



NOTICE OF MEETING AND AGENDA

November 22, 2023

TO THE GUESTS OF THE NEW YORK STATE ENERGY RESEARCH AND DEVELOPMENT AUTHORITY:

PLEASE TAKE NOTICE that a Special Meeting (the 264th) of the New York State Energy Research and Development Authority (“Authority”) will be held at 17 Columbia Circle, Albany, New York, at the NY Green Bank Office located at 1333 Broadway, New York, New York, and at the New York Power Authority located at 123 Main Street, Conference Room 1654, White Plains, New York on Wednesday, November 29, 2023, commencing at 10:00 a.m., for the following purposes:

1. To consider and act upon a resolution authorizing the Authority to develop and issue a Notice of Proposed Rulemaking to establish a new Part 510 of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York and to approve the issuance of a Negative Declaration under the State Environmental Quality Review Act for new Part 510 of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York.
2. To transact such other business as may properly come before the meeting.

Members of the public may attend the meeting at any of the above locations or via the video conference which can be accessed at <https://www.nyserdera.ny.gov/About/Board-Governance/Board-and-Committee-Meetings>.

The Authority will be posting a video and a transcript of the meeting to the web as soon as practicable after the meeting. The video and transcript will be posted at <http://www.nyserdera.ny.gov/About/Board-Governance/Board-and-Committee-Meetings>.

Peter J. Costello
Secretary

New York State Energy Research and Development Authority

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nyserdera.ny.gov | info@nyserdera.ny.gov

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726 Exchange Street
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14210-1484
(P) 716-842-1522
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New York City
1359 Broadway
19th Floor
New York, NY
10018-7842
(P) 212-971-5342
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Management Program**
9030-B Route 219
West Valley, NY
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Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended by adding a new Part 510 to read as follows:

Part 510. Evaluation Criteria for Determining the Cost Effectiveness of Proposed Changes to the Energy Conservation Construction Code of New York State

Section 510.1 Scope and Purpose

(a) The New York State Legislature has established greenhouse gas (GHG) emissions reduction mandates in New York State to 40% below 1990 levels by 2030 and then to 85% below 1990 levels by 2050. The State Energy Conservation Construction Code (Energy Code) is an important regulatory tool to assist in achieving these goals. The New York State Fire Prevention and Building Code Council (Code Council) is authorized to review and amend the Energy Code, or adopt a new Energy Code, through the promulgation of rules and regulations. To amend the Energy Code, the Code Council must determine that the Energy Code remains cost effective with respect to building construction in the State. The Code Council's cost-effective determination must include a life-cycle cost analysis; and the value of societal effects, such as reductions in GHG emissions.

(b) The purpose of this Part is to (1) establish a methodology for determining whether the life-cycle costs for a building will be recovered through savings in energy costs over the design life of the building under a life-cycle cost analysis; (2) define secondary or societal effects to be considered in the cost effectiveness determination; and (3) provide a method for quantifying the societal effects so that they can be added to the life-cycle costs. This Part implements amendments to paragraph (a) of subdivision 2 of section 11-103 of the Energy Law, as enacted by the "Advanced Building Codes, Appliance and Equipment Efficiency Standards Act of 2022."

Section 510.2 Definitions

Whenever used in this Part, unless otherwise expressly stated, the following terms shall have the meanings indicated below.

- (a) *Commercial Building*. Commercial building shall have the same meaning as set forth in 19 NYCRR section 1240.2.
- (b) *Code Council*. Code Council means the State Fire Prevention and Building Code Council, as established by section 374 of the Executive Law and enacted by the New York State Fire Prevention and Building Code Act, chapter 707 of the Laws of 1981.
- (c) *DOE*. DOE means the United States Department of Energy.
- (d) *DOE Commercial Methodology*. The DOE Commercial Methodology means the U.S. Department of Energy's *Methodology for Evaluating Cost-effectiveness of Commercial Energy Code Changes*.
- (e) *DOE Residential Methodology*. The DOE Residential Methodology means the U.S. Department of Energy's *Methodology for Evaluating Cost-Effectiveness of Residential Energy Code Changes*.
- (f) *Energy Code*. Energy Code means Part 1240 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York.
- (g) *Energy Code update*. Energy Code update means an amendment to the Energy Code, which may include the adoption of a new Energy Code by the Code Council.
- (h) *Effective Useful Life*. Effective useful life means the estimated, median length of time in years that an energy system, energy conservation measure, or piece of equipment is functional, prior to replacement.
- (i) *Emissions Factors*. Emissions factors mean the amount of GHGs emitted per unit of electricity or fuel used.

- (j) *Energy Price*. Energy price means the average annual retail price of electricity or fuel.
- (k) *Energy Price Escalation Rate*. Energy price escalation rate means the projected change in energy prices over time.
- (l) *Fuel*. Fuel means natural gas, propane, kerosene, diesel, or oil.
- (m) *Life-cycle Cost*. Life-cycle cost shall have the same meaning set forth in as section 11-102 of the Energy Law.
- (n) *NYSERDA*. NYSERDA means the New York State Energy Research and Development Authority.
- (o) *Prototype Building Model*. Prototype building model means the whole building energy simulations developed by U.S. Department of Energy for a series of commercial and residential building configurations, which models may be used for evaluating or comparing current Energy Code to a proposed Energy Code update.
- (p) *Residential Building*. Residential building shall have the same meaning as set forth in 19 NYCRR section 1240.2.
- (q) *Study Period*. Study period means the number of years into the future that costs and revenues are considered in this Part. The study year period as used in this Part is 30 years.
- (r) *TRM*. TRM (Technical Resource Manual) means the New York Standard Approach for Estimating Energy Savings from Energy Efficiency Programs - Residential, Multi-Family, and Commercial/Industrial.

(a) Life-cycle costs of an Energy Code update for commercial buildings will be analyzed by using the methodology for determining life-cycle cost net present value of savings established in the *DOE Commercial Methodology*, as incorporated by reference in section 510.7 of this Part and as modified in this section for New York State. Life-cycle costs of an Energy Code update for residential buildings will be analyzed by using the methodology for life-cycle costs established in the *DOE Residential Methodology*, as incorporated by reference in section 510.7 of this Part and as modified in this section for New York State.

(b) Building Energy Use Evaluation. For both commercial and residential buildings, whole building simulation will be used to calculate annual energy consumption for the duration of the study period for relevant end uses of buildings with construction starts that fall within a three-year period commencing on the effective date of an Energy Code update.

(1) Building Prototypes. Prototype building models developed by DOE under the Building Code Energy Program will be selected as follows:

(i) Commercial prototype building models. DOE commercial prototype building models will be modified as necessary to align with the anticipated predominant new construction system and equipment parameters in New York State. A minimum of 5 prototypes will be selected to represent not less than 75% of new construction starts by floor area in New York State.

(ii) Residential prototype building models. DOE residential building prototypes will be modified as necessary to align with anticipated predominant new construction system and equipment parameters in New York State.

(2) Building Model Cases. Two cases for each prototype building model will be analyzed. One model case will be a building that complies with the current Energy Code and other legal requirements, including Energy

Law section 11-104(6) and Executive Law section 378(19); the other model case will be an otherwise identical building that complies with the proposed Energy Code update and other legal requirements, including Energy Law section 11-104(6) and Executive Law section 378(19).

(i) Prototype building model cases will be configured to use typical and financially reasonable design parameters of each of the two cases.

