

TEXT
(19 NYCRR Subpart 1208-6 – E-1)

Subdivision (b) of section 1208-3.5 of Title 19 of the Official Compilation of Codes, Rules, and Regulations of the State of New York is amended to read as follows:

(b) Revocations based on failure to complete training requirement properly.

(1) The secretary may revoke a certified building safety inspector’s certification or a certified code enforcement official’s certification if the secretary determines, after notice and an opportunity to be heard, that such certified building safety inspector or certified code enforcement official:

[(1)] (i) did not actually attend and participate (in person or, in the case of an online training course, remotely) in any class session in any required basic training course, in-service training course, or advanced in-service training course; or

[(2)] (ii) achieved a passing grade on the examination in any required basic training course, in-service training course, or advanced in-service training course by fraudulent or dishonest means.

(2) The provisions of this section are in addition to, and not in substitution for or limitation of, the provisions of Subpart 1208-6.

Part 1208 of Title 19 of the Official Compilation of Codes, Rules, and Regulations of the State of New York is amended by adding a new Subpart 1208-6 to read as follows:

SUBPART 1208-6. SUSPENSION OR REVOCATION OF CERTIFICATIONS

1208-6.1 Introduction, purpose, and definition.

(a) Introduction and purpose. Section 376-a of the Executive Law was amended by Chapter 468 of the Laws of 2017. The amendments included the addition of new provisions that authorize the Secretary to promulgate rules and regulations with respect to the revocation or suspension of the certification of any code enforcement personnel found after a hearing to have “materially failed to uphold duties of a code enforcement

officer, including but not limited to, making material errors or omissions on an inspection report.” This Subpart implements those new provisions.

(b) Definition. In this Subpart, the term “authority having jurisdiction” shall mean any city, town, village, county, State agency, or other governmental unit or agency charged with or otherwise accountable or responsible for administration and enforcement of the Uniform Code and/or Energy Code.

1208-6.2 Suspension or revocation.

(a) General. The secretary may suspend or revoke the certification of a building safety inspector or code enforcement official if the administrative law judge conducting a hearing pursuant to section 1208-6.5 of this Subpart finds, after such hearing, that such building safety inspector or code enforcement official has materially failed to uphold his or her code enforcement duties.

(b) Material failure to uphold code enforcement duties – building safety inspector. For the purposes of this Subpart, a building safety inspector shall be deemed to have materially failed to uphold his or her code enforcement duties if he or she:

(1) fails to note one or more serious violations of the Uniform Code on an inspection report relating to a fire safety and/or property maintenance inspection, provided that such violations are of a type that should have been observed by a certified building safety inspector exercising reasonable care in the performance of the inspection;

(2) makes any other material error or omission on an inspection report relating to a fire safety and/or property maintenance inspection, provided that such error or omission is of a type that should not have been made by a certified building safety inspector exercising reasonable care in the performance of the inspection;

(3) demonstrates, by act or omission, willful misconduct, gross negligence, or gross incompetence in the performance of his or her code enforcement activities;

(4) performs any code enforcement activity other than fire safety and/or property maintenance inspections of existing buildings; or

(5) performs any code enforcement activity at a time when his or her certification is inactive or suspended.

For the purposes of paragraphs (1) and (2) of this subdivision, the term “certified building safety inspector” shall have the meaning ascribed to that term by section 1208-1.2(c) of this Part.

(c) Material failure to uphold code enforcement duties – code enforcement official. For the purposes of this Subpart, a code enforcement official shall be deemed to have materially failed to uphold his or her code enforcement duties if he or she:

(1) fails to note one or more serious violations of the Uniform Code and/or Energy Code on an inspection report relating to any type of inspection, provided that such serious violations are of a type that should have been observed by a certified code enforcement official exercising reasonable care in the performance of the inspection;

(2) makes any other material error or omission on an inspection report relating to any type of inspection, provided that such error or omission is of a type that should not have been made by a certified code enforcement official exercising reasonable care in the performance of the inspection;

(3) demonstrates, by act or omission, willful misconduct, gross negligence, or gross incompetence in the performance of his or her code enforcement activities; or

(4) performs any code enforcement activity at a time when his or her certification is inactive or suspended.

For the purposes of paragraphs (1) and (2) of this subdivision, the term “certified code enforcement official” shall have the meaning ascribed to that term by section 1208-1.2(d) of this Part.

(d) Matters not constituting a material failure to uphold code enforcement duties. For the purposes of this Subpart, personnel-related matters such as tardiness, absenteeism, insubordination, rude behavior, and the like shall not be deemed to be a material failure to uphold code enforcement duties.

