

reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-M-0476SP32)

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Waiver of the Prohibition on Service to Low-Income Customers by ESCOs

I.D. No. PSC-42-19-00007-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: The Commission is considering a petition filed on September 25, 2019 by Zone One Energy, LLC seeking an extension of the previously granted waiver of the prohibition on service to low-income customers by energy service companies.

Statutory authority: Public Service Law, sections 5(1)(b), 65(1), (2), (3), 66(1), (2), (3), (5) and (8)

Subject: Waiver of the prohibition on service to low-income customers by ESCOs.

Purpose: To consider the petition for an extension of the waiver of the prohibition on service to low-income customers by ESCOs.

Substance of proposed rule: The Public Service Commission (Commission) is considering a petition filed on September 25, 2019 by Zone One Energy LLC (Zone One) seeking an extension of its waiver of the prohibition on service by energy service companies (ESCOs) to low-income customers (Petition).

On December 16, 2016, the Commission directed a prohibition on ESCO service to low-income customers (Prohibition Order). The Prohibition Order provided that, if an ESCO can demonstrate that it is capable of providing a product to low-income customers that guarantees savings compared to what the customer would have otherwise paid as a full-service utility customer, it may seek a waiver of the Prohibition Order from the Commission.

On October 19, 2017, the Commission granted Zone One a waiver of the Prohibition Order, but stated that the waiver would only last for 24 months and that Zone One would need to petition for an extension. In the petition, Zone One asserts that it continues to provide a guaranteed savings product to all its low-income customers, and thus it continues to satisfy the requirements outlined in the Prohibition Order for the granting of a waiver.

The full text of the petition and the full record of the proceeding may be reviewed online at the Department of Public Service web page: www.dps.ny.gov. The Commission may adopt, reject or modify, in whole or in part, the action proposed and may resolve related matters.

Text of proposed rule and any required statements and analyses may be obtained by filing a Document Request Form (F-96) located on our website <http://www.dps.ny.gov/f96dir.htm>. For questions, contact: John Pitucci, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 486-2655, email: john.pitucci@dps.ny.gov

Data, views or arguments may be submitted to: Kathleen H. Burgess, Secretary, Public Service Commission, 3 Empire State Plaza, Albany, New York 12223-1350, (518) 474-6530, email: secretary@dps.ny.gov

Public comment will be received until: 60 days after publication of this notice.

Regulatory Impact Statement, Regulatory Flexibility Analysis, Rural Area Flexibility Analysis and Job Impact Statement

Statements and analyses are not submitted with this notice because the proposed rule is within the definition contained in section 102(2)(a)(ii) of the State Administrative Procedure Act.

(12-M-0476SP33)

Department of State

**EMERGENCY
RULE MAKING**

New York State Uniform Fire Prevention and Building Code (the Uniform Code)

I.D. No. DOS-42-19-00005-E

Filing No. 853

Filing Date: 2019-09-30

Effective Date: 2019-09-30

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 1220.1(b), 1221.1(b), 1225.1(b) and 1227.1(b) of Title 19 NYCRR.

Statutory authority: Executive Law, section 377

Finding of necessity for emergency rule: Preservation of public safety and general welfare.

Specific reasons underlying the finding of necessity: The State Fire Prevention and Building Code Council ("Code Council") and the Department of State have determined that immediate adoption of this rule on an emergency basis, as authorized by Section 202 (6) of the State Administrative Procedure Act, is necessary to protect public safety and general welfare, and that compliance with the requirements of subdivision one of section 202 of the State Administrative Procedure Act prior to the adoption of this rule would be contrary to the public interest, for the following reasons:

(1) Upon expiration of the prior, substantially similar version of this rule that was adopted as an emergency rule on July 1, 2019, the New York State Uniform Fire Prevention and Building Code ("Uniform Code"), which is adopted pursuant to Article 18 of the Executive Law and which is applicable in all parts of the State (except New York City, which has its own building code), will no longer have provisions that provide an adequate level of protection from the hazards of fire that could be caused by the installation and use of Energy Storage Systems (ESS).

(2) Regulated parties are expressing immediate and increasing interest in installing ESS as a means of storing electrical energy for use when and where it is most needed.

(3) A rule amending the Uniform Code to add provisions establishing requirements for safe installation and use of ESS is necessary.

(4) Developing, proposing, adopting, and implementing such a rule in compliance with the requirements of State Administrative Procedure Act section 202 (1) would delay the effective date of the rule, and may result in unsafe installations in the meantime.

(5) Adopting such a rule as an emergency rule, to be effective immediately upon the filing of the Notice of Emergency Adoption is necessary to protect public safety and general welfare.

Subject: New York State Uniform Fire Prevention and Building Code (the Uniform Code).

Purpose: The purpose of this rule is to amend 19 NYCRR Parts 1220, 1221, 1225, and 1227, by incorporating by reference a publication entitled the "2019 Energy Storage System Supplement (Revised September 2019)" (publication date September 2019) which adds provision to the New York State Uniform Fire Prevention and Building Code relating to the installation, use, and maintenance of Energy Storage Systems. Ensuring a minimum level of safety of such systems in buildings is a critical part of protecting the public, building occupants, and emergency responders.

Text of emergency rule: 1. Subdivision (b) of section 1220.1 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(b) For the purposes of applying the 2015 IRC in New York State, the 2015 IRC shall be deemed amended in the manner specified in (1) the publication entitled 2017 Uniform Code Supplement, publication date July, 2017, published by New York State Department of State and (2) the publication entitled 2019 Energy Storage System Supplement (Revised September 2019), publication date September, 2019, published by New York State Department of State. Said [publication] publications (hereinafter referred to as the "2017 supplement" and the "2019 ESS supplement," respectively) [is] are incorporated herein by reference. Copies of the 2017

supplement and the 2019 ESS supplement may be obtained and are available for inspection and copying at:

New York State Department of State of New York
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

2. Subdivision (b) of section 1221.1 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(b) For the purposes of applying the 2015 IBC in New York State, the 2015 IBC shall be deemed amended in the manner specified in (1) the publication entitled 2017 Uniform Code Supplement, publication date July, 2017, published by the New York State Department of State and (2) the publication entitled 2019 Energy Storage System Supplement (Revised September 2019), publication date September, 2019, published by New York State Department of State. Said [publication] publications (hereinafter referred to as the “2017 supplement” and the “2019 ESS supplement,” respectively) [is] are incorporated herein by reference. Copies of the 2017 supplement and the 2019 ESS supplement may be obtained and are available for inspection and copying at:

New York State Department of State of New York
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

3. Subdivision (b) of section 1225.1 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(b) For the purposes of applying the 2015 IFC in New York State, the 2015 IFC shall be deemed amended in the manner specified in (1) the publication entitled 2017 Uniform Code Supplement, publication date July, 2017, published by the New York State Department of State and (2) the publication entitled 2019 Energy Storage System Supplement (Revised September 2019), publication date September, 2019, published by the New York State Department of State. Said [publication] publications (hereinafter referred to as the “2017 supplement” and the “2019 ESS supplement,” respectively) [is] are incorporated herein by reference. Copies of the 2017 supplement and the 2019 ESS supplement may be obtained and are available for inspection and copying at:

New York State Department of State of New York
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

4. Subdivision (b) of section 1227.1 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(b) For the purposes of applying the 2015 IEBC in New York State, the 2015 IEBC shall be deemed amended in the manner specified in (1) the publication entitled 2017 Uniform Code Supplement, publication date July, 2017, published by the New York State Department of State and (2) the publication entitled 2019 Energy Storage System Supplement (Revised September 2019), publication date September, 2019, published by the New York State Department of State. Said [publication] publications (hereinafter referred to as the “2017 supplement” and the “2019 ESS supplement,” respectively) [is] are incorporated herein by reference. Copies of the 2017 supplement and the 2019 ESS supplement may be obtained and are available for inspection and copying at:

New York State Department of State of New York
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

This notice is intended to serve only as an emergency adoption, to be valid for 90 days or less. This rule expires November 1, 2019.

Text of rule and any required statements and analyses may be obtained from: Emma Gonzalez-Laders, Department of State, 99 Washington Avenue, Suite 1160, Albany NY 12231, (518) 473-8809, email: Emma.Gonzalez-Laders@dos.ny.gov

Additional matter required by statute: The State Fire Prevention and Building Code Council (“Code Council”) and the Department of State have determined that making this rule and the amendments to the New York State Uniform Fire Prevention and Building Code (the “Uniform Code”) made by this rule effective immediately upon the filing of the Notice of Emergency Adoption and Proposed Rule Making, as authorized by Executive Law § 378(18)(a)(i), is necessary to protect health, safety, and security, for the following reasons:

(1) Upon expiration of the prior, substantially similar version of this rule that was adopted as an emergency rule on July 1, 2019, the New York State Uniform Fire Prevention and Building Code (“Uniform Code”), which is adopted pursuant to Article 18 of the Executive Law and which is applicable in all parts of the State (except New York City, which has its own building code), will no longer have provisions that provide an adequate level of protection from the hazards of fire that could be caused by the installation and use of Energy Storage Systems (ESS).

(2) Regulated parties are expressing immediate and increasing interest

in installing ESS as a means of storing electrical energy for use when and where it is most needed.

(3) A rule amending the Uniform Code to add provisions establishing requirements for safe installation and use of ESS is necessary.

(4) Developing, proposing, adopting, and implementing such a rule to become effective at least ninety days after the date on which notice of such change has been published in the State Register would delay the effective date of the rule, and may result in unsafe installations in the meantime.

(5) Adopting such a rule as an emergency rule, to be effective immediately upon the filing of the Notice of Emergency Adoption is necessary to protect health, safety, and security.

Regulatory Impact Statement

1. STATUTORY AUTHORITY

This rule amends the New York State Uniform Fire Prevention and Building Code (“Uniform Code”) by adding new provisions relating to the installation, use, and maintenance of energy storage systems (“ESS”). This rule is adopted by the State Fire Prevention and Building Code Council (“Code Council”), a council established by Article 18 of the Executive Law.

The statutory authority for this rule is Executive Law § 377(1), which authorizes the Code Council to formulate the Uniform Code and, from time to time, to amend particular provisions of the Uniform Code.