(ii) Prototype building model components that are unchanged by a proposed Energy Code update are identical in prototype building model cases.

(3) Climate Zones. Each selected prototype building model will be simulated in each New York State climate zone, weighted by anticipated percentage of statewide new construction starts, to estimate the overall state average energy impact of the proposed Energy Code update. The calculated statewide impact will be weighted to account for both climate zone and building type specific differences in new construction that may be affected by the proposed Energy Code update.

(c) Costs

(1) Energy Prices. Retail energy prices will be based on the most recently-available New York State commercial or residential energy prices as of the date the analysis is performed, derived from public sources, which shall include, when available, reporting sources maintained by a federal or New York State entity authorized by law to report such information and/or an investor-owned public utility. Energy prices for delivered fuel will be based on weighted average delivered fuel cost derived from an estimate of fuel use by type in New York State. Energy prices will be escalated in accordance with the methods in this subdivision.

(i) Energy Price Escalation. Energy price escalation rates will be based on the projected change in energy costs in New York State. Energy price escalation values will be derived from public sources, which shall

include, when available, reporting sources maintained by a federal or New York State entity authorized by law to report such information, the New York Independent System Operator (NYISO), and/or an investor-owned public utilities and may use a combination of projections for the near term such as published investor-owned public utility sources. For purposes of this section, contemporaneous information reported in the U.S Department of Energy's Energy Information Administration regarding Short Term Energy Outlook and Annual Energy Outlook, and/or NYISO System & Resource Outlook may be used.

(ii) Energy Price Weighting by Climate Zone. When available, energy prices may be calculated using weighted energy prices, by climate zone, to better account for the variability of energy prices throughout the different regions of New York State. Climate zone specific energy prices are calculated by weighting the delivered energy and energy cost of utilities serving the different New York State climate zones.

(2) Effective Useful Life. The effective useful life of equipment and systems will be determined in accordance with Appendix P of the TRM, as incorporated by reference in section 510.7 of this Part. If equipment or material is not listed in the TRM, or if the value in the TRM is unreliable, an alternative source may be used. If a source alternative to the TRM is used, the source and effective useful life will be cited in reporting.

(3) Labor and Material Costs. Labor and material cost estimates will be adjusted for Albany, Buffalo, and New York City in accordance with the *DOE Commercial Methodology* and the *DOE Residential Methodology*, which are incorporated by reference in section 510.7 of this Part.

(4) Property Tax. Property tax will not be included in life-cycle cost analysis.

(d) Life-cycle Cost of Energy Code Updates for Commercial Buildings.

(1) Ownership Scenarios. Life-cycle costs for commercial buildings will be analyzed in accordance with the *DOE Commercial Methodology* for privately owned buildings, as incorporated by reference in section 510.7 of this Part.

(2) Maintenance Costs. If data is publicly available to support estimating maintenance costs, weighted by New York State climate zones, this level of analysis will be performed.

(3) Loan Interest Rate. Loan interest rate will be determined based on the most recent commercial loan rates when the analysis is performed for New York State as applied in the *DOE Commercial Methodology*, as incorporated by reference in section 510.7 of this Part.

(4) Income Tax Rate. The income tax rate will be equal to the combined federal and New York State corporate income tax rates in effect for the reporting year in which the evaluation is performed.

(5) Aggregating Results. The results will be aggregated using average weighting factors based on the most recent as of the date the analysis is performed New York State-derived disaggregated construction volume data. For purposes of this section, data obtained from Dodge Data & Analytics Construction Projects Starts Database, or equivalent commercially available a source, shall be deemed sufficient.

(e) Life-cycle Costs of Energy Code Updates to Residential Buildings

(1) Mortgage interest rate. The mortgage interest rate will be based on the ten-year historical average of a conventional 30-year real estate loan in New York State.

(2) Loan Fees. Loan fee values will be based on most recent New York State data as of the date the analysis is performed from a credible source such as the Freddie Mac Weekly Primary Mortgage Market Survey.

(3) Aggregation across foundation types. The results will be aggregated across foundation types using average weighting factors based on the most recent New York State-derived data as of the date the analysis is performed.

(4) Aggregation across Heating Equipment Types. The results will be aggregated across heating equipment types using average weighting factors based on the most recent New York-State-derived data and statutory requirements as of the date the analysis is performed.

(5) Aggregation across Building Type. The results will be aggregated across building types using average weighting factors based on the most recent census data for New York State or the best available New York State market data as of the date the analysis is performed.

(f) Statewide Life-cycle Costs. The statewide life-cycle cost will be the weighted sum of both the residential and commercial life-cycle cost analyses performed in accordance with this section. Weighting will be based on the estimated proportion of new construction starts during the three-year period commencing on the estimated effective date of an Energy Code update.

Section 510.4 Societal Effects

(a) Societal Effects Defined. Societal effects will include the value of avoided GHG emissions resulting from changes in electricity and fuel consumption.

(b) Estimating the value of avoided GHG emissions. Avoided GHG emissions will be calculated by multiplying the incremental annual building electricity and fuel consumption determined in accordance with section 510.3(b) of this Part by the corresponding GHG emissions factors.

(1) Emissions Factors. Emissions factors from the following reports published by NYSERDA detailing emissions factors for grid electricity, *Projected Emission Factors for New York State Grid Electricity*, as incorporated by reference in section 510.7 of this Part, and *Fossil and Biogenic Fuel Greenhouse Gas Emission Factors*, as incorporated by reference in section 510.7 of this Part will be applied.

(2) Monetary Value. The monetary value associated with avoided GHG emissions will be calculated using central values at the 2% discount rate following the New York State Department of Environmental Conservation (DEC) published guidance, *Establishing a Value of Carbon, Guidelines for Use by State Agencies*, as incorporated by reference in section 510.7 of this Part. Central values are discounted to the emissions year. Discounting from the emissions year to present will use a 2% discount rate.

Section 510.5 Presentation of Cost Effectiveness Analysis

(a) The cost effectiveness analysis performed in accordance with this Part will include the content described herein.

(1) Presentation of Life-cycle Cost Results.

(i) Commercial Buildings. The results of the life-cycle cost analysis performed for commercial buildings in accordance with section 510.3 of this Part will be presented in statewide Net Present Value, in dollars, and per square foot of floor area.

(ii) Residential Buildings. The results of the life-cycle cost analysis performed for residential buildings in accordance with section 510.3 of this Part will be presented in statewide Net Present Value, in dollars, and per square foot of floor area or by dwelling unit.

(iii) Statewide Results. The life-cycle cost of both commercial and residential buildings calculated in accordance with section 510.3(f) of this Part, will be presented in statewide Net Present Value, in dollars.

(2) Presentation of Results for Societal effects.

(i) Avoided GHG emissions. The results of the value of avoided GHG emissions calculated in accordance with section 510.4(b) of this Part, presented in statewide Net Present Value, in dollars.

(3) Total Net Present Value of Savings. The sum of the life-cycle costs from section 510.3(f) of this Part will be added to the value of avoided GHG emissions from section 510.4 of this Part, which will be presented as the Total Net Present Value of Savings.

Section 510.6 Cost Effectiveness Presumption

(a) An Energy Code update shall be presumed to be cost effective if the Net Present Value of Life-cycle Cost Impacts as determined in section 510.3 of this Part plus the Net Present Value of Societal Effects as determined in section 510.4 of this Part is greater than or equal to zero.

