



**State of New York
Department of State
Division of Code Enforcement and Administration**

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Rules and Regulations - Department of State

**TITLE 19 (NYCRR)
CHAPTER XXXII - DIVISION OF CODE ENFORCEMENT AND ADMINISTRATION
PART 1204 - UNIFORM CODE: ADMINISTRATION AND ENFORCEMENT BY
STATE AGENCIES**

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§1204.1 Introduction.

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 New York State Uniform Fire Prevention and Building Code (Uniform Code). Section 1201.2(d) of this Title provides that the State shall be accountable for administration and enforcement of the Uniform Code with respect to:

- (a) buildings, premises, and equipment in the custody of, or activities related thereto undertaken by, a

State agency; and

(b) all statewide wireless network facilities and all activities related thereto undertaken by the Office for Technology.

This Part establishes procedures for the administration and enforcement of the Uniform Code by State agencies. Buildings and structures exempted from the Uniform Code by other preclusive statutes or regulations are not subject to the requirements of this Part.

§1204.2 Effective Date.

This part shall take effect June 1, 1990.

§1204.3 Definitions.

(a) Code. The New York State Uniform Fire Prevention and Building Code.

(b) Code compliance certificate. A written document issued by a construction-permitting agency indicating that the agency has discovered no material deviations from applicable code provisions in a building or structure or in work performed, and authorizing the use or occupancy of a particular building, structure, or equipment.

(c) Construction emergency. Damage to or a malfunction in buildings or property of the State of New York caused by an unanticipated, sudden and unexpected occurrence which involves a pressing necessity for immediate repair, reconstruction or maintenance in order to permit the safe continuation of a necessary public use or function, or to protect the property of the State of New York, or the life, health or safety of any person.

(d) Construction permit. A written document issued by a construction-permitting agency authorizing construction to proceed on a particular project after a determination by the agency that the project as proposed will comply with applicable provisions of the Uniform Code.

(e) Construction-permitting agency. The Department of Environmental Conservation, the Department of State, the Office of General Services, the Office of Mental Health, the Office of Mental Retardation and Developmental Disabilities, the Office of Parks, Recreation and Historic Preservation, the Facilities Development Corporation, the Urban Development Corporation, the State University of New York, the State University Construction Fund, the Dormitory Authority of the State of New York, the New York Power Authority, the New York State Thruway Authority and any other State agency so designated by the Secretary.

(f) Custody. The effective control of a building or structure.

(1) Buildings leased pursuant to chapter 354 of the Laws of 1963 or chapter 152 of the Laws of 1964 are to be considered within the custody of the State of New York.

(2) The State of New York shall not be deemed to have custody of buildings or building spaces privately owned which are occupied by State agencies pursuant to a commercial lease made by the Office of General Services or the Office of Mental Health with the private owner.

(3) Criteria for determining whether the State possesses effective control of a building include but are not limited to the following:

(i) ownership of the building or the land on which it is located;

(ii) rights of entry or limitations thereon of an owner or landlord with regard to a building;

(iii) rights or obligations to make improvements or repairs to a building;

(iv) whether a lease provides for total or nearly total discretion by the leasee with regard to the use or alteration of a building; and

(v) whether a particular building is subject to taxation or whether payments in lieu of taxes are paid by the occupant(s).

(4) Notwithstanding any other provision of this subdivision to the contrary and without regard to the criteria mentioned in paragraph (3) of this subdivision, for the purposes of this Part the Office for Technology shall be considered to have custody and effective control of all statewide wireless network facilities; provided, however, that nothing in this subdivision shall be construed as subjecting to the provisions of the code any statewide wireless network facility that would not otherwise be subject to the provisions of the code; and provided further that for the purposes of this Part, the Office for Technology shall not be considered to have custody or effective control of any statewide wireless network supporting building merely by reason of the construction or installation of any statewide wireless network facility thereon or therein.

(g) Secretary. The Secretary of State.

(h) State agency.

(1) A department, bureau, commission, board, public authority or other agency of the State of New York including a public benefit corporation whose board of directors includes any member appointed by the Governor.