2. LEGISLATIVE OBJECTIVES

Executive Law § 371(2) provides that it is the public policy of the State of New York to provide for the promulgation of a Uniform Code addressing building construction and fire prevention in order to provide a basic minimum level of protection to all people of the state from hazards of fire and inadequate building construction. Executive Law § 371(2) further provides that in providing for such Uniform Code, it is the policy of this State to reconcile the myriad existing and potentially conflicting regulations which apply to different types of buildings and occupancies; to place public and private buildings on an equal plane with respect to fire prevention and adequacy of building construction; to require new and existing buildings alike to keep pace with advances in technology concerning fire prevention and building construction; and to provide protection to both residential and non-residential buildings.

The Legislative objectives sought to be achieved by this rule are to provide an enhanced level of protection to the people of this State from the hazards of fire and inadequate building construction and to require buildings in this State to keep pace with advances in technology concerning fire prevention and building construction. These objectives will be achieved by adding new provisions to the Uniform Code that will provide requirements for the installation of ESS, which are part of an emerging industry in New York. These new provisions will require extra protective measures in all cases where ESS are used; require extra protective measures based on the location of the installation; and otherwise enhance the level of protection to all people of the State from the potential hazard of fires caused by the installation and use of ESS.

3. NEEDS AND BENEFITS

This rule will amend the Uniform Code to add new provisions relating to specific construction and safety requirements to address the hazard of fires associated with the increased use of lithium-ion batteries, capacitors, and other modern ESS. This rule will define the term “energy storage system” as one or more devices, assembled together, capable of storing energy in order to supply electrical energy at a future time.

As New York’s grid becomes smarter and more decentralized, energy storage will be deployed to store and dispatch energy when and where it is most needed. New York has ambitious energy storage goals to meet over the next 10 years, the largest of any state in the country. Installation of ESS will increase at an unprecedented rate to meet the target of 3,000 MW, the equivalent electric demand of 40% of all New York State homes, by 2030. This is double the near-term target (1,500 MW by 2025) set in the New York State Energy Storage Roadmap.¹ To be successful, it is imperative that these systems are installed in a safe and responsible manner. Just one tragic event, like the April 19, 2019 explosion at the McMicken Energy Storage facility in Arizona,² could slow progress for years to come.

As intermittent renewable power sources like wind and solar provide a larger portion of New York’s electricity, energy storage will be used to time-shift renewable generation and minimize curtailment. Many of the large-scale ESS needed to achieve these goals will be installed in remote locations, often collocated with the large-scale wind and solar energy resources they support. For these rural locations, outdoor remote systems that are in dedicated use buildings will often be located near the energy resources they support. Remote outdoor installations do not represent the same level of risk to surrounding properties and occupants that an urban or indoor ESS would pose.

In urban areas where space is at a premium, load-constrained places would be working to reduce peak demand on the grid by installing ESS near load sources. These urban installations can potentially be inside build-

ings or parking garages or on rooftops. Each of these scenarios poses its own unique risks, including a greater risk to human safety in occupied buildings due to the potential of the structure of the building itself becoming involved in a fire, and the risk of exposure of occupants to toxic or explosive gases in the event of a system malfunction, depending on the type of ESS that is used.

In addition to permanent installations, walk-in ESS units can be deployed in a mobile operation, allowing them to be transported over the road and deployed at locations where additional energy storage is needed. The need can vary from a temporary power need due to a natural disaster or to accommodate a temporary outage at an existing facility due to renovations. Walk-in ESS units also have the potential to be used for retrofitting existing facilities without the need to construct new dedicated use spaces or heavily modify an existing structure to accommodate an indoor ESS. This adaptability allows these portable units to be used for both permanent installations and emergency power needs, making them a versatile solution.

When the Uniform Code was most recently updated in 2017, ESS were just beginning to be widely used. The current provisions of the Uniform Code, based on the 2015 editions of the model codes published by the International Code Council, Inc. (ICC), do not specifically address this new technology. As this technology has gained greater acceptance, the ICC model codes and industry referenced standards have been revised to adapt to the unique safety challenges ESS present. The combined effects of ESS technology becoming a key component to achieve New York's energy sustainability goals, along with the availability of New York State Energy Research and Development Authority (NYSERDA) funding to help underwrite the achievement of these goals, has created the need for the Uniform Code to be updated in this emergency rule.

According to information contained on NYSEDA's Distributed Energy Resources map³ and available data from NYSEDA,⁴ there are currently 51 installed ESS in New York (not including New York City) with a total storage capacity of 74,600 kWh⁵. 36 of these ESS are in private homes but only account for 500 kWh of storage. These residential systems are currently below both the 50 kWh commercial threshold and the 20 kWh residential threshold in the proposed rule. The proposed rule is needed to address the higher risks that are associated with the commercial and utility scale projects. According to NYSEDA, there are 240 proposed commercial and utility scale projects currently scheduled.

This change is necessary for New York State to remain competitive with the rest of the nation in matters involving building construction and to provide an adequate level of building safety to its residents. It is also necessary if New York State wishes to keep pace with evolving technology concerning fire prevention and building construction and to have a building and fire prevention code which is consistent with nationally accepted model codes. Adopting the proposed provisions of this rule allows New York to create a path forward that is safe for New Yorkers and creates the possibility of achieving our sustainability goals.

4. COSTS

There may be an initial cost increase associated with this rule. The initial cost increase could result when a proposed ESS either (1) has capacity greater than 50 kWh or (2) is designed to be placed less than 3 feet of each other and needs to undergo a large-scale fire test meeting the standard of UL 9540A (Test Method for Evaluating Thermal Runaway Fire Propagation in Battery Energy Storage Systems).

UL 9540A tests the battery ESS on the cell level, module level, and unit level. Typical cell level and module level tests each cost within a range from \$30,000 to \$50,000. These costs are often paid for by the physical battery manufacturer rather than the ESS manufacturer. The ESS manufacturer often assembles the cells and modules into a proprietary unit, which they manufacture, market, and sell. These units, when exceeding 50 kWh, would be required to be tested. This unit level test would cost the unit manufacturer within the range of \$60,000 to \$80,000.

An additional cost increase could be realized by the requirement to install a gas detection system and automatic ventilation system. The need for these systems will depend upon the type of ESS installed. According to NYSEDA, gas detectors can range from \$1,000 to \$5,000 per detector and a fully integrated detection and ventilation system can range from \$25,000 to \$50,000, which represents approximately 1% to 3% of the total ESS cost.

5. LOCAL GOVERNMENT MANDATES

This rule will not impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district, except as follows:

First, any county, city, town, village, school district, fire district or other special district that constructs an ESS, or installs any such system in an existing building, will be required to comply with the provisions amended and/or added by this rule.

Second, most cities, towns and villages, and some counties, are responsible for administering and enforcing the Uniform Code; since this

rule amends provisions in the Uniform Code, the aforementioned local governments will be responsible for administering and enforcing the requirements of the rule along with all other provisions of the Uniform Code.

It is anticipated that verifying compliance with this rule will add only a negligible amount to the already existing duties associated with reviewing permit applications and conducting inspections. In addition, because current provisions for permitting ESS are inadequate or non-existent, the clear guidelines included in this rule should make review and approval more streamlined.

The rule does not otherwise impose any new program, service, duty or responsibility upon any county, city, town, village, school district, fire district or other special district.

6. PAPERWORK

This rule will not impose any reporting requirements. No new forms or other paperwork will be required as a result of this rule.

7. DUPLICATION

The rule does not duplicate any existing Federal or State requirement.

8. ALTERNATIVES

It is the policy of the Department of State to modernize and amend the Uniform Code, so as to maintain consistency with the national model codes, to keep building practices in New York State consistent with practice nationally, and to incorporate new technical developments in a timely manner. The alternative of making no change to the Uniform Code provisions relating to ESS was considered. This alternative would rely on local municipalities to pass regulations regarding the safety of ESS. This will lead to a lack of uniformity and varying degrees of safety across the state, as well as confusion among manufactures, installers and operators. For these reasons, this alternative was rejected.

The alternative of adopting code provisions for ESS from the 2018 edition of the ICC codes was considered. The proposed rule, which is based on the proposed 2021 edition of the ICC codes, incorporates enhanced safety considerations which the 2018 edition did not contain. With the potential for a rapid increase in installations, waiting to adopt the proposed 2021 edition of the model codes during the next code adoption cycle would mean systems could be installed without these enhanced safety considerations. For these reasons, this alternative was rejected.

The alternative of adopting a rule identical to the prior, substantially similar version of this rule was considered, but rejected. Non-substantial changes were made to the prior, substantially similar version of this rule in response to public comments received. This rule reflects those changes.

9. FEDERAL STANDARDS

There are no standards of the Federal Government which address the subject matter of the rule.

10. COMPLIANCE SCHEDULE

This rule will become effective immediately upon filing. The Department of State anticipates that regulated persons will be able to achieve compliance with this rule in the normal course of operations, as part of the permitting or installation of an ESS.

¹ <https://www.nyserda.ny.gov/All-Programs/Programs/Energy-Storage/Energy-Storage-in-NYS>

² <https://www.greentechmedia.com/articles/read/aps-and-fluence-investigating-explosion-at-arizona-energy-storage-facility>

³ <https://der.nyserda.ny.gov/map>

⁴ <https://der.nyserda.ny.gov/download/facility-metric/>

⁵ See <https://der.nyserda.ny.gov/overview/>. These sites have received funding by NYSEDA and provide performance data for display.

Regulatory Flexibility Analysis

1. EFFECT OF RULE:

This rule amends provisions in the Uniform Fire Prevention and Building Code ("Uniform Code") to add new provisions relating to the installation, use, and maintenance of energy storage systems ("ESS"). The provisions add specific construction and safety requirements to address the hazard of fires associated with the increased use of lithium-ion batteries, capacitors, and other modern ESS. The new requirements provide for different types of installations and different types of ESS technologies in use today. This rule is adopted by the State Fire Prevention and Building Code Council (the "Code Council"), a council established by Article 18 of the Executive Law. The Uniform Code is applicable in all areas of the State with the exception of the City of New York.

