

**NEW YORK CITY DEPARTMENT OF HEALTH & MENTAL HYGIENE
FY 2019 REGULATORY AGENDA**

Pursuant to Section 1042 of the New York City Charter, the New York City Department of Health & Mental Hygiene hereby publishes a Regulatory Agenda for fiscal year 2019. The Regulatory Agenda describes those areas in which it is anticipated that rules may be promulgated during this fiscal year.

1. Mandate Reporting of *C. auris*

1. Provide a brief description of the subject area(s) of the proposed rule.
Amend New York City Health Code to mandate laboratory reporting of *Candida (C.) auris*.
2. State the reasons why action by the agency is being considered.
C. auris is an emerging fungus that represents a serious public health threat. *C. auris* can infect many parts of the body, and is most common in persons with other serious medical conditions and who are infected while in hospitals and nursing homes. Infection control measures are key to curbing the spread of *C. auris*. Mandated laboratory reporting will provide vital epidemiological information on the emerging outbreak in New York City.
3. Provide a summary of the anticipated contents of the proposed rule (if known).
Proposed rule would mandate laboratory reporting of *C. auris* –related laboratory findings.
4. Provide a summary of the objectives of the proposed rule.
Identify all *C. auris* cases in New York City to support appropriate infection control measures.
5. Provide a summary of the legal basis for the proposed rule.
Sections 556 (c) (2) and (4), Sections 558 (b) and Section 1043 of the New York City Charter.
6. Provide all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule:
Articles 11 and 13 of the New York City Health Code.
7. Provide a description of the types of individuals and entities likely to be subject to the proposed rule:
Clinical laboratories.
8. Provide the approximate schedule for adopting the proposed rule.
First or second quarter of FY 2019.
9. Agency Contact for Rulemaking:
Rima Oken, Director of Policy
Division of Disease Control
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2. Mandate Reporting of Non-Tuberculosis Mycobacteria

1. Provide a brief description of the subject area(s) of the proposed rule.
Amend the New York City Health Code to mandate provider and laboratory reporting of extrapulmonary infections caused by non-tuberculosis mycobacteria (NTM) species (i.e., not *M. tuberculosis* or *M. leprae*).
2. State the reasons why action by the agency is being considered.
Outbreaks of NTM are emerging in immunocompetent populations. In 2017, the Council of State and Territorial Epidemiologists (CSTE) adopted a position calling for national public health surveillance of extrapulmonary NTM.
3. Provide a summary of the anticipated contents of the proposed rule (if known).
The proposed rule would mandate laboratory and provider reporting of all positive NTM results yielded by specimens collected from sites other than the respiratory tract.
4. Provide a summary of the objectives of the proposed rule.
The Health Code amendment will enable the Department to conduct public health surveillance for the emerging disease, as recommended by CSTE
5. Provide a summary of the legal basis for the proposed rule.
Sections 556 (c) (2); 558 (b) and (c) abs 1043 of the New York City Charter.
6. Provide all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule:
Articles 11 and 13 of the New York City Health Code.
7. Provide a description of the types of individuals and entities likely to be subject to the proposed rule:
Clinical laboratories.
8. Provide the approximate schedule for adopting the proposed rule.
First or second quarter of FY 2019.
9. Agency Contact for Rulemaking:
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3. Bathing Beaches

1. Provide a brief description of the subject area(s) of the proposed rule.

Proposed revisions to Article 167 (Bathing Beaches) of the New York City Health Code to conform to changes made in the State Sanitary Code and revised water quality criteria recommendations issued by the Environmental Protection Agency pursuant to the BEACH Act of 2000.
2. State the reasons why action by the agency is being considered.
To update water quality criteria for City recreational waters consistent with the latest EPA recommendations.
3. Provide a summary of the anticipated contents of the proposed rule (if known).
Revise current provisions in Article 167 dealing with water quality to conform with 2012 EPA recommendations.
4. Provide a summary of the objectives of the proposed rule.
To better protect public health at the City's coastal beaches governed by Article 167 of the Health Code by conforming its provisions to applicable state and federal regulations and recommendations.
5. Provide a summary of the legal basis for the proposed rule.
Revise Article 167 of the Health Code to conform to the most recent water quality criteria recommendation issued by the EPA in 2012 under the authority of the Beaches Environmental Assessment and Coastal Health (BEACHES) Act of 2000.
6. Provide all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule:
BEACH Amendments to the Clean Water Act (CWA) Section 304(a).
New York State Sanitary Code Part 6, Subpart 6-2 (Bathing Beaches).
7. Provide a description of the types of individuals and entities likely to be subject to the proposed rule:
Swimmers, bathers and permitted bathing beaches.
8. Provide the approximate schedule for adopting the proposed rule.
Second quarter of Fiscal Year 2019.
9. Agency Contact for Rulemaking:
Trevor McProud, City Research Scientist II, Bureau of Public Health Engineering; Telephone: (347) 396-6135; Email: tmcproud@health.nyc.gov.

