

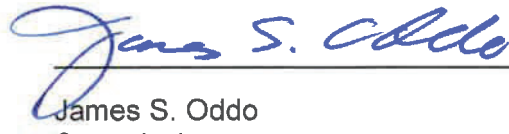
NEW YORK CITY DEPARTMENT OF BUILDINGS
NOTICE OF ADOPTION OF RULE

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 amending section 103-12 of Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York.

This rule was published on October 4, 2024, and a public hearing was held on November 7, 2024. DOB received and considered written and oral comments from the public.

Dated: 12-16-2024

New York, New York


James S. Oddo

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Commissioner

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Statement of Basis and Purpose

The Department of Buildings (“DOB” or “Department”) is amending section 103-12 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York to establish the filing requirements for applications for an adjustment to annual building emission limits in accordance with section 28-320.7 of the Administrative Code for the purpose of compliance with the greenhouse gas (GHG) emissions limits established by article 320 of chapter 3 of Title 28 of the Administrative Code. A building owner may qualify for such an adjustment to the annual building emissions limit where the building is subject to another provision of law or affected by a physical condition that prevents compliance with the limits. The proposed amendments would also allow buildings subject to article 321 of chapter 3 of Title 28 of the Administrative Code to apply for an adjustment where the building owner is experiencing financial constraints.

The Department received and considered comments during the public comment period, including testimony submitted at the public hearing. One comment noted the law does not require buildings applying for an adjustment of the GHG Emission limits pursuant to Section 28-320.7(1) to purchase renewable energy credits. In response to this comment, the rule was changed to reflect that buildings need only purchase greenhouse gas offsets in connection with such an application. Several comments were submitted relating to the adjustment for buildings constrained by finances pursuant to Section 28-320.7(2). In particular, comments reflected:

- The view that the metric for condos and co-ops is too lenient;
- A request that the adjustment be made available to safety net hospitals; and
- A recommendation that special consideration be given to buildings housing residents with fixed incomes.

No changes were made in response to these comments. DOB believes the rule reflects industry best practices and treats buildings appropriately as required by the law. In addition, safety net hospitals may qualify for the adjustment. DOB will continue to monitor the implementation of the rule, with a particular focus on affordability concerns, in order to determine whether a future change to the rules would best support full and equitable compliance with the law.

DOB made other changes to the rule for consistency in formatting and process, including to clarify that the timeline for submitting an adjustment application is the same as the timeline for submitting the annual emissions report, to require the inclusion of the most recent annual emissions instead of historical benchmarking data in such applications, and to require the inclusion of actual results of compliance work in the adjustment application for buildings facing an external constraint.

The Department's authority for these rules is found in Sections 643 and 1043(a) of the New York City Charter and Article 320 of Chapter 3 of Title 28 of the New York City Administrative Code.

New material is underlined.

[Deleted material is in brackets.]

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

Section 1. Section 103-12 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

§103-12. Requirements for Filing Applications for an Adjustment of Annual Greenhouse Gas Emission Limits [for Not-for-Profit Hospitals and Healthcare Facilities].

(a) [Purpose and Applicability. This section establishes the requirements for filing an application for an adjustment of the Greenhouse Gas (GHG) Emission limits for buildings owned by or leased to not-for-profit hospitals and healthcare facilities pursuant to Section 28-320.9 of the Administrative Code.

(b) Procedures for filing an application for an adjustment [under] of the Greenhouse Gas (GHG) Emission limits pursuant to Section 28-320.9 for buildings owned by or leased to not-for-profit hospitals and healthcare facilities. Applications for an adjustment must be filed by a registered design professional. Applications must include the following:

(1) 2018 benchmarking data submitted in accordance with Article 309 of Title 28 of the Administrative Code. Applicants must demonstrate:

(i) the actual building emissions for calendar year 2018,

(ii) the gross [square footage] floor area, where the whole building is occupied by a not-for-profit healthcare organization, or the total area occupied exclusively by a not-for-profit healthcare organization, and

(iii) the occupancies in the building.

The documentation should confirm the building emissions intensity based on actual emissions for 2018 for the purpose of establishing a new limit if an adjustment is approved. Energy benchmarking data from 2018 may be modified if an applicant can justify the reason for a correction to the energy consumption data, gross floor area, and/or occupancies recorded for the covered building.

(2) Documentation of not-for-profit status. Applicants must submit a copy of the New York City Department of Finance Notice of Property Value as documentation of the owner's designation as a not-for-profit organization. For buildings with a not-for-profit healthcare organization as a tenant, partial adjustments may be granted for area occupied exclusively by a not-for-profit healthcare organization for the purposes of healthcare services. An owner must submit a copy of the tenant's 501(c)(3) determination letter from the Internal Revenue Service.

(3) Documentation of separate metering for electricity. Owners may seek an adjustment for space leased to a not-for-profit healthcare tenant only if the space leased to the tenant is separately metered or sub-metered for electricity.

(4) Documentation of the lessor/lessee agreement. Applicants with a tenant that is a not-for-profit healthcare organization whose space is separately metered or sub-metered must submit documentation of the terms of the lessor/lessee agreement, including the term of the lease and the total area of space leased to the tenant for their exclusive use, in the form of an affidavit, signed by the owner. The current lease or a prior lease for the same space must have been effective for the entirety of calendar year 2018. If the lease is terminated and not renewed at any time between 2024 and 2034, the adjustment will be terminated for that space. The Department may request additional documentation as needed to support the adjustment.

(5) Effective period. An adjustment granted pursuant to Section 28-320.9 may be effective for the reporting years 2025 through 2034, provided that, when granted to an owner for a not-for-profit tenant, the tenant remains in the building. Owners may be required to provide additional documentation, as requested by the Department, to support the application for an adjustment.