This rule has the potential to affect small business that own or operate buildings in all areas of the State except the City of New York. Small businesses that construct, own, or operate buildings or structures are subject to the provisions of the Uniform Code and therefore will be required to comply with this rule.

Since this rule amends provisions in the Uniform Code, each local government that is responsible for administering and enforcing the

Uniform Code will be affected by this rule. The Department of State (DOS) estimates that approximately 1,600 local governments (mostly cities, towns and villages, as well as several counties) are responsible for administering and enforcing the Uniform Code. Local governments will be affected by this rule if the government constructs, owns, or operates structures that are subject to the provisions of the Uniform Code. In those circumstances, a local government is in no different situation than that of any building owner or operator, public or private. Therefore, adoption of this rule making will affect cities, towns, and villages of the State with the exception of the City of New York.

2. COMPLIANCE REQUIREMENTS:

No reporting or record keeping requirements are imposed upon regulated parties by the rule. Small businesses and local governments subject to the rule will be required to install ESS in accordance with the rule's provisions. In most cases, such installation will be incidental to the construction of a building or will otherwise involve the issuance of a building permit; in such cases, the local government responsible for administering and enforcing the Uniform Code will be required to consider the requirements of this rule when reviewing plans and inspecting work.

3. PROFESSIONAL SERVICES:

The rule will add requirements into the Uniform Code to address safety hazards associated with the increased use of lithium-ion batteries, capacitors, and other modern ESS. The new requirements provide for different types of installations and different types of ESS technologies in use today. For some installations professional services will be required to comply with the rule. Depending on the capacity of the ESS a third-party peer review (registered design professional or special expert) may be required by the building owner. If the building owner is a small business or local government and the system meets a specific capacity the small business will need to retain the services of a professional service to provide a peer review of the installation of the ESS.

4. COMPLIANCE COSTS:

There may be an initial cost increase associated with this rule. The initial cost increase could result when a proposed energy storage system either (1) has capacity greater than 50 kWh or (2) is designed to be placed less than 3 feet of each other and needs to undergo a large-scale fire test meeting the standard of UL 9540A (Test Method for Evaluating Thermal Runaway Fire Propagation in Battery Energy Storage Systems).

UL 9540A tests the battery energy storage system on the cell level, module level, and unit level. Typical cell level and module level tests each cost within a range from \$30,000 to \$50,000. These costs are often paid for by the physical battery manufacturer rather than the energy storage system manufacturer. The energy storage system manufacturer often assembles the cells and modules into a proprietary unit, which they manufacture, market, and sell. These units, when exceeding 50 kWh, would be required to be tested. This unit level test would cost the unit manufacturer within the range of \$60,000 to \$80,000.

An additional cost increase could be realized by the requirement to install a gas detection system and automatic ventilation system. The need for these systems will depend upon the type of energy storage system installed. According to NYSERDA, gas detectors can range from \$1,000 to \$5,000 per detector and a fully integrated detection and ventilation system can range from \$25,000 to \$50,000, which represents approximately 1% to 3% of the total energy storage system cost.

Compliance with this rule will occur when ESS is initially installed; therefore, it is anticipated that there will be no annual cost of complying with the rule.

Any variation in costs of complying with this rule for different types or sizes of small businesses and local governments will be attributable to the size and configuration of the ESS installed by such entities, and not to the nature or type or sizes of such small businesses and local governments. To the extent that larger businesses and larger local governments may tend to own larger buildings and therefore ESS, or more than one building, the total costs of compliance would be higher for larger businesses and larger local governments.

5. ECONOMIC AND TECHNOLOGICAL FEASIBILITY:

It is economically and technologically feasible for regulated parties to comply with the rule. This rule imposes no substantial capital expenditures. No new technology need be developed for compliance with this rule.

6. MINIMIZING ADVERSE IMPACT:

The economic impact of this rule on small businesses and local governments will be no greater than the economic impact of this rule on other regulated parties, and the ability of small businesses and local governments to comply with the requirements of this rule should be no less than the ability of other regulated parties to comply. Providing exemptions from coverage by the rule was not considered because such exemptions would endanger public safety.

7. SMALL BUSINESS AND LOCAL GOVERNMENT PARTICIPATION:

DOS notified interested parties throughout the State of the text of a

prior, substantially similar version of this rule by posting a notice on DOS's website, and publishing a notice in Building New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by DOS and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry.

DOS posted the full text of the prior, substantially similar version of this rule on the Department's website.

On July 1, 2019, DOS filed a Notice of Emergency Adoption and Proposed Rule Making for the prior, substantially similar version of this rule.

A public hearing on the prior, substantially similar version of this rule was held on September 16, 2019. Public comments on the prior, substantially similar version of this rule were received and analyzed. This rule includes revisions to the prior, substantially similar version of this rule that were made in response to the public comments received.

Rural Area Flexibility Analysis

1. TYPES AND ESTIMATED NUMBERS OF RURAL AREAS.

This rule amends provisions in the Uniform Fire Prevention and Building Code ("Uniform Code") to add new provisions relating to the installation, use, and maintenance of energy storage systems ("ESS"). The provisions add specific construction and safety requirements to address hazards of fire associated with the increased use of lithium-ion batteries, capacitors, and other modern ESS. The new requirements provide for different types of installations and different types of ESS technologies in use today. Since the Uniform Code applies in all areas of the State (with the exception of New York City), this rule will apply in all rural areas of the State.

2. REPORTING, RECORDKEEPING AND OTHER COMPLIANCE REQUIREMENTS; AND PROFESSIONAL SERVICES.

The rule will not impose any reporting or recordkeeping requirements in rural areas or elsewhere in New York. This rule making will amend the Uniform Code to add specific construction and safety requirements to address the hazard of fires caused by battery energy storage systems. Building owners typically rely on professionals for their expertise in building regulations with respect to design, construction, and operation and maintenance of buildings. The need for professionals in rural areas does not differ from such need in non-rural areas.

3. COMPLIANCE COSTS.

There may be an initial cost increase associated with this rule. The initial cost increase could result when a proposed energy storage system either (1) has capacity greater than 50 kWh or (2) is designed to be placed less than 3 feet of each other and needs to undergo a large-scale fire test meeting the standard of UL 9540A (Test Method for Evaluating Thermal Runaway Fire Propagation in Battery Energy Storage Systems).

UL 9540A tests the battery energy storage system on the cell level, module level, and unit level. Typical cell level and module level tests each cost within a range from \$30,000 to \$50,000. These costs are often paid for by the physical battery manufacturer rather than the energy storage system manufacturer. The energy storage system manufacturer often assembles the cells and modules into a proprietary unit, which they manufacture, market, and sell. These units, when exceeding 50 kWh, would be required to be tested. This unit level test would cost the unit manufacturer within the range of \$60,000 to \$80,000.

An additional cost increase could be realized by the requirement to install a gas detection system and automatic ventilation system. The need for these systems will depend upon the type of energy storage system installed. According to NYSERDA, gas detectors can range from \$1,000 to \$5,000 per detector and a fully integrated detection and ventilation system can range from \$25,000 to \$50,000, which represents approximately 1% to 3% of the total energy storage system cost.

Compliance with this rule will occur when ESS is initially installed; therefore, it is anticipated that there will be no annual cost of complying with the rule. Any variation in costs of complying with this rule for different types of public and private entities in rural areas will be attributable to the size and configuration of the ESS installed by such entities, and not to the nature or type of such entities or to the location of such entities in rural areas.

4. MINIMIZING ADVERSE IMPACT.

The economic impact of this rule in rural areas will be no greater than the economic impact of this rule in non rural areas, and the ability of individuals or public or private entities located in rural areas to comply with the requirements of this rule should be no less than the ability of individuals or public or private entities located in non-rural areas. Providing exemptions from coverage by the rule was not considered because such exemptions would endanger public safety.

5. RURAL AREA PARTICIPATION.

The Department of State notified interested parties throughout the State of the text of a prior, substantially similar version of this rule by posting a notice on the Department's website, and publishing a notice in Building

New York, an electronic news bulletin covering topics related to the Uniform Code and the construction industry which is prepared by the Department of State and which is currently distributed to approximately 10,000 subscribers, including local governments, design professionals and others involved in all aspects of the construction industry in all areas of the State, including rural areas.

The Department of State has posted the full text of the prior, substantially similar version of this rule on the Department's website.

On July 1, 2019, the Department of State filed a Notice of Emergency Adoption and Proposed Rule Making for the prior, substantially similar version of this rule.

A public hearing on the prior, substantially similar version of this rule was held on September 16, 2019. Public comments on the prior, substantially similar version of this rule were received and analyzed. This rule includes revisions to the prior, substantially similar version of this rule that were made in response to the public comments received.

Job Impact Statement

The Department of State has determined that this rule will not have a substantial adverse impact on jobs and employment opportunities.

This rule amends provisions in the Uniform Fire Prevention and Building Code ("Uniform Code") to add new provisions relating to the installation, use, and maintenance of energy storage systems ("ESS"). The provisions add specific construction and safety requirements to address the hazards of fire associated with the increased use of lithium-ion batteries, capacitors, and other modern ESS. The new requirements provide for different types of installations and different types of ESS technologies in use today.

Therefore, the Department of State concludes that this rule will not have a substantial adverse impact on jobs and employment opportunities, but it is anticipated that this rule may have a positive impact on jobs and employment opportunities in New York State.

NOTICE OF ADOPTION

New York State Uniform Fire Prevention and Building Code (the Uniform Code)

I.D. No. DOS-29-19-00015-A

Filing No. 864

Filing Date: 2019-10-01

Effective Date: 2019-11-01

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 1220.1(b), 1221.1(b), 1225.1(b) and 1227.1(b) of Title 19 NYCRR.

Statutory authority: Executive Law, section 377

Subject: New York State Uniform Fire Prevention and Building Code (the Uniform Code).

Purpose: The purpose of this rule is to amend 19 NYCRR Parts 1220, 1221, 1225, and 1227, by incorporating by reference a publication entitled the "2019 Energy Storage System Supplement (Revised September 2019)" (publication date September 2019) which adds provision to the New York State Uniform Fire Prevention and Building Code relating to the installation, use, and maintenance of Energy Storage Systems. Ensuring a minimum level of safety of such systems in buildings is a critical part of protecting the public, building occupants, and emergency responders.

