

**LOCAL LAWS  
OF  
THE CITY OF NEW YORK  
FOR THE YEAR 2009**

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**No. 87**

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Introduced by Council Member Gennaro, the Speaker (Council Member Quinn), Brewer, Comrie, Dickens, Garodnick, Gioia, James, Koppell, Lappin, Mitchell, Palma, Recchia Jr., Reyna, Rivera, Stewart, Liu, Yassky, Sears, White Jr., Mendez, de Blasio, Mark-Viverito, Vann, Avella, Vacca, Gerson, Jackson, Gonzalez, Ferreras, Vallone Jr., Barron, Arroyo, Crowley and Mealy

**A LOCAL LAW**

**To amend the New York city charter and the administrative code of the city of New York, in relation to requiring energy audits and retro-commissioning of base building systems of certain buildings and retro-fitting of certain city-owned buildings.**

*Be it enacted by the Council as follows:*

Section 1. Chapter 3 of title 28 of the administrative code of the city of New York is amended by adding a new article 308 to read as follows:

**ARTICLE 308  
ENERGY AUDITS AND RETRO-COMMISSIONING OF BASE BUILDING  
SYSTEMS**

*§28-308.1 Definitions. As used in this article, the following terms shall have the following meanings:*

**BASE BUILDING SYSTEMS.** *The systems or subsystems of a building that use energy and/or impact energy consumption including:*

- 1. The building envelope.*
- 2. The HVAC (heating ventilating and air conditioning) systems.*
- 3. Conveying systems.*

4. *Domestic hot water systems.*
5. *Electrical and lighting systems.*

**Exception:** *The term “base building systems” shall not include:*

1. *Systems or subsystems owned by tenants (other than a net lessee for a term of 49 years or more, inclusive of renewal options), condominium unit owners or cooperative unit shareholders, or a system or subsystems for which a tenant bears full maintenance responsibility and that is within the tenant’s leased space and/or exclusively serves such leased space.*
2. *Industrial processes that occur within a covered building.*

**BUILDING MANAGEMENT SYSTEM.** *A computer-based system that monitors and controls a building’s mechanical and electrical equipment, such as HVAC, lighting, power, fire, and security systems , including, at a minimum, control of the heating equipment using interior temperature sensors.*

**CITY BUILDING.** *A covered building that is owned by the city and for which the city regularly pays all or part of the annual energy bills.*

**Exception:** *The term “city building” shall not include:*

1. *Any building that participates in the tenant interim lease apartment purchase program.*
2. *Any building that participates in a program administered by the department of housing preservation and development.*
3. *Any building managed by the New York city health and hospitals corporation.*
4. *Any senior college in the City University of New York system.*
5. *Any cultural institution that is in the Cultural Institutions Group as*

*determined by the department of cultural affairs.*

**COVERED BUILDING.** *As it appears in the records of the department of finance: (i) a building that exceeds 50,000 gross square feet (4645 m<sup>2</sup>), (ii) two or more buildings on the same tax lot that together exceed 100,000 gross square feet (9290 m<sup>2</sup>), or (iii) two or more buildings held in the condominium form of ownership that are governed by the same board of managers and that together exceed 100,000 gross square feet (9290 m<sup>2</sup>).*

**Exception:** *The term “covered building” shall not include real property classified as class one pursuant to subdivision one of section 1802 of the real property tax law of the state of New York.*

**CURRENT FACILITY REQUIREMENTS.** *The owner’s current operational needs and requirements for a building, including temperature and humidity set points, operating hours, filtration, and any integrated requirements such as controls, warranty review, and service contract review.*

**ENERGY AUDIT OR AUDIT.** *A systematic process of identifying and developing modifications and improvements of the base building systems, including but not limited to alterations of such systems and the installation of new equipment, insulation or other generally recognized energy efficiency technologies to optimize energy performance of the building and achieve energy savings, provided that such process shall not be less stringent than the Level II Energy Survey and Engineering Analysis of the 2004 edition of Procedures for Commercial Building Energy Audits published by the American Society of Heating, Refrigerating and Air-conditioning Engineers Inc. (ASHRAE).*

**ENERGY AUDITOR.** *An approved agency authorized by the department to perform energy audits and to certify audit reports required by this article. Until such time as there*

*is a national standard establishing qualifications for persons performing energy audits and such standard has been adopted by the department, an energy auditor shall be a registered design professional with such other certification or qualification as the department deems to be appropriate. After the establishment of such a national standard, the department may adopt the qualifications of the national standard with such modifications as the department deems to be appropriate.*

***ENERGY MANAGEMENT SYSTEM.*** *A system incorporating interior temperature sensors and a central processing unit and controls, which are used to monitor and control gas, steam and oil usage, as is applicable, based on the need for heating.*

***ENERGY EFFICIENCY REPORT.*** *The report required to be filed pursuant to section 28-308.4.*

***FINANCIAL HARDSHIP (OF A BUILDING).*** *A building shall be considered to be subject to financial hardship if the building:*

- 1. Had arrears of property taxes or water or wastewater charges that resulted in the property's inclusion, within two years prior to the due date of an energy efficiency report, on the department of finance's annual New York city tax lien sale list;*
- 2. Is exempt from real property taxes pursuant to sections 420-a, 420-b, 446 or 462 of the real property tax law and applicable local law and the owner had negative revenue less expenses during the two tax years prior to the due date of an energy efficiency report as certified to the department by a certified public accountant;*
- 3. Had outstanding balances under the department of housing preservation and development's emergency repair program that resulted in the property's inclusion, within two years prior to the due date of an energy efficiency report, on*

- the department of finance's annual New York city tax lien sale list; or*
- 4. Has an active or effective commitment letter from a governmental agency that provides for the financing of the rehabilitation, within a period of 5 years or less, of such building by such government agency for the purposes of affordable housing for low or moderate income families.*

**OWNER.** *The owner of record of a covered building, except that in the case of a net lease of an entire building for a term of 49 years or more, inclusive of renewal options, the term owner shall refer to the net lessee and in the case of a covered building held in cooperative or condominium form of ownership, the term owner shall refer to the board of managers in the case of a condominium and the board of directors in the case of a cooperative apartment corporation.*

**RETRO-COMMISSIONING.** *A systematic process for optimizing the energy efficiency of existing base building systems through the identification and correction of deficiencies in such systems, including but not limited to repairs of defects, cleaning, adjustments of valves, sensors, controls or programmed settings, and/or changes in operational practices.*

**RETRO-COMMISSIONING AGENT.** *An individual, who shall not be a certified refrigerating system operating engineer or a licensed high pressure boiler operating engineer on the staff of the building being retro-commissioned, authorized by the department to certify retro-commissioning reports required by this article. Until such time as there is a national standard establishing qualifications for persons who perform retro-commissioning and such standard has been adopted by the department, a retro-commissioning agent shall be a registered design professional, a certified refrigerating*

