



THE CITY OF NEW YORK
OFFICE OF THE COMPTROLLER

Notice of Public Hearing and Opportunity to Comment on Proposed Regulations

What are we proposing? The New York City Comptroller's Office (Comptroller) proposes changes to Chapter 2 of Title 44 of the rules of the city of New York. The rules will be repealed, amended, and supplemented in order to comprehensively address Comptroller investigations, hearings, reports and recommendations, and determinations and orders as authorized by various laws, including New York state labor law articles eight and nine; New York state real property tax law sections 421-a (8), (16)(c), (16)(h), and (17)(g); and New York city administrative code sections 6-109 and 19-142.

When and where is the Hearing? The Comptroller will hold a public hearing on the proposed regulations. The public hearing will take place from 11:30 AM to 1:00 PM on January 5, 2018. The hearing will be in the Comptroller's offices in the David N. Dinkins Municipal Building at One Centre Street, Room 1117D, New York, NY 10007.

How do I comment on the proposed regulations? Anyone can comment on the proposed regulations by:

- **Website.** You can submit comments to the Comptroller through the NYC rules Web site at <http://rules.cityofnewyork.us>.
- **Email.** You can email written comments to laborlaw@comptroller.nyc.gov.
- **Mail.** You can mail written comments to Constantine Kokkoris, Assistant Comptroller for Labor Law, David N. Dinkins Municipal Building, One Centre Street, Room 651, New York, New York 10007.
- **Fax.** You can fax written comments to the Comptroller, (212) 815-8595, Attention: Constantine Kokkoris.
- **Hearing.** You can speak at the public hearing. Anyone who wants to comment on the proposed regulations at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 669-4443. You can also sign up in the hearing room before the hearing begins on January 5, 2018. You can speak for up to three minutes.

Is there a deadline to submit written comments? All written comments must be **received before the close of business on January 5, 2018** in accordance with section 1043(b) of the city Charter.

What if I need assistance to participate in the Hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may contact us either by email at laborlaw@comptroller.nyc.gov, by telephone at 212-669-4443, or by mail at the address given above. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by Tuesday, January 2, 2018.

This location has the following accessibility option(s) available: Wheelchair accessible. Please contact us either by email at laborlaw@comptroller.nyc.gov, by telephone at 212-669-4443, or by mail at the address given above **by Tuesday, January 2** if you need an interpreter, whether sign language or a particular spoken language.

Can I review the comments made on the proposed regulations? You can review the comments made online on the proposed regulations by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, copies of all comments submitted online, copies of all written comments, and an audiotape of oral comments concerning the proposed regulations will be available to the public at the David N. Dinkins Municipal Building, One Centre Street, Room 651, New York, NY from 10:00 AM to 4:00 PM on weekdays.

What authorizes the Comptroller to make these regulations? New York state labor law articles eight and nine; New York state real property tax law sections 421-a (8), (16), and (17); and New York city administrative code sections 6-109 and 19-142.

Where can I find the Comptroller regulations? The Comptroller's regulations are in title 44 of the rules of the city of New York.

What laws govern the rulemaking process? The Comptroller must meet the requirements of section 1043 of the city Charter when creating or changing regulations. This notice is made according to the requirements of section 1043 of the city Charter.

Statement of Basis and Purpose of Proposed Regulations

Various state and local laws vest the New York City Comptroller with authority to set prevailing wage and supplement rates, and to enforce the provisions of the above-mentioned laws by conducting investigations, issuing reports with recommendations or orders, in various situations. Over the years, as additional authority has been given to the Comptroller in this regard, it has become necessary and appropriate to update the Comptroller's procedural rules. The laws that vest authority in the Comptroller are detailed below.

- New York state labor law article eight requires payment of prevailing wages and supplements to construction workers on New York city public works projects.
- New York state labor law article nine requires payment of prevailing wages and supplements to building service employees on building service contracts with city agencies.

- New York state real property tax law sections 421-a (8), (16)(h), and 17(g) require payment of prevailing wages to building service employees in certain buildings that receive real estate tax exemptions under that law. New York state real property tax law section 421-a (16)(c) requires payment of an average minimum hourly wage to construction workers on certain projects that are entitled to real estate tax exemptions under that law.
- New York city administrative code section 6-109 requires payment of prevailing wages and supplements to workers on certain service contracts with city agencies and requires payment of living wages and supplements to workers on certain service contracts with city agencies.
- New York city administrative code section 19-142 requires payment of prevailing wages and supplements to workers on New York city street excavations.