Text of final rule: 1. Subdivision (b) of section 1220.1 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(b) For the purposes of applying the 2015 IRC in New York State, the 2015 IRC shall be deemed amended in the manner specified in (1) the publication entitled 2017 Uniform Code Supplement, publication date July, 2017, published by New York State Department of State and (2) the publication entitled 2019 Energy Storage System Supplement (Revised September 2019), publication date September, 2019, published by New York State Department of State. Said [publication] publications (hereinafter referred to as the "2017 supplement" and the "2019 ESS supplement," respectively) [is] are incorporated herein by reference. Copies of the 2017 supplement and the 2019 ESS supplement may be obtained and are available for inspection and copying at:

New York State Department of State of New York
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

2. Subdivision (b) of section 1221.1 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(b) For the purposes of applying the 2015 IBC in New York State, the 2015 IBC shall be deemed amended in the manner specified in (1) the publication entitled 2017 Uniform Code Supplement, publication date July, 2017, published by the New York State Department of State and (2) the publication entitled 2019 Energy Storage System Supplement (Revised September 2019), publication date September, 2019, published by New York State Department of State. Said [publication] publications (hereinafter referred to as the "2017 supplement" and the "2019 ESS supplement," respectively) [is] are incorporated herein by reference. Copies of the 2017 supplement and the 2019 ESS supplement may be obtained and are available for inspection and copying at:

New York State Department of State of New York
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

3. Subdivision (b) of section 1225.1 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(b) For the purposes of applying the 2015 IFC in New York State, the 2015 IFC shall be deemed amended in the manner specified in (1) the publication entitled 2017 Uniform Code Supplement, publication date July, 2017, published by the New York State Department of State and (2) the publication entitled 2019 Energy Storage System Supplement (Revised September 2019), publication date September, 2019, published by the New York State Department of State. Said [publication] publications (hereinafter referred to as the "2017 supplement" and the "2019 ESS supplement," respectively) [is] are incorporated herein by reference. Copies of the 2017 supplement and the 2019 ESS supplement may be obtained and are available for inspection and copying at:

New York State Department of State of New York
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

4. Subdivision (b) of section 1227.1 of Title 19 of the Official Compilation of Codes, Rules and Regulations of the State of New York is amended to read as follows:

(b) For the purposes of applying the 2015 IEBC in New York State, the 2015 IEBC shall be deemed amended in the manner specified in (1) the publication entitled 2017 Uniform Code Supplement, publication date July, 2017, published by the New York State Department of State and (2) the publication entitled 2019 Energy Storage System Supplement (Revised September 2019), publication date September, 2019, published by the New York State Department of State. Said [publication] publications (hereinafter referred to as the "2017 supplement" and the "2019 ESS supplement," respectively) [is] are incorporated herein by reference. Copies of the 2017 supplement and the 2019 ESS supplement may be obtained and are available for inspection and copying at:

New York State Department of State of New York
One Commerce Plaza, 99 Washington Avenue
Albany, NY 12231-0001

Final rule as compared with last published rule: Nonsubstantive changes were made in sections 1220.1(b), 1221.1(b), 1225.1(b) and 1227.1(b).

Text of rule and any required statements and analyses may be obtained from: Emma Gonzalez-Laders, Department of State, 99 Washington Avenue, Suite 1160, Albany NY 12231, (518) 473-8809, email: Emma.Gonzalez-Laders@dos.ny.gov

Additional matter required by statute: The State Fire Prevention and Building Code Council ("Code Council") and the Department of State have determined that making this rule and the amendments to the New York State Uniform Fire Prevention and Building Code (the "Uniform Code") made by this rule effective on November 1, 2019, rather than 90 days after publication of the Notice of Adoption of this rule, as authorized by Executive Law § 378(18)(a)(i), is necessary to protect health, safety, and security, for the following reasons:

(1) Upon expiration of the prior, substantially similar version of this rule that was adopted as an emergency rule on July 1, 2019, the New York State Uniform Fire Prevention and Building Code ("Uniform Code"), which is adopted pursuant to Article 18 of the Executive Law and which is applicable in all parts of the State (except New York City, which has its own building code), will no longer have provisions that provide an adequate level of protection from the hazards of fire that could be caused by the installation and use of Energy Storage Systems (ESS).

(2) Regulated parties are expressing immediate and increasing interest in installing ESS as a means of storing electrical energy for use when and where it is most needed.

(3) A rule amending the Uniform Code to add provisions establishing requirements for safe installation and use of ESS is necessary.

(4) Developing, proposing, adopting, and implementing such a rule to become effective at least ninety days after the date on which notice of such change has been published in the State Register would delay the effective date of the rule, and may result in unsafe installations in the meantime.

(5) Adopting such a rule to be effective on November 1, 2019, after the emergency rule expires, is necessary to protect health, safety, and security.

Revised Regulatory Impact Statement

The Department of State has determined that the changes made to the last published rule are non-substantive and do not necessitate a revision of the original Regulatory Impact Statement published in the Notice of Emergency Adoption and Proposed Rule Making in the State Register on July 17, 2019.

Those changes made to the rule are summarized as follows:

Sections 1220.1, 1221.1, 1225.1, and 1227.1 of Title 19 NYCRR were changed to update the publication entitled “2019 Energy Storage System Supplement” to “2019 Energy Storage System Supplement (Revised September 2019)” and the to change the publication date from June 2019 to September 2019.

Minor formatting changes were made to the 2019 Energy Storage System Supplement. As an example, spaces were added or removed, and certain text was indented. In addition, the publication date was revised.

Changes to Part 1 (Amendments to the 2015 IRC)

Item 1.1: Modified the definition of “Energy Storage System” to exclude electric motor vehicles and stand-alone car batteries. See comment 6 in full Assessment of Public Comments.

Item 1.2 Section R327.2: Revised to remove the language referring to ESS being listed and labeled for residential use. See comment 2 in full Assessment of Public Comments.

Item 1.2 Section R327.8: Revised to clarify the intention of the section by the inclusion of specific language of Section R302 rather than rely on a code reference to Section R302. See comment 3 in full Assessment of Public Comments.

Changes to Part 3 (Amendments to the 2015 IBC)

Item 3.3 Table 509: Revised to coordinate with the 2015 IFC (as amended). See comment 4 in full Assessment of Public Comments.

Changes to Part 4 (Amendments to the 2015 International Fire Code)

Item 4.1: Modified the definition of “Energy Storage System” to exclude electric motor vehicles and stand-alone car batteries. See comment 6 in full Assessment of Public Comments.

Item 4.3 Section 608.1: Revised to remove the reference to one- and two-family dwellings and townhouses. This was an error as these occupancies are regulated in the 2015 IRC, as amended.

Item 4.3 Table 608.1: Modified footnote “c” to indicate the lead-acid ESS installations in excess of 50 gallons of electrolyte have exceeded the threshold of Table 608.1. See comment 7 in full Assessment of Public Comments.

Item 4.3 Section 608.2: Modified to include a new exception to exclude outdoor stationary vehicle charging stations. See comment 9 in full Assessment of Public Comments.

Item 4.3 Section 608.9.2: Modified the section to indicate the Operation and Maintenance Manual shall be available to the fire code official for review. See comment 25 in full Assessment of Public Comments.

Item 4.3 Section 608.10.1: Modified the provision to allow approved UL 9540 equivalent listings to be acceptable. See comment 19 in full Assessment of Public Comments.

Item 4.3 Section 608.11.7: Modified the provision to clarify the intention of this provision to apply to ESS installed indoors. See comment 22 in full Assessment of Public Comments.

Item 4.3 Section 608.11.8: Modified the provision to require the signage to list the ESS rated capacity and that the contact person needs to have the technical knowledge to handle system faults. See comment 31.

Item 4.3 Section 608.12.1: Modified Exception 2 to remove the language “the fire code official may approve” and adding “shall be permitted.” See comment 30 in full Assessment of Public Comments.

Item 4.3 Section 608.12.6: Modified the provision to limit the maximum enclosure size in cubic feet rather than linear dimensions. See comment 35 in full Assessment of Public Comments.

Item 4.3 Section 608.12.7: Modified the provision to add an exception for reduced clearances when large-scale fire testing is used. See comment 36 in full Assessment of Public Comments.

Item 4.3 Section 608.15.4: Revised to coordinate with the change resulting from revising 608.12.7.

Item 4.3 Section 608.18.1: Revised to remove the language referring to ESS being listed and labeled for residential use. See comment 2 in full Assessment of Public Comments.

Item 4.3 Section 608.18.7: Revised to coordinate with the change resulting from revising R327.8. See comment 3 in full Assessment of Public Comments.

Revised Regulatory Flexibility Analysis

The Department of State has determined that the changes made to the last published rule are non-substantive and do not necessitate a revision of the original Regulatory Flexibility Analysis published in the Notice of Emergency Adoption and Proposed Rule Making in the State Register on July 17, 2019.

Those changes made to the rule are summarized as follows:

Sections 1220.1, 1221.1, 1225.1, and 1227.1 of Title 19 NYCRR were changed to update the publication entitled “2019 Energy Storage System Supplement” to “2019 Energy Storage System Supplement (Revised September 2019)” and the to change the publication date from June 2019 to September 2019.

Minor formatting changes were made to the 2019 Energy Storage System Supplement. As an example, spaces were added or removed, and certain text was indented. In addition, the publication date was revised.

Changes to Part 1 (Amendments to the 2015 IRC)

Item 1.1: Modified the definition of “Energy Storage System” to exclude electric motor vehicles and stand-alone car batteries. See comment 6 in full Assessment of Public Comments.

Item 1.2 Section R327.2: Revised to remove the language referring to ESS being listed and labeled for residential use. See comment 2 in full Assessment of Public Comments.

Item 1.2 Section R327.8: Revised to clarify the intention of the section by the inclusion of specific language of Section R302 rather than rely on a code reference to Section R302. See comment 3 in full Assessment of Public Comments.

