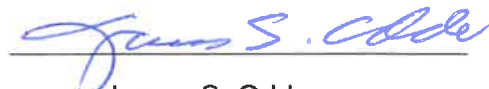


**NEW YORK CITY DEPARTMENT OF BUILDINGS**  
**NOTICE OF ADOPTION OF RULE**

**NOTICE IS HEREBY GIVEN**, pursuant to the authority vested in the Commissioner of Buildings by section 643 of the New York City Charter, and in accordance with the requirements of Section 1043 of the New York City Charter, DOB is adding a section 103-17 to Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York.

This rule was first published on September 18, 2023 and a public hearing was held on October 24, 2023. DOB received and reviewed written and oral comments from the public.

Dated: 12/14/23  
New York, New York

  
James S. Oddo  
Commissioner



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

The Department of Buildings (“DOB” or “Department”) is adding a new section 103-17 to implement Article 321 of Title 28 of the New York City Administrative Code establishing energy conservation measure requirements for certain buildings.

### **Background and Overview of Rule**

Local Law No. 97 of 2019 (“Local Law No. 97” or the “Law”) was enacted on May 19, 2019 and took effect on November 15, 2019. Local Law No. 97 and its amendments amended Chapter 3 of Title 28 of the Administrative Code of the City of New York (“Administrative Code”) to require owners of a “covered building,” as such term is defined in Article 321, to report to the Department whether their covered building complied with applicable energy conservation measure requirements.

This rule addresses compliance with the Law, including the following:

- Establishes reporting requirements for Article 321 compliance, including inspection and documentation requirements for the prescriptive energy measures; and
- Establishes penalties for non-compliance with Article 321 including a framework to allow for mitigation of penalties and mediated resolutions.

The proposed rule has been revised in response to comments received at the public hearing as well as written comments received during the public comment period. The final rule includes the following changes from the proposed rule:

- Clarifies multiple buildings on the same tax lot that are reporting pursuant to the same section of the law can comply by submitting a single report;
- Clarifies temperature controls or enclosures for radiators are only required on two-pipe steam distribution systems, in response to feedback from the engineering community that TRVs have minimal efficacy in one-pipe steam buildings.

The Department’s authority for these rules is found in sections 643 and 1043(a) of the New York City Charter and Article 321 of Chapter 3 of Title 28 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

Asterisks (\*\*\*) indicate ellipses, i.e., unamended text.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of the Department, unless otherwise specified or unless the context clearly indicates otherwise.

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 103-17 to read as follows:



**§ 103-17 Energy Conservation Measure Requirements for Certain Buildings.**

(a) Definitions. Terms defined in Article 321 of Title 28 of the Administrative Code of the City of New York have the same meanings in this section. For the purposes of this section, the following terms have the following meanings:

**Energy service.** Energy service is the delivery of energy from the energy supply or energy distribution system to or throughout a building, including any equipment used for such delivery. Two or more buildings may share energy service. Two or more buildings share energy service if such buildings share a meter or other point of connection to the energy supply or energy distribution system.

**Qualified retro-commissioning (RCx) agent.** A qualified RCx agent is a retro-commissioning agent who is not on the staff of the building being inspected and who holds one of the following credentials in good standing:

- (1) Certified Commissioning Professional certified by the Building Commissioning Association;
- (2) Certified Building Commissioning Professional certified by the Association of Energy Engineers (AEE);
- (3) Existing Building Commissioning Professional as certified by the AEE;
- (4) Commissioning Process Management Professional certified by American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE);
- (5) Accredited Commissioning Process Authority Professional approved by the University of Wisconsin;
- (6) Certified Commissioning Authority certified by the Associated Air Balance Council Commissioning Group;
- (7) Building Commissioning Professional certified by ASHRAE;
- (8) Commissioning Process Professional certified by National Environmental Balancing Bureau (NEBB);
- (9) Technical Retro-Commissioning Certified Professional certified by NEBB;
- (10) Building Systems Commissioning Professional certified by NEBB; or
- (11) Registered Design Professional.