*system operating engineer, or a licensed high pressure boiler operating engineer, with such other qualification or certification as determined by the department. After the establishment of such a national standard, the department may adopt the qualifications of the national standard with such modifications as the department deems to be appropriate.*

***SIMPLE BUILDING.*** *A covered building with neither a central chilled water system nor a central cooling system that covers more than 10% of the building's gross area.*

***SIMPLE PAYBACK.*** *The number of years for the projected annual energy savings to equal the amount invested in the energy conservation measure, as determined by dividing the investment by the annual energy savings.*

***SPACE.*** *An area within a building enclosed by floor to ceiling walls, partitions, windows and doors.*

***SYSTEM OR SUBSYSTEM.*** *Shall have the same definition as set forth in section 202 of the New York city energy conservation code.*

***§28-308.2 Energy audits required.*** *The owner shall ensure that an energy audit is performed on the base building systems of a covered building prior to filing an energy efficiency report as required by this article. Except as otherwise provided in section 28-308.7, an energy audit shall be performed by or under the supervision of an energy auditor and shall be performed in accordance with rules promulgated by the department.*

*The audit process shall cover the base building systems and shall identify at a minimum:*

- 1. All reasonable measures, including capital improvements, that would, if implemented, reduce energy use and/or the cost of operating the building;*
- 2. For each measure, the associated annual energy savings, the cost to implement,*

- and the simple payback, calculated by a method determined by the department;*
- 3. The building's benchmarking output consistent with the United States Environmental Protection Administration (EPA) Portfolio Manager tool or as otherwise established by the department;*
  - 4. A break-down of energy usage by system and predicted energy savings by system after implementation of the proposed measures; and*
  - 5. A general assessment of how the major energy consuming equipment and systems used within tenant spaces impact the energy consumption of the base building systems based on a representative sample of spaces.*

***Exceptions:***

- 1. No energy audit is required if the building complies with one of the following as certified by a registered design professional:*
  - 1.1. The covered building has received an EPA Energy Star label for at least two of the three years preceding the filing of the building's energy efficiency report.*
  - 1.2. There is no EPA Energy Star rating for the building type and a registered design professional submits documentation, as specified in the rules of the department, that the building's energy performance is 25 or more points better than the performance of an average building of its type over a two-year period within the three-year period prior to the filing of an energy efficiency report consistent with the methodology of the Leadership in Energy and Environmental Design (LEED) 2009 rating system for Existing*

*Buildings published by the United States Green Building Council (USGBC) or other rating system or methodology for existing buildings, as determined by the department.*

- 1.3. The covered building has received certification under the LEED 2009 rating system for Existing Buildings published by the USGBC or other rating system for existing buildings, as determined by the department, within four years prior to the filing of the building's energy efficiency report.*
- 2. An energy audit shall not be required for the first energy efficiency report of a simple building that is in compliance with six out of seven of the following items as certified by a registered design professional:*

  - 2.1. Individual heating controls. (i) Each dwelling unit in the building has one or more thermostatic controls controlling all the heating units within the dwelling unit and any heated space not within a dwelling unit has one or more thermostatic controls controlling all the heating units within the space, or (ii) the building has a central heating system controlled by an energy management system or a building management system that incorporates temperature sensors located in at least 10 percent of the dwelling units and 10 percent of the heated spaces, except that the total number of sensors required within the building shall not be less than 10 nor more than 30.*
  - 2.2. Common area and exterior lighting. Common area (lighting outside of tenant spaces) and exterior lighting, at a minimum, are in*



*compliance with the provisions of the New York city energy conservation code as in effect for new systems installed on or after July 1, 2010.*

*2.3. Low flow faucets and shower heads. All faucets and showerheads within the building, at a minimum, meet the standards of table 604.4 of the New York city plumbing code as in effect for new systems installed on or after July 1, 2010.*

*2.4. Pipe insulation. All exposed pipes that are used to convey heat or hot water are insulated, at a minimum, in accordance with the standards of the New York city energy conservation code as in effect for new systems installed on or after July 1, 2010.*

*2.5. Domestic hot water. All domestic hot water tanks that do not have built-in insulation are insulated with a minimum insulation value of R-8.*

*2.6. Washing machines. All common area clothes washing machines are front loading.*

*2.7. Cool roof. The roof complies with section 1504.8 of the New York city building code as in effect for new buildings constructed on or after July 1, 2010.*

**§28-308.2.1 Contents of audit report.** *The energy auditor shall prepare and certify a report of the energy audit. Except as otherwise provided in section 28-308.7, the audit report shall include such information relating to the audit as shall be specified in the rules of the department, including but not limited to (i) the date that the audit*

was completed, and (ii) the information specified in section 28-308.2.

**§28-308.2.1.1 Compliance with landmarks laws.** *The cost estimates for covered buildings that are regulated by any city, state or federal law regulating landmarks and historic buildings shall include all additional costs necessary for the proposed work to comply with such law.*

**§28-308.2.2 Timing of energy audit.** *Except as otherwise provided in section 28-308.7, the energy audit shall be completed no earlier than four years prior to the date on which a covered building's energy efficiency report is filed with the department pursuant to this article.*

**§28-308.3 Retro-commissioning required.** *The owner shall ensure that retro-commissioning is performed on the base building systems of a covered building prior to filing an energy efficiency report as required by this article. Except as otherwise provided in section 28-308.7, retro-commissioning shall be performed by or under the supervision of a retro-commissioning agent in accordance with rules promulgated by the department. Such rules, at a minimum, shall ensure that sufficient analysis, corrections and testing have been done so that the base building systems meet the following criteria demonstrating efficient operation:*

*1. Operating protocols, calibration, and sequencing:*

*1.1. HVAC temperature and humidity set points and setbacks are appropriate and operating schedules reflect major space occupancy patterns and the current facility requirements.*

*1.2. HVAC sensors are properly calibrated.*

*1.3. HVAC controls are functioning and control sequences are appropriate*

*for the current facility requirements.*

*1.4. Loads are distributed equally across equipment when appropriate (i.e. fans, boilers, pumps, etc. that run in parallel).*

*1.5. Ventilation rates are appropriate for the current facility requirements.*

*1.6. System automatic reset functions are functioning appropriately, if applicable.*

*1.7. Adjustments have been made to compensate for oversized or undersized equipment so that it is functioning as efficiently as possible.*

*1.8. Simultaneous heating and cooling does not occur unless intended.*

*1.9. HVAC system economizer controls are properly functioning, if applicable.*

*1.10. The HVAC distribution systems, both air and water side, are balanced.*

*1.11. Light levels are appropriate to the task.*

*1.12. Lighting sensors and controls are functioning properly according to occupancy, schedule, and/or available daylight, where applicable.*

