

REGULATORY IMPACT STATEMENT

(Part 1203)

1. STATUTORY AUTHORITY

Part 1203 of Title 19 of the Official Compilation of the Rules and Regulations of the State of New York implements Executive Law § 381(1) by establishing minimum standards for the administration and enforcement of the State Uniform Fire Prevention and Building Code (“Uniform Code”) and State Energy Conservation Construction Code (“Energy Code”), and Executive Law § 382(2) by setting the time for compliance with an order to remedy a condition found to be in violation of the Uniform Code. Additionally, Energy Law § 11-107 provides that the Energy Code shall be administered and enforced in the manner prescribed by applicable local law or ordinance consistent with the standards and procedures adopted pursuant to § 381 of Executive Law.

2. LEGISLATIVE OBJECTIVES

Executive Law § 371 states that it shall be the public policy of the State of New York to: 1) ensure that the Uniform Code be in full force and effect in every area of the State; and 2) encourage local governments to exercise their full powers to administer and enforce the Uniform Code. The proposed rule would repeal an existing regulation that prescribes minimum standards for administration and enforcement of the Uniform Code and Energy Code and replace it with a new rule, which also establishes minimum standards regarding administration and enforcement of the Uniform Code and Energy Code, to correspond to the recent revision of the Uniform Code and Energy Code. In adopting the proposed rule, the Department of State (“DOS”) will be advancing the aforementioned public policies of the State.

This proposed rule is intended to amend Part 1203 to update the minimum standards for the administration and enforcement of the Uniform Code and Energy Code to (1) update references to be consistent

with the updated versions of the Uniform Code and the Energy Code which took effect on May 12, 2020 (“2020 Codes of New York State”); (2) add defined terms for the purposes of Part 1203 based on the Executive Law and the 2020 Codes of New York State; and (3) update the requirements for operating permits to be consistent with the 2020 Codes of New York State.

3. NEEDS AND BENEFITS GENERAL

The purpose of the proposed rule is to prescribe minimum standards for administration and enforcement of the Uniform Code and the Energy Code whether enforced by a city, town, village, or some other governmental entity. Executive Law § 381 directs the Secretary of State to promulgate rules and regulations that establish such standards. The rule-making would repeal Part 1203 and replace it with a new Part 1203 which contains revised and updated standards.

The Uniform Code and the Energy Code were recently amended by completely replacing the text of the code. Effective May 12, 2020, the Uniform Code was amended to incorporate by reference various publications including the 2020 Residential Code of New York State (“2020 RCNYS”), 2020 Building Code of New York State, 2020 Fire Code of New York State (“2020 FCNYS”), 2020 Fuel Gas Code of New York State, 2020 Plumbing Code of New York State, 2020 Mechanical Code of New York State, 2020 Existing Building Code of New York State, and 2020 Property Maintenance Code of New York State. Also, effective May 12, 2020, the Energy Code was amended to incorporate by reference various publications including the 2020 Energy Conservation Construction Code of New York State. Consequently, the amendments to the Uniform Code and the Energy Code trigger a parallel review of, and amendments to, Part 1203 for consistency with the newly adopted 2020 Codes of New York State.

The proposed rule identifies and describes the features which must be included in a program for administration and enforcement of the Uniform Code and Energy Code. The proposed rule provides that all programs for administering and enforcing the Uniform Code and Energy Code must include: (1) building permits; (2) construction inspections; (3) stop work orders; (4) certificates of occupancy or certificates of compliance; (5) a procedure for notifying the code enforcement official of fires; (6) a procedure for identifying and addressing unsafe structures and equipment; (7) operating permits; (8) fire safety and property maintenance inspections; (9) a procedure for addressing bona fide complaints; (10) condition assessments of parking garages; (11) climatic and geographic design criteria; and (12) the maintenance of records regarding the activities of code enforcement. The majority of these features prescribed by the proposed rule are similarly required by the current regulation that establishes minimum standards for administration and enforcement. The proposed rule, however, will clarify and expand upon these features to promote greater consistency in local government enforcement programs.

