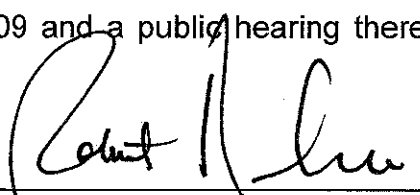


NOTICE OF ADOPTION OF RULE

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 and Article 113 of Title 28 of the New York City Administrative Code, that the Department of Buildings hereby repeals Chapter 1 of Title 1 of the Official Compilation of the Rules of the City of New York, relating to Material and Equipment Application Procedures and adds a new Section 101-12 to Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York, relating to the Office of Technical Certification and Research and the use of material in construction activities.

This rule was first published on August 11, 2009 and a public hearing thereon was held on September 14, 2009.

Dated: 9/24/04
New York, New York


Robert D. LiMandri
Commissioner

Chapter 1 of Title 1 of the Official Compilation of the Rules of the City of New York, relating to Material and Equipment Application Procedures, is REPEALED and Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new Section 101-12, to read as follows:

§101-12 The Office of Technical Certification and Research and the use of material in construction activities.

(a) Scope. There shall be an Office of Technical Certification and Research ("OTCR"), responsible for approving materials pursuant to Article 113 of the New York City Construction Codes ("Construction Codes").

(b) References. See Sections 28-103.9, 28-103.10, 28-113.1 to 28-113.4 and 28-114.1 to 28-114.4 of the New York City Administrative Code ("Administrative Code").

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

(1) Applicant. The person or entity seeking an assessment or approval of materials.

(2) Approved inspection agency. An agency that is approved by the department as qualified to perform one or more of the inspections required by the Construction Codes.

(3) Approved product certification agency. An inspection agency that is approved by the department as qualified to inspect at regular intervals the material that is to be or is listed and labeled, to verify that the labeled material is representative of the material tested.

(4) Approved testing agency. An agency that is approved by the department as qualified to test and evaluate the performance of one or more of the materials regulated in their use by the Construction Codes. Such term shall include, when approved pursuant to department rules, a third party testing or certification agency, evaluation agency, testing laboratory, testing service or other entity concerned with product evaluation. Such term shall also include a licensed concrete testing laboratory.

(5) Code prescribed materials. Materials for which the Construction Codes provide prescribed standards. Such materials do not require OTCR approval, but may be required to be identified on the Schedule of Materials and Equipment as provided for in subdivision (d) of this section.

(6) Labeled. Material to which has been attached a label, symbol or other identifying mark of the manufacturer that contains the name of the manufacturer, the function and performance characteristics of the product or material, and the name and identification of an approved agency and that indicates that a representative sample of the material has been tested and evaluated by an approved agency for compliance with nationally recognized standards or tests to determine suitable usage in a specified manner.

(7) Listed. Material identified in a list published by an approved agency that maintains periodic inspection of production of listed material or periodic evaluation services and whose listing states either that the material meets identified nationally recognized standards or has been tested and found suitable for a specified purpose when installed in accordance with the manufacturer's installation instructions.

(8) Materials. Materials, assemblies, appliances, equipment, devices, systems, products and methods of construction regulated in their use by the Construction Codes.

(d) Identification of materials.

(1) Schedule of Materials and Equipment. OTCR shall prepare and maintain a Schedule of Materials and Equipment ("Schedule") that shall be used to identify third-party tested and/or listed materials on construction documents. OTCR shall post the Schedule on the OTCR Webpage of the department's Website (<http://www.nyc.gov/buildings>). For such materials, a registered design professional filing construction documents shall be required to incorporate the Schedule into his or her construction documents, shall provide material listing information as identified on the Schedule and shall maintain third-party certification documents for a period of six (6) years following sign-off of the work.

(2) Code-prescribed or alternative material determination. An applicant for materials approval may elect to have OTCR determine if materials are code-prescribed or alternative materials by submitting an OTCR 1 application and six hundred dollar (\$600.00) fee to OTCR, as prescribed in Table 28-112.8 of the Administrative Code. OTCR shall notify the applicant of its determination in writing. If the material is found to be alternative, the application will be evaluated in accordance with subdivision (f) of this section and the fee required to determine whether the materials are code-prescribed or alternative materials shall be applied to OTCR's fee for the evaluation of standards for alternative materials prescribed in subdivision (f) of this section.

(e) Site specific approvals.

