

New Rule Requires Carbon Monoxide Detection in Commercial Buildings

By Gene Kelly, David Crowe and Lauren Baron

The Department of State in late 2015 adopted an emergency rule adding section 1228.4 to the Uniform Fire Prevention and Building Code (the “Uniform Code”).¹ Section 1228.4 sets forth installation and maintenance requirements for carbon monoxide alarms in commercial buildings. Prior to the addition of section 1228.4, the law only required carbon monoxide detection alarms in residential dwellings, and excluded commercial buildings. The new rule became effective on June 27, 2015, and requires both new and existing commercial buildings to install and maintain carbon monoxide detection alarms.²

Carbon monoxide is a naturally occurring chemical compound that is created by the incomplete combustion of carbon-based fuels. It is an odorless and invisible gas, and can cause serious respiratory problems, including death, if inhaled. According to the Department of State, there are approximately 450 hospitalizations and 55 fatalities reported in New York state each year due to carbon monoxide poisoning.³

Section 1228.4(b)(9) of the Uniform Code defines a commercial building as “any new or existing building that is not a one-family dwelling, a two-family dwelling or a building containing only townhouses.”⁴ This definition seems to include any commercial building regardless of whether it is privately owned or owned by a municipality.

Existing commercial buildings are those that were constructed prior to December 31, 2015 or construction projects that filed a complete building permit prior to December 31, 2015.⁵ Any building that does not qualify as an existing commercial building is considered a new commercial building.⁶ Unlike owners of new commer-

cial buildings, who will have to comply with the requirements of section 1228.4 upon construction, owners of existing commercial buildings are required to comply with the rule by June 27, 2016.⁷

Section 1228.4 does not include inspection requirements or describe the consequences for failing to comply. However, pursuant to Executive Law section 381 and the regulations governing the Department of State, the Uniform Code is enforced through the Division of Code Enforcement and Administration, which proposes minimum requirements for municipalities regarding inspections and enforcement of the Uniform Code by local enforcement officials.⁸ If a property owner of a newly constructed or existing commercial building fails to comply by the respective compliance deadlines, the code enforcement official with jurisdiction over the commercial building in question is likely able to enforce compliance with section 1228.4 under the Uniform Code and applicable local law. For example, the City of Rochester has fully incorporated the Uniform Code into its own municipal city code and is able to enforce violations by issuing fines.⁹

The new rule has interesting implications for New York State schools classified as Educational Group E under the 2010 Building Code of New York state (the “Building Code”), as well as certain types of mixed use buildings, which are included within the definition of commercial buildings under the rule. Schools that are classified as Educational Group E buildings under the Building Code and that meet the requirements of section 1228.4(c)(1) are required to install carbon monoxide detection alarms and must ensure that the

alarm signal is “automatically transmitted to an approved on-site location that is normally staffed by school personnel during normal school hours.”¹⁰

Although the definition of commercial buildings encompasses many types of buildings, there are exemptions under the rule for certain types of commercial buildings, such as those which are specifically classified under the 2010 Building Code of New York state and are “occupied only occasionally and only for building or equipment maintenance.”¹¹

Section 1228.4 discusses specific requirements for the type and components of carbon monoxide detection alarms, as well as for the configuration of alarms within a commercial building. Commercial building owners will have to evaluate the carbon monoxide sources within their building in accordance with section 1228.4(d) in order to determine where alarms must be located.¹²

Endnotes

1. N.Y. COMP. CODES, RULES & REGS. § 1228.4 (2016), WL 19 NY ADC 1228.4.
2. *Id.* § 1228.4(a).
3. N.Y. DEP’T OF STATE, CARBON MONOXIDE REQUIREMENTS IN COMMERCIAL BUILDINGS (2015).
4. COMP. CODES, RULES & REGS. § 1228.4(b)(9).
5. *Id.* § 1228.4(b)(12).
6. *Id.* § 1228.4(b)(13).
7. *Id.* § 1228.4(p)(3).
8. N.Y. EXEC. LAW § 381 (McKinney 2011).
9. ROCHESTER, N.Y., CODE § 39-101 (Gen. Code Publishers 2011), available at <http://ecode360.com/12553592>.
10. COMP. CODES, RULES & REGS. § 1228.4(h)(5)(i)(2).
11. *Id.* § 1228.4(c)(2)(i)(b).
12. *Id.* § 1228.4(d).

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