

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. The proposed amendment will provide for the issuance of a violation with a monetary penalty to the owner of any covered building for the failure to annually post the energy efficiency grade and the energy efficiency score achieved by the building. The amendment will also provide a basis to challenge the issuance of the annual posting violation.

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 11/25/19. The hearing will be in the 3rd 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.
- **Mail.** You can mail comments to the New York City Department of Buildings, Office of the General Counsel, 280 Broadway, 7th 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 11/25/19. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes, you must submit comments by 11/25/19.

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 11/12/19.

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 28-309.12 et seq. 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 Rule

The Department of Buildings (DOB) is amending 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 amendment will provide for the issuance of a violation with a monetary penalty to the owner of any covered building for the failure to annually post the energy efficiency grade and the energy efficiency score achieved by the building. The amendment will also provide a basis to challenge the issuance of a violation for failing to comply with the annual posting requirements.

New material is underlined.

[Deleted material is in brackets.]

Section 1. 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) Violations and penalt[y]ies.

- (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.

[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.]

- (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.

§2. 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 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;
 - (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 their 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.

[(2)](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.

**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 Annual Reporting Requirements for Energy and Water Use

REFERENCE NUMBER: 2019 RG 082

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 L. GOULDEN
Acting Corporation Counsel

Date: 9/27/2019

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

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

RULE TITLE: Amendment of Annual Reporting Requirements for Energy and Water Use

REFERENCE NUMBER: DOB-122

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 as it is not applicable, but there is a procedure in place to challenge a violation.

/s/ ALEXANDRA GJONI
Mayor's Office of Operations

Date: 9/30/2019