(b) Existing buildings. A proposed Energy Code update will be presumed to be cost effective in existing buildings subject to the proposed Energy Code update if they are cost effective in new buildings as determined in subdivision (a) of this section.

Section 510.7 Reference Material

The following regulations or technical materials listed in Table RM are incorporated by reference. The documents are available from the addresses listed or, in the case of Federal publications, from the National Archives, 700 Pennsylvania Avenue, NW, Washington, DC 20408, and for inspection and copying at the offices

of the New York State Energy Research and Development Authority. For each reference, additional sources for hard copy materials and websites, where appropriate, are provided.

Table RM

| Item | Website | Date |
|---|---|-------------------|
| DOE Methodology for Evaluating Cost-effectiveness of Commercial Energy Code Changes prepared by Pacific Northwest National Laboratory * | https://www.energycodes.gov/sites/default/files/2021-07/commercial_methodology.pdf | August 2015 |
| DOE Methodology for Evaluating Cost-Effectiveness of Residential Energy Code Changes prepared by Pacific Northwest National Laboratory * | https://www.energycodes.gov/sites/default/files/2021-07/residential_methodology_2015.pdf | August 2015 |
| Appendix P of the New York Department of Public Service New York Standard Approach for Estimating Energy Savings from Energy Efficiency Programs – Residential, Multi-Family, and Commercial/Industrial** | https://www3.dps.ny.gov/W/PSCWeb.nsf/96f0fec0b45a3c6485257688006a701a/72c23decff52920a85257f1100671bdd/\$FILE/NYS%20TRM%20V10.pdf | December 30, 2022 |
| NYSERDA Projected Emission Factors for New York State Grid Electricity** | https://www.nyserda.ny.gov/-/media/Project/Nyserda/Files/Publications/Energy-Analysis/22-18-Projected- | August 2022 |

| | | |
|---|---|-------------|
| | Emission-Factors-for-New-York-Grid-Electricity.pdf | |
| NYSERDA Fossil and Biogenic Fuel Greenhouse Gas Emission Factors** | https://www.nyserra.ny.gov/-/media/Project/Nyserda/Files/Publications/Energy-Analysis/22-23-Fossil-and-Biogenic-Fuel-Greenhouse-Gas-Emission-Factors.pdf | May 2023 |
| New York State Department of Conservation Establishing a Value of Carbon, Guidelines for Use by State Agencies** | https://www.dec.ny.gov/regulations/56552.html | August 2023 |

* Hard copies available from US Government Publishing Office, 732 North Capitol Street, NW, Washington, DC 20401-0001.

** Hard copies are available at One Commerce Plaza, 99 Washington Ave, Albany, NY 12231.

Notice of Proposed Rule Making

Energy Research and Development Authority, New York State
(SUBMITTING AGENCY)

- Approval has been granted by Executive Chamber to propose this rule making.
- This rule making does not require Executive Chamber approval.

NOTE: Typing and submission instructions are at the end of this form. Please be sure to COMPLETE ALL ITEMS. Incomplete forms will be cause for rejection of this notice.

| 1. A. Proposed action: | | |
|------------------------|----------|-----------------------|
| Addition of | Part 510 | Title <u>21</u> NYCRR |
| _____ | _____ | Title _____ NYCRR |
| _____ | _____ | Title _____ NYCRR |
| _____ | _____ | Title _____ NYCRR |
| _____ | _____ | Title _____ NYCRR |
| _____ | _____ | Title _____ NYCRR |

- B. This is a consensus rule making. A statement is attached setting forth the agency’s determination that no person is likely to object to the rule as written [SAPA §202(1)(b)(i)].
- C. This rule was previously proposed as a consensus rule making under I.D. No [REDACTED]. Attached is a brief description of the objection that caused/is causing the prior notice to be withdrawn [SAPA §202(1)(e)].
- D. This rule is proposed pursuant to [SAPA §207(3)], 5-Year Review of Existing Rules (see also item 16).

2. Statutory authority under which the rule is proposed:
 Energy Law, section 11-103; Public Authorities Law, sections 1854 and 1855; and State Administrative Procedure Act, Section 102.

3. Subject of the rule:
 Cost-Effectiveness of Energy Code Updates

4. Purpose of the rule:
 Establish a life-cycle cost methodology and define societal effects for Energy Code updates.

5. Public hearings (check box and complete as applicable):
- A public hearing is not scheduled. (SKIP TO ITEM 8)
 - A public hearing is required by law and is scheduled below. (**Note:** first hearing date must be at least 60 days **after** publication of this notice unless a different time is specified in statute.)
 - A public hearing is not required by law, but is scheduled below.

| Time: | Date: | Location: |
|-------|-------|-----------|
| | | |
| | | |
| | | |
| | | |
| | | |

6. *Interpreter services* (check only if a public hearing is scheduled):

Interpreter services will be made available to hearing impaired persons, at no charge, upon written request to the agency contact designated in this notice.

7. *Accessibility* (check appropriate box only if a public hearing is scheduled):

All public hearings have been scheduled at places reasonably accessible to persons with a mobility impairment.

Attached is a list of public hearing locations that are **not** reasonably accessible to persons with a mobility impairment. An explanation is submitted regarding diligent efforts made to provide accessible hearing sites.

8. *Terms of rule* (SELECT ONE SECTION):

A. The full text of the rule is attached because it does not exceed 2,000 words.

B. A summary of the rule is attached because the full text of the rule exceeds 2,000 words.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

www.nyserda.ny.gov/All-Programs/Clean-Resilient-Building-Codes/Stakeholder-Feedback

C. Pursuant to SAPA §202(7)(b), the agency elects to print a description of the subject, purpose and substance of the rule as defined in SAPA §102(2)(a)(ii) [Rate Making]. Web posting of full text of such rule is not required [SAPA §202(1)(a)].

9. *The text of the rule and any required statements and analyses may be obtained from:*

Agency contact Chris Corcoran

Agency Name New York State Energy Research and Development Agency

Office address 17 Columbia Circle

Albany, NY 12203-6399

Telephone 518-862-1090 *E-mail:* appliancestandards@nyserda.ny.gov

10. *Submit data, views or arguments to* (complete only if different than previously named agency contact):

Agency contact _____

Agency name _____

Office address _____

Telephone _____ *E-mail:* _____

11. *Public comment will be received until:*

60 days after publication of this notice (MINIMUM public comment period).

5 days after the last scheduled public hearing required by statute (MINIMUM, with required hearing).

Other: (specify) _____.

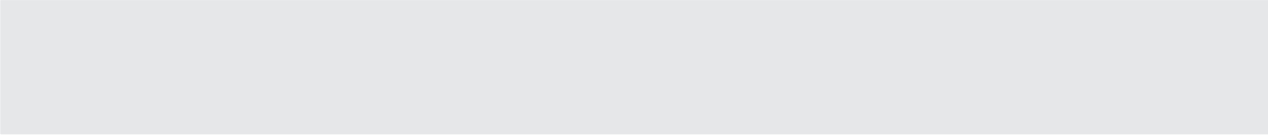
12. A prior emergency rule making for this action was previously published in the _____ issue of the *Register*, I.D. No. _____.

13. *Expiration date* (check only if applicable):

This proposal will not expire in 365 days because it is for a "rate making" as defined in SAPA §102(2)(a)(ii).

14. *Additional matter required by statute*:

Yes (include below material required by statute).



No additional material required by statute.

15. *Regulatory Agenda* (See SAPA §202-d[1]):

This rule was a Regulatory Agenda item for this agency in the following issue of the *State Register*: _____.