Changes to Part 3 (Amendments to the 2015 IBC)

Item 3.3 Table 509: Revised to coordinate with the 2015 IFC (as amended). See comment 4 in full Assessment of Public Comments.

Changes to Part 4 (Amendments to the 2015 International Fire Code)

Item 4.1: Modified the definition of “Energy Storage System” to exclude electric motor vehicles and stand-alone car batteries. See comment 6 in full Assessment of Public Comments.

Item 4.3 Section 608.1: Revised to remove the reference to one- and two-family dwellings and townhouses. This was an error as these occupancies are regulated in the 2015 IRC, as amended.

Item 4.3 Table 608.1: Modified footnote “c” to indicate the lead-acid ESS installations in excess of 50 gallons of electrolyte have exceeded the threshold of Table 608.1. See comment 7 in full Assessment of Public Comments.

Item 4.3 Section 608.2: Modified to include a new exception to exclude outdoor stationary vehicle charging stations. See comment 9 in full Assessment of Public Comments.

Item 4.3 Section 608.9.2: Modified the section to indicate the Operation and Maintenance Manual shall be available to the fire code official for review. See comment 25 in full Assessment of Public Comments.

Item 4.3 Section 608.10.1: Modified the provision to allow approved UL 9540 equivalent listings to be acceptable. See comment 19 in full Assessment of Public Comments.

Item 4.3 Section 608.11.7: Modified the provision to clarify the intention of this provision to apply to ESS installed indoors. See comment 22 in full Assessment of Public Comments.

Item 4.3 Section 608.11.8: Modified the provision to require the signage to list the ESS rated capacity and that the contact person needs to have the technical knowledge to handle system faults. See comment 31.

Item 4.3 Section 608.12.1: Modified Exception 2 to remove the language “the fire code official may approve” and adding “shall be permitted.” See comment 30 in full Assessment of Public Comments.

Item 4.3 Section 608.12.6: Modified the provision to limit the maximum enclosure size in cubic feet rather than linear dimensions. See comment 35 in full Assessment of Public Comments.

Item 4.3 Section 608.12.7: Modified the provision to add an exception for reduced clearances when large-scale fire testing is used. See comment 36 in full Assessment of Public Comments.

Item 4.3 Section 608.15.4: Revised to coordinate with the change resulting from revising 608.12.7.

Item 4.3 Section 608.18.1: Revised to remove the language referring to ESS being listed and labeled for residential use. See comment 2 in full Assessment of Public Comments.

Item 4.3 Section 608.18.7: Revised to coordinate with the change resulting from revising R327.8. See comment 3 in full Assessment of Public Comments.

Revised Rural Area Flexibility Analysis

The Department of State has determined that the changes made to the last published rule are non-substantive and do not necessitate a revision of the original Rural Area Flexibility Analysis published in the Notice of Emergency Adoption and Proposed Rule Making in the State Register on July 17, 2019.

Those changes made to the rule are summarized as follows:

Sections 1220.1, 1221.1, 1225.1, and 1227.1 of Title 19 NYCRR were changed to update the publication entitled “2019 Energy Storage System Supplement” to “2019 Energy Storage System Supplement (Revised September 2019)” and the to change the publication date from June 2019 to September 2019.

Minor formatting changes were made to the 2019 Energy Storage System Supplement. As an example, spaces were added or removed, and certain text was indented. In addition, the publication date was revised.

Changes to Part 1 (Amendments to the 2015 IRC)

Item 1.1: Modified the definition of “Energy Storage System” to exclude electric motor vehicles and stand-alone car batteries. See comment 6 in full Assessment of Public Comments.

Item 1.2 Section R327.2: Revised to remove the language referring to ESS being listed and labeled for residential use. See comment 2 in full Assessment of Public Comments.

Item 1.2 Section R327.8: Revised to clarify the intention of the section by the inclusion of specific language of Section R302 rather than rely on a code reference to Section R302. See comment 3 in full Assessment of Public Comments.

Changes to Part 3 (Amendments to the 2015 IBC)

Item 3.3 Table 509: Revised to coordinate with the 2015 IFC (as amended). See comment 4 in full Assessment of Public Comments.

Changes to Part 4 (Amendments to the 2015 International Fire Code)

Item 4.1: Modified the definition of “Energy Storage System” to exclude electric motor vehicles and stand-alone car batteries. See comment 6 in full Assessment of Public Comments.

Item 4.3 Section 608.1: Revised to remove the reference to one- and two-family dwellings and townhouses. This was an error as these occupancies are regulated in the 2015 IRC, as amended.

Item 4.3 Table 608.1: Modified footnote “c” to indicate the lead-acid ESS installations in excess of 50 gallons of electrolyte have exceeded the threshold of Table 608.1. See comment 7 in full Assessment of Public Comments.

Item 4.3 Section 608.2: Modified to include a new exception to exclude outdoor stationary vehicle charging stations. See comment 9 in full Assessment of Public Comments.

Item 4.3 Section 608.9.2: Modified the section to indicate the Operation and Maintenance Manual shall be available to the fire code official for review. See comment 25 in full Assessment of Public Comments.

Item 4.3 Section 608.10.1: Modified the provision to allow approved UL 9540 equivalent listings to be acceptable. See comment 19 in full Assessment of Public Comments.

Item 4.3 Section 608.11.7: Modified the provision to clarify the intention of this provision to apply to ESS installed indoors. See comment 22 in full Assessment of Public Comments.

Item 4.3 Section 608.11.8: Modified the provision to require the signage to list the ESS rated capacity and that the contact person needs to have the technical knowledge to handle system faults. See comment 31.

Item 4.3 Section 608.12.1: Modified Exception 2 to remove the language “the fire code official may approve” and adding “shall be permitted.” See comment 30 in full Assessment of Public Comments.

Item 4.3 Section 608.12.6: Modified the provision to limit the maximum enclosure size in cubic feet rather than linear dimensions. See comment 35 in full Assessment of Public Comments.

Item 4.3 Section 608.12.7: Modified the provision to add an exception for reduced clearances when large-scale fire testing is used. See comment 36 in full Assessment of Public Comments.

Item 4.3 Section 608.15.4: Revised to coordinate with the change resulting from revising 608.12.7.

Item 4.3 Section 608.18.1: Revised to remove the language referring to ESS being listed and labeled for residential use. See comment 2 in full Assessment of Public Comments.

Item 4.3 Section 608.18.7: Revised to coordinate with the change resulting from revising R327.8. See comment 3 in full Assessment of Public Comments.

Revised Job Impact Statement

The Department of State has determined that the changes made to the last published rule are non-substantive and do not necessitate a revision of the original Job Impact Statement published in the Notice of Emergency Adoption and Proposed Rule Making in the State Register on July 17, 2019.

Those changes made to the rule are summarized as follows:

Sections 1220.1, 1221.1, 1225.1, and 1227.1 of Title 19 NYCRR were changed to update the publication entitled “2019 Energy Storage System Supplement” to “2019 Energy Storage System Supplement (Revised September 2019)” and the to change the publication date from June 2019 to September 2019.

Minor formatting changes were made to the 2019 Energy Storage System Supplement. As an example, spaces were added or removed, and certain text was indented. In addition, the publication date was revised.

Changes to Part 1 (Amendments to the 2015 IRC)

Item 1.1: Modified the definition of “Energy Storage System” to exclude electric motor vehicles and stand-alone car batteries. See comment 6 in full Assessment of Public Comments.

Item 1.2 Section R327.2: Revised to remove the language referring to ESS being listed and labeled for residential use. See comment 2 in full Assessment of Public Comments.

Item 1.2 Section R327.8: Revised to clarify the intention of the section

by the inclusion of specific language of Section R302 rather than rely on a code reference to Section R302. See comment 3 in full Assessment of Public Comments.

Changes to Part 3 (Amendments to the 2015 IBC)

Item 3.3 Table 509: Revised to coordinate with the 2015 IFC (as amended). See comment 4 in full Assessment of Public Comments.

Changes to Part 4 (Amendments to the 2015 International Fire Code)

Item 4.1: Modified the definition of “Energy Storage System” to exclude electric motor vehicles and stand-alone car batteries. See comment 6 in full Assessment of Public Comments.

Item 4.3 Section 608.1: Revised to remove the reference to one- and two-family dwellings and townhouses. This was an error as these occupancies are regulated in the 2015 IRC, as amended.

Item 4.3 Table 608.1: Modified footnote “c” to indicate the lead-acid ESS installations in excess of 50 gallons of electrolyte have exceeded the threshold of Table 608.1. See comment 7 in full Assessment of Public Comments.

Item 4.3 Section 608.2: Modified to include a new exception to exclude outdoor stationary vehicle charging stations. See comment 9 in full Assessment of Public Comments.

Item 4.3 Section 608.9.2: Modified the section to indicate the Operation and Maintenance Manual shall be available to the fire code official for review. See comment 25 in full Assessment of Public Comments.

Item 4.3 Section 608.10.1: Modified the provision to allow approved UL 9540 equivalent listings to be acceptable. See comment 19 in full Assessment of Public Comments.

Item 4.3 Section 608.11.7: Modified the provision to clarify the intention of this provision to apply to ESS installed indoors. See comment 22 in full Assessment of Public Comments.

Item 4.3 Section 608.11.8: Modified Exception 2 to remove the language “the fire code official may approve” and adding “shall be permitted.” See comment 30 in full Assessment of Public Comments.

Item 4.3 Section 608.12.1: Modified the provision to require the signage to list the ESS rated capacity and that the contact person needs to have the technical knowledge to handle system faults. See comment 31.

Item 4.3 Section 608.12.6: Modified the provision to limit the maximum enclosure size in cubic feet rather than linear dimensions. See comment 35 in full Assessment of Public Comments.

Item 4.3 Section 608.12.7: Modified the provision to add an exception when large-scale fire testing is used to show the allowance. See comment 36 in full Assessment of Public Comments.

Item 4.3 Section 608.15.4: Revised to coordinate with the change resulting from revising 608.11.8, 608.12.6, and 608.12.7.

Item 4.3 Section 608.18.1: Revised to remove the language referring to ESS being listed and labeled for residential use. See comment 2 in full Assessment of Public Comments.