*1.13. Domestic hot water systems have been checked to ensure proper temperature settings.*

*1.14. Water pumps are functioning as designed.*

*1.15. System water leaks have been identified and repaired.*

## *2. Cleaning and repair:*

*2.1. HVAC equipment (vents, ducts, coils, valves, soot bin, etc.) is clean.*

*2.2. Filters are clean and protocols are in place to replace, as appropriate.*

*2.3. Light fixtures are clean.*

- 2.4. *Motors, fans, and pumps, including components such as belts, pulleys, and bearings, are in good operating condition.*
- 2.5. *Steam traps have been replaced as required to maintain efficient operation, if applicable.*
- 2.6. *Manual overrides on existing equipment have been remediated.*
- 2.7. *Boilers have been tuned for optimal efficiency, if applicable.*
- 2.8. *Exposed hot and chilled water and steam pipes three (3) inches or greater in diameter with associated control valves are insulated in accordance with the standards of the New York city energy conservation code as in effect for new systems installed on or after July 1, 2010.*
- 2.9 *In all easily accessible locations, sealants and weather stripping are installed where appropriate and are in good condition.*

*3. Training and documentation:*

- 3.1. *Permits for all HVAC, electrical and plumbing equipment are in order.*
- 3.2. *Critical operations and maintenance staff have received appropriate training, which may include labor/management training, on all major equipment and systems and general energy conservation techniques.*
- 3.3. *Operational and maintenance record keeping procedures (log books, computer maintenance records, etc.) have been implemented.*
- 3.4. *The following documentation is on site and accessible to the operators: the operations and maintenance manuals, if such manuals are still available from the manufacturer, the maintenance contracts, and the most recent retro-commissioning report.*

**Exception:** *No retro-commissioning is required if the covered building has received certification under the LEED 2009 rating system for Existing Buildings published by the USGBC or other rating system for existing buildings, as determined by the department, within two years prior to the filing of the building's energy efficiency report and earned the LEED point for Existing Building Commissioning investigation and analysis and the LEED point for Existing Building Commissioning implementation.*

**§28-308.3.1 Contents of retro-commissioning report.** *The retro-commissioning agent shall prepare and certify a retro-commissioning report. The retro-commissioning report shall include such information relating to the retro-commissioning as shall be set forth in the rules of the department including, at a minimum:*

*1. Project and team information:*

*1.1 Building address.*

*1.2 Experience and certification of person performing retro-commissioning and any staff involved in the project.*

*1.3 Name, affiliation, and contact information for persons performing retro-commissioning and members of the retro-commissioning team, owner of building, and facility manager of building.*

*2. Building information:*

*2.1. List of all HVAC, domestic hot water, electrical equipment, lighting, and conveyance equipment types in the base building systems.*

- 2.2. *Benchmarking output.*
3. *Testing protocol:*
  - 3.1. *List of all equipment types tested.*
  - 3.2. *For each equipment type tested, a list of the sample rates (percent of each type of equipment tested), the testing methodology, including any diagnostic equipment used, and the test results.*
  - 3.3. *List of integrated system testing performed.*
4. *Master list of findings, including for each, the name of the retro-commissioning measure and its assigned number, a brief description of the measure, recommended corrections, the benefits attained, estimated annual savings (energy and cost), the estimated implementation cost, and the simple payback.*
5. *Deficiencies corrected:*
  - 5.1. *List of repairs completed during investigation.*
  - 5.2. *List of deficiencies corrected, including, for each deficiency, the date corrected, by whom the correction was made, the actual cost, and projected savings.*

**§28-308.3.2 Timing of retro-commissioning.** *Except as otherwise provided in section 28-308.7, the retro-commissioning shall be completed no earlier than four years prior to the date on which a covered building's energy efficiency report is filed with the department pursuant to this article.*

**§28-308.3.3 Documentation of retro-commissioning.** *A copy of the latest up-to-date equipment manuals and the most recent retro-commissioning report shall be*

*maintained at every covered building and shall be made available upon request for inspection by the department.*

**§28-308.4 Energy efficiency report required.** *Except as otherwise provided in section 28-308.7, the owner of a covered building shall file an energy efficiency report for such building between January first and December thirty-first of the calendar year in which such report is due pursuant to this section and between January first and December thirty-first of every tenth calendar year thereafter.*

**Exceptions:**

- 1. An owner may apply for an extension of time to file an energy efficiency report if despite such owner's good faith efforts, to be documented in such application, the owner is unable to complete the required energy audit and retro-commissioning prior to the scheduled due date for such report. The commissioner may grant no more than two such extensions of no more than one year each. Extensions granted pursuant to this provision shall not extend the scheduled due dates for subsequent energy efficiency reports.*
- 2. An owner may receive annual extensions of time to file an energy efficiency report based on financial hardship of the building.*

**§28-308.4.1 Due dates.** *The first energy efficiency reports for covered buildings in existence on the effective date of this article and for new buildings shall be due, beginning with calendar year 2013, in the calendar year with a final digit that is the same as the last digit of the building's tax block number, as illustrated in the following chart:*

<i>Last digit of tax block number</i>	<i>0</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>	<i>9</i>
<i>Year first EER is due</i>	<i>2020</i>	<i>2021</i>	<i>2022</i>	<i>2013</i>	<i>2014</i>	<i>2015</i>	<i>2016</i>	<i>2017</i>	<i>2018</i>	<i>2019</i>

*Owners of covered buildings (i) that are less than 10 years old at the commencement of their first assigned calendar year or (ii) that have undergone substantial rehabilitation, as certified by a registered design professional, within the 10 year period prior to any calendar year in which an energy efficiency report is due, such that at the commencement of such calendar year all of the base building systems of such building are in compliance with the New York city energy conservation code as in effect for new buildings constructed on and after July 1, 2010, or as in effect on the date of such substantial rehabilitation, whichever is later, may defer submitting an energy efficiency report for such building until the tenth calendar year after such assigned calendar year.*

***Exception:*** *The first due dates for city buildings shall be in accordance with a staggered schedule, commencing with calendar year 2013 and ending with calendar year 2022 for buildings in existence on the effective date of this article, to be submitted by the department of citywide administrative services to the department on or prior to December 31, 2011. A city building constructed after the effective date of this article shall be added to such schedule within 10 years after the issuance of the first certificate of occupancy for such building. Copies of energy efficiency reports submitted to the department with respect to city buildings that are not submitted by the department of citywide administrative services shall also be submitted to the department of citywide administrative*



*services.*

**§28-308.4.2 Combined audit and retro-commissioning.** *Nothing in this article shall prevent an owner from performing the audit and the retro-commissioning in a combined process, provided that all the requirements of sections 28-308.2 and 28-308.3 are met.*