This rule was not under consideration at the time this agency submitted its Regulatory Agenda for publication in the *Register*.

Not applicable.

16. **Review of Existing Rules** (ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS)

This rule is proposed pursuant to SAPA §207 (item 1D applies) (check applicable boxes):

Attached is a statement setting forth a reasoned justification for modification of the rule. Where appropriate, include a discussion of the degree to which changes in technology, economic conditions or other factors in the area affected by the rule necessitate changes in the rule.

Attached is an assessment of public comments received by the agency in response to its publication of a list of rules to be reviewed.

An assessment of public comments is not attached because no comments were received.

Not applicable.

17. **Regulatory Impact Statement (RIS)**

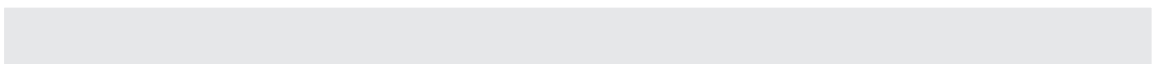
(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS, EXCLUDING SUMMARIES OF STUDIES, REPORTS OR ANALYSES [Needs and Benefits]):

A. The attached RIS contains:

The full text of the RIS.

A summary of the RIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:



A consolidated RIS, because this rule is one of a series of closely related and simultaneously proposed rules or is virtually identical to rules proposed during the same year.

B. A RIS is **not attached**, because this rule is:

subject to a consolidated RIS printed in the *Register* under I.D. No.: _____ - _____; issue date: _____.

exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

exempt, as defined in SAPA §102(11) [Consensus Rule Making].

C. A **statement is attached** claiming exemption pursuant to SAPA § 202-a (technical amendment).

18. Regulatory Flexibility Analysis (RFA) for small businesses and local governments

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RFA contains:

 The full text of the RFA. A summary of the RFA.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

 A consolidated RFA, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a RFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse economic impact or reporting, recordkeeping or other compliance requirements on small businesses or local governments and the reason(s) upon which the finding was made, including any measures used to determine that the rule will not impose such adverse economic impacts or compliance requirements.

C. A RFA is **not** attached, because this rule:

is subject to a consolidated RFA printed in the *Register* under I.D. No.: [REDACTED] - [REDACTED]; issue date: [REDACTED].

 is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. is exempt, as defined in SAPA §102(11) [Consensus Rule Making].**19. Rural Area Flexibility Analysis (RAFA)**

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached RAFA contains:

 The full text of the RAFA. A summary of the RAFA.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

 A consolidated RAFA, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a RAFA is not required. This statement is in scanner format and explains the agency's finding that the rule will not impose any adverse impact on rural areas or reporting, recordkeeping or other compliance requirements on public or private entities in rural areas and the reason(s) upon which the finding was made, including what measures were used to determine that the rule will not impose such adverse impact or compliance requirements.

C. A RAFA is **not attached**, because this rule:

is subject to a consolidated RAFA printed in the *Register* under I.D. No.: [REDACTED] - [REDACTED]; issue date: [REDACTED].

 is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making]. is exempt, as defined in SAPA §102(11) [Consensus Rule Making].

20. Job Impact Statement (JIS)

(SELECT AND COMPLETE ONE; ALL ATTACHMENTS MUST BE 2,000 WORDS OR LESS):

A. The attached JIS contains:

The full text of the JIS.

A summary of the JIS.

Full text is posted on the following State website. [Pursuant to SAPA §202(7)(d), provide sufficient information to enable the public to access the full text without extensive searching. For example, provide a URL or a title to either a webpage or a specific section of the website where the full text is posted]:

[Redacted text area]

A consolidated JIS, because this rule is one of a series of closely related rules.

B. A **statement is attached** explaining why a JIS is not required. This statement is in scanner format and explains the agency's finding that the rule will not have a substantial adverse impact on jobs and employment opportunities (as apparent from its nature and purpose) and explains the agency's finding that the rule will have a positive impact or no impact on jobs and employment opportunities; except when it is evident from the subject matter of the rule that it could only have a positive impact or no impact on jobs and employment opportunities, the statement shall include a summary of the information and methodology underlying that determination.

A JIS/Request for Assistance [SAPA §201-a(2)(c)] is attached.

C. A JIS is **not attached**, because this rule:

is subject to a consolidated JIS printed in the *Register* under I.D. No.: [Redacted] - [Redacted] issue date: [Redacted].

is exempt, as defined in SAPA §102(2)(a)(ii) [Rate Making].

is proposed by the State Comptroller or Attorney General.

AGENCY CERTIFICATION (To be completed by the person who PREPARED the notice.)

I have reviewed this form and the information submitted with it. The information contained in this notice is correct to the best of my knowledge.

I have reviewed Article 2 of SAPA and Parts 260 through 263 of 19 NYCRR, and I hereby certify that this notice complies with all applicable provisions.

Name _____ Signature _____

Address _____

Telephone _____ E-Mail _____

Date _____

Please read before submitting this notice:

1. Except for this form itself, all text must be typed in the prescribed format as described in the Department of State's Register procedures manual, *Rule Making in New York*.
2. Rule making notices, with any necessary attachments (in MS Word), should be e-filed via the Department of State website.

Summary of Proposed Rule

New Part 510 would establish evaluation criteria for determining the cost effectiveness of proposed changes to the State Energy Conservation Construction Code (Energy Code) and is summarized as follows:

Section 510.1 states the New York State Fire Prevention and Building Code Council (Code Council) is authorized to review and amend the Energy Code, or adopt a New Energy Code, through the promulgation of rules and regulations. To amend the Energy Code, the Code Council must determine that the Energy Code remains cost effective with respect to building construction in the State. The Code Council's cost-effective determination must include a life-cycle cost analysis and the value of societal effects, such as reductions in GHG emissions.

The purpose of this Part is to: (1) establish a methodology for determining whether the life-cycle costs for a building will be recovered through savings in energy costs over the design life of the building under a life-cycle cost analysis; (2) define secondary or societal effects to be considered in the cost effectiveness determination; and (3) provide a method for quantifying the societal effects so that they can be added to the life-cycle costs. This Part implements amendments to paragraph (a) of subdivision 2 of section 11-103 of the Energy Law, as enacted by the "Advanced Building Codes, Appliance and Equipment Efficiency Standards Act of 2022."

Section 510.2 sets forth definitions of terms used throughout this Part.

Section 510.3 establishes the methodology for performing a life-cycle cost analysis for Energy Code updates that will rely on the U.S. Department of Energy's Commercial and Residential Methodologies and specifically describes where the NYSERDA will deviate from those Methodologies.

Section 510.4 defines societal effects to include the value of avoided greenhouse gas (GHG) emissions resulting from changes in electricity and fuel consumption. This section also describes the process for estimating the value of the avoided GHG emissions.

Section 510.5 describes how information should be presented for the cost effectiveness analysis.

Section 510.6 establishes the cost effectiveness presumption.

Section 510.7 lists the regulation's referenced materials and where they may be obtained.

