

**DEPARTMENT OF HEALTH AND MENTAL HYGIENE
COMMISSIONER OF HEALTH AND MENTAL HYGIENE**

NOTICE OF PUBLIC HEARING

**NOTICE OF INTENTION TO AMEND CHAPTER 23
OF TITLE 24 OF THE RULES OF THE CITY OF NEW YORK**

IN COMPLIANCE WITH SECTION 1043(a) OF THE NEW YORK CITY CHARTER NOTICE IS HEREBY GIVEN OF THE PROPOSED INTENTION TO AMEND CHAPTER 23 (“FOOD SERVICE ESTABLISHMENT SANITARY INSPECTION PROCEDURES”) OF TITLE 24 OF THE RULES OF THE CITY OF NEW YORK.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT OF HEALTH AND MENTAL HYGIENE (THE “DEPARTMENT”) WILL HOLD A PUBLIC HEARING ON THE PROPOSAL FROM 10:00 A.M. TO 12:00 P.M. ON TUESDAY, OCTOBER 5, 2010 IN THE THIRD FLOOR BOARD ROOM AT 125 WORTH STREET, NEW YORK, NEW YORK.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK AT THE HEARING SHOULD NOTIFY RENA BRYANT, SECRETARY TO THE DEPARTMENT, IN WRITING, BY MAIL TO 125 WORTH STREET, CN-31, NEW YORK, NEW YORK 10013, OR BY FAX TO (212) 788-4315 BY MONDAY OCTOBER 4, 2010. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL WORKING HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

REGISTRATION OF PERSONS WHO WISH TO SPEAK AT THE HEARING WILL BE ACCEPTED AT THE DOOR ON THE DATE OF HEARING. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO REGISTER BEFORE THE HEARING DATE.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE DEPARTMENT, 125 WORTH STREET, CN-31, NEW YORK, NEW YORK 10013, (212) 788-5242, BY TUESDAY, SEPTEMBER 21, 2010.

WRITTEN COMMENTS REGARDING THE PROPOSAL MUST BE SUBMITTED TO RENA BRYANT, SECRETARY, BY MAIL TO 125 WORTH STREET CN-31, NEW YORK, NEW YORK 10013, BY FAX TO (212) 788-4315, BY E-MAIL TO RESOLUTIONCOMMENTS@HEALTH.NYC.GOV OR ONLINE (WITHOUT ATTACHMENTS) TO www.nyc.gov/nycrules OR TO <http://www.nyc.gov/html/doh/html/notice/notice.shtml> ON OR BEFORE 5:00 P.M., TUESDAY, OCTOBER 5, 2010. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED. COMMENTS RECEIVED AFTER OCTOBER 5, 2010 WILL BE CONSIDERED TO THE EXTENT POSSIBLE.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY. THE DEPARTMENT’S GENERAL POLICY IS TO MAKE WRITTEN COMMENTS AVAILABLE FOR PUBLIC VIEWING ON THE INTERNET. ALL COMMENTS RECEIVED, INCLUDING ANY PERSONAL INFORMATION PROVIDED, WILL BE POSTED WITHOUT CHANGE TO <http://www.nyc.gov/html/doh/html/comment/comment.shtml>.

Statutory Authority

Amendment of Chapter 23 of Title 24 of the Rules of the City of New York is authorized by §§389(b) and 1043 (a) of the New York City Charter (the “Charter”). Charter §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 §1043(a) authorizes each agency to “adopt rules necessary to carry out the powers and duties delegated to it by or pursuant to federal, state or local law.”

STATEMENT OF BASIS AND PURPOSE

Effective July 15, 2010, the Department of Health and Mental Hygiene (the “Department”) repealed and recodified rules in Chapter 23 of Title 24 of the Rules of the City of New York for food service establishment sanitary inspection procedures. At its meeting on March 16, 2010, the Board of Health amended §81.51 of the New York City Health Code, authorizing the Department to establish a letter grading program for food service establishments. The Board determined that providing restaurant grading information is feasible, will inform consumer choice and is likely to improve restaurants’ compliance with Health Code requirements and thereby reduce the burden of food borne illness in New York City.

Chapter 23 includes two appendices demonstrating how a sanitary inspection’s violations are weighted and scored according to their severity: Appendix 23-A: “Food Service Establishment Sanitary Inspection Score Worksheet” and Appendix 23-B: “Food Service Establishment Sanitary Inspection Scoring Parameters—A Guide to Conditions.” When the Chapter was recodified, changes were made to Appendix 23-A and Appendix 23-B. After the rules were printed, however, typographical errors were noted in the texts for violation conditions 4H, 10F and 10H in Appendix 23-B. The proposed rule consists of Appendix 23-B with corrections in the examples of violation conditions for violation codes 4H and 10F and the descriptions of violations that constitute condition levels II and III of violation code 10H.

