

## **ASSESSMENT OF PUBLIC COMMENTS (19 NYCRR Part 1240 – Energy Code)**

This rule updates and amends the State Energy Conservation Construction Code (the Energy Code) in its entirety. The Notice of Proposed Rule Making was published in the State Register on March 19, 2025. A public hearing was held in person at the Department of State (DOS) Albany office on May 20, 2025. Additional public hearings were held virtually on May 21 and May 22, 2025. The public comment period closed on May 27, 2025.

The Energy Code incorporates by reference a modified version of the 2024 International Energy Conservation Code (IECC) and ASHRAE 90.1: Standard for Sites and Buildings Except Low-Rise Residential Buildings (ASHRAE 90.1), collectively referenced as the “model code.”

DOS received seventy-one (71) written comments on the Energy Code, including the Fossil-Fuel Equipment and Building Systems provisions of 19 NYCRR Part 1240. Twenty-five (25) persons provided testimony at public hearings, including some who also submitted written comments. While some comments addressed a single topic, the majority addressed multiple topics. Below is a summary of each topic, DOS’s position, and any changes made to the proposed rule as a result. Where identical or substantially similar comments were received from more than one commenter, and where a comment was made in support of another comment, those comments are discussed in one consolidated statement below.

In some cases, DOS has determined that the change recommended by a comment needs further consideration, analysis, cost-effectiveness evaluation, and public input. The changes recommended by those comments have not been incorporated into the rule now being adopted. However, DOS and the NYS Fire Prevention and Building Code Council (Code Council) will continue to review the recommendations and may consider them for future proposed rule makings.

## SUMMARY OF COMMENTS

### **1. 19 NYCRR Part 1240, including Fossil-Fuel Equipment and Building Systems. 19 NYCRR Section 1240.6**

**COMMENT #1.01:** A comment recommended that the code require the use of a web-enabled electric panel capable of load management functions (“Smart”), suggesting that it could help reduce the need for electric service upgrades and reduce grid demand during peak times.

**RESPONSE TO COMMENT #1.01:** To better manage power loads during peak times, the proposed code update contains provisions mandating the installation of demand-responsive thermostats and appliances but does not mandate the installation of “Smart” electrical panels. The requirements for electric panels are part of the Uniform Code. The response to this comment is in the Assessment of Public Comments on the Uniform Code. No changes were made to the Energy Code as a result of this comment.

**COMMENT #1.02:** Thirty-three comments from coalitions, organizations, and individuals indicated general support of the prohibition against the use of fossil-fuel equipment and building systems and the additional efficiency requirements. Most of those comments included recommendations and concerns as summarized below.

Two commenters expressed support for the additional efficiency requirements and reducing the carbon footprint of buildings but opposed the prohibition against the use of fossil-fuel equipment and building systems.

Seven comments from organizations and individuals indicated general opposition to the prohibition against the use of fossil-fuel equipment and building systems. Some of those comments included recommendations and concerns as summarized below.

**RESPONSE TO COMMENT #1.02:** Section 1240.6 (titled Fossil-fuel Equipment and Building Systems) implements the provisions of subdivisions six, seven, and eight of section 11-104 of the Energy Law, as added by Part RR of Chapter 56 of the Laws of 2023, which require that the Energy Code shall prohibit the installation of fossil-fuel equipment and building systems in new buildings, with specific effective dates

applicable by building type and size, with exceptions. As such, DOS and the Code Council must comply with Article 11 of the Energy Law, as added by Part RR of Chapter 56 of the Laws of 2023. No changes were made as a result of these comments.

**COMMENT #1.03:** Twenty-four comments advocated for the adoption of ICC Appendices, ICC Resources, or additional recommendations of the Scoping Plan of the Climate Leadership and Community Protection Act (CLCPA), such as, EV-readiness where parking is offered, solar power in residential buildings, mandatory demand-responsive appliances in residential buildings, and energy storage systems in residential buildings. Similar comments advocated for a mandatory requirement for geothermal systems.

**RESPONSE TO COMMENT #1.03:** Energy Law § 11-103(2)(a) authorizes the Code Council to “*to review and amend the code, or adopt a new code, through rules and regulations provided that the code remains cost effective with respect to building construction in the state.*” Including those recommendations as mandatory requirements would require reevaluating the cost-effectiveness of the proposed code, not only delaying the implementation of this rule, but also potentially rendering the proposed Energy Code not cost-effective at this time. No changes were made as a result of these comments.

**COMMENT #1.04:** Five comments advocated for code provisions that prioritize the needs of disadvantaged communities (DACs) in accordance with the recommendations of the Scoping Plan of the CLCPA.

**RESPONSE TO COMMENT #1.04:** A key recommendation from the CLCPA Scoping Plan for the Buildings sector is the adoption of “*advanced codes for highly efficient, zero-emission, and resilient new construction.*” The proposed code update accomplishes this key strategy by including provisions that benefit and impact DACs, such as reducing emissions from buildings and power plants through the prohibition of the use of fossil fuels in new buildings (see Section 1240.6) and requiring renewable energy in new commercial buildings. The proposed update also requires energy efficiency that exceeds the model codes for building

envelope insulation and air sealing, lighting, and mechanical equipment. These efficiency measures reduce energy burdens that disproportionately affect DACs<sup>1</sup> and minimize the effect of outdoor temperature extremes in the building interior. Because of these new requirements, the heating needs of new buildings will likely be met through the use of heat pumps which also provide air conditioning, ensuring that DACs have access to cooling that was not previously available, delivering not only comfort but also the ability to remain in place during extreme heat events.

Consistent with the recommendations of the CLCPA, the training and education offerings of DOS, are provided remotely, thus reducing barriers for participation and providing a code official workforce development path with no cost to the participants.

The provisions of the code for increased energy efficiency result in societal benefits delivering comfort, air quality improvements, health and safety, climate resiliency, and economic benefits across all sectors. Reducing energy consumption at the building level and greenhouse gas emissions overall results in better housing and improved air quality, particularly in areas downwind of power generation facilities, which, as multiple studies have demonstrated<sup>2</sup>, have historically meet the definition of DAC.

Also, as a direct benefit to DACs, current and proposed state programs to incentivize energy efficiency improvements in existing buildings are structured to consider historical inequities and to prioritize the needs of DACs. Such programs include EmPower+, Weatherization Assistance Program, Energy Affordability Program & Guarantee Pilot, Affordable Multifamily Energy Efficiency, Program (AMEEP), and the Climate Friendly Homes Fund.

No changes were made to the proposed rule as a result of these comments.

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<sup>1</sup> Energy-Burdened Communities Tool. Natural Resources Defense Council (NRDC). <https://www.nrdc.org/resources/energy-burdened-communities-tool>

<sup>2</sup> Peaker Power Plant Mapping Tool. Clean Energy States Alliance. [Peaker Plant Maps - Clean Energy Group](#). Power Plants and Neighboring Communities Mapping Tool. US Environmental Protection Agency. [Clean Air Power Sector Programs | US EPA](#)

**COMMENT #1.05:** Four comments indicated concerns over potential negative impacts of electrification on the housing market, limiting consumer choice, affordability, presumed diminished construction activity and companies relocating outside the state, and grid reliability.

**RESPONSE TO COMMENT #1.05:** As indicated in Comment 1.02, updating and adopting the Energy Code without including the prohibition on the installation of fossil-fuel equipment and building systems would be inconsistent with the requirements of Article 11 of the Energy Law.

As mentioned in the response to Comment 1.04, the code update provides economic benefits, and societal benefits as well as improving health and safety, and climate resiliency to New Yorkers across all sectors. The code update was evaluated in accordance with Energy Law § 11-103.2(a) and found to be cost-effective, meaning that the initial cost of construction will be recovered within a 30-year span, delivering utility savings over the life of the building.

No changes were made as a result of these comments.

**COMMENT #1.06:** One comment raised concerns that the proposed regulations may be inconsistent with the federal Energy Policy and Conservation Act (EPCA).

**RESPONSE TO COMMENT #1.06:** DOS and the Code Council do not believe that the proposed rule to amend the Energy Code duplicates or conflicts with any rule or other legal requirement of the federal government. No changes were made as a result of this comment.

