

TEXT

(Part 1203 – Energy Code-related amendments)

Section 1203.1 of Title 19 NYCRR is repealed and Part 1203 of Title 19 NYCRR is amended by adding a new Section 1203.1, to read as follows:

1203.1 Introduction and definitions.

(a) Introduction. Subdivision 1 of section 381 of the Executive Law directs the Secretary of State to promulgate rules and regulations prescribing minimum standards for administration and enforcement of the Uniform Fire Prevention and Building Code (the Uniform Code) and the State Energy Conservation Construction Code (the Energy Code). Subdivision 1 of section 381 of the Executive Law provides that such rules and regulations shall address the nature and quality of enforcement.

Subdivision 2 of section 382 of the Executive Law provides that such rules and regulations shall fix the time for compliance with an order to remedy. The rules and regulations set forth in this Part: prescribe minimum standards for administration and enforcement of the Uniform Code and Energy Code by governmental units or agencies charged with or accountable for such administration and enforcement (Authorities Having Jurisdiction), address the nature and quality of enforcement, and fix the time for compliance with an order to remedy.

(b) Definitions. In this Part, the term “Uniform Code” means the State Uniform Fire Prevention and Building Code, as currently in effect and as hereafter amended from time to time; the term “Energy Code” means the State Energy Conservation Construction Code, as currently in effect and as hereafter amended from time to time; the term “Authority Having Jurisdiction” means the governmental unit or agency charged with or accountable for administration and enforcement of the Uniform Code and Energy Code; and the terms “commercial building,” “residential building,” “R-value,” “U-factor,” “SHGC,” “VT,” and “HVAC” shall have the meanings ascribed to those terms in the Energy Code.

Section 1203.2 of Title 19 NYCRR is amended to read as follows:

1203.2 Program for administration and enforcement.

(a) Every city, village, town, and county, charged under subdivision 2 of section 381 of the Executive Law with administration and enforcement of the Uniform Code and Energy Code shall administer and enforce the Uniform Code and Energy Code and shall provide for such administration and enforcement by local law, ordinance or other appropriate regulation. Any such instrument or combination thereof shall include the features described in section 1203.3 of this Part, as now in effect and as hereafter amended from time to time.

(b) Every state agency accountable under section 1201.2(d) of this Title for administration and enforcement of the Uniform Code shall administer and enforce the Uniform Code and Energy Code and shall provide for such administration and enforcement in accordance with Part 1204 of this Title, as now in effect and as hereafter amended from time to time.

(c) In circumstances in which the Secretary of State is or becomes responsible for administration and enforcement of the Uniform Code, the Secretary of State shall administer and enforce the Uniform Code and Energy Code in accordance with Part 1202 of this Title, as now in effect and as hereafter amended from time to time.

[(c)] (d) Every [agency accountable under section 1201.2 of this Title for administration and enforcement of the Uniform Code and] Authority Having Jurisdiction not otherwise included in subdivisions (a), [and] (b) or (c) of this section shall administer and enforce the Uniform Code and Energy Code and shall provide for such administration and enforcement in regulation. Any such regulation shall include the features described in section 1203.3 of this Part, as now in effect and as hereafter amended from time to time.

[(d)] (e) Every [government or agency thereof charged with administration and enforcement of the Uniform Code] Authority Having Jurisdiction shall exercise its powers in due and proper manner so as to extend to the public protection from the hazards of fire and inadequate building construction.

[(e)] (f)

(1) Where [a government or agency charged with or accountable for administration and enforcement of the Uniform Code] any Authority Having Jurisdiction relies upon the contracted-for services of an individual, partnership, business corporation or similar firm for the principal part of an administration and enforcement program, [it] such Authority Having Jurisdiction shall satisfy itself that any such provider has qualifications comparable to those of an individual who has met the requirements of Part [434] 1208 of this Title.

(2) No agreement shall be made by which building permits, certificates, orders or appearance tickets related to administration and enforcement of the Uniform Code and/or Energy Code are issued by other than public officers.

[(f)] (g) The persons, offices, departments, agencies or combinations thereof authorized and responsible for administration and enforcement of the Uniform Code and/or Energy Code, or any portion thereof, shall be clearly identified.

