

## 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 establish criteria governing the training of individuals learning to become a hoisting machine operator.

**When and where is the hearing?** DOB will hold a public hearing on the proposed rule. The public hearing will take place at 10am on 11/17/17. The hearing will be in the 3<sup>rd</sup> floor conference room at 280 Broadway.

**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, 7<sup>th</sup> 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 before the hearing by calling 212-393-2085. You can also sign up in the hearing room before the hearing begins on 11/17/17. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes, you must submit comments by 11/17/17.

**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 must tell us if you need a sign language interpreter. You can tell us by mail or email at the addresses given above. You may also tell us by telephone at 212-393-2085. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 11/3/17.

This location has the following accessibility option(s) available: Wheelchair accessibility.

**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/>. A few days after the hearing, 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.

**What authorizes DOB to make this rule?** Sections 643 and 1043(a) of the City Charter and Article 405 of Chapter 4 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 laws 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 Rule**

This rule proposes to establish criteria governing the training of individuals learning to become a hoisting machine operator by adopting requirements of the United States Department of Labor Occupational Safety and Health Administration (OSHA) contained in 29 CFR 1926.1427(f) and making modifications for New York City. The purpose of this rule is to ensure protection of the general public.

The New York City specific modifications include:

- Establishing basic knowledge requirements for learners
- Requiring the supervising licensee to be present in or near the cab or operator’s station when the learner is operating a tower crane
- Prohibiting a learner from operating a hoisting machine when the supervising licensee is on break
- Clarifying that the supervising licensee is responsible for performing New York City mandated inspections and maintain New York City mandated logs
- Prohibiting a learner from performing multiple-lift rigging operations, critical picks, or any operation related to the erection, climbing, jumping, or dismantling of a tower crane
- Clarifying the scope of equipment that can be operated and supervised based on the license type being sought and the license held by the supervising licensee

The Department of Buildings’ authority for these rules is found in sections 643 and 1043 of the New York City Charter and Article 405 of Chapter 4 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. Subchapter D of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new Section 104-23, to read as follows:

**§104-23 Hoisting machine operator learners and supervision of learners.**

**(a) Applicability.** The operation of hoisting machines by a learner must be in accordance with the requirements of this section.

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

Hoisting machine. See Section 3302.1 of the New York city building code.

Hoisting machine operator. An individual licensed as a hoisting machine operator in accordance with Article 405 of Chapter 4 of Title 28 of the New York city administrative code.

Learner. An individual learning to become a hoisting machine operator.

Supervising licensee. The hoisting machine operator who is supervising the learner.

**(c) Basic requirements for learners.** Learners must, at a minimum:

(1) Be at least 18 years of age;

(2) Hold a valid driver's license;

(3) Be able to communicate in the language of the supervising licensee;

(4) Be able to read plans and load charts;

(5) Be familiar with the controls, operating characteristics, and emergency procedures of the hoisting machine to be operated; and

(6) Meet the physical qualifications of section 5-3.1.2(a) of ASME B 30.5-2014, as verified by passing a physical exam and a substance abuse test.

**(d) Supervision by licensee.** The learner must be in the presence of and under the direct supervision of a licensed hoisting machine operator during all times the learner is operating the hoisting machine, as follows:

(1) The supervising licensee and the learner must be in direct communication with each other, either verbally or by hand signals, at all times; and

(2) For hoisting machines other than tower cranes, the supervising licensee and the learner must be in the direct line of sight of each other at all times. For a tower crane, the supervising licensee must be present in or near the crane cab or operators station.

(e) **Breaks.** The learner may not operate the hoisting machine when the supervising licensee is on a break. The hoisting operation must stop and the hoisting machine must be properly secured before the supervising licensee goes on break.

(f) **Responsibility of supervising licensee.** The supervising licensee must:

(1) Ensure the learner safely operates the hoisting machine in accordance with all department regulations, manufacturer specifications, and approved permits or certificates; and

(2) Perform the frequent inspection and the parking/securing inspection for the crane or derrick in accordance with subdivision (k) of section 3319-01 of these rules and maintain the log for the crane or derrick in accordance with subdivision (h) of section 3319-01 of these rules.

(g) **Authority to stop operation.** The supervising licensee has the authority to issue orders to the learner, order the learner to stop operation, and, if necessary, prohibit the learner from operating the hoisting machine.

(h) **Attention to monitoring.** While supervising the learner, the supervising licensee may not perform any tasks that detract from his or her ability to monitor the learner.

(i) **Tasks within learners ability.** The tasks performed by the learner while operating the hoisting machine must be within the learner's ability.

(j) **Restrictions on learners operation.** The learner may not operate a hoisting machine in any of the following circumstances:

(1) If any part of the hoisting machine, load line, or load (including rigging and lifting accessories), if operated up to the hoisting machine's maximum working radius in the work zone as established by clause (A) of subparagraph (ii) of paragraph (3) of subdivision (s) of section 3319-01 of these rules, could get within 20 feet of a power line that is up to 350 kV, or within 50 feet of a power line that is over 350 kV;

(2) If the hoisting machine is used to hoist personnel;

(3) In multiple-equipment lifts;

(4) If the hoisting machine is used over a shaft, cofferdam, or in a tank farm;

(5) In multiple-lift rigging operations;

(6) If the pick is a critical pick as defined in Section 3302.1 of the New York city building code; or

(7) If the operation is related to the erection, climbing, jumping, or dismantling of a tower crane.

**(k) Type, size, and capacity of hoisting machine supervised is within scope of license.**  
Licensed hoisting machine operators may only supervise the operation of a learner on hoisting machinery that is authorized to be operated by the licensee, and where a certification for the operation of a type of hoisting machine has been established in rules promulgated by the commissioner, the licensee possesses the certification for that type of hoisting machine, and such certification has been listed on the hoisting machine operator's license by the department.

**(l) Type, size, and capacity of hoisting machine operated by learner to be within scope of license sought.**  
The learner may only operate hoisting machinery that is authorized by the scope of the license sought. Only a person who possesses a Class A hoisting machine operator license may operate as a learner on hoisting machinery that is authorized to be operated only by a Class B hoisting machine operator.

§2. Exception number 3 to Paragraph (1) of Subdivision (i) of Section 3319-01 of Title 1 of the Rules of the City of New York is hereby amended to read as follows:

3. Learners in the presence of and under the direct supervision of a licensed operator[.] in accordance with section 104-23 of these rules.

**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:** Training for Hoisting Machine Operators

**REFERENCE NUMBER:** 2017 RG 066

**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: September 11, 2017

**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:** Training for Hoisting Machine Operators

**REFERENCE NUMBER:** DOB-97

**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) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

/s/ Shevani Patel  
Mayor's Office of Operations

September 12, 2017  
Date