In printing violation code 10H (“Proper sanitization not provided for utensil ware washing operation”), the error resulted in omission of text describing the violations that contribute to scoring condition level II and III, all ware washing violations set forth in Health Code §81.37. No error was identified in the description of condition level I or IV violations. The Department is proposing to correct this error in the rule and include the omitted text. Until the error is corrected and the final corrected rule is effective, the Department will score 10H violations as either condition I or condition IV violations. Until the amendment is final, violations that would have been scored as condition II or III violations will be scored as condition I violations and contribute two points to the total score. In addition, during this interim period, the Department will recommend a \$200 per violation penalty for any 10H condition I, II and III violation sustained by hearing examiners at the Administrative Tribunal. For violation codes 4H and 10F, however, no accommodation is necessary because the error did not relate to the substance of the violation, but rather consisted of the omission of illustrative examples. As such, the citation of 4H and 10F violations and the scoring based on such violations is not affected by the typographical error or by the correction made by this rule.

Statement Pursuant to Charter §1043

This proposed rule was not included in the Regulatory Agenda because the need for the rule did not become known until after the Regulatory Agenda was published.

The proposed rule is as follows.

Deleted matter is in brackets [].

New matter is underlined.

§1. Appendix 23-B “Food Service Establishment Sanitary Inspection Scoring Parameters—A Guide to Conditions” of Chapter 23 of Title 24 of the Rules of the City of New York is hereby amended, to be printed to read as follows:

APPENDIX 23-B
FOOD SERVICE ESTABLISHMENT SANITARY INSPECTION
SCORING PARAMETERS – A GUIDE TO CONDITIONS

	Violation	Condition I	Condition II	Condition III	Condition IV	Condition V
Critical Violations						
2A*	Food not cooked to required minimum temperature.				Failure to properly cook meats, comminuted meats, and other potentially hazardous foods (PHFs), unless a consumer specifically asks for a serving of item ordered to be cooked below the minimum temperature.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.

2B*	Hot food item not held at or above 140° F.	One hot food item out of temperature in one area. Example: One tray of chicken wings held at 115° F.	Two hot food items out of temperature or the same type of food out of temperature in two different areas. Example: One tray of chicken wings and a pot of rice held at 115° F; or one tray of chicken wings on the steam table and one tray of chicken wings in the food preparation area held at 115° F.	Three hot food items out of temperature or the same type of food out of temperature in three different areas. Example: One tray of chicken wings, a pot of rice and platter of roast beef held at 115° F; or one tray of chicken wings on the steam table, one tray of chicken wings in the food preparation area and one basket of chicken near the deep fryer held at 115° F.	Four or more hot food items out of temperature or the same type of food out of temperature in four or more different areas. Example: One tray of chicken wings, a pot of rice, platter of roast beef and tureen of beef stew held at 115° F; or one tray of chicken wings on the steam table, one tray of chicken wings in the food preparation area, one basket of chicken near the deep fryer and a rotisserie machine filled with eleven chickens held at 115° F.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
2C	Hot food item that has been cooked and refrigerated is being held for service without first being reheated to 165° F or above within 2 hours.	One cooked and refrigerated hot food item not reheated to 165° F before service. Example: chicken soup.	Two cooked and refrigerated hot food items not reheated to 165° F before service. Example: chicken soup and baked ham.	Three cooked and refrigerated hot food items not reheated to 165° F before service. Example: chicken soup, baked ham and sliced turkey.	Four or more cooked and refrigerated hot food items not reheated to 165° F before service. Example: chicken soup, baked ham, sliced turkey, meatloaf and lobster bisque.	

2D	Precooked potentially hazardous food from commercial food processing establishment that is supposed to be heated, but is not heated to 140° F within 2 hours.	One precooked commercially prepared food not heated to 140° F. Example: beef patties.	Two pre-cooked commercially prepared foods not heated to 140° F. Example: beef patties and clam chowder.	Three pre-cooked commercially prepared foods not heated to 140° F. Example: beef patties, clam chowder and smoked turkey.	Four or more pre-cooked commercially prepared foods not heated to 140° F. Example: beef patties, clam chowder, smoked turkey, corned beef and gyros.	
2E	Whole frozen poultry or poultry breasts, other than a single portion, are being cooked frozen or partially thawed.	One whole poultry or poultry breast being cooked from a frozen state. Example: chicken breast.	Two or more whole poultry or poultry breasts being cooked from a frozen state. Example: chicken breast, whole chicken, turkey breast and duck.	Note: For failure to properly cook poultry to the required minimum temperature, *2A cited.		
2F	Meat, fish or molluscan shellfish served raw or undercooked without prior notification to customer.				Failure to properly cook meats, comminuted meats, fish, shellfish and other PHFs, unless a consumer specifically asks for their order to be cooked below the minimum temperature.	