The caption, the unnumbered introductory paragraph, and subdivisions (a), (b), and (c) of Section 1203.3 of Title 19 NYCRR are amended to read as follows:

1203.3 Minimum features of a program for administration and enforcement of the Uniform Code and Energy Code.

[A] Each Authority Having Jurisdiction shall establish and operate a program for administration and enforcement of the Uniform Code and Energy Code which shall[,] include all features described in

subdivisions (a) through (j) of this section. [A government or agency charged with or accountable for administration and enforcement of the code] Each Authority Having Jurisdiction must provide for each of the listed features through legislation, regulation or other appropriate means.

(a) Building permits.

(1) Building permits shall be required for work which must conform to the Uniform Code and/or the Energy Code. [A government or agency charged with or accountable for administration and enforcement of the Uniform Code] The Authority Having Jurisdiction may exempt from the requirement for a permit the categories of work listed in subparagraphs (i) through (xii) of this paragraph. An exemption from the requirement to obtain a permit shall not be deemed an authorization for work to be performed in violation of the Uniform Code and/or the Energy Code. The following categories of work may be excluded from the requirement for a building permit:

(i) construction or installation of one story detached structures associated with one- or two-family dwellings or multiple single-family dwellings (townhouses) which are used for tool and storage sheds, playhouses or similar uses, provided the gross floor area does not exceed 144 square feet [(13.88m²)];

(ii) installation of swings and other playground equipment associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses);

(iii) installation of swimming pools associated with a one- or two-family dwelling or multiple single-family dwellings (townhouses) where such pools are designed for a water depth of less than 24 inches and are installed entirely above ground;

(iv) installation of fences which are not part of an enclosure surrounding a swimming pool;

(v) construction of retaining walls unless such walls support a surcharge or impound Class I, II or IIIA liquids;

- (vi) construction of temporary motion picture, television and theater stage sets and scenery;
 - (vii) installation of window awnings supported by an exterior wall of a one-or two- family dwelling or multiple single-family dwellings (townhouses);
 - (viii) installation of partitions or movable cases less than 5'-9" in height;
 - (ix) painting, wallpapering, tiling, carpeting, or other similar finish work;
 - (x) installation of listed portable electrical, plumbing, heating, ventilation or cooling equipment or appliances;
 - (xi) replacement of any equipment provided the replacement does not alter the equipment's listing or render it inconsistent with the equipment's original specifications; and
 - (xii) repairs, provided that such repairs do not involve:
 - [(a)] (a) the removal or cutting away of a loadbearing wall, partition, or portion thereof, or of any structural beam or load bearing component;
 - [(b)] (b) the removal or change of any required means of egress, or the rearrangement of parts of a structure in a manner which affects egress;
 - [(c)] (c) the enlargement, alteration, replacement or relocation of any building system;
 - [(d)] (d) the removal from service of all or part of a fire protection system for any period of time.
- (2) An application for a building permit shall [request] not be accepted unless such application complies with all requirements of the Uniform Code and Energy Code and provides sufficient information to permit a determination that the intended work accords with the requirements of the Uniform Code and Energy Code. [and shall require submission of] An application for a building permit must include the following information and documentation:
- (i) a description of the proposed work;
 - (ii) the tax map number and the street address of the property where the work is to be performed;

(iii) the occupancy classification of any affected building or structure;

(iv) where applicable, a statement of special inspections prepared in accordance with the provisions of the Uniform Code; and

(v) at least two sets of construction documents (drawings and/or specifications) that define the scope of the proposed work and satisfy the requirements of paragraph (3) of this subdivision.

(3) Construction documents shall not be accepted as part of an application for a building permit unless such documents:

(i) are prepared by a New York State registered architect or licensed professional engineer where so required by the Education Law;

(ii) indicate with sufficient clarity and detail the location, nature, and extent of the work proposed;

(iii) substantiate that the proposed work will comply with the Uniform Code and the [State Energy Conservation Construction Code] Energy Code, and in particular, but not by limitation, include a representation of the building's thermal envelope and show in sufficient detail pertinent data and features of the building, systems and equipment as governed by the Energy Code, such details to include, but not necessarily to limited to, the following, as applicable:

(a) insulation materials and their R-values;

(b) fenestration U-factor and solar heat gain coefficient (SHGC);

(c) area-weighted U-factor and solar heat gain coefficient (SHGC) calculations;