(e) Effect of suspension or revocation. Notwithstanding the nature of certification pursuant to this Part as an indication of satisfactory completion of specified training requirements, and without regard to the amount of training actually completed by a person whose certification has been suspended or revoked pursuant to this Subpart:

(1) the suspension of such person's certification pursuant to this Subpart shall result in such person being deemed not to be certified during the period of such suspension;

(2) the revocation of such person's certification pursuant to this Subpart shall result in such person being deemed not to be certified at any time on or after the date of such revocation;

(3) such suspension or revocation shall not be shortened or terminated by reason of such person taking or re-taking any basic training, in-service training, advanced in-service training, or other training (provided, however, that if a suspension of a certification is made subject to the condition that the person to whom the certification was issued receive specified training during the period of the suspension, and if such suspension further provides that the period of the suspension will end upon completion of such training, such provisions in such suspension shall be given effect); and

(4) except as may otherwise be provided in the order suspending or revoking such certification, such person shall not receive any new or additional certification, whether as a building safety inspector or a code enforcement official, and such person shall not be permitted to increase or decrease the level of his or her certification pursuant to subdivision (c) or subdivision (d) of section 1208-3.1 of this Part, at any time during the period of such suspension or at any time after such revocation.

1208-6.3 Complaints.

(a) General. A complaint alleging that a building safety inspector or code enforcement official has materially failed to uphold his or her code enforcement duties may be submitted to the department. Any such complaint must:

(1) be in writing on a form provided by or otherwise acceptable to the department;

(2) identify the building safety inspector or code enforcement official who is alleged to have materially failed to uphold his or her duties (such a building safety inspector or code enforcement official being hereinafter referred to as the “subject person”);

(3) identify the authority having jurisdiction that employs or otherwise uses the services of the subject person;

(4) include a statement of the acts or omissions of the subject person that are alleged by the complainant to constitute a material failure to uphold the subject person’s code enforcement duties;

(5) include the complainant’s agreement to cooperate with any investigation conducted by the department and/or by any authority having jurisdiction;

(6) include the complainant’s name, address, and contact information; and

(7) be signed by the complainant.

(b) Review. The department will review the complaint to determine if the complaint states, on its face, an allegation that the subject person has materially failed to uphold his or her code enforcement duties. The department shall be permitted, but not required, to contact the complainant to request additional information or documentation related to the complaint.

(c) Preliminary determination. If the department determines that the complaint, on its face, does not state an allegation that the subject person has materially failed to uphold his or her code enforcement duties, the department will notify the complainant of that determination, and the department will take no further action

with respect to the complaint. If the department determines that the complaint, on its face, does state an allegation that the subject person has materially failed to uphold his or her code enforcement duties, the department shall investigate the complaint and/or refer the complaint to the appropriate authority having jurisdiction, as provided in section 1208-6.4 of this Part.

(d) Providing copies of complaint. Without regard to the determination made by the department pursuant to subdivision (c) of this section, the department shall be permitted, but not required, to submit a copy of such complaint and any supporting information and documentation provided to the department by the complainant to each authority having jurisdiction that employs or otherwise uses the services of the subject person. In addition, if the complaint relates to an inspection performed pursuant to section 807-a of the Education Law, the department shall be permitted, but not required, to submit a copy of such complaint and any supporting information and documentation provided to the department by the complainant to the school authorities in charge of the subject school and to the New York State Department of Education. To the extent required by the Personal Privacy Protection Law (Article 6-A of the Public Officers Law), the department shall redact the complainant's name, address, and contact information, and any other "personal information" (as that term is defined in Public Officers Law section 92(7)), from copies submitted to an authority having jurisdiction or to any other person or entity pursuant this subdivision.

(e) Actions taken without a complaint. This section shall not be construed as requiring the department to receive a formal complaint under this section before the department is authorized to conduct an investigation; to refer a matter to an authority having jurisdiction for investigation; to conduct a hearing; and otherwise to take steps to suspend or revoke the certification of a building safety inspector or code enforcement official who may have materially failed to uphold his or her code enforcement duties.

1208-6.4 Investigations.

(a) Investigation of complaints. If the department determines that a complaint submitted pursuant to section 1208-6.3 of this Subpart states, on its face, an allegation that the subject person has materially failed to uphold his or her code enforcement duties, the department shall:

(1) investigate such complaint in such manner as the department deems appropriate, and/or

(2) refer such complaint to the authority having jurisdiction that employs or otherwise uses the services of the subject person; require such authority having jurisdiction to investigate the complaint and to submit a written report of such investigation to the department; and provide such authority having jurisdiction with instructions regarding the conduct of such investigation and the submission of such report.

The complainant, the subject person named in the complaint, and each authority having jurisdiction that employs or otherwise uses the services of the subject person shall cooperate fully with any investigation conducted pursuant to this subdivision.

