ASSESSMENT OF PUBLIC COMMENTS
(19 NYCRR Part 1203)

This proposed rule repeals Part 1203 and adds a new Part 1203 of Title 19 of the Official Compilation of the Rules and Regulations of the State of New York (Part 1203), which establishes the minimum standards for the administration and enforcement of the State Uniform Fire Prevention and Building Code (Uniform Code) in accordance with Executive Law § 381(1) and the State Energy Conservation Construction Code (Energy Code) in accordance with Energy Law § 11-107. The Proposed Rule Making was published in the State Register on May 12, 2021. A public hearing was held on July 15, 2021, and the public comment period ended on July 20, 2021.

SUMMARY OF THE ASSESSMENT OF PUBLIC COMMENTS

The Department of State (DOS) did not receive any comments during the public hearing and received four comment letters during the public comment period. Where identical or substantially similar comments were received, those comments are discussed in one consolidated statement below. Some of the comments received either requested clarification or indicated that some provisions had been misunderstood. As a result, editorial clarifications were made to the proposed rule and minor changes were made to correct typographical errors. Additionally, a few changes were made as a result of new legislation that passed subsequent to the publication of the Notice of Proposed Rule Making in the State Register.[1]

In some instances, DOS determined that the change recommended by the comment needs further consideration, analysis, and public input and that incorporating those changes as part of this Rule Making could delay the adoption of this rule, potentially by a significant amount of time. DOS determined that a delay of the

[1] *See* Chapter 333 of the Laws of 2020 and Chapter 47 of the Laws of 2021 amending Executive Law §382(4),effective December 15, 2020; Chapter 507 of the Laws of 2021 amending Executive Law §382(3), effective October 25, 2021; Chapter 571 of the Laws of 2021 amending Executive Law §382(2), effective March 3, 2022.

other important proposed changes provided by this Rule Making would unnecessarily delay the proper enforcement of the Uniform Code and Energy Code, including the necessary coordination with the updates to those codes that went into effect on May 12, 2020. Although the changes recommended by those comments have not been incorporated into the rule now being adopted, DOS and where appropriate, the State Fire Prevention and Building Code Council (Code Council), will continue to evaluate the recommendations and may consider them as part of future proposed rule makings. The comments received are described below in greater detail.

ASSESSMENT OF PUBLIC COMMENTS

COMMENT #1: A comment was received requesting the rule replace the word "regulation" with the word "means" under §1203.3 so that a program for administration and enforcement could provide for the required features through "local law, ordinance, or appropriate means" rather than through "local law, ordinance, or appropriate regulation." According to the commenter, "appropriate means," as it is written in the rule currently in effect, gives an authority having jurisdiction (AHJ) the flexibility to administer and enforce the Uniform Code and Energy Code through "departmental policy, […] procedure, or rule" without requiring that a local governing body take action. The comment indicated that public input would not provide any value to the local adoption process since the provisions contained in this rule are mandatory and opportunity for public comment has already been provided through this Rule Making.

RESPONSE TO COMMENT #1: This comment was proposed during the Notice of Rule in Development. As previously explained in the Regulatory Impact Statement included in the Notice of Proposed Rule Making (RIS), while DOS understands the desire for flexibility and speed of implementation, a departmental policy or similar procedure to establish a code enforcement program in compliance with Part 1203, as an alternative to establishing a code enforcement program through local law, ordinance, or regulation does not afford constituents "…opportunity for public input. Additionally, this alternative may also produce

unenforceable documents that are not produced in accordance with the powers available to the AHJs by the State Legislature."

As identified in §1203.3, which requires a code enforcement program to be established, the features required by §1203.3 are the minimum features. Through the same local law, ordinance, or appropriate regulation, a municipality could provide for more stringent features. If this was permitted to be a departmental policy or another unenforceable document that was not produced in accordance with the powers available to the AHJs by the State Legislature, then those additional features would not have gone through any public input. Based on the lack of public input at the local level and the enforceability concerns, no change to the rule was made as a result of this comment.

COMMENT #2: A comment was received recommending that references to other portions of the rule use a general reference such as "1203.3 (g)(1)" rather than "subparagraphs (i) through (vii) of paragraph (1) of this subdivision."

RESPONSE TO COMMENT #2: In response to this comment, references have been simplified throughout for conciseness, where appropriate.

COMMENT #3: A comment proposed maintaining consistency in the use of the words "public" and "people of the State" within §1203.2 (d). Another comment suggested that the words "assuring a continuing supply of energy for future generations" in the same Subdivision would place an undue burden on AHJs.

RESPONSE TO COMMENT #3: A change was made to the Subdivision to maintain consistency with the original language found in Executive Law. The language pertaining to the enforcement of the Energy Code was also modified to specifically reference the Energy Law.

COMMENT #4: Three comments indicated that clarification was needed regarding the impact of the qualification requirements of Part 1208 on electrical inspectors.

RESPONSE TO COMMENT #4: The qualification requirements in accordance with Part 1208 apply to persons rendering contracted-for services on behalf of the AHJ who perform activities consistent with the definition of "enforcement activity," and that would customarily be performed by “building safety inspectors” or “code enforcement officials,” as those terms are defined in Part 1208, and the authority to perform those activities is regulated by Part 1208.

The qualification requirement in accordance with Part 1208 does not apply to special inspections as defined in the Uniform Code, including but not limited to, electrical inspections, elevator inspections, welding inspections, and smoke control system inspections, or to design and construction professionals rendering services on behalf of the owner or applicant. The qualifications of inspectors performing third-party services and special inspections are subject to the approval of the AHJ and required to be in accordance with the provisions of the Uniform Code, where applicable. Regardless of who performs an inspection, a building safety inspector or code enforcement official may rely upon the documents produced as a result to help perform their duties and required inspections. Therefore, Section 1203.4(e) was modified, and a new Section 1203.2 (e)(4) was added to clarify this intent.

COMMENT #5: Comments were received suggesting that most definitions be deleted and to rely on either the commonly accepted definitions of the terms or a global reference to the definitions found in the Uniform Code. Other related comments suggested deleting only specific definitions.

RESPONSE TO COMMENT #5: Similar comments were proposed during the Notice of Rule in Development. As previously explained in the RIS, “terms were defined where more than one definition is used in the Executive Law and/or in the documents incorporated by reference [into the Uniform Code or Energy Code], 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.” As a result of the comment, each definition was

reviewed and reevaluated to determine if the absence of a definition could lead to ambiguity or inconsistent enforcement programs.