Additionally, non-substantive modifications to Part 1203 were made which include clarifications, the addition of definitions, changes due to coordinated efforts with other State agencies, and editorial changes based on feedback and technical support provided by DOS to local governments. These modifications were done to clarify, not to change, frequently misunderstood provisions and to include modifications, such as, providing definitions for key terms used in Part 1203 based on the Executive Law and the 2020 Codes of New York State; clarifying that the administration and enforcement provisions identified in Part 1203 include the administration and enforcement of both the Uniform Code and the Energy Code¹; including a greater degree of detail to assist

¹ Energy Law § 11-107 (Administration and enforcement) provides that “(e)xcept as otherwise provided in regulations adopted pursuant to section three hundred eighty-one of the executive law, the administration and enforcement of the provisions of the [Energy Code] with respect to any building shall be the responsibility of that governmental entity which is responsible for the administration and enforcement of the provisions of the

an Authority Having Jurisdiction (“AHJ”) in verifying design professionals, where required, are in compliance with the Education Law; emphasizing that these are the baseline standards and that local governments can adopt more stringent administration and enforcement standards; clarifying the time period for temporary certificates of occupancy, operating permits, and fire safety and property maintenance inspections; aligning the fire safety and property inspections of public and private schools and colleges with the annual inspection requirements of the Education Law and Executive Law; and modifying the list of work that can be excluded from the requirements for a building permit by deleting various categories of work that are not regulated by the Uniform Code and clarifying some work that may impact life safety that should not be exempt from the requirement for a building permit.

A new subdivision was added to Part 1203 to clarify and highlight the responsibility of AHJs to establish and make available the data outlined in Chapter 3 of the 2020 RCNYS. The data includes climatic and geographic design criteria and flood hazard data. The requirement for the AHJ to provide this data has long been part of the Uniform Code and is stated in Section R301.2 and in Table R301.2(1) of the 2020 RCNYS, however, it is often missed by the code enforcement community. This provision was expanded in the 2020 version of the RCNYS to also require that heating and cooling equipment design loads be provided by the AHJ. Providing the information outlined in Chapter 3 of the 2020 RCNYS to applicants is crucial to ensure that construction documents are prepared based on the appropriate provisions of the Uniform Code and to ensure a uniform application of the requirements of the code.

uniform code or other applicable fire prevention and building construction code with respect to such building. The code shall be administered and enforced in the manner prescribed by applicable local law or ordinance consistent with the standards and procedures adopted pursuant to section three hundred eighty-one of the executive law.”

In response to developments in available technology, recent guidelines published by the International Code Council, as well as feedback from the code enforcement community, the proposed rule highlights the flexibility for an AHJ to accept construction documents submitted as part of a permit application in electronic format and for inspections to be performed remotely, where the AHJ deems that the inspections can be performed to the same level and quality as an in-person inspection. Neither of these would be considered a new provision, however, the proposed regulation makes it more evident that these are options available to the AHJ.

The proposed rule would require local governments charged with the responsibility for administering and enforcing the Uniform Code and/or Energy Code to provide for such administration and enforcement by local law, ordinance, or other appropriate regulation. Other governmental agencies accountable for administering and enforcing the Uniform Code and/or Energy Code would be required to provide for administration and enforcement in regulation. With municipal enforcement of the Uniform Code and Energy Code, the adoption of some type of local legislation is necessary to impose the requirements of an enforcement program upon private property owners.

Specific notable changes to the current Part 1203 are discussed below outlining the needs and benefits, alternatives, and associated costs.

Section 1203.1 (Introduction and definitions)

Needs and Benefits:

A new paragraph was added to Section 1203.1 to include definitions for key terms used in Part 1203. Some terms were defined to refer to the specific version and title of the standards incorporated by reference into the 2020 Codes of New York State; while a publisher may issue multiple versions of a code or reference standard, only the version duly incorporated by reference into the Uniform Code or the Energy Code is

enforceable. Making that clarification will eliminate ambiguity where more than one version of the document is published. Similarly, terms were defined where more than one definition is used in the Executive Law and/or in the documents incorporated by reference, leading to ambiguity in the interpretation of the provisions of Part 1203.

Other definitions were added for terms that are new to Part 1203 and some terms were defined to address confusion, evidenced by repeated instances of technical support requests answered by DOS.

Cost/Impact:

The definitions are added as a matter of clarification on the intent of the provisions of Part 1203. As discussed in more detail in Item #4 below, local governments that administer and enforce the Uniform Code and Energy Code may incur costs in connection with revising a local program for administration and enforcement of the Uniform Code and Energy Code in order to bring such program into compliance with the rule. However, the addition of definitions, in itself, does not pose an additional cost impact to regulated parties.