These proposed regulations set forth a clear and cohesive procedure for setting prevailing wage and supplement rates, and investigating and issuing recommendations or orders in cases brought under the above-mentioned laws. The comprehensiveness of the rules provides enhanced guidance to employers, employees, and building owners covered by these laws.

Section 1 amends the heading of chapter 2 of title 44 of the rules of the city of New York to clarify that the rules are inclusive of Comptroller activity under various laws, and not limited to labor law. Section 2 amends section 2-01 of chapter 2 of title 44 to expand the description of applicable laws.

Section 3 repeals and replaces section 2-02 of chapter 2 of title 44 to address the need for definitions of additional terms. Section 4 repeals and replaces section 2-03 of chapter 2 of title 44 to set forth the Comptroller’s procedures for determining Prevailing Wage and Supplements and how the determinations may be challenged.

Section 5 repeals and replaces section 2-04 of chapter 2 of title 44 to explain the extent of the obligation to pay prevailing wages and supplements, and record-keeping mandates for covered employers.

Section 6 repeals and replaces section 2-05 of chapter 2 of title 44 to explain how compliance investigations of covered employers are commenced, the look-back period, and the process and resolution of such investigations. The new section 2-05 now includes the parameters for penalties that may be assessed in a settlement with a covered employer in which the violation was committed by a subcontractor.

Section 7 amends chapter 2 of title 44 to add a new section 2-06 which describes the rules for hearings, and the interactions between the Comptroller, other agencies, and the office of administrative trials and hearings.

New text is underlined.

[Deleted material is in brackets.]

“Shall and “must” denote mandatory requirements and may be used interchangeably in the rules of this agency, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. The heading of chapter 2 of title 44 of the rules of the city of New York is amended to read as follows:

Comptroller's [Labor Law Hearing Practice and Procedure] Prevailing Wage Law Regulations

§ 2. Section 2-01 of chapter 2 of title 44 of the rules of the city of New York is amended to read as follows:

§ 2-01 Applicability.

[These rules shall apply to hearings conducted pursuant to the provisions of New York State labor law sections 220 et seq. and sections 230 et seq.]

These regulations apply to Comptroller investigations, hearings, reports and recommendations, and determinations and orders under New York state labor law articles eight and nine, New York state real property tax law section 421-a (16)(c) and New York city administrative code section 19-142; Comptroller investigations, hearings and reports and recommendations made to the New York city department of housing preservation and development under New York state real property tax law sections 421-a (8), (16)(h) and (17)(g); and to Comptroller investigations, hearings and reports and recommendations made to city agencies under New York city administrative code section 6-109.

§ 3. Section 2-02 of chapter 2 of title 44 of the rules of the city of New York is repealed and replaced to read as follows:

§2-02 Definitions

As used in this chapter, the following terms have the following meanings. Capitalized terms that are not specifically defined in this chapter have the meanings set forth in the laws designated in section 2-01.

Bona Fide Fringe Benefit. "Bona Fide Fringe Benefit" means any payment made by a Covered Employer, other than wages, that directly benefits a Covered Worker, including but not limited to paid vacation or sick leave, medical or dental insurance, retirement accounts or annuities and apprenticeship training.

Bureau. "Bureau" means the comptroller's bureau of labor law.

Certified Payroll Report. "Certified Payroll Report" means a weekly payroll record in the form provided on the comptroller's website.

Complaining Worker. "Complaining Worker" means a worker who has filed a written complaint for the underpayment of Wages and Supplements with the Bureau.

Comptroller. "Comptroller" means the city of New York comptroller or the comptroller's designee.

Covered Employer. "Covered Employer" means any person or entity subject to liability for Wages and Supplements under labor law articles eight or nine on public works projects or building service contracts for the city of New York by and through its agencies or public benefit corporations; or

under real property tax law sections 421-a (8), (16)(c), (16)(h), or 17(g); or New York city administrative code sections 6-109 or 19-142.

Covered Work. “Covered Work” means any work that is subject to the requirements of articles eight or nine of the labor law on public works projects or building service contracts for the city of New York by and through its agencies or public benefit corporations; or subject to the requirements of real property tax law sections 421-a (8), (16)(c), (16)(h) or (17)(g); or New York city administrative code sections 6-109 or 19-142. “Covered Work” does not include purely supervisory work, or work that is not performed on or about the site of the project, contract or building in question.