Based on that review, it was determined that the following definitions could be removed without compromising clarity or consistency: the definition for the term “ACCA Manual J,” since the reference to this term was removed from the rule text based on another public comment; the definitions for “energy storage systems” and “hazardous materials” since the terms are only used when referencing provisions or requirements of a specific chapter or section of the Uniform Code and the addition of a definition within Part 1203 did not improve the understanding of the term; and the definition of the term “building systems” because its intended application was instead addressed in the applicable provision in §1203.3 (a)(3)(vi).

All other definitions remained.

COMMENT #6: Comments were received requesting to add definitions of the terms (a) “either or both of the Codes” to the rule, since that term is used throughout the regulation, and (b) “public officer,” to be defined as “a certified NYS Code Enforcement Official who has been certified and maintains their educational requirements in accordance with [Part 1208].” Another comment suggested that the use of the term “public officer” in §1203.2 (e)(3) would prevent a municipality from allowing a permit technician or permit clerk from issuing a building permit and recommended that language be modified to allow for permit clerks, permit technicians, or similar public employee of the municipality to sign official documents.

RESPONSE TO COMMENT #6: (a) The term “codes” is defined in the regulation as “the Uniform Code and the Energy Code” and the terms “Uniform Code” and “Energy Code” are also defined. Therefore, defining the term “either or both of the Codes” as either the Uniform Code or the Energy Code would not have an added benefit. (b) The term "public officer" was contemplated as an additional definition; however, laws and regulations outside the jurisdiction of the Division of Building Standards and Codes (DBSC) identify who is a public officer and the ethical responsibilities of public officers. Adding a definition into Part 1203 could

conflict with these other laws and the term, as used in Part 1203, is not intended to be understood differently but to rely on any existing law or regulation that defines a public officer for a municipality. This regulation does not change the longstanding requirement that someone with authority to act on behalf of the municipality sign documents such as building permits, certificates of occupancy, temporary certificates of occupancy, certificates of compliance, orders, appearance tickets, or other similar documents related to administration and enforcement of the Uniform Code and/or Energy Code. Part 1208 clearly defines "enforcement activity" and requires that these activities be conducted by a Code Enforcement Official or a Building Safety Inspector; however, the definition of "enforcement activity" excludes purely ministerial acts such as "signing permits… or other similar documents." Therefore, no changes were made to the rule as a result of these comments.

COMMENT #7: A comment was received requesting that "2020" be removed from the definitions of the code books citing that including the year in the definition will burden the local AHJ to update their local law for every update of the Uniform Code or Energy Code that contains newly incorporated versions of the code books.

RESPONSE TO COMMENT #7: As previously stated in the RIS, "…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 or historic versions exist." Additionally, referencing a non-specific version of a code or reference standard or a possible future version of a code or reference standard could lead to non-uniform enforcement and opportunities for misinterpretation of requirements. However, to minimize the number of potential modifications to Part 1203 due to future updates to the Uniform Code or the Energy Code, while the edition year of the code books is used in the definition, the terms are abbreviated throughout the rule without the year notation, thus minimizing the burden to municipalities when updating their code enforcement program.

COMMENT #8: A comment was received requesting that the term "assembly area" be changed to "areas of public assembly," which is the term used in Article 18 of Executive Law, and because the term "assembly area" is used throughout the Uniform Code which, according to the comment, will likely lead to confusion related to enforcing provisions within the Uniform Code.

RESPONSE TO COMMENT #8: The term "area of public assembly" is defined in Executive Law; however, the use of the word "public" causes confusion. The DOS Technical Support Unit has fielded multiple inquiries concerning the implications of the word "public" and whether the provisions of Part 1203 apply to privately owned spaces generally open only to tenants, such as conference rooms and cafeterias, that would otherwise meet the definition. Regardless of whether the space is public or private, history has taught us that all assembly areas pose an increased hazard to life and safety and that extra effort is needed to address hazards. Also, it is important to be clear on what the intended meaning of the term is for the purposes of this rule regardless of how it might be used elsewhere such as Executive Law or the Uniform Code. Terms defined for the purposes of this rule do not invalidate the provisions of other laws, rules, or regulations where those terms are also used. Therefore, this term, as used in this rule, is intended to be understood according to the definition contained in the rule and removing the qualifier "public" is consistent with that intent. No changes were made to the rule as a result of this comment.

COMMENT #9: A comment was received requesting that the definition for the term "Uniform Code" include a reference to Part 1219.

RESPONSE TO COMMENT #9: Language to reference Subchapter A of Chapter XXXIII of Title 19 was added since it further clarifies that Part 1219 and the Parts included therein are part of the Uniform Code.

COMMENT #10: A comment was received suggesting the addition of the words "provision shall be made" in each paragraph throughout §1203.3 to emphasize that this rule identifies the minimum provisions that

must be included in the local code enforcement program but does not constitute the actual code enforcement program.

RESPONSE TO COMMENT #10: In addition to language already included in §1203.2 (a), which indicates that local governments responsible for administration and enforcement of either or both of the Codes shall provide for administration and enforcement by local regulation, and that such local regulation shall include the features described in §1203.3, similar language to the suggested language was added where applicable to further clarify that Part 1203 does not constitute the required code enforcement program but instead, it is a regulation that requires each AHJ to establish a code enforcement program to administer and enforce the codes which includes the minimum provisions outlined in §1203.3. The language added also further clarifies whether the provision is specific to something the AHJ or an entity contracted by the AHJ must do, something the code enforcement program itself must contain, and/or whether the AHJ has an option to include or exclude a specific provision with the code enforcement program. Lastly, additional language was added where appropriate to clarify when a violation is cited, whether it should include a provision of the code enforcement program and/or either or both of the Codes.

COMMENT #11: A comment suggested to amend the list of exemptions from building permits as follows: (a) to include the categories of work that are exempted from the requirements of the Energy Code; (b) to include repairs to building systems; and (c) to add the exemptions that are part of the rule currently in effect that were removed in the proposed rule, such as, playground equipment, swimming pools containing less than 24-inches of water, fences not part of a swimming pool enclosure, and certain retaining walls.

