



Promulgation Details for 1 RCNY 32-03

This rule became effective on March, 27, 2009.

Since such date, one or more amendments have been made to this rule. Each rule amendment has its own effective date and Statement of Basis and Purpose.

Below you will find one or more rule amendments (the most recent appearing at the top), followed by the original rule.

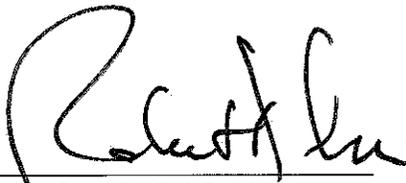
The effective date of each amendment and the original rule can be found at the top of each "NOTICE OF ADOPTION OF RULE."

NOTICE OF ADOPTION OF RULE

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of the Department of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter, that the Department of Buildings hereby adopts the repeal of sections 32-01, 32-02 and 32-04 and renumbering and amendment of section 32-03 of Title 1 of the Official Compilation of the Rules of the City of New York regarding façade inspections.

This rule was first published on October 15, 2010 and a public hearing thereon was held on November 15, 2010.

Dated: Dec 20, 2010
New York, New York


Robert D. LiMandri
Commissioner

Section 1. Sections 32-01, 32-02 and 32-04 of title 1 of the rules of the city of New York, relating to the design and installation of curtain walls and panel walls, dangerous conditions of a building's exterior walls and appurtenances, and masonry parapet walls are hereby REPEALED.

§2. Section 32-03 of title 1 of the rules of the city of New York is hereby renumbered section 103-04.

§[32-03] 103-04 **Periodic Inspection of Exterior Walls and Appurtenances of Buildings.**

§3. The definition of *Acceptable report* set forth in subdivision a of section 103-04 of title 1 of the rules of the city of New York, as renumbered by this rule, is amended as follows and a new definition of *Filed report* is added between the definitions of *Critical examination* and *Filing window*, as follows:

Acceptable report. A technical examination report filed by a Qualified Exterior Wall Inspector that meets the requirements of the Administrative Code and this rule as determined and approved by the Department. [A report shall be deemed filed with the Department only when it has been submitted to, received, reviewed, and accepted by the Department.]

Filed report. A report shall be deemed filed with the Department when it has been received by the Department. The filed report shall be completed in accordance with the provisions of paragraph 3 of subdivision b of this section.

§4. Subparagraphs ii, iii and iv of paragraph 2 of subdivision b of section 103-04 of title 1 of the rules of the city of New York are amended as follows:

(ii) Such examination shall be conducted and witnessed by or under the direct supervision of a QEWI retained by [or on behalf of] the owner of the building or his or her representative.

(iii) The QEWI shall [determine] design an inspection program for the specific building to be inspected, which shall include, but not be limited to, the methods to be employed in the examination.[, but he/she] The inspection program shall be based on considerations of the type of construction of the building's envelope, age of the material components, the façade's specific exposure to environmental conditions and the presence of specific details and appurtenances. Consideration shall be given to the facade's history of maintenance and repairs as described in previous reports and submittals to the department.

Except as provided in subparagraph viii of paragraph 2 of subdivision b of this section, the QEWI need not be physically present at the location [where]when the examination is made. [Under] Architects, engineers, tradesmen and technicians, working under the QEWI's direct supervision, [technicians, tradesmen, contractors, and engineers-in-training] may be delegated to perform selected inspection tasks[. These individuals need not be in the QEWI's employ] only when they are employees or subcontractors of the QEWI.

(iv) The methods used to examine the building shall permit a complete inspection of same. Except as herein required, the use of a scaffold or other observation platform is preferred, but the QEWI may use other methods of inspection as he/she deems appropriate. A physical examination from a scaffold or other observation platform (a “close-up inspection”) is required for a representative sample of the exterior wall. The QEWI shall determine what constitutes a representative sample. The representative sample shall include at least one physical examination along a path from grade to top of an exterior wall on a street front using at least one scaffold drop or other observation platform configuration, including all setbacks.

§5. Paragraph 2 of subdivision b of section 103-04 is amended by adding a new subparagraph viii to read as follows:

(viii) Completion of a critical examination shall mean that the QEWI has conducted a final physical inspection to determine that the building conditions as described in the report are consistent with the actual conditions. Such final inspection shall, at a minimum, include an actual visual examination and a walk around with binoculars or other inspectorial equipment. A drive-by inspection is not acceptable.

§6. Subparagraph i of paragraph 3 of subdivision b of section 103-04 is amended as follows:

(i) The QEWI shall [submit to] file with the Department and submit a copy to the owner of the building a written report [as to] describing the result of the critical examination, clearly documenting all conditions noted during the inspection and stating that the inspection was performed and completed in accordance with the Administrative Code and this rule. A separate acceptable report must be prepared and filed for each building, even if it shares a Block and Lot number with other structures.

§7. Items D, G, I, J, M(1), O and P of subparagraph iii of paragraph 3 of subdivision b of section 103-04 are amended as follows:

(D) A detailed description of any settlements, repairs, or revisions to exterior enclosures since the previous report[, if available];

(G) A [report of all]description and classification of each significant condition[s] observed, including:

1. [Significant] deterioration and any movement detected; and
2. [A statement concerning] the apparent water-tightness of the exterior surfaces[;].