Regulatory Impact Statement

1. Statutory authority: The statutory authority to promulgate this rulemaking is derived from Energy Law Section 11-103. Section 11-103 vests the New York State Fire Prevention and Building Code Council (Code Council) with the statutory authority of reviewing and amending, or adopting anew, the State Energy Conservation Construction Code (ECCC), provided that the ECCC remains cost effective. The law states that “In determining whether the Energy Code remains cost effective, the Energy Law requires that the Code Council consider: 1) whether the life-cycle costs for a building will be recovered through savings in energy costs over the design life of the building under a life-cycle cost analysis performed under methodology as established by the New York State Energy Research and Development Authority (NYSERDA) in regulations that may be updated from time to time; and 2) secondary or societal effects, such as reductions in greenhouse gas emissions, as defined in regulations.” Public Authorities Law (PAL) Sections 1855 (4) (10), and (17) grants to NYSERDA the general power: to make rules and regulation for the fulfillment of its corporate purposes; execute all instruments for the fulfilment of its corporate purposes; and to do all things necessary or convenient to carry out its corporate purposes and exercise its powers.

2. Legislative objectives: This proposal is intended to advance the stated purpose of the Energy Law to promote the clean energy and climate agenda, specifically the New York State Climate Leadership and Community Protection Act (CLCPA), and advance public policy objectives by the legislature of ensuring that the ECCC remains cost effective in a manner that considers both direct life cycle costs of new ECCC requirements over the design life of the building and secondary or societal effects as defined in regulations.

3. Needs and benefits: This rule is intended to ensure that the ECCC of New York State minimizes any adverse cost impacts to New York State by evaluating both direct costs and benefits of new ECCC requirements

and secondary or societal effects of new ECCC requirements. The U.S. Department of Energy (DOE) estimates that the building sector accounts for approximately 32% of energy consumption and 21% of carbon dioxide emissions produced in the United States, making emissions reductions in this sector an essential component of New York's effort to achieve the significant decarbonization targets established by the CLCPA. The rule considers a 30-year useful life of a building and includes broader societal effects of energy use in a comprehensive view of costs, benefits, and impacts across New York State. This is an increase from the previous simplified 10-year payback scenario and is intended to account for a variety of factors not previously considered, including interest rates and the true full useful life of an investment.

4. Costs: No direct costs to the State, agency, or local governments are expected to result from adoption of this proposal. The proposed regulation places no mandates directly on local governments and, therefore, no additional costs to local government are expected. The proposed rule places no mandates on regulated persons or entities and, therefore, no additional costs on these parties are expected.

5. Local government mandates: Adoption of the proposed rule would not impose any mandates on local governments directly.

6. Paperwork: Adoption of the proposed rule will impose additional paperwork on the Code Council. Under the proposed rule, the cost effectiveness analysis of future proposed changes to the ECCC will need to be presented in a manner consistent with section 510.5 of this rule.

7. Duplication: The proposal does not duplicate, nor is it inconsistent with any other existing Federal or State regulations or statutes.

8. Alternatives: NYSERDA was instructed to create and promulgate a life-cycle cost analysis and therefore did not consider the do-nothing alternative. In establishing this life-cycle cost analysis, NYSERDA considered previous methodologies. NYSERDA considered but decided not to utilize the former 10-year life cycle cost methodology when considering new code change proposals to the ECCC, because the former rule was not compliant with Energy Law 11-103. The former rule did not adequately evaluate whether the life-cycle costs for a building will be recovered through savings in energy costs over the design life of the building nor did the relevant methodology adequately account for secondary or societal effects as required by statute.

9. Federal standards: There are no existing minimum standards of the Federal government for the evaluation of the cost effectiveness of ECCC requirements.

10. Compliance schedule: The regulation will be effective the same date as the publication of the Notice of Adoption. The Code Council will be required to follow the rule as of that date.

Regulatory Flexibility Analysis for Small Businesses and Local Governments

The proposed rule is not expected to have an effect on small businesses or local governments. It impacts solely the New York State Fire Prevention and Building Code Council (the “Code Council”) and has no direct impact on small businesses or local governments. The proposed rule provides specific guidance on how the cost effectiveness can be determined regarding any changes made by the Code Council to the State Energy Conservation Construction Code (the “ECCC”). NYSERDA was tasked with creating the proposed rule by the New York legislature.

Under Energy Law § 11-103(2)(a), the Code Council is to determine whether the code remains cost-effective after amendments. To make such determination, §11-103(2)(a) requires the Code Council to consider:

- (i) whether the life-cycle costs for a building will be recovered through savings in energy costs over the design life of the building under a life-cycle cost analysis performed under methodology as established by [NYSERDA] in regulations which may be updated from time to time, and (ii) secondary or societal effects, such as reductions in greenhouse gas emissions, as defined in regulations.”

Accordingly, §11-102(2)(a), which has been passed into law by the New York State legislature, has already set out the steps to determine cost-effectiveness. The purpose of the proposed rule is to minimize the economic and financial impact of such changes made by the Code Council.

Therefore, the proposed rule, by itself, will not have direct impacts on small businesses or local governments. It will not have any direct impact the cost of construction, as it does not set any requirements for new or existing buildings. Any indirect impacts caused by decisions by the Code Council are speculative and hypothetical, and, further, are unrelated to the language of the proposed rule, itself. For these reasons, a Regulatory Flexibility Analysis is not being submitted with this rule.

Rural Area Flexibility Analysis

The proposed rule does not disadvantage rural areas. It impacts solely the New York State Fire Prevention and Building Code Council (the “Code Council”) and has no direct impact on the citizens or businesses of New York. The proposed rule provides specific guidance on how the cost effectiveness can be determined regarding any changes made by the Code Council to the State Energy Conservation Construction Code (the “ECCC”). NYSERDA was tasked with creating the proposed rule by the New York legislature.

Under Energy Law § 11-103(2)(a), the Code Council is to determine whether the code remains cost-effective after amendments. To make such determination, §11-103(2)(a) requires the Code Council to consider:

- (i) whether the life-cycle costs for a building will be recovered through savings in energy costs over the design life of the building under a life-cycle cost analysis performed under methodology as established by [NYSERDA] in regulations which may be updated from time to time, and (ii) secondary or societal effects, such as reductions in greenhouse gas emissions, as defined in regulations.

Accordingly, §11-102(2)(a), which has been passed into law by the New York State legislature, has already set out the steps to determine cost-effectiveness. The purpose of the proposed rule is to minimize the economic and financial impact of such changes made by the Code Council.

The proposed rule does not burden state municipalities with reporting, recording, or compliance requirements, and does not require any professional services. There are no added responsibilities or costs stemming from the proposed rule to any area of the state, rural or urban, and, as such, a Rural Area Flexibility Analysis is not being submitted with this rule.

Job Impact Statement

The proposed rule is not expected to have a substantial negative impact on jobs. It impacts solely the New York State Fire Prevention and Building Code Council (the “Code Council”) and has no direct impact on the citizens or businesses of New York. The proposed rule provides specific guidance on how the cost effectiveness can be determined regarding any changes made by the Code Council to the State Energy Conservation Construction Code (the “ECCC”). NYSERDA was tasked with creating the proposed rule by the New York legislature.

Under Energy Law § 11-103(2)(a), the Code Council is to determine whether the code remains cost-effective after amendments. To make such determination, §11-103(2)(a) requires the Code Council to consider:

- (i) whether the life-cycle costs for a building will be recovered through savings in energy costs over the design life of the building under a life-cycle cost analysis performed under methodology as established by [NYSERDA] in regulations which may be updated from time to time, and (ii) secondary or societal effects, such as reductions in greenhouse gas emissions, as defined in regulations.

Accordingly, §11-102(2)(a), which has been passed into law by the New York State legislature, has already set out the steps to determine cost-effectiveness. The purpose of the proposed rule is to minimize the economic and financial impact of such changes made by the Code Council.