RESPONSE TO COMMENT #11: (a) While some categories of work are exempt from compliance with the requirements of the Energy Code, such as re-roofing, the same categories of work might not be exempt from compliance with the requirements of the Uniform Code. It would, therefore, be inaccurate and misleading to list them here as a blanket exemption from a building permit because a building permit to verify compliance

with the Uniform Code might be required, as is the case in the re-roofing example provided. Should a category of work be exempt from the requirements of both the Energy Code and Uniform Code, a building permit would not be required per the charging language of §1203.3 (a) and including them in this list would be redundant. (b) The exemptions found in §1203.3 (a)(1)(vii) and §1203.3 (a)(1)(viii) have the effect of exempting certain categories of repair and replacement of portions of building systems, as long as the work proposed does not have an impact on fire and life safety. An AHJ needs to evaluate proposed work on a case-by-case basis to determine if the exemptions apply as opposed to a blanket exemption, in order to ensure life and fire safety are preserved. (c) These categories of work were removed from the list found in the rule currently in effect because they are already exempted from the Uniform Code and the Energy Code; therefore, listing them here is unnecessarily redundant. For these reasons, the changes proposed by this comment were not implemented.

COMMENT #12: A comment requested a clarification on the exemption for the requirement for a building permit for temporary stages and scenery.

RESPONSE TO COMMENT #12: A modification was made to clarify that sets and scenery are exempt and remove language that implied that temporary stages were also exempt.

COMMENT #13: A comment suggested removing the requirement for the written statement indicating compliance with the Energy Code and rely instead on Sections C105.2.2 and R105.2.2 of the Energy Code. The commenter also noted that the building permit application is not the correct location or time in the permitting or construction process for this requirement.

RESPONSE TO COMMENT #13: The requirement for an Energy Code compliance statement in accordance with the Energy Code was moved to §1203.3(a)(3) relating to construction documents submitted as part of a building permit application. In the interest of ensuring compliance with the requirements of the Energy Code, verifying that the statement has been included with the plans is part of these “minimum requirements.” During the review of this section as a result of this comment, it was also noted that submitting additional

documents such as manufacturer's installation instructions, geotechnical reports, and shop drawings is not always feasible at the building permit application phase of a project. These specific references were removed, allowing the AHJ to rely on the provisions within the Uniform Code to request what documents they deem necessary at the appropriate phase of the project.

COMMENT #14: A comment was received requesting the addition of "where applicable" before "a site plan" in the list of items of documentation required to be submitted with construction documents.

RESPONSE TO COMMENT #14: The addition of the term "where applicable" is unnecessary, as the charging language in §1203.3 (a)(3) introduces the list of required documentation by stating "including but not limited to the following, where applicable," thus applying to the entire list of items. Therefore, no change was made based on this comment.

COMMENT #15: Comments inquired about provisions applicable when registered design professionals are part of a project, such as, the manner in which construction documents are signed and stamped and whether electronic signatures could be accepted, as well as the meaning of, where to find, and the reasons to require a "firm's Certificate of Authorization," as such term is used in §1203.3 (a)(3) of the rule. Another comment suggested replacing the detailed provisions with a general reference to Articles 145 and 147 of New York State Education Law.

RESPONSE TO COMMENT #15: Executive Law §371(2)(b) makes it clear that the public policy of the State includes affording "protection to all people of the state from hazards of fire and inadequate building construction." Protection from inadequate building construction includes, in part, ensuring that design professionals, where their services are required by Education Law, either of the codes, and/or the local code enforcement program, are duly licensed, registered, and practicing in accordance with Education Law. Design professionals practicing a profession governed by Title VIII of the NYS Education Law are required per §6502 to register with the State Education Department to practice in New York. Additionally, permissible corporate

entities practicing engineering as professional service corporations, design professional service corporations, professional service limited liability companies, registered limited liability companies, partnerships, and joint enterprises must obtain a certification of authorization from the State Education Department prior to practicing professional engineering in this State.

DOS confirmed with the State Education Department that a design professional's license number and registration status, which confirm their ability to lawfully offer professional services requiring a license in New York State, and an engineering firm's certificate of authorization number can be verified by visiting the State Education Department's website at http://www.op.nysed.gov/opsearches.htm or by calling the State Education Department directly at (518) 474-3817, extension 400. DOS also provided this information to the commenter for clarity.

The amended regulations do not change current best practices for working drawings, specifications, and reports provided by professional engineers and architects to code enforcement officials in New York State in order to protect public safety. Practice Guideline 3.VI for professional engineers includes best practices for drawings, specifications, and reports, including information that should be contained within a professional engineer's title block. Among other items, the guideline calls for "the license number and expiration date of the professional engineer's registration" and, if practicing as a permissible corporate entity, the engineering firm's "…Certificate of Authorization number of the engineering firm, unless exempt from this requirement." Similarly, Practice Guideline B.9 for architects includes best practices for working drawings and specifications, including information that should be contained within an architect's title block. Among other items, the guideline calls for "the license number and expiration date of the architect's registration" to be included on a title block. In order to fulfill its mission to "provide a basic minimum level of protection to all people of the state from hazards of fire and inadequate building construction," in accordance with Executive Law, DOS defers to the Education Law and the State Education Department's practice guidelines and other applicable

laws, rules, and regulations regarding the practice of registered design professionals, including the acceptability of electronic signatures and seals. However, to address part of the comments and consistent with the State Education Department's recommendations, the language "and practice guidelines" was added for clarity. No other changes were made to the rule as a result of these comments.

COMMENT #16: A comment requested adding to the list of required inspections those required by the Energy Code. Another comment suggested removing specific language allowing for remote inspections as, according to the commenter, the current interpretation is that Part 1203 allows for remote inspections, although not expressly indicated.

RESPONSE TO COMMENT #16: A modification was made to the rule including a list of items to be inspected during construction in accordance with the Energy Code. In reviewing this list as a result of this comment, it was also noted that required inspections for factory manufactured buildings and manufactured homes was also inadvertently missing from the list of required inspections. A new line for "installation, connection, and assembly of factory manufactured buildings and manufactured homes" was added as a result.

Provisions for remote inspections and the parameters under which the remote inspections may be performed were added to remove ambiguity and the possibility of multiple interpretations. The regulation being silent could be misinterpreted in several ways, such as that remote inspections are prohibited or that the same standard of care as an in-person inspection does not apply. Neither of these possible interpretations would afford the public the basic minimum level of protection intended by Executive Law. This provision is consistent with guidance previously issued by DOS. For these reasons, no change was made as a result of this comment.