(b) Required report for certain buildings. No later than May 1, 2025, the owner of a covered building must submit a report, in a form and manner determined by the Department, in accordance with section 28-321.3 of the Administrative Code, demonstrating compliance with either paragraph (1) or paragraph (2) of this subdivision. Where an owner has multiple covered buildings on a lot, such owner may choose to provide a separate report for each such covered building on the lot, or a single report pursuant to either section 28-321.3.1 or section 321.3.2 of the Administrative Code for all such covered buildings on the lot. Where buildings share an energy system, such buildings must be reported in a single report pursuant to the same section of the Administrative Code. Two or more covered buildings located on adjacent but separate tax lots may be included in a single report pursuant to the same section of the Administrative Code, provided all such covered buildings share energy service.

(1) Energy compliant buildings report. To demonstrate compliance with this subdivision the owner of a covered building may submit a building emissions report, certified by a registered design professional, in accordance with section 28-321.3.1 of the Administrative Code, this paragraph, and section 103-14 of these rules, that for calendar year 2024 such covered building was in compliance with the applicable building emissions limit established pursuant to section 28-320.3.2 of the Administrative Code. The report must include:

(i) Building address(es);

(ii) Building owner and contact information;

(iii) Name of the registered design professional certifying the report; and

(iv) Energy use and emissions information for such covered building calculated as if such building were a covered building as defined in Article 320 of Title 28 of the Administrative Code and section 103-14 of these rules.

(2) Prescriptive energy conservation measures (PECMs) report. To demonstrate compliance with this subdivision the owner of a covered building may submit a report, certified by a qualified RCx agent, in accordance with this section and Section 28-321.3.2 of the Administrative Code, demonstrating that each applicable PECM





identified in section 28-321.2.2 of the Administrative Code was fully implemented at the covered building prior to January 1, 2025. The RCx agent must maintain all documentation and information used in preparing such report, including records of inspections conducted, for a minimum of 6 years. Such documentation and information must be submitted to the Department upon request. The report required by this paragraph must include:

(i) Building address(es);

(ii) Building owner and contact information;

(iii) Name, affiliation, contact information, experience, and relevant certifications for the qualified RCx agent and supervised staff performing the PECM inspections;

(iv) Name, affiliation, and contact information for the facility manager for the building;

(v) For each building, an inventory of all HVAC equipment, domestic hot water equipment, electrical equipment, lighting, and conveyance equipment serving the building, including the date of installation of such equipment. Where applicable, the report must indicate where equipment serves multiple buildings; and

(vi) For each PECM, documentation as required in subdivision (c) of this section.

(c) Inspection and documentation for prescriptive energy conservation measures. PECMs must be inspected and documented by the RCx agent in accordance with this subdivision. Documentation of such inspection required by this subdivision must be included with the PECM report required by subdivision (b) of this section.

(1) Temperature set points.



(i) Inspection: The RCx agent must examine the temperature set points for heat and hot water systems in the building. All systems serving multifamily dwelling units must be set to the requirements of the Housing Maintenance Code.

(ii) Documentation: An attestation by the RCx agent certifying completion of such PECM.

(2) Repair heating system leaks.

(i) Inspection: The RCx agent must conduct a visual inspection of all heating equipment for water, steam, oil, refrigerant, and air leaks in systems. Leaks identified must be repaired by January 1, 2025. Exception: Inspection of forced-air and electric-resistance heating systems is not required.

(ii) Documentation: An attestation by the RCx agent certifying completion of such PECM.

(3) Heating system function.

(i) Inspection: The RCx agent must confirm that each heating system in the covered building is functioning in good working order.

(ii) Documentation: An attestation to the Department certifying completion of such PECM.

(4) Temperature controls or enclosures for radiators.

(i) Inspection: The RCx agent must confirm that each dwelling unit has at least one thermostat to control the heating system or that each radiator is installed with an individual temperature control or an insulated radiator enclosure with temperature controls, where applicable. Proper inspection for a thermostatic radiator valve (TRV) or a radiator enclosure survey must include radiators in the covered building that have over- or underheating issues, as reported by testing, facility manager or occupant. Such inspections must be conducted as follows:

(A) Two-pipe steam systems. For two-pipe steam distribution systems, the RCx agent must confirm that either a TRV or an insulated radiator enclosure with temperature controls has been installed at each radiator and is in good working order.