(d) (in the case of a commercial building) mechanical system design criteria;

(e) mechanical and service water heating system and equipment types, sizes, and efficiencies;

(f) (in the case of a commercial building) economizer description;

(g) (in the case of a commercial building) equipment and system controls;

(h) (in the case of a commercial building) fan motor horsepower (hp) and controls;

(i) duct sealing, duct and pipe insulation and location;

(j) (in the case of a commercial building) lighting fixture schedule with wattage and control

narrative;

(k) (in the case of a commercial building) location of daylight zones on floor plans; and

(l) air sealing details;

(iv) where applicable, include a site plan that shows any existing and proposed structures on the site, the location of any existing or proposed well or septic system, the location of the intended work, and the distances between the structures and the lot lines[.]; and

(v) where the construction documents are required to be prepared by a New York State registered architect or licensed professional engineer, such documents must bear the seal or stamp and signature of such registered architect or licensed professional engineer and include, immediately above the signature, a statement substantially similar to the following: “To the best of the knowledge, belief, and professional judgment of the undersigned [registered architect or licensed professional engineer], the plans and specifications depicted on these drawings are in compliance with the applicable provisions of the New York State Uniform Fire Prevention and Building Code and the New York State Energy Conservation Construction Code, as currently in effect.”

(4) A building permit or amendment thereto shall not be issued unless the Authority Having Jurisdiction (i) receives a written application that satisfies the requirements of paragraph (2) of this subdivision, (ii) receives construction documents that satisfy the requirements of paragraph (3) of this subdivision, (iii) determines that the intended work satisfies the requirements of the Uniform Code and Energy Code, and (iv) approves such application. Applications for a building permit or for an amendment thereto shall be examined to ascertain whether the proposed construction is in substantial

conformance with the requirements of the Uniform Code and Energy Code. Provisions shall be made for construction documents accepted as part of a permit application to be so marked in writing or by stamp. In particular, but not by way of limitation, when construction documents are determined to be in compliance with the applicable requirements of the Energy Code and accepted, the construction documents shall be endorsed in writing and stamped “Reviewed for Energy Code Compliance.” One set of accepted construction documents shall be retained by the [government or agency charged with or accountable for administration and enforcement of the code] Authority Having Jurisdiction. One set shall be returned to the applicant to be kept at the work site so as to be available for use by the code enforcement official.

(5) A building permit shall contain a statement directing that all work shall be performed in accordance with the construction documents submitted and accepted as part of the application. In addition, a permit shall include the directive that the [government or agency responsible for enforcement of the code] Authority Having Jurisdiction shall be notified immediately in the event of changes occurring during construction.

(6) Building permits shall be issued with a specific expiration date. [A local government or agency responsible for enforcement of the Uniform Code] The Authority Having Jurisdiction may provide that a permit shall become invalid unless the work authorized is commenced within a specified period following issuance.

(7) When a building permit has been issued in error because of incorrect, inaccurate or incomplete information, or the work for which the permit was issued violates the Uniform Code and/or the Energy Code, such permit shall be revoked or suspended until such time as the permit holder demonstrates that all work completed and all work proposed shall be in compliance with applicable provisions of the [code] Uniform Code and Energy Code.

(8) Building permits shall be required to be visibly displayed at the work site and to remain visible until the project has been completed.

(b) Construction inspections.

(1) Permitted work shall be required to remain accessible and exposed until inspected and accepted by the [government or agency enforcing the Uniform Code] Authority Having Jurisdiction. Permit holders shall be required to notify the [government or agency] Authority Having Jurisdiction when construction work is ready for inspection.

(2) Provisions shall be made for inspection of the following elements of the construction process, where applicable:

- (i) work site prior to the issuance of a permit;
- (ii) footing and foundation;
- (iii) preparation for concrete slab;
- (iv) framing;
- (v) building systems, including underground and rough-in;
- (vi) fire resistant construction;
- (vii) fire resistant penetrations;
- (viii) solid fuel burning heating appliances, chimneys, flues or gas vents;

(ix) [energy code compliance] inspections for Energy Code compliance, including, at a minimum, each of the following, where applicable:

(a) inspections of footings and foundations to verify compliance with the Energy Code as to R-value, location, thickness, depth of burial and protection of insulation as required by the Energy Code and approved plans and specifications;