**§28-308.5 Content of energy efficiency report.** *Except as otherwise provided in section 28-308.7, the energy efficiency report shall include, in a format prescribed by the department, (i) the energy audit report or documentation substantiating that an exception as set forth in section 28-308.2 applies to such building, and (ii) the retro-commissioning report or documentation substantiating that an exception as set forth in section 28-308.3 applies to such building.*

**§28-308.6 Notification by the department of finance.** *The department of finance shall notify the owner of the requirements of this article three years prior to the calendar year in which the covered building's energy efficiency report is due and in the calendar year prior to the calendar year in which such report is due.*

**§28-308.7 Early compliance.** *Notwithstanding any other provision of this article, an owner may submit an energy efficiency report, including both an energy audit report pursuant to section 28-308.7.1 and a retro-commissioning report pursuant to section 28-308.7.2, in the calendar year commencing January 1, 2013 and ending December 31, 2013 in order to achieve early compliance with this section. An energy efficiency report submitted for early compliance shall be deemed to satisfy the first required energy efficiency report for the building as assigned pursuant to section 28-308.4.1. The next required energy efficiency report for such building shall be due in the tenth calendar year*

*after the first assigned due date for such report.*

**§28-308.7.1 Early compliance energy audit report.** *An energy audit report for a covered building shall be acceptable for early compliance if it is completed after January 1, 2006 and it includes:*

- 1. The address of the building, completion date of the audit, signature and credentials of the person performing or supervising the performance of the audit and of the audit team; and*
- 2. The information required in items 1 through 5 of section 28-308.2.*

**§28-308.7.1.1 Early compliance audit completed after January 1, 2006 and prior to the effective date of this article.** *An early compliance audit completed after January 1, 2006 and prior to the effective date of this article shall have met the following additional criteria:*

- 1 The audit shall have met the requirements of the Level II Energy Survey and Analysis of the 2004 edition of Procedures for Commercial Building Energy Audits published by ASHRAE; or*
- 2. The audit shall have been performed under a New York Power Authority or New York State Energy Research and Development Authority (NYSERDA) contract or by a NYSERDA Flex Tech contractor; and*
- 3. The audit report shall be submitted along with certification by a registered design professional that the audit satisfies the criteria of this section.*
- 4. A partial audit completed after January 1, 2006 and prior to the effective date of this article shall qualify for early compliance only if the base building systems that were not subject to such audit are audited, after the*

*effective date of this article, in the manner set forth in section 28-308.7.1.2.*

**§28-308.7.1.2 *Early compliance audit completed after the effective date of this article.*** *An early compliance audit completed after the effective date of this article shall meet the following additional criteria:*

- 1. The audit shall be performed by or under the supervision of a registered design professional and shall meet the requirements of the Level II Energy Survey and Analysis of the 2004 edition of Procedures for Commercial Building Energy Audits published by ASHRAE;*
- 2. The auditing team shall include an individual who is one of the following:*
  - 2.1. A NYSERDA-approved Flex Tech contractor;*
  - 2.2. A Certified Energy Manager (CEM) or Certified Energy Auditor (CEA), certified by the Association of Energy Engineers (AEE);*
  - 2.3. A High-Performance Building Design Professional (HPBD) certified by ASHRAE; or*
  - 2.4. For audits of multifamily residential buildings only, a Multifamily Building Analyst (MFBA), certified by the Building Performance Institute (BPI), or have such other qualification or certification as determined by the department;*
- 3. An individual with at least three years of professional experience performing energy audits on buildings larger than 50,000 gross square feet (4645 m<sup>2</sup>) shall be a member of the auditing team;*
- 4. The building's operations and maintenance staff shall be consulted at the*

*start of and during the audit process; and*

5. *The registered design professional performing or supervising the audit shall certify that the audit satisfies the criteria of this section.*

**§28-308.7.2 Early compliance retro-commissioning.** *a. Retro-commissioning shall be acceptable for early compliance if it is completed after the effective date of this article and meets the following criteria:*

1. *The retro-commissioning shall be performed under a NYSERDA contract for base building retro-commissioning or certified by an individual who is not on the staff of the building and is (i) a registered design professional, (ii) a certified Refrigerating System Operating Engineer, or (iii) a licensed High Pressure Boiler Operating Engineer;*
2. *The retro-commissioning team shall include an individual who is a Certified Commissioning Professional (CCP) certified by the Building Commissioning Association (BCA), a Certified Building Commissioning Professional (CBCP) certified by the AEE, a Commissioning Process Management Professional (CPMP) certified by ASHRAE, or an Accredited Commissioning Process Authority Professional (ACPAP) approved by the University of Wisconsin, or has such other certification as determined by the department;*
3. *The retro-commissioning team shall include an individual with at least one year of professional experience performing retro-commissioning on the mechanical systems of buildings larger than 50,000 gross square feet (4645 m<sup>2</sup>);*
4. *The building's operations and maintenance staff shall be consulted at the start*

*of and during the retro-commissioning process; and*

5. *The retro-commissioning report shall contain a certification that sufficient analysis and testing has been done and corrections have been performed so that the base building systems meet the criteria of section 28-308.3 and shall include the information specified in section 28-308.3.1.*

b. *Nothing in this section shall be construed to determine which individuals may perform the work to correct deficiencies identified during the retro-commissioning process, except as otherwise provided by applicable law.*

**§28-308.8** *Optional compliance for energy efficiency reports due in the calendar year commencing January 1, 2013.* Notwithstanding any other provision of this article, audits and retro-commissioning for energy efficiency reports scheduled to be due in the calendar year commencing January 1, 2013 shall be performed, at the option of the owner, in accordance with the provisions for early compliance as set forth in section 28-308.7 or in accordance with procedures set forth in the rules of the department, if such procedures are promulgated within one year prior to the due date of such report. If such procedures are not promulgated within one year prior to the due date of such report, audit and retro-commissioning for energy efficiency reports due in the calendar year commencing January 1, 2013 shall comply with the audit and retro-commissioning procedures for early compliance.

**§28-308.9** *Rules.* The department shall promulgate such rules as are necessary to carry out the provisions of this article in a timely manner, which may include separate fees for filing and review of applications and reports filed pursuant to this article.