(2) A subdivision of any department, bureau, commission, board, public authority or other agency of the State which is easily identifiable and which for most other purposes is treated as an independent State agency.

(3) Without limiting the generality of paragraphs (1) and (2) of this subdivision, for the purposes of this Part and for the purposes of Part 1201 of this Title, the term State agency shall include the Office for Technology.

(i) Statewide wireless network. An integrated statewide communications system intended to link State and local first responders to each other and to allow State and local first responders to communicate reliably during emergency situations, as contemplated by section 402(1)(a) of the State Technology Law. The term statewide wireless network shall include such communications system as originally developed and constructed and as thereafter extended, improved, upgraded, or otherwise modified from time to time.

(j) Statewide wireless network facility. Any tower, antenna, or equipment which is used or intended to be used in the operation of the statewide wireless network, and any building or structure which is constructed specifically for the purpose of supporting or containing any such tower, antenna, or equipment.

(k) Statewide wireless network supporting building. A building or structure which is not a statewide wireless network facility (i.e., which was not constructed specifically for the purpose of supporting or containing a tower, antenna, or equipment which is used or intended to be used in the operation of the statewide wireless network), but which has a statewide wireless network facility constructed or installed thereon or therein. For example, if a tower, antenna, and equipment used or intended to be used in the operation of the statewide wireless network, and a building or structure which will contain such equipment or support such tower, are constructed on the top of an existing office building, then:

(1) such office building would be a statewide wireless network supporting building;

(2) such office building would not be a statewide wireless network facility; and

(3) the tower, antenna, equipment, and building or structure constructed on the top of such office building would be a statewide wireless network facility.

(l) Temporary approval for occupancy. A written document permitting a building or a portion thereof to be occupied for a temporary period notwithstanding the fact that construction of the building may not be complete or that violations of the code remain unresolved.

§1204.4 Custody by the Office of General Services.

For the purposes of this Part the Office of General Services shall be considered to have custody of all buildings leased pursuant to chapter 152 of the Laws of 1964 or chapter 354 of the Laws of 1963 and of all buildings within the statutory jurisdiction of the Office of General Services which have not been transferred by lease into the custody of a leasee.

§1204.5 Code Coordinator.

(a) Each State agency unless exempted pursuant to section 1204.15 of this part shall designate one or more code coordinators who shall be responsible for the agency's compliance with this Part so that the buildings, premises, equipment, and activities of the agency are maintained and operated in conformance with applicable provisions of the code.

(b) Code coordinators shall be designated by the commissioner, director or similar chief executive official of the State agency.

(c) Code coordinators shall be responsible for providing for fire safety inspections and inspections in response to complaints regarding conditions or activities allegedly failing to comply with provisions of the Uniform Code. In addition, coordinators shall be responsible for their agency's compliance with **Parts 1174, 1195 and 1196 of Title 9 of the Official Compilation of Codes, Rules and Regulations** including the preparation of the reports required under those Parts.

Clarification:

... compliance with **applicable provisions of the Fire Code of New York State (19 NYCRR Part 1225) and the Property Maintenance Code of New York State (19 NYCRR Part 1226) Parts 1174, 1195 and 1196 of Title 9 of the Official Compilation of Codes, Rules and Regulations** including the preparation of the reports required under those Parts.

(d) Code coordinators shall complete a course of instruction as specified by the Secretary.

(e) When a State agency has designated more than one code coordinator, one of the coordinators shall be identified as responsible for the State agency's overall compliance with this part.

§1204.6 Code Compliance Manager.

(a) The commissioner, director or similar chief executive official of each construction-permitting agency shall designate one or more code compliance managers.

(b) A code compliance manager shall be:

- (1) an architect licensed to practice in New York State; or
- (2) a professional engineer licensed to practice in New York State; or
- (3) an individual otherwise qualified by reason of training and experience who has demonstrated knowledge of the construction aspects of the code and who has at least two years of experience

working directly with the code.

(c) Code compliance managers shall complete a course of instruction as specified by the Secretary.

