

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 is proposing to add a credential to the qualified energy auditor requirements and to remove the provision that requires a building owner to pay outstanding penalties before new submissions of the Energy Efficiency Report are accepted by the Department.

When and where is the hearing? DOB will hold a public hearing on the proposed rule online. The public hearing will take place at 11:00 AM on 11/7/2024.

- Join through Internet – Desktop app:

To join the hearing via your browser either click on the following URL link or copy and paste it into your browser's address bar. Then follow the prompts to either continue using the browser or download/open the Teams desktop app.

<https://events.gcc.teams.microsoft.com/event/c0a18c01-4968-42c5-98fc-1d743d4da150@32f56fc7-5f81-4e22-a95b-15da66513bef>

Enter your name when prompted and click the **“Join now”** button. If you don't have computer audio or prefer to phone in for audio, select **“Phone audio”** under **“Other join options”** then click the **“Join now”** button. You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins. If you are using phone audio then follow the dial-in instructions when prompted.

If you have low bandwidth or inconsistent Internet connection, we suggest you use the Phone audio option for the hearing. This will reduce the possibility of dropped audio and stutters.

- Join through Internet – Smartphone app:

To join using the Microsoft Teams app on your smartphone, click on the following URL link from your phone to automatically open the Teams app. Note that the Microsoft Teams app must already be installed on your smartphone. It is available for free both in the Apple Store and Google Play.

<https://events.gcc.teams.microsoft.com/event/c0a18c01-4968-42c5-98fc-1d743d4da150@32f56fc7-5f81-4e22-a95b-15da66513bef>

When prompted select “Join meeting”. Type your name and then select “Join meeting” again. You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins.

Alternatively, open the Teams app and select “Join a meeting”. Signing in with an account is not required. Type your name, the following Meeting ID and Passcode, then select “Join meeting”.

Meeting ID: 239 321 667 320

Passcode: nosG8A (Code is case sensitive)

- Join via phone only:

To join the meeting only by phone, use the following information to connect:

Phone: +1 646-893-7101

Phone Conference ID: 866 348 222#

You will first be placed in a waiting status in the virtual lobby, then be admitted when the hearing begins.

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.
- **By 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 by emailing dobrules@buildings.nyc.gov by 10/31/2024 and including your name and affiliation. While you will be given the opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a "Question and Answer" format.

Is there a deadline to submit comments? Yes, you must submit comments by 11/7/2024.

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 can tell us by email at dobrules@buildings.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us by 10/24/2024.

This location has the following accessibility option(s) available: Simultaneous transcription for people who are hearing impaired, and audio only access for those who are visually impaired.

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/>. 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 and may be requested by email at dobrules@buildings.nyc.gov.

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 New York 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 rules 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" or "Department") is proposing to amend subdivision (n) of section 103-07 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York to add Energy Management Professional Certification offered by the Energy Management Association to the list of qualifications for energy auditors. DOB is also proposing to remove the provision that the Department will not accept new Energy Efficiency Report ("EER") submissions until the building owner has paid outstanding penalties associated with failure to submit previous EERs. The removal of this provision does not remove the Department's discretion to require satisfaction of all penalties, but allows the Department to support buildings working to achieve compliance rather than mandating the issuance of penalties. This approach allows for consistency in enforcement across DOB's sustainability laws.

The Department's authority for this rule is found in sections 643 and 1043(a) of the New York City Charter, and article 308 of chapter 3 of Title 28 of the New York City Administrative Code.

[Deleted material is in brackets.]

Section 1. Paragraph 1 of subdivision (c) of section 103-07 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(1) The energy auditor performing or supervising the audit may not be on the staff of the building being audited. 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:

- (i) a Certified Energy Manager or Certified Energy Auditor, certified by the Association of Energy Engineers (AEE);
- (ii) a High-Performance Building Design Professional certified by ASHRAE;
- (iii) a Building Energy Assessment Professional certified by ASHRAE; [or]
- (iv) for audits of multifamily residential buildings only, a Multifamily Building Analyst, certified by the Building Performance Institute[.]; or
- (v) an Energy Management Professional certified by the Energy Management Association.

§ 2. Subdivision (n) of section 103-07 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(n) *Violation and penalty.* Failure to submit an acceptable EER is a Major (Class 2) violation which may result in a penalty of \$3,000 in the first year and \$5,000 for each additional year until the EER is submitted to the department. [The department will not accept any outstanding EER submission if outstanding penalties are not paid in full.]

**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 Penalty Provisions Relating to Failure to File Energy Efficiency Report

REFERENCE NUMBER: 2024 RG 079

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
Senior Counsel

Date: September 13, 2024

**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: Amendment of Penalty Provisions Relating to Failure to File Energy Efficiency Report
REFERENCE NUMBER: DOB-183
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:

- (iii) Is understandable and written in plain language for the discrete regulated community or communities;
- (iv) 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 but removes the provision that requires a building owner to pay outstanding penalties before new submissions of the Energy Efficiency Report are accepted by the Department.

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

September 13, 2024
Date