension of the filing deadline. An owner may request an extension of the filing deadline in order to correct defects found during category testing and to file an affirmation of correction stating that identified defects have been corrected in accordance with Article 304 of Title 28 of the Administrative Code by submitting proof that the request is based on extraordinary circumstances and/or that the delay in correction is beyond the owner's control, not including financial or administrative hardship. The request must be made prior to the expiration of the filing deadline, submitted with the filing fee and made on such forms and in such manner as required by the commissioner.

(i) Civil penalties – owners of commercial buildings, mixed use buildings or buildings that contain more than two (2) residential units.

- (1) Failure to file the inspection and test report. An owner who fails to file a category 1 [periodic inspection and] test report for each elevator [within twelve (12) months from the date of the inspection and test] on or by twenty-one (21) days after the end of the inspection and test cycle, pursuant to Article 304 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of three thousand dollars (\$3000.00) per elevator. An owner who fails to file a category 3 or 5 [periodic inspection and] test report for each elevator [within twelve (12) months from the date of the inspection and test] on or by twenty-one (21) days after the end of the inspection and test cycle, pursuant to Article 304 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of five thousand dollars (\$5000.00) per elevator. An owner who fails to file the periodic inspection report for each elevator on or by fourteen (14) days after the end of the inspection and test cycle, pursuant to Article 304 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of three thousand dollars (\$3000.00) per elevator.
- (2) Late filing of the inspection and test report. An owner who submits a category 1 late filing or periodic inspection late filing, but who provides proof that the inspection and test took place within the period for which the report was due, shall be liable for a civil penalty of one hundred and fifty dollars (\$150.00) per month, per elevator, commencing on the day following the filing deadline and ending on the date of submission of a complete report. The total penalty shall not exceed one thousand eight hundred dollars (\$1800.00) per elevator. An owner who submits a

category 3 or 5 late filing, but who provides proof that the inspection and test took place within the period for which the report was due, shall be liable for a civil penalty of two hundred and fifty dollars (\$250.00) per month, per elevator, commencing on the day following the filing deadline and ending on the date of submission of a complete report. The total penalty shall not exceed three thousand dollars (\$3000.00) per elevator. For the purposes of this paragraph, "proof" shall mean a copy of the elevator inspection and test report for the inspection and test conducted during the applicable period and, if applicable, a copy of the front and back of a canceled check(s) to the department for an elevator inspection/test report fee or proof of electronic payment of such fee.

- (3) Failure to file the affirmation of correction. An owner who fails to correct the defects within the applicable time after the inspection and test and to file the affirmation of correction [within twelve (12) months from] by the date the affirmation was due, stating that all [category 1] defects found [on] during the inspection and test and indicated on the report have been corrected pursuant to Section 28-304.6.6 of the Administrative Code and subdivision (e) of this section, shall be liable for a civil penalty of three thousand dollars (\$3000.00) per elevator.
- (4) Untimely filing of the affirmation of correction. An owner who fails to correct the defects within the applicable time after the inspection and test and to file such affirmation within [sixty (60) business] fourteen (14) days from the date of correction in accordance with subdivision (e) of this section, shall be liable for a civil penalty of one hundred and fifty dollars (\$150.00) per month, per elevator, commencing on the day following the date the affirmation was due and ending on the date of submission of the affirmation. The total penalty shall not exceed one thousand eight hundred dollars (\$1800.00) per elevator.
- (5) Extension of the filing deadline. An owner may request an extension of the filing deadline in order to correct defects found during category testing and to file an affirmation of correction stating that identified defects have been corrected in accordance with Article 304 of Title 28 of the Administrative Code by submitting proof that the request is based on extraordinary circumstances and/or that the delay in correction is beyond the owner's control, not including financial or administrative hardship. The request must be made prior to the expiration of the filing deadline, submitted with the filing fee and made on such forms and in such manner as required by the commissioner.

(j) Challenge of a civil penalty. An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this section by providing written proof of a timely and complete inspection and test and filing and/or correction of defects and filing to the department. Examples of such proof shall include, but are not limited to a copy of the elevator inspection/test report for the inspection and test conducted during the applicable period and, if applicable, a copy of the front and back of a canceled check(s) to the department for an elevator inspection and test report fee or proof of electronic payment of such fee. Challenges shall be made in writing within thirty (30) calendar days from the date of service of the violation by the department and sent to the office/unit of the department that issued the violation. The decision to dismiss or uphold the penalty shall be at the sole discretion of the department.