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4. Mobile Food Vending Commissaries

1. Provide a brief description of the subject area(s) of the proposed rule.
Amend Article 89 of the New York City Health Code to specify additional regulatory standards and practices for mobile food vendor commissaries.
2. State the reasons why action by the agency is being considered.
There is a need to revise the provisions pertaining to mobile food vending commissaries in Article 89 to better control and prevent foodborne illnesses in the mobile food vending industry in the City.
3. Provide a summary of the anticipated contents of the proposed rule (if known).
To amend Article 89 of the New York City Health Code to update the provisions pertaining to the mobile food vending industry as it relates to design and construction, equipment and food safety operations.
4. Provide a summary of the objectives of the proposed rule.
Currently, Article 89 of the Health Code, specifically Section 89.27, sets forth only the most general categorical requirements for commissaries, and has been difficult for commissaries to comply with in the absence of specifications. The proposed regulations will aid the industry to maintain compliance with food sanitation requirements.
5. Provide a summary of the legal basis for the proposed rule.
Section 558(b) and (c) of the New York City Charter empowers the Board of Health to amend the Health Code and to include all matters to which the Health Department's authority extends.
6. Provide all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule:
Subpart 14-1 of the State Sanitary Code; Subpart 14-4 of the State Sanitary Code; Article 71 of the New York City Health Code; Article 81 of the New York City Health Code; Article 89 of the New York City Health Code.
7. Provide a description of the types of individuals and entities likely to be subject to the proposed rule:
The public, permittees, owners and managers of all food service establishments.
8. Provide the approximate schedule for adopting the proposed rule.
Winter 2019.
9. Agency Contact for Rulemaking:
Michelle Robinson
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5. Radiation Control

1. Provide a brief description of the subject area(s) of the proposed rule.
Radiation Control.
2. State the reasons why action by the agency is being considered.
To simplify the process of maintaining consistency between Article 175 of the New York City Health Code (Radiation Control) and applicable federal (US Nuclear Regulatory Commission) radioactive materials requirements by incorporating relevant federal regulations by reference, and to update radiation equipment requirements by adopting certain provisions of the Model Code maintained by the Conference of Radiation Control Program Directors (CRCPD).
3. Provide a summary of the anticipated contents of the proposed rule (if known).
Repeal and reenactment of Article 175 of the New York City Health Code to incorporate by reference applicable federal regulations in order to maintain required consistency between federal and local requirements and to update radiation equipment standards primarily to implement “best practices” quality assurance processes.
4. Provide a summary of the objectives of the proposed rule.
To incorporate by reference into Article 175 of the Health Code applicable federal radiation materials requirements and to update radiation equipment requirements.
5. Provide a summary of the legal basis for the proposed rule.
NYC Charter Sections 556(c)(11), 558 and 1043.
6. Provide all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule:
10 CFR Chapter I
10 NYCRR Part 16
Article 175 of the New York City Health Code
7. Provide a description of the types of individuals and entities likely to be subject to the proposed rule:
Facilities having a City issued x-ray permit or license to possess and use radioactive materials.
8. Provide the approximate schedule for adopting the proposed rule.
Fall 2018.
9. Agency Contact for Rulemaking:
Li Huang
Acting Assistant Commissioner, Environmental Sciences and Engineering, Office of Radiological Health, Telephone: (718) 310-2726
Email: luhuan@health.nyc.gov.

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6. Bathing Establishments

1. Provide a brief description of the subject area(s) of the proposed rule.
The Department proposes to revise Article 165 of the New York City Health Code (Bathing Establishments).
2. State the reasons why action by the agency is being considered.
To further protect swimmer health and safety and to conform to the federal Centers for Disease Control and Prevention (CDC) model code.
3. Provide a summary of the anticipated contents of the proposed rule (if known).
Revision to bather safety requirements in New York City Health Code Article 165.
4. Provide a summary of the objectives of the proposed rule.
To further protect swimmer health and safety and to conform to the CDC model code.
5. Provide a summary of the legal basis for the proposed rule.
NYC Charter Section 556 (c) (3) authorizes the Department to exercise its functions, powers and duties in the area extending over the City, and over adjacent waters thereto.
6. Provide all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule:
15 USC Sections 8001-8008 (Virginia Graeme Baker Pools and Spa Safety Act.
Model Aquatic Health Code, Centers for Disease Control and Prevention
New York State Sanitary Code, Part 6, Subpart 6-1 Swimming Pools
New York State Building Code (Uniform Code), Section 3109
New York City Building Code, Section 3109
Article 165 of the New York City Health Code
7. Provide a description of the types of individuals and entities likely to be subject to the proposed rule:
Swimmers and permitted bathing establishments.
8. Provide the approximate schedule for adopting the proposed rule.
Summer 2018.
9. Agency Contact for Rulemaking:
Trevor McProud, City Research Health
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Email: tmcproud@health.nyc.gov.

