



NYC Department of Buildings
280 Broadway, New York, NY 10007

Robert D. LiMandri
Acting Commissioner

280 Broadway, 7th Floor
New York, NY 10007
Phone: (212) 566-3103
Fax: (212) 566-3785
E-mail: robertl@buildings.nyc.gov

Statement of Substantial Need for Earlier Implementation

I hereby find, pursuant to §1043, subdivision e, paragraph 1(c) of the New York City Charter, and hereby represent to the Mayor, that there is substantial need for the implementation of new Section §101-07 of Title 1 of the Rules of the City of New York, regarding the qualification and approval of special inspection and other agencies, upon the publication in the City Record of its Notice of Adoption.

This is one of the rules needed to implement the City's new Construction Codes. Under current law, third parties performing tests or inspections of materials, equipment, construction-related activities, and periodic maintenance are required to be licensed or accepted by the Department, as recognition of their competence. This rule sets forth such competency requirements and designates such third parties as approved agencies when they meet the prescribed standards. Previously, the requirements were subject to different interpretations by practitioners. This inconsistency of interpretation has enabled inspections and tests to be performed by those who may not necessarily have the appropriate knowledge to evaluate the subject of the inspection and tests in light of technical standards.

The rule addresses that problem. It defines qualifications and competencies to ensure consistency and enhance the standards in practice. By setting consistent standards for testing and inspecting agencies, the rule will ultimately enhance the safety and integrity of buildings.

Robert D. LiMandri
Acting Commissioner
Department of Buildings

APPROVED: _____

Michael R. Bloomberg
Mayor

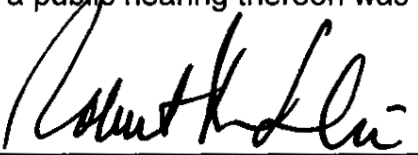
DATE: 6/30/2008

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 addition of Section 101-07 to Subchapter A of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding the qualification and approval of special inspection and other agencies.

This rule was first published on May 22, 2008 and a public hearing thereon was held on June 23, 2008.

Dated: 6/26/08, 2008
New York, New York


Robert D. LiMandri
Acting Commissioner

Section 1. Subchapter A of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new section 101-07 to read as follows:

§101-07 Inspections and approved agencies.

(a) Definitions. For the purposes of this section, all terms used herein shall have the same meanings as set forth in the building code. In addition, the following terms shall have the following meanings:

(1) Approved construction documents. Any and all documents that set forth the location and entire nature and extent of the work proposed with sufficient clarity and detail to show that the proposed work conforms to the provisions of the building code and other applicable laws and rules. Such documents shall include shop drawings, specifications, manufacturer's instructions and standards that have been accepted by the design professional of record or such other design professional retained by the owner for this purpose.

(2) Approved boiler inspection agency. An agency employing qualified boiler inspectors, as defined below.

(3) Approved inspection agency. An 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. 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.

(4) Approved progress inspection agency. An agency that is approved by the department as qualified to perform one or more of the progress inspections required by section BC 109 of the building code.

(5) 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 its use by the building code. 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.

(6) Certificate of compliance. A certificate stating that materials meet specified standards or that work was done in compliance with approved construction documents and other applicable provisions of law.

(7) 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, a high pressure boiler operating engineer licensed pursuant to the provisions of the New York City Administrative Code, a class A or class B oil burning equipment installer licensed pursuant to the provisions of such Code, a master plumber licensed pursuant to the provisions of such Code, or a journeyman plumber acting under the direct and continuing supervision of a master plumber licensed pursuant to the provisions of such Code. For inspection of boilers at properties owned or managed by the Department of Education, such term shall include an individual who has passed the National Board Commission examination and who has 5 years relevant experience, as defined below, approved by the department.

(8) Qualified exterior wall inspector. A New York State licensed civil or structural engineer with 1 year relevant experience or a New York State registered architect with 1 year relevant experience.

(9) Relevant experience. Direct participation and practice related to the underlying construction activities that are the subject of the special or other inspection where such participation has led to accumulation of knowledge and skill required for the proper execution of the special or other inspection.

