



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Public Hearing and Opportunity to Comment on Proposed Amendments to the Articles of the New York City Health Code

What are we proposing? The New York City Department of Health and Mental Hygiene (“Department”) is proposing that the Board of Health amend the modification provisions that apply to sections 11.27, 173.13 and 173.14 and to Articles 43, 45, 47, 48, 48-A, 49, 51, 81, 88, 89, 131, 141, 143, 161, 165, 167, 175 and 177 of the New York City Health Code (“Health Code”) to standardize all such provisions with consistent language across the Health Code.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place from 10:00 a.m. to 11:00 a.m. on April 30, 2025. The hearing will be conducted by video conference accessible via internet or telephone:

- **Internet.** To participate in the public hearing, enter to register at this Webex URL: <https://nycdohmh.webex.com/nycdohmh/j.php?MTID=m777d93b1175594548913787496e995ce>
If prompted to provide an event number or password, please enter the following:
Webinar number: **2341 502 2595**, Password: **ADmtRkf2e73** (23687532 from phones)
- **Phone:** For access, dial: (646) 992-2010 or (408) 418-9388; then please enter the following Access code: **234 150 22595**

How do I comment on the proposed amendments? Anyone can comment on the proposed amendments by:

- **Website:** You can submit comments to the Department through the NYC Rules website at <http://rules.cityofnewyork.us>.
- **Email:** You can email written comments to resolutioncomments@health.nyc.gov.
- **Mail:** You can mail written comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, 14th Floor, CN 30
Long Island City, NY 11101-4132.
- **Fax:** You can fax written comments to the Department at 347-396-6087.
- **Speaking at the hearing:** Anyone who wants to comment on the proposed amendments at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078 or 347-396-6116 or by emailing resolutioncomments@health.nyc.gov before the hearing begins at 10 a.m. on April 30, 2025. While you will be given the opportunity during the hearing to indicate that you would like to comment, we prefer that you sign up in advance. You can speak for up to three minutes. Please note that the hearing is for accepting oral testimony only and is not held in a “Question and Answer” format.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 PM on April 30, 2025.

What if I need assistance to participate in the hearing? You must tell the Department's Office of General Counsel if you need a reasonable accommodation of a disability at the hearing, including if you need a sign language interpreter. You can tell us by e-mail or by mail at the addresses given above. You may also tell us by telephone at 347-396-6078. Please give us advance notice to allow sufficient time to arrange the accommodation. Please tell us by 4 p.m. on April 16, 2025.

Can I review the comments made regarding the proposed amendments? You may review the online comments made on the proposed amendments at <https://rules.cityofnewyork.us/proposed-rules/>. All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable time after the hearing by the Department's Office of General Counsel.

What authorizes the Department to make these amendments? Sections 556, 558 and 1043 of the New York City Charter ("Charter") authorize the Department to make these proposed amendments.

Where can I find the Department's rules and the Health Code? The New York City Health Code is located in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? The Department must meet the requirements of Section 1043 of the Charter when amending the Health Code. This notice is made according to the requirements of Section 1043 of the Charter. These amendments were not included in the Department's most recent regulatory agenda because they were not contemplated when the Department published the agenda.

Statement of Basis and Purpose of Proposed Rule

Background

Modification of the Health Code

The New York City Department of Health and Mental Hygiene ("Department") has the authority to modify the application of certain provisions of the New York City Health Code ("Health Code") in response to a request by an entity subject to such provisions under certain circumstances. Generally, those circumstances arise when the requestor demonstrates a practical difficulty complying with a particular requirement in a specific instance and the purpose of the Health Code provision can be satisfied without adherence to that requirement.

Many, though not all, articles of the Health Code contain provisions granting the Department the authority to modify the application of Health Code terms. These provisions are not consistent. For example, there is variation as to the showing that an entity requesting a modification must make, the ability of the Health Commissioner to designate others to make determinations concerning such requests, and whether a denial of a request can be appealed. The differing language is likely a result of inconsistent drafting over time, rather than due to an intention to adopt different approaches or analyses.

To eliminate these inconsistencies, the Department proposes to make uniform all the modification provisions throughout the Health Code. These amendments would create consistent language regarding the showing a requestor must make; permit the Health Commissioner or a designee to make modification determinations in all instances; and provide that the denial of a request for a modification is a final agency determination and is not subject to appeal. The new uniform modification provision reads as follows:

When the Department determines that the strict application of any provision of this Article presents practical difficulties, the Commissioner or their designee may, in a specific instance, modify the application of such provision consistent with the general purpose of this Article and upon such condition(s) the Department deems necessary to protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

Proposed Amendments

The Department is proposing to amend the provisions applicable to sections 11.27, 173.13 and 173.14 and to Articles 43, 45, 47, 48, 48-A, 49, 51, 81, 88, 89, 131, 141, 143, 161, 165, 167, 175 and 177 of the Health Code to include a consistent modification provision.

Statutory Authority

The authority for this proposed amendment is found in Sections 556, 558 and 1043 of the Charter. Section 556 of the Charter provides the Department with jurisdiction to protect and promote the health of all persons in the City of New York. Sections 558(b) and (c) of the Charter empower the Board to amend the Health Code and to include all matters to which the Department's authority extends. Section 1043 grants the Department rule-making authority.