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7. Fixed Penalty Schedules for Sustained Violations

1. Provide a brief description of the subject area(s) of the proposed rule.
Proposed rule in Title 24 of the Rules of the City of New York establishing a fixed penalty schedule for all sustained notices of violation/summonses issued by the Department that are adjudicated at the Office of Administrative Trials and Hearings.
2. State the reasons why action by the agency is being considered.
It is the Department's intent to establish fixed penalty amounts for all Department programs that issue violations returnable to the Office of Administrative Trials and Hearings. The Department currently has established fixed penalties for some, but not all, of its enforcement programs.
3. Provide a summary of the anticipated contents of the proposed rule (if known).
Fixed penalty amounts for additional Departmental programs that issue notices of violation returnable to the Office of Administrative Trials and Hearings will be established.
4. Provide a summary of the objectives of the proposed rule.
Fixed penalties provide notice, promote transparency and consistency in adjudication outcomes.
5. Provide a summary of the legal basis for the proposed rule.
Sections 556 and 1043 of the City Charter grants rulemaking authority to the Department.
6. Provide all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule:
Article 81 of the New York City Health Code; Article 89 of the New York City Health Code.
7. Provide a description of the types of individuals and entities likely to be subject to the proposed rule:
Respondents in enforcement actions brought by the Department.
8. Provide the approximate schedule for adopting the proposed rule.
First Quarter 2019.
9. Agency Contact for Rulemaking:
Jeffrey Blank
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Email: jblank@health.nyc.gov.

**NEW YORK CITY DEPARTMENT OF HEALTH & MENTAL HYGIENE
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8. Mobile Food Vending Inspection Procedures

1. Provide a brief description of the subject area(s) of the proposed rule.
Mobile Food Vending Inspection Procedures
2. State the reasons why action by the agency is being considered.
Section 17-325.3 of Subchapter 2 of Chapter 3 of Title 17 of the Administrative Code directs the Department to promulgate rules establishing a system for grading and classifying inspection results for mobile food vending units using letter grades.
3. Provide a summary of the anticipated contents of the proposed rule (if known).
Amend Chapter 6 of Title 24 of the Rules of the City of New York to include inspection scoring and letter grading inspection and scoring procedures similar to those applied to food service establishments. Rule will also delineate penalties for violations of the proposed rule, the Health Code and State Sanitary Code.
4. Provide a summary of the objectives of the proposed rule.
The proposed rule will establish objective measures for the sanitary inspections of mobile food vending units, including the implementation of a letter grading system.
5. Provide a summary of the legal basis for the proposed rule.
Section 17-325.3 of Subchapter 2 of Chapter 3 of Title 17 of the Administrative Code requires that the Department establish a grading system for mobile food unit inspections.
6. Provide all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule:
Subchapter 2 of Chapter 3 of Title 17 of the New York City Administrative Code; Chapter 6 of Title 24 of the Rules of the City of New York; Subpart 14-4 of the State Sanitary Code; Articles 5, 81 and 89 of the New York City Health Code.
7. Provide a description of the types of individuals and entities likely to be subject to the proposed rule:
Mobile food vending permittees and licensees.
8. Provide the approximate schedule for adopting the proposed rule.
Winter 2019.
9. Agency Contact for Rulemaking:
Michelle Robinson
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Email: Mrobins1@health.nyc.gov.

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9. Window Guards

1. Provide a brief description of the subject area(s) of the proposed rule.
Repeal and Reenact Chapter 12 of Title 24 of the Rules of the City of New York to update specifications for window guards and other limiting devices; update the procedures to be followed for obtaining the Department's approval of such window guards and limiting devices; update lease notice and annual notice of widow guard requirement provided to tenants in multiple dwellings.
2. State the reasons why action by the agency is being considered.
To reflect the technical advances in window design and modern building structures and to streamline the approval process for window fall prevention devices (window guards and limiting devices).
3. Provide a summary of the anticipated contents of the proposed rule (if known).
Update the requirements for window guards and alternative window guard limiting devices in order to obtain the required Department approvals for use of these devices.
4. Provide a summary of the objectives of the proposed rule.
Update specifications for window guards and alternative limiting devices to be followed in order to obtain the required Department approval for use of these devices.
5. Provide a summary of the legal basis for the proposed rule.
Section 131.15 of the NYCHC and Chapter 12 of Title 24 of the RCNY; Section 17-123 of Title 17 of the New York City Administrative Code, Section 2043.1 of Title 27 of the Housing Maintenance Code.
6. Provide all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule:
Section 131.15 of the New York City Health Code; Chapter 12, Title 24 of the Rules of the City of New York;
7. Provide a description of the types of individuals and entities likely to be subject to the proposed rule:
Building owners and landlords of multiple dwellings where children 11 years of age or younger reside as well as manufacturers of window guards and limiting devices.
8. Provide the approximate schedule for adopting the proposed rule.
Second quarter of Fiscal Year 2019.
9. Agency Contact for Rulemaking:
Deborah Nagin
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10. Cleaning Park Playground Equipment after Pesticide Spraying