[3. A classification of each]Each condition shall be classified as safe, unsafe or SWARMP[;]. If the building is classified as “safe,” all conditions noted during examination that require monitoring and/or routine maintenance, including, but not limited to, minor rusting at ground floor exit door, caulking exterior joints and repair of flashing at cant strip shall be included. If the building is classified as “SWARMP” or unsafe, the report shall include the locations and descriptions of all SWARMP or unsafe conditions.

[4. The deleterious effect, if any, of]The observation shall also include the condition of the exterior appurtenances, including, but not limited to, exterior fixtures, flagpoles, signs, parapets, copings, guard rails, window frames (including hardware and lights), balcony enclosures, window guards, window air conditioners, flower boxes[,] and [communications] any equipment attached to or protruding from the façade. The condition of window air conditioners may not be designated as SWARMP[; and].

[5. If the classification of the building is “safe,” all conditions noted during examination that require monitoring and/or routine maintenance, including, but not limited to, minor rusting at ground floor exit door, caulking exterior joints and repair of flashing at cant strip.]

[6. A list of locations and descriptions of all SWARMP and unsafe conditions.]

(I) [The] A detailed status [of the exterior maintenance] report of maintenance work performed up to the date of submission of the report;

(J) A comparison of currently observed conditions with conditions observed during the previous report filing cycle examinations, including the status of the repairs or

maintenance performed with respect to the prior conditions. The following shall be [listed in the comparison] included and discussed:

1. Work permit numbers relating to façade repairs, including permits for sheds;
2. Job numbers, status and sign-off dates for any façade related jobs, where applicable; and
3. Violation numbers of any open Environmental Control Board (“ECB”) façade violations and the status of the repairs of the conditions cited in the ECB violations;

(M) 1. Color [P]photographs of the primary house number and at least one view of the entire street front elevation for all reports regardless of the building’s filing condition, and color photographs and sketches documenting [the location of] any conditions that are either unsafe or SWARMP and their locations. Photographs shall be at least 3” x 5” (76mm x 127mm) in size, unless otherwise requested by the Department. The photographs shall be dated and both the original photographs and all required copies shall be in color.

(O) The seal and signature of the QEWI under whose direct supervision the critical examination was performed.

[P] Appendices.

1. BIS Property Profile Overview
2. ECB facade violation summary
3. ECB violation details for any facade-related violations
4. BIS Document Overview for facade-related alteration and shed applications]

§8. Subparagraphs i and iii, items A and B of subparagraph viii and subparagraph ix of paragraph 4 of subdivision b of section 103-04 are amended as follows:

- (i) The requirements of this rule shall apply to all buildings with exterior walls or parts thereof that are greater than six stories in height, including the basement, but not the cellar, as defined in the building code, and regardless of the information in the Certificate of

Occupancy. For buildings constructed on sloped sites that contain six (6) full stories plus one partial story where more than half the height of that partial story is above existing grade and/or adjacent to open areas (e.g., areaways, yards, ramps), the wall containing that partial story shall be subject to façade inspection. Conditions requiring façade inspections may also include other structures that add to the height of the building as per section BC 504. The Commissioner shall determine which additional buildings and/or parts thereof are required to file in accordance with this rule.

(iii) An acceptable report shall be filed within the applicable two-year filing window to avoid a late filing penalty, except for cycle seven, during which the applicable filing window shall be:

(A) two years for buildings that meet the requirements of item (A) of clause (v) of this paragraph,

(B) eighteen months for buildings that meet the requirements of item (B) of clause (v) of this paragraph and

(C) twelve months for buildings that meet the requirements of item (C) of clause (v) of this paragraph.

[The late filing penalty shall be two hundred fifty dollars (\$250) for each month until the report is accepted by the Department.]

(viii) If contiguous zoning lots under single ownership or management contain multiple buildings that are considered one complex where at least two buildings of more than six stories in height fall into different filing windows as described above in items (A), (B) and (C) of clauses (v) and (vi) of this paragraph, the owner or management shall choose one of the following report filing options:

(A) An acceptable report for each building to which this rule applies may be filed separately according to the filing window corresponding to the last digit of that individual building's block number; or

(B) The owner or his or her representative may choose one of the applicable filing windows and file a report for all of the buildings within that filing window, regardless of that building's individual filing window. The owner or his or her representative shall

inform the Department 180 days prior to the end of the assigned filing window if this option is chosen. If an owner or [management] representative chooses this option, the owner or [management] representative shall continue to file under this same filing window for the duration of [his, her or its control] the owner's ownership of the property.

(ix) A report shall be filed within sixty (60) days of the date on which the QEWI completed the critical examination, as defined in subparagraph viii of paragraph 2 of subdivision b of this section, but not more than one (1) year after completion of the close-up inspection. If the report is not acceptable and is rejected by the Department, a revised report shall be filed within forty-five (45) days of the date of the Department's rejection. Failure to submit a revised report addressing the Department's objections within one (1) year of the initial filing shall require a new critical examination, including a new close-up inspection.

§9. Subparagraphs i, ii and iii of paragraph 5 of subdivision b of section 103-04 are amended as follows:

(i) Upon filing a report of an unsafe condition with the Department, the owner of the building, his or her agent, or the person in charge of the building shall immediately commence such repairs or reinforcements and any other appropriate measures such as erecting sidewalk sheds, fences, and safety netting as may be required to secure the safety of the public and to make the building's walls and appurtenances thereto conform to the provisions of the Administrative Code.