(10) Supervision. Oversight and responsible control by a registered design professional having the necessary qualifications and relevant experience to effectively perform responsibilities associated with the inspection being supervised. Such supervision shall include ensuring the inspector's training/education through whatever arrangements are necessary to the inspector's duties and shall also include plans for continued training to keep pace with developing technology. Field supervision shall include responsibility for determining competence of special inspectors for the work they are authorized to inspect and monitoring the inspection activities at the jobsite to assure that the qualified inspector is performing his or her duties when work requiring inspection is in progress. The supervisor shall review inspection progress reports and final reports for conformance with the approved plans, specifications and workmanship provisions of the building code. Such supervision and control shall be evidenced by the supervisor's signature and seal upon any required statements, applications and/or reports.

(11) Technician. An employee of the inspection or testing agency assigned to perform the actual operations of inspection or testing. See ASTM E 329-07, paragraph 3.1.17.

(b) General requirements for approved agencies.

(1) Availability and compliance. An approved agency shall have responsibilities set forth in this rule and in the building code. Such agency shall employ experienced personnel qualified to conduct, supervise and evaluate the tests or inspections that it undertakes.

(2) Duties. The approved agency shall:

(i) Examine all relevant documents, including approved construction documents and/or manufacturers' instructions that define and describe requirements in connection with the test or inspection to be performed.

(ii) Confirm that the documents are sufficient to enable the proper performance of the test or inspection.

(iii) Confirm that any relevant approved construction documents are acceptable to the registered design professional of record or another design professional retained by the owner for the purpose of accepting shop drawings and that the manufacturers' instructions are current. Acceptance shall be demonstrated in writing on the drawing by the registered design professional.

(iv) Confirm through the test or inspection that the installation and materials are in compliance with all relevant documents, reference standards and the building code.

(3) Documentation. An approved agency shall maintain records of inspections and tests for at least 6 years or for such shorter period as the commissioner shall determine and shall make such records available to the department upon request. Such records shall include field logs, test results, laboratory reports, notes, photographs and such other information as may be necessary or appropriate to establish the sufficiency of the inspection. The principal of the approved agency shall furnish to the department upon request such records of any inspection or test, in the manner required by the department.

(4) Obligation to cooperate with inquiries. All approved agencies shall cooperate with any investigation by the department, or other city or law enforcement agency, into the activities at any job site or fabricating/manufacturing/testing facility for which such agencies have undertaken any inspections or tests and shall provide prompt, accurate and complete responses to reasonable inquiries by the department and other such city or law enforcement agencies about the conduct of such activities.

(5) Limitation of duties. An approved agency shall not engage in any activity for which it has not been registered, licensed or accredited. An inspector or technician employed by an approved agency shall not perform inspections or tests beyond the area of expertise for which he or she is qualified in accordance with the standards set by the department, the accrediting agency, if applicable, and the agency supervisor.

(6) Obligation to comply with an order of the commissioner. All approved agencies shall comply with an order of the commissioner.

(7) Insurance. Every approved agency shall maintain the following insurance coverage:

(i) A general liability insurance policy for the amount of one million dollars;

(ii) Insurance required by the provisions of the New York State Worker's Compensation and Disability Laws; and

(iii) For progress inspection agencies and qualified exterior wall inspectors only, in addition to the requirements of (i) and (ii) above, a Professional Liability/Errors and Omissions insurance policy, occurrence based, for the term of the registration or accreditation.

(8) Agency structure. An approved agency's structure shall comply with all applicable New York State and Federal laws.

(9) Audits. The operations of approved agencies shall be subject to audit at any time. Audits may examine applications for registration or accreditation as well as the performance and documentation of inspections and tests. Audits may also be conducted upon receipt of complaints or evidence of falsification, negligence or incompetence.

(c) Qualifications of approved agencies.

(1) Except as otherwise provided in subdivision (d) of this section, on or after the effective date of this section, all approved agencies, including single person approved agencies, shall comply with the requirements of this section and Title 28-114 of the New York City Administrative Code and shall meet the qualifications set forth herein.

(2) Testing and inspection agencies.

(i) A testing and/or inspection agency shall be deemed an approved testing and/or approved inspection agency for testing and/or inspecting materials and listing and labeling materials to specified standards in accordance with the building code and its

referenced standards where such agency has achieved accreditation for such testing and/or inspections from International Accreditation Service, Inc. or an equivalent accrediting agency accrediting to the standards set forth in ASTM Designation: E 329-07 or a federal agency. Accrediting agencies, other than federal agencies, must be members of an internationally recognized cooperation of laboratory and inspection accreditation bodies subject to a mutual recognition agreement.