**COMMENT #1.07:** One comment indicated concern over possible litigation at the local municipal level in response to the Energy Code prohibition against the installation of fossil-fuel equipment and building systems in new buildings, with specific effective dates applicable by building type and size, and with specified exceptions.

**RESPONSE TO COMMENT #1.07:** As noted in response to Comment 1.06 above, as of this date, DOS and the Code Council believe that the proposed rule to amend the Energy Code does not duplicate or

conflict with any rule or other legal requirement of the federal government. No changes have been made as a result of this comment.

**COMMENT #1.08:** Two comments were received regarding extending the prohibition on the use of fossil-fuel equipment and building systems to existing buildings and imposing additional energy efficiency requirements in existing buildings. One of the comments was in favor, the other against.

**RESPONSE TO COMMENT #1.08:**

Energy Law § 11-104(6)(b) expressly provides that the restrictions on the installation of fossil-fuel equipment and building systems in new buildings shall not be construed as applying to buildings existing prior to the effective date of the applicable prohibition, including to the repair, alteration, addition, relocation, or change of occupancy or use of such buildings. As such, the Code Council is not authorized to require the prohibition on the installation of fossil-fuel equipment and building systems in existing buildings.

The proposed code update contains a requirement for additional energy efficiency credits in existing buildings and new provisions for alterations that constitute “*substantial improvements.*” However, Subdivision Energy Law §11-103(1)(b) provides that “*the code shall not be interpreted to require any unaltered portion of the existing building or building system to comply with the code.*” As mentioned in the response to Comment 1.04, multiple incentive programs are available for voluntary energy efficiency improvement projects.

No changes were made as a result of these comments.

**COMMENT #1.09:** Three comments requested that modifications be made to more clearly reflect that the law is only applicable to new and not to existing buildings. Another comment recommended clarifying that Section 1240.6(d)(1) does not prohibit any work associated with fossil-fuel equipment and building systems that were legally installed prior to the effective dates indicated in the Energy law or the installation of such equipment and systems in buildings that existed prior to the effective dates indicated in the Energy law.

**RESPONSE TO COMMENT #1.09:** Modifications were made to the proposed rule to clarify that the prohibition related to the installation of fossil-fuel equipment and building systems relate only to “new” buildings and removing the clause beginning with the word “*notwithstanding*” from Sections 1229-2.4(a) and 1240.6(d)(1) as proposed.

**COMMENT #1.10:** Three comments suggested that those projects (and multi-phase projects) that have site plan or subdivision approvals that predate the effective date of this proposed rule be included in the definition of “*substantially complete building permit application*,” thus exempting them from compliance. Another comment recommended that the definition of “*substantially complete building permit application*” specify that it applies only to permits for new buildings.

**RESPONSE TO COMMENT #1.10:** Section 1240.6(d)(1)(i) of the proposed rule already indicates that the prohibition against the installation of fossil-fuel equipment and building systems in new buildings, with specific effective dates applicable by building type and size, and with specified exceptions, does not apply to buildings “*for which a substantially complete building permit application*” is submitted prior to the effective dates set in the Energy Law. Energy Law §11-104(6)(b) requires the prohibition for applicable new buildings beginning on certain prescribed dates. Accordingly, no change was made as a result of this comment. However, clarification has been made, where appropriate, to indicate that the provisions apply only to “new” buildings.

**COMMENT #1.11:** A comment opposed the definition of “*agricultural building*” in Section 1240.6(c)(1)(i) being different from the definition in the Uniform Code with concerns for potential confusion.

**RESPONSE TO COMMENT #1.11:** As stated in Section 1240.6(c)(1), and in accordance with Energy Law §11-104(7)(b)(iii), the definitions in Section 1240.6(c)(1) establish the meanings of the defined terms only “*for the purposes of this section.*” They serve to determine the building types and uses subject to the provisions

of the applicable section. The definitions in other codes serve to determine the applicability of the provisions of those codes. No changes were made as a result of this comment.

**COMMENT #1.12:** A comment suggested clarifying the definition of “*agricultural buildings*” to include the term “*a building or part of a building that is used as an agricultural building.*”

**RESPONSE TO COMMENT #1.12:** The primary purpose of an “*agricultural building,*” as defined for the purposes of Section 1240.6, is to “*be part of a farm operation.*” The definition explicitly excludes “*any building or structure used in whole or in part as a place of human habitation.*” A mixed-use building, where part of the building contains an agricultural use and other parts contain dwelling or sleeping units, would no longer be classified as an “*agricultural building*” for the purposes of this rule. Therefore, the change suggested by this comment was not made.

**COMMENT #1.13:** A comment recommended that the definition of “*electrification ready*” specify that it only applies to equipment that is subject to conditional exemptions.

**RESPONSE TO COMMENT #1.13:** The definition indicates that the provisions are intended for the potential “*future replacement of fossil-fuel equipment.*” The only time the “*electrification ready*” requirement is invoked is within the conditional exemptions. DOS has determined that the terms are adequately descriptive and do not require additional context; however, a modification was made to subclause 1240.6(e)(3)(ii)(b)(1) of the proposed rule including the word “*new*” to clarify that electrification readiness would solely be required in new and not existing buildings.

**COMMENT #1.14:** A comment supported the definition of “*fossil-fuel equipment and building systems*” used in the rule as correctly reflecting the definition of “*equipment*” set forth in Energy Law §11-102.

**RESPONSE TO COMMENT #1.14:** No changes were made as a result of this comment.

**COMMENT #1.15:** Five comments indicated that, in the definition of “*fuel cell systems*,” the language “*with no carbon byproducts*” should be removed, as it would inadvertently prohibit most fuel cell systems currently available.

**RESPONSE TO COMMENT #1.15:** The definition has been modified as suggested to remove “*with no carbon byproducts*” so as not to inadvertently exclude certain fuel cell systems, for clarity and as consistent with relevant statutes.

**COMMENT #1.16:** A comment supported including in the definition of “*grid*” a reference to the definition of an “*electric plant*” set forth in public service law and suggested it be simplified by removing the language “*including the generation, transmission, and distribution of electricity*” for clarity, or, to reproduce in its entirety the definition of “*grid*” in public service law.

**RESPONSE TO COMMENT #1.16:** The abbreviated portion of the definition of “*grid*” used in the proposed rule satisfies the purposes of this rule. Removing the suggested language would not provide sufficient clarity, and reproducing the entire definition, as suggested, would add unnecessary and potentially confusing language. For those instances where more detail is needed, the reference to the Public Service Law suffices. However, the grid exemption language was modified for clarity to address this comment.

**COMMENT #1.17:** A comment noted ambiguity in the definition of “*manufacturing facility*” and recommended that the definition be amended to include any facility classified under the North American Industry Classification System Codes (NAICS) as manufacturing.

**RESPONSE TO COMMENT #1.17:** The definition has been modified to include the NAICS codes as a resource.

**COMMENT #1.18:** One comment asserted that, based on definitions found in the Energy Law, appliances that operate on 100% biofuels, such as B100 biodiesel and R100 renewable diesel, should be exempt from the fossil-fuel prohibition.

**RESPONSE TO COMMENT #1.18:** Energy Law §11-104(8)(a) defines “*fossil-fuel equipment and building systems*” as “(i) equipment, as such term is defined in Energy Law §11-102, that uses fossil-fuel for combustion; or (ii) systems, other than items supporting an industrial or commercial process as referred to in the definition of equipment in Energy Law §11-102, associated with a building that will be used for or to support the supply, distribution, or delivery of fossil-fuel for any purpose, other than for use by motor vehicles.” Energy Law §1-103(7) defines “*fossil fuel*” as “coal, petroleum products and fuel gases.” Energy Law §1-103(11) defines “*petroleum products*” as “all products refined or unrefined from synthetic or crude oil or oil extracted from other sources, including natural gas liquids.” If certain 100% biofuels are considered a “*petroleum product*” and therefore a “*fossil fuel*” as defined in the Energy Law, then they would be subject to the prohibition in Energy Law §11-104. No changes were made as a result of this comment.