Therefore, the proposed rule, by itself, will not have direct impacts on employment. It will not have any direct impact the cost of construction, as it does not set any requirements for new or existing buildings. Any indirect impacts caused by decisions by the Code Council are speculative and hypothetical, and, further, are unrelated to

the language of the proposed rule, itself. For these reasons, a Job Impact Statement is not being submitted with this rule.

Short Environmental Assessment Form

Part 1 - Project Information

Instructions for Completing

Part 1 – Project Information. The applicant or project sponsor is responsible for the completion of Part 1. Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

| Part 1 – Project and Sponsor Information | | | |
|--|--|------------|---------------------------------|
| Name of Action or Project: | | | |
| Project Location (describe, and attach a location map): | | | |
| Brief Description of Proposed Action: | | | |
| Name of Applicant or Sponsor: | | Telephone: | |
| | | E-Mail: | |
| Address: | | | |
| City/PO: | | State: | Zip Code: |
| 1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2. | | | NO <input type="checkbox"/> |
| | | | YES <input type="checkbox"/> |
| 2. Does the proposed action require a permit, approval or funding from any other government Agency? If Yes, list agency(s) name and permit or approval: | | | NO <input type="checkbox"/> |
| | | | YES <input type="checkbox"/> |
| 3. a. Total acreage of the site of the proposed action? _____ acres | | | |
| b. Total acreage to be physically disturbed? _____ acres | | | |
| c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres | | | |
| 4. Check all land uses that occur on, are adjoining or near the proposed action: | | | |
| <input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban) | | | |
| <input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other(Specify): | | | |
| <input type="checkbox"/> Parkland | | | |

| | | | |
|---|--------------------------|--------------------------|--------------------------|
| 5. Is the proposed action, a. A permitted use under the zoning regulations? b. Consistent with the adopted comprehensive plan? | NO | YES | N/A |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| 6. Is the proposed action consistent with the predominant character of the existing built or natural landscape? | NO | YES | |
| | <input type="checkbox"/> | <input type="checkbox"/> | |
| 7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____ | NO | YES | |
| | <input type="checkbox"/> | <input type="checkbox"/> | |
| 8. a. Will the proposed action result in a substantial increase in traffic above present levels? b. Are public transportation services available at or near the site of the proposed action? c. Are any pedestrian accommodations or bicycle routes available on or near the site of the proposed action? | NO | YES | |
| | <input type="checkbox"/> | <input type="checkbox"/> | |
| | <input type="checkbox"/> | <input type="checkbox"/> | |
| 9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____ | NO | YES | |
| | <input type="checkbox"/> | <input type="checkbox"/> | |
| | <input type="checkbox"/> | <input type="checkbox"/> | |
| 10. Will the proposed action connect to an existing public/private water supply? If No, describe method for providing potable water: _____ _____ | NO | YES | |
| | <input type="checkbox"/> | <input type="checkbox"/> | |
| 11. Will the proposed action connect to existing wastewater utilities? If No, describe method for providing wastewater treatment: _____ _____ | NO | YES | |
| | <input type="checkbox"/> | <input type="checkbox"/> | |
| 12. a. Does the project site contain, or is it substantially contiguous to, a building, archaeological site, or district which is listed on the National or State Register of Historic Places, or that has been determined by the Commissioner of the NYS Office of Parks, Recreation and Historic Preservation to be eligible for listing on the State Register of Historic Places? b. Is the project site, or any portion of it, located in or adjacent to an area designated as sensitive for archaeological sites on the NY State Historic Preservation Office (SHPO) archaeological site inventory? | NO | YES | |
| | <input type="checkbox"/> | <input type="checkbox"/> | |
| | <input type="checkbox"/> | <input type="checkbox"/> | |
| 13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency? b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____ _____ | NO | YES | |
| | <input type="checkbox"/> | <input type="checkbox"/> | |
| | <input type="checkbox"/> | <input type="checkbox"/> | |

| | | |
|--|--------------------------|--------------------------|
| 14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest Agricultural/grasslands Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban Suburban | | |
| 15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered? | NO | YES |
| | <input type="checkbox"/> | <input type="checkbox"/> |
| 16. Is the project site located in the 100-year flood plan? | NO | YES |
| | <input type="checkbox"/> | <input type="checkbox"/> |
| 17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: _____ _____ | NO | YES |
| | <input type="checkbox"/> | <input type="checkbox"/> |
| | <input type="checkbox"/> | <input type="checkbox"/> |
| | <input type="checkbox"/> | <input type="checkbox"/> |
| | | |
| 18. Does the proposed action include construction or other activities that would result in the impoundment of water or other liquids (e.g., retention pond, waste lagoon, dam)? If Yes, explain the purpose and size of the impoundment: _____ _____ | NO | YES |
| | <input type="checkbox"/> | <input type="checkbox"/> |
| 19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ | NO | YES |
| | <input type="checkbox"/> | <input type="checkbox"/> |
| 20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ | NO | YES |
| | <input type="checkbox"/> | <input type="checkbox"/> |
| I CERTIFY THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE Applicant/sponsor/name: _____ Date: _____ Signature: _____ Title: _____ | | |

Attachment 1
Short Form Environmental Assessment Form Question 1
Narrative Description of the Proposed Action

Energy Law section 11-103 vests the New York State Fire Prevention and Building Code Council (the “Code Council”) with the statutory authority of reviewing and amending, or adopting anew, the State Energy Conservation Construction Code (the “Energy Code”). Pursuant to the Energy Law section 11-103, as adopted by the “Advanced Building Codes, Appliance and Equipment Efficiency Standards Act of 2022” (“2022 Efficiency Standards Act”), the New York State Energy Research and Development Authority (the “NYSERDA”) is directed to establish in regulation a methodology for use by the Code Council to evaluate whether an update to the Energy Code will be cost effective. The criteria for determining whether such Energy Code update is cost effective shall be based upon consideration of: (i) whether the life-cycle costs for a building will be recovered through savings in energy costs over the design life of the building, and (ii) secondary or societal effects, such as reductions in greenhouse gas (GHG) emissions. By proposing this regulation, NYSERDA intends to fulfill its obligation to provide the Code Council with such criteria and associated methodology.

The proposed rule is intended to provide information to the Code Council, as directed by the Legislature, in order that the Code Council may consider the cost effectiveness of a proposed amendment to, or newly promulgated, the Energy Code. No provision of the proposed Action is intended to encroach upon the authority of Code Council to act, in its own discretion, or otherwise impose an obligation upon Code Council to adopt or reject any such amendment or provision. Therefore, the secondary or indirect impacts of the proposed Action are speculative. Accordingly, the proposed Action will not directly impact any environmental resources, or result in secondary or indirect environmental impacts without further action, of which the setting, probability of occurring, duration, irreversibility, geographic scope and magnitude cannot be known or anticipated at this time.

Project:

Date:

***Short Environmental Assessment Form
Part 2 - Impact Assessment***

Part 2 is to be completed by the Lead Agency.

Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept “Have my responses been reasonable considering the scale and context of the proposed action?”

| | No, or small impact may occur | Moderate to large impact may occur |
|--|--|---|
| 1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations? | | |
| 2. Will the proposed action result in a change in the use or intensity of use of land? | | |
| 3. Will the proposed action impair the character or quality of the existing community? | | |
| 4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)? | | |
| 5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway? | | |
| 6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities? | | |
| 7. Will the proposed action impact existing: | | |
| a. public / private water supplies? | | |
| b. public / private wastewater treatment utilities? | | |
| 8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources? | | |
| 9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)? | | |
| 10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems? | | |
| 11. Will the proposed action create a hazard to environmental resources or human health? | | |

Project:

Date:

Short Environmental Assessment Form Part 3 Determination of Significance

For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.

Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.

Name of Lead Agency

Date

Print or Type Name of Responsible Officer in Lead Agency

Title of Responsible Officer

Signature of Responsible Officer in Lead Agency

Signature of Preparer (if different from Responsible Officer)

NEGATIVE DECLARATION
Determination of Non-Significance

Lead Agency: New York State Energy Research & Development Authority

Date: November 13, 2023

This notice is issued pursuant to Part 617 of the implementing regulations pertaining to Article 8 (State Environmental Quality Review Act) of the Environmental Conservation Law.

The New York State Energy Research & Development Authority (“NYSERDA”), as lead agency, has reviewed the proposed action and determined that it will not have a significant adverse environmental impact and that a Draft Environmental Impact Statement will not be prepared.

Name of Action: Proposed Rulemaking to promulgate Part 510 of Title 21 of the New York Codes, Rules, and Regulations (NYCRR) titled Evaluation Criteria for Determining the Cost Effectiveness of Updates to the Energy Conservation Construction Code of New York (the “Action”).

Location of Project Site: The Action proposes to establish criteria for performing a life-cycle cost analysis, defined secondary and provide a framework for quantifying the costs thereof. The proposed rule shall be used by the New York State Fire Prevention and Building Code Council (the “Code Council”) in evaluating the cost-effectiveness of proposed changes in Energy Conservation Construction Code of New York (the “Energy Code”).

SEQR Status: Unlisted action.

Description of Action: The Action will add new regulatory provisions at 21 NYCRR Part 510. et. seq. titled *Evaluation Criteria for Determining the Cost Effectiveness of Updates to the Energy Conservation Construction Code of New York*. This Part 510 implements amendments to paragraph (a) of subdivision 2 of section 11-103 of the Energy Law, as enacted by the “Advanced Building Codes, Appliance and Equipment Efficiency Standards Act of 2022.”(the “2022 Efficiency Standards Act”) The purpose of Part 510 is to: (1) establish a methodology for determining whether the life-cycle costs for a building will be recovered through savings in energy costs over the design life of the building under a life-cycle cost analysis; (2) define secondary or societal effects to be considered in the cost effectiveness determination; and (3) provide a method for quantifying the societal effects so that they can be added to the life-cycle costs.

Reasons Supporting this Determination:

NYSERDA has identified the relevant areas of environmental concern and has taken a hard look at each of these areas as required by the State Environmental Quality Review Act (“SEQRA”).

NYSERDA compared the Action with the criteria for determining significance identified in 6 NYCRR § 617.7(c)(1) and in accordance with 6 NYCRR § 617.7(c)(2) and (3). As indicated below in the discussion of each criterion specified in 6 NYCRR § 617.7(c)(1), the Action will not have a significant adverse impact on the environment.

The proposed rule will establish criteria for use by the Code Council to evaluate the cost effectiveness of proposed updates to the Energy Code. The Action is intended to provide relevant information to the Code Council, as directed by the Legislature, in order that a life cycle cost analysis may be conducted for updates to the Energy Code using a standardized metric, and consistent methodologies, and procedures. By establishing objective criteria to evaluate such proposed changes, and including the secondary and societal effects, the proposed Action will enhance the ability of the Code Council to evaluate a proposed update and determine whether it will result in more efficient building construction that will reduce energy consumption, reduce water consumption, and reduce greenhouse gas (GHG) emissions associated with energy consumption without imposing undue economic burden on building owners, residents, or developers. Because the proposed Action imposes no obligation upon the Code Council to adopt changes to the Energy Code, it can have no direct environmental impacts.

(i) a substantial adverse change in existing air quality, ground or surface water quality or quantity, traffic or noise levels; a substantial increase in solid waste production; a substantial increase in potential for erosion, flooding, leaching or drainage problems;

a. Traffic Impacts

The Action does not involve construction or development. The Action is to establish criteria for use in subsequent evaluations of proposed changes to the Energy Code performed by the Code Council. Therefore, the Action will not have a significant adverse impact upon traffic or transportation.

b. Noise Impacts

The Action does not involve construction or development. The Action is to establish criteria for use in subsequent evaluations of proposed changes to the Energy Code performed by the Code Council. Therefore, the Action will not create a significant adverse noise impact.

b. Air Quality Impacts

The Action does not involve construction or development. The Action is to establish criteria for use in subsequent evaluations performed by the Code Council. The Action is expected to contribute to efforts by the Code Council to improve air quality because it will provide an opportunity to consider secondary or societal effects when evaluating the cost effectiveness of proposed updates to the Energy Code. Because the criteria may capture additional benefits of proposed updates to the Energy Code, it may result in a determination by the Code Council that measures included in the Energy Code are beneficial in reducing energy consumption, water consumption, and reducing greenhouse gas (GHG) emissions associated with energy consumption.

compared to existing provisions of the Energy Code, while also preventing adoptions of measures which would impose undue cost burdens on building owners, residents, or developers.

c. Wetland Impacts

The Action does not involve construction or development. Therefore, it will result in no impact to wetlands.

d. Erosion, Flooding and Drainage Impacts

The Action does not involve construction or development. Therefore, it will result in no impacts from erosion, flooding, or drainage.

e. Solid Waste Production

The Action is a proposed rulemaking and does not involve construction or development activities, or any other acts that would result in the production of solid waste. Therefore, it will result in no adverse impacts related to solid waste production.

(ii) the removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources;

The Action will apply to future actions taken by agencies engaged in separate rule-making activities. The proposed rule does not involve construction or development activities. Therefore, it will not result in removal or destruction of vegetation or fauna. Nor will the Action result in interference with the movement of any resident or migratory fish or wildlife species. There will not be any impacts on a significant habitat area or any impacts on wildlife either nor will there be any impacts on natural resources.

(iii) the impairment of the environmental characteristics of a Critical Environmental Area as designated pursuant to subdivision 617.14(g) of this Part;

There will be no such impacts.

(iv) the creation of a material conflict with a community's current plans or goals as officially approved or adopted;

The Action is consistent with NYSERDA's authority delegated by the legislature through The Advanced Building Codes, Appliances and Equipment Efficiency Standards Act of 2022 to methodology for performing a life-cycle cost analysis, and identify secondary or societal effects.

NYSERDA is also authorized under Public Authorities Law, Section 1854 and 1855, to advise the Legislature on implementing new energy technologies and energy conservation measures, and generally, to promulgate rules that further their legislative purpose.

The Climate Leadership and Community Protection Act of 2019 mandates the State achieve 100% zero-emission electricity by 2040, and a reduction of Greenhouse Gas Emissions (GHG) of at least 85% below 1990-level GHG emissions by 2050. In particular, the CLCPA establishes a goal of reducing 22 million tons of carbon through energy efficiency and electrification improvements. The Code Council is authorized, from time to time, to amend the Energy Code. Establishing objective criteria for performing a life-cycle cost analysis, while also taking into account societal or secondary benefits will further the State's goal of achieving carbon reduction through energy and natural resource conservation. Accordingly, the goals of the proposed Action are in line with NYSERDA's purpose and the State's plans and goals.

