



New York City Department of Health and Mental Hygiene Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The New York City Department of Health and Mental Hygiene (“DOHMH” or “Department”) is proposing to amend Chapter 23 (*Food Service Establishment Sanitary Inspection Procedures and Letter Grading*) of Title 24 of the Rules of the City of New York (“RCNY”) to update certain requirements concerning inspections of a food service establishment (“FSE”).

When and where is the hearing? The Department will hold a public hearing on the proposed rules. The public hearing will take place from 10:00 a.m. to 11:00 a.m. on June 23, 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=m8f7114bf6642eb4d256c9d8488a0bdef>
If prompted to provide an event number or password, please enter the following:
Event number: **2341 736 6898**
Password: **Pin3i3rMHj9** (74634376 from phones)
- **Phone:** For access, dial: (408) 418-9388; (646) 992-2010 (New York City)
then please enter Access Code: **234 173 66898**.

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

- **Website:** You can submit comments to the Department through the NYC rules website, at <https://rules.cityofnewyork.us>
- **Email:** You can email comments to resolutioncomments@health.nyc.gov
- **Mail:** You can mail comments to DOHMH at:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street
Long Island City, NY 11101-4132
Attention: Svetlana Burdeynik
- **Fax:** You can fax written comments to DOHMH at (347) 396-6087.
- **By 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 before the hearing by calling the Secretary to the Department at (347) 396-6078. You can also sign up when you join the hearing on June 23, 2025. You can speak for up to five 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? Yes, you must submit written comments by 5 p.m. on June 23, 2025.

What if I need assistance to participate in the hearing? You must tell the DOHMH if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at (347) 396-6078 by June 9, 2025.

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/> Within a reasonable time after the hearing, all written comments and a summary of the oral comments received by the Department will be made available on request.

What authorizes the DOHMH to make this rule? Sections 389, 556 and 1043 of the New York City Charter (“Charter”) and sections 16-324(e) and (f), 17-195.1, 17-199.11, 17-199.18 of the New York City Administrative Code (“Administrative Code”) and section 81.12 of the New York City Health Code (“Health Code”) authorize the Department to make this proposed rule. Charter section 389(b) provides that “heads of mayoral agencies shall have the power to adopt rules to carry out the powers and duties delegated to the agency head or the agency by or pursuant to federal, state or local law.” Charter section 556(c)(9) requires the Department to supervise and regulate the food supply for the City. Charter section 1043(a) provides that each “agency is empowered to adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law.” Section 16-324(e) and (f) of the Administrative Code provide penalty ranges for covered establishment organic waste violations and polystyrene single-use service items, respectively. Section 17-195.1 of the Administrative Code requires every internet-based food delivery service to conspicuously post on their website or mobile application a hyperlink to the Department’s FSE inspection lookup tool and authorizes the Department to promulgate rules for compliance. Section 17-199.11 of the Administrative Code provides the penalty for a violation of beverage options for children’s meals. Section 17-199.18 of the Administrative Code requires the issuance of a rule regarding notification and warning concerning items with high added sugars sold at chain restaurants. Section 81.12 of the Health Code prohibits the sale or distribution of reduced oxygen packaged foods to other business entities or consumers. Finally, New York State Public Health Law section 1356 requires FSEs to display a food-allergy awareness notice in all staff areas and requires all FSEs or internet-based food delivery service to include a food allergy notice on their menu and authorizes rules to ensure its compliance.

Where can I find the DOHMH’s rules? DOHMH’s rules are in Title 24 of the RCNY.

What laws govern the rulemaking process? DOHMH must meet the requirements of Section 1043 of the Charter when creating or changing rules. This notice is made according to the requirements of Section 1043(b) of the Charter. These proposed rules were included in the Department’s FY2025 Regulatory Agenda.

Statement of Basis and Purpose of Proposed Rule

Chapter 23 of Title 24 of the Rules of the City of New York (“Chapter 23”) provides Department rules concerning the requirements and procedures for sanitary inspections of food service establishments (“FSEs”). The Department is proposing to amend Chapter 23 primarily to update requirements for reduced-oxygen packaged (“ROP”) food. ROP is food that is placed into a package where oxygen is removed to keep food fresher for a longer time.