Underlined language is new.

Language in [brackets] is to be deleted.

Ellipses (***) indicate unamended text.

RESOLVED, that subdivision (h) of section 11.27 of Article 11 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

(h) Modification by Department. When the Department determines that the strict application of any provision of this section presents [undue, unusual or unreasonable hardships] practical difficulties, the Commissioner [may,] or their designee may, in a specific instance [and in his or her discretion], modify the application of such provision consistent with the general purpose [and

intent] of this section and upon such [conditions as in his or her opinion are] conditions(s) the Department deems necessary to protect [the public] life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner will be deemed a final agency determination.

RESOLVED, that section 43.25 of Article 43 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 43.25 Modification [of Provisions] by Department.

When the Department determines that the strict application of any provision of this [article] Article presents practical difficulties, [or unusual or unreasonable hardships,] the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose [and intent] of [these articles] this Article and upon such [conditions as in the Commissioner's opinion are] condition(s) the Department deems necessary to protect [the] life and health [of the children]. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial [by the Commissioner] of a request for modification [may be appealed to the Board in the manner provided by 24 RCNY Health Code § 5.21] by the Commissioner will be deemed a final agency determination.

RESOLVED, that section 45.21 of Article 45 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 45.21 Modification [of Provisions] by Department.

When the Department determines that the strict application of any provision of this [article] Article or Articles 49 or 51 presents practical difficulties, [or unusual or unreasonable hardships,] the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose [and intent of these articles] of this Article and upon such [conditions as in his opinion are] condition(s) the Department deems necessary to protect [the] life and health [of the children]. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial [by the Commissioner] of a request for modification by the Commissioner [may be appealed to the Board in the manner provided § 5.21] shall be deemed a final agency determination.

RESOLVED, that subdivision (a) of section 47.75 of Article 47 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

(a) *Modification [of Provisions] by Department.* When the Department determines that the strict application of any provision of this [article] Article presents practical difficulties, [or unusual or

unreasonable hardships,] the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose [and intent] of this [Code] Article and upon such [conditions as in his/her opinion are] condition(s) the Department deems necessary to protect [the] life and health [of the children]. [Unless a shorter duration is specified] Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department[, all modifications shall remain in effect for the remainder of the permit period in which they are issued and shall expire at the end of the permit period]. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 48.26 of Article 48 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 48.26 Modification [of Provisions] by Department

When the Department determines that the strict application of any provision of this Article presents [substantial] practical difficulties, [or unusual or unreasonable hardships,] the Commissioner [of the Department] or their designee may, in a specific instance, modify the application of such provision consistent with the general purpose [and intent] of this Article and upon such [conditions as in his/her opinion are] condition(s) the Department deems necessary to protect [the] life and health [of the children]. [Unless a specific duration is specified] Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department[, all modifications shall remain in effect for the remainder of the permit period and shall expire at the end of the permit period]. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 48.27 of Article 48 of the New York City Health Code, relating to modification of Health Code requirements, as set forth in Title 24 of the Rules of the City of New York, is **REPEALED**.

RESOLVED, that section 48-A.23 of Article 48-A of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 48-A.23 Modification [of Provisions] by Department.

When the Department determines that the strict application of any provision of this [article] Article presents practical difficulties, [or unusual or unreasonable hardships,] the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose [and intent] of this Article and upon such [conditions as in his opinion are] condition(s) the Department deems necessary to protect [the] life and health [of the children]. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial by the Commissioner of a

request for modification [may be appealed to the Board in the manner provided by § 5.21] shall be deemed a final agency determination.

RESOLVED, that section 81.55 of Article 81 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 81.55 Modification by [Commissioner] Department.

When the Department determines that the strict application of any provision of this Article presents practical difficulties [or unusual hardships], the Commissioner or their designee may, in a specific instance, [may] modify the application of such provision consistent with the general purpose of this Article and upon such [conditions as in his or her opinion are] conditions(s) the Department deems necessary to [provide for clean and sanitary food prepared, manufactured, processed or served in clean and sanitary establishments] protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 88.23 of Article 88 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York is amended to read as follows:

§ 88.23 Modification by Department.

[The Commissioner may modify requirements] When the Department determines that the strict application of any provision of this Article [when compliance] presents practical difficulties [or unusual or unreasonable hardships], the Commissioner or their designee may, in a specific instance, modify the application of such provision consistent with the general purpose [and intent] of this Article and [this Code] upon such condition(s) the Department deems necessary to protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 89.35 of Article 89 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 89.35 Modification by Department.

[The Commissioner may modify any requirements in] When the Department determines that the strict application of any provision of this Article [which present] presents practical difficulties [or unusual or unreasonable hardships], the Commissioner or their designee may, in a specific instance, modify the application of such provision consistent with the general purpose [and intent] of this Article and [this Code] upon such [conditions as are] condition(s) the Department deems necessary to [assure the service of safe food and to] protect [the public] life and health. Failure to

comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 131.19 of Article 131 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 131.19 Modification by [Commissioner]Department.

