

NEW YORK CITY FIRE DEPARTMENT

Notice of Adoption of
New Rule entitled
“Issuance of Proof of Compliance to Company Certificate Holders”
and Amendments to Fire Department Rule
3 RCNY §115-01, entitled
“Company Certificates”

NOTICE IS HEREBY GIVEN PURSUANT TO THE AUTHORITY VESTED IN THE Fire Commissioner of the City of New York pursuant to Sections FC102.6.3 and FC901.6 of the New York City Fire Code (Title 29 of Administrative Code of the City of New York), and in accordance with the requirements of Section 1043 of the New York City Charter, that the New York City Fire Department has adopted the above final rule.

The public hearing was held on February 27, 2018. The rule shall take effect on June 1, 2018.

The Notice of Adoption, final rule and the Statement of Basis and Purpose of Final Rule, will be available on the Fire Department’s website (www.nyc.gov/fdny) and NYCRULES (www.nyc.gov/NYCRULES).

Statement of Basis and Purpose of Final Rule

Existing Regulation of Commercial Cooking Exhaust Systems

The New York City Fire Code requires the periodic inspection and cleaning of exhaust systems for restaurant and other commercial cooking equipment that generate grease-laden vapors. Grease accumulations in exhaust systems are the source of numerous fires, which the exhaust ducts can spread throughout the building. The residue generated by wood-burning cooking equipment compounds the risk of a fire.

Restaurant owners and others have been targeted over the years by unscrupulous businesses that charge for cleaning the commercial cooking exhaust system but fail to perform a proper cleaning. To help prevent this, companies that clean commercial cooking exhaust systems must be licensed by the Fire Department, which requires businesses performing the cleaning to obtain a company certificate and their cleaning technicians a certificate of fitness.

The cleaning companies are required to attach a decal to the commercial cooking equipment to document that the exhaust system has been cleaned, as well as by what company and technician, and when the cleaning was performed. Currently, cleaning companies print their own decals as proof of compliance with Fire Code requirements. Recent investigations by the New York City Department of Investigation revealed that unlicensed businesses unlawfully conducting such cleanings fraudulently placed decals identifying other, licensed companies as having done the work.

Existing Regulation of Portable Fire Extinguishers

The New York City Fire Code requires the periodic inspection and servicing of portable fire extinguishers where such extinguishers are required. An annual inspection must be conducted by a licensed portable fire extinguisher servicing company to ensure that the portable fire extinguishers are functional and to repair or recharge them if necessary. A tag must be attached to the portable fire extinguisher to document the inspection and/or servicing.

It is difficult for business owners to assess whether the companies they have hired to service portable fire extinguishers are properly servicing them. The Fire Department itself may not be able to evaluate the adequacy of the services provided when it inspects the premises weeks or months later. There is a history of unscrupulous companies charging businesses inflated fees for these services, and then failing to perform necessary servicing. Most recently, the New York City Department of Investigation discovered several such companies attaching an inspection tag bearing the name of another company, jeopardizing the other company's business reputation.

As a result, companies that sell or service portable fire extinguishers are required to be licensed by the Fire Department. The companies must obtain a company certificate and their technicians must obtain a Fire Department certificate of fitness.

New Regulation of Proof of Compliance

The Fire Department adopts this rule to regulate the decals and tags that serve as proof of compliance with Fire Code requirements.

Section 115-02 requires commercial cooking exhaust system cleaning companies to use Fire Department-issued, numbered decals as proof of compliance with Fire Code inspection and cleaning requirements. It also requires portable fire extinguisher sales and servicing companies to use Fire Department-issued, numbered tags as proof of compliance with Fire Code inspection, testing and servicing requirements. Only licensed companies are eligible to purchase the Fire Department-issued decals and tags, and only the Fire Department-issued decals and tags will be acceptable proof of the inspection, cleaning and/or servicing. The decals and tags will be designed with various security measures to prevent counterfeiting.

This will help ensure that only licensed businesses perform the required fire safety inspections, cleaning and servicing; promote proper performance by preventing misidentification of the company that performed the work; and make it more difficult for unqualified and unlicensed businesses to engage in fraudulent practices.

Unauthorized use of Fire Department-issued proof of compliance by an unlicensed company or individual, or misuse by a licensed company or one of its technicians, constitutes a violation of the applicable Fire Code requirements for commercial cooking exhaust systems or portable fire extinguishers and will subject the violator to a civil or criminal penalty. It can also result in denial, suspension, revocation or non-renewal of a Fire Department certificate.

In accordance with existing Fire Code requirements (as set forth in Section FC107.7), records of all inspections, cleaning and/or servicing of equipment, and the names and Certificate of Fitness

numbers of all company personnel who performed the work, must be maintained for a period not less than three (3) years.