(B) Hydronic systems. For hydronic distribution systems, the RCx agent must confirm that temperature controls are functioning on radiators where present. If controls are found to not be functioning properly, such controls must be repaired or replaced.

(C) Electric-resistance systems. For buildings served by electric resistance radiators, the RCx agent must confirm that each dwelling unit has at least one thermostat to control the radiators in the unit.

(ii) Documentation: For each covered building in a report, the RCx agent must provide one of the following completed on or after November 15, 2019:

- (A) Proof of a completed utility TRV or orifice plate incentive program; or
- (B) The results of a TRV/radiator enclosure or other temperature control survey by a qualified RCx agent as described herein.

(5) Piping insulation.

(i) Inspection: The RCx agent must verify that all exposed and readily accessible piping that is part of the heating and service hot water system supply is insulated to the extent possible in accordance with section C403.11.3 of the New York City Energy Conservation Code. Where existing insulation is degraded, such insulation must be replaced.

(ii) Documentation: An attestation to the Department certifying completion of such PECEM.

(6) Steam and hot water tank insulation.

(i) Inspection: The RCx agent must inspect hot water tanks to confirm that they are insulated. Exception: Vacuum units are not required to be inspected.

(ii) Documentation: An attestation to the Department certifying completion of such PECEM.

(7) Indoor/outdoor temperature sensors.

(i) Inspection: The RCx agent must inspect and confirm the presence of indoor/outdoor temperature systems in accordance with section C403.4.1.5 of the New York City Energy Conservation Code. Where such sensors or controls are



not present, they must be installed. For steam distribution systems, this requirement may be satisfied by the use of wireless temperature sensors that provide feedback to the boiler or heating system control, provided that such sensors have been installed in a minimum of 25% of dwelling units and are in good working order.

(ii) Documentation:

(A) A screenshot or other output from a digital control system showing that sensors are connected and in good working order and showing sufficient information to identify the covered building; or,

(B) Proof of completion of a utility program to install such indoor/outdoor temperature sensors and/or controls; or,

(C) The location of such temperature sensors and controls, attestation that they were in good working order at the time of inspection, and the date of completion of the inspection.

(8) Functioning steam traps.

(i) Inspection: The RCx agent must inspect radiators to confirm that each has a steam trap or orifice plate in good working order no earlier than January 1, 2022, and no later than December 31, 2024. Proper inspection of steam traps must include the RCx agent surveying the supply equipment and distribution lines for each heating system serving a covered building and confirming the presence of properly functioning steam traps, in accordance with the following requirements for each distribution system type:

(A) Two-pipe steam systems. For two-pipe steam distribution systems, all steam traps must be inspected, or tested to identify areas where the system is not functioning properly. The Department shall provide guidance with respect to such testing. All steam traps found to be functioning improperly must be replaced, repaired, or rebuilt. Steam traps are not required on radiators where functioning TRVs are installed with orifice plates and both are found to be in good working order.

(B) High-pressure steam systems. For high-pressure steam distribution systems, all high-pressure steam traps operating above 15 PSI of pressure





must be tested using ultrasonic leak detection to verify proper operations. All steam traps found to be functioning improperly must be replaced, repaired, or rebuilt.

(ii) Documentation: For each covered building in a report, the RCx agent must provide one of the following:

(A) Proof of a completed utility orifice plate and/or steam trap incentive program; or

(B) Results of a steam trap survey by a qualified RCx agent as described herein.

(9) Steam system venting.

(i) Inspection: For one-pipe steam systems and for atmospheric (non-vacuum) two-pipe steam systems, the RCx agent must confirm that master venting is installed at the ends of mains, at large horizontal pipe runs, at the tops of all risers, and at vertical pipes branching off a main where appropriate. Testing, pursuant to guidance issued by the Department, may be employed to identify loops that are not functioning properly.