Item 4.3 Section 608.18.7: Revised to coordinate with the change resulting from revising R327.8. See comment 3 in full Assessment of Public Comments.

Initial Review of Rule

As a rule that requires a RFA, RAFA or JIS, this rule will be initially reviewed in the calendar year 2022, which is no later than the 3rd year after the year in which this rule is being adopted.

Assessment of Public Comment

This rule amends the New York State Uniform Fire Prevention and Building Code (the Uniform Code), 19 NYCRR Parts 1220, 1221, 1225, and 1227, by incorporating by reference a publication entitled the “2019 Energy Storage System Supplement (Revised September 2019)” (2019 ESS Supplement) which adds provisions to the Uniform Code relating to the installation, use, and maintenance of Energy Storage Systems (ESS).

The Notice of Emergency Adoption and Proposed Rule Making was published in the State Register on July 17, 2019. A public hearing was held on September 16, 2019. The Department of State (DOS) received the comments described below. The following assessment contains a summary of the comments submitted and an analysis of any issues raised by such comments.

Summary of Comments Resulting in Modifications to the 2019 ESS Supplement

A comment was received suggesting a revision to Section R327.2 of the 2015 International Residential Code (2015 IRC) with respect to equipment that is “listed and labeled for residential use in accordance with UL 9540”. UL 9540 testing does not differentiate between applications, so it is not currently possible to be listed and labeled for residential use. The commenter recommended removing the language “residential use” from this sentence. The provision has been modified for clarity and consistency with the language of NFPA 855.

Multiple comments were received requesting clarification to Item 1.2 (Section R327) of the 2019 ESS Supplement dealing with the required fire separation between areas containing ESS and other areas of the dwelling.

The intent of this new section was to require fire separation in attached garages and utility closets that is the same as the current fire separation requirements in Section R302 of the 2015 IRC. To clarify this requirement, this section was revised to make the requirement explicitly clear by prescriptively including the intended requirements from R302 of the 2015 IRC within Section R327 of the 2015 IRC, as added by the 2019 ESS Supplement.

A comment was received requesting clarification regarding the fire separation requirements for ESS in Table 509 of the 2015 International Building Code (2015 IBC), as amended by the 2019 ESS Supplement. It appears that there is a conflict between what Table 509 requires and what Section 608 of the 2015 International Fire Code (2015 IFC), as amended by the 2019 ESS Supplement, requires. Accordingly, Table 509 of the 2015 IBC, as amended by the 2019 ESS Supplement, was revised to remove the conflict and to coordinate the provisions of the 2015 IBC and the 2015 IFC.

Multiple comments were received requesting the definition of a mobile ESS be clarified to indicate that mobile ESS do not include electric vehicles. Therefore, the definition was changed to clarify that motor vehicles and stand-alone car batteries are exempt. The exemption for small rechargeable appliances is covered under the provisions of Section R327.2 of the 2015 IRC and Table 608.1 of the 2015 IFC. Self-propelled outdoor units cannot be equated to motor vehicles and therefore, were not exempted.

A comment was received suggesting a modification to Table 608.1 footnote c to clarify that when a lead-acid battery exceeds 50 gallons of electrolyte, it is considered to have exceeded the threshold of the Table. The comment as proposed represents a clearer statement of the intended requirement. The footnote has been revised as suggested.

A comment was received expressing concern that electric vehicle charging equipment located outdoors would be subject to these regulations. It is not the intent of Section 608.2 of the 2015 IFC, as amended, to regulate charging stations located outside buildings. This is consistent with the regulations of the New York City Fire Department for similarly sized stations. Therefore, an exception was added for clarification.

A comment was received requesting that approved equivalents be included as alternatives to being listed to UL 9540 in Section 608.10.1. The commenter's stated reason was to allow for future testing standards to be accepted or developed that may better address this changing technology. DOS agrees, as this is the approach taken with other standards in this rule, such as UL 9540A, and the requested change has been incorporated.

A comment was received requesting outdoor installations be specially exempted from the ventilation requirements. The words "installed outdoors" were added to Section 608.11.7 in response to this comment.

A comment was received suggesting that the approval of the fire code official regarding the size and separation limits in Section 608.12.1 should not be required when completing large-scale fire testing. DOS agrees that requiring large scale fire testing in addition to the approval of the fire code official is redundant. The purpose of the large-scale fire testing is to establish the baseline design parameters for a safe installation. Once completed, the system designer can provide adequate safety measures to address the system risks. The additional approval of the fire code official is an unnecessary redundancy.

A comment was received suggesting a requirement should be introduced requiring the posting of contact information for the manufacturer or responsible party to inform maintenance/emergency operations. In any emergency or maintenance event there are extremely complicated and specific systems that vary from installation to installation. Without this information first responders may not know how to approach a situation safely and during maintenance the installation could be unnecessarily damaged. Contact information is already part of the signage requirement. Language was added to require that the rated capacity of the system be stated on the required signage. The recommendation will provide a greater degree of safety during an emergency with no impact to the developer. Section 608.11.8 was modified as a result of this comment.

A comment was received recommending the maximum enclosure size be expressed in terms of volume rather than linear dimensions. The proposed change allows flexibility in the design of facilities without compromising safety. The units indicating the maximum size of facilities were changed to the equivalent volume, expressed in cubic feet.

A comment was received requesting the allowance of reduced clearing areas if warranted by results of large-scale fire testing. This is consistent with Section 608.12.6 and other similar sections. This modification has been incorporated.

Summary of Comments Resulting in No Changes

A comment requested that a requirement should be put into the 2019 ESS Supplement requiring development of Emergency Operations plans. The NYSERDA New York Battery Energy Storage System Guidebook has an example of the content requirements for an Emergency Operations Plan in Appendix 4. While the comment appears to have merit, it constitutes a

new requirement that needs further analysis and hasn't been submitted for public review and comment. DOS will duly research the requirement and, if appropriate, implement at the next reasonable opportunity. Currently, these provisions can still be implemented per NYSERDA's manual or as part of a local municipality's requirements.

A comment was received suggesting a requirement should be included for a smoke/gas purge system on large systems. The smoke/gas purge system allows for a switch to be turned on by first responders that engages an active smoke/gas vent to prevent breach events. When this system is engaged it can begin providing air changes to the system volume which can clear smoke/dangerous gases without exposing personnel to the interface between a possibly fuel rich environment and outside oxygen. This may also prevent first responders from having to open vent holes in energy storage systems during emergency operations. While the comment appears to have merit, it constitutes a new requirement that needs further analysis and hasn't been submitted for public review and comment. As currently written, the regulations do require exhaust ventilation in Table 608.13 and Section 608.13.1. DOS will duly research potential additional requirements and, if appropriate, implement at the next reasonable opportunity.

DESCRIPTION OF CHANGES MADE IN THE RULE

This rule will amend the current versions of Parts 1220, 1221, 1225, and 1227 of Title 19 of the NYCRR by adding references to the "2019 Energy Storage System Supplement (Revised September 2019)." Non-substantive changes were made to the rule as originally proposed.

Changes to Title 19 NYCRR Parts 1220, 1221, 1225, and 1227

Part 1220, Section 1220.1(b)(2); Part 1221, Section 1221.1(b)(2); Part 1225, Section 1225.1(b)(2); Part 1227, Section 1227.1(b)(2): The publication entitled "2019 Energy Storage System Supplement" has been changed to "2019 Energy Storage System Supplement (Revised September 2019)" and the publication date has been changed from June 2019 to September 2019.

Summary of Changes Made to the 2019 ESS Supplement

General Changes

Minor formatting changes were made to the 2019 ESS Supplement. As an example, spaces were added or removed, and certain text was indented. In addition, the publication date was revised.

Changes to Part 1 (Amendments to the 2015 IRC)

Item 1.1: Modified the definition of "Energy Storage System" to exclude electric motor vehicles and stand-alone car batteries. See comment 6 in full Assessment of Public Comments.

Item 1.2 Section R327.2: Revised to remove the language referring to ESS being listed and labeled for residential use. See comment 2 in full Assessment of Public Comments.

Item 1.2 Section R327.8: Revised to clarify the intention of the section by the inclusion of specific language of Section R302 rather than rely on a code reference to Section R302. See comment 3 in full Assessment of Public Comments.

Changes to Part 3 (Amendments to the 2015 IBC)

Item 3.3 Table 509: Revised to coordinate with the 2015 IFC (as amended). See comment 4 in full Assessment of Public Comments.

Changes to Part 4 (Amendments to the 2015 International Fire Code)

Item 4.1: Modified the definition of "Energy Storage System" to exclude electric motor vehicles and stand-alone car batteries. See comment 6 in full Assessment of Public Comments.

Item 4.3 Section 608.1: Revised to remove the reference to one- and two-family dwellings and townhouses. This was an error as these occupancies are regulated in the 2015 IRC, as amended.

Item 4.3 Table 608.1: Modified footnote "c" to indicate the lead-acid ESS installations in excess of 50 gallons of electrolyte have exceeded the threshold of Table 608.1. See comment 7 in full Assessment of Public Comments.

Item 4.3 Section 608.2: Modified to include a new exception to exclude outdoor stationary vehicle charging stations. See comment 9 in full Assessment of Public Comments.

Item 4.3 Section 608.9.2: Modified the section to indicate the Operation and Maintenance Manual shall be available to the fire code official for review. See comment 25 in full Assessment of Public Comments.

Item 4.3 Section 608.10.1: Modified the provision to allow approved UL 9540 equivalent listings to be acceptable. See comment 19 in full Assessment of Public Comments.

Item 4.3 Section 608.11.7: Modified the provision to clarify the intention of this provision to apply to ESS installed indoors. See comment 22 in full Assessment of Public Comments.

Item 4.3 Section 608.11.8: Modified the provision to require the signage to list the ESS rated capacity and that the contact person needs to have the technical knowledge to handle system faults. See comment 31.

Item 4.3 Section 608.12.1: Modified Exception 2 to remove the language "the fire code official may approve" and adding "shall be permitted." See comment 30 in full Assessment of Public Comments.

