

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:

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Signed:

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