§2. Chapter 9 of the New York city charter is amended by adding a new section

224.2 to read as follows:

*§224.2 Required energy conservation projects in city buildings. a. Definitions. For the purposes of this section, the terms “base building systems”, “city building”, “energy audit”, “energy efficiency report”, and “simple payback” shall have the same meanings as defined in section 28-308.1 of the administrative code.*

*b. No later than one year after the submission, in accordance with article three hundred eight of chapter three of title twenty-eight of the administrative code, of an energy efficiency report for a city building, reasonable capital improvements to the building’s base building systems that are recommended in the building’s energy audit shall be completed, including, at a minimum, all those improvements of the base building systems having a simple payback of not more than seven years or capital improvements that, when combined, would equal or exceed the overall reduction in energy consumption of such recommended capital improvements having a simple payback of not more than seven years.*

*c. The mayor shall promulgate rules as may be necessary to carry out the provisions of this section.*

§3. Report on capital improvements of base building systems. The department of citywide administrative services shall submit annual reports to the mayor and the speaker of the city council on capital improvements of base building systems completed pursuant to section 224.2 of the charter, as added by section 2 of this local law, for each city fiscal year commencing with the fiscal year beginning July 1, 2013. The first such report for the fiscal year commencing July 1, 2013 shall be submitted by December 31, 2014. Subsequent reports shall be due six months after the close of the fiscal year covered by

the report. Each report shall include at a minimum:

a. The latest energy efficiency reports (including energy audit and retro-commissioning) submitted pursuant to article three hundred eight of chapter three of title twenty-eight of the administrative code for each building covered by the applicable report of the department of citywide administrative services.

b. An analysis of the most commonly recommended capital improvements of base building systems recommended in the energy audits of such buildings.

c. An analysis of the accuracy of such energy audits in predicting costs of the recommended capital improvements.

d. An analysis after one year of operation of the accuracy with which such audits predicted the actual saving achieved by the capital improvements.

e. Recommendations as to appropriate legislative or administrative actions or a statement as to why no legislative or administrative actions are needed.

§4. Severability. If any section, subsection, sentence, clause, phrase or other portion of this local law is for any reason declared unconstitutional or invalid, in whole or in part, by any court of competent jurisdiction, such portion shall be deemed severable, and such unconstitutionality or invalidity shall not affect the validity of the remaining portions of this local law, which remaining portions shall continue in full force and effect.

§5. This local law shall take effect immediately.

THE CITY OF NEW YORK, OFFICE OF THE CITY CLERK, s.s:

I hereby certify that the foregoing is a true copy of a local law of The City of New York,  
passed by the Council on .....December 9, 2009..... and approved by the Mayor  
on .....December 28, 2009.....

MICHAEL M. McSWEENEY, City Clerk Clerk of the Council.

CERTIFICATION PURSUANT TO MUNICIPAL HOME RULE §27

Pursuant to the provisions of Municipal Home Rule Law §27, I hereby certify that the enclosed Local Law (Local Law 87 of 2009, Council Int. No. 967-A) contains the correct text and was passed by the New York City Council on December 9, 2009, approved by the Mayor on December 28, 2009 and returned to the City Clerk on December 28, 2009.

JEFFREY D. FRIEDLANDER, Acting Corporation Counsel.



**NOTICE OF ADOPTION OF RULE**

**NOTICE IS HEREBY GIVEN**, pursuant to the authority vested in the Commissioner of the Department of Buildings by Section 643 of the New York City Charter and in accordance with Section 1043 of the Charter, that the Department of Buildings hereby adopts the addition of Section 103-07 to Subchapter C and the amendment of subdivision (j) of section 102-01 of subchapter B of Chapter 100 of Title 1 of the Official Compilation of the Rules of the City of New York, regarding requirements for audits and retrocommissioning.

This rule was first published on February 17, 2012 and a public hearing thereon was held on March 23, 2012.

Dated: 9/5/12  
New York, New York

/s/  
Robert D. LiMandri  
Commissioner

## **Statement of Basis and Purpose**

The following rule amendments are proposed pursuant to the authority of the Commissioner of Buildings under Sections 643 and 1043(a) of the New York City Charter.

On December 28, 2009, the Mayor signed local law 87 requiring the owners of covered buildings, as defined in the law, including city-owned buildings, to perform energy audits and retrocommissioning and file energy efficiency reports with the department.

The law also requires the department to specify the information to be contained in the reports. The proposed rule sets out procedures for energy audits, retrocommissioning, and for filing energy efficiency reports. The proposed rule also establishes a penalty for failure to file an energy efficiency report, classifies such failure to file as a class 2 violation, and provides a process to challenge the penalty.

The proposed rule sets out qualifications for energy auditors and retrocommissioning agents along with registration requirements for those individuals who are not registered design professionals.

Section 1. Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new section 103-07 to read as follows:

### **§103-07 Energy audits and retro-commissioning of base building systems**

**(a) Purpose.** This section sets forth the basic requirements for performing energy audits and retro-commissioning on certain buildings 50,000 square feet or more in floor area and submitting the associated Energy Efficiency

Report (“EER”) in accordance with article 308 of chapter 3 of title 28 of the administrative code, and establishes violations for failing to submit an EER.

**(b) References.** Article 308 of Chapter 3 of Title 28 of the New York City Administrative Code (“Article 308”); American Society of Heating, Refrigerating and Air-conditioning Engineers Inc. (“ASHRAE”) Procedures for Commercial Building Energy Audits, 2011 edition.

**(c) Approved agency qualifications.** Individuals with relevant experience are deemed approved agencies pursuant to this section for the purpose of conducting energy audits and retro-commissioning of base building systems.

**(1) Energy auditor qualifications.** The energy auditor performing or supervising the audit may not be on the staff of the building being audited and must meet the qualifications of either subparagraph (i) or (ii).

**(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 Certified Energy Manager (CEM) or Certified Energy Auditor (CEA), certified by the Association of Energy Engineers (AEE);**

- (C) a High-Performance Building Design Professional (HPBD) certified by ASHRAE;
- (D) a Building Energy Assessment Professional (BEAP) certified by ASHRAE; or
- (E) for audits of multifamily residential buildings only, a Multifamily Building Analyst (MFBA), certified by the Building Performance Institute (BPI).

(ii) The energy auditor must be an individual registered with the department and must be one of the following:

- (A) a Certified Energy Manager (CEM) or Certified Energy Auditor (CEA), certified by the Association of Energy Engineers (AEE);
- (B) a High-Performance Building Design Professional (HPBD) certified by ASHRAE;
- (C) a Building Energy Assessment Professional (BEAP) certified by ASHRAE; or
- (D) for audits of multifamily residential buildings only, a Multifamily Building Analyst (MFBA), certified by the Building Performance Institute (BPI).

(2) **Retro-commissioning agent qualifications.** The retro-commissioning agent performing or supervising the retro-commissioning may not be on the staff of the building being retro-commissioned and must meet the qualifications of either subparagraph (i) or (ii).

(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.

(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.