Alternatives:

One alternative considered was to reference directly to specific definitions found in the Executive Law or the 2020 Codes of New York State. However, the definitions found in these other documents are subject to modification without coordination with Part 1203 and do not always match across all documents. When this occurs, Part 1203 would have to be revised accordingly and there would be a period of time, while the regulation is revised, where a potential conflict exists between the newly re-defined terms and the intent of Part 1203. Updating Part 1203 as a result of a re-defined term would be an unnecessary burden for DOS and every AHJ and this alternative was, therefore, rejected.

Another alternative considered was to not provide any definitions or references to the Executive Law or the 2020 Codes of New York State, and rely on the commonly understood meaning of the terms. While this

may reduce the language of the new regulation and the need for AHJs to consider the inclusion of new definitions in their local laws, not all terms provided in Part 1203 can rely on a commonly understood meaning of the term. This alternative would place an undue burden on AHJs to interpret the intent of Part 1203. The likelihood that multiple AHJs, and even multiple employees within an AHJ, would assign different interpretations to these terms would lead to a lack of uniformity in the enforcement of the 2020 Codes of New York State. Additionally, while Part 1203 pertains to administration and enforcement performed by AHJs, the document is not used exclusively by AHJs. Other entities, such as applicants and their design professionals, attorneys, and judges deciding court cases, also use Part 1203. Including the definitions ensures that all parties have access to the same information without relying on their familiarity with and access to the applicable portions of the Executive Law and the family of codes and standards to find a definition, or relying on some other resource not intended to be used to define the term. While for some members of the code enforcement community, the terms used might appear obvious when coupled with the 2020 Codes of New York State and the Executive Law, other entities using Part 1203 may interpret the terms differently. Providing the exact definition removes this ambiguity. For these reasons, the alternative of not providing any defined terms was rejected.

Sections 1203.3 (b)(3), 1203.3 (g)(3), and 1203.3 (h)(2) (Construction Inspections, Operating Permit Inspections, and Fire Safety and Property Maintenance Inspections)

Needs and Benefits:

The proposed Sections 1203.3 (b)(3), 1203.3 (g)(3), and 1203.3 (h)(2), relating to inspections, require a citation to the specific code provision or provisions that have not been met to be included with the notification to the permit holder indicating that the work, or a portion of the work, failed a required inspection.

It is essential that violations issued pursuant to Part 1203 be based on a violation of the Uniform Code or the Energy Code. Not doing so could lead to inconsistent enforcement. Including a citation to the specific provision ensures that notices of failed inspections are based directly on the Uniform Code or Energy Code. A citation is also necessary for effective compliance; it would be unreasonable to expect permit holders to remedy a violation without proper notification of what the requirements are or where to find them. In the interest of efficiency and transparency, permit holders should be afforded a clear reference regarding the provisions with which they failed to comply.

The public will benefit from this proposed rule through more effective use of resources to achieve compliance. Municipalities might benefit from this change through a reduction in the number of re-inspections required to secure code compliance.

Cost/Impact:

Although not specifically required in earlier versions of Part 1203 or the 2020 Codes of New York State, DOS has consistently recommended in guidance, training, and technical support issued to AHJs, to include a citation of the specific code provisions that have not been met when issuing notices of failed inspections. The DOS phone surveyed AHJs to determine the impact of this rule change. Responses were gathered from nine AHJs of varying sizes and geographic locations. The responders represented all but one of the affected Regional Economic Development Councils² and included: three counties, three towns, two villages, and one city, including a response from a fire department (in an instance where the fire department constitutes the fire

² In 2011, Governor Cuomo established 10 Regional Councils to develop long-term strategic plans for economic growth for their regions. The Councils are public-private partnerships made up of local experts and stakeholders from business, academia, local government, and non-governmental organizations. DOS reached out to several AHJs from the Western New York Region, and no response was received. Additionally, DOS did not reach out to the New York City region because it is not affected by this rule change.

code enforcement official responsible for operating permits and fire safety and property maintenance inspections). Survey questions and discussion revolved around current enforcement practices, operating permit procedures, and a discussion of the potential impact of the rule changes to their respective municipalities.