Item 4.3 Section 608.12.6: Modified the provision to limit the maximum enclosure size in cubic feet rather than linear dimensions. See comment 35 in full Assessment of Public Comments.

Item 4.3 Section 608.12.7: Modified the provision to add an exception for reduced clearances when large-scale fire testing is used. See comment 36 in full Assessment of Public Comments.

Item 4.3 Section 608.15.4: Revised to coordinate with the change resulting from revising 608.12.7.

Item 4.3 Section 608.18.1: Revised to remove the language referring to ESS being listed and labeled for residential use. See comment 2 in full Assessment of Public Comments.

Item 4.3 Section 608.18.7: Revised to coordinate with the change resulting from revising R327.8. See comment 3 in full Assessment of Public Comments.

**PROPOSED RULE MAKING
NO HEARING(S) SCHEDULED**

Real Estate Advertisements

I.D. No. DOS-42-19-00001-P

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following proposed rule:

Proposed Action: Amendment of section 175.25 of Title 19 NYCRR.

Statutory authority: Real Property Law, section 442-k

Subject: Real estate advertisements.

Purpose: To update current regulations concerning real estate advertisements.

Text of proposed rule: Section 175.25. Advertising

(a) Definitions.

(1) Advertising and advertisement mean promotion and solicitation related to licensed real estate activity, including but not limited to, advertising via mail telephone, websites, e-mail, electronic bulletin boards, business cards, signs, billboards, and flyers. Advertising and advertisement shall not include commentary made by a duly licensed real estate salesperson, real estate associate broker or real estate broker that is not related to promoting licensed real estate activity.

(2) Team means two or more persons, one of whom must be an associate real estate broker or real estate salesperson, associated with the same real estate brokerage who hold themselves out or operate as a team.

(3) Real estate brokerage means a real estate company represented by a real estate broker.

(4) Logo means a graphic mark used to identify a real estate broker, associate broker, salesperson or team, but not a photograph of a real estate broker, associate broker, salesperson or team contained in an advertisement.

(5) Property means real property or shares of stock in a cooperative corporation.

(b) Placement of advertisements.

(1) Only a real estate broker is permitted to place or cause to be published advertisements related to the sale or lease of property. Advertisements placed or caused to be published by an associate real estate broker, a real estate salesperson or a team for the sale or lease of property listed with or represented by a real estate broker are not permitted except where the property is listed with or represented by the real estate broker with whom the associate real estate broker, real estate salesperson or team placing the ad is associated and said real estate broker approved placement of the advertisement.

(2) Authorization

(i) No property shall be advertised unless the real estate broker has obtained authorization for such advertisement from the owner of the property or as hereinafter provided.

(ii) Real estate brokers shall not advertise property that is subject to an exclusive listing held by another real estate broker without the permission of the listing broker.

(iii) Proprietary information. Photographs of property that are posted on a real estate broker's website shall not be used or reproduced without written permission from the copyright holder of such photographs.

(c) Content of advertisements.

(1) Name of real estate broker. Advertisements shall indicate that the advertiser is a real estate broker or provide the name of the real estate broker or real estate brokerage and either:

(i) the full address of the real estate broker or real estate brokerage or,

(ii) the telephone number of the real estate broker or brokerage.

(2) Name of associated licensees. The advertisement may include the names of one or more associate real estate brokers or real estate salesper-

sons associated with the real estate broker or brokerage placing the advertisement. Where an advertisement includes the name of an associate broker, real estate salesperson or a team, the name of the real estate broker and/or real estate brokerage must also be printed in the advertisement.

(3) Nicknames. Real estate brokers, associate real estate brokers, and real estate salespersons shall advertise using the name under which said real estate broker, associate real estate broker or real estate salesperson is licensed with the Department of State. A nickname may be used in an advertisement provided that the full-licensed name is listed clearly and conspicuously.

(4) License type. Except as provided in subdivision (d) of this section, advertisements shall correctly and accurately state the type of license held by the real estate broker, associate real estate broker or real estate salesperson named in the advertisement. Licensees may abbreviate the type of license held, provided that such abbreviation is not misleading. The use of the titles, "sales associate", "licensed sales agent" or simply "broker" is prohibited. Real estate brokers, associate real estate brokers or real estate salespersons who have additional titles or designations are permitted to advertise such titles or designations.

(5) Contact information. An associate real estate broker, real estate salesperson or team may provide additional contact information, such as a post office box, in an advertisement.

(6) Home offices. A residence may be used as an office provided that it is properly licensed by the Department of State.

(7) Telephone numbers. Notwithstanding paragraph (1) of this subdivision, a real estate broker, associate broker, real estate salesperson or team may provide telephone numbers other than that of the brokerage in an advertisement, provided that the advertisement clearly identifies the type of such other telephone number as desk, home, cell phone, or otherwise.

(8) Logos. A real estate team, associate real estate broker or real estate salesperson may use a logo different from that of the real estate broker or real estate brokerage with whom they are associated, provided that the name or logo of the real estate broker or real estate brokerage is also printed in the advertisement.

(9) Property description. Advertisements shall include an honest and accurate description of the property to be sold or leased. All advertisements that state the advertised property is in the vicinity of a geographical area or territorial subdivision shall include as part of such advertisement the name of the geographical area or territorial subdivision in which such property is actually located. Use by real estate brokers, associate real estate brokers and real estate salespersons of a name to describe an area that would be misleading to the public is prohibited.

(10) Guaranteed Profits. Advertisements shall not guarantee future profits from any real estate activity.

(d) Additional requirements and exceptions.

(1) Classified Advertisements. Classified and multi-property advertisements shall indicate that the advertiser is a real estate broker or brokerage; or provide the name of the real estate broker or real estate brokerage. Classified and multi-property advertisements may omit the license type of any associate real estate broker or real estate salesperson named in the advertisement.

(2) Business cards. Notwithstanding subdivision (c) of this section, business cards must contain the business address of the licensee, license type, and the name of the real estate broker or real estate brokerage with whom the associate real estate broker or real estate salesperson is associated. All business cards must also contain the office telephone number for the associate real estate broker, real estate salesperson or team.

(3) Web-based advertising.

(i) Websites created and maintained by associate real estate brokers, real estate salespersons and teams are permitted, provided that said associate real estate brokers, real estate salespersons and teams are duly authorized by their supervising real estate broker to create and maintain such websites and such websites remain subject to the supervision of the real estate broker with whom the licensees are associated while the website is live.

(ii) Every page of such a website, including any page that displays multiple properties or property search results, shall include the information required by these rules and regulations. In addition, a link to the broker or brokerage website with whom the associate broker, salesperson or team is associated is required on the homepage of the associate broker, salesperson or team website unless the broker or brokerage does not have a website.

(4) E-mail. An initial e-mail from a real estate broker, associate real estate broker, real estate salesperson or team to a client or potential client shall provide the information required by these rules and regulations. Such information may be omitted from subsequent e-mail communications to the same recipient.

(5) For-Sale Signs. Notwithstanding paragraph (c)(1) of this section, unless otherwise prohibited by local law, any property listed through a real

estate broker must be advertised as such, and any signage placed upon such property soliciting the sale or lease of the property must identify the representative broker or brokerage.

(6) Advertisements referencing property not listed with broker. [Any advertisement that references or includes information about a property that is not listed with the advertising broker or was not sold by the advertising broker shall prominently display the following disclaimer: "This advertisement does not suggest that the broker has a listing in this property or properties or that any property is currently available." Such advertisement:

(i) shall not suggest, directly or indirectly, that the advertising broker was involved in the transaction; and

(ii) shall not refer to property currently listed with another broker absent consent provided pursuant to subparagraph (b)(2)(ii) of this section.]

(i) *No real estate broker, associate real estate broker, or real estate salesperson shall advertise in any manner or make reference to in any advertisement property that is subject to an exclusive listing agreement of another broker, without authorization from the exclusive listing broker. Such advertisements must clearly and conspicuously disclose the name of the exclusive listing broker immediately after one of the following phrases: "Listing Provided by [insert name of the exclusive listing broker]", "Listing by [insert name of exclusive listing broker]", "Listing Broker Contact [insert name of exclusive listing broker]", "Listing of [insert name of exclusive listing broker]", "Listing Provided Courtesy of [insert name of exclusive listing broker]", "Listing Courtesy of [insert name of exclusive listing broker]", or "Listing Agent Contact [insert name of exclusive listing broker]"*.

(ii) *Any real estate broker, associate real estate broker, or real estate salesperson that pays a third-party for advertising involving a property that is subject to an exclusive listing agreement of another broker must, in addition to the requirements in subparagraph (i), include in any advertisement that provides the advertising broker's name words to disclose that the advertisement is a paid advertisement, using at a minimum the word "advertisement" immediately following the real estate broker, associate real estate broker, or real estate salesperson's name.*

(e) Teams.

(1) Team name. Team names shall either:

(i) include the full licensed name of the real estate brokers, associate brokers or real estate salespersons who are part of said team; or

(ii) if the names are not included, the team name must be immediately followed by "at/of [full name of the broker/brokerage]."

Team names shall use the term "team." The use of any other terms besides "team," such as "associate," "realty" or "group" is prohibited. The use of the name of a non-licensed individual in a team name is prohibited. [For 12 months after the adoption of this regulation, teams that have changed their name to comply with this provision shall be entitled to state in advertisements under their new name that they were 'formerly known as' their prior team name.]

(2) Unlicensed team members. If any unlicensed individuals are named in advertising for a team, the advertisement must clearly and conspicuously state which individuals are real estate licensees and which ones are not.

Text of proposed rule and any required statements and analyses may be obtained from: David Mossberg, Esq., Dept. of State, 123 William Street, 20th Floor, (212) 417-2063, email: david.mossberg@dos.ny.gov

Data, views or arguments may be submitted to: Same as above.

Public comment will be received until: 60 days after publication of this notice.

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

Regulatory Impact Statement

1. Statutory Authority:

Article 12-A of the New York Real Property Law (RPL) prescribes requirements for individuals and business entities to act as real estate brokers and real estate salespeople. RPL § 442-k(1) authorizes the Department of State (Department), in conjunction with the New York State Real Estate Board (Board), to promulgate regulations to administer and effectuate the purposes of Article 12-A. Accordingly, the Department and the Board are proposing the instant rulemaking to amend section 175.25 of Title 19 NYCRR.