**(3) Registration.**

- (i) General. An energy auditor or a retro-commissioning agent who is not a registered design professional must register with the department in accordance with the provisions of this paragraph. No such energy auditor or retro-commissioning agent may perform audits or retro-commissioning without a current registration.
- (ii) Form and manner of registration. An application for registration must be submitted in a form and manner determined by the commissioner, including electronically, and the applicant must provide such information as the commissioner may require.
- (iii) Certifications. All energy auditors or retro-commissioning agents who register with the department must obtain and maintain a current certification from one of the entities listed in subparagraph (ii) of paragraph (1) or subparagraph (ii) of paragraph (2) of this subdivision, as applicable. The certification must be presented to the department upon request.
- (iv) Registration term. The term of an initial registration is three (3) years, beginning on the applicant's birthday following the date of registration, and may be renewed for additional three- (3) year periods after such initial registration.
- (v) Registration and renewal fees. Fees will be those set forth in section 101-03 of these rules.
- (vi) Renewals. A renewal application must be submitted between sixty (60) and ninety (90) days prior to the expiration date of the registration and must be accompanied by proof that the auditor or agent has, during the one (1) year period immediately preceding renewal, maintained a current certification as set forth in this rule.

(vii) Other applicable provisions. The provisions of sections 28-401.6, 28-401.8 and 28-401.19 of the Administrative Code shall apply to energy auditors and retro-commissioning agents registered pursuant to this paragraph.

**(d) Energy Audit Procedures.** An energy audit must be performed on the base building systems of a covered building prior to filing an energy efficiency report. The scope of such energy audit must be at a minimum equivalent to the procedures described for a Level 2 Energy Survey and Analysis in accordance with *Procedures for Commercial Building Energy Audits*, 2011 edition, published by the American Society of Heating, Refrigerating and Air-conditioning Engineers, Inc. (ASHRAE). The building's operations and maintenance staff must be consulted at the start of and during the energy audit process in order to establish the current facility requirements.

**(e) Contents of Energy Audit Report.** An audit report must be prepared for the owner that is at a minimum equivalent to the report prescribed by *ASHRAE Procedures for Commercial Building Energy Audits*, 2011 edition, and must include the information required by §28-308.2 of the Administrative Code. Such report must be retained by the owner in accordance with subdivision (j) of this section. The energy auditor must certify that the audit satisfies the requirements of §28-308.2 of the Administrative Code and this rule.

**(f) Retro-commissioning procedures.** The base building system components subject to retro-commissioning as per §28-308.3 of the Administrative Code must be assessed in accordance with §28-308.3 of the Administrative Code, including the testing protocols, master list of findings and repairs and deficiencies corrected, and this section. Deficiencies found in the assessment must be corrected as required by this subdivision. Notwithstanding the particular provisions of this subdivision, where less than ninety percent of components tested in the

initial sample set is found to be satisfactory, corrections may be made to all similar system components without further testing. The building's operations and maintenance staff must be consulted at the start of and during the retro-commissioning process in order to establish the current facility requirements.

**(1) Operating protocols, calibration, and sequencing.**

**(i) Heating, ventilation, and air conditioning (HVAC) system temperature and humidity set points and setbacks.** All major system components, such as chillers, boilers, cooling towers, air handlers, or pumps, must be tested to verify that such system set points and setbacks are appropriate to the current facility requirements. Where set points and setbacks require correction, the condition must be corrected and noted on the retro-commissioning report.

**(ii) HVAC sensors.**

**(A) All critical sensors that are part of a control sequence and have direct control of a major piece of equipment such as a chiller, boiler, pump, or air handling unit of capacity greater than 5,000 cubic feet per minute must be tested for proper calibration. Where sensors require correction, the condition must be corrected and noted on the retro-commissioning report.**

**(B) For monitoring sensors that measure air flow or temperature but are not part of a control sequence, a sample set constituting ten percent of all monitoring sensors, but in no event fewer than ten individual**



sensors, must be tested for proper calibration. If more than ninety percent of the sample set is found to be satisfactory, then no further sampling is required for the purposes of the retro-commissioning report. If less than ninety percent of the sample set is found to be satisfactory, then all monitoring sensors serving base building systems must be tested for proper calibration. Where sensors require correction, the condition must be corrected and noted on the retro-commissioning report.

- (iii) **HVAC controls.** All control sequences and critical controls that are part of a control sequence of a major piece of equipment such as a chiller, boiler, pump, or air handling unit of capacity greater than 5,000 cubic feet per minute must be checked for proper function. Proper function may be determined from interviews with facility staff, through trend analysis, field observation or dedicated data loggers. Where controls require correction, the condition must be corrected and noted on the retro-commissioning report.
  
- (iv) **Load distribution.** Fans, boilers, and pumps that are designed to run in parallel on major systems greater than ten horsepower must be tested for proper load distribution across the individual components. Where load distributions require correction, the condition must be corrected and noted on the retro-commissioning report.
  
- (v) **Ventilation rates.** A sample set constituting ten percent of all outdoor air intakes, but in no event fewer than three outdoor air intakes, must be measured to verify that the flow

rates are appropriate for the current facility requirements. If more than ninety percent of the sample set is found to be appropriate, then no further sampling is required for the purposes of the retro-commissioning report. If less than ninety percent of the sample set is found to be appropriate, then all outdoor air intakes serving base building systems must be measured. Where flow rates require correction, the condition must be corrected and noted on the retro-commissioning report.

(vi) **System automatic reset functions.** For each piece of major equipment, such as chillers, boilers, cooling towers, air handlers, or pumps, at least one energy-related reset function based on temperature or pressure must be tested to verify that the reset function is functioning properly. Where the reset function requires correction, the condition must be corrected and noted on the retro-commissioning report.

(vii) **Adjustments to oversized or undersized equipment.** Only major equipment, such as chillers, boilers, cooling towers, air handlers, or pumps, serving base building systems must be required to be adjusted to perform as efficiently as possible for the current facility requirements. Where the equipment requires correction, the condition must be corrected and noted on the retro-commissioning report.

(viii) **Simultaneous cooling and heating.** A sample set constituting ten percent of the HVAC system air handling units must be tested to verify that simultaneous heating and cooling is not occurring, unless intended. If the entirety of the sample set is found to be without unintended simultaneous

heating and cooling, then no further sampling is required for the purposes of the retro-commissioning report. If any portion of the sample set is found to have unintended simultaneous heating and cooling, then all base building air handling units must be tested for unintended simultaneous heating and cooling. Where unintended simultaneous cooling and heating is occurring, the condition must be corrected and noted on the retro-commissioning report.

(ix) **HVAC System Economizer controls.** The economizer controls serving all major air handling units with a minimum air circulation capacity of 5,000 cubic feet per minute must be tested for proper functionality through trends or functional testing. Where the economizer controls are found to require correction, the condition must be corrected and noted on the retro-commissioning report.

(x) **HVAC distribution balancing.** All major systems that include chillers, boilers, cooling towers, air handlers, or pumps, must be tested for proper balance for current facility requirements. A major system as used in this subparagraph means a system that serves more than 10,000 square feet. If the system is found to be out of balance, the condition must be corrected and noted on the retro-commissioning report. System balancing may only be performed by an individual certified in the testing and balancing of HVAC systems by the National Environmental Balancing Bureau (NEBB), the Testing, Adjusting and Balancing Bureau (TABB), or the Associated Air Balance Council (AABC).