**COMMENT #1.19:** One comment advocated that an exemption be added for hybrid systems with backup fossil-fuel heating equipment to be used when the electrical grid is constrained.

**RESPONSE TO COMMENT #1.19:** In consideration of grid constraints, the proposed code update includes requirements for demand response where such programs are available and chosen by the utility subscriber. The provisions of the rule also include an exception for generation of emergency back-up power or standby power. Adding an exception for hybrid systems is not authorized by the Energy Law. No changes were made as a result of this comment.

**COMMENT #1.20:** A comment suggested that the list of exemptions in Section 1240.6(e)(3) not be termed “*conditionally exempt*” and instead, list the criteria as “*additional requirements*.” Another comment noted that the exemptions are unnecessarily confusing as proposed.

**RESPONSE TO COMMENT #1.20:** The proposed rule was developed to distinguish between the categories of buildings which are wholly exempt [i.e. manufactured homes as defined in Executive Law §601(7) and agricultural buildings as defined by the Code Council] and those which are exempt as long as other

requirements are met, which for ease of understanding have been characterized as “*conditionally exempt*.” The statute authorizes the Code Council to include provisions, to the fullest extent feasible, that limit the use of fossil-fuel equipment and building systems to the system and area of the building for which a prohibition on fossil-fuel equipment and building systems is infeasible, and the language developed was intended to address such infeasibility. No changes were made as a result of this comment.

**COMMENT #1.21:** A comment suggested providing a complete exemption for manufacturing facilities, rather than a conditional exemption. Another comment recommended that “*other medical facilities*” be conditionally exempt under 1240.6(e)(2) rather than fully exempt.

**RESPONSE TO COMMENT #1.21:** Energy Law §Section 11-104(7)(b)(iii) explicitly includes manufacturing facilities among the list of building types for which additional conditions apply. However, Energy Law §11-104(7)(c) expressly provided that the provisions (1) limiting the use of fossil-fuel equipment and building systems, (2) requiring the area or service within a new building to be electrification ready, and (3) minimizing emissions from fossil-fuel equipment and building systems that are allowed to be used, “*do not adversely affect health, safety, security, or fire protection.*” As it pertains to medical facilities, in the interest of health and safety, consistent with the purpose of the Energy Code “*to protect the health, safety and security of the people of the state*” (Energy Law §11-101), the additional conditions do not apply to such facilities. No changes were made as a result of these comments.

**COMMENT #1.22:** Two comments requested that the “*grid exemption*” be modified to better define the conditions that trigger it. Another comment expressed a concern that qualifying for a “*grid exemption*” would be too easy if the application were based on electric resistance space heating and suggested requiring that the application be based on heat pump space heating. Another comment requested that the “*grid exemption*” include a time threshold and a threshold for cost to the owner if grid upgrades were necessary to provide service.

**RESPONSE TO COMMENT #1.22:** Energy Law §11-104(7)(e), as modified by Part RR of Chapter 56 of the Laws of 2023, reads that “*the public service commission shall determine reasonableness for purposes of this exemption.*” The language in the proposed rule aligns with the law, as the local utility will make the service determination based on the application of reasonable criteria established by the Public Service Commission.

**COMMENT #1.23:** A comment in reference to the grid exemption recommended that the rule more clearly state who is the “*authority having jurisdiction*” to whom the local utility’s written determination must be provided.

**RESPONSE TO COMMENT #1.23:** A definition for the term “*authority having jurisdiction*” has been added to the rule.

**COMMENT #1.24:** A comment suggested that the language of condition (a) in Section 1240.6(e)(3)(ii) pertaining to “*fossil fuel equipment and building systems related to lighting; space conditioning, such as heating, humidification, ventilation, or cooling; and domestic water heating*” is not supported by the statute. Another comment suggested that, if the intent is to require lighting, HVAC, and hot water systems in otherwise exempted facilities to be non-fossil-fuel based, the provision should specify that the exemption only applies to such systems that are servicing manufacturing or industrial processes.

**RESPONSE TO COMMENT #1.24:** The statute authorizes the Code Council to include provisions, to the fullest extent feasible, that limit the use of fossil-fuel equipment and building systems to the system and area of the building for which a prohibition on fossil-fuel equipment and building systems is infeasible, and the language developed was intended to address such infeasibility. The differentiation between process and non-process loads and support for the quoted language comes from Energy Law §11-104(7)(c), which indicates that where an exception applies to the subset of building types listed in §11-104(7)(b)(i) and (iii), the use of fossil fuels should be limited “*to the system and area of the building for which a prohibition on fossil-fuel equipment*

*and building systems is infeasible.*” Electrification of non-process loads is considered feasible and therefore not exempt.

**COMMENT #1.25:** A comment requested that condition (b)(2) in section 1240.6(e)(3)(ii) related to “*measurable emission reductions or increased energy efficiency*” be clarified to indicate what the facility’s minimized emissions or energy efficiency are to be compared against.

**RESPONSE TO COMMENT #1.25:** As required in condition (b)(2) in section 1240.6(e)(3)(ii), the condition provides that emissions or energy use be “*minimized through the use of alternative materials, equipment, or methods of construction.*” The intent of the rule is to allow flexibility to implement multiple potential strategies chosen by applicants subject to the approval of the building official. Further guidance was added to the rule as a result of this comment by providing examples of ways to demonstrate measurable emissions reduction or increased energy efficiency, such as energy modeling, submittal of environmental product declarations (EPDs), and submittal of cut sheets comparing equipment that meets the minimum requirements against proposed equipment that exceeds those minimum requirements.

**COMMENT #1.26:** Three comments suggested explaining the applicability of the term “*associated with a building*” in the definition of “*fossil-fuel equipment and building systems,*” or adding explicit exemptions to enable connections of new buildings to existing district energy systems or thermal energy networks (TENS).

**RESPONSE TO COMMENT #1.26:** The prohibition against the installation of fossil-fuel equipment and building systems in Energy Law §11-104(6) is applicable to “*new*” buildings and not to buildings existing prior to the prescribed prohibition dates, pursuant to Energy Law §11-104(7)(a). Per the definition of “*fossil fuel equipment and building systems,*” if the new building does not contain (i) equipment that uses fossil-fuel for combustion or (ii) systems associated with a building that will be used for or to support the supply, distribution, or delivery of fossil-fuel for any purpose, then the prohibition would not apply to such new

building, regardless of whether the new building will connect to an existing TEN or use energy generated through such existing TEN. No changes were made to the definition of “*fossil-fuel equipment and building systems*” as a result of these comments.

**COMMENT #1.27:** A comment requested a 30-day extension to the public comment period for the proposed rule.

**RESPONSE TO COMMENT #1.27:** The Code Council has been undertaking the code development process to update the Uniform Code and Energy Code since 2021. As outlined in the introduction to this document, a Notice of Rule in Development was announced in July of 2024, and public comments were accepted through September 24, 2024. A Notice of Proposed Rule Making was posted and published in the State Register on March 19, 2025, with public hearings held in person on May 20 and virtually on May 21 and May 22, 2025. The public comment period ended on May 27, 2025, in accordance with SAPA §202 and will not be extended so as to ensure the timely progression of the SAPA process.

## **2. 2025 ECCCNY – Residential Provisions**

**COMMENT #2.01:** A comment opposed amending Chapter 1, recommending using the model code unmodified, and suggesting that references for compliance in New York City be removed.

**RESPONSE TO COMMENT #2.01:** While Chapter 1 is largely based on the model code, the model code does not satisfy the requirements of New York State laws, rules, and regulations that govern the administration and enforcement of the New York State Energy Code. These amendments are necessary to fulfill the requirements of the Energy Law, Executive Law, and other applicable regulations. Unlike the Uniform Code, the Energy Code is applicable throughout the state regardless of the population of the jurisdiction, including the City of New York. No changes were made as a result of this comment.

**COMMENT #2.02:** A comment proposed modifying the requirements in Section R101.5.1 for approved compliance software to add Passive House energy models to the list of approved software acceptable to demonstrate compliance with the Residential provisions of the Energy Code.

