

**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 Section 1043 of the Charter, that the Department of Buildings hereby adopts the addition to Section 101-03 of Subchapter A of Chapter 100 of Title 1 of the Official Compilation 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, as well as the addition of section 103-12 to Subchapter C of Chapter 100 of Title 1 of the Rules of the City of New York specifying the filing requirements for an application for these adjustments.

This rule was first published on January 15, 2021 and a public hearing thereon was held on February 16, 2021.

Dated: 3/3/2021  
New York, New York

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/s/  
Melanie E. La Rocca  
Commissioner

### **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 title 28 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.