

# 1 RCNY §103-06

## CHAPTER 100

### Subchapter C Maintenance of Buildings

#### §103-06 Benchmarking energy and water use.

- (a) **Purpose.** This section establishes the procedures for benchmarking certain buildings.
- (b) **References.** Article 309 of Chapter 3 of Title 28 of the New York City Administrative Code (“Article 309”).
- (c) **Requirement.** Owners of covered buildings, as defined in Article 309, must benchmark their whole buildings using the online Portfolio Manager tool of the United States Environmental Protection Agency (“EPA”).
- (d) **Definitions.** Terms defined in Article 309 of Title 28 have the same meanings in this section. For the purposes of this section, the following additional terms are defined as follows:

**ACTUAL ENERGY DATA:** Actual energy data is data taken directly from 1) utility meters or billing information, or data for the entire building provided by the utility; and/or 2) sub-meters for entire buildings that share heating, cooling and/or service (domestic) hot water systems with other buildings; and/or 3) extrapolated energy data calculated in accordance with clause (A) of subparagraph (ii) of paragraph (2) of subdivision (g) of this section.

**AGGREGATED ENERGY DATA:** Aggregated energy data means total energy data for a specified period as provided by the utility company for the building for a given energy type.

**DEFAULT ENERGY DATA:** Default energy data means data calculated using default values taken from Table 1 or 2 of this section. Such data is designed to result in a low energy efficiency rating within the bottom 25<sup>th</sup> percentile in Portfolio Manager and must be used only when the owner is unable to obtain actual energy data either as aggregated energy data from the utility company, directly from meters or sub-meters, or from tenants.

**ENERGY TYPE:** Energy type is electricity, natural gas, steam, and/or fuel oil. Energy type for a building may take the form of chilled or hot water when heating, cooling and/or service (domestic) hot water systems are shared by multiple buildings.

**GROSS FLOOR AREA:** Gross floor area is the total number of square feet measured between the exterior surfaces of the enclosing fixed walls. It includes vent shafts, elevator shafts, flues, pipe shafts, vertical ducts, stairwells, light wells, basement space, mechanical/electrical rooms, and interior parking. It excludes unroofed courtyards and unroofed light wells. For atria, gross floor area only includes the area of atrium floors. For tenant spaces, interior demising walls should be measured to the centerline of the wall.

**GROSS SQUARE FEET (GROSS SQUARE FOOTAGE):** Gross square feet or gross square footage means a building’s total square footage as provided in Department of Finance records.

**NEW YORK CITY BENCHMARKING COMPLIANCE REPORT (“COMPLIANCE REPORT”):** The New York City Benchmarking Compliance Report is an electronic report generated from the benchmarking data in Portfolio Manager.

**PORTFOLIO MANAGER:** Portfolio Manager is the benchmarking tool as defined in §28-309.2 of the Administrative Code.

**TEMPORARY ENERGY DATA:** Temporary energy data is a Portfolio Manager indicator for energy data entries that are not actual energy data, when actual energy data is not available. In this section, temporary energy data means energy data calculated from 1) default values calculated as described in this section, or 2) pro-rated energy use for a covered building that shares heating, cooling and/or service

(domestic) hot water systems with other buildings on other tax lots.

- (e) **Requirement to calculate gross floor area.** The owner must calculate the gross floor area and enter it into Portfolio Manager. All space areas entered into Portfolio Manager for a building must add up to the building’s gross floor area. Gross floor areas as calculated by the owner under this provision are not related to the Department of Finance records that determine whether a building or buildings qualify as covered buildings under §28-309 of the Administrative Code.
- (f) **Period of benchmarking.** The owner must enter energy consumption data into Portfolio Manager for the period covering January 1 through December 31 of the year being benchmarked for each energy type.
- (g) **Energy data entry into Portfolio Manager.** In accordance with section 28.309.4 of the Administrative Code, the owner of a covered building must enter energy data for each applicable energy type into Portfolio Manager.

**Exception for energy data entry.** Covered buildings that exceed 25,000 gross square feet but do not exceed 50,000 gross square feet, shall not be required to directly enter energy data into Portfolio Manager and, per section 28-309.4 of the Administrative Code, may rely on their utility company to directly upload their building’s energy data into Portfolio Manager, based on the owner’s request, and in accordance with section 28.309.5 of the Administrative Code. The failure of the owner to either request upload of the energy data by their utility, per section 28.309.5 of the Administrative Code, or upload the data themselves, may result in a violation per section 28.309.4.3 of the Administrative Code.