Covered Worker. “Covered Worker” means any person who performs Covered Work.

Daily Sign-In Log. “Daily Sign-In Log” means a daily attendance record in the form provided on the comptroller’s website.

Document. “Document” means records in any form or electronically stored information, including writings, graphs, charts and other data or data compilations stored in any medium.

Prevailing Wages and/or Supplements. “Prevailing Wages and Supplements” or “Prevailing Wages” or “Prevailing Supplements” mean Prevailing Wages and/or Supplements as defined in labor law articles eight and nine; real property tax law sections 421-a (8), (16)(h) or (17)(g); and New York city administrative code sections 6-109(a) and 19-142.

Wages and Supplements. “Wages and Supplements” means either Prevailing Wages and/or Supplements or Living Wage and/or Health Benefit Supplement Rate as defined in New York city administrative code section 6-109(a), or Minimum Average Hourly Wage as defined in real property tax law section 421-a (16)(c).

Worker Notice Poster. “Worker Notice Poster” means a notice in the form provided on the comptroller’s website detailing the Wages and Supplements due for Covered Work performed on a particular project, contract or building.

§ 4. Section 2-03 of Chapter 2 of Title 44 of the rules of the city of New York is repealed and replaced to read as follows:

§ 2-03 Annual Prevailing Wage and Supplement Determinations

(a) Prevailing Wage Schedules. On June 1 of each year, the Bureau preliminarily determines and publishes Prevailing Wage and Supplement rates for each trade classification. The Bureau then considers any comments from interested persons asserting errors or omissions in the preliminary Prevailing Wage and Supplement rates if such comments are submitted in writing on or before June 15 of the same year. On July 1 of each year, the Bureau determines and publishes the Prevailing Wage and Supplement rates for each trade classification effective from the date of publication until June 30 of the following year. In January of each year, the Bureau may publish updated Prevailing Wage and Supplement rates for each trade classification, without a comment period, effective from the date of publication until June 30 of the same year.

(b) Standard for Prevailing Wage and Supplement Rates. (1) The Prevailing Wage and Supplement rates for each trade classification are based upon the rate of wage paid and supplements provided by virtue of a collective bargaining agreement between a bona fide labor organization and employers of the private sector performing public or private work, provided the employers party to the agreement employ at least 30 percent of the workers in the same trade or occupation in the city of New York. If it is determined that less than 30 percent of the workers in a particular trade or occupation in the city of New York receive a collectively bargained rate of wage and supplements, then the average wage paid and supplements provided to such workers in the same trade or occupation in the city of New York during the prior year is the Prevailing Wage and Supplement rate.

(2) For all Prevailing Wage and Supplement rates other than those governed by labor law article eight, the Bureau considers: (i) wage and fringe benefit data from the Occupational Employment Statistics survey and the National Compensation survey; (ii) classification data from the Standard Occupational Classification System and the North American Industry Classification System; as well as (iii) any other competent evidence submitted by an interested person before adopting rates from a collective bargaining agreement.

(c) Challenges to Prevailing Wage and Supplement Determinations. An interested person that seeks to challenge an annual determination of Prevailing Wage and Supplement rates by the Bureau for a trade classification must request a redetermination by the Bureau for that trade classification in writing on or before March 1 in order for the redetermination to be effective on July 1 of that year. The request for redetermination must include competent evidence that the Bureau's prior annual determination of Prevailing Wage and Supplement rates for that trade classification was erroneous in accordance with the standard set forth in section 2-03(b).

(d) Inability to Determine or Invalidity of Prevailing Wage or Supplement Rates. If the Bureau is unable to determine or update the Prevailing Wage or Supplement rates for a trade classification in time for publication in any schedule, for any reason, such as the failure to obtain information concerning collective bargaining agreements, or if the Prevailing Wage or Supplement rates for any trade classification in any schedule are declared invalid by a court of competent jurisdiction, then the last valid Prevailing Wage or Supplement rate determination for that trade classification remains the Prevailing Wage and Supplement rate for that schedule.

§ 5. Section 2-04 of chapter 2 of title 44 of the rules of the city of New York is repealed and replaced to read as follows:

§2-04 Wage and Supplement requirements and recordkeeping

(a) Applicable rates. The Prevailing Wage and Supplement rates that are required for Covered Work are the rates that are published and effective as set forth in section 2-03(a) at the time that the Covered Work is performed.

