

## NEW YORK CITY DEPARTMENT OF BUILDINGS

### Notice of Public Hearing and Opportunity to Comment on Proposed Rules

**What are we proposing?** The Department of Buildings (DOB) is proposing to amend its Rule relating to the annual reporting of energy and water use by individual “covered” buildings. These proposed amendments will cover the expansion of reporting requirements to buildings larger than 25,000 gross square feet, remove obsolete reporting mechanisms, and clarify certain reporting and enforcement procedures.

**When and where is the hearing?** DOB will hold a public hearing on the proposed rule. The public hearing will take place at 2pm on 4/16/18. The hearing will be in the 3<sup>rd</sup> floor conference room at 280 Broadway.

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

- **Website.** You can submit comments to the DOB through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to [dobrules@buildings.nyc.gov](mailto:dobrules@buildings.nyc.gov).
- **Mail.** You can mail comments to the New York City Department of Buildings, Office of the General Counsel, 280 Broadway, 7<sup>th</sup> floor, New York, NY 10007.
- **Fax.** You can fax comments to the New York City Department of Buildings, Office of the General Counsel, at 212-566-3843.
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up in the hearing room before the hearing begins on 4/16/18. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes, you must submit comments by 4/16/18.

**What if I need assistance to participate in the hearing?** You must tell the Office of the General Counsel if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail or email at the addresses given above. You may also tell us by telephone at 212-393-2085. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by 4/2/18.

This location has the following accessibility option(s) available: Wheelchair accessibility.

**Can I review the comments made on the proposed rules?** You can review the comments made online on the proposed rules 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 a summary of oral comments concerning the proposed rule will be available to the public at the Office of the General Counsel.

**What authorizes DOB to make this rule?** Sections 643 and 1043(a) of the City Charter and section 28-309.10 of the City Administrative Code authorize DOB to make this proposed rule. This proposed rule was not included in DOB's regulatory agenda for this Fiscal Year because it was not contemplated when DOB published the agenda.

**Where can I find DOB's rules?** DOB's rules are in Title 1 of the Rules of the City of New York.

**What laws govern the rulemaking process?** DOB must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

### **Statement of Basis and Purpose of Proposed Rule**

The Department of Buildings (DOB) is proposing to amend Section 103-06 of Title 1 of the Rules of the City of New York relating to the annual reporting of energy and water use by individual "covered" buildings. This change will require approximately 16,000 more buildings in the City to report on their energy and water use. The proposed amendments will:

- 1) Expand the reporting requirements to include buildings that exceed 25,000 gross square feet. The current rule applies only to buildings that exceed 50,000 gross square feet;
- 2) Allow these newly covered buildings the option to have their data entered by their utility company;
- 3) Clarify the reporting deadlines for newly covered buildings;
- 4) Permit certain properties to challenge violations if they can prove they timely requested benchmarking assistance and demonstrate correction of the violation within the specified period of time,
- 5) Clarify the method of reporting data under certain special conditions; discontinue the use of "default energy data" and "temporary energy data" reporting.

New material is underlined.

[Deleted material is in brackets.]

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

Section 1. The definitions of "Default Energy Data" and "Temporary Energy Data" set forth in Subdivision (d) of Section 103-06 of Title 1 of the Rules of the City of New York are Repealed.

§2. Subdivision (g) of section 103-06 of Title 1 of the Rules of the City of New York is amended to read as follows:

**(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. [This data must be obtained by one or more of the following methods

**(1) Access to total data for a given energy type used in a building.** Where an owner obtains all energy data for a given energy type for the entire building via aggregated energy data from the utility company, meter data or fuel oil bills, and/or data collected from tenants, the owner must enter such information in Portfolio Manager as actual energy data for that energy type. In the energy meter section of Portfolio Manager, the owner must respond “No” to the question, “Are temporary values being used for energy data?” No further calculation of energy use for that energy type is required.

**(2) Access to partial data for a given energy type used in a building.** When an owner has not obtained entire-building energy data in accordance with paragraph (1) of this subdivision, energy use data for the building must be entered into Portfolio Manager as described in this paragraph. In the energy meter section of Portfolio Manager, whenever actual energy data is used, the owner must respond “No” to the question, “Are temporary values being used for energy data?” Whenever default energy data is used, the owner must respond “Yes” to the same question. In addition, when default energy data is entered into Portfolio Manager, the owner must set the meter configuration in the Energy Meters section to "Other" and enter "Default energy data" in the free-text box.]

