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 103-07 of Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York.

This rule was first 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. No changes have been made to the rule.

Dated: 12/16/2024
New York, New York

/S/
James S. Oddo
Commissioner

Notice of Adoption

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 103-07 of Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York.

This rule was first 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. No changes have been made to the rule.

Statement of Basis and Purpose of Rule

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

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

[Deleted material is in brackets.]

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

(1) The energy auditor performing or supervising the audit may not be on the staff of the building being audited. The energy auditor must be a registered design professional, and the energy auditor or an individual under the direct supervision of the energy auditor must be one of the following:

(i) a Certified Energy Manager or Certified Energy Auditor, certified by the Association of Energy Engineers (AEE);

(ii) a High-Performance Building Design Professional certified by ASHRAE;

(iii) a Building Energy Assessment Professional certified by ASHRAE; [or]

(iv) for audits of multifamily residential buildings only, a Multifamily Building Analyst, certified by the Building Performance Institute[.]; or

(v) an Energy Management Professional certified by the Energy Management Association.

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

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

NEW YORK CITY 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 101-03 of Subchapter A 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. No changes have been made to the rule.

Dated: 12/16/2024
New York, New York

/S/
James S. Oddo
Commissioner

Notice of Adoption

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 101-03 of Subchapter A 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. No changes have been made to the rule.

Statement of Basis and Purpose of Rule

The Department of Buildings ("DOB" or "Department") is amending section 101-03 of subchapter A of chapter 100 of Title 1 of the Rules of the City of New York by:

- Adding fees for filing of lighting and sub-metering reports as required under section 28-310.3 and 28-311.5 of the New York City Administrative Code ("the Administrative Code").

- Adding fees for simple and complex filings for annual building emission reports required under section 28-320.3.7, requests for extensions of the time for filing of annual building emission reports permitted by section 28-320.3.7.1 and Good Faith Effort Reports submitted pursuant to section 28-320.6.1 of the Administrative Code.

- Adding fees for filing compliance reports required by section 28-321.3.1 or 28-321.3.2 of the Administrative Code.

- Adding fees for filing applications for an adjustment of the annual building emission limits pursuant to section 28-320.7 of the Administrative Code.

The Department's authority for these rules is found in sections 643 and 1043 of the New York City Charter, sections 28-112.1 and sections 28-310.3, 28-311.5 and Articles 320 and 321 of Title 28 of the Administrative Code.

New material is underlined.

Section 1. Section 101-03 of subchapter A of chapter 100 of Title 1 of the Rules of the City of New York is amended by adding the following entries at the end of the table set forth in that section:

Filing fee for reporting required upgrades to lighting systems and required installation of electrical sub-meters pursuant to sections 28-310.2 and 28-311.5.	$115
Filing fee for annual building emissions reports pursuant to RCNY § 103-14: •Simple Reports	 $210

•Complex Reports	$615
•Requests for Extensions	$60
•Good Faith Efforts Report	$950
Annual Emission Limits Compliance Reports for Certain Buildings pursuant to RCNY § 103-17	
•Compliance Report	$210
•Mediated Resolution Reports	$800
Filing fee for application for adjustment to the annual building emissions limit pursuant to 28-320.7	
• External constraints pursuant to RCNY § 103-12(b)	$3,540
• Financial constraints pursuant to RCNY § 103-12(c)(3)	$690
• Financial constraints pursuant to RCNY § 103-12(c)(4)	$300

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 103-14 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

/S/
James S. Oddo
Commissioner

Notice of Adoption

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 103-14 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.

Statement of Basis and Purpose of Rule

The Department of Buildings ("DOB" or "Department") is amending section 103-14 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York to further specify how to comply with article 320 of chapter 3 of Title 28 of the New York City Administrative Code, which requires the establishment of annual greenhouse gas (GHG) emissions limits for buildings. These amendments:

- Establish a coefficient for calculating the emissions resulting from the use of certain biofuels,
- Amend the equations for calculating the coefficient for campus-style electricity,
- Establish a coefficient for certain co-generation systems,
- Amend the equation for calculating deemed electric use for qualifying beneficial electrification, and
- Set forth the type and amount of GHG offsets that may be used as a deduction from annual building emissions to achieve Local Law 97 (LL97) compliance.