(v) the impairment of the character or quality of important historical, archeological, architectural, or aesthetic resources or of existing community or neighborhood character;

The Action is a proposed rulemaking and does not involve construction or development activities. Therefore, no significant adverse impacts related to important historical, archaeological, architectural, or aesthetic resources or of existing community or neighborhood character will occur as a result of the proposed Action.

(vi) a major change in the use of either the quantity or type of energy;

The Action will not, by itself result in a change in energy usage or type of energy used because the proposed Action is intended to provide information and analysis, but otherwise does not impose any obligation upon the Code Council, or other entities. The proposed Action requires only that the results of the cost effectiveness analysis are considered by the Code Council when it evaluates future proposed updates to the Energy Code. Indirectly, the criteria established by the Action is intended to encourage the conservation of energy by enabling the consideration of both life-cycle costs and societal or secondary effects related to proposed updates in the Energy Code. By creating a means for the Code Council to include the value of secondary or societal benefits, however, the proposed Action may ultimately result in significant benefits for the environment and the State resulting from updates to the Energy Code. Such Energy Code updates may have some economic impact upon construction, but when accounting for the significant secondary or societal effects, may be deemed prudent. According, environmental benefits may be realized in circumstances where such benefits previously would not have been realized.

(vii) the creation of a hazard to human health;

There will be no such impacts.

(viii) a substantial change in the use, or intensity of use, of land including agricultural, open space or recreational resources, or in its capacity to support existing uses;

There will be no such impacts. No construction or development activities are contemplated, thus there will be no effect on existing agricultural land, open space, or recreational resources.

(ix) the encouraging or attracting of a large number of people to a place or places for more than a few days, compared to the number of people who would come to such place absent the action;

There will be no such impacts.

(x) the creation of a material demand for other actions that would result in one of the above consequences;

There will be no such impacts.

(xi) changes in two or more elements of the environment, no one of which has a significant impact on the environment, but when considered together result in a substantial adverse impact on the environment; or

There will be no such impacts.

(xii) two or more related actions undertaken, funded or approved by an agency, none of which has or would have a significant impact on the environment, but when considered cumulatively would meet one or more of the criteria in this subdivision.

There will be no such impacts.

For Further Information:

Contact Person: Chris Corcoran, (518) 862-1090 ext. 3007

Address: New York State Energy Research and Development Authority
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Signed:

Doreen M. Harris
President and CEO

Executive Order No. 17 Local Government Mandate Evaluation Impact on Local Government and Property Taxpayers

Submitting Agency: New York State Energy Research and Development Authority

NYCRR Citation: 21 NYCRR Part 510

Description of the Regulation: Cost-Effectiveness of Energy Code Updates

Statutory Authority for the Regulation: Energy Law, section 11-103; Public Authorities Law, sections 1854 and 1855; and State Administrative Procedure Act, Section 102.

Agency Contact:

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1. Does the regulation impose a mandate on a county, city, town, village, school district or special district that requires such entity to:

a. Provide or undertake any program, project or activity;

Yes

No

b. Increase spending for an existing program, project or activity (even if such program, project or activity is voluntarily undertaken by a local government unit);

Yes

No

c. Grant any new property tax exemption, or broaden the eligibility or increase the value of any existing property tax exemption; or

Yes

No

d. Carry out a legal requirement that would likely have the effect of raising property taxes.

Yes

No

If the answers to all questions above are “no,” ensuring the regulation will not result in a mandate on local governments and property taxpayers, no further information is required. If the answer to any question above is “yes,” and the regulation may have a fiscal impact on local governments and property taxpayers, please proceed to items 2 – 3.

2. Is the mandate required by federal law or regulation or state law?

Yes

No

- a. If yes, please cite the specific provision in the statute or federal regulation.
- b. If yes, please describe any elements of the regulation not specifically mandated by the statute or regulation.

3. If any portion of the mandate is not required by federal or state law, please attach to this Checklist an Accounting for such portion containing:*

- a. A description of the mandate in the regulation;
- b. An accounting of the impacts of such mandate that includes:
 - (i) A fiscal impact statement;
 - (ii) A cost-benefit analysis, which includes:
 - (x) a specific delineation of the costs and benefits to local governments and property taxpayers; and
 - (y) a quantification of the impact on local government revenue and expenditures, where such impact is quantifiable based on available information (please consult with the Regulatory Review Unit if further guidance is needed);
- c. A description of input sought and received from affected local governments;
- d. A description of the proposed revenue sources to fund such mandate; and
- e. An explanation as to why this regulation should be advanced with a mandate.

*Note: The “Regulatory and Flexibility Analysis for Small Businesses and Local Governments” may be attached so long as the items set forth in 3 above are fully accounted for in the Analysis.

Resolution No. _____

WHEREAS, Energy Law section 11-103 vests the New York State Fire Prevention and Building Code Council (the “Code Council”) with the statutory authority of reviewing and amending, or adopting anew, the State Energy Conservation Construction Code (the “Energy Code”);

WHEREAS, the Advanced Building Codes, Appliances and Equipment Efficiency Standards Act of 2022 (the “2022 Efficiency Standards Act”), gives authority to the New York State Energy Research and Development Authority (“NYSERDA”) to promulgate certain criteria for conducting a life-cycle cost analysis;

WHEREAS, pursuant to the 2022 Efficiency Standards Act, NYSERDA proposes to adopt Part 510 of Title 21 of the New York Codes, Rules, and Regulations (NYCRR) for the purpose of enacting regulations to: (1) establish a methodology for determining whether the life-cycle costs for a building will be recovered through savings in energy costs over the design life of the building under a life-cycle cost analysis; (2) define secondary or societal effects to be considered in the cost effectiveness determination; and (3) provide a method for quantifying the societal effects so that they can be added to the life-cycle costs (“Action”);

WHEREAS, the rule making process for NYSERDA is governed by the State Administrative Procedure Act (“SAPA”);

WHEREAS, NYSERDA is the Lead Agency pursuant to SEQRA, as it is the only agency that has discretionary approval authority over the Action;

WHEREAS, NYSERDA has determined the Action is an unlisted action as defined under the New York State Environmental Quality Review regulations (“SEQR”);

WHEREAS, NYSERDA, in its capacity as Lead Agency, has completed Parts 1, 2, and 3 of the Environmental Assessment Form, and conducted an evaluation of the potential environmental impacts of the Action; and

WHEREAS, NYSERDA has determined that the Action will not result in any significant adverse environmental impacts.

NOW THEREFORE, BE IT RESOLVED, that NYSERDA, in its capacity as Lead Agency, does hereby issue and adopt the attached **Negative Declaration and Determination of Non-Significance** for the Action;

BE IT FURTHER RESOLVED that NYSERDA adopts the text of the Proposed Rule, substantially in the form attached hereto; and

BE IT FURTHER RESOLVED, that NYSERDA, authorizes, approves, and directs the publication of Notice of Proposed Rulemaking to establish a new Part 510 of Title 21 of the Official Compilation of Codes, Rules and Regulations of the State of New York, titled **Evaluation Criteria for Determining the Cost Effectiveness of Proposed Updates to the Energy Conservation Construction Code of New York**, in substantially in the form attached hereto, including the (1) Summary of the Proposed Rule; (2) the Regulatory Impact Statement (RIS); (3) the Regulatory Flexibility Analysis for Small Businesses and Local Governments (RFA); (4) Rural Area Flexibility Analysis (RAFA); and (5) Jobs Impact Statement (JIS).