(ii) All unsafe conditions shall be corrected within thirty (30) days from the [filing] submission of the critical examination report.

(iii) Within two weeks after repairs to correct the unsafe condition have been completed, the QEWI shall inspect the premises. The QEWI shall obtain permit sign-offs as appropriate and shall promptly file with the Department a detailed amended report stating the revised report status of the building, along with a filing fee as specified in the rules of the Department. Sheds or other protective measures shall remain in place until an amended report is accepted; however, the QEWI may request permission for the removal of the shed upon submission of a signed and sealed statement certifying that an inspection was conducted, the conditions were

corrected and the shed is no longer required. Permission to remove the shed may be granted in the Commissioner's sole discretion.

§10. Subparagraphs i and ii of paragraph 6 of subdivision b of section 103-04 are amended as follows:

(6) Conditions that are safe with a repair and maintenance program.

(i) The owner of the building is responsible for ensuring that the conditions described in the critical examination report as SWARMP are repaired and all actions recommended by the QEWI are completed within the time frame recommended by the QEWI, and are not left to deteriorate into unsafe conditions before the next critical examination. It is the owner's responsibility to notify the Department of any deviation from the timeframe to make corrections as specified in the QEWI's report. Such notification shall be accompanied by supporting documents from the QEWI justifying the request for a new time frame. The department may approve or disapprove such request.

(ii) A report may not be filed describing the same condition and pertaining to the same location on the building as SWARMP [for the same building] for two consecutive report filing cycles.

§11. Subdivision c of section 103-04 is re-lettered subdivision d and a new subdivision c is added to read as follows:

(c) Civil penalties.

(1) Failure to file. An owner who fails to file the required acceptable inspection report shall be liable for a civil penalty of one thousand dollars (\$1,000) per year immediately after the end of the applicable filing window.

(2) Late filing. In addition to the penalty for failure to file, an owner who submits a late filing shall be liable for a civil penalty of two hundred fifty dollars (\$250.00) per month, commencing on the day following the filing deadline of the assigned filing window period and ending on the filing date of an acceptable initial report.

(3) In addition to the penalties provided in this section, an owner who fails to correct an unsafe condition shall be liable for a civil penalty of one thousand dollars (\$1,000) per month, pro-rated daily, until the unsafe condition is corrected, unless the commissioner grants an extension of time to complete repairs pursuant to this section. This penalty shall be imposed until receipt of an acceptable amended report by the department indicating the unsafe conditions were corrected or an extension of time is granted.

(4) Challenge of civil penalty.

(i) An owner may challenge the imposition of any civil penalty authorized to be imposed pursuant to this subdivision by providing proof of compliance. Examples of such proof shall include, but are not limited to, a copy of an acceptable initial report, a copy of the acceptable amended report, copies of approved extension of time requests while work was/is in progress or written proof from a QEWI that the unsafe conditions observed at the building were corrected and the violation was dismissed.

(ii) 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.

§12. Paragraph 1 of subdivision d of section 103-04 is amended by adding a new subparagraph iii to read as follows:

(iii) 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.”

§13. Section 101-03 of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York is amended to add the following fees at the end of the table set forth in that section, to read as follows:

§101-03 Fees payable to the Department of Buildings. The department shall be authorized to charge the following fees:

<u>Façade inspection reports</u>	
• <u>Initial filing</u>	<u>\$265</u>
• <u>[Application for amendment]Amended/subsequent filing</u>	<u>\$100</u>
• <u>Application for extension of time to complete repairs</u>	<u>\$135</u>

STATEMENT OF BASIS AND PURPOSE

The foregoing rule amendments are adopted pursuant to the authority of the Commissioner of Buildings under Sections 643 and 1043(a) of the New York City Charter and section 28-302.2 of the New York City Administrative Code.

Sections 32-01, 32-02 and 32-04 are being repealed because their provisions are now covered in the building code or in this rule.

Rule 32-03 is renumbered to conform to the new rule numbering scheme the department is now using. It is also amended to clarify some provisions that were unaddressed in the previous amendment. These include: separating filing of a report from acceptance of a report by the department in order to clarify that the reporting requirement is satisfied when the department determines the report meets all Code requirements, as opposed to being satisfied upon the mere filing of the report, which could contain errors or omissions; specifying the duties of a QEWI; defining what constitutes a critical examination and when a new one should be performed; and clarifying how stories are counted on buildings constructed on sloped sites, for the purpose of determining the applicability of this rule. These changes address issues that have arisen since the rule was amended in 2009.

The rule replaces Technical Policy and Procedure Notice #5/99, which addresses which exterior building walls are exempt from or subject to inspections.

The rule is also amended to add penalties for failure to file a report and a penalty for failure to correct an unsafe condition. In addition, filing fees are added to cover the administrative costs of the program.

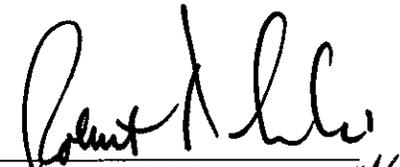
This rule has an effective date of 03-27-09.

NOTICE OF ADOPTION OF RULE

NOTICE IS HEREBY GIVEN, pursuant to the authority vested in the Commissioner of the Department of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter, that the Department of Buildings hereby adopts the amendments to section 32-03 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding periodic inspections of exterior walls and appurtenances.