Requiring a citation to specific code provisions to be included in notices of failed inspections will not impose a regulatory impact on those AHJs where doing so is the current standard practice, as previously recommended by DOS. Based on the survey, this is the case for multiple AHJs throughout the State, including the City of Rochester, the Town of Saugerties, and the Village of Cazenovia.

Requiring a citation to specific code provisions to be included in notices of failed inspections will impose a regulatory impact on municipalities where doing so is not standard practice. A sizable portion of the AHJs surveyed identified that their enforcement process includes an informal discussion of the issues with the contractor or the permit holder, that a formal letter is issued for any non-conforming items, and that the letters do not always include a reference to the appropriate section of the Uniform Code or Energy Code. A majority of code enforcement officials (CEOs) with whom the DOS spoke believed that including the references would be beneficial and that it would take no more than 15 minutes of research and documentation per violation to include a reference. For those AHJs where citing specific sections of the code on notices of failed inspections is not currently the standard practice, the additional time spent on each violation is negligible when inspecting relatively small and simple projects, but could be more significant in larger, more complex projects. The size range and degree of complexity of the projects are too broad to make an exact determination of additional time and effort possible to ascertain. The impact to the AHJ, if any, could potentially be mitigated by the permit fees and may also be offset by the increase in compliance and decrease in potential re-inspections.

Requiring a citation to specific code provisions to be included in notices of failed inspections will likely reduce the regulatory impact on building permit holders. While permit fees may potentially increase, providing

clear guidance on the specific provisions that permit holders must address will likely result in a reduction of the time, cost, and effort spent to achieve compliance. Additionally, by clearly identifying the code requirements to the permit holders and their builders/contractors, there is a potential for future work to be more compliant, as permit holders become more familiar with the provisions, further reducing the burden on the code enforcement officials and the permit holders.

Alternatives:

One alternative is to retain the language of the provision and not to explicitly require a citation, relying on the AHJs discretion on whether a citation is necessary. This alternative, however, does not prevent inconsistent enforcement of the Uniform Code, nor does it provide permit holders the necessary information to ensure proper compliance. For this reason, this alternative was rejected.

Section 1203.3 (g)(1) (Operating Permits)

Needs and Benefits:

The proposed rule provides that operating permits shall be issued for a set period not to exceed 180 days for tents, special event structures, and other membrane structures; not to exceed 60 days for alternative activities at a sugarhouse; and not to exceed one year for all other activities, structures, and operations specifically listed in the paragraph. A set period for operating permits issued at the discretion of the AHJ and not listed in the paragraph is not established in the proposed rule; the appropriate term will instead be subject to the judgment of the AHJ. While many AHJs choose to perform fire safety and property maintenance inspections concurrently with operating permit inspections, and yet others issue an operating permit to indicate a successful fire safety and property maintenance inspection, it is important to recognize that the requirements for operating permits in Part 1203 are separate and apart from regular fire safety and property maintenance inspections. Operating

permits are required in Part 1203 for activities and building operations with high inherent safety hazards. Therefore, issuing an open-ended operating permit or an operating permit for longer periods of time than indicated in the proposed rule would provide a lower level of safety from hazards than what is required for other uses and activities with a lesser hazard. This would compromise public safety and would be contrary to the intent and purpose of the Uniform Code as stated in Executive Law §371(2)(b) to “*provide a basic minimum level of protection to all people of the state from hazards of fire and inadequate building construction.*”

The proposed rule also includes an expansion and clarification of the list of activities and uses where operating permits are required based on the 2020 Uniform Code. In the current Part 1203, the list of activities and uses did not specifically address several high hazard items that are categorized as such in the Uniform Code. The revised list of activities and uses includes, but is not limited to, tents, temporary special event structures, other membrane structures; and operations involving flammable finishes, explosives, and fireworks. Other activities and uses, such as mobile food preparation vehicles and certain energy storage systems, were added based on their recent addition to the 2020 Uniform Code.