The offsets that may be used for LL97 compliance are offsets generated by the New York City Affordable Housing Reinvestment Fund (AHRF). The AHRF is a fund established by the Department and the Department of Housing Preservation and Development (HPD), and administered by a third-party pursuant to a contract with the City. AHRF offsets are generated in connection with qualifying building electrification projects at affordable housing buildings in New York City pursuant to a methodology developed by HPD, which uses a deemed savings approach and assumptions vetted by an independent, qualified third-party to estimate the emissions reductions for such projects. AHRF offsets are the only offsets eligible for LL97 compliance because they are high-integrity offsets that reduce emissions from the built environment and result in environmental, health, and economic benefits in New York City, and are therefore the only offsets DOB recognizes as furthering the goals of LL97. AHRF offsets exemplify principles of environmental integrity, as identified by the federal government in the "Voluntary Carbon Markets Joint Policy Statement and Principles" published May 2024: they are real and quantifiable, permanent, additional, verifiable, unique, and based on robust baselines for estimating emissions reductions. AHRF offsets operate in a controlled, local environment to provide verifiable emissions reductions and contribute to building decarbonization in New York City.

The Department received and considered comments during the public comment period, including testimony submitted at the public hearing, and subsequently made changes to the rule, as follows:

- Clarify that the minimum annual average efficiency for qualified generation facilities is based on the previous year's NYC GHG inventory coefficient for electric emissions;

- Clarify that the alternative GHG coefficients for qualified generation facilities will be available until such systems are no longer cleaner than the grid based on the annual operating efficiency of the system; and
- Clarify that deductions for offsets are available in each compliance period.

No changes were made relating to the coefficient for biofuels. The rule reflects the life-cycle emissions for biofuel blends based on published U.S. Environmental Protection Agency data, which demonstrates that biofuels have a lower net life cycle emissions compared to other fossil fuels. DOB will provide additional calculations for particular biofuel blends in Department guidance.

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. Subdivision (a) 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 the following new definitions, to be inserted in alphabetical order:

Affordable Housing Reinvestment Fund (AHRF). The AHRF is a third-party fund established by the Department in collaboration with the New York City Department of Housing Preservation and Development (HPD) to receive, encumber, and distribute funds for qualifying building electrification projects and generate offsets for such activities.

Biofuel. Biofuel means biodiesel and renewable diesel.

Fund Administrator. The fund administrator is a third party retained to administer the Affordable Housing Reinvestment Fund pursuant to a contract with the City.

Qualified generation facility. A qualified generation facility is any combined heat and power system, permitted prior to September 1, 2024, that (i) operates at a minimum annual average efficiency as established by this rule, (ii) emits levels of Nitrogen Oxide (NOx) below the limits established by this rule, (iii) is not owned by a utility, and (iv) meets the requirements of the New York City Air Pollution Control Code.

§ 2. Subparagraph (i) of paragraph (3) of subdivision (d) of section 103-14 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(i) Greenhouse gas coefficients for certain fuels combusted or consumed on premises for calendar years 2024 - 2034. For building emissions reports for calendar years 2024 - 2034, the GHG coefficients for fuel types combusted or consumed on premises provided in section 28-320.3.1.1 of the Administrative Code apply, except as provided in this subparagraph (i) or in subparagraph (ii) of this paragraph[, provided that for any fuel type with a biogenic blend, the owner may propose an alternate coefficient pursuant to clause c of this subparagraph].

a. For the following fuel types combusted or consumed on premises, greenhouse gas emissions must be calculated as generating the following amounts of tCO2e per kBtu:

Fuel	**Emissions Coefficient (tCO_2e per kBtu)**
Butane	0.00006502
Butylene	0.00006897
Diesel	0.00007421
Distillate Fuel Oil No. 1	0.00007350
Ethane	0.00005985
Ethylene	0.00006621
Gasoline	0.00007047
Isobutane	0.00006519
Isobutylene	0.00006911
Kerosene	0.00007769
Naphtha (< 401 deg F)	0.00006827
Other Oil (> 401 deg F)	0.00007647
Pentanes Plus	0.00007027
Propane	0.00006425
Propylene	0.00006802
Special Naphtha	0.00007259
Coke Oven Gas	0.00004689
Fuel Gas	0.00005925
Biofuel	0.00007389

b. *Exceptions.* Notwithstanding any other provision of this subparagraph, for building emissions reports for calendar years 2030 – 2034:

1. Number two (No. 2) fuel oil combusted on the premises of a covered building shall be calculated as 0.00007421 tCO_2e per kBtu.

2. Number four (No. 4) fuel oil combusted on the premises of a covered building shall be calculated as 0.00007529 tCO_2e per kBtu.

c. For any fuel type that is combusted or consumed on site, not listed in this subparagraph or section 28-320.3.1.1 of the Administrative Code and not prohibited by applicable rule or law, the owner must propose a carbon coefficient, in tCO_2e per kBtu, that serves the public interest of reducing GHG emissions, to be used for calculating greenhouse gas emissions for such fuel type. Such proposed coefficient and documentation supporting such proposed coefficient shall be provided to the Department, in a form and manner determined by the Department. Such proposed carbon coefficient is subject to approval by the Department, which may alternatively assign a different coefficient for such fuel type.

