

Regulatory Impact Statement

1. Statutory authority: The statutory authority to promulgate this rulemaking is derived from Energy Law Section 11-103, as amended by the Advanced Building Codes, Appliance and Equipment Efficiency Standards Act of 2022. 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. Buildings are the single largest user of energy in the State of New York. Building energy codes govern new buildings and modifications to existing buildings, directly impacting a building's energy load and

carbon footprint. Increasing the efficiency of buildings will have a significant impact on New York's energy use and have a major impact in achieving the State's energy and climate goals.

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: Energy Law 11-103 requires NYSERDA to create and promulgate a life-cycle cost analysis and therefore NYSERDA 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.