Proof of Compliance Issuance Process

The Fire Department will coordinate the purchase of the proof of compliance from an approved City vendor. The Fire Department will retain the services of a vendor and order blank proof of compliance, which will be completed with the name of the company certificate holder at time of purchase. The price of the proof of compliance for company certificate holders will reflect the cost of its preparation and printing, as well as administrative processing costs. Minimum order sizes may apply. Price, order and payment arrangements will be published on the Fire Department's website and are subject to change. When possible, the Fire Department will offer company certificate holders the benefit of bulk discounts that are available for large print orders. The Fire Department anticipates publishing a bulk reorder schedule.

Related Amendments

The Fire Department also amends 3 RCNY §115-01, the rule addressing company certificates, to reference company certificates for commercial cooking system cleaning (currently set forth in Fire Code Section FC901.6.3.3), and incorporate the existing qualifications for the certificate (currently set forth on the Fire Department application form), including five years' experience. Section 115-01(d) also incorporates existing minimum company staffing requirements and indicates the types of tools, materials and equipment required to conduct commercial cooking exhaust system cleaning.

Public Comment and Fire Department Response

Public comment received at the public hearing, including the statement of an industry association, the New York Association of Fire Equipment Distributors, was generally favorable to the proposed rule. Various speakers acknowledged that there are unlicensed persons or companies that engage in deceptive practices, including use of misleading or stolen decals and tags.

Various speakers expressed concern about the cost of the decals and tags, but also urged that they be able to incorporate company logos, license numbers from other jurisdictions, and other identifying information. The Fire Department will endeavor to design decals and tags that can accommodate as many of the requested features as possible, consistent with the goal of keeping the cost low.

Public comment urged the use of multi-year decals and tags. The proof of compliance will address this concern.

Public comment was received expressing skepticism about the ability to prevent counterfeiting. The Fire Department is incorporating various security measures into the decals and tags.

Several comments were received expressing concern about additional recordkeeping requirements. Use of Fire Department-issued proof of compliance will require somewhat more careful recordkeeping, but this will be facilitated with the use of bar codes.

One printing company expressed opposition to the rule on the impact it would have on competing printing companies, claiming that it restrains competition. Requiring government-issued decals or tags as proof of compliance with public safety regulations (like the registration and inspection decals affixed to motor vehicles) is not a restraint of trade. The City vendor that will be used to print the required decals and tags was retained by the New York City Department of Citywide Administrative Services in accordance with City procurement processes.

A public comment was received suggesting that the term “precipitator” be clarified to include any pollution control device. This suggested change has been accepted and incorporated.

New material is underlined. Material to be deleted is in [brackets].

Guidance with respect to the interpretation of the Fire Code and Fire Department rules may be obtained using the Public Inquiry Form on the Fire Department’s website, <http://www1.nyc.gov/site/fdny/about/resources/code-and-rules/nyc-fire-code.page>.

Section 1. Subdivision (d) of Section 115-01 of Chapter 1 of Title 3 of the Rules of the City of New York is amended by adding a new Paragraph (9) to read as follows:

(9) Commercial cooking exhaust system servicing company certificates

- (A) One (1) or more principals or officers shall have a minimum of five (5) years’ experience in the cleaning of commercial cooking exhaust systems.
- (B) One (1) or more principals or officers shall hold a *certificate of fitness* for commercial cooking exhaust system servicing technician.
- (C) The company shall have in its employ at least two (2) persons to conduct commercial cooking exhaust system cleaning and servicing. Each such person shall hold the *certificate of fitness* for commercial cooking exhaust system servicing technician required to conduct such cleaning and servicing. The principal(s) holding such *certificate of fitness* may be counted toward such minimum staffing requirement only if the principal(s) will be personally conducting such cleaning and servicing.
- (D) The company shall possess all tools, materials and equipment required to safely clean and service commercial cooking exhaust systems, including ladders, lighting equipment, scraping and washing equipment, cleaning materials, and vehicle(s) marked with the company name and company certificate number.

§ 2. Chapter 1 of Title 3 of the Rules of the City of New York is amended by adding a new Section 115-02 to read as follows:

§ 115-02 Issuance of Proof of Compliance to Company Certificate Holders

(a) Scope. This section governs the requirements for issuance by the *Department* of decals and tags or other *proof of compliance* to companies and individuals to document the performance of certain fire safety inspections, testing, cleaning, servicing and/or other required or regulated activities.

(b) Definition. The following term shall, for purposes of this section, have the meaning set forth herein.

Proof of compliance. *Department*-issued decals, tags or other forms of documentation, individually marked and/or numbered to identify the company and *person* who performed certain fire safety inspections, testing, cleaning servicing and/or other required or regulated activities.

(c) General. The *Department* will issue *proof of compliance* in accordance with the requirements and procedures set forth in this section.

(1) Types. The *Department* will issue only to businesses holding the following company certificates *proof of compliance* for the following fire safety inspections, testing, cleaning and servicing activities:

(A) Company certificate for portable fire extinguisher sales and company certificate for portable fire extinguisher servicing: *proof of compliance* for portable fire extinguisher inspection, testing and servicing (including repair and recharging).

(B) Company certificate for commercial cooking exhaust system servicing: *proof of compliance* for commercial cooking exhaust system inspection and cleaning.

