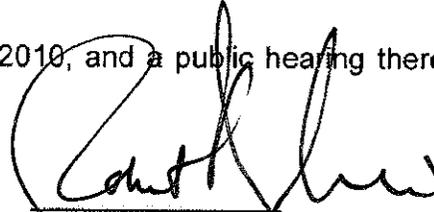


NOTICE OF ADOPTION OF RULE

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter and Article 303 of Title 28 of the New York City Administrative Code, that the Department of Buildings hereby adds a new Section 103-05 to Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York, relating to high-pressure boiler inspection and filing requirements, penalties and waivers.

This rule was first published on August 30, 2010, and a public hearing thereon was held on September 30, 2010.

Dated: 10/12/10
New York, New York



Robert D. LiMandri
Commissioner

Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new Section 103-05 to read as follows:

§103-05 High-pressure boiler inspection and filing requirements, penalties and waivers.

(a) Scope. This rule implements Article 303 of Title 28 of the New York City Administrative Code (“Administrative Code”) by specifying the high-pressure boiler annual inspection requirements, the processes through which the department shall regulate the filings of high-pressure boiler annual inspection reports and shall issue penalties and waivers for failure to file and/or late filing, and the penalties for failure to file and/or untimely filing of a written notice of removal or disconnection of a high-pressure boiler.

(b) References. See Sections 28-201.2.2, 28-202.1 and Article 303 of Title 28 of the Administrative Code.

(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) 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. November 16th of the preceding calendar year through November 15th of the calendar year for which the report is being submitted.

(6) Inspection type. There are two inspection types, an external high-pressure boiler annual inspection and 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 thereof that is filed after the filing deadline.

(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 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.

(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 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. Upon the department's mailing of a notification to an owner stating that the department will not be conducting high-pressure boiler annual inspections for the upcoming inspection cycle, the owner shall be responsible for hiring a qualified boiler inspector to conduct such inspections during such upcoming inspection cycle. 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.

(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) of this section.

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

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

(5) The inspector shall verify that a department-issued boiler number is affixed to the boiler, and such number shall 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 shutdown of the boiler, the inspector shall 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>.

(f) Acceptance of filings. Inspection reports filed after the filing deadline but within twelve (12) months of the date the inspection was conducted shall be considered late filings upon payment of the appropriate civil penalties as set forth in subdivision (i) of this section. Reports filed after such twelve- (12) month period shall be deemed expired. In such cases, the appropriate civil penalties shall be paid, a new inspection shall be performed for the current inspection cycle and a new report filed in accordance with this section.

(g) Ten- (10) day notifications. The inspector shall notify the department at least ten (10) days prior to the performance of an internal high-pressure boiler annual inspection.

(h) Notification of change of address or sale of premises. 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 shall reference the department's boiler number in all correspondence.

(i) 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.

(j) Civil penalties, high-pressure boiler annual inspection report.

(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 from the qualified boiler inspector who conducted the inspection stating 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.

(3) 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

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

(4) 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 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) Waiver of penalties. An owner may request a waiver of penalties assessed for violation of Section 28-303.7 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. 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".

(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.

(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. Upon completion of

such work, an affirmation of correction shall be filed with the department.

(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 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.

(k) 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 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, 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, shall be liable for a civil penalty of 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 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 fee for the filing of a Self-Certification of Removed or Existing Boiler(s) form.

STATEMENT OF BASIS AND PURPOSE

The foregoing rule is promulgated pursuant to the authority of the Commissioner of Buildings under Sections 643 and 1043(a) of the New York City Charter.

In accordance with Section 204 of the New York State Labor Law and Section 14-1.2 of Industrial Code Rule No. 14, this rule implements Article 303 of Title 28 of the New York City Administrative Code by specifying the high-pressure boiler annual inspection requirements, and the processes through which the department will regulate the filings of high-pressure boiler annual inspection reports and issue penalties and waivers for failure to file and/or late filing.

Subdivision (e) of this rule states that if an owner is notified by the department that the department will not be conducting high-pressure boiler annual inspections for the upcoming inspection cycle, that such inspections must be conducted by a qualified boiler inspector in the employ of a duly authorized insurance company. The choice to have high-pressure boiler annual inspections performed by either the department or an inspector employed by an insurance company, as provided by Section 28-303.3 of the Administrative Code, is only available to the owner if the department has the resources to conduct such inspections in a timely fashion.

Under current law, building owners are required to file high-pressure boiler annual inspection reports and to certify that any defects identified in the reports have been corrected. This rule sets forth the manner by which the reports shall be filed and the penalties that will be imposed for failure to comply. Section 28-201.2.2 of the Administrative Code specifies that failure to perform boiler inspections and to file required reports is a major violation and Section 28-202.1(2) of the Administrative Code sets the limits on civil penalties for major violations.

This rule replaces and alters the terms of the department's Administrative Procedure & Policy Notice (APPN) 1/05, which governs the granting of waivers of assessed civil penalties to building owners.

This rule generally maintains the waiver guidelines set forth in the APPN in relation to government ownership, bankruptcy, device status and building status and sets out new criteria under which new owners may be granted waivers. In order to qualify for a waiver of penalties that were issued prior to the owner

taking title to the property, there must be evidence of a broader community benefit. The new owner shall have obtained full tax exemption status from the New York City Department of Finance or shall have taken title to the property as part of an economic development program. By limiting the availability of waivers, the department hopes to eliminate a loophole in current law allowing a simple transfer of property to qualify as a basis for a waiver of penalties.

The rule also establishes as a lesser violation the failure to file and/or untimely filing of a written notice of removal or disconnection of a high-pressure boiler (a Self-Certification of Removed or Existing Boiler(s) form) in accordance with Sections 28-202.1 and 28-303.8 of the Administrative Code, and sets the penalties for the violation.