**(i) Common area energy:**  
 For each energy type, the owner must enter actual energy data for common areas, and all common or central systems, including but not limited to heating, cooling, lighting and/or service (domestic) water heating as applicable.

**(ii) Tenant energy data - residential:**  
 Where energy use data is unavailable for some or all dwelling units in a building, the owner must use one of the following methods to determine energy use for dwelling units. For the purpose of this subparagraph, “apartment” means “dwelling unit.”

<b>Actual –energy data - Extrapolation method</b>	<p>When an owner obtains representative billing or meter data as described below for a given energy type from tenants, the owner may extrapolate such information for the building and enter it into Portfolio Manager as actual energy data. Extrapolation may be used only as follows:</p> <p>A. The owner must obtain all meter data for such energy type for a minimum of ten percent (10%) of apartments in each apartment line in the building. Apartments are considered in the same line if they have similar shape and square footage and are stacked one above another.</p> <p>B. For a given energy type, extrapolation must be performed each month as follows:        Total energy use = <math>[(E_1 / N_1) * T_1] + [(E_2 / N_2) * T_2] + [(E_3 / N_3) * T_3] \dots [(E_n / N_n) * T_n]</math> ,</p> <p>where:</p> <p>E is the total energy collected by the owner for the month for 10% or more of the apartments in the specified apartment line for a given energy type;        N is the number of apartments in the specified apartment line for which the energy was collected;        T is the total number of apartments in the specified apartment line;</p>
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	<p><sub>1</sub> refers to apartment line 1;  <sub>2</sub> refers to apartment line 2;  <sub>n</sub> refers to the total number of apartment lines in the building, or the final apartment line under consideration in the building.</p>
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<p><b>(iii) Tenant energy data – non-residential:</b>  The owner must use one of the following methods to determine non-residential tenant energy use, as applicable, and must enter the energy data into Portfolio Manager.</p>	
<p><b>Actual energy data</b></p>	<p>The building owner must request information from his or her non-residential tenants on the non-residential tenant information collection form. This form is available at the Mayor’s Office of Sustainability website: <a href="http://www.nyc.gov/ggpb">www.nyc.gov/ggpb</a>. If the building owner has access to aggregated energy data, the owner does not need to collect energy meter information on this form; all other information requested on the form must be completed, including, but not limited to, the service address and other information affecting energy use in the building. If the building owner does not have access to aggregated energy data, the owner must use the non-residential tenant information collection form to collect separately metered energy information from the non-residential tenants. In either case, the building owner must enter this information in Portfolio Manager as actual energy data.</p>

<p><b>(iv) Non-residential vacant space:</b>  The owner must account for non-residential vacant space in Portfolio Manager as directed by the EPA.</p>
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- (h) **Water data entry into Portfolio Manager.** Buildings provided with automatic meter-reading equipment by the Department of Environmental Protection (“DEP”) for the entire calendar year will be benchmarked by DEP in accordance with section 28-309.5.2 of the Administrative Code. Building owners are not required to enter such data.
- (i) **Special conditions.** The following special conditions must be addressed in the following ways:
  - (1) **Space use attributes for multi-family housing spaces.** Building owners must enter all optional space use attributes for multi-family housing spaces as such attributes are defined in Portfolio Manager. Optional space use attributes for multi-family housing spaces include, but are not limited to: number of occupied and unoccupied apartment units in building, number of bedrooms in building, and maximum number of floors.
  - (2) **Multiple buildings on a tax lot.** Multiple buildings on a tax lot must be benchmarked as a covered building, as defined in section 28-309.2 of the Administrative Code, and that covered building must provide an aggregate number to represent the energy and water usage of all buildings comprising that covered building.
  - (3) **Buildings on multiple tax lots that share systems.** Buildings on multiple lots that share systems must be benchmarked as follows:
    - (i) Buildings that are separately metered or are sub-metered for a given energy type must be benchmarked individually for that energy type.