COMMENT #17: A comment was received noting that text pertaining to temporary certificates of occupancy within §1203.3 (d)(4) was unnumbered and suggesting that subsequent portions be re-numbered.

RESPONSE TO COMMENT #17: This portion of the rule was not unnumbered; however, placing the list of conditions mid-paragraph led to confusion. To ensure clarity the section was restructured.

COMMENT #18: Two comments requested to maintain the provision in the current rule for assembly spaces with an occupant load threshold of 100 or more persons before the requirement for operating permits is triggered.

RESPONSE TO COMMENT #18: As previously stated in the RIS, the occupancy threshold for assembly areas was decreased from 100 to 50 persons for consistency with the occupant load identified in Executive Law and the Uniform Code, as well as a proportionate means of mitigating the hazards to persons and property associated with assembly areas. Setting the threshold at 100 versus 50 would miss some higher hazard uses that both the Executive Law and the Uniform Code consider assembly uses. No changes were made to the rule as a result of this comment.

COMMENT #19: A comment suggested expanding the list of required operating permits to include hot work or welding.

RESPONSE TO COMMENT #19: This rule already includes provisions for an operating permit to be required for welding and other hot work in §1203.3 (g)(1)(ii)(*h*). No changes were made to the rule as a result of this comment.

COMMENT #20: General comments were received relating to operating permit requirements, including: (a) how the provisions for operating permits are dependent on specific references to chapter titles within the FCNYS out of concern that future changes to those chapters of the FCNYS might burden the local AHJ with the duty to update their local law in response and suggested to simplify the provisions by using only "a general reference to the Fire Code;" (b) suggesting removing the permitting thresholds and instead depend on the provisions of the FCNYS to identify those thresholds; (c) suggesting that it is unreasonable to expect that the certificate of occupancy includes the necessary information to make use of the exception from the requirement for operating permits where the use is expressly authorized by a certificate of occupancy or certificate of compliance; (d) requesting clarification on the term "dining areas of restaurants and drinking

establishments;" (e) questioning the need for and whether the FCNYS requires operating permits for tents 400square feet and larger; and (f) questioning whether an operating permit should be required for "outdoor assembly events" consistent with Section 3106.2.2 of the FCNYS.

RESPONSE TO COMMENT #20: (a) As previously noted in the RIS, "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." The RIS also previously noted that the list of items reflects "activities and building operations with high inherent safety hazards" or "based on their recent addition to the 2020 Uniform Code" and that requiring, within these minimum standards, an operating permit for all the uses and activities identified in the FCNYS as a special occupancy or a hazardous material "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." The operating permit section relies on the FCNYS to clearly define these uses and activities; identify applicable code provisions; and, in some cases, identify permitting thresholds to ensure that there is sufficient clarity and uniformity. Therefore, a proper citation to the chapter or section is needed and no changes were made as a direct result of this comment.

(b) A few of the items listed in §1203.3 include permit thresholds, such as tire storage and high piled combustibles, because the specific chapter in the FCNYS was silent on permit thresholds for these categories. The permit thresholds used in this rule were based on Chapter 1 of the 2018 International Fire Code, on which the 2020 FCNYS is based, and are necessary for the intended application of the requirement for operating permits. No changes were made to the rule as a direct result of this comment.

(c) The rule currently in effect requires, under §1203.3(d)(2), that Certificates of Occupancy contain the information that would enable such exception, such as, "the use and occupancy classification of the structure" and "the assembly occupant load of the structure, if any;" therefore, some existing uses, can be exempted from the requirement for Operating Permits if the Certificate of Occupancy was issued in compliance with this requirement. As previously noted in the RIS, it is the opinion of DOS that while decreasing the occupancy threshold in assembly areas and adding other items to the list may appear to suggest that more operating permits will be required, the exception for uses listed on the Certificate of Occupancy will result in a reduction in the number of required permits when the exception is utilized and certificates of occupancy have been issued in compliance with the current provisions of Part 1203. The burden to AHJs and regulated parties will be minimal while providing for the protection of the users and property owners. For these reasons, no changes were made to the rule as a direct result of this comment.

(d) An editorial change was made to remove terms that are already classified as assembly areas where listing them proved to be redundant, such as "dining areas of restaurants" and "drinking establishments."

(e) The proposed rule requires an operating permit for "…tents where approval is required pursuant to Chapter 31 of the FCNYS." Section 3103.2 of the FCNYS requires approval from the fire code official for tents greater than 400 square feet (with some exceptions). Section 3103.4 of the 2020 FCNYS indicates permits shall be required and includes the reference to operating permits and the local code enforcement program. As tents pose a unique risk to the public, DOS has determined that an operating permit is the most appropriate mechanism to document the required approval and ensure tent structures 400 square feet and larger are safe. No changes were made to the rule as a direct result of this comment.

(f) An operating permit for outdoor events where the planned attendance exceeds 1,000 persons is already required in §1203.3 (g)(1)(v). No changes were made as a direct result of this comment.

During the review of these comments, DBSC noted that the provision for operating permits for parking garages, that is part of the rule currently in effect, had been erroneously omitted from the proposed rule text. This provision has been added and, accordingly, the exception in §1203.3 (g)(2) was expanded to exclude from the requirement for an operating permit those parking garages where condition assessments are performed in compliance with §1203.3 (j), as applicable.

COMMENT #21: A comment was received suggesting that a timeframe of 1-year for operating permits required at the discretion of the AHJ and that are not required by Part 1203 was onerous and should be left to the discretion of the AHJ, but not to exceed 3 years.

RESPONSE TO COMMENT #21: The proposed rule already grants the AHJ the discretion to establish a timeframe longer than a year for those operating permits issued at the discretion of the AHJ that do not pose "a substantial potential hazard to public safety." However, new language was added to the rule to clarify that the timeframe, for those operating permits required at the discretion of the AHJ that do not pose a substantial hazard, is left to the discretion of the AHJ and to indicate that in no case should it be longer than three years.

COMMENT #22: Comments suggested expanding the exception for owner-occupied one- and two-family dwellings from the requirement for periodic fire safety and property maintenance inspections. One comment suggested including apartment buildings, dormitories, and similar uses to protect tenants' 4th amendment constitutional rights and another suggested specifically mentioning townhouses. Another comment suggested including provisions to inform AHJs and to require them to notify owners and occupants of their right to appeal an order of remedy.