**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.”

**[(A)]  
Actual –energy data  
- Extrapolation  
method**

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:

[1] 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.

[2] B. For a given energy type, extrapolation must be performed each month as follows:

$$\text{Total energy use} = [(E1 / N1) * T1] + [(E2 / N2) * T2] + [(E3 / N3) * T3] \dots [(En / Nn) * Tn] ,$$

where:

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;

1 refers to apartment line 1;

2 refers to apartment line 2;

n refers to the total number of apartment lines in the building, or the final apartment line under consideration in the building.

|                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>[(B)</b><br/><b>Default value method</b></p> | <p>If the owner is unable to obtain actual energy data as described in clause (A) of this subparagraph, the owner may calculate tenant energy use from default values by apartment, regardless of the gross floor area of any apartment, and enter it into Portfolio Manager as temporary energy data in accordance with sub clauses 1, 2, and 3 below:</p> <ol style="list-style-type: none"> <li>1. Calculate the building’s monthly residential tenant electrical use as follows: For each month, multiply the default kWh/unit value in the second column of Table 1 below by the total number of apartments in the building.</li> <li>2. If the residential units are not centrally heated, in addition to the calculations in sub clause 1, above, calculate the building’s monthly tenant heating use, regardless of energy type actually used, as follows:<br/><br/>Multiply the default kWh/unit values in the third column of Table 1 below by the total number of apartments in the building.</li> <li>3. Enter the tenant electrical energy use for all cases and the tenant heating energy when applicable into Portfolio Manager.</li> </ol> |
|----------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

**TABLE 1**

| <b>Default Values for Residential Tenant Space Column 1</b> | <b>Column 2</b>                                     | <b>Column 3</b>                                  |
|-------------------------------------------------------------|-----------------------------------------------------|--------------------------------------------------|
| <b>Month</b>                                                | <b>Tenant-paid electrical energy use (kWh/unit)</b> | <b>Tenant-paid heating energy use (kWh/unit)</b> |
| January                                                     | 420                                                 | 1454                                             |
| February                                                    | 370                                                 | 1238                                             |
| March                                                       | 350                                                 | 1022                                             |
| April                                                       | 340                                                 | 562                                              |
| May                                                         | 360                                                 | 202                                              |
| June                                                        | 430                                                 | 29                                               |
| July                                                        | 530                                                 | 0                                                |
| August                                                      | 570                                                 | 0                                                |
| September                                                   | 440                                                 | 58                                               |
| October                                                     | 360                                                 | 360                                              |

|          |     |      |
|----------|-----|------|
| November | 350 | 749  |
| December | 380 | 1209 |

Source: Values are based on averaged New York State Energy Research and Development Authority data for multi-family residential buildings in New York City from 2006 – 2009 and correspond to the 25th percentile of building energy performance.]

**(iii) Tenant energy data – non-residential:**

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>[(A)]<br/><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 [Long-Term Planning and] 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. [In the event] <u>If</u> 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)]<br/><b>Default values</b></p>     | <p>1. If the owner is unable to obtain all actual energy data from a given non-residential tenant, the owner must calculate such tenant's monthly energy use by using the default values in Table 2 below, in kilowatt hours per month per gross square foot regardless of energy type actually used, and must enter such data in Portfolio Manager as temporary energy data. To calculate the temporary energy data, the owner must multiply the default value in Table 2 below by the gross floor area for the respective tenant space type.</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|                                            | <p>2. Use of default energy values for non-residential tenant space will not be permitted for benchmarking submissions in 2013, measuring building energy use for calendar year 2012. For benchmarking</p>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

|  |                                                                                    |
|--|------------------------------------------------------------------------------------|
|  | reports due May 1, 2013 and thereafter, only actual energy data will be permitted. |
|--|------------------------------------------------------------------------------------|