- (ii) For buildings that are neither separately metered nor sub-metered for a given energy type, the owner(s) must provide an aggregate number to represent the energy and water usage of all buildings that share systems.
- (4) **New buildings.** Owners of new buildings must begin benchmarking such buildings in the first full calendar year following the year the building receives its first Temporary Certificate of Occupancy. Energy use for unused spaces or incomplete tenant areas must be estimated in accordance with subparagraph (iv) of paragraph (2) of subdivision (g) of this section.
- (5) **Buildings with change in ownership.** When a building changes ownership, the new owner must benchmark such building for the first full calendar year following transfer of ownership and must submit the Compliance Report by May 1 of the following year and by the same date every year thereafter.
- (6) **Demolished buildings.** Buildings for which a full demolition permit has been issued are not required to benchmark for the prior calendar year, provided that demolition work has commenced, some energy-related systems have been compromised and legal occupancy is no longer possible prior to May 1 of the year the benchmarking report is due.
- (7) **Exemptions.** The owner shall not be required to include the following in a building's benchmarking:
  - (i) Broadcast antennas, when metered or sub-metered separately from the building;
  - (ii) Cellular towers, when metered or sub-metered separately from the building;
  - (iii) Illuminated signs required by Section 81-732 of the New York City Zoning Resolution, when metered or sub-metered separately from the building;
  - (iv) Natural gas, when separately metered for kitchens in apartments.
- (j) **Submission to the City of New York.** By May 1 following each benchmarked year, the owner must submit the Compliance Report to the Department of Finance. Submission must be made through a web-link provided by the Mayor's Office of Long-Term Planning and Sustainability at their website: [www.nyc.gov/ggbp](http://www.nyc.gov/ggbp).
- (k) **Required records.** Owners of covered buildings as defined in section 28-309.2 of the Administrative Code must maintain the following records as proof of benchmarking of energy and water use as required in article 309:
  - (1) The confirmation email from EPA for proof of submission date;
  - (2) Proof of request to non-residential tenants for information related to the non-residential tenant's separately metered energy use;
  - (3) Back-up information regarding energy use inputs, including, but not limited to, utility bills, fuel oil bills, calculations, and correspondence; and
  - (4) A copy of water and energy input data entered into Portfolio Manager.

Such records must be retained for three (3) years from the required submission date of May 1 and must be made available to the Department and/or the Mayor's Office of Long Term Planning and Sustainability upon request.

(l) **Violations and penalties.**

- (1) Failure to benchmark energy and water use for the prior calendar year by May 1 may result in a penalty of \$500. Continued failure to benchmark may result in additional violations on a quarterly basis and an additional penalty of \$500 per violation.
- (2) Failure to annually post the energy efficiency grade and the energy efficiency score for the building within thirty (30) days after October 1, the date upon which the energy efficiency grade will be available, in accordance with the requirement of section 28-309.12.3 of the Administrative Code, may result in a penalty of \$1,250.

(m) **Challenge to violations.**

- (1) An owner may challenge a violation for failure to benchmark issued pursuant to paragraph (1) of subdivision (l) of this section. Proof in support of any such challenge may include, but need not be limited to:
  - (i) Proof from the Department of Finance that the building in question is not a covered building as defined in section 28-309.2 of the Administrative Code;
  - (ii) Proof of timely benchmarking as indicated by a confirmation email from the EPA that includes a date-stamped copy of data released to the city; or
  - (iii) Proof of change in ownership during the year in question;
  - (iv) Proof of each factor listed in the “Exception” provision of section 28-309.4.3 of the Administrative Code, including proof of a request for benchmarking assistance, as defined in section 28-309.11 of the Administrative Code. Such proof shall consist of a completed copy of the submitted Department form for requesting benchmarking assistance; or
  - (v) Proof of owner’s request to utility company, no later than fourteen days prior to the benchmarking due date, to directly upload information necessary to benchmark energy use for such building, as described in section 28-309.4 of the Administrative Code.
- (2) An owner may challenge a violation for failure to post issued pursuant to paragraph (2) of subdivision (l) of this section. Proof in support of such challenge may include, but not be limited to, photographic proof of timely posting of the energy efficiency grade and the energy efficiency score, as directed in section 28-309.12.3 of the Administrative Code.
- (3) Such challenge must be made in writing to the Department within thirty (30) days from the postmark date of the violation served by the Department.