RESPONSE TO COMMENT #22: The exemption for owner-occupied one-and two-family dwellings from periodic fire safety and property maintenance inspections comes from Executive Law §381. A similar exemption is not provided for tenants or the other suggested uses within Executive Law. However, Executive

Law does not nullify the rights afforded to persons under the Constitution. The Scope and Administration chapters of the Uniform Code include provisions for due process and DOS has consistently issued guidance to the code enforcement community, through technical documents and training, regarding due process provisions as they pertain specifically to inspections and to orders to remedy. It would be unnecessarily redundant to include those provisions in this Part. However, while the intent of the revised language pertaining to the intervals for periodic fire safety and property maintenance inspections was to provide clarity, during the restructuring of the section, part of the original intent was lost. A change has been made to further clarify this provision by maintaining some of the language of the rule currently in effect pertaining to the applicable inspection intervals for "multiple dwellings and nonresidential occupancies," rather than the reference to "all other buildings."

COMMENT #23: A comment suggested that the word "approved" does not represent the role of the AHJ as it pertains to the conditions for issuance of a certificate of occupancy that are specific to final reports of special inspections and flood hazard certification.

RESPONSE TO COMMENT #23: The applicable portions of §1203.3 (d)(2) have been modified to indicate the AHJ will receive and review the information and determine whether the information demonstrates compliance with the applicable provisions of the Uniform Code, to better align with the role of the AHJ as suggested. In review of this list of additional information as a result of this comment, it was noted that AHJs are also required to verify the affixation of the appropriate seals, insignias, and manufacturers' data plates as required for factory manufactured buildings and/or manufactured homes. As a result, this additional verification was added to the list.

COMMENT #24: A comment suggested that, in light of the condominium collapse in Surfside, Florida, the provisions for condition assessment of parking garages be expanded to include "high-rise" buildings, as such uses are defined in the Building Code of New York State, to verify they are structurally sound.

RESPONSE TO COMMENT #24: As stated in the RIS, this update is intended to bring Part 1203 into alignment with the 2020 Code update that went into effect on May 12, 2020, and to address common misunderstandings of the current Part 1203; to proceed without further delay is the best course of action to better serve the needs of the code enforcement community. It would be premature to include provisions to address possible structural failures of high-rise structures until the investigation of the Surfside, Florida building collapse is concluded. Several open questions will set the parameters for any potential course of action, including but not limited to, the exact nature of the failure and factors involved, the types and height of buildings that should be evaluated, whether the current Uniform Code threshold of 75-feet for high-rise buildings is appropriate, the occupancy type and age of the building, whether to limit the requirement to buildings located near the coast or to include other locations, the applicable intervals of those inspections, and the qualifications of those performing inspections. DOS is closely monitoring the multiple ongoing local and federal investigations; has participated in the panel discussion sponsored by the International Code Council, the National Institute of Building Sciences, and the Building Owners and Managers Association International held on August 17, 2021; and plans to continue participating in any future opportunities to collaborate with the industry. On September 16, 2021, the Code Council established a Building Assessment Workgroup to review this matter. DOS can more appropriately address the issue noted above when more information is available. Through the SAPA process, regulated parties would have the opportunity to review and comment should any regulation be updated as a result. The change recommended by this comment requires further consideration, analysis, and public input that could take a significant amount of time to complete. To avoid delay in the adoption of the other essential updates to this rule, the change recommended by this comment has not been incorporated into the rule now being adopted.

However, this Part establishes minimum standards for administration and enforcement, while granting AHJs the flexibility to adopt provisions for administration and enforcement that are more stringent than these

minimum requirements and thus provide the appropriate level of oversight within their jurisdiction. For example, in accordance with §1203.3 (h)(1), an AHJ may require more frequent periodic fire safety and property maintenance inspections at intervals consistent with local conditions. Also, in accordance with §1203.3 (g)(1)(ix), an AHJ may require an operating permit for operating any type of building, structure, or facility at its discretion. Additionally, Part 1203 does not limit the authority of an AHJ to require that periodic inspections of buildings, structures, and facilities be performed by a structural engineer.

COMMENT #25: A comment suggested removing the provisions for condition assessments of parking garages and to locate those provisions in the Uniform Code.

RESPONSE TO COMMENT #25: Executive Law §381 authorizes DOS to include the following items into the requirements for the minimum standards for administration and enforcement of the Uniform Code and Energy Code: frequency of mandatory inspections, adequacy of inspections, and adequacy of means for ensuring compliance with the codes, among other requirements. Therefore, it is appropriate to include provisions for parking garage condition assessments in Part 1203. The change proposed by this comment requires further consideration, analysis, and public input to determine if all or some of the parking garage condition assessment provisions could alternatively be placed within the Uniform Code. DOS will, and the Code Council may, consider this comment in a future rule making. No changes were made to this rule as a result of this comment.

COMMENT #26: A comment suggested removing the requirement for design criteria from §1203.3 (k)(2) and asked why an option to ACCA Manual J was not provided consistent with the Energy Code.

RESPONSE TO COMMENT #26: As previously stated in the RIS, the requirement for AHJs to provide design criteria to applicants is repeated in this rule because it is often overlooked by the code enforcement community and generally not included in local code enforcement programs as a result. The provisions of §1203.3 (k) are consistent with the requirements of the Energy Code and the Uniform Code,

allowing options for design criteria to be either "based on ACCA Manual J or established criteria determined by the jurisdiction." However, the language of the provision was simplified to rely on the reference to the Uniform Code, rather than the definition of ACCA Manual J or other approved methods, in response to this comment.

COMMENT #27: A comment suggested that DOS follow the Freedom of Information Law (FOIL) process to request copies of documents from AHJs (note that the commenter referenced FOIA, which applies only to federal documents, and DOS has assessed the comment based on FOIL, a similar law that applies to New York State governmental entities). Another comment suggested that requiring "true and complete copies of the records and related materials" to be provided to DOS is an unreasonable expansion of DOS' oversight powers and could provide an unreasonable link and negative implications to AHJs under Part 1208. This comment is an expansion of one previously submitted during the Notice of Rule in Development to the same effect.

