



**NEW YORK STATE DEPARTMENT OF STATE**  
Division of Code Enforcement and Administration

Phone : (518) 474-4073  
[www.dos.state.ny.us](http://www.dos.state.ny.us)

Fax : (518) 486-4487  
E-mail: [info@dos.state.ny.us](mailto:info@dos.state.ny.us)

---

## **T E C H N I C A L   B U L L E T I N**

---

**Effective Date:**            **January 1, 2003**

**Source Document:**        **19 NYCRR 1225 - *Fire Code of New York State* (FCNYS)**

**Topic:**                        **Hazardous Materials: Chapter 27**

***When conducting a fire safety inspection, how much of Chapter 27 is applicable to an existing building?***

As stated in section 2701.1, Chapter 27 provides general requirements for prevention, control and mitigation of dangerous conditions related to the storage, dispensing, use and handling of hazardous materials. Chapters 28 through 44 provide additional requirements for specific hazardous materials.

In Chapter 27, Tables 2703.1.1(1) through 2703.1.1(4) prescribe the maximum quantity of materials allowed in a control area for a building to be regulated as something other than a Group H (Hazardous) occupancy. The term control area is defined in section 2702 of the FCNYS, as “spaces within a building which are enclosed and bounded by exterior walls, fire walls, fire barriers and roofs, or a combination thereof, where quantities of hazardous materials not exceeding the maximum allowable quantities per control area are stored, dispensed, used or handled.” The quantities in a building are **not** limited by the tables, but if the quantity exceeds the specified amount, the building is classified as Group H. Per section 2703.1.3, if the quantities do not exceed the maximum allowances in the tables, storage, use and handling must comply with sections 2701 and 2703. Per section 2703.1.4, if the quantities do exceed the maximum allowances in the tables, storage, use and handling must comply with the entire chapter (i.e., sections 2701, 2703, 2704 and 2705).

***Chapter 27 contains many provisions that seem to require construction or equipment installation. Do these apply to existing buildings?***

Only under limited circumstances.

Section 102.1 of the FCNYS sets conditions under which the construction and design provisions of the code are applicable:

1. Structures, facilities and conditions arising after the adoption of this code.
2. Existing structures, facilities and conditions not legally in existence at the time of adoption of this code.
3. Existing structures, facilities and conditions when identified in specific sections of this code.
4. Existing structures, facilities and conditions which constitute a distinct hazard to life or property.

If a building legally contained a specific amount of certain hazardous materials before the FCNYS came into effect, and there is no change in the maximum quantity or type of material, the construction provisions of Chapter 27 would

not be applicable under item 1 of Section 102.1 of the FCNYS. Change of quantity should not be taken to refer to the normal changes as a result of day-to-day or seasonal business operations. [e.g., stocks of fertilizers in a garden center or agricultural supplier may change with seasonal use]. However, if the same supplier decided to stock increased quantities - whether due to increased demand, change in the business focus, or any other reason - that would constitute a change of condition, and would require compliance with the design and construction provisions of Chapter 27 and the appropriate chapter for the specific material type. If the new quantities are less than or equal to those specified in Tables 2703.1.1(1) through 2703.1.1(4), only Sections 2701 and 2703 apply; if they are greater, Sections 2704 and 2705 also apply.

Non-compliance with the present regulations requires compliance with the new regulations. The fact that someone has been maintaining an illegal operation or condition is not a basis for allowing compliance with the “old” provisions. The provisions of Chapter 27 are applicable per item 2 of Section 102.1 of the FCNYS and the appropriate chapter of the specific material type.

Item 3 is more limited in scope under the FCNYS than is the case with the *International Fire Code* (IFC), because the IFC contains retroactive provisions that are not applicable in New York. For example, section 701.1 of the FCNYS provides for the maintenance of fire-resistance rated construction. Section 701.1 of the IFC requires the enclosure of existing floor openings and shafts. However, sections such as section 907.3.2 of the FCNYS explicitly apply to existing buildings.

Item 4 provides for design and construction provisions of the code to apply when there are distinct hazards to life or property. While this provision allows for some discretion, it should not be applied in an arbitrary manner.

## **CONCLUSION**

When conducting a fire safety inspection of an existing building, one of the first tasks for an inspector is the classification of the building by occupancy group. Existing occupancy groups do not always correspond directly to occupancy groups in the FCNYS. The existing quantity of hazardous material may impact the occupancy classification of the building. Even the classification of an existing building in Group H, with legally pre-existing quantities doesn't trigger the construction requirements.

Change of condition leads thru section K102.1 in Appendix K of the *Building Code of New York State*, to require compliance with all of Chapter 27 of the FCNYS and the appropriate chapter for the specific material type. Change in quantity of hazardous materials requires compliance with the appropriate sections of Chapter 27 of the FCNYS, depending upon the new quantities and the appropriate chapter for the specific material type.

***Ronald E. Piester, R.A., Director  
Division of Code Enforcement and Administration***