The Department is also proposing new sugar warning menu requirements violations as required by Local Law 150 of 2023. Local Law 150 of 2023 created Administrative Code section 17-199.18, which requires the Department to issue rules to require chain restaurants to provide an added sugar warning and notification for applicable menu items.

Finally, as required by recently-enacted State legislation amending Public Health Law section 1356 regarding allergy and intolerances notices in restaurants, and adding section 17-195.1 to the Administrative Code regarding availability of sanitary inspection grades to consumers of internet-based food delivery services, the Department is proposing to add penalties that apply when an FSE fails to post required information on food allergens and intolerances, and to add a penalty for an internet-based food delivery service provider that fails to post a hyperlink to the Department’s lookup tool to view recent FSE sanitary inspections, respectively. Other proposed minor changes to Appendix 23-C are as described below.

ROP Food

According to Health Code § 81.12(c), ROP foods must be prepared and consumed on the premises of the FSE or may be consumed off premises only if the preparation site is properly permitted and wholly owned and operated by the same business entity as the FSE. No ROP food products are allowed to be sold or distributed by FSEs to any other business entities or consumers. However, despite this prohibition, the Department has become aware of recent instances where such sales or distributions were occurring, either by sales directly to the consumer via the internet or wholesaling ROP foods to other businesses. For this reason, the Department is now clarifying in appendices A, B and C of Chapter 23 that ROP foods are not allowed to be sold to other businesses or consumers for off-site consumption.

Appendix 23-A

Appendix 23-A (*Food Service Establishment & Non-Retail Food Processing Establishment Inspection Worksheet*) of Chapter 23 summarizes the subjects covered by a Department inspection and the points assessed for each type of violation observed. The Department proposes to amend appendix 23-A to clarify that offering ROP foods produced in an FSE directly to consumers is a critical violation.

Appendix 23-B

Appendix 23-B (*Food Service Establishment Inspection Scoring Parameters-A Guide to Conditions*) of Chapter 23 provides violation descriptions and examples of different violation condition levels from I (least serious) to V (most serious). The Department is proposing to amend appendix 23-B to clarify that it is a critical violation to sell or offer ROP foods produced in FSEs directly to consumers, whether offered or sold from the FSE, the internet, or from a third-party delivery service.

Appendix 23-C

Appendix 23-C (*Food Service Establishment and Non-Retail Food Processing Establishment Penalty Schedule*) of Chapter 23 specifies monetary penalties for FSE violations that are adjudicated at the Office of Administrative Trials and Hearings. This proposed amendment would:

- establish violations for failure to comply with sugar warning requirements;
- reduce the violation penalty for beverage options for children's meals;
- waive penalties for certain initial organic waste disposal violations by designated covered entities;
- correct a typographical error for the penalty for violating Administrative Code § 16-329(c) concerning expanded polystyrene single service food articles;
- add the penalty for violating Public Health Law § 1356 that requires a food allergy notice on menus and in food preparation areas for restaurants, catering halls and online food ordering services; and
- include a penalty for an internet-based food delivery service provider failure to conspicuously post a hyperlink to the Department's food establishment inspection lookup tool on their website or mobile application.

Statutory Authority

The authority for these rules is found in the New York City Charter §§ 389, 556 and 1043, New York City Administrative Code §§ 16-324(e) and (f), 17-195.1, 17-199.11(d), 17-199.18(b), and 81.12 of the New York City Health Code. Additionally, Public Health Law §1356 authorizes rules to ensure its compliance.

The proposal is as follows:

“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.

New text is underlined.

Deleted text is in [brackets].