This rule was first published on November 13, 2008 and a public hearing thereon was held on December 15, 2008.

Dated: 2/17/09
New York, New York



Robert D. LiMandri *RLS*
Commissioner

Section 32-03 of Title 1 of the Rules of the City of New York is amended to read as follows:

§ 32-03 Periodic Inspection of Exterior Walls and Appurtenances of Buildings.

(a) Definitions.

Acceptable report. A technical examination report filed by a Qualified Exterior Wall Inspector that meets the requirements of the Administrative Code and this rule as determined by the Department. A report shall be deemed filed with the Department only when it has been submitted to, received, reviewed, and accepted by the Department.

Amended report. A technical examination report filed by a Qualified Exterior Wall Inspector who certifies that the unsafe conditions reported in the initial report have been repaired and that no unsafe conditions exist at the building.

Critical examination. [The term “critical examination” shall mean an] An examination conducted to review the exterior of a building and all parts thereof to determine whether the exterior walls (façades) and the appurtenances thereto are either safe, unsafe, or safe with a repair and maintenance program and whether, in the judgment of a [Registered Architect or Professional Engineer] Qualified Exterior Wall Inspector, they require remedial work.

Filing window. The two-year period during which a report for a particular building may be filed without penalty.

Qualified Exterior Wall Inspector (hereinafter “QEWI”). A qualified exterior wall inspector as defined in section 101-07 of the rules of the department.

Report filing cycle. The five-year time interval established by the Commissioner for the filing of each successive report for each successive critical examination of every building subject to the requirements of Article 302 of Title 28 of the Administrative Code.

Safe. [The term “safe” shall mean a] A condition of a building wall, any appurtenances thereto or any part thereof not requiring repair or maintenance to sustain the structural integrity of the exterior of the building and that will not become unsafe during the next five years.

Safe with a repair and maintenance program (hereinafter “SWARMP”). [The term “safe with a repair and maintenance program” shall mean a] A condition of a building wall, any

appurtenances thereto or any part thereof that is safe at the time of inspection, but requires repairs or maintenance during the next five years in order to prevent its deterioration [during that five year period] into an unsafe condition during that five-year period.

[Standard reporting period. The term “standard reporting period” shall mean the time interval established by the Commissioner of Buildings for the filing of each successive report for each successive critical examination of every building subject to the requirements of Local Law 10 for the Year 1980 as amended by Local Law 11 for the Year 1998.]

Staggered inspection cycle. The separate time intervals for filing reports of critical examinations as determined by the last digit of the building’s block number, beginning February 21, 2010, and continuing thereafter for each subsequent report filing cycle.

Subsequent report. A technical examination report that is filed by a QEWI after an acceptable report in order to change the status of the building for that report filing cycle to reflect changed conditions.

Unsafe condition. [The term “unsafe condition” shall mean a] A condition of a building wall, any appurtenances thereto, or any part thereof that is [dangerous] hazardous to persons or property and requires prompt [remedial action] repair. In addition, any condition [which] that was reported as [safe with a repair and maintenance program] SWARMP in [an earlier] a previous report and [which] that is not corrected at the time of the current inspection shall be reported as an unsafe condition.

(b) Critical examinations.

(1) [Requirements] Periodic inspection requirements. **(i)** In order to maintain a building's exterior walls and appurtenances thereto in a safe condition, and in accordance with [§27-129] Article 302 of Title 28 of the Administrative Code, a critical examination of all parts of all exterior walls and any appurtenances thereto [shall be conducted at periodic intervals, which are at least once every five years, of all existing buildings or buildings hereafter erected that are greater than six stories in height] of all existing buildings greater than six stories in height or buildings hereafter erected that are greater than six stories in height, except for those parts of any exterior wall [which] that are less than twelve inches (305 millimeters) from the exterior wall of an adjacent building, shall be conducted at periodic intervals.

[(ii)The second critical examination shall be conducted within two years after February 21, 1985 for all buildings covered by the first examination cycle. The initial critical examination for any building erected subsequent to February 21, 1982 shall be conducted in the fifth year following the erection or installation of any exterior walls and/or enclosures. Subsequent critical examinations shall be conducted within five years from the previous examination.

(iii) Regarding buildings in existence on March first, nineteen hundred ninety-eight, initial critical examinations of exterior walls or parts thereof and any appurtenances thereto which were not subject to such examinations under the provisions of paragraph (i) of subdivision (1) of section (b) of these rules in effect prior to March first, nineteen hundred ninety-eight, and which did not have a critical examination for which a report was filed prior to February twenty-first, nineteen hundred ninety-seven, shall be conducted prior to March first, two thousand.]

(2) Inspection procedures.

(i) Before any exterior wall for any building is critically examined, the [Registered Architect or Licensed Professional Engineer (hereinafter referred to as "professional")] QEWI [employed by] retained by or on behalf of the owner of the building shall carefully review the most recent report and any [previous] available previous reports. The [Buildings] Department will maintain a file of such reports submitted in conformance with [§27-129] the law in effect prior to July 1, 2008 and with Article 302 of Title 28 of the New York City Administrative Code, and furnish copies upon payment of fees set forth in [§26-214] the rules of the Department.