(k) Waiver of penalties. An owner may request a waiver of penalties assessed for violation of Article 304 of Title 28 of the Administrative Code, [predecessor provisions of the 1968 New York City Building Code] and/or related rules enforced by the department. Requests shall be made in writing and submitted with the filing fee.



- (1) Owner status.
  - (i) New owner. A new owner may be granted a waiver of penalties contingent upon the department's acceptance of the owner's proof that transfer of ownership to the new owner occurred after penalties were incurred. Proof includes a recorded deed evidencing transfer of ownership to the current owner after penalties were incurred, as well as any other documentation requested by the Department. [Such a waiver is limited to one of the following circumstances:
    - (A) The new owner has obtained full tax exemption status from the New York City Department of Finance; or
    - (B) The new owner submits proof to the department (such as a certificate from the Department of Housing Preservation and Development) that he or she took title to the property as part of an economic development program sponsored by a government agency.]
  - (ii) Government ownership. An owner may be granted a waiver of penalties upon submission of official documentation from a government entity affirming that the premises was owned in its entirety by the entity during the period for which a waiver is requested.
  - (iii) Bankruptcy. An owner may be granted a waiver of penalties upon submission of a copy of a bankruptcy petition[, together with proof that either the department or the New York City Law Department was served with a "Notice of Bar Date." ] and a decision from the bankruptcy court.
- (2) Device status. An owner may be granted a waiver of penalties contingent upon the department's acceptance of proof of the following:
  - (i) Removed or dismantled. That a permit was issued by the department for the removal or dismantling of the elevator(s) and that there was department sign-off, [for removal only,] indicating that the elevator was removed or dismantled prior to the inspection and test cycle for which the report was due.
  - (ii) New or replaced. That a [final] certificate of compliance was issued by the department as part of a new installation during the inspection and test cycle for which the report was due.
  - (iii) Work in progress. That there is work in progress for the replacement or installation of a new elevator or a major renovation requiring that the elevator be deactivated during the work. For the purposes of this subparagraph, "proof" shall mean the filing of an elevator application including a projected date of completion of work. Upon completion of such work, a new category 1 [inspection and] test report shall be filed in accordance with this section.
- (3) Building status. An owner may be granted a waiver of penalties contingent upon the department's confirmation of the following:
  - (i) Demolished. That the full demolition of the building occurred prior to the inspection and test cycle for which the report was due and that such demolition was [signed-off]signed off by the department [and/]or that a new building permit has been issued for the property.

- (ii) Sealed or vacated. That the building was ordered to be sealed or vacated by a government agency (i.e. DOB, HPD, FDNY or OEM) or by court order prior to the expiration of the inspection and test cycle for which the report was due.

(l) Fees. Fees for filings related to elevators shall be as set forth in Section 101-03 of these rules [and Table 28-112.7.2 of the Administrative Code].

§5. Subdivisions (c) through (f) of section 103-05 of subchapter C of chapter 100 of Title 1 of the rules of the City of New York are amended to read as follows:

(c) Definitions. For the purposes of this section, the following terms shall have the following meanings:

- (1) Department. The department of buildings.
- (2) External high-pressure boiler annual inspection. An inspection made while the boiler is in operation.
- (3) Filing deadline. For the high-pressure boiler annual inspection report or any part thereof, [~~forty-five (45)~~] fourteen (14) days from the date of the inspection.
- (4) First test. An inspection of a newly installed or replaced boiler required for the department to approve its use and operation.
- (5) Inspection cycle. January 1<sup>st</sup> through December 31<sup>st</sup> of the calendar year for which an owner submits the report.
- (6) Inspection type. [There are two inspection types, an] An external high-pressure boiler annual inspection [and] or an internal high-pressure boiler annual inspection.
- (7) Internal high-pressure boiler annual inspection. An inspection made when the boiler is shut down and handholes and manholes or other inspection openings are opened or removed for inspection of the interior.
- (8) Late filing. An inspection report or any part of that report filed after the [~~forty-five (45)~~] fourteen (14) day filing deadline but in no event [~~more than twelve (12) months from the date of the inspection]~~ later than January 14<sup>th</sup> of the calendar year immediately following the inspection cycle.
- (9) Owner. Any person, agent, firm, partnership, corporation or other legal entity having a legal or equitable interest in, or control of, the premises and/or boiler.
- (10) Qualified boiler inspector. [~~An~~] A qualified boiler inspector [who has been issued a certificate of competence by the State Department of Labor and who is employed by an authorized insurance company as a high pressure boiler inspector] as defined in Section 101-07 of these rules.
- (11) Removal or disconnection. Removal or disconnection shall have the same meaning as the term “removal or discontinuance” as used in Section [~~28-303.8~~] 28-303.9 of the Administrative Code.
- (12) Waiver. Removal of the obligation to pay a penalty associated with a violation. A waiver does not result in dismissal of the violation.