Proposed Rule

Section 1. The row containing item 3A in the critical violations table of appendix 23-A of chapter 23 of Title 24 of the Rules of the City of New York is amended to read as follows:

APPENDIX 23-A: FOOD SERVICE ESTABLISHMENT & NON-RETAIL FOOD PROCESSING ESTABLISHMENT INSPECTION WORKSHEET						
Critical Violations	Conditions					Score
	I	II	III	IV	V	
Food Source						
3A* Food from unapproved or unknown source or home canned or home prepared. Live animal slaughtered in establishment. ROP fish not frozen before processing; or ROP foods prepared on premises [transported to another site] <u>sold, distributed or offered to another business entity or offered packaged directly to consumers.</u>	—	—	—	10	28	

§ 2. The row containing item 3A in the critical violations table in appendix 23-B of chapter 23 of Title 24 of the Rules of the City of New York is amended to read as follows:

APPENDIX 23-B: FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS - A GUIDE TO CONDITIONS
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	Violation	Condition I	Condition II	Condition III	Condition IV	Condition V
Critical Violations						
3A*	Food from unapproved or unknown source or home canned or home prepared; or live animal slaughtered in establishment; or ROP fish not frozen before processing; or ROP food prepared on premises [transported to another site] <u>sold, distributed or offered to another business entity or offered packaged directly to consumers.</u>				One or more food items from an unapproved or unknown source, or home canned or home prepared; or live animal slaughtered in establishment. Example: wild mushrooms or home canned beets or ROP fish not frozen before processing or home prepared meat balls, curry, rice, [or] lasagna <u>or frozen ROP chicken with mushroom sauce offered directly to the customer, through the internet, or through a third party delivery service.</u>	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.

§ 3. The row containing violation code 03A concerning the citation to subdivision (c) of New York City Health Code § 81.12 in the scored violations table of appendix 23-C of chapter 23 of Title 24 of the Rules of the City of New York is amended to read as follows:

APPENDIX 23-C: FOOD SERVICE ESTABLISHMENT AND NON-RETAIL FOOD PROCESSING ESTABLISHMENT PENALTY SCHEDULE									
SCORED VIOLATIONS									
VIOLATION CODE	CITATION	CATEGORY	VIOLATION DESCRIPTION	CURE ACCEPTED OR \$0 PENALTY FIRST-TIME VIOLATIONS	VIOLATION PENALTY CONDITION I*	VIOLATION PENALTY CONDITION II*	VIOLATION PENALTY CONDITION III*	VIOLATION PENALTY CONDITION IV*	VIOLATION PENALTY CONDITION V*
03A	NYCHC § 81.12(c)	Public Health Hazard	[Reduced oxygen packaged foods not from an approved source] <u>ROP food products sold, distributed or offered to another business entity or directly to consumers.</u>					\$400	\$600

§ 4. The rows containing violation codes 16-11 and 19-01 through 19-04 of the unscored violations table of appendix 23-C of chapter 23 of Title 24 of the Rules of the City of New York are amended to read as follows:

APPENDIX 23-C: FOOD SERVICE ESTABLISHMENT AND NON-RETAIL FOOD PROCESSING ESTABLISHMENT PENALTY SCHEDULE					
UNSCORED VIOLATIONS					
VIOLATION CODE	CITATION	VIOLATION DESCRIPTION	CURE ACCEPTED OR \$0 PENALTY FIRST-TIME VIOLATIONS	APPEARANCE PENALTY*	DEFAULT PENALTY
16-11	Admin. Code § 17-199.11(b)	Prohibited drink listed on children's meal menu***	\$0	\$[100] <u>50</u>	Same as appearance penalty
19-01	16 RCNY § 1-11(c)(2)	Organics mixed with non-organics materials*****		\$[250] <u>0</u> (1st violation); \$500 (2nd violation in 12 months); \$1,000 (3rd and subsequent violations in 12 months)	Same as appearance penalties
19-02	16 RCNY § 1-11(c)(1)	Organics containers not labeled*****		\$[250] <u>0</u> (1st violation); \$500 (2nd violation in 12 months); \$1,000 (3rd and subsequent violations in 12 months)	Same as appearance penalties
19-03	16 RCNY § 1-11(d)(2)	Failure to post sign in organics collection areas*****		\$[250] <u>0</u> (1st violation); \$500 (2nd violation in 12 months); \$1,000 (3rd and subsequent violations in 12 months)	Same as appearance penalties
19-04	Admin. Code § 16-329(c)	Possess, sell expanded polystyrene single service articles		\$[100] <u>150</u> (1st violation); \$250 (2nd violation) \$500 (3rd and subsequent violations in 12 months)	Same as appearance penalties