§ 3. Subparagraph (iv) of paragraph (3) of subdivision (d) of section 103-14 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

(iv) *Greenhouse gas coefficient for campus-style electric systems*. The greenhouse gas coefficient for electricity generated by a campus-style electric system, where electricity consumed by any covered building served by such system is generated in whole or in part on the premises of the campus, must be calculated in accordance with this subparagraph (iv).

a. The GHG coefficient for electricity generated by the campus-style electric system, must be calculated as follows:

$$g_{ce} = \frac{\Sigma_n (m_n \bullet g_n)}{m_{ce}} \qquad \textbf{(Equation 103-14.7)}$$

Where:

g_{ce} = the on-site campus generated electricity GHG coefficient in tCO_2e per kWh.

m_n = the plant input energy for each energy source consumed, *n*, in kBtu.

g_n = the GHG coefficient for each plant input energy source, *n*, in tCO_2e per kBtu as provided pursuant to Article 320 of Chapter 3 of Title 28 of the Administrative Code or this paragraph.

m_{ce} = the total electricity consumed by buildings and other campus loads from the campus-style electric system, in kWh, during the year being reported, [excluding] including any electricity delivered into the utility grid, provided that such electricity delivered into the utility grid results in lower GHG emissions than grid purchased electricity.

b. Where a covered building consumes electricity generated by the campus-style electric system and also consumes utility electricity, the combined GHG coefficient for campus electricity must be calculated as follows:

$$g_e = \frac{(m_{ue} \bullet g_{ue}) + (m_{ce} \bullet g_{ce})}{m_{ue} + m_{ce}}$$ **(Equation 103-14.8)**

Where:

g_e = the GHG coefficient for electricity generated by a campus-style electric system on-site, in $tCO2_e$ per kWh.

m_{ue} = the total electricity consumed by buildings and other campus loads from the utility grid, in kWh.

g_{ue} = the GHG coefficient for utility electricity, in $tCO2_e$ per kWh, provided pursuant to Article 320 of Chapter 3 of Title 28 of the Administrative Code or this paragraph.

m_{ce} = the electricity consumed by buildings and other campus loads from the campus-style electric system, in kWh, [excluding] including any electricity delivered into the utility grid, provided that such electricity delivered into the utility grid results in lower GHG emissions than grid purchased electricity.

g_{ce} = the on-site campus generated electricity GHG coefficient in tCO2e per kWh (see Equation 103-14.7).

c. Where electricity consumed by any covered building on the campus is generated on the site of the campus, and the owner elects to calculate emissions from such electricity based on time of use (TOU), the GHG coefficient shall be calculated as follows:

$$g_e = \frac{(\Sigma h(m_{ueh} \bullet g_{TOU})_h)+(m_{ce} \bullet g_{ce})}{m_{ue} + m_{ce}} \quad \textbf{(Equation 103-14.9)}$$

Where:

g_e = the GHG coefficient for electricity generated by a campus-style electric system on-site, in $tCO2_e$ per kWh.

m_{ueh} = the total electricity consumed by buildings and other campus loads from the utility grid, in kWh.

G_{TOU} = the hourly TOU GHG coefficient, as calculated in accordance with subparagraph (iii) of this paragraph for the calendar year being [reporting] reported, in $tCO2_e$ per kWh.

m_{ce} = the electricity consumed by buildings and other campus loads from the campus-style electric system, in kWh, [excluding] including any electricity delivered into the utility grid, provided that such electricity delivered into the utility grid results in lower GHG emissions than grid purchased electricity, see Equation 103-14.7.

g_{ce} = the on-site campus generated electricity GHG coefficient in tCO2e per kWh, see Equation 103-14.7.

m_{ue} = the total electricity consumed by buildings and other campus loads from the utility grid, in kWh, see Equation 103-14.8.

§ 4. Clause a of subparagraph (vi) of paragraph (3) of subdivision (d) of section 103-14 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

a. *GHG coefficient for certain distributed energy resources*. Except as provided in clause b, c, [or] d or e of this subparagraph, the GHG coefficient for energy generated by distributed energy resources, such as microturbines, combined heat and power generation, and fuel cells, including natural gas powered fuel cells that commenced operation on or after January 19, 2023, shall be determined in accordance with subparagraph (i) or (ii) of this paragraph, for the energy source used to generate the energy for such distributed energy resource and the calendar year being reported.