**RESPONSE TO COMMENT #2.02:** Section R101.5.1 indicates that other compliance software may be approved in writing by the Secretary of State, where a software provider demonstrates that it is suitable “*for demonstrating compliance with the ECCCNYs—Residential Provisions.*” The Secretary of State only approves alternative compliance software that demonstrates compliance with these requirements. Where it is impractical for an above-code program developer to demonstrate that the proposed software meets the evaluation requirements, demonstrating compliance through the United States Department of Energy’s (DOE’s) ResCheck is a reasonable alternative. No changes were made as a result of this comment.

**COMMENT #2.03:** A comment opposed modifications made to the definition of the terms “*addition,*” “*historic buildings,*” and “*on-site renewable energy*” with a preference for consistency with the model code. The comment also proposed modifying the definition of these terms as follows: “*building,*” closely resembling the definition of “*residential buildings;*” “*change of occupancy,*” matching the definition in the Residential Code; and “*residential building*” to include detached accessory buildings.

**RESPONSE TO COMMENT #2.03:** The term “*addition*” was modified as suggested.

The proposed changes to these definitions were not made for various reasons. The change was not made to the term “*building*” because it would erroneously closely match the definition of “*residential building.*” The change was not made to the term “*change of occupancy*” in favor of remaining consistent with the Commercial Provisions of the Energy Code. The change was not made to the term “*historic buildings*” since it was developed in consultation with the State Office of Historic Preservation in accordance with the Energy Law. The change was not made to the term “*on-site renewable energy*” because the model code uses the undefined term “*project site,*” where the ECCCNYs uses the defined term “*building site.*”

The suggested modification to the definition of the term “*residential building*” was not made because modifications had already been made to the scope in Section R101.3 of the proposed rule to indicate that the Residential Provisions of the code regulate residential buildings and their accessory structures.

**COMMENT #2.04:** A comment advocated for real estate property transactions to require an energy use disclosure at the time of sale or lease and an energy performance rating as part of sale listings. The same commenter also advocated for a credentialing program for Energy Code inspectors.

**RESPONSE TO COMMENT #2.04:** Real estate transactions are outside the purview of the Energy Code; however, the DOS will consider establishing credentialing programs as part of its ongoing efforts to serve the code enforcement community and to improve the enforcement of the Energy Code. No changes were made as a result of these comments.

**COMMENT #2.05:** Six comments suggested increasing the energy efficiency of the proposed code as follows: adopting provisions of the 2021 version of the model code that are more efficient than the 2024 version; eliminating potential loopholes in the “*simulated building performance*” path; removing the insulation trade-off provisions in the “*additional efficiency requirements*” section; and extending the Commercial provisions for thermal bridging and on-site renewable energy to Residential buildings.

**RESPONSE TO COMMENT #2.05:** As indicated in the response to Comment #1.03, including those additional efficiency recommendations would require a new life-cycle cost-effectiveness evaluation and may render the proposed Energy Code not cost-effective at this time. No changes were made as a result of these comments.

**COMMENT #2.06:** A comment was received in support of several efficiency improvements to the code, including increased efficiency of the building thermal envelope, limits on electric-resistance heat, demand-responsive controls, and more efficient lighting systems.

Another comment opposed those improvements, as well as the insulation requirements for pool covers, and modifications to Table R405.4.2(1) “*Specifications for the Standard Reference and Proposed Designs,*” in favor of consistency with the model code and minimizing initial costs.

**RESPONSE TO COMMENT #2.06:** Regarding Table R405.4.2(1), the only change in the draft was the value for mechanical ventilation rate. A change has been made to the table, reverting to the model code value.

The efficiency improvements are consistent with §11-103(2)(b) of the Energy Law, which directs the Code Council to “*use its best efforts to adopt*” an Energy Code “*that achieves energy savings greater than the energy savings achieved by the then most recently published*” IECC and ASHRAE 90.1, provided that the code is cost-effective. As mentioned in the response to Comment 1.04, the code update was evaluated in accordance with Energy Law §11-103(2)(a) and found to be life-cycle cost-effective, meaning that the initial cost of construction will be recovered within a 30-year span, delivering utility savings over the life of the building.

The provisions for demand-responsive controls were developed through a public consensus process and are included in the interest of grid reliability, as recommended by the CLCPA Scoping Plan.

Other than the modification to Table R405.4.2(1), no other changes were made as a result of these comments.

**COMMENT #2.07:** A comment proposed that the use of unvented attics be allowed in the prescriptive path. Additionally, the commenter advocated for a reduction in the prescriptive roof R-value requirements from R-49 to R-30 in unvented attics with air-impermeable insulation, an air leakage rate of 2.5 ACH50 (as opposed to 3.0 in climate zones 4 and 5), and ducts located within the building thermal envelope.

**RESPONSE TO COMMENT #2.07:** Neither the current version of the Energy Code nor the proposed update prohibits the use of air-impermeable insulation in residential attics, or the use of prescriptive ceiling insulation values in an unvented attic assembly. The proposed update already includes a provision that allows

R-30/U-0.032 values where continuous insulation is installed entirely above the roof deck, which would account for thermal bridging.

The proposed strategy is most beneficial in buildings without basements or crawl spaces where equipment could be located. The optional compliance paths are offered for flexibility and are intended, as a whole, to yield equivalent energy efficiency for a variety of building types.

Reducing the prescriptive R-value requirements without accounting for thermal bridging would result in a provision that is less energy efficient than the 2024 IECC. As noted in the response to Comment 2.06, Energy Law §11-103(2)(b) directs the Code Council to “*use its best efforts to adopt*” an Energy Code that achieves “*energy savings greater than the energy savings achieved by the then most recently published*” IECC and ASHRAE 90.1, provided that the code is cost-effective. The changes recommended by these comments require further consideration, analysis, cost-effectiveness determination, and public input. To avoid delay in the adoption of the updated Energy Code, the changes recommended by these comments have not been incorporated into this rule. DOS and the Code Council may consider the recommended changes in a future rulemaking.

**COMMENT #2.08:** A comment recommended amending the wall insulation prescriptive value in Table R402.1.3 from R-20+5 to R-20+7, suggesting that the minimum requirements are insufficient to protect against cold-weather condensation in the walls. Two comments recommended amending the code to require balanced ventilation (either ERV or HRV) in all Climate Zones and deleting the corresponding optional efficiency credit in Table R408. Another comment proposed reducing the air tightness requirement in Section R402.5.1.3 to 2 ACH50 in all climate zones (as opposed to 3.0 ACH50 in climate zones 4 and 5 and 2.5 in climate zone 6) and deleting the corresponding additional efficiency credits in Section R408.

**RESPONSE TO COMMENT #2.08:** The changes recommended by these comments require further consideration, analysis, cost-effectiveness determination, and public input. To avoid delay in the adoption of the

updated Energy Code, the changes recommended by these comments have not been incorporated into this rule. DOS and the Code Council may consider the recommended changes in a future rulemaking.

**COMMENT #2.09:** A comment suggested a clarification to the requirements for maximum air leakage rate for smaller buildings in Section R402.5.1.3, exception #2.

**RESPONSE TO COMMENT #2.09:** A revision has been made to clarify that the exception applies to the “*testing unit enclosure area*” to provide clarity and restore language from the 2021 IECC that was omitted in the 2024 IECC.

**COMMENT #2.10:** A comment proposed exempting two-stage HVAC cooling systems from the demand-responsive thermostat requirements, suggesting they might have difficulty attaining the 70% general curtailment requirements in AHRI 1380.

**RESPONSE TO COMMENT #2.10:** The proposed exemption would be a less restrictive provision than the model code by limiting the types of equipment to which the provision applies. Moreover, it would lessen the impact of the measure as demand-response is most useful to the grid when there is more available curtailment capacity. Fewer systems with demand response capability would result in less available curtailment capacity. As noted in the Response to Comments 2.06 and 2.07, it is the policy of New York State to exceed the energy efficiency of the model codes. No changes were made as a result of this comment.

**COMMENT #2.11:** A comment suggested that referencing ASTM C1313/C1313M in Section R402.3 is not justified, adds to the cost of installation, and should be removed.