§ 5. The unscored violations table of appendix 23-C of chapter 23 of Title 24 of the Rules of the City of New York is amended by adding new rows containing violation codes 16-15 through 16-17 to read as follows:

APPENDIX 23-C: FOOD SERVICE ESTABLISHMENT AND NON-RETAIL FOOD PROCESSING ESTABLISHMENT PENALTY SCHEDULE					
UNSCORED VIOLATIONS					
VIOLATION CODE	CITATION	VIOLATION DESCRIPTION	CURE ACCEPTED OR \$0 PENALTY FIRST-TIME VIOLATIONS	APPEARANCE PENALTY*	DEFAULT PENALTY
<u>16-15</u>	<u>Admin. Code § 17-199.18</u>	<u>No added sugar warning icon where required.</u>		<u>\$200</u>	<u>Same as appearance penalty</u>
<u>16-16</u>	<u>Admin. Code § 17-199.18</u>	<u>Added sugar icon non-compliant with design specifications.</u>		<u>\$200</u>	<u>Same as appearance penalty</u>
<u>16-17</u>	<u>Admin. Code § 17-199.18</u>	<u>No added sugar warning statement where required.</u>		<u>\$200</u>	<u>Same as appearance penalty</u>

§ 6. The unscored violations table of appendix 23-C of chapter 23 of Title 24 of the Rules of the City of New York is amended by adding three new rows for violation code 20-01 to read as follows:

APPENDIX 23-C: FOOD SERVICE ESTABLISHMENT AND NON-RETAIL FOOD PROCESSING ESTABLISHMENT PENALTY SCHEDULE					
UNSCORED VIOLATIONS					
VIOLATION CODE	CITATION	VIOLATION DESCRIPTION	CURE ACCEPTED OR \$0 PENALTY FIRST-TIME VIOLATIONS	APPEARANCE PENALTY*	DEFAULT PENALTY
<u>20-01</u>	<u>NYSPHL § 1356</u>	<u>Allergen or intolerance statement or information not provided when required.</u>		<u>\$100</u>	<u>Same as appearance penalty</u>
<u>20-01</u>	<u>NYSPHL § 1356</u>	<u>Allergen or intolerance notice not translated into common language when required.</u>		<u>\$100</u>	<u>Same as appearance penalty</u>
<u>20-01</u>	<u>NYSPHL § 1356</u>	<u>No method for patrons to indicate food allergies, and/or no allergy information provided for each menu item.</u>		<u>\$100</u>	<u>Same as appearance penalty</u>

§ 7. The unscored violations table of appendix 23-C of chapter 23 of Title 24 of the Rules of the City of New York is amended by adding a new row containing violation code 20-02 to read as follows:

APPENDIX 23-C: FOOD SERVICE ESTABLISHMENT AND NON-RETAIL FOOD PROCESSING ESTABLISHMENT PENALTY SCHEDULE					
UNSCORED VIOLATIONS					
VIOLATION CODE	CITATION	VIOLATION DESCRIPTION	CURE ACCEPTED OR \$0 PENALTY FIRST-TIME VIOLATIONS	APPEARANCE PENALTY*	DEFAULT PENALTY
<u>20-02</u>	<u>Admin. Code § 17-195.1</u>	<u>Failure to conspicuously post a hyperlink to the Department's inspection lookup tool as required.</u>		<u>\$100</u>	<u>Same as appearance penalty</u>

§ 8. This rule takes effect thirty days after publication of its notice of adoption, except that section 5 takes effect no sooner than October 4, 2025 and section 6 takes effect no sooner than May 21, 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 Rules Relating to Sanitary Inspections of Food Service Establishments

REFERENCE NUMBER: DOHMH-155

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 the cannot be corrected or undone and/or the violation poses significant risks to public health and safety.

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

April 23, 2025
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: Amendment of Rules Relating to Sanitary Inspections of Food Service Establishments

REFERENCE NUMBER: 2025 RG 002

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: April 23, 2025