RESPONSE TO COMMENT #27: FOIL identifies a process for members of the public to request records and a requirement for New York State governmental entities to provide records where the records are not already required to be made available by another law or regulation. Therefore, DOS is authorized to require AHJs to cooperate with DOS by providing access to records of the AHJs' code enforcement programs. Similarly, under Part 1208, DOS is authorized to require building safety inspectors and code enforcement officials to fully cooperate with DOS with any investigation pursuant to §1208-6.4. Accordingly, Part 1203 relates to AHJs and their code enforcement programs, while Part 1208 relates to code enforcement personnel.

As previously stated in the RIS, AHJs are currently required to maintain "a system of records of the features and activities." Also as previously stated, "timely and complete information is needed for DOS to promptly exercise its oversight function" which results in benefits not only to DOS, but also to the AHJ, where those records have, in some instances, been "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." The

modifications proposed by this comment were rejected for the same reasons noted in the RIS, being that "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."

However, a modification was made to the rule to indicate that the requested documents may be submitted "within a reasonable timeframe" before an inference is made that the requirements of this rule have not been met and adding that "No such inference shall be based on the failure to provide copies of records if such records were, prior to a request for copies, disposed of pursuant to the applicable records retention and disposition schedules established by the authority having jurisdiction or pursuant to the Arts and Cultural Affairs Law."

Description of Changes Made to the Rule

The rule repeals Part 1203 of NYCRR Title 19 and adds a new Part 1203 in its place. Editorial clarifications were made to the proposed rule in response to some of the comments received either requesting clarification or indicating that some provisions had been misunderstood. Other editorial modifications were made to correct typographical errors or for formatting purposes. The rule now being adopted makes the following non-substantive changes to the rule as proposed in the Notice of Proposed Rule Making:

1. §1203.1 (b): The definitions for "ACCA Manual J," "Building systems," "Energy Storage System," and "Hazardous materials" have been deleted.
2. §1203.1 (b): A reference to "Subchapter B of Chapter XXXIII of this Title" was added to the definition of "Energy Code" and a reference to "Subchapter A of Chapter XXXIII of this Title" was added to the definition of "Uniform Code."

3. §1203.1 (b): The definitions were renumbered to account for the removal of the definitions mentioned in item 1 above.
4. §1203.2 (a): The phrase “establish a code enforcement program to,” was added to the first sentence and the second sentence was reworded to “Such code enforcement program shall include the features and provisions described in section 1203.3 of this Part.”
5. §1203.2 (b): In the second sentence the wording “subdivision (j) of section 1203.3” was replaced with “section 1203.3 (j).”
6. §1203.2 (d): In the first sentence the term “the public” was replaced with “all people of the State” and in the last sentence the phrase “further the purposes of protecting the health, safety, and security of the people of the State and assuring a continuing supply of energy for future generations.” was replaced with “further the purposes of Article 11 of the Energy Law, as applicable.”
7. §1203.2 (e): The language “Contracted services.” was replaced with “An authority having jurisdiction may contract directly with an individual or business entity to perform “building safety inspector enforcement activities” or “code enforcement official enforcement activities” (as those terms are defined in Part 1208 of this Title) on behalf of the authority having jurisdiction, subject to the following conditions:”
8. §1203.2 (e)(1) and §1203.2 (e)(2): The language “contracts directly with” replaced “relies upon the contracted-for services of,” and the language “(as that term is defined in Part 1208 of this Title)”was removed in the first sentence of each paragraph.
9. §1203.2 (e)(4): This section was added with the following language “Special inspections (as defined in the Uniform Code), including but not limited to, electrical inspections, elevator inspections, welding inspections, and smoke control system inspections are not considered to be building safety inspector enforcement activities or code enforcement official enforcement activities (as defined in

Part 1208 of this Title). Accordingly, a special inspector performing a special inspection is not performing a building safety inspector enforcement activity or a code enforcement official enforcement activity and is not required to have qualifications comparable to those of a person who has met the requirements of Part 1208 of this Title. However, an authority having jurisdiction shall not accept or rely upon a special inspection unless the person performing such special inspection

(i) is a qualified person employed or retained by an agency that has been approved by the authority having jurisdiction and

(ii) has been approved by the authority having jurisdiction as having the competence necessary to inspect a particular type of construction requiring such special inspection."

10. §1203.3: The following changes were made:
    a. The language "and provisions" was added to the first sentence.
    b. The reference to "subdivision (a) through (l) of this section" was replaced with "section 1203.3."
    c. In the second sentence the language "government or agency responsible for administration and enforcement" was replaced with "authority having jurisdiction."
    d. In the third sentence the language "government or agency" was replaced with "authority having jurisdiction."
11. §1203.3 (a)(1) through (8); §1203.3 (b)(1) through (3); §1203.3 (c); §1203.3 (d)(3); §1203.3 (e); §1203.3 (g)(1), (3), (4), (6), and (7); and §1203.3 (h)(1): Each paragraph was reworded to begin with the directive language "Each authority having jurisdiction shall include in its code enforcement program provisions requiring…" along with the necessary minor grammatical corrections and additional language specific to each section to accommodate this change.

12. §1203.3 (a)(1): The clause “Where expressly set forth in their code enforcement program,” along with “any one or more of ” was added to the second sentence. The language “subparagraphs (i) through (ix)” was replaced with “section 1203 (a)(1)(i) through (viii).”
13. §1203.3 (a)(1)(ii): The language “construction of temporary motion picture, television, and theater stage sets and scenery” was replaced with the language “construction of temporary sets and scenery associated with motion picture, television, and theater uses.”
14. §1203.3 (a)(2)(iv): The language “to be” was added.
15. §1203.3 (a)(2)(v): The subparagraph was relocated to §1203.3 (a)(3)(vii) and the language was revised to read “a written statement indicating compliance with the Energy Code.” Subsequent subparagraphs in both paragraphs were renumbered accordingly.
16. §1203.3 (a)(2)(v): The reference “Paragraph (3) of this subdivision” was replaced with “section 1203.3 (a)(3).”
17. §1203.3 (a)(2)(vi): The explanatory language “such as manufacturer’s installation instructions, geotechnical reports, other technical reports, and/or shop drawings” was removed.
18. §1203.3 (a)(3)(vi): The term “building systems” was replaced with “structural, electrical, plumbing, mechanical, fire-protection, and other service systems of the building.”
19. §1203.3 (a)(3)(ix): The language “and practice guidelines” was added to the first sentence.
20. §1203.3 (a)(4), §1203.3 (b)(1), and §1203.3 (g)(4): Along with language added as noted in #11, the following language was also added “the authority having jurisdiction, or an individual or entity contracted by the authority having jurisdiction and satisfying the requirements set forth in section 1203.2 (e)(2), to...” along with the necessary minor grammatical corrections and additional language specific to each section to accommodate this change.

