

NEW YORK CITY DEPARTMENT OF BUILDINGS

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Buildings (DOB) is proposing to amend its rules to establish filing requirements for applications for an adjustment to annual greenhouse gas (GHG) building emission limits for buildings subject to a provision of law or affected by a physical condition that prevents compliance with the limits, or where the building owner is experiencing financial constraints.

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

- Join through Internet – Desktop app:

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

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

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

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

- Join through Internet - Smartphone app:

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

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

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

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

Meeting ID: 239 321 667 320

Passcode: nosG8A (Code is case sensitive)

- Join via phone only:

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

Phone: +1 646-893-7101

Phone Conference ID: 866 348 222#

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

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to the DOB through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to dobrules@buildings.nyc.gov.
- **Mail.** You can mail comments to the New York City Department of Buildings, Office of the General Counsel, 280 Broadway, 7th floor, New York, NY 10007.
- **Fax.** You can fax comments to the New York City Department of Buildings, Office of the General Counsel, at 212-566-3843.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up by emailing dobrules@buildings.nyc.gov by 10/31/2024 and including your name and affiliation. While you will be given the opportunity during the hearing to indicate that you would like to provide comments, we prefer that you sign up in advance. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

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

What if I need assistance to participate in the hearing? You must tell the Office of the General Counsel if you need a reasonable accommodation of a disability at the hearing. You can tell us by email at dobrules@buildings.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. You must tell us by 10/24/2024.

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

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. Copies of all comments submitted online, copies of all written comments and a summary of oral comments concerning the proposed rule will be available to the public at the Office of the General Counsel and may be requested by email at dobrules@buildings.nyc.gov.

What authorizes DOB to make this rule? Sections 643 and 1043(a) of the City Charter and section Article 320 of Chapter 3 of Title 28 of the New York City Administrative Code authorize DOB to make this proposed rule. This proposed rule was included in DOB’s regulatory agenda.

Where can I find DOB’s rules? DOB’s rules are in Title 1 of the Rules of the City of New York.

What rules govern the rulemaking process? DOB must meet the requirements of Section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the City Charter.

Statement of Basis and Purpose

The Department of Buildings (“DOB” or “Department”) is proposing to amend 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 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’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 for buildings owned by or leased to not-for-profit hospitals and healthcare facilities pursuant to Section 28-320.9. 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 by May 1 for the prior calendar year 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;

(2) A 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, demonstrating the following, provided that such data may be modified if an applicant can demonstrate a valid reason for a modification:

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

(ii) the gross floor area of the building,

(iii) the property types in the building, and

(iv) the building emissions intensity based on actual emissions for the prior calendar year;

(3) A detailed description of the provision of law or physical condition 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;

(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,

(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;

(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 available 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.

(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 for buildings constrained by finances pursuant to Section 28-320.7(2). Applications for an adjustment must be filed 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) A 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, demonstrating the following, provided that such data may be modified if an applicant can demonstrate a valid reason for a modification:

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

(ii) the gross floor area of the building,

(iii) the property types in the building, and

(iv) the building emissions intensity based on actual emissions for the prior calendar year; and

(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 available 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 on 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 on 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.

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

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

RULE TITLE: Filing Requirements for Application to Adjust Emission Limits

REFERENCE NUMBER: 2024 RG 077

RULEMAKING AGENCY: Department of Buildings

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Senior Counsel

Date: September 13, 2024

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

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Filing Requirements for Application to Adjust Emission Limits

REFERENCE NUMBER: DOB-182

RULEMAKING AGENCY: Department of Buildings

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because it does not establish a violation, modification of a violation, or modification of the penalties associated with a violation.

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

September 13, 2024
Date