Exceptions:

1. if the HVAC distribution has been tested and balanced within the twelve months prior to the reporting date of the retro-commissioning report, then the records of such testing and balancing must be included in the retro-commissioning report and no further testing and balancing will be required.
2. if the HVAC distribution has been tested and balanced within the sixty months prior to the reporting date of the retro-commissioning report, then no further testing and balancing is required, provided that all of the following conditions are satisfied:
  - 2.1. Space configurations have not been altered to affect the HVAC system since the prior testing and balancing; and
  - 2.2. no new equipment has been installed and no existing equipment has been removed during the sixty months since the prior testing and balancing; and
  - 2.3. if the major systems are controlled by a Building Management System (BMS), the BMS is monitoring or controlling all relevant equipment; and
  - 2.4. if the system is controlled by a BMS, more than ninety percent of the remote sensors, control valves, and control dampers are monitored or controlled by the BMS; and
  - 2.5. no piece of equipment is under manual control; and

- 2.6. fewer than ten percent of the diffusers in the system require replacement; and
- 2.7. if the system utilizes a Variable Air Volume (VAV) system, fewer than ten percent of the VAV terminal units are under manual control; and
- 2.8. if the system utilizes economizers, all economizers and economizer controls are fully functioning; and
- 2.9. the system supply air and water temperatures satisfy the current facility requirements.

3. If an HVAC system is out of balance but corrective work would be so extensive that it would require a work permit from the department, the condition need not be corrected in connection with the retro-commissioning but may be recommended for examination in connection with the energy audit.

(xi) **Light levels.** A sample set constituting ten percent of the area served by base building lighting systems must be tested to verify that the lighting levels are appropriate for the current facility requirements. The sample set should include areas of different uses. If more than ninety percent of the sample set is found to be within fifteen percent of current facility required lighting levels for a given area, then no further sampling is required for the purposes of the retro-commissioning report. If less than ninety percent of the sample set is found to be within fifteen percent of current facility required lighting levels, then all areas served by the base building lighting system must be tested. Where the

light levels are found to require correction, the condition must be corrected and noted on the retro-commissioning report.

(xii) **Lighting sensors and controls.** A sample set constituting ten percent of the area served by base building lighting systems must be checked to verify that the lighting sensors and controls are functioning properly. The sample set should include areas of different uses. If more than ninety percent of the sample set is found to be served by properly functioning sensors and controls, then no further sampling is required for the purposes of the retro-commissioning report. If less than ninety percent of the sample set is found to be served by deficient sensors and controls, then all areas served by the base building lighting system must be checked to verify that the lighting sensors and controls are functioning properly. Where lighting sensors and controls are found to require correction, the condition must be corrected and noted on the retro-commissioning report.

(xiii) **Domestic hot water heater temperature settings.** All major hot water heaters serving base building systems must be visually checked to verify that the temperature settings are accurate and are appropriate for the current facility requirements. Where a given base building system is served by multiple domestic hot water heaters, a sample set constituting ten percent of such heaters, but in no event fewer than three domestic hot water heaters, must be visually checked to verify that the temperature settings are appropriate. If more than ninety percent of the sample set is found to be appropriate, then no further sampling is required

for the purposes of the retro-commissioning report. If less than ninety percent of the sample set is found to be satisfactory, then all domestic hot water heaters must be visually checked to verify that the temperature settings are appropriate. Where the temperature settings are found to require correction, the condition must be corrected and noted on the retro-commissioning report.

(xiv) **Water pumps.** All water pumps greater than ten horsepower, excluding fire pumps, must be tested to verify that the devices are functioning to meet the current facility requirements. Where a pump is found to require correction, the condition must be corrected and noted on the retro-commissioning report.

(xv) **Water leaks.**

(A) All boilers and roof tanks must be visually checked to verify that they are not leaking water.

(B) For water distribution lines and makeup water lines including steam distribution, a sample set constituting ten percent of the areas where such lines are exposed must be visually checked to verify that no leaks are present. If the entirety of the sample set is found to be without water leaks, then no further sampling is required for the purposes of the retro-commissioning report. If any portion of the sample set is found to be leaking, then all areas where such water lines are exposed must be visually checked.

(C) For plumbing fixtures, such as faucets, toilets, and showerheads, served by base building systems, a sample set constituting ten percent of the fixtures must be visually checked to verify that they are without water leaks. If the entirety of the sample set is found to be without water leaks, then no further sampling is required for the purposes of the retro-commissioning report. If any portion of the sample set is found to be leaking, then all fixtures must be visually checked. All system water leaks identified must be repaired, and the condition must be noted on the retro-commissioning report.

(2) **Cleaning and repair.**

(i) **HVAC equipment.** A visual inspection of all accessible HVAC equipment, including vents, ducts, coils, valves, and soot bins must be visually checked for cleanliness where required for proper operation. If within the scope of the visual inspection the equipment is found to require cleaning, then that equipment must be cleaned, and the condition must be noted on the retro-commissioning report.

(ii) **Filter cleaning and replacement.** A sample set constituting ten percent of filters must be visually checked to verify cleanliness and tested to confirm that the filter is within the manufacturer's recommended pressure drop differential. The retro-commissioning agent must confirm with facility maintenance staff that a replacement protocol is in place for the replacement of filters according to the pressure drop differential or at least as frequently as the manufacturer's



recommendation. Where such protocol is not in place, the lack of protocol must be noted as a deficiency to be corrected, and a satisfactory protocol must be developed in order to correct such deficiency and noted on the retro-commissioning report.

- (iii) **Light fixture cleanliness.** A sample set constituting ten percent of the area served by base building lighting systems must be visually checked to verify that light fixtures serving such areas are clean. If more than ninety percent of the sample set is found to be clean, then no further sampling is required for the purposes of the retro-commissioning report. If less than ninety percent of the sample set is found to be clean, then all areas served by the base building lighting system must be visually checked to verify that the lighting fixtures are clean. Lighting fixtures requiring cleaning must be cleaned and the condition must be noted on the retro-commissioning report.

Exception: Cleaning of lighting fixtures throughout a building for the purposes of retro-commissioning is not required where there is regular maintenance of fixtures and the condition of fixtures is such that gains in energy efficiency from extensive cleaning would be minimal.

- (iv) **Operating conditions of motors, fans and pumps.** A visual inspection of all motors, fans, or pumps, 5 horsepower and greater, and associated belts, pulleys, and bearings must be performed to determine that such components are in good operating condition. Where any motor, fan, or pump is found to require correction, the condition must be corrected and noted on the retro-commissioning report.