(ii) An approved testing and/or approved inspection agency shall have in responsible charge a director who shall be qualified by education and relevant experience to undertake the tests or inspections performed. Qualification may be based on the standards set forth in ASTM E329-07. The director shall personally supervise the testing and/or inspection of materials for compliance with prescribed nationally recognized standards. Concrete testing laboratories shall follow the provisions of subdivision (c)(6) of this section.

(iii) Technicians shall be qualified by education and relevant experience to perform all tests or inspections they may be required to conduct under the supervision of the director. Qualification may be based on the standards set forth in ASTM E329-07.

(iv) An approved testing agency shall furnish to the department such proof of qualifications of all personnel and information regarding the equipment used to perform tests as the department may from time to time request, and any other such information that the commissioner deems appropriate in assessing the competency of the agency's operations.

(v) All approved testing and approved inspection agency inspection and test reports shall be retained in a form acceptable to the department and shall bear the name of the approved agency, its accreditation, license or department acceptance identification information where applicable, the name of the director who supervised the inspection or test, the names of all personnel who performed the inspection or test, and the names of all witnesses to such inspection or test.

(3) Progress inspection agencies.

(i) Registered design professionals with relevant experience shall be deemed approved progress inspection agencies, without further requirement of registration or accreditation, for the purpose of conducting the progress inspections required by section BC 109

of the building code. Such progress inspections shall include the following:

(A) Preliminary. See section 28-116.2.1 of the New York City Administrative Code and section 109.2 of the building code.

(B) Footing & foundation. See section 109.3.1 of the building code.

(C) Lowest floor elevation. See section 109.3.2 of the building code.

(D) Frame inspection. See section 109.3.3 of the building code.

(E) Energy Code Compliance Inspections. See section 109.3.5 of the building code.

(F) Fire-resistant rated construction. See section 109.3.1 of the building code.

(G) Final. See section 28-116.2.4.2 of the New York City Administrative Code and section 109.5 of the building code.

(H) Public assembly emergency lighting. See section 1006 and 1024 of the building code and section 28-116.2.2 of the Administrative Code.

(ii) A progress inspection agency shall conduct required progress inspections, provided such inspections are conducted by a registered design professional with relevant experience or a person under such design professional's direct supervision.

(iii) A progress inspection agency's performance of a progress inspection shall include verification that any special inspections that were required to have been conducted prior to the progress inspection have been documented as completed.

(4) Elevator inspection agencies.

(i) Notwithstanding anything to the contrary set forth herein, elevator inspection companies, including their agency directors and agency inspectors that currently hold or hereafter secure a Certificate of Approval from the department issued pursuant to

Chapter 11 of Title 1 of the Rules of the City of New York shall be deemed approved elevator inspection agencies without further requirement of registration or accreditation, for the purpose of conducting the periodic elevator inspections and tests required by section 28-304.6 of the Administrative Code.

(ii) Written or oral tests required by 1 RCNY 11-01(2)(ii) shall require familiarity with the standards set forth in section 3001.2 and appendix K of the building code.

(iii) Tests and inspections performed after the effective date of this section shall be performed in compliance with reference standards set forth in section 3012.1 and appendix K of the building code, provided that for the period from January 1, 2008 through September 15, 2008, inspections and tests need not be witnessed by another approved elevator inspection agency.

(iv) Effective January 1, 2009, periodic elevator inspections and tests required by section 28-304.6.1 of the Administrative Code shall be performed in compliance with the following requirements:

(A) The test must be performed by an approved elevator inspection agency and witnessed by an approved elevator inspection agency not affiliated with the agency performing the test.

(B) The approved elevator inspection agency responsible for performing the test shall designate skilled elevator trade personnel in its employment to perform the test under the direct supervision of a director who holds a Certificate of Approval from the department issued pursuant to the 1968 Building Code and 1 RCNY 11-01. Such designation by the director shall be in writing and shall indicate the director's endorsement of the qualification of the personnel designated to conduct the test.

(C) The approved elevator inspection agency responsible for witnessing the test shall designate to witness such test an inspector in its employment who holds a Certificate of Approval from the department issued pursuant to the 1968 Building Code and 1 RCNY 11-01.

