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Proposed rules for Local Law 97 leave big questions unanswered

By CAROLINE SPIVACK

The Department of Buildings has released much-anticipated proposed rules on how property owners can begin to comply with the city's ambitious climate law known as Local Law 97.

The proposed rules, which were published last week, offer some guidance on how the law will chop emissions from most buildings larger than 25,000 square feet. The new regulations seek to clarify how building owners can calculate their property's carbon footprint, the level of emissions it can emit annually and details on how the caps apply to specific building uses.

A recent bright spot, particularly for developers of multi-family affordable housing, is the passage of the federal Inflation Reduction Act in September, opening financial pathways to decarbonization, "Frankly, it's a game changer. We have the funding to meet a lot of the legislation and what we really need now is the regulatory path, and New York is on that path, and the political will to get there."

Esther Toporovsky, President Housing Partnership Sustainability Solutions

But some in the real estate industry remain frustrated with what they still see as the city's incremental progress on rules to implement Local Law 97. They also point to a clarity on paths to potentially adjust emission limits and to what extent they can use renewable energy credits to offset their emissions.

"This law is single-handedly changing how buildings have been running for at least 100 years," said Jay Martin, executive director of the Community Housing Improvement Program, an organization that represents owners and managers of more than 400,000 rent-stabilized properties. "We're willing to participate but I think we're closer to the beginning of this process than the end."

Beginning in 2024 building owners will have to cut their fossil fuel emissions by 2024. The law seeks to cut building emissions 40% by 2030 and 80% by 2050. Currently, 70% of the city's carbon emission comes from buildings.

Buildings that exceed emission limits will be on the hook for annual fines of $268 per metric ton over the cap. Those fees could easily climb into the thousands or millions for properties out of compliance and have caused anxiety for landlords waiting for guidance on how to comply with the ordinance.

DOB officials have also published a 338-page preliminary list of buildings that are subject to the law's initial compliance period, which covers a variety of apartments, offices, groceries and other types of spaces. Regulators will gather feedback on the proposed rules during a Nov. 14 public hearing and aim to finalize the guidance by year's end. The rules are the first of a series of proposed regulations, says DOB.

Lingering questions

One point of confusion for the real estate community revolves around exemptions. DOB says buildings with 35% rent stabilized units or more can push back compliance with the caps to 2026. But there is no clear process to apply for that exemption. The Adams administration has also said property owners that prove they are taking significant action towards the law's goals could potentially have their fines reduced or emission caps adjusted. How buildings might qualify for such adjustments remains up in the air.

"To get exempt you'd still have to carry out repairs and upgrades to various parts of your energy systems throughout your building," said David Sivin, senior project manager at engineering consultant PVE LLC, which has been advising property owners on Local Law 97. "This could take months of tenant coordination, opening up partitions, surveying boilers—it's a lot of work. And with the law being just a few years away, I would hope there would be more rules outlined."

Another looming question is how the city will regulate the use of renewable energy credits generated from solar and wind projects, which can be used to offset a building's emissions related to utility-supplied electricity. The city currently draws the bulk of its electricity from fossil fuels. Credits are expected to mostly benefit commercial buildings over residential properties, which tend to rely more on natural gas and oil for heat and hot water.

The proposed rules do not limit the use of credits but imply that a cap will be imposed through future rulemaking. That doesn't matter much now because there simply are not enough renewable energy projects plugged into the city's grid for those credits to be a viable pathway to compliance. But that will begin to change in 2027 when two massive renewable energy transmission projects come online, making some 18 million renewable energy credits available.

For buildings that produce renewable energy on site, say from solar panels, Sivin said the proposed rules make clear that those properties cannot "double dip." Energy credits generated by those properties can either be used to benefit the building or sold to another building—but not both.

Path forward

Regulations on how the city will enforce these rules and dole out penalties are currently light on details.

Environmental advocates have urged the Adams administration to strictly limit the use of renewable energy credits to ensure owners are truly retrofitting their buildings.

A coalition of green energy groups, made up of New York Communities for Change, Food & Water Watch, the New York Public Interest Research Group and Treeage, are calling on the city to cap energy credits at 10% of a building's total pollution or 30% of the emissions above a building's cap.

“We want to ensure that this law is applied properly and that landlords can't play the games that they often do with housing laws,” said Pete Sikora, climate and inequality campaigns director at New York Communities for Change. “This law is too important for it to be gutted.”

A recent bright spot, particularly for developers of multi-family affordable housing, is the passage of the federal Inflation Reduction Act in September, opening financial pathways to decarbonization, says Esther Toporovsky, president of sustainability solutions at the New York City Housing Partnership.

For instance, $27 billion will soon be available to help states with decarbonization efforts through a Greenhouse Gas Reduction Fund—$15 billion of which is targeted to disadvantaged communities.

“Frankly, it's a game changer,” said Toporovsky. “We have the funding to meet a lot of the legislation and what we really need now is the regulatory path, and New York is on that path, and the political will to get there.”