(ii) Documentation:

(A) Proof of a completed utility program that included installation, repair, or replacement of master venting; or

(B) Schematic diagrams of the steam loops in the covered building identifying the installed vents with a schedule indicating the date of testing of each loop found to be in compliance with this subparagraph or the inspection date of each vent indicating whether the vent was in good working order, repaired, replaced, or rebuilt.

(10) Upgrade lighting.

(i) Inspection: Lighting and lighting controls installed after July 1, 2010 must be compliant with the New York City Energy Conservation Code in effect at the time of installation. Lighting and lighting controls installed prior to July 1, 2010 must be compliant with the New York City Energy Conservation Code in effect on July 1,



2010 or must be replaced. Compliance must be confirmed through examination of installation records or visual inspection.

(ii) Documentation: Documentation of this requirement must be submitted to the Department in accordance with Article 310 of Chapter 3 of Title 28 of the Administrative Code and the Department's rules.

(11) Building envelope.

(i) Inspection: The RCx agent must perform a visual inspection of the envelope to confirm that required air barriers at fenestration, doors, and other penetrations are in good working order. Where major sources of leakage are identified, these seals must be repaired or replaced.

(ii) Documentation: An attestation to the Department certifying completion of such PECEM.

(12) Exhaust fan timers.

(i) Inspection: The RCx agent must inspect exhaust fans intended for intermittent operation to confirm that timers or other controls automatically turn the fan off are installed and are in good working order. The RCx agent must confirm that fans intended for continuous use are in good working order.

(ii) Documentation: An attestation to the Department certifying completion of such PECEM.

(13) Radiant barriers.

(i) Inspection: The RCx agent must inspect radiators to confirm that foil-faced radiant barriers or radiator reflectors are installed where applicable prescriptive measures include the installation or replacement of TRVs or installation of thermostatic radiator covers.

(ii) Documentation: An attestation to the Department certifying completion of such PECEM.

(d) Penalty for failure to file a report. An owner of a covered building shall be liable for a civil penalty for failing to file a report in accordance with section 28-321.3 of the Administrative Code and subdivision (b) of this section within 60 days of the reporting deadline or by any extension deadline granted by the Department.



(1) Penalty amount. An owner who fails to file such report shall be liable for a civil penalty of \$10,000 per covered building.

(2) Extension of time to file. An owner who is unable to file such report by the reporting deadline may apply for an extension in accordance with this paragraph. Such extension application must be filed with accompanying documentation no sooner than 30 days before and no later than 60 days after the reporting deadline. For purposes of this provision, an owner may receive an extension where:

(i) The registered design professional or qualified RCx agent, as applicable, hired for purposes of completing such report could not finish completing such report by the reporting deadline. For purposes of this paragraph, acceptable documentation in support of such extension request includes a contract executed no later than February 1, 2025 and an affidavit signed by the owner and the registered design professional or qualified RCx agent stating that such professional or agent was unable to complete such report on time and that such report will be completed and filed within 120 days of the reporting deadline; or

(ii) Such owner has challenged a determination by the Department of Finance regarding whether the square footage of the building qualifies such building as a covered building, or a determination by the Department regarding whether the building qualifies as a covered building under Article 320 or Article 321, provided that such owner must file the report within 120 days of the first determination by either Department that such building qualifies as a covered building under this rule following such a dispute. For purposes of this paragraph, acceptable documentation in support of such extension request is an attestation signed by the owner indicating why the building does not qualify as a covered building and all correspondence between the applicable agency and the building owner related to such dispute.

(e) Penalty for failure to demonstrate energy conservation measures as required in section 28-321.2 of the Administrative Code. An owner of a covered building shall be liable for a civil penalty of \$10,000 per covered building for failing to demonstrate either:



(1) Pursuant to section 28-321.2.1 of the Administrative Code, for calendar year 2024, the annual building emissions of such covered building did not exceed what the applicable annual building emissions limit would be in 2030 pursuant to Article 320 of Chapter 3 of Title 28 of the Administrative Code and rules promulgated thereunder if such building were a covered building as defined in such Article 320; or

(2) Pursuant to section 28-321.2.2 of the Administrative Code, the prescriptive energy conservation measures, as applicable, were fully implemented by December 31, 2024.