(b) Investigation of information obtained without a complaint. If information indicating that a building safety inspector or code enforcement official may have materially failed to uphold his or her code enforcement duties comes to the attention of the department by any means other than a complaint submitted pursuant to section 1208-6.3 of this Subpart, the department may:

(1) investigate such matter in such manner as the department deems appropriate, and/or

(2) refer such matter to the authority having jurisdiction that employs or otherwise uses the services of such building safety inspector or code enforcement official; require such authority having jurisdiction to investigate the complaint and to submit a written report of such investigation to the department; and provide such authority having jurisdiction with instructions regarding the conduct of such investigation and the submission of such report.

Such building safety inspector or code enforcement official and each authority having jurisdiction that employs or otherwise uses the services of such building safety inspector or code enforcement official shall cooperate fully with any investigation conducted pursuant to this subdivision.

1208-6.5 Hearings and determinations.

(a) Referral to Office of Administrative Hearings. The department may refer the question of whether a building safety inspector or code enforcement official did or did not materially fail to uphold his or her code enforcement duties to the department's Office of Administrative Hearings. Upon such referral, an administrative law judge in the Office of Administrative Hearings shall conduct a hearing and shall render a decision in writing.

(b) Hearing. The hearing shall be conducted in accordance with the provisions of Article 3 of the State Administrative Procedure Act and Part 400 of this Title that are applicable to proceedings to suspend or revoke a license. For that purpose, in any provision of Article 3 of the State Administrative Act or Part 400 of this Title (including but not necessarily limited to section 400.4(a) of Part 400) that is applicable to proceedings to suspend or revoke a license, the term "license" shall be deemed to include a certification as a building safety inspector or code enforcement official issued pursuant to any provision of this Part. However, nothing in this section or elsewhere in this Part shall be construed as categorizing any certification issued pursuant to this Part as a "license" for the purposes of any provision of the State Administrative Procedure Act or Part 400 of this Title (including but not necessarily limited to section 400.4(b) and section 400.13(b) of Part 400) that is applicable to a determination to deny an application for a license or for renewal of a license.

(c) Decision. The decision shall include findings of fact and conclusions of law or reasons for the decision, determination, or order. If the administrative law judge finds that the building safety inspector or code enforcement official did materially fail to uphold his or her code enforcement duties, the administrative law judge shall:

(1) suspend the certification of such building safety inspector or code enforcement official for such period of time, and subject to such terms and conditions, as the administrative law judge may deem to be appropriate, or

(2) revoke the certification of such building safety inspector or code enforcement official.

1208-6.6 Consent to jurisdiction and service.

Each person who has performed or hereafter performs any enforcement activity on behalf of any authority having jurisdiction shall be deemed to have consented to:

(a) the jurisdiction of the department and the department’s Office of Administrative Hearings for the purpose of proceedings to suspend or revoke certifications pursuant to this Subpart, and

(b) service of notices of hearing, determinations, and other papers in such proceedings by certified mail, return receipt requested, or regular first-class mail directed to such person at the address of such person last known to the department, or in any manner authorized by the Civil Practice Law and Rules or any other applicable law.

1208-6.7 Persons performing enforcement activities pursuant to section 1208-2.2(b) of this Part.

Section 1208-2.2(b)(1), section 1208-2.2(b)(2), and section 1208-2.2(b)(4) of this Part authorize certain persons who have not satisfied the training requirements specified in this Part to perform certain enforcement activities, subject to the terms and conditions specified in those sections. For the purposes of this Subpart, any authority to perform enforcement activities given to a person under section 1208-2.2(b)(1), section 1208-2.2(b)(2), or section 1208-2.2(b)(4) of this Part shall be deemed to be a certification. If a person having such authority materially fails to uphold his or her code enforcement duties, such authority shall be subject to suspension or revocation pursuant to this Subpart.

1208-6.8 Inactive certifications.

If a person whose certification has been designated as inactive pursuant to section 1208-3.5 of this Part materially fails to uphold his or her code enforcement duties, whether before or after such designation, such person's certification shall be subject to suspension or revocation pursuant to this Subpart. However:

(a) nothing in this section shall be construed as amending, or creating an exception to, the definitions of the terms "certified building safety inspector" and "certified code enforcement official, and a person whose certification has been designated as inactive is not a "certified building safety inspector" (as defined in 1208-1.2(c) of this Part) or a "certified building safety inspector" (as defined in section 1208-1.2(d) of this Part); and

(b) nothing in this section shall be construed as amending, or otherwise limiting or impairing, the provisions of section 1208-2.2(a) of this Part, and it is a violation of the minimum standard set forth in section 1208-2.2(a) of this Part for an authority having jurisdiction to allow a person whose certification has been designated as inactive to perform enforcement activities.

1208-6.9 Other suspension / revocation provisions.

The provisions of this Subpart are in addition to, and not in substitution for or limitation of, the provisions of section 1208-3.5(b) of this Part.