**RESPONSE TO COMMENT #2.11:** Section R303.2.2 of the model Energy Code requires thermal barriers to comply with ASTM C1313/C1313M, and the standard is listed in Chapter 6. Section R402.3 of the NYS version of the code references the same standard for the same application. A version of the same standard is also currently referenced in the 2020 version of the Building Code. There is no increased stringency on the application of the code. No changes were made as a result of this comment.

**COMMENT #2.12:** A comment suggested that adding the words “*where permitted*” to Section R403.13 pertaining to gas fireplaces, was unnecessary and should be removed.

**RESPONSE TO COMMENT #2.12:** Omitting “*where permitted*” would incorrectly imply that this type of appliance is permitted in all buildings. No changes were made as a result of this comment.

**COMMENT #2.13:** A comment was received suggesting that the provisions for dwelling unit electrical meter Section R404.5 and the relevant portion of Table R405.2 be moved to chapter 34 of the Residential Code where they would be more visible.

**RESPONSE TO COMMENT #2.13:** While the standards for the installation of meters and submeters are in the Uniform Code, this provision applies to Group R-2 buildings, which are not regulated by the Residential Code. Further, the purpose of this requirement is energy conservation, consistent with the Scope statement in Section R101.3 and with the parallel Commercial Provisions. No changes were made as a result of this comment.

**COMMENT #2.14:** A comment recommended including Passive House certification as an option for compliance with the requirement for a minimum number of additional energy efficiency credits in Section R408.

**RESPONSE TO COMMENT #2.14:** The number of credits awarded for each measure is modeled and calculated by a national laboratory as part of the development of the model codes. Each credit is intended to represent a consistent percentage of energy savings. Modifications to the additional efficiency credit tables in Section R408, and alternatives for compliance thereof, are best pursued through the model code consensus process, where those modeling resources are available. No changes were made as a result of this comment.

**COMMENT #2.15:** A comment opposed modifications to Section R408.2.1.1: Enhanced Building Thermal Envelope Performance in favor of consistency with the model code.

**RESPONSE TO COMMENT #2.15:** The clarifications and editorial modifications made to that section were evaluated and approved unanimously through the 2027 IECC consensus process with the rationale that *“this was a necessary editorial correction for consistent use of the subscribed terms used in the definitions.”* No changes were made as a result of this comment.

**COMMENT #2.16:** A comment noted that the provisions for historic buildings in Section R501.5 do not indicate that the building official is authorized to require a historic building report.

**RESPONSE TO COMMENT #2.16:** A correction to this section, consistent with the parallel section in the Commercial Provisions has been made to correct the omission identified in this comment.

**COMMENT #2.17:** A comment suggested that reference to a commercial section of code in Section R503.1.1.2 (Roof, Ceiling and Attic Alterations) be changed to a reference within the Residential Provisions and suggested that the requirement to insulate to full depth when the cavity is exposed be removed advocating for no additional requirements for cavities that were previously in compliance.

**RESPONSE TO COMMENT #2.17:** The requirement that cavities be insulated to their full capacity when exposed during work in existing buildings has been in the code for several code cycles with Section R503.1.1 of the 2020 version of this code requiring that building envelope assemblies that are part of an alteration comply with the provisions for new buildings. These provisions are consistent with Energy Law §11-103(1)(b) to make energy efficiency improvements where feasible without requiring unaltered portions of the existing building to comply. A correction to the section reference has been made as a result of this comment; however, no changes were made to the insulation requirements.

**COMMENT #2.18** A comment proposed eliminating Section R408.2.9 with an objection to trading the efficiency of the building thermal envelope, which lasts for the life of the building, for more efficient equipment with a shorter life span.

**RESPONSE TO COMMENT #2.18:** This particular section encourages voluntary electrification and installation of renewable energy in existing buildings in support of the State’s goals and increasing flexibility. No changes were made as a result of this comment.

**3. 2025 ECCCCNYS – Commercial Provisions**

**COMMENT #3.01:** A comment opposed several amendments in Chapter 1 and recommended using the model code unmodified.

**RESPONSE TO COMMENT #3.01:** While Chapter 1 is largely based on the model code, the model code does not satisfy the requirements of New York State laws, rules, and regulations that govern the administration and enforcement of the Energy Code. These amendments are necessary to fulfill the requirements of the New York State Energy Law, Executive Law, and other applicable New York State regulations. No changes were made as a result of this comment.

**COMMENT #3.02:** A comment indicated that the language in Section C101.4, that reads: “*requiring that economically reasonable energy conservation techniques be used*” is subjective and recommended that it be modified consistent with the language of Article 11 of the Energy Law.

**RESPONSE TO COMMENT #3.02:** Editorial modifications were made to reference “*life-cycle cost-effectiveness*” as a result of this comment.

**COMMENT #3.03:** A comment suggested explicitly requiring inspection of insulation prior to cladding installation in Section C106.2.6 to ensure continuous exterior insulation and window air seals are installed as designed.

**RESPONSE TO COMMENT #3.03:** A clarification was made to indicate that an inspection is required prior to the installation of “*interior and exterior finishes*” in response to this comment

**COMMENT #3.04:** A comment opposed modifications made to the definition of the terms “*historic buildings,*” “*on-site renewable energy,*” and “*standard reference design*” with a preference for consistency

with the model code. The comment also proposed modifying the definition of the term “*residential building*” to include detached accessory buildings and to delete the definitions for the terms “*market value*” and “*substantial improvement*.”

Another comment requested that clarification be provided to the provisions for “*penetrations from mechanical equipment*.”

**RESPONSE TO COMMENT #3.04:** Modifications had already been made to the scope in Section R101.3 of this proposed rule to indicate that the Residential Provisions of the code regulate residential buildings and their accessory structures, therefore, the definition of the term “*residential building*” was not changed.

The proposed changes to these terms were not made for various reasons. The change was not made to the term “*historic buildings*,” since it was developed in consultation with the State Office of Historic Preservation in accordance with the Energy Law. The change was not made to the term “*on-site renewable energy*,” because the model code uses the undefined term “*project site*,” whereas the ECCNYS uses the defined term “*building site*.” The change was not made to the term “*standard reference design*,” because the NYS definition corrects an error in the model code. The change was not made to the term “*substantial improvement*,” because it is substantially similar to the definition in the model code and necessary for the application of requirements in Chapter 5. The change was not made to the term “*market value*,” because the definition of “*substantial improvement*” relies on this assessment.

As it pertains to the term “*penetrations from mechanical equipment*” a clarification was made in Section C402.1.2.1.8 adding a reference to a table.

No other changes were made as a result of these comments.

**COMMENT #3.05:** A comment proposed modifying the requirements for approved compliance software in Section C101.5.1 to add Passive House energy models to the list of approved software acceptable to demonstrate compliance with the Commercial provisions of the Energy Code.

**RESPONSE TO COMMENT #3.05:** Section C101.5.1 indicates that other compliance software may be approved in writing by the Secretary of State, where a software provider demonstrates that it is suitable “*for demonstrating compliance with the ECCCNYSC—Commercial Provisions or, if applicable, for demonstrating compliance with the 2024 NYS ASHRAE 90.1.*” The Secretary of State only approves alternative compliance software that demonstrates compliance with these requirements. Where it is impractical for an above-code program developer to demonstrate that the proposed software meets the evaluation requirements, demonstrating compliance through DOE’s ComCheck is a reasonable alternative. No changes were made as a result of this comment.

**COMMENT #3.06:** A comment on Section C402.1 opposed several modifications to code provisions in favor of consistency with the model code and minimizing cost increases. The specific deviations included provisions for greenhouses in Section C402.1.1.2, increased efficiency of the building thermal envelope, protection of slab insulation, limits on electric resistance space heating, modifications to the “*minimum efficiency requirement*” tables, demand-response, occupant sensor control for egress illumination, and daylight-responsive control function.