1. Provide a brief description of the subject area(s) of the proposed rule.
The City Council passed Local Law No. 71 of 2018 which requires the cleaning of park playground equipment within 24 hours of pesticide application (spraying). DOHMH must establish by rule the minimum distance between the treatment and the equipment where cleaning will be required.
2. State the reasons why action by the agency is being considered.
Local Law 71 of 2018 requires that the Department pass this rule.
3. Provide a summary of the anticipated contents of the proposed rule (if known).
The proposed rule will specify the minimum distance between the pesticide treatment and the equipment where cleaning will be required.
4. Provide a summary of the objectives of the proposed rule.
Establish by rule the minimum distance between treatment and playground equipment where cleaning will be required.
5. Provide a summary of the legal basis for the proposed rule.
Local Law No. 71 of 2018 (Section 18-148 of Chapter 1 of Title 18 of the Administrative Code of the City of New York.
6. Provide all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule:
Section 18-148 of Chapter 1 of Title 18 of the Administrative Code; Section 409-k of the State Education Law; Section 390 of the Social Services Law.
7. Provide a description of the types of individuals and entities likely to be subject to the proposed rule:
Operators applying pesticide near City park playground equipment.
8. Provide the approximate schedule for adopting the proposed rule.
Second quarter of Fiscal Year 2019.
9. Agency Contact for Rulemaking:
Otis Pitts, Assistant Commissioner, Regulatory and External Affairs, Bureau of Environmental Health; Telephone: (646) 632-6254
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11. Food Safety Inspection Procedures

1. Provide a brief description of the subject area(s) of the proposed rule.
Food Safety Inspection Procedures.
2. State the reasons why action by the agency is being considered.
Updating is required to Department rules located at 24 RCNY Chapter 23, Appendices A, B, and C (relating to Food Service Establishment Inspection Procedures) to conform them to applicable recent amendments to Article 81 of the New York City Health Code.
3. Provide a summary of the anticipated contents of the proposed rule (if known).
To conform the numbering and descriptions of certain violations with those in Article 81 of the Health Code.
4. Provide a summary of the objectives of the proposed rule.
Chapter 23 will be amended to better reflect changes that were made to Article 81.
5. Provide a summary of the legal basis for the proposed rule.
NYC Charter Section 556 (c)(9) authorizes the Department to supervise and regulate the City's food supply.
6. Provide all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule:
10 NYCRR Chapter I, State Sanitary Code, Part 14, Subpart 14-1
Article 71 of the New York City Health Code
Article 81 of the New York City Health Code
7. Provide a description of the types of individuals and entities likely to be subject to the proposed rule:
The public, permittees, owners and managers of all food service establishments.
8. Provide the approximate schedule for adopting the proposed rule.
Winter 2019.
9. Agency Contact for Rulemaking:
Michelle Robinson
Deputy Executive Director, Food Safety and Community Sanitation, Bureau of Environmental Health
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**NEW YORK CITY DEPARTMENT OF HEALTH & MENTAL HYGIENE
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12. Cooling Towers

1. Provide a brief description of the subject area(s) of the proposed rule.
Cooling Towers.
2. State the reasons why action by the agency is being considered.
Minor revisions are needed to Chapter 8 of Title 24 of the Rules of the City of New York (Cooling Towers) for consistency with New York State regulations. Additional changes are proposed to clarify certain requirements of the regulations as well as incorporate elements of relevant standards and codes that have been published since the promulgation of Chapter 8.
3. Provide a summary of the anticipated contents of the proposed rule (if known).
Proposal to amend and revise the current rule for clarification and consistency with state regulations.
4. Provide a summary of the objectives of the proposed rule.
Purpose is to provide clarification and consistency with state regulations.
5. Provide a summary of the legal basis for the proposed rule.
NYC Charter Sections 556 and 1043; Section 17-194 of the Administrative Code of the City of New York.
6. Provide all relevant federal, state, and local laws and rules, including those which may duplicate, overlap or conflict with the proposed rule:
10 NYCRR 4-1; Section 17-194.1 of the New York City Administrative Code
24 RCNY Chapter 8.
7. Provide a description of the types of individuals and entities likely to be subject to the proposed rule:
Both owners of cooling towers and owners of buildings with cooling towers.
8. Provide the approximate schedule for adopting the proposed rule.
First Quarter of FY 2019.
9. Agency Contact for Rulemaking:
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