The items added to proposed Section 1203.3 (g)(1)(i) and (ii) rely on references to the 2020 FCNYS to identify when an operating permit would be required for certain activities. For example, the permit applicability for the use or storage of hazardous materials relies on the Maximum Allowable Quantity tables found in Chapter 50 of the 2020 FCNYS to identify quantities requiring a permit. Another example is the requirement for an operating permit for tents, which relies on the approval exemptions in Chapter 31 of the 2020 FCNYS. In this instance, the Uniform Code exempts recreational camping tents, among others, from the requirements for approval, and therefore, the proposed Part 1203 also exempts them from an operating permit. Operating permits outlined in Part 1203 intend to require regulatory oversight only on hazardous or dangerous activities to ensure public safety. Including these references is a balance between specifically citing the exact provision of

the 2020 FCNYS or using terms broadly, as provided in the current version of Part 1203. Using a more detailed and specific citation to direct code users to the applicable Chapter or Section could potentially require frequent and more extensive updates to Part 1203 and local laws in the event that the referenced Chapters or Sections change in future code cycles. However, the use of broader terms would likely cause different interpretations of how to enforce the requirements of Part 1203 resulting in nonconformity with the intent of the regulation and inconsistency in the enforcement of the Uniform Code.

Another change proposed to the list of required operating permits in Section 1203.3(g)(1) is the removal of the occupant load threshold of 100 persons or more in buildings containing one or more assembly areas. The proposed provision works in concert with the definition for “*assembly area*.” According to the definition, and consistent with the definitions found in the Uniform Code and Executive Law § 372, assembly areas include those “*primarily used or intended to be used for gathering fifty or more persons...*” The Uniform Code has consistently included more stringent requirements, as a means of mitigating hazards to persons and property, in assembly areas with an occupant load of 50 persons or more, consistent with the definition. The risks specific to assembly spaces can be fatal. These risks are mitigated, in part, through provisions for means of egress, the directional swing of doors, fire-rated construction assemblies, treatment of combustible materials, means of fire apparatus access, heat and smoke detection, portable fire extinguishers, and fire suppression features. Verifying these mitigating items remain in place is necessary through either fire safety and property maintenance inspections and/or operating permits.

This change may appear to suggest that there will be an increase in the number of operating permits required for those assembly areas intended for an occupant load between 51 and 100 persons. However, proposed Section 1203.3 (g)(2) indicates that an AHJ may exempt from the operating permit requirement “*processes or activities, or the buildings, structures, or facilities ... provided that the use is expressly*

authorized by a certificate of occupancy or certificate of compliance.” This affords the AHJ the opportunity to evaluate the inherent risks of the use or activity individually and, if found to be reasonable and consistent with the type of construction and the safety measures of the building, to explicitly state its approval in the certificate of occupancy or the certificate of compliance without requiring operating permits. This is true for all operating permit processes, activities, buildings, structures, or facilities, not only assembly areas. Therefore, although the list of processes, activities, and facilities where operating permits are required has been expanded, allowing those uses to be exempted from the requirement for operating permits where the use is stated on and allowed by the certificate of occupancy or certificate of compliance is anticipated to result in an overall reduction in the number of operating permits required. For example, an assembly occupancy that is allowed via a certificate of occupancy or certificate of compliance to have an occupant load of 101 persons, would require an operating permit under the current Part 1203. Under the proposed rule, an operating permit may be exempted by the AHJ. Similarly, under the current regulation, commercial and industrial operations that produce combustible dust as a byproduct require operating permits, however, under the proposed regulation, an operating permit can be exempted by the AHJ for those operations allowed by a certificate of occupancy or certificate of compliance.

The public will benefit from this code change through consistent application of the requirements of Part 1203, the Uniform Code, and the Executive Law across the State, as well as a greater assurance that the hazards inherent to assembly areas and other hazardous activities will be appropriately mitigated.

Cost/Impact:

The actual number of operating permits required will vary from one municipality to another and will depend on several variables such as the size and population of the municipality; the number of hazardous processes and activities performed; whether those processes, activities, buildings, and uses requiring an operating permit are specifically allowed under the certificate of occupancy or certificate of compliance; the

number of existing buildings capable of accommodating a gathering of 50 people or more; and other factors. Potentially, the regulatory burden on AHJs, if any, could be offset by the operating permit fee. Other efficiencies could be pursued by the AHJ such as performing operating permit inspections concurrently with annual fire safety and property maintenance inspections. For municipalities where the standard practice is to require an operating permit for all the uses and activities outlined in the FCNYS, there is no increased burden, other than requiring an operating permit for Mobile Food Preparation Vehicles, which is a new item added to the 2020 version of the FCNYS. This is the case, for example, for the Village of Westhampton Beach and the Town of Oneonta, which anticipate only a minor impact as a result of this change.