**RESPONSE TO COMMENT #3.06:** The Energy Law §11-103(1)(a) and §11-103(2)(a) delegates the authority to adopt and update the Energy Code to the Code Council. The Energy Law is periodically updated to further define the criteria the code update shall meet, while enabling the Code Council to define, consider, and “*use its best efforts*” to meet the needs of the state, including “*to adopt provisions ... for commercial buildings that achieve energy savings greater than energy savings achieved by the then most recently published*” model codes [see §11-103(2)(b)]. Most of the proposed modifications, including those on greenhouses, have been submitted to the ICC and have been incorporated either as errata to the 2024 IECC or approved for the 2027 IECC through the consensus process. The proposed rule corrects inconsistencies, makes clarifications, and necessary improvements.

The provisions for protection of slab insulation were inadvertently removed from the 2024 IECC and restored through the consensus process for the 2027 IECC. The limits on electric resistance heat, the provisions for occupant sensor control for egress illumination, and daylight responsive control function are resiliency measures proposed in accordance with Energy Law §11-103(2)(b) of the Energy Law. The modifications to the “*minimum efficiency requirement*” tables were made to correct inconsistencies with ASHRAE 90.1 and the mandatory efficiency requirements of the DOE; the notation that some of the table values are subject to federal preemption and periodic updates was added to address questions the DOS has received.

The provisions for demand-responsive controls for air conditioners, heat pumps, water heaters, and lighting were developed through a public consensus process and are included in the interest of grid reliability, as recommended by the CLCPA Scoping Plan and §11-104(6)(a) of the Energy Law.

No changes were made as a result of these comments.

**COMMENT #3.07:** A comment suggested modifications to Table C402.1.3 requiring that the ratio between cavity insulation and continuous insulation not exceed 0.35 for CZ5 and 0.5 for CZ6 to prevent potential hygrothermal issues. Another comment recommended a U-factor of 0.27 for all climate zones for nonmetal framing in Table C402.5, as opposed to the required 0.34. A third comment proposed deleting exception 2 of Section C402.6.2, suggesting that large buildings in CZ4 should be required to meet the same air leakage compliance requirements due to anticipated significant energy savings.

**RESPONSE TO COMMENT #3.07:** These recommendations require further consideration, analysis, cost-effectiveness determination, and public input and have not been incorporated into this rule. DOS and the Code Council may consider the recommended changes in a future rulemaking.

**COMMENT #3.08:** A comment expressed structural and aesthetic concerns about the requirements for slab-on-grade insulation in accordance with Section C402.2.4 and conflicting local understanding of the provision.

**RESPONSE TO COMMENT #3.08:** The provisions for protection of slab insulation are in Section R402.2.10 of the current version of the ECCCNY. As written, they allow flexibility to install insulation inside or outside the foundation wall, as well as interruptions due to structural or mechanical elements. DOS technical support staff is available to assist in resolving conflicting understanding of code provisions. No changes were made as a result of these comments.

**COMMENT #3.09:** A comment recommended revising the economizer requirements in Section C403.5 to exempt Group-R buildings with natural ventilation and adjusting the per-system and total building thresholds.

**RESPONSE TO COMMENT #3.09:** The proposed requirements were developed through the consensus process. The change recommended by this comment requires further consideration, analysis, cost-effectiveness determination, and public input and has not been incorporated into this rule. DOS and the Code Council may consider the recommended change in a future rulemaking.

**COMMENT #3.10:** A comment on Table C402.5 recommended maintaining frame material neutrality in commercial fenestration U-factors consistent with the IECC and ASHRAE 90.1. Another comment on the same table suggested that the minimum requirements for metal framing windows should be increased because, in their opinion, it is cost-effective.

**RESPONSE TO COMMENT #3.10:** Frame material has an impact on efficiency; therefore, U-factor requirements for nonmetal framing are different. In this specific instance, aligning them with the model code would reduce efficiency in the instances where higher values are suggested or increase cost where lower values are suggested, since fenestration with lower U-factors is consistently more expensive. No changes were made as a result of these comments.

**COMMENT #3.11:** A comment proposed increasing enthalpy recovery ratios in Section C403.7.4. Another comment proposed requiring energy recovery instead of heat recovery ventilators, modifying Section

C406.2.2.5 to require energy recovery ventilation regardless of whether supplemental humidification is required or provided, and increasing the enthalpy recovery ratio for ERVs in the additional credits section.

**RESPONSE TO COMMENT #3.11:** The proposed requirements were developed through the consensus process. The changes recommended by these comments require further consideration, analysis, cost-effectiveness determination, and public input and have not been incorporated into this rule. DOS and the Code Council may consider the recommended changes in a future rulemaking.

**COMMENT #3.12:** A comment questioned the rationale for the non-transient dwelling unit heat or energy recovery requirement being greater than the parallel ASHRAE 90.1 requirement and the requirement for all other space types in Section C403.7.4.1.

**RESPONSE TO COMMENT #3.12:** The NY-specific modifications in the referenced section pertain only to the removal of inapplicable climate zones, with the technical requirements remaining the same as in the model code. Regarding the parallel values in ASHRAE 90.1, the Energy Code offers alternative compliance pathways to be chosen by applicants in the interest of flexibility, with the expectation that all paths yield consistent efficiency and cost-effectiveness. Making parts of the provisions within those pathways identical eliminates part of that flexibility without a practical means to ensure consistent levels of efficiency and cost-effectiveness. No changes were made as a result of this comment.

**COMMENT #3.13:** A comment proposed that Sections C403.4.3, C403.4.4, and C403.4.5, (requirements on controls) be added to the mandatory requirements in Table C407.2(1).

**RESPONSE TO COMMENT #3.13:** Those items which are included within the simulated building performance compliance path's Table C407.2(1) were developed through the consensus process. The change recommended by this comment requires further consideration, analysis, cost-effectiveness determination, and public input and has not been incorporated into this rule. DOS and the Code Council may consider the recommended change in a future rulemaking.

**COMMENT #3.14:** A comment suggested modifying the requirements for demand-responsive control in Section C403.4.6.1 for 2-stage products, claiming that it would be difficult to attain the 70% general curtailment requirements in AHRI 1380 and it would not be possible to meet the Critical Curtailment requirements of AHRI 1380 for those products.

**RESPONSE TO COMMENT #3.14:** This would be a less energy efficient provision than what was developed for the model code through the consensus process, as it limits the types of equipment to which this provision would apply. Moreover, it would lessen the impact of the measure as demand response is most useful to the grid when there is more available curtailment capacity. Fewer systems with demand response capability would result in less available curtailment capacity. As noted earlier in this document, it is the policy of New York State to exceed the energy efficiency of the model codes. No changes were made as a result of this comment.

**COMMENT #3.15:** Two comments recommended lowering the per fan system limit in Section C403.5 item 3 to 54,000 Btu/h, removal of the building-wide limit for dwelling unit systems and including a total building limit for systems serving non-dwelling unit areas that is aligned with the 20% or 300,000 Btu/h for all other occupancies.

**RESPONSE TO COMMENT #3.15:** The changes recommended by these comments require further consideration, analysis, cost-effectiveness determination, and public input and have not been incorporated into this rule. DOS and the Code Council may consider the recommended changes in a future rulemaking.

**COMMENT #3.16:** A comment suggested changing the term “*dining areas*” in Section C405.2.1 item 6 to “*dining cafeteria/fast food.*”

**RESPONSE TO COMMENT #3.16:** The recommended change would limit the types of areas to which the provisions apply. No changes were made as a result of this comment.

**COMMENT #3.17:** A comment regarding the new provisions for demand response requested a comprehensive list of space type exceptions where demand-responsive controls would not be required to avoid getting project-specific approval from the building official.

**RESPONSE TO COMMENT #3.17:** The demand response provisions apply to three equipment types, each with different exceptions. Four space type exceptions for demand-response controls for space conditioning equipment are listed in Section C403.4.6, three equipment-related exceptions are listed for water heating in Section C404.8, and five exceptions for lighting are listed in Section C405.2.8. All other spaces and equipment types are required to comply, and a separate building permit is required for each project, regardless. No changes were made as a result of this comment.

**COMMENT #3.18:** A comment recommended deleting exception 3 in Section C404.4, suggesting that though the piping serves fluid that is not heated with fossil fuel or electric energy, the heating loss from the piping could have an adverse effect on the cooling loads within the space(s) that it is located.