(D) The witnessing inspector shall affix the inspection date and his or her agency's Certificate of Approval number to the inspection certificate at the site. The witnessing inspector and the director of the witnessing

agency shall further sign and indicate that agency's Certificate of Approval number in the test report.

(5) Boiler inspection agencies.

(i) Notwithstanding anything to the contrary set forth herein, a qualified boiler inspector shall be deemed an approved boiler inspection agency, without further requirement of registration or accreditation, for the purpose of conducting the periodic inspections required by section 28-303.2 of the Administrative Code. Such approved boiler inspection agencies may complete required periodic boiler inspections for the period from January 1, 2008 through December 31, 2008 in compliance with the requirements of the 1968 Building Code and 1 RCNY 2-01. Notwithstanding the above, reports of periodic boiler inspections for the period January 1, 2008 to December 31, 2008 shall be accompanied by a certification that identified defects have been corrected. The inspection report must be submitted to the department prior to December 31, 2008.

(ii) Effective January 1, 2009, periodic boiler inspections required by section 28-303.2 of the Administrative Code shall be performed in compliance with the following requirements:

(A) Low pressure boiler annual inspection reports shall be submitted for each calendar year on such forms and in such manner as required by the department. The report shall include:

((a) An inspection report for each boiler identifying the inspector or inspection agency;

((b) The owner's annual statement completed in compliance with section 28-303.6 of the Administrative Code; and

((c) A certification by the owner that identified defects have been corrected. The report must be filed within 45 days of the inspection but in no event later than December 31st of each calendar year. Any required part of the report not filed within 45 days of the inspection and on or before December 31st shall be deemed late and shall subject the owner to penalties as provided in Administrative Code sections 28-201.2.2 and 28-202.1.

(B) A low pressure boiler annual inspection must be conducted between November 16th of the preceding calendar year through November 15th of the calendar year for which the report is being submitted at a date that follows the preceding annual inspection by 6 months or more. The inspector must verify that a department-issued boiler number is affixed to the boiler and such number must 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 shut down of the boiler, the inspector must immediately notify the boiler division at the department of the condition via fax or email at the number or address provided on the department's website, <http://www.nyc.gov/buildings>.

(C) Low pressure boiler annual inspection reports not filed within 12 months from the date of the inspection will be deemed expired. Expired inspection reports will not be accepted by the department to satisfy the annual inspection report filing requirement as prescribed by section 28-303 of the Administrative Code and this section.

(6) Concrete testing laboratories.

(i) Except as provided in subdivision (d) of this rule, a concrete testing laboratory shall be deemed an approved agency and a licensed concrete testing laboratory pursuant to the provisions of Article 406 of Title 28 of the Administrative Code for purposes of testing and inspecting concrete-related construction activities in accordance with the building code and its referenced standards where such laboratory has achieved accreditation from AASHTO Accreditation Program or an equivalent accrediting agency accrediting to the standards set forth in ASTM Designations: C1077, C1093 and E 329-07 or a federal agency. Accrediting agencies, other than federal agencies, must be members of an internationally recognized cooperation of laboratory and inspection accreditation bodies subject to a mutual recognition agreement.

(ii) A licensed concrete testing laboratory shall have in responsible charge a director who shall be qualified by education and relevant experience to undertake the tests or inspections performed. Qualification may be based on the standards set forth in ASTM C1077, C1093 and E 329-07. The director shall personally supervise the inspection and tests for compliance with

prescribed nationally recognized standards. The director shall be a registered design professional.

(iii) Technicians shall be qualified by education and relevant experience to perform all tests or inspections they may be required to conduct under the supervision of the director. Field technicians shall be certified as ACI Field Testing Technician – Grade I, or other equivalent certification acceptable to the commissioner.

(iv) Laboratory technicians shall be certified as ACI Concrete Testing Laboratory Technician – Level 1, or other equivalent certification acceptable to the commissioner. Qualification may be based on the standards set forth in ASTM C1077, C1093 and E 329-07.

(v) The concrete testing laboratory shall furnish to the department such proof of qualifications of all personnel and information regarding the equipment used to perform tests as the department may from time to time request, and any other such information that the commissioner deems appropriate in assessing the competency of the laboratory's operations.

(vi) All concrete testing laboratory inspection and test reports shall be presented in a form acceptable to the department and shall bear the name of the laboratory or service and its accreditation and department-issued license number where applicable, the name of the director who supervised the inspection or test, the names of all personnel who performed the inspection or test, and the names of all witnesses. Reports shall be signed and sealed by the director who supervised the inspection or test

(7) Exterior wall inspections.