(b) inspections at framing and rough-in, to be made before application of interior finish and to verify compliance with the Energy Code as to types of insulation and corresponding R-values and their correct location and proper installation, fenestration properties (U-factor and SHGC and, in the case of a commercial building, VT), and proper installation and air leakage controls as required by the Energy Code and approved plans and specifications;

(c) inspections at plumbing rough-in to verify compliance as required by the Energy Code and approved plans and specifications as to types of insulation and corresponding R-values and protection, required controls, and required heat traps; and

(d) inspections at mechanical rough-in to verify compliance as required by the Energy Code and approved plans and specifications as to installed HVAC equipment type and size, required controls, system insulation, and corresponding R-value; system and damper air leakage (in the case of a commercial building) or system air leakage control (in the case of a residential building); and required energy recovery and economizers (in the case of a commercial building) or programmable thermostats, dampers, whole-house ventilation, and minimum fan efficiency (in the case of a residential building); and;

(e) in the case of a commercial building, inspections at electrical rough-in to verify compliance as required by the Energy Code and approved plans and specifications as to installed lighting systems, components and controls and, if applicable, installation of an electric meter for each dwelling unit; and

(x) a final inspection after all work authorized by the building permit has been completed[.] and, in the case of a commercial building, after the Authority Having Jurisdiction has received a letter from the building owner confirming that the building owner has received the Preliminary Commissioning Report required by the Energy Code. The final inspection shall verify that the work has been performed in compliance with the applicable provisions of the Uniform Code and the Energy Code and the

approved plans. In particular, but not by way of limitation, the final inspection shall, in the case of a commercial building, verify the installation and proper operation of all building controls required by the Energy Code, the receipt of documentation verifying that activities associated with building commissioning required by the Energy Code have been conducted and that findings of noncompliance corrected, and the receipt of the HVAC system certification required by the Energy Code; and the final inspection shall, in the case of a residential building, verify the installation of all building systems, equipment, and controls required by the Energy Code and their proper operation and the installation of the number of high-efficiency lamps and fixtures required by the Energy Code.

(3) After inspection, the work or a portion thereof shall be noted as satisfactory as completed, or the permit holder shall be notified as to where the work fails to comply with the Uniform Code and/or Energy Code. Construction work not in compliance with [code provisions] any applicable provision(s) of the Uniform Code and/or Energy Code shall be required to remain exposed until it has been brought into compliance with [the code] all applicable provisions of the Uniform Code and Energy Code, been reinspected, and been found satisfactory as completed.

(c) Stop work orders.

Stop work orders shall be used to halt work that is determined to be contrary to provisions of the Uniform Code and/or Energy Code, or is being conducted in a dangerous or unsafe manner, or is being performed without obtaining a required permit. A stop work order shall state the reason for its issuance and the conditions which must be satisfied before work will be permitted to resume.

Paragraph (3) of subdivision (d) of Section 1203.3 of Title 19 NYCRR is amended to read as follows:

(3) Temporary occupancy. A certificate allowing temporary occupancy of a structure may not be issued prior to the completion of the work which is the subject of a building permit unless the structure or portions thereof may be occupied safely, any fire- and smoke-detecting or fire protection equipment which has been installed is operational, and all required means of egress from the structure have been provided. The effectiveness of a temporary certificate shall be limited to a specified period of time during which the permit holder shall undertake to bring the structure into full compliance with applicable provisions of the Uniform Code and Energy Code.

Subdivision (f) of Section 1203.3 of Title 19 NYCRR is amended to read as follows:

(f) Procedures regarding unsafe structures and equipment.

Procedures shall be established for identifying and addressing unsafe structures and equipment. Such procedures shall comply with all applicable Constitutional requirements. In particular, but not by way of limitation, such procedures shall include provisions for giving owners and occupants of a building that is to be posted with a “do not occupy” notice with such pre-posting notice and opportunity to be heard (in a case that does not involve imminent danger) or such post-posting notice and opportunity to be heard (in a case that does involve imminent danger) as may be required by Constitutional due process requirements.

