

1 RCNY §103-12

CHAPTER 100 Subchapter C Maintenance of Buildings

§103-12. Requirements for Filing Applications for an Adjustment of Annual Greenhouse Gas Emission Limits.

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