21. §1203.3 (b)(1)(v): The language “building systems, including underground and rough-in.” was replaced with “structural, electrical, plumbing, mechanical, fire-protection, and other similar service systems of the building.”
22. §1203.3 (b)(1)(ix): The term “Energy Code compliance” was replaced with “inspections required to demonstrate Energy Code compliance, including but not limited to insulation, fenestration, air leakage, system controls, mechanical equipment size, and, where required, minimum fan efficiencies, programmable thermostats, energy recovery, whole-house ventilation, plumbing heat traps, high-performance lighting and controls;”
23. §1203.3 (b)(1)(x): A new subparagraph was added to read: “installation, connection, and assembly of factory manufactured buildings and manufactured homes” and the subsequent subparagraph was renumbered.
24. §1203.3 (b)(3): The paragraph was reworded to begin with the directive language “ Each authority having jurisdiction shall include in its code enforcement program provisions requiring that after each inspection, the authority having jurisdiction, shall note the premises as satisfactory, or...” and the second sentence was reworded to begin with the directive language “The code enforcement program shall also include provisions requiring…”
25. §1203.3 (c), §1203.3 (d)(1), §1203.3 (d)(2), §1203.3 (d)(4), and §1203.3 (d)(5): Each paragraph was reworded to begin with the directive language “Each authority having jurisdiction shall include in its code enforcement program provisions for the authority having jurisdiction to...” along with the necessary minor grammatical corrections and additional language specific to each section to accommodate this change.

26. §1203.3 (d)(1): The introduction to the last sentence "Except as provided in paragraph (4) of this subdivision," was replaced with "The code enforcement program shall provide that, except as provided in section 1203.3 (d)(4)."
27. §1203.3 (d)(2): The paragraph was reworded to begin with the directive language "Each authority having jurisdiction shall include in its code enforcement program a provision that precludes the authority having jurisdiction from issuing..."
28. §1203.3 (d)(2)(ii): The language was revised to read, "where applicable, received and reviewed each written statement of structural observations and/or a final report of special inspections required by any applicable provisions of the Uniform Code and determined that the information in such written statement or report adequately demonstrates compliance with the applicable provision of the Uniform Code;"
29. §1203.3 (d)(2)(iii): The language was revised to read, "where applicable, received and reviewed flood hazard certifications required by any applicable provisions of the Uniform Code and determined that the information in such certifications adequately demonstrates compliance with the applicable provision of the Uniform Code;"
30. §1203.3 (d)(2)(iv): The language was revised to read, "where applicable, received and reviewed each written statement of the results of tests performed to show compliance with the Energy Code and determined that the information in such statements adequately demonstrates compliance with the applicable provision of the Energy Code; and"
31. §1203.3 (d)(2)(v): A new subparagraph was added to read: "where applicable, verify the affixation of the appropriate seals, insignias, and manufacturers' data plates as required for factory manufactured buildings and/or manufactured homes."
32. §1203.3 (d)(4): The following changes were made:

a. The paragraph was divided into an introduction and four subparagraphs.

b. The original list of three subparagraphs was moved to the fourth subparagraph as clauses and its introduction was revised from "provided that the authority having jurisdiction determines that the following conditions are met" to "an authority having jurisdiction shall not issue a temporary certificate of occupancy until it determines that the following conditions are met."

c. In the sentence that originally followed the list, the article "the" was replaced with "A."

d. The term "portion(s)" was replaced with "portion or portions;"

e. The reference "paragraph (3) of this subdivision" was replaced with "section 1203.3 (d)(3)"

33. §1203.3 (f): The title of the subdivision was revised from "Procedures regarding unsafe structures…" to "Unsafe Structures…"

34. §1203.3 (f): The paragraph was reworded to begin with the directive language "Each authority having jurisdiction shall include in its code enforcement program procedures for the authority having jurisdiction to identify and address ..."

35. §1203.3 (g)(1)(ii): The reference "clauses (*a*) through (*m*) of this subparagraph" was replaced with "section 1203.3 (g)(1)(ii)."

36. §1203.3 (g)(1)(ii)(*a*): The term "combustible dusts" was replaced with "combustible dust."

37. §1203.3 (g)(1)(ii)(*g*): The term "tire rebuilding plants" was replaced with "tire rebuilding plant."

38. §1203.3 (g)(1)(ii)(*l*): The term "or candles" was replaced with "fire, and burning" and the terms "dining areas of restaurants" and "drinking establishments" were removed.

39. §1203.3 (g)(1)(vii): A subparagraph was added to read: "parking garages as defined in section 1203.3 (j)" and the subsequent paragraph was renumbered.

40. §1203.3 (g)(1)(ix): A subparagraph was added to read "other processes or activities or for operating any type of building, structure, or facility at the discretion of the authority having jurisdiction."

41. §1203.3 (g)(2) and (5): The introduction to each paragraph was reworded to begin with the directive language “Where specifically identified in their code enforcement program, an authority having jurisdiction may…,” along with the necessary minor grammatical corrections to accommodate this change.
42. §1203.3 (g)(2): The references “paragraph (1) of this subdivision” and “subdivision (h) of this section were replaced with “section 1203.3 (g)(1)” and “section 1203.3 (h),” respectively. The language “condition assessments are performed in compliance with section 1203.3 (j), as applicable” was added.
43. §1203.3 (g)(3): The references “paragraph (1) of this subdivision” and “paragraph (2) of this subdivision, shall be required” were replaced with “section 1203.3 (g)(1)” and “section 1203.3 (g)(2) … such activity or operation” respectively. Furthermore, the introduction to the second to last sentence was modified to be preceded by “The code enforcement program shall also include provisions requiring…” and “shall” was replaced by “to.”
44. §1203.3 (g)(4): The term “Codes” was replaced with “Uniform Code and the code enforcement program.” The last sentence of the paragraph was revised from “after inspection, the premises shall be noted as satisfactory, or the operating permit holder shall be notified as to the manner in which the premises fail to comply the Uniform Code, including a citation to the specific code provision or provisions that have not been met” to “After inspection, the premises shall be noted as satisfactory and the operating permit shall be issued, or the operating permit holder shall be notified as to the manner in which the premises fail to comply with either or both of the Uniform Code and the code enforcement program, including a citation to the specific provision or provisions that have not been met.”