(d) Fees. Fees for filings related to high-pressure boilers shall be as set forth in Section 101-03 of these rules[ and Table 28-112.7.2 of the Administrative Code].

(e) Inspections, tests and filing requirements. The owner shall be responsible for hiring a qualified boiler inspector to conduct [such] inspections [during such upcoming inspection cycle] and tests and file high pressure boiler annual inspection reports pursuant to Article 303 of Title 28 of the Administrative Code. Such inspections shall comply with Article 303 [of Title 28 of the Administrative Code], applicable provisions of the New York State Labor Law and the following:

(1) Internal and external high-pressure boiler annual inspection reports along with the appropriate filing fee(s) shall be submitted for each inspection cycle on such forms and in such manner as required by the department. The reports shall include:

(i) An inspection report for each boiler identifying the qualified boiler inspector; [and]

(ii) An affirmation of correction [from the owner] along with the filing fee stating that identified defects have been corrected, if applicable; and

(iii) The filing fee as provided in subdivision (d).

(2) The reports shall be filed by the filing deadline. Any required part of the report not filed by the filing deadline shall be deemed late and shall subject the owner to penalties as set forth in subdivision [(j)](i) of this section.

(3) The filing is deemed accepted upon payment of the fee(s) and any civil penalties due. If the payment is not honored, the filing will be deemed invalid and the owner may receive a violation for failure to file and be subject to all applicable penalties as set forth in subdivision (i).

[(3)](4) High-pressure boiler annual inspections shall be conducted twelve (12) months from the preceding annual inspection of the same inspection type.

[(4)](5) Internal and external high-pressure boiler annual inspections shall be performed approximately six (6) months from each other during the inspection cycle.

[(5)](6) The inspector must verify that a valid department-issued boiler number is affixed to the boiler, and this number must be used in all correspondence between the inspector and the department.

(7) If an inspection reveals any dangerous condition in a boiler that threatens life or safety and that requires an immediate shutdown of the boiler, [or reveals an unregistered boiler,] the inspector must immediately notify the department's boiler division of the condition via [fax or] email at the [number or] address provided on the department's website, <http://www.nyc.gov/buildings>. Notification of an unregistered boiler must be made by filing a report electronically in a form and manner required by the department.

(f) Acceptance of filings. Inspection reports filed after the [forty (45)] fourteen (14) day filing deadline but [within twelve (12) months of the date the inspection was conducted] on or before January 14<sup>th</sup> of the calendar year immediately following the inspection cycle will be considered late filings and will be subject to the appropriate civil penalties as set forth in subdivision [(j)](i) of this section. Reports filed after such [twelve (12) month]late filing period will be considered expired. In such cases, owners will be subject to the appropriate civil penalties for failure to file a

report as set forth in subdivision [(j)](i) of this section, and the department will require a new inspection to be performed for the current inspection cycle and a new report filed in accordance with this section.

§6. Subdivision (h) of section 103-05 of subchapter C of chapter 100 of Title 1 of the rules of the City of New York is deleted and subdivisions (i) through (k) are re-lettered (h) through (j).

§7. Subdivisions (h) through (j) of section 103-05 of subchapter C of chapter 100 of Title 1 of the rules of the City of New York, as re-lettered by this rule, are amended to read as follows:

(h) Tenant notification. An owner of a building containing a high-pressure boiler(s) shall notify any affected tenants of the [requirements set forth in this section]planned shutdown of the boiler for inspection at least forty-eight (48) hours prior to such shutdown by (i) distributing a notice regarding such plan to each occupied dwelling unit and (ii) posting a notice regarding such plan in a conspicuous manner in the building lobby.