(d) Code compliance managers are authorized to issue construction permits and code compliance certificates for work undertaken by a State agency which is subject to provisions of the Uniform Code. Such managers shall also be responsible for providing for the review of requests for construction permits, for inspections during the process of construction, and for inspections in response to complaints regarding work which is subject to the Uniform Code. When appropriate they may issue notices of violations, stop work orders, and temporary approvals for occupancy.

(e) An architect or engineer who affixes his seal to a set of plans or specifications as the designer of record for a specific project shall not act as the code compliance manager for that project.

§1204.7 Construction Permits.

(a) On or after July 1, 1990, no State agency shall commence the erection, construction, enlargement, alteration, improvement, relocation, removal, or demolition of any building or structure without first obtaining a construction permit from a construction-permitting agency. Work which is not subject to the Uniform Code shall not require a permit. No permit shall be required for the performance of necessary repairs which do not materially affect structural elements and/or the plumbing, electrical, or heating/ventilation systems, nor for the construction of storage facilities of less than 3000 cubic feet. No permit shall be required for work costing \$20,000 or less on an existing building provided that such exemption does not conflict with the procedures of any construction-permitting agency involved in the project. All work shall nevertheless be done in conformance with the Uniform Code.

(b) Prior to the issuance of a construction permit, the issuing agency shall obtain and retain on file the following information:

- (1) a description of the site upon which the proposed work is to be done;
- (2) a description of the use or occupancy of all parts of the land and of the proposed building or structure;
- (3) where work is proposed for an existing structure, a description of the current use or occupancy of the structure;
- (4) a description of the work proposed to be undertaken;
- (5) the name(s) of the State agency which will have custody of the structure during construction and after the project is completed; and
- (6) a complete set of plans and specifications for the proposed project.

The issuing agency may waive the requirement for plans and specifications where the work to be done involves minor alterations or where plans and specifications are otherwise unnecessary.

(c) Each State agency seeking a construction permit shall be responsible for providing to the construction-permitting agency the information specified in subdivision 1204.7(b) of this section. During the period that the permit is in effect the applicant agency shall notify the issuing agency whenever any changes occur in the information contained within a permit application. A permit shall not be issued unless the proposed work is determined to be in conformance with the requirements of the Uniform Code. The authority conferred by a permit may be limited by conditions contained therein.

(d) A construction permit issued pursuant to this Part may be suspended or revoked by the issuing agency if it is determined that the work to which it pertains is not proceeding in conformance with the

Uniform Code or with any condition attached to such permit or if there has been a misrepresentation or a falsification of a material fact in connection with the application for the permit.

(e) A construction permit issued pursuant to this Part shall be valid for a period of time specified by the issuing agency, such period not to exceed three years. A construction permit shall expire upon the issuance of a code compliance certificate. A construction permit may be renewed for successive periods of up to three years each provided that:

(1) the permit has not been revoked or suspended at the time the application for renewal is made; and

(2) the relevant information included in the permit application is up to date.

(f) No State agency shall disburse funds for work requiring a construction permit until such permit has been obtained.

(g) In the event of the occurrence of a construction emergency, a State agency may undertake emergency repairs or reconstruction work without first obtaining a construction permit as required by subdivision (a) of this section. All work, however, should be done in conformance with applicable provisions of the Uniform Code. The occurrence of a construction emergency will not exempt a State agency from the requirement of section 1204.9 of this Part to obtain a code compliance certificate for all work subject to provisions of the Uniform Code. As soon as emergency circumstances allow and before the issuance of a code compliance certificate for any work performed, the agency which undertook the work shall submit to the appropriate construction-permitting agency documentation sufficient to establish that all work was performed in compliance with applicable provisions of the Uniform Code.

§1204.8 Inspections During Construction.

(a) Each construction-permitting agency shall provide for construction inspections of all work for which the agency has issued a construction permit under this Part. Work shall be inspected during the course of construction so as to observe the foundation, framing, superstructure, electrical system, plumbing system, heating/ventilating/air conditioning system, fire protection and detection system, and exit features.

