

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 add a new fee to section 101-03 of Chapter 100 of Title 1 of the Rules of the City of New York regarding fees for filings for an adjustment to applicable annual building emission limits for calendar years 2024 – 2029 and 2030 - 2034, as set out in section 28-320.9 of the New York City Administrative Code. DOB is also proposing to add a new section 103-12 to Chapter 100 of Title 1 of the Rules of the City of New York to specify the filing requirements for an application for these adjustments.

Due to the current health emergency, the public hearing for this rule is being scheduled as a virtual hearing, which may be accessed according to the information given below in this Notice.

- **When and where is the hearing?** DOB will hold a public hearing on the proposed rule online. The public hearing will take place from 11am to 12pm on 2/16/21.
- Join through Internet:

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.

<https://buildings.webex.com/buildings/j.php?MTID=mdf33a363c12e877a71dc1f6dd61819c0>

When prompted, enter the following meeting password: 10007

When joining the meeting choose either **“Use computer for audio”** or **“Call in”** for the audio portion of the public hearing. If you choose the “Call in” option, the information needed to connect (**phone number, Access Code and Attendee ID**) will automatically be presented to you immediately **after** you join the Webex meeting.

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

- Join via phone only:

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

Phone: 646-992-2010

Access code: 180 146 0909

Password (if requested): 10007

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.
- **Comments cannot be submitted by mail or fax at this time because the DOB office is temporarily closed.**
- **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 2/9/21 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.

Is there a deadline to submit comments? Yes, you must submit comments by 2/16/21.

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 2/9/21.

This location has the following accessibility option(s) available: Simultaneous transcription and an ASL interpreter 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/>.

What authorizes DOB to make this rule? Sections 643 and 1043(a) of the City Charter and Article 320 of Chapter 3 of Title 28 of the Administrative Code authorize DOB to make this proposed rule. This proposed rule was not included in DOB's regulatory agenda for this Fiscal Year because it was not contemplated when DOB published the 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

Local Law 97 of 2019 was enacted on May 19, 2019 and went into effect on November 15, 2019. Local Law 97 amended Chapter 3 of the Administrative Code to establish Greenhouse Gas Emission limits for certain buildings. Local Law 147 of 2019, which was enacted on July 27, 2019 and also went into effect on November 15, 2019, amended Local Law 97.

Local Law 97 of 2019 requires owners of covered buildings to report their Greenhouse Gas Emissions to the City beginning in 2025, based on the building's energy consumption for the

previous year. Section 28-320.9 provides for an adjustment to applicable annual building emission limits for not-for-profit hospitals and healthcare facilities. The adjustment increases the emissions limit above the limits established in Section 320.3 of the law, for the period between 2025 and 2034.

For not-for-profit healthcare organizations that have greenhouse gas emissions that exceed the limits set forth in Section 28-320.3, the requirement to make modifications to improve their building prior to 2024, without an adjustment, could compete with their primary mission of providing healthcare services that benefit residents of New York City. Meeting the specified emissions limits prescribed in the law may require capital improvements which, in addition to associated costs, could result in disruption of the services provided or possibly closure of these healthcare facilities.

Now, more than ever, access to healthcare is of critical importance. As such, Section 28-320.9 was intended to extend the timeframe for not-for-profit healthcare organizations to come into compliance with the emissions limits established in Section 28-320.3. Likewise, an owner leasing space to such not-for-profit entities, without an adjustment, could be penalized for their tenant's energy usage for providing healthcare services, if that owner is required to comply with Section 28-320.3 emission limits in 2025.

This rule clarifies that the adjustment is available to owners that lease space to not-for-profit healthcare organizations. The adjustment is based on the building's emissions from calendar year 2018, as required by Section 28-320.9. Specifically, Section 320.9 item 2 establishes that, if granted, an adjustment would result in the emissions limit for calendar years 2024 through 2029 and calendar years 2030 through 2034 being 85 percent and 70 percent of the 2018 building emissions, respectively.

This rule establishes a fee and filing requirements for owners wishing to seek this adjustment.

Specifically, the rule:

- clarifies the requirements for submitting supporting documentation that a building is classified as a not-for-profit hospital, not-for-profit health center, or a not-for-profit HIP center; or has one of these not-for-profit entities as a tenant;
- clarifies the requirements to establish the adjusted building emissions limit, including documentation of the building's 2018 energy consumption, square footage, and occupancies in the building; and,
- establishes the filing fee for submitting an application to the Department for an adjustment to a building emissions limit for a not-for-profit hospital or healthcare facility.

The Department of Buildings' authority for this rule is found in sections 643 and 1043 of the New York City Charter and Article 320 of Chapter 3 of Title 28 of the Administrative Code.

New material is underlined.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

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 to add, at the end of the table set forth in that section, a new fee for the application for an adjustment to the Building Emissions Limit for not-for-profit hospitals and healthcare facilities pursuant to Section 28-320.9, as follows:

<u>Filing application for a building emissions limit adjustment for not-for-profit hospitals and healthcare facilities pursuant to Section 28-320.9 of the Administrative Code</u>	<u>\$335</u>
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§2. Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York is amended by adding a new section 103-12 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 adjustment under 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, 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 adjustment.

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

**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: Requirements for adjustment of building emissions limits for not for profit hospitals and health care facilities

REFERENCE NUMBER: DOB-134

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 or modify a violation or penalty.

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

January 7, 2021
Date

**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: Requirements for adjustment of building emissions limits for not for profit hospitals and health care facilities

REFERENCE NUMBER: 2020 RG 110

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/ S. Goulden
Acting Corporation Counsel

Date: January 4, 2020