(ii) Such examination shall be conducted and witnessed by or under the supervision of a [professional] QEWI retained by or on behalf of the owner of the building. [It shall be done to the best of his/her knowledge and belief.]

(iii) The [professional] QEWI shall determine methods employed in the examination, but he/she need not be physically present at the location where the examination is made. Under the [professional's] QEWI's supervision, technicians, tradesmen, contractors, and engineers-in-training may be delegated selected inspection tasks. These individuals need not be in [his/her] the QEWI's employ.

(iv) The methods used to examine the building shall permit a complete inspection of same. Except as herein required, the use of a scaffold or other observation

platform is preferred, but the [professional] QEWI may use other methods of inspection as he/she deems appropriate. A physical examination from a scaffold or other observation platform is required for a representative sample of the exterior wall. The [professional] QEWI shall determine what constitutes a representative sample. The representative sample [must] shall include at least one physical examination along a path from grade to top of an exterior wall on a street front using at least one scaffold drop or other observation platform configuration, including all setbacks.

(v) The known history of the building, the nature of the materials used and the conditions observed will dictate the extent of the critical examination.

The [registered architect or licensed professional engineer] QEWI shall utilize a professional standard of care to [detect] assess the building's condition, including splitting or fracturing of terra cotta on buildings, cracking of masonry and brick work in brick faced buildings, loosening of metal anchors and supports, water entry, movement of lintel angles, [etc.,] and shall ascertain the cause of these and such other conditions detected. The [professional] QEWI shall order any special or additional inspections and/or tests that may be required to support investigations and to determine the causes of any defects.

The removal of portions of the façade in order to facilitate the performance of tests may require a permit from the Landmarks Preservation Commission.

(vi) During the course of the critical examination, photographs shall be taken and/or sketches made to properly document the location of all conditions observed that are either unsafe or [safe with a repair and maintenance program]SWARMP.

(vii) Upon discovery of any unsafe condition the [professional] QEWI shall immediately notify the [Borough Commissioner] Department and the owner of the building by letter or by fax, in a form and manner as provided by the Department.

(3) Report requirements.

(i) The [professional] QEWI shall submit to the [Commissioner] Department and to the [Owner] owner of the building a written report as to the result of [such] the critical examination, clearly documenting all conditions [not classified as safe]

and stating that the inspection was performed and completed in accordance with the [New York City] Administrative Code and this rule. A separate report must be prepared and filed for each building, even if it shares a Block and Lot number with other structures.

(ii) Technical information in the report shall adhere to and follow the sequence and the labeling of the report requirements as listed in paragraph (iii) of this subdivision, and shall be provided on such forms and in such format as the Department shall require. Additional information may be provided. All letters (A – P) shall be listed in the report. If a requirement is not applicable, this shall be indicated on the report under the relevant letter.

(iii) The report shall include:] an executive overview that shall consist of a summary of findings and recommendations, a concise statement of the scope of the inspection and findings, the conclusions and recommendations and a determination as to whether the building is categorized as “safe,” “SWARMP,” or “unsafe.” The report shall also include, but shall not be limited to:

- (A) The address, any a.k.a. addresses, Block and Lot number, the Building Identification Number (“BIN”), the landmark status of the building, the location from the nearest cross street, and [Block and Lot numbers] a copy of the Property Profile Overview from the Buildings Information System (“BIS”) found on the Department’s website;
- (B) [The landmark status of the building;
- (C) The name, mailing address and telephone number of the owner of the building[, his agent or the person in charge, possession or control of the building], or, if the owner is not an individual, the name, mailing address, telephone number, position/title of a principal of the owner;
- [(D) (a) (C) [The] A description of the building, including the number of stories, height, plan dimensions, Certificate of Occupancy number if available, usage, and age and type of exterior wall construction;
- [(b) (D) [Brief history] A detailed description of any settlements, repairs, or revisions to exterior enclosures since the previous report, if available;

(E) A detailed description of the procedures used in making the critical examination;

(F) A detailed description of [the]:

1. The extent and location of all physical examinations performed;

2. The names, addresses, telephone numbers, and license or registration numbers for riggers and other consultants involved in the critical examination;

3. A location diagram of a discernable scale and with a north arrow, indicating the main entrance and nearest cross street and locations and dates of close-up inspections; and

4. Dates of the start and completion of the critical examination;

(G) A report of all conditions observed, including[significant]:

1. Significant deterioration and any movement [observed]detected;

2. [as well as a] A statement concerning the apparent water-tightness of the exterior surfaces; [, and the deleterious effect of exterior appurtenances, including exterior fixtures, flagpoles, signs, parapets, copings, guard rails, window frames (including hardware and lights), window guards, window air conditioners, flower boxes, etc.]

3. [The report shall classify]A classification of each [such] condition as safe, unsafe or [safe with a repair and maintenance program] SWARMP;

4. The deleterious effect, if any, of exterior appurtenances, including exterior fixtures, flagpoles, signs, parapets, copings, guard rails, window frames (including hardware and lights), window guards, window air conditioners, flower boxes, and communications equipment. The condition of window air conditioners may not be designated as SWARMP; and

5. If the classification of the building is “safe,” all conditions noted during examination that require monitoring and/or routine maintenance, including, but not limited to, minor rusting at ground

floor exit door, caulking exterior joints and repair of flashing at cant strip.