Depending on the standard practice of a particular AHJ, some facility owners and tenants could incur additional costs associated with this change in the form of operating permit fees. As mentioned previously, DOS researched the cost of operating permits in several municipalities of various sizes and locations throughout the State and found that some municipalities (such as Jefferson County) do not charge a fee for operating permits, some (such as the Town of Saugerties) charge an additional \$25 over the cost of a fire safety and property maintenance inspections, while others (such as the Village of Westhampton Beach) may charge up to \$350 for certain types of operating permits in conjunction with fire safety and property maintenance inspections. However, as part of the survey, DOS determined that in most instances, the cost of an operating permit is typically combined with the cost of a fire safety and property maintenance inspection and set at around \$100 per year. Facility owners and tenants will also derive a benefit from operating permit inspections in the form of a safer facility and the opportunity to remediate unsafe conditions before they cause a greater failure. This benefit could potentially exceed the cost of the permit over time.

Alternatives:

One alternative considered by DOS was to remove the list in its entirety from Part 1203 and instead include a reference to the requirements of the 2020 FCNYS. This alternative would be overly burdensome for AHJs and facility owners, particularly where the use or activity is already permitted by the certificate of occupancy or compliance. Additionally, not every instance in the 2020 FCNYS captures all of the details necessary to require operating permits. For these reasons, this alternative was rejected.

Another alternative considered was to maintain the list as written in the current version. This alternative would fail to address hazardous uses and activities that are new to the Uniform Code and fail to specifically address some uses and activities that are equally hazardous to those listed. This alternative could also be interpreted to exempt from the requirement for an operating permit those buildings and spaces that have assembly areas with a capacity of 50 to 100 persons. This alternative would also fail to provide a means of mitigating the risk of fire and other hazards for those assembly areas, and would not provide minimum standards of safety, which would be inconsistent with the explicit requirements of the Uniform Code. For these reasons, this alternative was rejected.

Section 1203.4 (Program review and reporting)

Needs and Benefits:

The proposed rule requires AHJs to provide to DOS, upon request, “true and complete copies” of the records the AHJ is required to maintain, whereas, the rule currently in effect requires “excerpts, summaries, tabulations, statistics and other information and accounts of its activities in connection with administration and enforcement.” The proposed rule also requires “true and complete copies” of portions of records when portions of records are requested.

DOS customarily requests copies of records from AHJs during the course of reviewing a local government's program for administration and enforcement of the Uniform Code and Energy Code as part of DOS's oversight function. Such reviews are often triggered by a complaint received through the Oversight Unit of the Division of Building Standards and Codes at DOS. Timely and complete information is needed for DOS to promptly exercise its oversight function. In some instances, the records submitted by the AHJ are intrinsic to a determination that the AHJ has acted prudently, has adhered to the provisions of their local law, and has complied with the minimum standards of Part 1203. True and complete copies of the necessary records that are already required to be kept by the AHJ per the current and proposed Part 1203 will not only assist DOS, but the AHJ as well, to further the legislative objectives to ensure that the Uniform Code and Energy Code are in full force and effect in every area of the State and for local governments to exercise their full powers to administer and enforce the Uniform Code and Energy Code.

Cost/Impact:

AHJs are currently required to maintain "a system of records of the features and activities" specified in Section 1203.3 in accordance with subdivision 1203.3(k). It will likely require an AHJ between two and five clerical staff-hours to locate, reproduce, and submit records requested by DOS. The actual time spent will depend on several factors that include the age, the location (whether in the same building or remote location), and the size of the records. Reproducing records for small projects with a low level of complexity will likely require less time than reproducing the records of large and complex projects. The length of time involved will also depend on the actual "system of records" developed by the AHJ and the degree of care the AHJ has placed on archiving the records it is required to maintain.³

³ The State Archives revised and consolidated its local government records retention and disposition schedules and issued a single, comprehensive retention schedule for all types of local governments on August 1, 2020.

It is possible that submitting “true and complete copies” will save time when compared to the effort required to gather the records, produce tables and summaries, and respond to subsequent requests for additional information. Submitting partial information can result in a delay in DOS’s review process and lead to multiple follow up requests.

There will be a nominal cost to reproduce and deliver records if physical copies are being provided. The cost will be even less where the records are being provided by electronic means.