(b) Supplement rates. (1) The obligation to pay Prevailing Supplements may be discharged by either the provision of (i) Bona Fide Fringe Benefits that cost no less than the Prevailing Supplement rate, (ii) a supplement to the hourly wage in an amount no less than the Prevailing

Supplement rate, or (iii) a combination of Bona Fide Fringe Benefits and wage supplements that, collectively, costs no less than the Prevailing Supplement rate.

(2) The obligation to pay Prevailing Wages cannot be reduced or discharged through the provision of Bona Fide Fringe Benefits that cost more than the Prevailing Supplement rate.

(3) The hourly cost of a Bona Fide Fringe Benefit provided by a Covered Employer to a Covered Worker under section 2-04(b)(1) must be determined by dividing the total annual cost or contribution for providing such Bona Fide Fringe Benefit by the total annual hours worked by that worker on both private and public work.

(c) Required records. (1) Covered Employers must maintain Documents consisting of the following records for six years after Covered Work is performed, must preserve the records immediately when notified by the Bureau of a compliance investigation, and must promptly produce true copies of all such records upon demand by the Bureau:

i) Contracts and subcontracts for Covered Work;

ii) Certified Payroll Reports for Covered Work;

iii) Daily Sign-In Logs for Covered Work;

iv) Weekly payroll records, registers or journals required by labor law section 195;

v) All documents and records concerning the cost of Bona Fide Fringe Benefits provided to Covered Workers, including but not limited to invoices, account statements, benefits remittance reports and benefits plan descriptions; and

vi) All federal, state and city employment tax returns and filings, including, but not limited to, quarterly combined withholding, wage reporting, and unemployment insurance returns including forms NYS-45; employers' quarterly federal tax returns including forms 941; wage and tax statements including forms W-2; and miscellaneous income statements including form 1099.

(2) Each Covered Employer must maintain one weekly Certified Payroll Report for each project, contract or building on which it performs Covered Work. The Certified Payroll Report must set forth the names, addresses and trade classifications for all Covered Workers employed by the Covered Employer on the project, contract or building, as well as the hours and days of Covered Work, the hourly wage and supplement rates, and the weekly gross and net pay amounts for each Covered Worker. The Certified Payroll Report must be signed and affirmed to be true under penalties of perjury by an officer or principal of the Covered Employer.

(3) Each Covered Employer must maintain one Daily Sign-In Log for each project, contract or building on which it performs Covered Work. The Daily Sign-In Log must set forth the daily start and end times of Covered Work for and be signed by each Covered Worker employed by the Covered Employer on the project, contract or building.

(4) Each Covered Employer must post a Worker Notice Poster in a prominent and accessible place at each project, contract or building on which it performs Covered Work. The Worker Notice

Poster must set forth the Wages and Supplements due for the Covered Work performed on that project, contract or building.

§ 6. Section 2-05 of chapter 2 of title 44 of the rules of the city of New York is repealed and replaced to read as follows:

§ 2-05 Compliance investigations, settlements, interest and penalties

(a) The Bureau investigates and determines underpayments of Prevailing Wages and Supplements by Covered Employers under labor law articles eight and nine, and Covered Employers under real property tax law sections 421-a (8), (16)(h), and (17)(g) and New York city administrative code section 19-142 for work performed within the two-year period immediately preceding the earlier of: (i) the commencement of the compliance investigation by the Bureau, or (ii) the filing of a written complaint by a Covered Worker with the Bureau or the New York State Department of Labor.

(b) The Bureau investigates and determines underpayments of Wages and Supplements by Covered Employers under New York city administrative code section 6-109 for Covered Work performed within the three-year period immediately preceding the earlier of: (i) the commencement of the compliance investigation by the Bureau, or (ii) the filing of a written complaint by a Covered Worker with the Bureau. Compliance investigations concerning underpayment of Prevailing Wages and Supplements for Building Service Employees that are also covered by labor law article nine are governed by the provisions of section 2-05(a).

(c) The Bureau investigates and determines underpayments of Wages and Supplements by Covered Employers under real property tax law section 421-a (16)(c) for Covered Work on a project upon the written complaint of a Covered Worker or upon the Bureau's own initiative if unpaid wages appear to be due, provided such written complaint is filed or such compliance investigation is commenced within one year of the Completion Date of the project.

(d) The Bureau may decline to investigate and determine underpayments of Wages and Supplements if the Complaining Worker or the Complaining Worker's representative has participated in any other legal proceeding to recover the same unpaid Wages and Supplements that are the subject of the complaint.