(2) Issuance procedure. An authorized representative of a business holding a company certificate shall submit a written request (in such form or manner as prescribed by the *Department*) to the Public Certification Unit of the *Bureau of Fire Prevention* for issuance of *proof of compliance*. The *Department* will coordinate the purchase of the *proof of compliance* from an authorized vendor. Price, order and payment arrangements will be published on the *Department's* website (www.nyc.gov/fdny) and are subject to change. Minimum order sizes may apply. Except as otherwise provided in R115-02(d)(6), the purchase price is non-refundable and the *proof of compliance* is not returnable.

(d) Use of Proof of Compliance

- (1) Authorized use. Use of *proof of compliance* is restricted to the business to which the *proof of compliance* is issued, and to the *certificate of fitness* holders employed by the company who actually conduct commercial cooking exhaust duct system cleaning. *Proof of compliance* may not be transferred to any other company (including any subsidiary or other entity related to the company holding a company certificate) without the prior written authorization of the Chief of Fire Prevention.
- (2) Commercial cooking exhaust system. The *proof of compliance* for a *commercial cooking system* (including any insert or marking identifying the *certificate of fitness* holder who performed the servicing) shall be affixed to each *hood* upon completion of a cleaning of the entire commercial cooking exhaust system (including any precipitator or other pollution control device) in compliance with FC609, by the *certificate of fitness* holder who conducted the cleaning.
- (3) Portable fire extinguisher. The *proof of compliance* for a portable fire extinguisher (including any insert or marking identifying the *certificate of fitness* holder who performed the servicing) shall be affixed to the extinguisher upon completion of the annual inspection and any required servicing.
- (4) Safeguarding and reporting of loss or theft. The principals and officers of each company to which *proof of compliance* has been issued, and the *certificate of fitness* holders authorized to handle and affix *proof of compliance* for such company, shall safeguard the *proof of compliance*. Loss or theft of *proof of compliance* shall be reported to the Public Certification Unit of the *Bureau of Fire Prevention* by the company certificate holder or *certificate of fitness* holder within two (2) business days. Notification shall also be made to the Public Certification Unit within two (2) business days of the date a *certificate of fitness* holder leaves employment with the company, to enable the *Department* to monitor any future use of *proof of compliance* by that *certificate of fitness* holder.
- (5) Unauthorized use and misuse. Unauthorized use of *proof of compliance*, by a company or individual other than the company to which the *proof of compliance* was issued (and its authorized representatives), and misuse of *proof of compliance*, by the company to which it was issued (and its authorized representatives):
 - (A) is a violation of the Fire Code, this section, R113-01 and R115-01;
 - (B) may result in imposition of a civil or criminal penalty;
 - (C) may result in denial of an application for a company certificate or *certificate of fitness*; and

(D) constitutes misconduct within the meaning of R113-01(g) and R115-01(i), and may result in suspension, revocation and/or non-renewal of a company certificate and/or certificate of fitness.

(6) Changes in business operations. A company certificate holder to which proof of compliance has been issued must provide at least 10 business days' advance notice in writing to the Public Certification Unit of the Bureau of Fire Prevention any change in ownership, office location, or other information required by the application for issuance of the proof of compliance. If permanently discontinuing business operations, the company certificate holder may obtain a full refund of unused proof of compliance (not to exceed 4,000 items) by giving notice of discontinuance of business operations to the Public Certification Unit, and returning the unused proof of compliance, within 10 business days of discontinuing business operations.

(e) Recordkeeping

(1) Each holder of a company certificate shall maintain a record of the identifying numbers of all proof of compliance:

(A) issued to the company;

(B) supplied by the company to individual certificate of fitness holders employed by the company and authorized to conduct the regulated activity and affix the proof of compliance;

(C) used to document the conduct of the regulated activity, as set forth in R115-02(e)(2) and (3); and

(D) lost or stolen, and the date such loss or theft was reported to the Department, as set forth in R115-02(d)(4).

(2) Each holder of a company certificate for commercial cooking exhaust cleaning shall maintain a record of the following information to document use of proof of compliance (in accordance with FC107.7):

(A) Date of the cleaning and/or servicing of each commercial cooking exhaust system;

(B) The business name and address at which the commercial cooking exhaust system was cleaned and/or serviced, and proof of compliance affixed;

(C) The names and certificate of fitness numbers of the technicians that conducted the cleaning and/or servicing; and

(D) The identifying number of the proof of compliance.

(3) Each holder of a *company certificate for portable fire extinguisher sales or servicing* shall maintain a record (in accordance with FC107.7) of the following information to document use of *proof of compliance*:

(A) The identifying number of the portable fire extinguisher to which proof of compliance was affixed;

(B) The name of the business to or for which the portable fire extinguisher was sold and/or serviced, and the premises address at which the portable fire extinguisher will be used;

(C) The name(s) and *certificate of fitness* number(s) of the technicians that conducted the cleaning and/or servicing; and

(D) The identifying number of the *proof of compliance*.