Where an owner chooses to utilize a utility electricity GHG coefficient based on TOU to account for operation of distributed energy resources, such owner must use a TOU coefficient for all utility electricity consumption for their reporting.

§ 5. Subparagraph (iv) of paragraph (3) of subdivision (d) 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 a new clause e, to read as follows:

e. *GHG coefficients for qualified generation facilities*. For the purposes of reporting emissions, an owner of a qualified generation facility may utilize the coefficients listed in section 28-320.3.1.1 of the Administrative Code for electricity and district steam where such owner is able to demonstrate in a form and manner established by the Department that such co-generation plant operates as a qualified generation facility. For annual electric output of the plant, the coefficient for utility electricity may be utilized, and for annual heat output of the plant, the coefficient for district steam may be utilized, provide that:

1. Average annual efficiency. The average annual efficiency of the plant, as calculated pursuant to Department guidance based on all generation units, must be no less than the efficiency of the utility grid identified by the Department in guidance based on the published Inventory of New York City Greenhouse Gas Emissions.

Exceptions. A co-generation plant may be eligible as a qualified generation facility without meeting the minimum efficiency requirement if:

(1) The co-generation plant operates year-round and is essential to prevent voltage drops serving a critical facility; or

(2) The co-generation plant serves a building in an area designated by the Department as having limited spare electrical capacity as verified by the utility.

2. Nitrogen oxide (NOx) emissions limit. For each power generation unit that is part of the co-generation plant, the owner must confirm that the NOx emissions

are below 1.6 lbs-Nox/MWh, or 4.4 lbs-Nox/MWh if the interconnection application and/or air permit application were accepted on or before January 1, 2017.

§ 6. Equation 103-14.14 in clause b of subparagraph (iii) of paragraph (4) of subdivision (d) of section 103-14 of subchapter C of chapter 100 of Title 1 of the Rules of the City of New York is amended to read as follows:

$$[ASde = \left(\frac{HC}{3.412}\right) \times \left(\frac{1}{1.51} \times EFLH \times SF\right)]$$

$$\underline{ASde = \left(\frac{HC}{3.412}\right) \times \left(\frac{1}{1.51} \times EFLH\right)} \qquad \text{(Equation 103-14.14)}$$

§ 7. Subdivision (e) 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 a new paragraph (3), to read as follows:

(3) *Deductions from reported annual building emissions for offsets*. Deductions from reported annual building emissions for offsets may be made to annual building emission calculations for each compliance period as follows:

(i) Offsets generated by the New York City Affordable Housing Reinvestment Fund (AHRF) are eligible for compliance with this section.

(ii) The AHRF will be administered by the fund administrator.

(iii) The fund administrator will receive, encumber, and distribute funds for qualifying building electrification projects and generate offsets for such activities pursuant to a methodology developed by HPD, which uses a deemed savings approach and assumptions vetted by an independent, qualified third-party to estimate the emissions reductions for such projects.

(iv) The AHRF will be used to finance qualifying building electrification projects at buildings subject to affordable housing regulatory agreements in New York City. In order to qualify, such projects must demonstrate the following principles of environmental integrity:

a. Additionality: The projects are not otherwise required to be completed in order to reduce emissions by international, federal or local law;
b. Unique: The projects allow for tracking of each offset to ensure that such offset corresponds to one tCO2e reduced;

c. Real and quantifiable: Emissions reductions accomplished through the project represent genuine impact that is replicable in accordance with a credible, transparent methodology determined by HPD and vetted by an independent, qualified third party in consultation with HPD;

d. Validation and verification: The project designs are validated and verified by an independent, qualified third party in consultation with HPD;

e. Permanence of greenhouse gas benefits: The projects replace fossil fuel equipment, thereby resulting in permanent emissions reductions; and

f. Robust baselines: The baselines for such projects are verified by an independent, qualified third party to ensure that only incremental emissions reductions are counted in order to avoid over-crediting.

(v) A building owner may purchase offsets from the fund administrator as described by the Department in guidance. The fund administrator shall provide confirmation of a building owner's offset purchase.

(vi) The price for an offset representing one tCO_2e will be set by the fund administrator, in consultation with the Department and HPD, taking into consideration the cost of compliance with this rule and the cost of the work associated with the offset projects.

(vii) AHRF offsets may be applied to reduce a building's annual emissions up to a maximum of 10 percent of a building's annual building emissions limit.

(viii) The fund administrator will maintain a registry to track each offset purchase, the assignment of each offset to a specific project, the retirement of each offset, and the emissions reductions corresponding to each offset.

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

/S/
James S. Oddo
Commissioner

Notice of Adoption

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.

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.