(b) Procedures for filing an application for an adjustment of the GHG Emission limits pursuant to Section 28-320.7(1) for buildings subject to a provision of law or affected by a physical condition. Applications for an adjustment must be filed with the annual building emissions report by a registered design professional. Applications must include the materials listed in paragraphs (1) through (6) below. Owners may be required to provide additional documentation, as requested by the Department.

(1) Confirmation that the building was in existence, or that a permit for construction of such building was issued, prior to November 15, 2019; and

(2) The annual building emissions report for the calendar year prior to the submission of the application for an adjustment, submitted in accordance with Article 320 of Title 28 of the Administrative Code and section 103-14 of these rules; and

(3) A detailed description of the provision of law or physical condition of the building or building site preventing compliance with the annual building emissions limit and a technical explanation of how such provision or condition makes it not reasonably possible for the building to achieve strict compliance with the annual building emissions limit; and

(4) A technical explanation of the building's efforts to achieve compliance with the annual building emissions limit to the maximum extent possible, including:

(i) all carbon reduction alterations and energy efficiency measures implemented since 2019, including actual emissions reductions and efficiency increases achieved,

(ii) a plan for decarbonizing such building to the maximum extent possible, and

(iii) all alternative methods to achieve compliance considered and why such methods were not deemed reasonably possible; and

(5) An affidavit from an entity funded by the city to provide compliance resources, pursuant to guidance issued by the Department, stating the owner availed itself of all city, state, federal, private, and utility incentive programs related to energy reduction or renewable energy, for which they could reasonably apply; and

(6) Evidence that the owner has purchased the maximum amount of greenhouse gas offsets authorized under section 103-14 of these rules and pursuant to guidance issued by the Department.

(7) Effective period. An adjustment granted pursuant to this subdivision may be effective for a maximum of three calendar years.

(c) Procedures for filing an application for an adjustment of the GHG Emission limits pursuant to Section 28-320.7(2) for buildings constrained by finances. Applications for an adjustment must be filed with the annual building emissions report by a registered design professional. Applications must include the materials listed in paragraphs (1) through (4) below. Owners may be required to provide additional documentation, as requested by the Department.

(1) Confirmation that the building was in existence, or that a permit for construction of such building was issued, prior to November 15, 2019; and

(2) The annual building emissions report for the calendar year prior to the submission of an application for an adjustment, submitted in accordance with Article 320 of Title 28 of the Administrative Code and section 103-14 of these rules; and either paragraph 3 or 4 below:

(3) For the most recent calendar year(s) prior to the application for an adjustment:

(i) An affidavit from an entity funded by the city to provide compliance resources, pursuant to guidance issued by the Department, stating that:

(a) the owner has been working with such entity in an effort to comply with the applicable building emissions limit prior to the application; and

(b) the owner availed itself of all city, state, federal, private, and utility incentive programs related to energy reduction or renewable energy, for which they could reasonably apply; and

(c) the owner availed itself of all programs funded by the city or enabled by local law that provide financing for the purpose of energy reduction or sustainability measures, in which they could reasonably participate; and

(ii) Evidence that the owner has purchased the maximum amount of greenhouse gas offsets or renewable energy credits authorized under section 103-14 of these rules and pursuant to guidance issued by the Department; and

(iii) Documentation prepared by a certified public accountant demonstrating one of the following:

(a) For buildings held in a condominium or cooperative form of ownership: a 3-year average increase in annual carrying charges per unit of 5% above the average rate of inflation for the same 3-year period; or

(b) For buildings 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: the building owner had negative revenue after subtraction of expenses for the combined 2 years prior to the application; or

(c) For buildings that are party to an affordable housing regulatory agreement and buildings with no debt: the building's income-expense ratio, as calculated pursuant to guidance issued by the department, is less than 1.05; or

(d) For all other building types: the building's debt service coverage ratio, as calculated pursuant to guidance issued by the department, is less than 1.15; or

(4) For the combined 2 calendar years prior to the application for an adjustment:

(i) Attestation that the building had arrears of property taxes or water or wastewater charges that resulted in the property's inclusion on the Department of Finance's annual New York City tax lien sale list; or

(ii) Attestation that the building had outstanding balances under the Department of Housing Preservation and Development's emergency repair program that resulted in the property's inclusion on the Department of Finance's annual New York City tax lien sale list.

(5) Effective period. An adjustment granted pursuant to Section 28-320.7(2) may be effective for a maximum of 1 calendar year.

[(c)] (d) Fees. Owners seeking an adjustment pursuant to this section must pay a filing fee as provided in Section 101-03 of these rules.

§ 2. Subdivision (f) of section 103-14 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York is amended by adding new paragraphs (3) and (4), to read as follows:

(3) Where an owner has been granted an adjustment to their building emissions limit pursuant to § 28-320.7(1) of the Administrative Code, the adjustment expires no later than January 1 of the calendar year three years following the first year covered by the building's adjustment.

(4) Where an owner has been granted an adjustment to their building emissions limit pursuant to § 28-320.7(2) of the Administrative Code, the adjustment expires no later than January 1 of the calendar year following the year covered by the building's adjustment.

§ 3. Paragraph (1) of subdivision (g) of section 103-17 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(1) The Department may offer a mediated resolution to an owner not in compliance with § 28-321.2.1 or § 28-321.2.2 of the Administrative Code [of the City of New York], provided that the Department [shall] will offer such resolution only where[,] such owner has applied for or been granted an adjustment by the Department in accordance with § 28-320.7(2) of the Administrative Code and clause c of subparagraph iii of paragraph 3 of subdivision c of section 103-12 of this subchapter, or the following criteria are met 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 § 28-321.2.1 or § 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 § 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.