**RESPONSE TO COMMENT #3.18:** The change recommended by this comment requires further consideration, analysis, cost-effectiveness determination, and public input and has not been incorporated into this rule. DOS and the Code Council may consider the recommended change in a future rulemaking.

**COMMENT #3.19:** A comment requested matching the interior lighting power allowance values per building area and per space-by-space in Tables C405.3.2(1) and C405.3.2(2) with the values in ASHRAE 90.1. Also noted that some spaces, such as “*patient room*,” are listed twice in the table.

**RESPONSE TO COMMENT #3.19:** The Energy Code offers alternative compliance pathways to be chosen by applicants in the interest of flexibility, with the expectation that all paths yield consistent efficiency and cost-effectiveness. Making the parts of those pathways identical eliminates that flexibility without a practical means to ensure consistent levels of efficiency and cost-effectiveness. The duplicate listing for “*patient room*” is intentional and applies for “*common space types*” and for “*building type specific spaces*” in

the same table; however, the values are the same and no conflicts would result regardless of which portion of the table is used. No changes were made as a result of this comment.

**COMMENT #3.20:** A comment noted that Equation 4-11 in Section C405.15.2 contained a reference to a missing Table.

**RESPONSE TO COMMENT #3.20:** The  $REN_{off}$  value of 1.35 kilowatt-hours per watt found in the Table C405.15.2 is applicable in all New York State climate zones; therefore, the table was deleted in favor of placing the values directly into Equation 4-11 for ease of use. A revision has been made to remove the stranded reference to the table.

**COMMENT #3.21:** Several comments were received regarding allocation of credit points in Table C406: one proposed increasing parity between climate zones for credits provided for air tightness; another noted that air tightness and thermal bridging not be considered in the evaluation of the reference design model relative to the proposed design, suggesting that this could result in discrepancies between ASHRAE models and Passive House models; another suggested including points for whole-building blower door test in addition to, or in lieu of, apartment compartmentalization test credits, and another suggested decreasing credits for efficient gas water heaters to in the interest of removing hydrocarbons from buildings.

**RESPONSE TO COMMENT #3.21:** The number of credits awarded for each measure is modeled and calculated by a national laboratory as part of the development of the model codes. Each credit is intended to represent a consistent percentage of energy savings. Modifications to the additional efficiency credit tables found in Section C406 and modifications to the evaluation of the reference design are best pursued through the consensus process, where those modeling resources are available. No changes were made as a result of these comments.

**COMMENT #3.22:** Two comments recommended replacing energy cost as the basis for simulated building performance in Section C407 with site energy use intensity (EUI) or carbon emissions since energy

costs vary by fuel type and utility territory, which can be a penalty against electrification. The comment suggested that EUI would offer a consistent, fuel-neutral measure of efficiency.

**RESPONSE TO COMMENT #3.22:** The C407 performance path is intended to be fuel-neutral. A modification has been made adding EUI as an option, rather than replacing energy cost, to offer flexibility, enabling applicants to select the preferred means of compliance regardless of fuel type used.

**COMMENT #3.23:** A comment requested clarifying the electric source energy conversion factor to be used for onsite renewable energy in Table C407.2(2).

**RESPONSE TO COMMENT #3.23:** The simulated building performance path specifies that the maximum reduction in energy cost (or other metric, if used) due to on-site renewables is limited to 5% of total energy cost (or other metric). The source energy conversion would be performed after the on-site renewable energy is removed from the proposed design energy consumption, therefore, a conversion to source energy for on-site renewables is not needed. No changes were made as a result of this comment.

**COMMENT #3.24:** A comment proposed referencing ASHRAE Standard 202 for standard commissioning procedures in Section C408.2.3.

**RESPONSE TO COMMENT #3.24:** The standard has been added to Section C408.2.3 as a compliance option.

**COMMENT #3.25:** A comment requested clarifying that standard electric receptacle controls do not require commissioning in Section C408.3.

**RESPONSE TO COMMENT #3.25:** The provisions are specific to “*automatic*” controls, as defined. DOS has determined that the term is adequately defined and does not require additional clarification. No changes were made as a result of this comment.

**COMMENT #3.26:** A comment opposed the new efficiency requirements in Section C405.8.1 for some traction elevators and the requirements in Section C503.2.8 for the building thermal envelope certificate to be updated during alterations, in favor of consistency with the model code and cost savings.

**RESPONSE TO COMMENT #3.26:** As mentioned in comment #2.06, Energy Law §11-103(2)(b) directs the Code Council to use its best efforts to adopt an Energy Code that achieves energy savings greater than the model code, provided that the code is cost-effective. The code update was evaluated in accordance with Energy Law §11-103(2)(a) and found to be life-cycle cost-effective.

As it pertains to the efficiency improvements for traction elevators, these were submitted for the 2027 IECC, where, substantially increased requirements were approved and found to be cost-effective through the consensus process. Similarly, the requirement to update the building thermal envelope certificate was approved through the consensus process with the rationale that it *“adds value during future work on the same building.”*

No changes were made as a result of these comments.

**COMMENT #3.27:** A comment opposed modifications made to the lighting system provisions of Section C503.5 applicable to alterations and advocated for consistency with the model code.

**RESPONSE TO COMMENT #3.27:** The lighting system provisions for alterations were modified to include exemptions that were previously located in Chapter 1 and to add a testing requirement for existing controls when the connected lighting power within a space is increased. No changes were made as a result of this comment.

**COMMENT #3.28:** A comment suggested that Appendix CG – Electric Vehicle Charging Infrastructure, be modified to include California’s ‘Power Allocation Method’ for determining the quantity of electrical vehicle chargers required.

**RESPONSE TO COMMENT #3.28:** The change recommended by this comment requires further consideration, analysis, cost-effectiveness determination, and public input and has not been incorporated into this rule. DOS and the Code Council may consider the recommended change in a future rulemaking.

**COMMENT #3.29:** One comment recommended deleting RESOURCE CRA: All-Electric Commercial Building Provisions because some of the provisions might be inconsistent with section 1240.6 and could cause confusion.

**RESPONSE TO COMMENT #3.29:** As noted below the title, “*resources are related information that is not part of the code.*” Like appendices, resources are not mandatory unless specifically adopted; the list of appendices adopted by this rule, if any, are clearly identified in Chapter 1. Appendices and resources are beneficial in other ways, such as informing the design and enforcement of voluntarily chosen features, informing the development of locally adopted, more restrictive codes, and forming the basis of future code provisions. Should their presence in the code cause any confusion, the Division’s technical support staff is ready to assist. Therefore, the change recommended by this comment has not been incorporated into this rule.

**COMMENT #3.30:** A comment recommended that the Energy Code be modified to adopt the Rocky Mountain Institute’s (RMI) Zero Fuel Bias Code Overlay to correct a presumed bias against electric heat pumps in the model code.

**RESPONSE TO COMMENT #3.30:** The change recommended by this comment requires further consideration, analysis, cost-effectiveness determination, and public input and has not been incorporated into this rule. DOS and the Code Council may consider the recommended change in a future rulemaking.

#### **4. NYS ASHRAE 90.1-2025**

**COMMENT #4.01:** A comment proposed an additional exception for alterations to the building thermal envelope, allowing a 40% window-to-wall ratio for the whole building instead of the 40% limit for the work area. Another comment proposed a new exception to building thermal envelope provisions for alterations that

do not impact more than 5% of the above-ground opaque wall area and 5% of the roof area, and another comment proposed a compliance path for small alterations that require trade-offs between fenestration and opaque assemblies.

**RESPONSE TO COMMENT #4.01:** Adding the proposed exceptions or compliance alternative would result in provisions that are less restrictive than ASHRAE 90.1. On March 6, 2024, DOE issued a determination that ASHRAE 90.1-2022 will achieve greater energy efficiency in buildings subject to the code. Pursuant to the EPCA, States are required to certify that they have reviewed the provisions of their commercial building code regarding energy efficiency, and, as necessary, update their codes to meet or exceed the updated edition of ASHRAE 90.1. The proposed rule is based on ASHRAE 90.1-2022 and therefore changes that would render the commercial provisions less restrictive cannot be made.