2. Legislative Objectives:

Article 12-A of the RPL requires the Department to license and regulate real estate licensees. It has long been recognized that Article 12-A was enacted, in part, to "protect the public from inept, inexperienced or dishonest persons who might perpetrate or aid in the perpetration of frauds and to establish protective or qualifying standards to that end." (People v Sickinger, 79 Misc 2d 572, 574 [Crim Ct, New York County 1974]). The rulemaking advances this legislative intent by requiring licensees to advertise listings in a more transparent and consistent manner.

3. Needs and Benefits:

When a licensee references property in an advertisement that is subject to an exclusive listing of another broker, the current regulation requires that the advertisement contain the following statement: "This advertisement does not suggest that the broker has a listing in this property or properties or that any property is currently available." 19 NYCRR § 175.25(d)(6). The Department and Board have observed that this statement does not appear when required on many buyer lead generation websites (both broker owned as well as third party platforms). Many websites do not adequately disclose to the consumer who the exclusive agent is, and when there is a reference to the listing broker, the disclosure is not clear enough. This proposal advances an important consumer need by ensuring that when any advertisement is placed on either a licensee owned website or a third party lead generation page, including on thumbnail pages, there is a clear and conspicuous reference to the actual listing broker.

The proposal also deletes a grace period that is no longer applicable.

4. Costs:

a. Costs to Regulated Parties:

The Department anticipates that there will be no significant costs resulting from the implementation of the rule to individual licensees. Prior to proposing this rulemaking, the Department engaged the New York State Association of Realtors ("NYSAR"), the Real Estate Board of New York Inc. ("REBNY"), and the Zillow Group Inc. ("Zillow") for feedback regarding possible implementation. The Department received results from surveys returned by approximately 2,100 Real Estate Brokers and Associate Brokers/Salespersons. 62% of Real Estate Brokers responding to a question on webpage updates indicated that their webpage is updated at least monthly with new information not related to specific properties. 94% of all licensees responding to a question on cost indicated that the cost for an average broker to make a similar change would be less than \$500.00.

b. Costs to the Department of State:

The rule does not impose any costs to the agency, the state or local governments for the implementation and continuation of the rule. Existing staff will answer any questions about the regulatory changes and investigate and enforce compliance with the proposed rules.

5. Local Government Mandates:

The rule does not impose any program, service, duty or responsibility upon any county, city, town, village, school district or other special district.

6. Paperwork:

The rule amends the current disclosure text required on real estate advertisements when a licensee refers to property that is subject to an exclusive listing agreement of another real estate broker.

7. Duplication:

This rule does not duplicate, overlap or conflict with any other state or federal requirement.

8. Alternatives:

The Department considered other approved text formats and, after consulting, in part, with the Division of Consumer Protection, found that other variations did not provide enough consumer clarity or transparency. The Department also considered limiting the list of acceptable disclosure terms but determined that providing multiple variations would potentially lead to more compliance from the industry.

9. Federal Standards:

There are no federal standards relating to this rule. Consequently, this rule does not exceed any existing federal standard.

10. Compliance Schedule:

The rule will be effective 180 days after publication of the Notice of Adoption to allow licensees and other platform providers that offer services to licensees sufficient time to come into compliance with the rule.

Regulatory Flexibility Analysis

1. Effect of rule:

The rule will apply to all licensed real estate brokers, associate brokers, and salespeople that advertise related to licensed real estate activity. The rule changes the current disclosure text and placement when a licensee references property that is exclusively listed by another broker. The rule also removes a grace period that is no longer applicable.

2. Compliance requirements:

Licensees that advertise related to licensed real estate activity will be required to ensure that any advertisement, whether placed on their own website or on a third party lead generation page, contains appropriate disclosures in a clear and conspicuous manner.

The rule does not impose any compliance requirements on local governments.

3. Professional services:

It is expected that some professional services (e.g., website design, information technology) will be required to add new disclosures to real estate advertisement pages, including thumbnail or search result pages.

The rule does not impose any compliance requirements on local governments.

4. Compliance costs:

The Department anticipates that there will be no significant costs resulting from the implementation of the rule to individual licensees. Prior to proposing this rulemaking, the Department engaged the New York State Association of Realtors ("NYSAR"), the Real Estate Board of New York Inc. ("REBNY"), and the Zillow Group Inc. ("Zillow") for feedback regarding possible implementation. The Department received results from surveys returned by approximately 2,100 Real Estate Brokers and Associate Brokers/Salespersons. 62% of Real Estate Brokers responding to a question on webpage updates indicated that their webpage is updated at least monthly with new information not related to specific properties. 94% of all licensees responding to a question on cost indicated that the cost for an average broker to make a similar change would be less than \$500.00.

5. Economic and technological feasibility:

The purpose of the rule is to update acceptable disclosure text and placement of such text in the context of specific types of real estate advertisements. These types of advertisements already exist, therefore it will be technologically feasible for licensees to comply with the proposed rule by changing text or placement. Additionally, based on a survey provided, the Department believes that it will not be cost prohibitive to comply and is economically feasible.

Local government will not need to comply with this rule.

6. Minimizing adverse impact:

The rulemaking will not result in significant increased costs to licensees. Based on a sample survey conducted, many licensees already update their websites on a frequent basis and the cost associated with these changes are not expected to be significant. Additionally, the Department believes that once the appropriate website design is created future listings will be able to rely on the updated coding, thereby minimizing future economic impact.

7. Small business participation:

Prior to proposing the rule, the Department had numerous discussions with Zillow, NYSAR, and REBNY regarding potential impact. These conversations were designed to illicit feedback from major industry representatives on the new disclosures. The rulemaking was also discussed at an open meeting of the New York Real Estate Board on May 30, 2019, which was open to the public. The Department anticipates additional participation following publication of the Notice of Proposed Rule Making.

Rural Area Flexibility Analysis

1. Types and estimated numbers of rural areas:

The rule will apply to all licensed real estate brokers, associate brokers, and salespeople that advertise related to licensed real estate activity operating in the State of New York. Individuals and entities licensed pursuant to Article 12-A of the New York Real Property Law ("NY RPL") operate throughout the state including both rural and urban areas.

2. Reporting, recordkeeping and other compliance requirements; and professional services:

It is expected that some professional services (e.g., website design, information technology) will be required to add new disclosures to real estate advertisement pages, including thumbnail or search result pages. The Department believes that these requirements will be the same for licensees operating in rural areas as those operating in urban areas.

3. Costs:

The Department anticipates that there will be no significant costs resulting from the implementation of the rule to individual licensees. Prior to proposing this rulemaking, the Department engaged the New York State Association of Realtors ("NYSAR"), the Real Estate Board of New York Inc. ("REBNY"), and the Zillow Group Inc. ("Zillow") for feedback regarding possible implementation. The Department received results from surveys returned by approximately 2,100 Real Estate Brokers and Associate Brokers/Salespersons. 62% of Real Estate Brokers responding to a question on webpage updates indicated that their webpage is updated at least monthly with new information not related to specific properties. 94% of all licensees responding to a question on cost indicated that the cost for an average broker to make a similar change would be less than \$500.00.

4. Minimizing adverse impact:

The rulemaking will not result in significant increased costs to licensees. Based on a sample survey conducted, many licensees already update their websites on a frequent basis and the cost associated with these changes are not expected to be significant. Additionally, the Department believes that once the appropriate website design is created future listings will be able to rely on the updated coding, thereby minimizing future economic impact.

5. Rural area participation:

Prior to proposing the rule, the Department had numerous discussions with Zillow, NYSAR, and REBNY regarding potential impact. These conversations were designed to illicit feedback from major industry representatives on the new disclosures; some members of which operate in rural areas. The Department anticipates additional participation following publication of the Notice of Proposed Rule Making.

Job Impact Statement

A Job Impact Statement is not required for the proposed regulatory amendments. It is apparent from the nature and the purpose of the proposed

regulatory amendments that they will not have a substantial adverse impact on jobs and employment opportunities in either the public or private sectors. The current regulation already specifies a disclosure for certain types of real estate advertisements and this rulemaking merely amends the acceptable text and placement of such disclosure.

State University of New York

NOTICE OF ADOPTION

Proposed Amendments to Appointment of Employees and Leave of Absence for Employees in the Professional Service

I.D. No. SUN-15-19-00007-A

Filing No. 850

Filing Date: 2019-09-27

Effective Date: 2019-10-16

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 335.4(d) and 335.8(c) of Title 8 NYCRR.

Statutory authority: Education Law, sections 353 and 355

Subject: Proposed amendments to Appointment of Employees and Leave of Absence for Employees in the Professional Service.

Purpose: Allow a temporary cessation of service credit during birth/adoption/foster care placement of child and update leave accruals.

Text or summary was published in the April 10, 2019 issue of the Register, I.D. No. SUN-15-19-00007-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Assessment of Public Comment

The agency received no public comment.

NOTICE OF ADOPTION

State Basic Financial Assistance for Operating Expenses of Community Colleges Under the Program of SUNY and CUNY

I.D. No. SUN-30-19-00001-A

Filing No. 849

Filing Date: 2019-09-27

Effective Date: 2019-10-16

PURSUANT TO THE PROVISIONS OF THE State Administrative Procedure Act, NOTICE is hereby given of the following action:

Action taken: Amendment of sections 602.8(c) and 602.13 of Title 8 NYCRR.

Statutory authority: Education Law, sections 355(1)(c), 6304(1)(b); L. 2018, ch. 53

Subject: State basic financial assistance for operating expenses of community colleges under the program of SUNY and CUNY.

Purpose: Modify limitations formula for basic State financial assistance and institute an operating support "floor".

Text or summary was published in the July 24, 2019 issue of the Register, I.D. No. SUN-30-19-00001-P.

Final rule as compared with last published rule: No changes.

Text of rule and any required statements and analyses may be obtained from: Lisa S. Campo, State University of New York, State University Plaza, Albany, NY 12246, (518) 320-1400, email: Lisa.Campo@SUNY.edu

Assessment of Public Comment

The agency received no public comment.