(1) Use. Use and/or installation of the following materials requires site specific approval by the department:

- (i) Materials too large to be tested in a laboratory;
- (ii) Component parts, which must be assembled in the field; or
- (iii) Foreign-made materials unavailable for testing prior to installation, which may require on-site testing;
- (iv) Other materials as determined by the commissioner.

(2) Application process.

(i) The applicant for a site-specific approval shall submit to OTCR the OTCR 2 application (Site-Specific Approval Application) and six hundred dollar (\$600.00) fee as prescribed in Table 28-112.8 of the Administrative Code.

(ii) The approved testing agency or the professional engineer has sixty (60) calendar days from the date of the filing of the OTCR 2 in which to submit to OTCR the OTCR 3 statement (Approved Testing Agency or Professional Engineer Statement) and any associated test reports. If the statement and reports are not submitted to OTCR within the sixty (60) calendar days, the application may be administratively closed. The application fee shall be non-refundable.

(3) Fire safety. If OTCR determines that a site specific material and/or installation of such materials raises fire safety concerns and so notifies the applicant:

(i) The applicant shall submit the OTCR 2 and a letter indentifying the project location and the fire safety concern(s) identified by OTCR to the Technology Management Unit of the Fire Department;

(ii) The applicant shall submit an affidavit to OTCR attesting that the OTCR 2 and letter were submitted to the Technology Management Unit; and

(iii) OTCR must receive correspondence from the Technology Management Unit recommending support, rejection or restrictions of the material prior to OTCR approving or rejecting the use and/or installation of the material.

(4) Approval or rejection. Notification of approval or rejection shall be issued by OTCR in writing.

(f) Alternative Materials.

(1) Standards for alternative materials. In the event that there is no Construction Code-prescribed standard for a material, but there exist standards that are accepted and/or endorsed by a nationally recognized organization that sets standards and/or evaluates materials used in the construction of buildings, an OTCR 1 application (Alternative Material Acceptance Criteria Application) shall be submitted to OTCR along with a six hundred dollar (\$600.00) fee as prescribed in Table 28-112.8 of the Administrative Code, requesting a review of the proposed standard. The applicant shall provide OTCR with any additional information and/or supporting documentation that OTCR requires within fourteen (14) days from the date of a request for such information. If such information and/or documentation is not received within such time, the application shall be deemed abandoned and no refund of the application fee shall be issued.

(i) Upon receipt of the application, OTCR shall review and research the standard and, simultaneously, solicit comments from members of the building and construction industry and other city agencies as appropriate;

(ii) OTCR shall review and evaluate comments received from the industry and other city agencies, if any, and make such changes to the proposed approval as it deems appropriate; and

(iii) OTCR shall publish its final approval on the department's Website (<http://www.nyc.gov/buildings>).

(iv) Notification of rejection of a standard will be issued by OTCR in writing. No refund of the application fee shall be issued.

(2) Testing, listing and labeling. Following the completion of steps (i) through (iv) above, the alternative material shall be tested by an approved testing agency according to the standard approved by OTCR. If OTCR finds it necessary on the basis of such factors as but not limited to the history of the material, its sensitivity, and treatment of similar materials that are listed and labeled, the material shall be listed and labeled by an approved inspection and/or product certification agency. Upon being so tested and/or listed and labeled, the material may be used in construction with such limitations as OTCR may prescribe.

(g) Abandoned applications. OTCR 1 and/or OTCR 2 applications that have been rejected and upon which no further action has been taken by the applicant within sixty (60) days after the notice of rejection shall be deemed abandoned.

(h) Reinstatement. Applicants seeking reinstatement of an abandoned application(s) shall pay an additional six hundred dollar (\$600.00) filing fee as prescribed in Table 28-112.8 of the Administrative Code.

(i) Appeals. Any final decision by the department may be appealed to the Board of Standards and Appeals pursuant to its rules.

(j) Testing. The department reserves the right to have materials tested by a third party at the building owner's or manufacturer's expense where there are observable defects, labeling inconsistencies, evidence of non-compliance with the approved standard and/or other indications of concern.

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.

The rule implements Article 113 of Title 28 of the New York City Administrative Code by specifying the role and responsibilities of the Office of Technical Certification and Research ("OTCR") in relation to the use of materials in construction activities.

The rule establishes OTCR as the office responsible for administering the process of accepting standards for materials not prescribed in the Construction Codes. It also clarifies §28-113.3 (Approval procedure) of the Administrative Code by providing details regarding the OTCR application, evaluation and approval or rejection of standards for the use of alternative materials and site specific approvals for the use of materials.

This rule will reduce approval delays and will facilitate the use of non-Construction Code prescribed materials.