(f) Mitigated penalties. An owner not in compliance with this section may be eligible for a mitigated penalty as specified in section 102-01 of these rules and this subdivision.

(1) Unexpected or unforeseeable event. An owner may demonstrate that an unexpected or unforeseeable event or condition outside of their control precluded compliance where a building was damaged as a result of a disaster, including but not limited to a hurricane, severe flooding, or fire. Such owner must provide photographs demonstrating the nature and extent of any such damage, and a description of how such damage precluded compliance. Demonstration of such an unexpected or unforeseeable event or condition may result in zero penalty.

(2) Eligible energy conservation alteration projects. An owner may demonstrate no later than May 1, 2025, in accordance with guidance issued by the Department, that such building received a commitment from a state or local agency or instrumentality no earlier than November 15, 2019 to receive governmental assistance to engage in an eligible energy conservation alteration project with a state or local agency or instrumentality that achieves compliance with the annual building emissions limit described in section 28-321.2.1 of the Administrative Code or the energy conservation measures identified in section 28-321.2.2 of such Code. Such owner must provide a letter from such agency or instrumentality detailing such project and demonstrating that the building will meet the applicable compliance requirements. Demonstration of such eligible energy conservation alteration project may result in zero penalty.

(g) Mediated resolution.





(1) The Department may offer a mediated resolution to an owner not in compliance with section 28-321.2.1 or section 28-321.2.2 of the Administrative Code of the City of New York, provided that the Department shall offer such resolution only where, by May 1, 2025:

i. Such owner submits an attestation in a form and manner determined by the Department that such owner is not in compliance with section 28-321.2.1 or section 28-321.2.2 of the Administrative Code; and

ii. Such owner submits benchmarking information for the previous calendar year to the benchmarking tool in accordance with Article 309 of Chapter 3 of Title 28 of the Administrative Code and rules promulgated thereunder as applicable, or the data required by section 28-309.4 of the Administrative Code for the prior calendar year; and

iii. Such resolution would facilitate the building owner achieving compliance with Article 321 of Chapter 3 of Title 28 of the Administrative Code.

(2) A mediated resolution is an agreement between the owner and the Department not to bring an enforcement proceeding and may provide for terms and conditions determined by the Department, including but not limited to requiring the owner to submit a plan for compliance with section 28-321.2 of the Administrative Code. The Department shall provide guidance with respect to such plans, including examples of appropriate compliance plans.

(3) Such mediated resolution shall provide that an enforcement proceeding will be commenced and civil penalties may be imposed for the violation of Article 321 of Title 28 of the Administrative Code of the City of New York where the owner fails to comply with the terms of such agreement, pursuant to subdivision d and subdivision e of this section.

§ 2. Table 1 of subdivision (k) of section 102-01 of the Rules of the City of New York is amended by adding a new line in numerical order to read as follows:

Section of Law	Classification	Violation Description	Cure	Stipulation	Standard	Mitigated	Default	Aggravated I Penalty	Aggravated I	Aggravated II Penalty	Aggravated II Default
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					<u>Penalty</u>	<u>Penalty</u>	<u>Penalty</u>		<u>Default Penalty</u>		<u>- Max Penalty</u>
<u>1 RCNY 103-17(d) (1)</u>	<u>Class 2</u>	<u>Failure to file report per 28-321.3</u>	<u>Yes</u>	<u>Yes</u>	<u>\$10,000</u>	<u>Yes</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>
<u>1 RCNY 103-17(e) (1)</u>	<u>Class 2</u>	<u>Failure to demonstrate compliance with energy compliance buildings requirements per 28-321.2</u>	<u>Yes</u>	<u>Yes</u>	<u>\$10,000</u>	<u>Yes</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>
<u>1 RCNY 103-17(e) (2)</u>	<u>Class 2</u>	<u>Failure to demonstrate compliance with energy conservation measures per 28-321.2</u>	<u>Yes</u>	<u>Yes</u>	<u>\$10,000</u>	<u>Yes</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>	<u>\$10,000</u>