Paragraph (1) of subdivision (g) of Section 1203.3 of Title 19 NYCRR is amended to read as follows:

(1) Operating permits shall be required for conducting the activities or using the categories of buildings listed below:

(i) manufacturing, storing or handling hazardous materials in quantities exceeding those listed in tables [2703.1.1(1), 2703.1.1(2), 2703.1.1(3) or 2703.1.1(4), of the Fire Code of New York State (see Part 1225 of this Title)] 5003.1.1(1), 5003.1.1(2), 5003.1.1(3) or 5003.1.1(4) of the 2015 edition of the International Fire Code (a publication currently incorporated by reference in Part 1225 of this Title);

(ii) hazardous processes and activities, including, but not limited to, commercial and industrial operations which produce combustible dust as a byproduct, fruit and crop ripening, and waste handling;

(iii) use of pyrotechnic devices in assembly occupancies;

(iv) buildings containing one or more areas of public assembly with an occupant load of 100 persons or more; and

(v) buildings whose use or occupancy classification may pose a substantial potential hazard to public safety, as determined by the [government or agency charged with or accountable for administration and enforcement of the Uniform Code] Authority Having Jurisdiction.

Paragraph (2) of subdivision (g) of Section 1203.3 of Title 19 NYCRR is amended to read as follows:

(2) Parties who propose to undertake the types of activities or operate the types of buildings listed in paragraph (1) of this subdivision shall be required to obtain an operating permit prior to commencing such operation. An application for an operating permit shall contain sufficient information

to permit a determination that quantities, materials, and activities conform to the requirements of the Uniform Code and Energy Code. Tests or reports necessary to verify conformance shall be required.

Paragraph (6) of subdivision (g) of Section 1203.3 of Title 19 NYCRR is amended to read as follows:

(6) Where activities do not comply with applicable provisions of the Uniform Code and/or Energy Code, an operating permit shall be revoked or suspended.

Subdivisions (i) and (j) of Section 1203.3 of Title 19 NYCRR are amended to read as follows:

(i) Procedure for complaints.

Procedures shall be established for addressing bona fide complaints which assert that conditions or activities fail to comply with the Uniform Code, with the Energy Code or with local laws, ordinances or regulations adopted for administration and enforcement of the Uniform Code and Energy Code. The process for responding to such complaints shall include, when appropriate, provisions for inspection of the conditions and/or activities alleged to be in violation of the [code] Uniform Code, the Energy Code or the laws and/or regulations adopted for administration and enforcement of the [code] Uniform Code and Energy Code.

(j) Recordkeeping.

(1) General. A system of records of the features and activities specified in subdivisions (a) through (i) of this section and of fees charged and collected, if any, shall be established and maintained.

(2) Energy Code Compliance. In addition, a system for recording the rate of compliance with the Energy Code by projects in each project category described below shall be established and maintained. The recordkeeping system contemplated by this paragraph shall record the number of projects in each

project category that are completed during each calendar year, starting with 2017, and, for each such project, the percentage of applicable Energy Code requirements with which the project complied and the method(s) used to verify such compliance. The project categories are as follows:

- (i) new commercial building construction projects,
- (ii) new residential building construction projects,
- (iii) existing commercial building renovation projects, and
- (iv) existing residential building renovation projects.

Section 1203.4 of Title 19 NYCRR is amended to read as follows:

1203.4 Program review and reporting.

(a) Every city, village, town, and county, charged under subdivision 2 of section 381 of the Executive Law with administration and enforcement of the Uniform Code shall annually submit to the Secretary of State, on a form prescribed by the Secretary, a report of its activities relative to administration and enforcement of the Uniform Code and Energy Code. Commencing with the annual report for calendar year 2017, such annual report shall include, in addition to all other information required by the form prescribed by the Secretary, a statement, for each project category mentioned in paragraph (2) of subdivision (j) of section 1203.3 of this Part, of:

- (1) the number of projects in such project category that were completed during the year covered by the report;
- (2) the number of such completed projects that complied with ninety percent (90%) or more of the applicable requirements of the Energy Code, and
- (3) a description of the methods used by the city, village, town or county to verify such compliance.

(b) Upon request of the Department of State, every municipality or other agency subject to this Part shall provide from the records and related materials it is required to maintain; excerpts, summaries, tabulations, statistics and other information and accounts of its activities in connection with administration and enforcement of the Uniform Code and Energy Code. Failure to produce the requested materials shall permit an inference that the minimum standards of this Part have not been met.

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