**COMMENT #4.02:** A comment proposed allowing trade-offs between fenestration and opaque building thermal envelope components in alterations to existing buildings for consistency with the IECC.

**RESPONSE TO COMMENT #4.02:** The Energy Code offers alternative compliance pathways to be chosen by applicants in the interest of flexibility, with the expectation that all paths yield consistent efficiency and cost-effectiveness. Making provisions within those pathways identical would eliminate part of that flexibility without a practical means to ensure consistent levels of efficiency and cost-effectiveness.

**COMMENT #4.03:** A comment proposed to modify the definition of “*indirectly conditioned space*,” expressing a concern that the calculation in the definition would classify some transitional spaces, such as loading docks, as conditioned space and, therefore, insulation would be placed at the exterior of the space instead of at the walls adjacent to the conditioned space. Another comment proposed to modify the definition of “*unconditioned space*” to exclude areas that are heated or cooled. Another comment recommended adding definitions for the term “*garage*.”

**RESPONSE TO COMMENT #4.03:** The misclassification of spaces is unlikely, since adding insulation to the interior walls would lower the heat transfer to and from the space in question, placing the space to the exterior of the insulation firmly into the category of unconditioned space. Allowing designers the choice to either insulate the true exterior wall and consider transitional spaces “*conditioned*” or to insulate between a transitional space and the “*conditioned spaces*” maintains flexibility in the code.

As indicated in Section 3.1, the term “*garage*” should be understood to mean the “*ordinarily accepted meaning within the context in which [it is] used.*” The criteria to establish whether a parking garage is conditioned or unconditioned is included in the definition for “*unconditioned space.*” Adding a definition would not provide additional clarity and could create confusion with the provisions for garages in the Building Code. No changes were made as a result of these comments.

**COMMENT #4.04:** A comment requested that a definition be added to clarify the meaning of the term “*penetrations from mechanical equipment*” used in Exceptions to Sections 5.5.3 and 5.6.1.1. Another comment requested clarification of the term “*provided it is similar to an assembly being modeled*” in Section 5.6.1.1.

**RESPONSE TO COMMENT #4.04:** DOS has determined that both terms are adequately descriptive and do not require additional context. However, DOS technical support staff is available to assist in understanding code provisions. No changes were made as a result of these comments.

**COMMENT #4.05:** A comment requested a clarification distinguishing between air-cooled and “*space-constrained*” air cooled equipment types in Table 6.8.1-2.

**RESPONSE TO COMMENT #4.05:** A footnote was added to Table 6.8.1-2 with an explanation for the term “*space-constrained.*”

**COMMENT #4.06:** A comment requested clarification on the restrictions on the use of electric resistance heating in Section 6.9 for unoccupied areas, such as mechanical equipment rooms, stairwells, and corridors.

**RESPONSE TO COMMENT #4.06:** The space examples given are occupiable spaces required to comply with the provisions. No changes were made as a result of this comment; however, DOS technical support staff is available to assist in understanding of code provisions.

**COMMENT #4.07:** A comment requested guidance on how to perform a SEER2 into COPnf conversion for energy models built using Chapter 12: Energy Cost Budget Method.

**RESPONSE TO COMMENT #4.07:** A new formula, consistent with ASHRAE 90.1-2022, Addendum by\_20250430, was added to the pertinent section.

**COMMENT #4.08:** A comment recommended replacing energy cost as the basis for the performance rating method in Appendix G with site energy use intensity (EUI) or carbon emissions since energy costs vary by fuel type and utility territory. The comment suggested that EUI would offer a consistent, fuel-neutral measure of efficiency. Another comment advocated for the use of site energy, source energy, and carbon emissions (CO<sub>2</sub>e), in addition to energy cost, for determining compliance with ASHRAE 90.1.

**RESPONSE TO COMMENT #4.08:** The provisions already allow the use of a Site Energy metric where fossil-fuels are prohibited. Modifications have been made to afford all applicants the same flexibility to select the preferred means of compliance regardless of fuel type used.

### **Description of Changes Made to the Rule**

The rule repeals Part 1240 of NYCRR Title 19 and adds a new Part 1240 in its place. The rule now being adopted makes the following non-substantive changes to the rule as originally proposed.

#### **Changes Made to Title 19 NYCRR Part 1240**

19 NYCRR Section 1240.2(a): The rule as originally proposed would have incorporated by reference the 2024 ECCCNYIS with a publication date of March 2025. The rule, as now adopted, incorporates the 2025 ECCCNYIS with a publication date of July 2025.

19 NYCRR Section 1240.2(e): The rule as originally proposed would have incorporated by reference the NYS ASHRAE 90.1-2024 with a publication date of March 2025. The rule, as now adopted, incorporates the NYS ASHRAE 90.1-2025 with a publication date of July 2025.

19 NYCRR Sections 1240.3(c)(3) and 1240.4(b)(6): The rule as originally proposed would have incorporated by reference the 2024 Residential Code of New York State, 2024 Building Code of New York State, 2024 Plumbing Code of New York, 2024 Mechanical Code of New York State, 2024 Fuel Gas Code of New York State, 2024 Fire Code of New York State, 2024 Existing Building Code of New York State, and 2024 Property Maintenance Code of New York State with publication dates of March 2025. The rule now being adopted incorporates by reference the 2025 Residential Code of New York State, 2025 Building Code of New York State, 2025 Plumbing Code of New York, 2025 Mechanical Code of New York State, 2025 Fuel Gas Code of New York State, 2025 Fire Code of New York State, 2025 Existing Building Code of New York State, and 2025 Property Maintenance Code of New York State and specifies the publication date of such publications as July 2025.

19 NYCRR Section 1240.4(b)(1)(i): Corrected the publication date for ANSI/ACCA 1 Manual D to 2016 instead of 2023.

19 NYCRR Section 1240.4(b)(4)(i): Corrected the publication date for ASHRAE Handbook of Fundamentals to 2021 instead of 2001.

19 NYCRR Section 1240.6(c)(1): Revised to add a definition for “authority having jurisdiction” for clarity, to modify the definition of “fuel cell system” by removing the phrase “with no carbon byproducts,” and to modify the definition of “manufacturing facility” to provide examples for clarity.

19 NYCRR Section 1240.6(d): Revised to clarify the prohibition against installation of fossil-fuel equipment and building systems is applicable to “new” buildings and subject to the statutory exemptions.

19 NYCRR Section 1240.6(e)(2): Revised to clarify that the New York State Public Service Commission’s orders and rules establish the standards and criteria for making the reasonableness determination regarding the grid exemption.

19 NYCRR Section 1240.6(e)(3)(ii)(b)(1): Revised to clarify that provisions requiring electrification ready are only applicable to new and not existing buildings.

19 NYCRR Section 1240.6(e)(3)(ii)(b)(2): Revised to provide examples of demonstrating measurable emissions reductions or increased energy efficiency for clarity.

#### Changes Made to the 2025 ECCCNY

1. The publication date was changed from March 2025 to July 2025.
2. Some references in Chapter 1 to sections in other parts of the 2025 ECCCNY were corrected, and editorial changes were made for consistency with other publications incorporated by reference as part of the New York State Uniform Fire Prevention and Building Code (the Uniform Code).
3. Several minor changes were made for formatting purposes, clarifications, and correcting typographical errors throughout the 2025 ECCCNY.
4. The definition of the term “*addition*” was revised to eliminate the wording “*conditioned space*.”
5. Energy Use Intensity was added to the C407 performance path as an alternative compliance option.
6. An option for compliance with ASHRAE standard 202 was added to the commissioning testing requirements of Section C408.2.3

#### Changes Made to the NYS ASHRAE 90.1-2025

1. The publication date was changed from March 2025 to July 2025.
2. Several minor changes were made for formatting purposes, clarifications, and correcting errata throughout the NYS ASHRAE 90.1-2025.

3. The use of a Site Energy metric as a compliance alternative in Appendix G was extended to those pursuing electrification voluntarily.