

3.28. Weather Conditions (CPLR 4528)

Any record of the observations of the weather, taken under the direction of the United States weather bureau, is prima facie evidence of the facts stated.

Note

This rule restates verbatim CPLR 4528.

The statute provides that a record of a weather observation made under the direction of the United States weather bureau is prima facie evidence of the facts stated therein and thereby establishes a hearsay exception as well for the admissibility of that record.

Note the requirement that the weather observation be made “under the direction of the United States weather bureau.” *Beaton v City of New York*, __AD3d__, 2021 NY Slip Op 04477 [2d Dept 2021] [“the three pages of climatological data that [defendant] submitted in support of its motion should have been authenticated because these pages themselves did not indicate that the data contained therein was "taken under the direction of the United States weather bureau""].

While those weather records are thus admissible and are “prima facie evidence” of the facts stated, evidence may be introduced to rebut the accuracy of those facts or otherwise to affect the weight of the evidence. (*Cf. Knox Vil. Assoc. v Town of New Windsor*, 219 AD2d 585, 586 [2d Dept 1995] [“the defendants overcame the presumption of accuracy afforded to the ancient documents produced by the plaintiff (*see*, CPLR 4522 . . .)”]; *Berman v Golden*, 131 AD2d 416, 417 [2d Dept 1987] [indicating that the terminology “prima facie evidence” in CPLR 4522 (Ancient filed maps, surveys and records affecting real property) created a rebuttable presumption of the accuracy of the documents]. *See* Vincent C. Alexander, Practice Commentaries, McKinney’s Cons Laws of NY, Book 7B, CPLR C4518:9.)