**TABLE 2**  
**Default Values for Non-Residential Tenant Space**

| Space Use                                                | kWh/month/gsf |
|----------------------------------------------------------|---------------|
| Preschool and K-12                                       | 1.17          |
| College/University                                       | 2.00          |
| Library                                                  | 1.93          |
| Laboratory                                               | 4.55          |
| Hospital/Inpatient health                                | 2.97          |
| Medical offices/Clinics                                  | 1.73          |
| Retail store                                             | 2.27          |
| 24 hour convenience store/Bodega                         | 6.58          |
| Grocery store/Food sales/Refrigerated warehouse          | 4.53          |
| Fast food                                                | 10.93         |
| Restaurant/Cafeteria                                     | 5.01          |
| Fire station/Police station/Post office                  | 1.11          |
| Public assembly/Entertainment/Culture                    | 1.41          |
| Health clubs/Gymnasium                                   | 2.00          |
| Office space                                             | 1.61          |
| Bank/Other financial                                     | 2.46          |
| Data centers/Trading floors/TV studios                   | 15.00         |
| Dormitory/Hotel/Nursing Home/Single Room Occupancy (SRO) | 1.75          |
| Religious worship                                        | 0.50          |
| Warehouse/Storage/Shipping                               | 0.62          |
| Repair shop/Vehicle service                              | 0.82          |
| Interior parking                                         | 0.53          |
| Other                                                    | 4.00          |

Source: Values derived from the 2007 American Society of Heating, Refrigerating and Air Conditioning Engineers, Inc., Handbook, Chapter 35: "Energy Use and Management," Table 3 Electricity Index Percentiles from 2003 Commercial Buildings Energy Consumption Survey (CBECS) of the United States Department of Energy's Energy Information Administration and represent the 25th percentile of building energy performance.]

|                                                                                                                                                           |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>(iv) Non-residential vacant space:</b><br/>The owner must account for non-residential vacant space in Portfolio Manager as directed by the EPA.</p> |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------|

§3. Paragraphs (2), (3) and (6) of subdivision (i) of section 103-06 of Title 1 of the Rules of the City of New York are amended to read as follows:

- (i) **Special conditions.** The following special conditions must be addressed in the following ways:

\*\*\*

**(2) Multiple buildings on a tax lot.** Multiple buildings on a tax lot must be benchmarked as [follows:

- (i) Multiple buildings on a tax lot that are separately energy-metered and/or energy sub-metered and that have separate heating, cooling and service (domestic) hot water systems must be benchmarked individually.
- (ii) Multiple buildings on a tax lot that are not separately energy-metered or energy sub-metered and/or that share heating and/or cooling and/or service (domestic) hot water systems must be benchmarked as one building for all energy types using gross energy consumption by energy type and total gross floor area of all such buildings.]

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 [pro-rate the various energy types based on total energy consumption for each energy type. Owners must calculate their prorated share based on the gross square footage of their building compared to the gross square footage of other buildings that share systems with the building and enter the prorated energy data as temporary energy data.] provide an aggregate number to represent the energy and water usage of all buildings that share systems.

\*\*\*

**(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.

§4. Subdivision (l) of section 103-06 of Title 1 of the Rules of the City of New York is amended to read as follows:

**(l) Violation and penalty.**

Failure to benchmark energy and water use for the prior calendar year by [August 1, 2011, or by] May 1 [of subsequent years,] 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.

Exception: Covered buildings that exceed 25,000 gross square feet but do not exceed 50,000 gross square feet may benchmark energy and water use for Calendar Year 2017 on or before February 1, 2019.

§5. Subdivision (m) of section 103-06 of Title 1 of the Rules of the City of New York is amended to read as follows:

**(m) Challenge to violations.**

(1) An owner may challenge a violation for failure to benchmark issued pursuant to 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) 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.

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

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

**RULE TITLE: Amendment of Reporting Requirements for Energy and Water Use  
in Certain Buildings**

**REFERENCE NUMBER: DOB-103**

**RULEMAKING AGENCY: Department of Buildings**

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) Provides a cure by allowing an owner to avoid further violations by submitting a benchmarking report before the next quarterly deadline.

/s/ Francisco X. Navarro  
Mayor's Office of Operations

February 21, 2018  
Date

**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:** Amendment of Reporting Requirements for Energy and Water Use in Certain Buildings

**REFERENCE NUMBER:** 2017 RG 105

**RULEMAKING AGENCY:** Department of Buildings

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: February 21, 2018