Alternatives:

An alternative is to maintain the language of Section 1203.4 as it currently exists. This alternative was rejected because it does not afford DOS the information necessary to exercise its duty in accordance with the Executive Law and the corresponding regulations. The lack of DOS access to true and complete records could also be detrimental to the AHJ in that if it cannot be proven to DOS, through copies of true and complete records, that the AHJ has met the requirements of the regulations or laws, then the presumption is that the AHJ has not met the requirements.

4. COST

a. COST TO REGULATED PARTIES FOR THE IMPLEMENTATION OF, AND CONTINUING COMPLIANCE, WITH THE PROPOSED RULE

Local governments that administer and enforce the Uniform Code and Energy Code may incur costs in connection with revising a local program for administration and enforcement of the Uniform Code and Energy

The new schedule, Retention and Disposition Schedule for New York Local Government Records (LGS-1), supersedes and replaces the CO-2, MU-1, MI-1, and ED-1 Schedules. Local governments must adopt the LGS-1 prior to utilizing it, even if they adopted and have been using the existing schedules, and will have until January 1, 2021 to do so. If a local government has not adopted the LGS-1 by January 1, 2021, it may not legally dispose of any records:

Code in order to bring such program into compliance with the rule. Amending a local law that implements the local code enforcement program may require expenses associated with the preparation of revised text, the publication of notices of a public hearing, and conducting the hearing itself. DOS anticipates that these costs will vary based on the degree to which a local government's existing code enforcement program complies with the current version of Part 1203, as well as the degree by which a local government wishes to exceed the minimum standards established by this rule. Executive Law § 381(2) provides that cities, towns, villages, and counties may charge fees to defray the costs of administration and enforcement. Fees for permits and inspections such as building permits, operating permits, fire safety and property maintenance inspections, and construction inspections are instances where a local government can collect fees to defray the costs of administration and enforcement. DOS anticipates that these fees could offset the costs of the administrative duties that local governments may incur as a result of this rule.

The proposed rule might require certain building owners to now obtain an operating permit from the local government prior to operating certain buildings and/or conducting certain activities in accordance with the requirements of the new version of the Uniform Code, effective May 12, 2020, which could result in additional administrative fees. Requiring operating permits will not only provide local governments with the necessary leverage to ensure that the provisions of the Uniform Code are complied with, but will also result in safer buildings. As mentioned in Item #3 above, facility owners and tenants will derive a benefit from operating permit inspections in the form of a safer facility and the opportunity to remediate unsafe conditions before they cause a greater failure. This benefit could potentially exceed the cost of the permit over time.

Further information concerning costs and savings of the most significant of the new or revised provisions of Part 1203 are discussed within Item #3 above.

b. COST TO THE AGENCY, THE STATE AND LOCAL GOVERNMENTS FOR THE IMPLEMENTATION OF, AND CONTINUED ADMINISTRATION OF, THE RULE

Part 1203 currently requires each AHJ to establish a code enforcement program that includes the features described in Part 1203. Approximately 1,600 municipalities will be required to review their existing code enforcement program, and if such program does not now include the provisions described in the proposed Part 1203, as amended by this rule, such AHJ will be required to amend its program by local law, ordinance, or other appropriate regulation. DOS anticipates that any AHJ that has established a code enforcement program that included the features described in the current version of Part 1203 will need to make only minor changes to that program to bring it into compliance with Part 1203, as proposed by this rule. To assist local governments, DOS will post on its website an updated model local law establishing a code enforcement program that includes the features required by Part 1203, as proposed by this rule.

Part 1203 currently requires each code enforcement program to include recordkeeping provisions. Some municipalities may be required to process and issue more operating permits than what is required under the current version of the regulations and, therefore, this rule might require some AHJs to keep records on an increased number of operating permits while decreasing the number in other AHJs.

DOS will provide training and guidance on the new or revised provisions of Part 1203, as needed, for all local government code enforcement personnel in the State at no cost to the municipalities. Local governments that administer and enforce the Uniform Code will continue to access the provisions of Part 1203 free of charge.

Further information concerning costs and savings of the most significant of the proposed revisions to Part 1203 are discussed within Item #3 above.