**(v) Steam traps.**

(A) The retro-commissioning agent must confirm with facility maintenance staff that a protocol is in place for the testing of steam traps and replacement of non-functional steam traps. Where such protocol is not in place, the lack of protocol must be noted as a deficiency to be corrected. A satisfactory protocol must be developed in order to correct such deficiency and noted on the retro-commissioning report.

(B) A sample set constituting ten percent of all steam traps in areas served by base building system must be tested to verify operation. If more than ninety percent of the sample set is found to be functioning properly, then no further sampling is required for the purposes of the retro-commissioning report. If less than ninety percent of the sample set is found to be functioning properly, then all areas served by the base building steam system must be tested to verify that the steam traps are operational. All steam traps found to be functioning improperly must be replaced, repaired or rebuilt, and the condition must be noted on the retro-commissioning report.

(vi) **Manual override remediation.** The retro-commissioning agent must confirm with facility maintenance staff that a protocol for the remediation of the issues causing manual overrides has been developed. Where such protocol is not in place, the lack of protocol must be noted as a deficiency

to be corrected, and a satisfactory protocol must be developed in order to correct such deficiency, and the condition must be noted on the retro-commissioning report.

- (vii) **Boilers tuned for optimal efficiency.** A combustion efficiency test must be conducted for each boiler serving a base building system, and the boiler must be tuned and cleaned to perform at optimal efficiency for the current facility requirements.

However, if the boiler has been tested and tuned within the twelve months prior to the reporting date of the retro-commissioning report, then the records of such tuning must be included in the retro-commissioning report, and no further testing and tuning will be required.

- (viii) **Pipe insulation.** All exposed hot and chilled water and steam pipes three inches in diameter and greater and pipe fittings must be visually checked for insulation. Where any such pipes are found not to be insulated, they must be insulated in accordance with the *New York City Energy Conservation Code* and noted on the retro-commissioning report.

**Exception: Insulation with asbestos.** Existing insulation with asbestos containing materials found to be in need of replacement or repair shall not be required to be removed or replaced for the purposes of the retro-commissioning report. The condition must be noted on the retro-commissioning report and correction of such condition is not required.

(ix) **Sealants and weather stripping.** A visual inspection must be conducted in a sample set constituting ten percent of all accessible locations to confirm that sealants and weather stripping are installed and in good condition. If any portion of the sample set is found to require correction, then all accessible locations must be visually inspected. Where any sealant or weather stripping is found to require correction, the condition must be corrected and noted on the retro-commissioning report.

**Exception: Sealants and weather stripping with asbestos.** Sealants and weather stripping with asbestos containing materials shall not be required to be removed or replaced for the purposes of the retro-commissioning report. The condition must be noted on the retro-commissioning report and correction of such condition is not required.

(x) **Training and documentation.** On-site documentation in accordance with §28-308.3(3) of the Administrative Code must be verified and noted on the retro-commissioning report. Verification of training of critical operations and maintenance staff must be noted on the retro-commissioning report.

(g) **Contents of retro-commissioning report.** In accordance with §28-308.3.1 of the Administrative Code, the retro-commissioning agent must prepare and certify a retro-commissioning report that satisfies the requirements of §28-308.3 of the Administrative Code and this rule. Such report must be retained by the owner in accordance with subdivision (j) of this section.

**(h) Contents of Energy Efficiency Report.** An Energy Efficiency Report in accordance with §28-308.5 of the Administrative Code must be submitted to the department in accordance with §28-308.4 of the Administrative Code on forms prescribed by the department.

**(i) Multiple buildings.**

**(1) Multiple buildings on a lot.** Two or more buildings on a lot that constitute a covered building in accordance with §28-308.1 of the Administrative Code are subject to an energy audit and retro-commissioning of base building systems as follows:

**(i) Multiple buildings on a covered lot that are equipped with base building systems that are wholly separate from each other are subject to the requirements for an EER for each individual building.**

**(ii) Multiple buildings on a covered lot that share base building systems are subject to the requirements for an EER for each grouping of buildings that share base building systems.**

**(2) Multiple buildings on multiple tax lots that share systems.** Two or more buildings on more than one tax lot that share base building systems are subject to the requirements for an EER for each grouping of buildings that share base building systems.

**(3) Buildings on different blocks with shared base building systems.** Two or more buildings on separate blocks that constitute a covered building in accordance with §28-308.1 of the Administrative Code are subject to the requirements for an EER for each grouping of buildings that share base building systems. The due date for the EER will be in the calendar year with a final digit

that is the same as the last digit of the block number that is highest or with respect to a city building as defined in §28-308.1 of the Administrative Code in accordance with the schedule of the Department of Citywide Administrative Services.

**(j) Record retention.** Owners of covered buildings as defined in § 28-308.1 of the Administrative Code must maintain the Energy Audit Report required by §28-308.2.1 of the Administrative Code and the Retro-commissioning Report required by §28-308.3.1 of the Administrative Code as proof of energy audits and retro-commissioning as required in Article 308. Such records must be retained for eleven years from the required submission date and must be made available to the department upon request.

**(k) Fees.** Owners of covered buildings must pay a filing fee as provided in §101-03 of these rules.

**(l) Extension of time to file report.**

(1) An owner may apply for an extension of time to file an energy efficiency report if, despite good faith efforts, the owner is unable to complete the required energy audit and retro-commissioning prior to the due date of the report, for reasons other than financial hardship of the building. The application must be on a form provided by the department and must be filed by October 1 of the year in which the report is due.

(2) An owner may apply for annual extensions of time to file an energy efficiency report based on the financial hardship of the building. The application must be on a form provided by the department and must be filed by October 1 of the year in which the report is due and by October 1 of every subsequent year for which an extension is requested.

**(m) Violation and penalty.** Failure to submit an 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.

**(n) Challenge to violations.**

(1) An owner may challenge a violation issued pursuant to this section by providing:

(i) proof from the Department of Finance that the building in question is not a “covered building” as defined in section 28-308.1 of the Administrative Code; or

(ii) proof of early compliance with the filing requirements pursuant to section 28-308.7 of the Administrative Code; or

(iii) proof that the building is less than ten years old at the start of its first assigned calendar year; or

(iv) proof that the base building systems underwent substantial rehabilitation within the preceding ten years; or

(v) proof that the owner was granted an extension of time to file the report.

(2) Such challenge must be made in writing on a form provided by the Department within thirty days from the postmark date of the violation served by the Department.

§2. Subdivision (j) of section 102-01 of subchapter B of chapter 100 of Title 1 of the Rules of the City of New York is amended by adding, in numerical order, a new entry relating to Section 28-308.4 of the New York City Administrative Code as follows:

<b>Section of Law</b>	<b>Classification</b>	<b>Violation Description</b>
<u>28-308.4</u>	<u>Class 2</u>	<u>Failure to file an energy efficiency report in accordance with section 28-308.4 or 28-308.7</u>