(b) A construction-permitting agency may arrange for the inspections described in subdivision (a) of this section to be performed by a State agency managing construction of a project, by a design consultant, or by another party. Where the building, structure, or portion thereof which is the subject of a construction permit exceeds 20,000 cubic feet, a final inspection must be performed by the construction-permitting agency which issued the construction permit before a code compliance certificate may be issued.

§1204.9 Use and Occupancy of Buildings.

(a) Upon the completion of all projects for which a construction permit has been issued in accordance with this Part, the State agency which undertook the project shall obtain a code compliance certificate from the agency which issued the construction permit. No building erected subject to the Uniform Code and this Part shall be used or occupied until a code compliance certificate or a temporary approval for occupancy is issued. No building enlarged or altered, or upon which work has been performed which is subject to provisions of the Uniform Code, shall continue to be occupied or used unless a code compliance certificate or a temporary approval for occupancy is issued. Work exempted from the requirement to obtain a construction permit pursuant to section 1204.7(a) of this Part shall similarly be exempted from the requirement to obtain a code compliance certificate.

(b) The occupancy classification, as defined in **Part 701 of Title 9 of the Official Compilation of Codes, Rules and Regulations**, of a building in the custody of the State of New York shall not be changed unless a

code compliance certificate authorizing such a change or a temporary approval for occupancy has been issued. Before a code compliance certificate is issued the State agency with custody of such building must establish that such change will conform with all applicable provisions of the Uniform Code.

Clarification:

The occupancy classification, as defined in **the Building Code of New York State (19 NYCRR Part 1221) and the Residential Code of New York State (19 NYCRR Part 1220) Part 701 of Title 9 of the Official Compilation of Codes, Rules and Regulations**, of a building in the custody of the State of New York . . .

(c) A code compliance certificate shall only be issued after an inspection is conducted which:

- (1) indicates substantial completion of any work for which a construction permit has been issued; and
- (2) reveals no uncorrected deficiency or material violation of the Uniform Code within the area or work for which the certificate is to be issued.

§1204.10 Temporary Approvals for Occupancy.

(a) At the discretion of a construction-permitting agency, a temporary approval for occupancy may be issued if it is determined that a building or structure or a designated portion of a building or structure is sufficiently complete so that it may be safely occupied, or that work performed pursuant to a construction permit may be safely put to the use for which it is intended. The temporary approval for occupancy may place limitations upon the occupancy or use of a building or structure or it may require the State agency receiving such temporary approval to undertake specific precautions when using or occupying the premises. Any required limitations or precautions shall be clearly stated upon a temporary approval for occupancy when issued.

(b) A temporary approval for occupancy shall be valid for a period specified by the construction-permitting agency issuing such approval, such period not to exceed one year. A temporary approval for occupancy may be renewed at the discretion of the issuing agency if it is determined that the particular building or structure may be safely occupied or safely put to the use for which it is intended.

(c) Failure to comply with any limitations or precautions specified on a temporary approval for occupancy shall invalidate such approval.

§1204.11 Stop Work Orders and Revocation of Permits and Certificates.

A construction-permitting agency may suspend or revoke a construction permit, a code compliance certificate, or a temporary approval for occupancy issued by such agency, or it may issue a stop work order halting construction under its jurisdiction, if violations of the Uniform Code or this Part are discovered and it is determined to be in the best interests of public safety or of the State of New York to do so.

§1204.12 Fire Safety Inspections.

(a) Beginning January 1, 1991, each State agency shall commence a program of periodic fire safety inspections of buildings within its custody. At least once every three years each State agency shall inspect for compliance with applicable provisions of the Uniform Code all buildings or portions thereof within its custody which are classified as low hazard storage (C4.1) or moderate hazard storage (C4.2) as defined by Parts 701 and 702 of Title 9 of the Official Compilation of Codes, Rules and Regulations. All other

buildings or portions thereof within the custody of a State agency shall be inspected at least once per year. A report setting forth the findings of the inspection shall be prepared by the agency's code coordinator.