(i) Civil penalties, high-pressure boiler annual inspection report and affirmation of correction.

(1) Late filing. An owner who submits a late filing, but who provides proof that the inspection took place within the inspection cycle for which the report was due, shall be liable for a civil penalty of not less than fifty dollars (\$50.00) per month, per boiler, per inspection type, commencing on the day following the filing deadline and ending on the date of submission of a complete report, including a late filing of the affirmation of correction. The total penalty shall not exceed six hundred dollars (\$600.00) per boiler, per inspection type. For the purposes of this paragraph, "proof" shall mean a [notarized affidavit] copy of the filed inspection report from the qualified boiler inspector who conducted the inspection [stating] indicating that the inspection was completed within the inspection cycle for which the report was due [and including his or her license number].

(2) Failure to file. An owner who fails to file the high-pressure boiler annual inspection report or any part thereof for each boiler and inspection type [within twelve (12) months from the date of the inspection], pursuant to Article 303 of Title 28 of the Administrative Code and this section, shall be liable for a civil penalty of not less than one thousand dollars (\$1000.00) per boiler, per inspection type. A high-pressure boiler annual inspection report not filed within the late filing period shall be deemed expired and shall not be accepted by the department.

(3) Failure to file the affirmation of correction. An owner who fails to correct the defects within the applicable time after the inspection and to file the affirmation of correction by the date the affirmation was due, stating that all defects found during the inspection have been corrected pursuant to Section 28-303.5 of the Administrative Code shall be liable for a civil penalty of one thousand dollars (\$1000.00) per boiler.

[(3)](4) Challenge of civil penalty. An owner may challenge the imposition of any civil penalty authorized pursuant to this subdivision by providing written proof of a timely and complete inspection and filing to the department. Challenges shall be made in writing within thirty (30) days from the date of service of the violation by the department and sent to the office/unit of the department that issued the violation.

The decision to dismiss or uphold the penalty shall be at the sole discretion of the department. Examples of such proof shall include, but are not limited to, the following:

- (i) A copy of the high-pressure boiler annual inspection report for the inspection performed during the applicable inspection cycle and a copy of the front and back of the canceled check or money order to the department for the high-pressure boiler annual inspection report fee or proof of electronic payment of such fee; or
- (ii) The department-assigned transmittal number for the electronic disk filing report or DOB NOW tracking number.

~~[(4)]~~(5) Extension of the filing deadline. An owner may request an extension of the filing deadline in order to correct high-pressure boiler defects and to file an affirmation of correction stating that identified defects have been corrected in accordance with Article 303 of Title 28 of the Administrative Code by submitting proof that the request is based on extraordinary circumstances and/or that the delay in correction is beyond the owner's control, not including financial or administrative hardship. The request shall be made prior to the expiration of the filing deadline, submitted with the filing fee and made on such forms and in such manner as required by the commissioner.

~~[(5)]~~(6) Waiver of penalties. An owner may request a waiver of penalties assessed for violation of ~~[Section 28-303.7]~~ Article 303 of Title 28 of the Administrative Code[, Section 27-793 of the 1968 Building Code] and/or related rules enforced by the department. Requests shall be made in writing and submitted with the filing fee.

(i) Owner status.

(A) New owner. A new owner may be granted a waiver of penalties contingent upon the department's acceptance of the owner's proof that transfer of ownership to the new owner occurred after penalties were incurred. Proof includes a recorded deed evidencing transfer of ownership to the current owner after penalties were incurred, as well as any other documentation requested by the Department. [Such a waiver is limited to one of the following circumstances:

((a)) The new owner has obtained full tax exemption status from the New York City Department of Finance; or

((b)) The new owner submits proof to the department (such as a certificate from the Department of Housing Preservation and Development) that he or she took title to the property as part of an economic development program sponsored by a government agency. ]

(B) Government ownership. An owner may be granted a waiver of penalties upon submission of official documentation from a government entity affirming that the premises was owned in its entirety by the entity during the period for which a waiver is requested.