(i) Examination of a building's exterior walls and appurtenances thereof pursuant to section 28-302 of the Administrative Code shall be performed by or under the direct supervision of a qualified exterior wall inspector.

(ii) A qualified exterior wall inspector shall maintain records of inspections and tests for at least 6 years and shall make such records available to the department upon request.

(iii) A qualified exterior wall inspector shall maintain insurance coverage as set forth in subdivision (b)(7) above.

(iv) Except as modified by the building code and this section, the provisions of 1 RCNY 32-02 shall apply.

(d) Interim status and application deadlines. An approved agency that is required to achieve accreditation shall be entitled, until July 1, 2010, to perform those inspections and tests for which it is seeking accreditation, provided that the following are true:

(1) The agency is diligently pursuing accreditation by the required accreditation services or an equivalent accreditation agency approved by the department.

(2) The agency is in good standing with the department and is licensed and/or accepted by the department pursuant to the laws in effect prior to July 1, 2008 to perform specific tests and inspections. Such agencies shall be limited to the performance of those tests for which they are under such prior law specifically licensed or accepted to perform.

(3) On or before July 1, 2010, an agency with interim status as an approved agency shall achieve accreditation as set forth in this rule. In the event the approved agency has failed by July 1, 2010 to achieve such accreditation, the agency may apply to the commissioner who may, upon a showing of good cause, grant an extension of time to achieve accreditation and allow the continuance of the interim status.

(e) Suspension or revocation of approved agency status.

(1) In accordance with department rules, the commissioner may suspend or revoke an approved agency's approval, with or without the imposition of penalties, for violation of any provision of Title 28 of the Administrative Code or the building code or the rules of the department, or any other applicable law or rule. The commissioner may refuse to accept any application or other document submitted pursuant to or in satisfaction of any requirement of law or rule that bears the signature of any approved agency or director that has been found, after notice and an opportunity to be heard, to have knowingly or negligently made a false statement or to have knowingly or negligently falsified or allowed to be falsified any certificate, form, signed statement, application, report or certification of the correction of a violation required under the provisions of Title 28 of the Administrative Code or the building code or any rule of any agency.

(2) Invalidation of tests and inspections upon suspension or revocation of approved agency status. Upon any suspension or revocation of approved agency approval pursuant to subdivision (e), the owner of a building at which such approved agency was required or scheduled to perform special, progress or periodic inspections shall immediately

designate another approved agency to re-do such tests or inspections performed by the disciplined agency. Any periodic inspections performed by a disciplined agency shall be rejected in the current cycle of such inspections and any owner of a building requiring such periodic inspection shall, upon notice of such disciplinary action, retain another approved agency to perform the periodic inspection.

(f) Obligations of others. Nothing in this section is intended to alter or diminish any obligation otherwise imposed by law on others, including but not limited to, the owner, construction manager, general contractor, contractor, materialman, architect, engineer, site safety manager, land surveyor, superintendent of construction or other party involved in a construction project, to engage in sound engineering, design, and construction practices, and to act in a reasonable and responsible manner to maintain a safe construction site.

§ 2. Subdivision a of section 13-11 of chapter 13 of Title 1 of the Rules of the City of New York is amended by adding a new paragraph 17 to read as follows:

(17) A petition by which the department seeks an order of suspension or revocation of the approval of an approved agency.

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 section 28-114.1 of the New York City Administrative Code by specifying the qualifications of approved agencies and qualified inspectors and the processes through which the Department will regulate their activities.

Under current law, third parties performing tests or inspections of materials, equipment, construction-related activities, and periodic maintenance are required to be licensed or accepted by the Department, as recognition of their competence. This rule sets forth such competency requirements and designates such third parties as approved agencies when they meet the prescribed standards. Previously, the requirements were subject to different interpretations by practitioners. This inconsistency of interpretation has enabled inspections and tests to be performed by those who may not necessarily have the appropriate knowledge to evaluate the subject of the inspection and tests in light of technical standards.

The rule addresses that problem. It defines qualifications and competencies to ensure consistency and enhance the standards in practice. By setting consistent standards for testing and inspecting agencies, the rule will ultimately enhance the safety and integrity of buildings.