Clarification:

... are classified as low hazard storage ~~[S-2] (C4.1)~~ or moderate hazard storage ~~[S-1] (C4.2)~~ as defined by **Section 311 of the Building Code of New York State (19 NYCRR Part 1221)**. ~~Parts 701 and 702 of Title 9 of the Official Compilation of Codes, Rules and Regulations.~~

(b) Bona fide complaints alleging conditions in violation of the Uniform Code shall be investigated and when necessary inspections shall be conducted.

(c) State agencies shall correct all code violations within a reasonable amount of time after their discovery.

(d) Each State agency shall prepare and maintain a correction plan for all code violations which remain uncorrected 60 days after their discovery.

§1204.13 Agency Relationships.

(a) No construction-permitting agency shall delegate or transfer its authority to issue construction permits, code compliance certificates, or temporary approvals for occupancy to another State agency or to another party.

(b) Except as prohibited in subdivision (a) of this section, State agencies may arrange for the performance of required code related activities through agreements with other State agencies or other parties. Such agreement, however, shall not exempt a State agency from the obligation to appoint a code coordinator, to prepare an annual report pursuant to section 1204.14 of this Title and to comply with provisions of the Uniform Code.

(c) When more than one construction-permitting agency is involved in a particular construction project, such agencies may agree among themselves as to which agency shall act as the construction-permitting agency for the project. In the event of a dispute as to which agency shall act as construction-permitting agency, a decision shall be made based upon the following order of preference:

- (1) the design agency;
- (2) the construction agency; or
- (3) the agency owning or with custody of the particular building or structure.

If the agencies involved are unable to agree, the Department of State shall be the final arbiter in determining which agency shall act as construction-permitting agency.

(d) When no construction-permitting agency is designing or constructing a specific project, the Office of General Services shall act as the construction-permitting agency for the project. Except for the Office of General Services, designation as a construction-permitting agency does not obligate a State agency to undertake construction-permitting responsibilities for any project for which the agency has no design or construction role.

(e) When an agency occupies a building or a portion thereof which is owned by or in the custody of another State agency, the agency occupying the space must notify the agency with custody or ownership

of any physical changes to the building which are proposed or which are needed to achieve compliance with applicable provisions of the Uniform Code.

(f) In response to allegations of code violations or for other good cause, the Department of State, after notice to the agency or agencies involved, may inspect any building or construction activity in the custody of a State agency.

(g) In the event of a dispute arising between State agencies concerning the application of this Part, the Department of State, at the request of any party and after consultation with all the parties, may make a ruling binding on all parties.

(h) To the maximum extent practicable, a State agency acting pursuant to this Part shall consult with any other governmental entities providing services, under authority of other laws, to those areas where the authority conferred by this Part is exercised.

§1204.14 Annual Reports and Documents.

(a) On or before February 1st of each year, each State agency shall prepare a report pertaining to the preceding calendar year which shall include the following information:

- (1) the name and address of the agency, the code coordinator, and any code compliance managers;
- (2) a list of all construction permits, code compliance certificates, and temporary approvals for occupancy which were issued or received during the preceding year along with an indication of which permits, certificates and temporary approvals were still valid on the preceding December 31st;
- (3) a list of all fire safety inspections conducted within buildings or structures in the custody of the particular State agency;
- (4) a list of all code violations within the agency's buildings or structures which were not corrected within 60 days of their discovery;
- (5) a statement of the current status of the violations noted in paragraph (4) of this subdivision and a plan to correct any such violations still uncorrected; and
- (6) a list of all code related complaints and their disposition.

(b) As a part of its first annual report, each State agency shall determine which of the buildings or portions of buildings it occupies, uses, maintains, or operates are within its custody and which are within the custody of another State agency or are subject to code enforcement by the authority responsible for enforcement in the particular municipality where the building is located. Any changes in custody and consequent responsibility for code enforcement shall be identified in subsequent annual reports prepared by the agency.

(c) Within 30 days after the preparation of its annual report each State agency shall notify the Secretary of its completion.