(H) [The] An analysis of the causes of the [reported] conditions[;] reported as unsafe or SWARMP;

(I) The status of the exterior maintenance;

[(J) Comparison of observed conditions with conditions observed during previous examinations, including status of the repairs or maintenance performed with respect to the prior conditions;

(K) Recommendations for repairs or maintenance, if appropriate, including the recommended time frame for same to be performed;

(L) Date of start and completion of the critical examination;

(M) The seal and signature of the professional under whose supervision the critical examination was performed shall be on the written report;

(N) If there are no unsafe conditions and no conditions that are safe with a repair and maintenance program, then the building shall be classified as safe;

(O) If there is at least one unsafe condition, then the building shall be classified as unsafe;

(P) If there is (are) a(ny) condition(s) that is (are) safe with a repair and maintenance program and there are no unsafe conditions, then the building shall be classified as safe with a repair and maintenance program;

(Q) The professional shall not file a report of the same condition that is safe with a repair and maintenance program for the same building for two consecutive filing periods. Unless the professional certifies to the correction of all conditions identified in the earlier report as requiring repair the building shall be classified as unsafe;

(R) Photographs and/or sketches documenting the location of any conditions that are either unsafe or safe with a repair and maintenance program;

(S) A statement by the professional indicating which repairs and/or maintenance require the obtaining of work permits prior to their commencement.]

(J) A comparison of currently observed conditions with conditions observed during the previous report filing cycle examinations, including

the status of the repairs or maintenance performed with respect to the prior conditions. The following shall be listed in the comparison:

1. Work permit numbers relating to façade repairs, including permits for sheds;
2. Job numbers and sign-off dates for any façade related jobs; and
3. Violation numbers of any open Environmental Control Board (“ECB”) façade violations;

(K) Detailed recommendations for repairs or maintenance of SWARMP items, including:

1. The recommended time frame for such repairs or maintenance to be performed, which shall indicate the date by which the work shall be performed (MM/YYYY) to prevent the conditions from becoming unsafe and not the date on which work is planned or scheduled;
2. Time frames of less than one (1) year, “ASAP,” or “immediately,” shall not be accepted.

(L) A list and description of the work permits required to accomplish the necessary work. If no work permits will be required, the reason shall be indicated;

(M) 1. Photographs of at least one view of the entire street front elevation for all reports regardless of the building’s filing condition, and photographs and sketches documenting the location of any conditions that are either unsafe or SWARMP. Photographs shall be at least 3” x 5” (76mm x 127mm) in size, unless otherwise requested by the Department.

2. The page/sheet size for attachments shall not exceed 11” x 17” (280mm x 430mm).

(N) The classification of the building for the current report filing cycle, as determined by the following guidelines:

1. If there are no unsafe conditions and no conditions that are SWARMP, then the building shall be classified as safe;

2. If there is at least one unsafe condition, then the building shall be classified as unsafe.

3. If there is at least one condition that is SWARMP and there are no unsafe conditions, then the building shall be classified as SWARMP. A report may not be filed describing the same condition at the same location as SWARMP for two consecutive report filing cycles. The QEWI shall certify that all of the conditions identified in the previous report as requiring repair have been corrected or the building shall be classified as unsafe;

(O) The seal and signature of the QEWI under whose supervision the critical examination was performed.

(P) Appendices.

1. BIS Property Profile Overview

2. ECB facade violation summary

3. ECB violation details for any facade-related violations

4. BIS Document Overview for facade-related alteration and shed applications

[(4) Report filing requirements.

(i) Any building existing as of the date of the passage of Local Law 10 of 1980 shall file a report of the second examination of the building's exterior walls and appurtenances thereto no sooner than February 21, 1985 and no later than February 21, 1987, and thereafter no sooner or no later than February 21 of each fifth subsequent year.

(ii) Any building of which the erection or installation of any exterior wall or enclosures reached a height greater than six stories or for which a Temporary Certificate of Occupancy or Certificate of Occupancy was received prior to January 1, 1983 shall be required to file a report no later than February 21, 1987, and thereafter no later than February 21 of each fifth subsequent year.

(iii) Any other building of which the erection or installation of any exterior wall or enclosures reaches a height greater than six stories shall be required to file an initial report five years from the date when such height is obtained, and thereafter a report each subsequent fifth year; however,

such initial report shall be filed no later than five years from the date a Temporary Certificate of Occupancy, or Certificate of Occupancy, whichever is sooner, is received.

However, if the date reached five years from such issuance falls between the standard reporting periods, the filing shall be made during the first standard reporting period following the five-year date.

(iv) Persons or entities wishing to perform the critical examinations of and the report filing for the exterior walls referenced in Section (b) (1) (iii) of these rules in conjunction with the critical examinations of, and the report filing for the exterior walls otherwise scheduled for critical examinations and report filing from February twenty-first, two thousand until February twenty-first, two thousand two may perform such combined critical examinations and file such combined reports no earlier than February twenty-first, nineteen hundred ninety-nine and no later than March first, two thousand.

(v) Each written report shall be accompanied by a signed statement by the owner of the building acknowledging receipt of a copy of it and acknowledging awareness of the required repairs and/or maintenance, if any, and the time frame for same.

(vi) Each written report shall be submitted in original and in microfilm form to the appropriate Borough Office of the Department of Buildings. It shall be accompanied by an Exterior Periodic Inspection Report Form in triplicate, one copy of which may be retained by the applicant.]