(C) Bankruptcy. An owner may be granted a waiver of penalties upon submission of a copy of a bankruptcy petition[, together with proof that either the department or the New York City Law Department

was served with a “Notice of Bar Date”] and a decision from the bankruptcy court.

(ii) Device status. An owner may be granted a waiver of penalties contingent upon the department’s acceptance of proof of the following:

(A) Removed or disconnected. That the high-pressure boiler was removed from the building or disconnected prior to the inspection cycle for which the report was due. In the event that proof of removal or disconnection has not yet been entered into the department’s database at the time of the request for a waiver, the owner shall submit to the department a copy of the [Self-Certification of Removed or Existing Boiler(s) form]submission for removal or disconnection of the boiler.

(B) New or replaced. That the first test was performed during the inspection cycle for which the report was due.

(C) Work in progress. That there is work in progress for the replacement or installation of a new boiler or burner or a major renovation requiring that the boiler or burner be deactivated during the work. For the purposes of this clause, “proof” shall mean the filing of a boiler [extension request with the department by the filing deadline] application including a projected date of completion of work. Upon completion of such work, [an affirmation of correction] a new inspection and test report shall be filed[with the department] in accordance with this section.

(iii) Building status. An owner may be granted a waiver of penalties contingent upon the department’s confirmation of the following:

(A) Demolished. That the full demolition of the building occurred prior to the inspection cycle for which the report was due and that such demolition was [signed-off]signed off by the department [and/]or that a new building permit has been issued for the property.

(B) Sealed or vacated. That the building was ordered to be sealed or vacated by a government agency (e.g. Department of Buildings, Department of Housing Preservation and Development, Fire Department of New York or Office of Emergency Management) or by court order prior to the expiration of the inspection cycle for which the report was due.

(j) Civil penalties, written notice of removal or disconnection of a high-pressure boiler. Failure to file a written notice of removal or disconnection [(a Self-Certification of Removed or Existing Boiler(s) form)]with the filing fee in accordance with Section [28-303.8] 28-303.9 of the Administrative Code, or filing [of] such notice more than thirty (30) days after the date of the removal or disconnection of a high-pressure boiler shall be deemed a lesser violation and shall subject the owner to penalties as set forth in this subdivision.

(1) Untimely filing. An owner who files such notice more than thirty (30) days after the date of removal or disconnection, but [within twelve (12) months from the end of such thirty (30) days]by thirty (30) days after the end of the inspection cycle, may submit an untimely filing and shall be liable for a civil penalty of not less than fifty dollars (\$50.00) per month, per boiler, commencing on the thirty-first (31) day after

the date of removal or disconnection and ending on the date of submission of the notice. The total penalty shall not exceed five hundred dollars (\$500.00) per boiler.

- (2) Failure to file. An owner who fails to file such notice [within twelve (12) months from the end of the thirty (30) days after the date of removal or disconnection] by thirty (30) days after the end of the inspection cycle, shall be liable for a civil penalty of [five hundred] one thousand dollars [(\$500.00)] (\$1,000) per boiler.
- (3) Challenge of civil penalty. An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this subdivision by providing proof of a timely filing to the department. Challenges shall be made in writing within thirty (30) days from the date of service of the violation by the department and sent to the office/unit of the department that issued the violation. The decision to dismiss or uphold the penalty shall be at the sole discretion of the department. An example of such proof shall include, but is not limited to, the following: a stamped and dated copy of [a Self-Certification of Removed or Existing Boiler(s) form] the submission for removal or disconnection of the boiler filed with the department, which may be supported by a copy of the front and back of a canceled check(s) to the department for the filing fee [for the filing of a Self-Certification of Removed or Existing Boiler(s) form] or proof of electronic payment of such fee.

**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 Boilers and Elevator Inspections

**REFERENCE NUMBER:** 2021 RG 077

**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: October 8, 2021



**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS  
253 BROADWAY, 10<sup>th</sup> FLOOR  
NEW YORK, NY 10007  
212-788-1400**

**CERTIFICATION / ANALYSIS  
PURSUANT TO CHARTER SECTION 1043(d)**

**RULE TITLE: Amendment of Rules Governing Boilers and Elevator Inspections**

**REFERENCE NUMBER: DOB-144**

**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) Late filing of the inspection reports is allowed within a prescribed timeframe.

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

October 8, 2021  
Date