(d) Construction-permitting agencies may establish procedures and forms consistent with this Part so as to effectively administer their responsibilities.

(e) All reports, construction permits, code compliance certificates, and temporary approvals for occupancy issued pursuant to this Part shall be prepared in a form acceptable to the Secretary so as to include sufficient information to identify the State agencies, the particular facilities, and the specific projects involved.

(f) The Secretary may examine the records of State agencies relating to the administration and

enforcement of the Uniform Code. It shall be the duty of State agencies to make such records available to the Secretary.

§1204.15 Agency Exemption.

(a) Individual State agencies may request that they be exempted from the requirements imposed by sections 1204.5 and 1204.14 of this Part. The Secretary may grant such exemptions under the following conditions:

- (1) the State agency does not have custody of any building or portion of a building;
- (2) all buildings occupied by the State agency are within the custody of the Office of General Services or are subject to code enforcement by a city, town, village, county or the Department of State; and
- (3) the State agency does not construct buildings or structures.

(b) The Secretary may review the exempt status of State agencies and rescind such status if it is determined that the particular State agency is no longer qualified for the exemption.

§1204.16 Designation as a Construction-Permitting Agency.

(a) State agencies which design, construct, or regulate buildings may apply to the Secretary for designation as a construction-permitting agency. Such application shall be in a form acceptable to the Secretary.

(b) Applications for designation shall be reviewed to determine whether the applying agency has demonstrated competency in design and construction of buildings and knowledge of the provisions of the Uniform Code. Where the Secretary finds that the applicant agency is capable of undertaking code enforcement activities, such agency shall be designated as a construction-permitting agency.

(c) Periodically the Secretary may review the records of construction-permitting agencies pertaining to the construction of buildings and to the activities performed pursuant to authority granted by this Part. When the Secretary finds that administration of the Uniform Code by a construction-permitting agency does not comply with the minimum standards established by this Part or Part 1203 of this Title, or that construction activities regulated by the agency do not substantially conform with applicable provisions of the Uniform Code, the agency's designation as a construction-permitting agency may be rescinded.

§1204.17 Authorities and Public Benefit Corporations.

Where a State authority or public benefit corporation participates in the construction of a new building or in the conversion, alteration, addition, or repair of an existing building and where upon its completion such building will be in the custody of an entity other than a State agency, administration and enforcement of the Uniform Code with respect to the construction, conversion, alteration, addition or repair will be the responsibility of the code enforcement agency generally performing those functions at the location of the work. The responsibility of a local code enforcement agency may be suspended during the period of the work if, acting pursuant to an express statutory grant, the authority or public benefit corporation exercises such discretion. In that event, a construction-permitting agency will be responsible for administration and enforcement of the Uniform Code with regard to the particular project. If previously designated as a construction-permitting agency, the particular authority or public benefit corporation participating in the project may serve as the agency responsible for administration and enforcement of the code. A construction-permitting agency will be similarly responsible where the Uniform Code is applied in lieu of local building construction regulations. Upon completion of the work, administration and enforcement of the Uniform Code will revert to the local agency ordinarily responsible for same.

§1204.18 Buildings Under the Supervision of the Department of Transportation Real Estate Division.

With regard to buildings on property acquired by the Department of Transportation for proposed transportation projects and which are the subject of permits issued by the Real Estate Division allowing use of the building by private entities until the property is needed for the construction of the transportation project, it shall be the responsibility of the occupants of such buildings to ensure that the building complies with applicable provisions of the Uniform Code. The local code enforcement agency ordinarily responsible for code enforcement where the building is located shall be responsible for administration and enforcement of the Uniform Code with regard to the particular building. Such responsibility shall include providing for the performance of periodic fire safety inspections of the building in accordance with a schedule established by the local enforcement agency for the particular category of the building. Upon the termination of a permit allowing the private use of a building under the supervision of the Real Estate Division, the Department of Transportation shall assume responsibility for ensuring that such building is maintained in compliance with applicable provisions of the Uniform Code and that periodic fire safety inspections of each building are conducted in accordance with the schedule established in section 1204.12 of this Part.