(4) Report filing requirements.

(i) The requirements of this rule shall apply to all buildings with exterior walls or parts thereof that are greater than six stories in height, including the basement, but not the cellar, as defined in the building code, regardless of the information in the Certificate of Occupancy. The Commissioner shall determine which additional buildings are required to file in accordance with this rule.

(ii) Buildings required to file a report shall do so once during each five-year report filing cycle established by the Department. The next complete report filing cycle, cycle seven, runs from February 21, 2010 to February 20, 2015.

(iii) An acceptable report shall be filed within the applicable two-year filing window to avoid a late filing penalty, except for cycle seven, during which the applicable filing window shall be:

(A) two years for buildings that meet the requirements of item (A) of clause (v) of this paragraph.

(B) eighteen months for buildings that meet the requirements of item (B) of clause (v) of this paragraph and

(C) twelve months for buildings that meet the requirements of item (C) of clause (v) of this paragraph.

The late filing penalty shall be two hundred fifty dollars (\$250) for each month until the report is accepted by the Department.

(iv) The report shall be submitted to the Department along with a filing fee as specified in the rules of the Department.

(v) Beginning with cycle seven, which runs from February 21, 2010 to February 20, 2015, an acceptable report for each building to which this rule applies is due in accordance with the following filing windows:

(A) For buildings located within a block ending with the number four (4), five (5), six (6), or nine (9), an acceptable report shall be filed within the filing window starting February 21, 2010 and ending February 21, 2012.

(B) For buildings located within a block ending with the number zero (0), seven (7), or eight (8), an acceptable report shall be filed within the filing window starting February 21, 2011 and ending August 21, 2012.

(C) For buildings located within a block ending with the number one (1), two (2), or three (3), an acceptable report shall be filed within the filing window starting February 21, 2012 and ending February 21, 2013.

(vi) For every five-year report filing cycle thereafter an acceptable report is due in accordance with the following filing windows:

(A) For buildings located within a block ending with the number four (4), five (5), six (6), or nine (9), an acceptable report shall be filed within the two-year filing window starting February 21 of years ending in zero (0) and five (5) and ending February 21 of years ending in two (2) and seven (7).

(B) For buildings located within a block ending with the number zero (0), seven (7), or eight (8), an acceptable report shall be filed within the two-

year filing window starting February 21 of years ending in one (1) and six (6) and ending February 21 of years ending in three (3) and eight (8).

(C) For buildings located within a block ending with the number one (1), two (2), or three (3), an acceptable report shall be filed within the two-year filing window starting February 21 of years ending in two (2) and seven (7) and ending February 21 of years ending in four (4) and nine (9).

(vii) Initial reports for new buildings greater than six stories in height shall be filed as follows:

(A) The report shall be filed five years from the date the first Temporary Certificate of Occupancy or Certificate of Occupancy was issued, if that five year date falls within the applicable filing window according to the last digit of the building's block number as provided in clause (v) or (vi) of this paragraph; or

(B) If five years from the date the first Temporary Certificate of Occupancy or Certificate of Occupancy was issued falls outside the applicable filing window according to the last digit of the building's block number as provided in clause (v) or (vi) of this paragraph, then the initial report shall be filed within the applicable two-year filing window for the next five-year cycle.

(viii) If contiguous zoning lots under single ownership or management contain multiple buildings that are considered one complex where at least two buildings of more than six stories in height fall into different filing windows as described above in items (A), (B) and (C) of clauses (v) and (vi) of this paragraph, the owner or management shall choose one of the following report filing options:

(A) A report for each building to which this rule applies may be filed separately according to the filing window corresponding to the last digit of that individual building's block number; or

(B) The owner may choose one of the applicable filing windows and file a report for all of the buildings within that filing window, regardless of that building's individual filing window. If an owner or management chooses this option, the owner or management shall continue to file under this

same filing window for the duration of his, her or its control of the property.

(ix) A report shall be filed within sixty (60) days of the date on which the QEWI completed the critical examination.

(x) A subsequent report indicating revised conditions may be filed within a five-year report filing cycle to change a building's filing status for that cycle.

(xi) The Department retains the right to destroy any copy of reports not picked up by the owner within thirty (30) days after the date of its acceptance or rejection by the Department.

(5) Unsafe conditions.

(i) Upon [the] filing [of the professional's]a report of an unsafe condition with the Department, the [Owner]owner of the building, his or her agent, or the person in charge of the building shall immediately commence such repairs or reinforcements and any other appropriate measures such as erecting sidewalk sheds, fences, and[/or] safety netting as may be required to secure the safety of the public and to make the building's walls and[/or] appurtenances thereto conform to the provisions of the [Building] Administrative Code.

(ii) All unsafe conditions shall be corrected within thirty (30) days from the filing of the critical examination report.

[(iii) The professional shall inspect the premises and file a detailed amended report stating the condition of the building with the Borough office within two weeks after repairs to correct the unsafe condition have been completed.]

(iii) Within two weeks after repairs to correct the unsafe condition have been completed, the QEWI shall inspect the premises. The QEWI shall obtain permit sign-offs as appropriate and shall promptly file with the Department a detailed amended report stating the revised report status of the building, along with a filing fee as specified in the rules of the Department.