45. §1203.3 (g)(6)(iii): A new subparagraph was added to read: “three years for the activities, structures, and operations determined per section 1203.3 (g)(1)” and the subsequent subparagraph was renumbered.
46. §1203.3 (g)(6)(iv): The reference “paragraph (1) of this subdivision” was replaced with “section 1203.3 (g)(1).”
47. §1203.3 (g)(7) and §1203.3 (h)(1): Along with language added as noted in #11 the following language was also added “the authority having jurisdiction, or an individual or entity contracted by the authority having jurisdiction and satisfying the requirements set forth in section 1203.2 (e)(1) or 1203.2 (e)(2), to...” along with the necessary minor grammatical corrections and additional language specific to each section to accommodate this change.
48. §1203.3 (h)(1)(ii): The following language, “provided that a local government may rely upon inspections performed by the Office of Fire Prevention and Control or other authorized entity pursuant to sections 807-a and 807-b of the Education Law and/or section 156-e of the Executive Law,” in the last sentence was removed.
49. §1203.3 (h)(1)(iii): The term “three years for all other buildings” was replaced with “three years for multiple dwellings and all nonresidential occupancies.”
50. §1203.3 (h)(2): The paragraph was reworded to begin with the directive language “Each authority having jurisdiction shall include in its code enforcement program provisions requiring that after each inspection, the authority having jurisdiction shall note the premises as satisfactory, or the owner and operator shall be notified as to the manner in which the premises fails to comply with the Uniform Code, including a citation to the specific Uniform Code provision or provisions that have not been met.”

51. §1203.3 (h)(4): An additional paragraph was added with the following language, “In the case of a building referred to in section 1203.3 (h)(1)(ii) , an authority having jurisdiction may accept an inspection performed by the Office of Fire Prevention and Control or other authorized entity pursuant to sections 807-a and 807-b of the Education Law and/or section 156-e of the Executive Law, in lieu of an inspection performed by the authority having jurisdiction or an individual or entity contracted by the authority having jurisdiction, provided that

    (i) the authority having jurisdiction satisfies itself that the individual performing such inspection satisfies the requirements set forth in section 1203.2 (e)(1) or 1203.2 (e)(2);

    (ii) the authority having jurisdiction satisfies itself that such inspection covers all elements required to be covered by a fire safety and property maintenance inspection;

    (iii) such inspections are performed no less frequently than once a year;

    (iv) a true and complete copy of the report of each such inspection is provided to the authority having jurisdiction; and

    (v) upon receipt of each such report, the authority having jurisdiction takes the appropriate action prescribed by paragraph (2) of this subdivision or verifies the authorized entity performing the inspection has taken the appropriate action consistent with paragraph (2) of this subdivision.”

52. §1203.3 (j)(2): The reference “subdivision (j)” was replaced with “section 1203.3 (j).”

53. §1203.3 (j)(3): The reference to “paragraph (4) of this subdivision” was replaced with “section 1203.3 (j)(4)” and references to paragraphs (5), (6), and (7) were similarly replaced.

54. §1203.3 (j)(6)(i) and (ii): The references to “paragraph (5) of this subdivision” were replaced with “section 1203.3 (j)(5)” in both instances.

55. §1203.3 (j)(8): The reference to “subparagraphs (7)(ii) and (7)(iii) of this subdivision” was replaced with “section 1203.3 (j)(7)(ii) and section 1203.3 (j)(7)(iii).”

56. §1203.3 (j)(10)(i): The reference to “subdivision (b) of this section” was replaced with “section 1203.3(b).”
57. §1203.3 (j)(10)(ii): The reference to “subdivision (h) of this section” was replaced with “section 1203.3(h).”
58. §1203.3 (k)(2): The second sentence which read “the design criteria shall be based on ACCA Manual J or established criteria determined by the jurisdiction” was deleted.
59. §1203.3 (l): The reference “subdivisions (a) through (k) of this section” was replaced with “section 1203.3 (a) through section 1203.3 (k).”
60. §1203.4 (b): In the second to last sentence the phrase “within a reasonable timeframe” was added. Additionally, the following sentence was added, “No such inference shall be based on the failure to provide copies of records if such records were, prior to a request for copies, disposed of pursuant to the applicable records retention and disposition schedules established by the authority having jurisdiction or pursuant to the Arts and Cultural Affairs Law.”
61. §1203.5(g)(3): The subdivision was amended to reference the new penalties set forth in Executive Law §382(2), (Chapter 571 of the Laws of 2021, effective March 3, 2022), to add at the end of subdivision (3): “for the first 180 days, and for the following 180 days shall be punishable by a fine of no less than $25 and not more than $1,000 per day of violation or imprisonment not exceeding on year, or both and thereafter shall be punishable by a fine of no less than $50 and not more than $1,000 per day of violation or imprisonment not exceeding one year, or both.”
62. §1203.5(g)(4): The subdivision was amended to reference the new enforcement options set forth in Executive Law §382(3), (Chapter 507 of the Laws of 2021, effective October 25, 2021), to provide the option to commence and prosecute an appropriate action or proceeding pursuant to subdivision 3 of section 382 of the Executive Law which seeks, in a case where the construction or use of a

building is in violation of any provision of the Uniform Code or any lawful order obtained thereunder, an order from a Justice of the Supreme Court, "New York City civil court, a city court, district court, or county court" directing the removal of the building or an abatement of the condition in violation of such provisions.

63. §1203.5(g): A new subdivision (5) was added to reference the new enforcement option set forth in Executive Law §382(4), (Chapter 333 of the Laws of 2020 and Chapter 47 of the Laws of 2021, effective December 15, 2020), "commencing and prosecuting an appropriate action or proceeding pursuant to subdivision 4 of section 382 of the Executive Law that provides that where a building has been altered in violation of any provision of the uniform code or any lawful order obtained thereunder, and such alteration impedes a person's egress from such building during a fire or other emergency evacuation, the owner of such building who has knowledge of such alteration or should have had knowledge of such alteration shall be subject to a civil penalty of up to $7,500" and subdivisions (5) through (10) were renumbered subdivisions (6) through (11), respectively.
64. §1203.5 (h): In the last sentence the reference to "subdivision (d) of this section" was replaced with "section 1203.5 (d)."