(e) A private settlement between a Covered Worker and a Covered Employer, or the execution of a release by a Covered Worker in favor of a Covered Employer, does not preclude investigation and determination as to underpayment of Wages and Supplements by the Bureau.

(f) The Bureau does not disclose the names or identities of Complaining Workers unless necessary for settlement or hearing.

(g) Covered Employers under investigation by the Comptroller's Office have the right to be represented by counsel at their own expense. Counsel must file a written notice of appearance with the Bureau. All subsequent notices, documents or other communications are sent to such counsel and deemed service upon the Covered Employer.

(h) The Bureau may resolve a compliance investigation by stipulation of settlement with a Covered Employer, which includes: (i) findings and assessments as to the underpayment of Wages and Supplements, (ii) findings as to the willfulness of the violation, (iii) assessments of interest and, (iv) in cases brought under labor law articles eight and nine and New York city administrative code sections 6-109 and 19-142 only, assessment of a civil penalty.

(i) Stipulations of settlement resolving compliance investigations under labor law articles eight and nine and real property tax law section 421-a (16)(c) are endorsed by the Comptroller and have the effect of an order of the Fiscal Officer under those laws. Stipulations of settlement resolving compliance investigations under real property tax law sections 421-a (8), (16)(h) and (17)(g) must be endorsed by the New York city department of housing preservation and development in order to have final effect under that statute. Stipulations of settlement resolving compliance investigations under New York city administrative code section 6-109 must be endorsed by the contracting agency in order to have final effect under that statute.

(j) Interest. (1) The Bureau assesses interest due on the underpayment of Wages and Supplements from the date of underpayment, and such interest cannot be waived by stipulation of settlement.

(2) Upon resolution of an investigation by stipulation of settlement, the Bureau may reduce the rate of interest on the underpayment of Wages and Supplements from the rate of interest then in effect as prescribed by the superintendent of banks under section fourteen-a of the banking law per annum to a rate of interest not less than six percent, based upon due consideration of the size of the Covered Employer's business, the good faith of the Covered Employer, the gravity of the violation, the history of previous violations and the failure to comply with recordkeeping or other non-wage requirements.

(k) Civil Penalty. (1) In cases brought under labor law articles eight and nine and New York city administrative code sections 6-109 and 19-142, the Bureau assesses any civil penalty in accordance with the criteria set forth in labor law sections 220(8), 220-b (2)(d) and 235(5)(b) and New York city administrative code section 6-109(e)(1)(a).

(2) The Bureau may waive the civil penalty for a Covered Employer entering into a stipulation of settlement for underpayments of Prevailing Wages and Supplements by its subcontractor where there is uncontroverted evidence of all of the following:

(i) the Covered Employer or its agent provided the subcontractor with the applicable Prevailing Wage schedule for the project or contract;

(ii) the Covered Employer made a good faith effort to ensure that the subcontractor complied with all Prevailing Wage and Supplement requirements, including but not limited to requesting and reviewing Certified Payroll Reports;

(iii) the subcontractor cannot be located, despite the Covered Employer having made a good faith attempt to locate said subcontractor, or the subcontractor has filed for bankruptcy protection, or the subcontractor is no longer in business;

(iv) the Covered Employer has paid the subcontractor in full in accordance with the terms of its subcontract agreement;

(v) the Covered Employer has fully cooperated, in a timely manner, with the Bureau's compliance investigation; and

(vi) in all likelihood, the Covered Employer will be unable to receive indemnification from the subcontractor for the restitution the Covered Employer has paid.

(l) The Bureau sends written notice to a Complaining Worker or the Complaining Worker's representative upon administrative closure of a compliance investigation. This notice of a final determination, binding on the Complaining Worker, commences any applicable time limits under article 78 of the New York state civil practice law and rules. If the Covered Employer under investigation has been notified of a compliance investigation, the Bureau sends written notice of administrative closure to the Covered Employer.

§ 7. Chapter 2 of Title 44 of the rules of the city of New York is amended to add a new section 2-06 to read as follows:

§2-06 Hearings, Reports and Recommendations, Determinations and Orders.

(a) Designation of office of administrative trials and hearings. All hearings required by New York labor law articles eight and nine; real property tax law sections 421-a (8), (16)(c), (16)(h) and (17)(g); and New York city administrative code sections 6-109 and 19-142 are held by the office of administrative trials and hearings trials division.