(iv) The Commissioner may grant an extension of time of up to ninety (90) days to complete the repairs required to remove an unsafe condition upon receipt and review of an initial extension application submitted by the [professional] QEWI, together with:

- (A)[Copy] A copy of the original report for that report filing cycle [with attachments]and all required documentation submitted with such report;
- (B) Notice that the premises have been [made safe]secured for public safety by means of a shed, fence, or other appropriate measures as may be required;
- (C) [Copy] A copy of the contract indicating scope of work to remedy unsafe conditions;
- (D)[Professional's] The QEWI's estimate of length of time required for repairs;
- (E) A statement of all applicable permit requirements;
- ([E]F) [Notarized] A notarized affidavit by the owner of the building that work will be completed within [stated]the time of [professional's]the QEWI's stated estimate[.]; and
- (G) a fee as specified in the rules of the Department.

Financial considerations shall not be accepted as a reason for granting an extension.

(v) A further extension will be considered only upon receipt and review of a further extension application, together with notice of:

- (A) [Substantial completion of work but subject to an] An unforeseen delay (e.g., weather, labor strike)[,] affecting the substantially completed work; or
- (B) Unforeseen circumstances (e.g., fire, building collapse)[,]; or
- (C) [Nature] The nature of the hazard that requires more than ninety (90) days to [remove]remedy (e.g., new wall to be built).

Financial considerations shall not be accepted as a reason for granting an extension.

(6) Conditions that are safe with a repair and maintenance program.

(i) The owner of the building is responsible for ensuring that the conditions described in the critical examination report as [safe with a repair and maintenance program]SWARMP are repaired and all actions recommended by the [professional] QEWI are completed within the [required] time frame recommended by the

QEWI, and are not left to deteriorate into unsafe conditions before the next critical examination.

(ii) [The professional shall not file a] A report [of] may not be filed describing the same condition [that is safe with a repair and maintenance program] as SWARMP for the same building for two consecutive report filing [periods.]cycles.

(iii) [A certification must be made by the professional attesting to] The QEWI shall certify the correction of [all conditions identified in the earlier report]each condition reported as requiring repair[. (iv) The professional shall] in the previous report filing cycle, or report conditions that were [previously]reported as [safe with a repair and maintenance program]SWARMP in the previous report filing cycle as unsafe if not corrected at the time of the current inspection.

(c) Penalty waivers; eligibility and evidentiary requirements. Owners may request a waiver of penalties assessed for violation of Article 302 of Title 28 of the Administrative Code, the 1968 New York City Building Code and/or rules enforced by the Department. Requests shall be made in writing and shall meet eligibility and evidentiary requirements as follows:

(1) Owner status.

(i) New owner requesting a waiver due to change in ownership shall submit proof of 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, and only in 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 took title of the property as part of an economic development program sponsored by a government agency.

(ii) A new owner of a government-owned property requesting a waiver due to change in ownership shall submit official documentation from the government entity affirming that the premises was entirely owned by the government entity during the period for which a waiver is requested.

(2) Building status. An owner requesting a waiver because the building was demolished shall submit city or departmental records evidencing the demolition of the building prior to the filing deadline.

STATEMENT OF BASIS AND PURPOSE

The foregoing rule amendments are promulgated pursuant to the authority of the Commissioner of Buildings under Sections 643 and 1043(a) of the New York City Charter and section 28-302.2 of the New York City Administrative Code.

On August 2, 2007, Mayor Bloomberg signed Local Law 38, which required the Commissioner of Buildings to promulgate rules to establish staggered inspection cycles for buildings covered by the façade inspection requirements. This rule creates such staggered inspection cycles, which will spread out over several years the performance of required inspections and the filing of approximately 12,500 inspection reports with the Department. Prior to this change the Department was receiving half of the required inspection reports during the last few weeks of the filing cycle, which was administratively burdensome. In addition, the change in filing cycles will lessen the pressure on those contractors and riggers who perform inspections and repairs to perform them all in the same time frame. Staggering the inspection cycles also reduces the chance that less experienced people will be performing this work because more experienced ones are already working for others. This will increase public safety.

The amendments also enhance and reorganize the reporting requirements, making it easier for the Department to review the reports and for Department inspectors to perform follow-up inspections, thus further ensuring public safety.

Among the additions are:

- A prohibition on window air conditioners being listed as “safe with repair and maintenance program.” This is due to the proliferation of window air conditioners that appear to be unstable. Air conditioners will now only be able to be reported as “safe” or “unsafe.”
- A time frame for repairs performed pursuant to a “safe with repair and maintenance program” assessment, which will make it easier for the Department to follow up and for the owner to know when the repairs will be completed.
- A definition of “acceptable report” to clarify that merely filing a report is insufficient to satisfy the requirements of the administrative code. The report must contain the required information in order to be accepted or it will not be considered to be properly filed.

- For repairs to unsafe conditions requiring a permit from the Department, Department signoff must be obtained in order to show the work was completed. This will enable the Department to ensure unsafe conditions are actually repaired promptly.
- A clarification that this section applies to basements but not cellars (incorporating a Departmental policy and procedure notice).
- Information on the riggers performing the inspections is required. This will enable the Department to verify that the close-up inspection was actually performed and will indicate by whom it was performed, thus facilitating any necessary follow-up investigations.
- Provisions for waiver of penalties for failure to file an inspection report were added for new owners or buildings that were demolished.