5. LOCAL GOVERNMENT MANDATES

As more fully discussed in Item #4 of this Regulatory Impact Statement, this rule will require AHJs to review their code enforcement programs; to amend those programs to include the additional provisions required by this rule; and to require some property owners to obtain an operating permit from the AHJ prior to operating a use or facility listed in this revised rule, while other operating permits may no longer be required where allowed by the AHJ through a certificate of occupancy or certificate of compliance. It is possible that a small number of AHJs will experience a net gain in the number of operating permits required, and if so, this rule will require those AHJs to review and process an increased number of operating permit applications; to take enforcement action or actions, if necessary; and to maintain records on the increased number of operating permits, if any. It is the opinion of DOS that most AHJs will experience a reduction in the number of operating permits processed.

The proposed amended rule will also require AHJs to include a citation to the specific code provision or provisions that have not been met with the notification to the permit holder indicating that the work, or a portion of the work, failed a required inspection.

Pursuant to Executive Law §381, every city, town, and village is responsible for administering and enforcing the Uniform Code. Consequently, local government personnel will need to familiarize themselves with the details of this rule. DOS will provide guidance, as needed, to enable local governments to enforce this regulation.

6. PAPERWORK

As more fully discussed in Item #3 of this Regulatory Impact Statement, this proposed rule might require some AHJs to require property owners to obtain annual operating permits for uses and activities not previously listed in Part 1203 and not otherwise permitted by the certificate of occupancy or certificate of

compliance. The majority of AHJs that DOS contacted, as mentioned within Item #3 of this document, are issuing annual operating permits in conjunction with conducting a fire safety and property maintenance inspection. Some AHJs that were only enforcing the minimum standards and/or that were issuing operating permits for periods exceeding one year might experience a small increase in the number of operating permits processed, however, it is anticipated that most AHJs will see a decrease in the number of operating permits processed.

7. DUPLICATION

This rule does not duplicate any rule or other legal requirement of the State or Federal government known to DOS.

8. ALTERNATIVES

It is the policy of DOS to modernize and amend the Uniform Code and Energy Code, to maintain consistency with the national model codes, to keep building practices in New York State consistent with practice nationally, and to incorporate new technological developments in a timely manner. It is also the policy of DOS to revise the related regulations for consistency with updates to the Uniform Code and Energy Code. Consequently, the alternative of maintaining existing provisions of Part 1203 unchanged was considered and rejected because it would fail to maintain consistency with the new versions of the recently adopted Uniform Code and Energy Code and would not provide clear direction to the AHJs on how to exercise their full powers to administer and enforce the Uniform Code and Energy Code as required by Executive Law § 371(2)(d) and Energy Law § 11-107.

It was suggested to DOS during the Notice of Rule in Development to make only minimal changes to Part 1203 and to include in it a means for the code enforcement community to respond to future changes in Part

1203, the Uniform Code, the Energy Code, or emergency rules through departmental policy or other document produced at the building department level. This could enable code enforcement officers to promptly respond to such changes by revising departmental documents without the delay and hardships that may be associated with enacting a local law. Absent in this alternative, however, would be the opportunity for public input.

Additionally, this alternative could also result in unenforceable documents if not produced in accordance with the powers afforded to the AHJs by the State Legislature. The current and proposed Part 1203 indicates an AHJ must provide for the features of Part 1203 through local law, ordinance, or other appropriate regulation, which results in an enforceable means of administration and enforcement. For these reasons, this alternative was rejected.

9. FEDERAL STANDARDS

This rule does not exceed any minimum standards of the Federal government for the same or similar subject areas known to DOS.

10. COMPLIANCE SCHEDULE

DOS notified the “regulated parties” (i.e., cities, towns, villages, counties, and State agencies that administer and enforce the Uniform Code) of its intent to develop and propose this rule by means of a notice that was posted on the DOS website and contained in *Building New York*, an e-bulletin sent by DOS to local governments and other persons and entities interested in the construction industry. The notice was posted, and issued in the *Building New York* e-bulletin, prior to the filing of the Notice of Proposed Rule Making for this rule. Local governments that administer and enforce the Uniform Code have thus been able to review their code enforcement programs and begin to consider draft revisions that may be necessitated by this rule. DOS

also engaged stakeholders, such as the New York State Building Officials Conference and the New York State Codes Coalition, which represent broad constituencies, including fire service professionals, building officials, and design professionals from both urban and rural areas. In response to initial comments received from local code enforcement officials, organizations, and private companies, DOS revised this rule as appropriate. #