(b) The rules of practice of section one of title 48 of the rules of the city of New York apply to all hearings held in accordance with section 2-06(a), but the following rules are not applicable: section 1-33 concerning discovery and section 51.1 concerning the decision made on the record.

(c) Discovery. Each party must provide to all other parties, no later than ten business days before trial: (i) the names of all witnesses the party expects to present at trial, (ii) copies of all Documents or other exhibits the party expects to introduce at trial, (iii) copies of all written statements provided by each Complaining Worker and (iv) copies of all written statements provided by each Covered Employer that is a party to the hearing. No other discovery between parties is permitted.

(d) Subpoenas. The Bureau may issue subpoenas as authorized by labor law articles eight and nine; real property tax law sections 421-a (8), (16), and (17); and New York city administrative code section 6-109 without application to the administrative law judge.

(e) Evidence at the Trial. (1) If a Covered Employer failed to keep accurate records as required by section 2-04(c), the Bureau is permitted to calculate underpayments of Wages and Supplements due to Covered Workers by using the best available evidence and the burden shifts to the Covered Employer to negate the reasonableness of the Bureau's calculations. In such case, the amount and extent of underpayment is a matter of reasonable inference and may be based upon the testimony of Covered Workers.

(2) If a Covered Employer fails to produce Documents or records requested in writing after receiving written notice of the Bureau's intent to preclude such documents or records with opportunity to cure during the compliance investigation, the Covered Employer is precluded from introducing such Documents or records at trial. The preclusion of Documents or records required

by section 2-04(c) at trial results in a finding that the Covered Employer failed to keep accurate records in accordance with section 2-06(e)(1).

(3) All parties are precluded from introducing any testimonial, documentary or other evidence concerning the immigration status of Covered Workers, including but not limited to information about their social security or individual taxpayer identification numbers.

(f) Report and recommendation. (1) Within a reasonable time after the conclusion of the hearings, the administrative law judge issues a written report, including proposed findings of fact and conclusions of law, and recommendation as to determinations and orders.

(2) The findings of fact are based exclusively upon the record as a whole, including facts of which official notice has been taken.

(3) An administrative law judge may, on his or her own initiative or on application duly made, revise the report and recommendation for the purpose of correcting clerical, arithmetical or typographical errors.

(4) In cases brought under labor law articles eight and nine and real property tax law section 421-a (16)(c), the administrative law judge forwards the report and recommendation to the Comptroller for consideration and the Comptroller issues a determination and order.

(5) In cases brought under real property tax law sections 421-a (8), (16)(h), and (17)(g), the administrative law judge forwards the report and recommendation to the New York city department of housing preservation and development for consideration and that agency issues a determination and order.

(6) In cases brought under New York city administrative code section 6-109, the administrative law judge forwards the report and recommendation to the contracting agency for consideration, and the contracting agency issues a determination and order.

(g) Determination and order. (1) In cases brought under labor law articles eight and nine and real property tax law section 421-a (16)(c), the Comptroller may, on his or her own initiative or on application duly made, on notice to all parties: (i) request further information or briefing on any relevant issue or (ii) provide copies of any recalculation of Wages and Supplements underpayment, interest and civil penalty, and request comments from the parties to the hearing before issuing a determination and order. Such request and any responses are part of the record.

(2) In cases brought under labor law articles eight and nine and real property tax law section 421-a (16)(c), the Comptroller may adopt, reject or modify the administrative law judge's report and recommendation when issuing a determination and order; such determination and order is to be based exclusively upon the record as a whole, including facts of which official notice has been taken.

(3) The Bureau files the Comptroller's determination and order and serves a notice of filing, with copy of the determination and order, on every party.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: STANDARDS AND PROCEDURES FOR ESTABLISHING PREVAILING WAGES FOR CERTAIN TRADES

REFERENCE NUMBER: 2017 RG 062

RULEMAKING AGENCY: OFFICE OF THE COMPTROLLER

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: November 21, 2017

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: STANDARDS AND PROCEDURES FOR ESTABLISHING
PREVAILING WAGES FOR CERTAIN TRADES

REFERENCE NUMBER: COMPT-1

RULEMAKING AGENCY: New York City Comptroller

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) No cure period is provided under the proposed rules because the enabling laws do not provide for a cure period. However, the rules provide for the waiver of penalties in certain circumstances.

/s/ Guenevere Knowles
Mayor's Office of Operations

November 21, 2017
Date