When the Department determines that the strict application of any provision of this [article] Article presents practical difficulties [or unusual hardships], the Commissioner[,] or their designee may, in a specific instance, [may] modify the application of such provision consistent with the general purpose of this article and upon such [condition as, in their opinion are] condition(s) the Department deems necessary to protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 141.19 of Article 141 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 141.19 Modification by Department.

When the Department determines that the strict application of any provision of this Article presents practical difficulties [or unusual hardships], the Commissioner[,] or their designee may, in a specific instance, [may] modify the application of such provision consistent with the general purpose of this Article and upon such [condition as, in his or her opinion are] condition(s) the Department deems necessary to protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial [by the Commissioner] of a request for modification [may be appealed to the Board in the manner provided pursuant to § 5.21 or successor rule] by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 143.17 of Article 143 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§143.17 Modification by [Commissioner] Department.

When the Department determines that the strict application of any provision of this [article] Article presents practical difficulties [or unusual hardships], the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose of this [article] Article and upon such [conditions as, in his opinion, are] condition(s) the Department deems necessary to protect life and health [and the environment].

Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial [by the Commissioner] of a request for modification [may be appealed to the Board of Health in the manner provided by § 5.21] by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 161.25 of Article 161 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York is amended to read as follows:

§ 161.25 Modification by [the Commissioner] Department.

When the Department determines that the strict application of any provision of this [article] Article presents practical difficulties [or unusual hardship], the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose of this [article] Article and upon such [conditions as, in his or her opinion are] condition(s) the Department deems necessary to protect [public] life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 165.13 of Article 165 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 165.13 Modification by Department.

[The] When the Department [may approve on written application and after review, a modification when] determines that the strict application of any provision of this Article presents practical difficulties [or unusual hardships. The], the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent with the general purpose of this Article and upon such [conditions as, in his or her opinion, are] condition(s) the Department deems necessary to protect [the] life and health [or safety of bathers]. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 167.11 of Article 167 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 167.11 Modification by Department.

When the Department determines that the strict application of any provision of this Article presents practical difficulties, [or unusual or unreasonable hardships,] the Commissioner or their designee may, in a specific instance [may], modify the application of such provision consistent

with the general purpose of this Article and upon such [conditions as, in his or her opinion, are] condition(s) the Department deems necessary to protect [the] life and health [or safety of bathers]. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that subdivision (h) of section 173.14 of Article 173 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

(h) *Modification by [the Commissioner] Department.* When the Department determines that the strict application of any provision of this section or § 173.13 of this Code presents practical difficulties [or unusual hardships], the Commissioner or their designee may, in a specific instance, modify the application of such provision consistent with the general [purposes] purpose of [this] these sections and upon such condition(s) the Department deems necessary [. When granting a modification the Commissioner or designee may impose such conditions as are in the opinion of the Commissioner or designee to prevent lead contamination and] to protect [the] life and health [and safety of any persons likely to be exposed to lead as a consequence of such modification]. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 175.06 of Article 175 of the New York City Health Code, relating to modifications and variance of Health Code requirements, as set forth in Title 24 of the Rules of the City of New York, is **REPEALED** and replaced with a new section 175.06 to read as follows:

§ 175.06 Modification by Department.

When the Department determines that the strict application of any provision of this Article presents practical difficulties, the Commissioner or their designee may, in a specific instance, modify the application of such provision consistent with the general purpose of this article and upon such condition(s) the Department deems necessary to protect life and health. Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

RESOLVED, that section 177.09 of Article 177 of the New York City Health Code, as set forth in Title 24 of the Rules of the City of New York, is amended to read as follows:

§ 177.09 [Modifications]Modification by Department.

[(a) An operator may submit a written request to the Department for a modification of any provision of this Article where there are unusual or substantial practical difficulties with the strict

compliance with such provision, provided that the health and safety of the public will not be adversely affected.

(b) The] When the Department [may approve, on written application and after review, a request for modification when] determines that the strict application of any provision of this Article presents [unusual hardships. The] practical difficulties, the Commissioner[, or their designee may, in a specific instance, [may] modify the application of such [provision(s)] provision consistent with the general purpose of this Article and upon such [conditions as, in his or her opinion, which are] condition(s) the Department deems necessary to protect [the] life and health [or safety of the public]. [An operator must meet all terms of an approved modification, including the effective date, the time period for which the modification is granted, the requirements being varied and any other conditions specified] Failure to comply with the terms of a modification may render such modification null and void and result in enforcement by the Department. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

**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: Amendment of Health Code Provisions Relating to Requests for Modification

REFERENCE NUMBER: 2025 RG 025

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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/ STEVEN GOULDEN
Senior Counsel

Date: March 12, 2025

**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: Amendment of Health Code Provisions Relating to Requests for Modification

REFERENCE NUMBER: DOHMH-159

RULEMAKING AGENCY: Department of Health and Mental Hygiene

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 a violation, modification of a violation, or modification of the penalties associated with a violation.

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

March 12, 2025
Date