

## 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 the qualifications for energy auditors and retro-commissioning agents.

**When and where is the hearing?** DOB will hold a public hearing on the proposed rule. The public hearing will take place at 10am on 9/29/17. 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 before the hearing by calling 212-393-2085. You can also sign up in the hearing room before the hearing begins on 9/29/17. You can speak for up to three minutes.

**Is there a deadline to submit comments?** Yes, you must submit comments by 9/29/17.

**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 9/15/17.

**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 Article 308 of Chapter 3 of Title 28 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**

The Department of Buildings (DOB) is amending section 103-07 of Title 1 of the Rules of the City of New York relating to the qualifications for energy auditors and retro-commissioning agents.

These amendments:

- Remove the New York State Energy Research and Development Authority- (NYSERDA) approved Flex Tech consultant from the list of qualifications for an energy auditor. This certification was intended for early compliance pursuant to the Administrative Code. Auditors who don't meet any of the other qualifications are using the Flex Tech consultant listing beyond the intended early compliance timeframe. In addition, the NYSERDA Flex Tech Consultant certification is firm-wide, so there is no way to be sure that the actual individual(s) performing the work are certified.
- Add the Certified Commissioning Authority (CxA) Certification to the qualifications of retro-commissioning agents. Adding this qualification will increase the number of individuals who can provide retro-commissioning services. Additionally, the CxA has also received American National Standards Institute (ANSI) accreditation and Department of Energy Better Buildings recognition.

- Add the Building Commissioning Professional (BCxP) certification, which the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE) is now granting as it phases out the Commissioning Process Management Professional (CPMP) certification over the next three years.

The Department of Buildings' authority for these rules is found in sections 643 and 1043 of the New York City Charter and Article 308 of Chapter 3 of Title 28 of the New York City Administrative Code.

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. Subparagraph (i) of paragraph (1) of subdivision (c) of section 103-07 of Title 1 of the Rules of the City of New York is amended to read as follows:

- (i) The energy auditor must be a registered design professional, and the energy auditor or an individual under the direct supervision of the energy auditor must be one of the following:

[(A) a New York State Energy Research and Development Authority- (NYSERDA) approved Flex Tech consultant;]

[(B)] (A) a Certified Energy Manager (CEM) or Certified Energy Auditor (CEA), certified by the Association of Energy Engineers (AEE);

[(C)] (B) a High-Performance Building Design Professional (HPBD) certified by ASHRAE;

[(D)] (C) a Building Energy Assessment Professional (BEAP)

certified by ASHRAE; or

[(E)] (D) for audits of multifamily residential buildings only, a Multifamily Building Analyst (MFBA), certified by the Building Performance Institute (BPI).

§ 2. Subparagraphs (i) and (ii) of paragraph (2) of subdivision (c) of section 103-07 of Title 1 of the Rules of the City of New York are amended to read as follows:

- (i) The retro-commissioning agent must be a registered design professional, a certified Refrigerating System Operating Engineer, or a licensed High Pressure Boiler Operating Engineer. In addition, the retro-commissioning agent or an individual under the direct supervision of the retro-commissioning agent must be one of the following:
  - (A) a Certified Commissioning Professional (CCP) certified by the Building Commissioning Association (BCA);
  - (B) a Certified Building Commissioning Professional (CBCP) certified by the AEE;
  - (C) an Existing Building Commissioning Professional (EBCP) as certified by the AEE;
  - (D) a Commissioning Process Management Professional (CPMP) certified by ASHRAE; [or]
  - (E) an Accredited Commissioning Process Authority Professional (ACPAP) approved by the University of Wisconsin;
  - (F) a Certified Commissioning Authority (CxA) certified by the Associated Air Balance Council (AABC) Commissioning Group (ACG); or

(G) a Building Commissioning Professional (BCxP) certified by ASHRAE.

(ii) The retro-commissioning agent performing or supervising the retro-commissioning must be an individual registered with the department and must be one of the following:

(A) a Certified Commissioning Professional (CCP) certified by the Building Commissioning Association (BCA);

(B) a Certified Building Commissioning Professional (CBCP) certified by the AEE;

(C) an Existing Building Commissioning Professional (EBCP) as certified by the AEE; [or]

(D) a Commissioning Process Management Professional (CPMP) certified by ASHRAE;

(E) a Certified Commissioning Authority (CxA) certified by the AABC Commissioning Group (ACG); or

(F) a Building Commissioning Professional (BCxP) certified by ASHRAE.

**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 Qualifications for Energy Auditors and Retro-commissioning Agents**

**REFERENCE NUMBER: DOB-94**

**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) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

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

August 3, 2017  
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 Qualifications for Energy Auditors and Retro-commissioning Agents

**REFERENCE NUMBER:** 2017 RG 059

**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: August 2, 2017