2G*	Cold food item held above 41° F (smoked fish and Reduced Oxygen Packaged food above 38° F), except during necessary preparation.	One cold food item out of temperature in one area. Example: one slab of unsliced smoked salmon or packet or tray of smoked salmon slices above 38° F or one tray of potato salad above 41° F in service display case.	Two cold food items out of temperature or the same food item out of temperature in 2 different areas. Example: one slab of smoked salmon above 38° F and one tray of sliced tomatoes above 41° F; or one bowl of potato salad in the service display case, and one bowl of potato salad in the food preparation area above 41° F.	Three cold food items out of temperature. Example: one slab of smoked salmon above 38° F and tray of sliced tomatoes and platter of tuna salad above 41° F; or one bowl of potato salad in the service display case and one bowl of potato salad in the food preparation area and garlic in oil mixture above 41° F.	Four cold food items out of temperature. Example: one slab of smoked salmon above 38° F and tray of sliced tomatoes, bowl of garlic in oil mixture, and bowl of cooked collard greens above 41° F; or one tray of potato salad in the service display case, one tray of potato salad in the reach-in refrigerator, and one tray of potato salad on the food preparation table above 41° F.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
2H*	Food not cooled by an approved method whereby the internal product temperature is reduced from 140° F to 70° F or less within 2 hours and from 70° F to 41° F or less within 4 additional hours.	One food item not cooled by approved method. Example: one whole, cooked turkey.	Two food items not cooled by approved method. Example: two whole, cooked turkeys.	Three food items not cooled by approved method. Example: two whole, cooked turkeys and one container of deep pot chicken stew.	Four or more food items not cooled by approved method. Example: two whole, cooked turkeys, one container of deep pot chicken stew and 10 pounds of cooked rice.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.

2I	Food prepared from ingredients at ambient temperature not cooled to 41° F or below within 4 hours.	One food item prepared from ambient temperature ingredients not cooled to 41° F. Example: tuna salad prepared with canned tuna above 41° F.	Two food items prepared from ambient temperature ingredients not cooled to 41° F. Example: tuna and salmon salads prepared with canned tuna and salmon above 41° F.	Three food items prepared from ambient temperature ingredients not cooled to 41° F. Example: tuna and salmon salads prepared with canned tuna and salmon, and open can of sardines above 41° F.	Four or more food items prepared from ambient temperature ingredients not cooled to 41° F. Example: tuna and salmon salads prepared with canned tuna and salmon, and open cans of sardines and anchovies above 41° F.	
2J*	Reduced Oxygen Packaged (ROP) food not cooled by an approved method whereby the internal product temperature is reduced to 38° F within two hours of cooking and if necessary further cooled to a temperature of 34° F within six hours of reaching 38° F.	One ROP food item not cooled by approved method. Example: ROP beef stew (twelve 4 oz packages).	Two ROP food items not cooled by approved method. Example: ROP beef stew (twelve 4 oz packages) and ROP chicken fricassee (two – 2 lb packages).	Three ROP food items not cooled by approved method. Example: ROP beef stew (twelve 4 oz packages), ROP chicken fricassee (two 2 lb packages) and ROP pork tenderloin (sixteen 8 oz packages).	Four ROP food items not cooled by approved method. Example: ROP beef stew (twelve 4 oz packages), ROP chicken fricassee (two 2 lb packages), ROP pork tenderloin (sixteen 8 oz packages) and meat sauce (six 1lb packages).	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
3A*	Food from unapproved or unknown source or home canned; Reduced Oxygen Packaged (ROP) fish not frozen before processing; or ROP food prepared on premises transported to another site.				One or more food items not from an approved source, or home canned. Example: wild mushrooms or home canned jellies or ROP fish not frozen before processing.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.

3B*	Shellfish not from approved source, improperly tagged/labeled; tags not retained for 90 days.				One or more containers or kinds of shellfish not from an approved source, improperly tagged/labeled; tags not retained for 90 days. Example: clams not tagged, oyster tags not retained for 90 days, mussels improperly labeled and mussels not tagged.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
3C*	Eggs found dirty/cracked; liquid, frozen or powdered eggs not pasteurized.	1-6 dirty/cracked eggs or liquid, frozen, or powdered eggs not pasteurized. Example: 4 dirty and/or cracked eggs; or one container of unpasteurized liquid eggs.	7-12 dirty/cracked eggs; or 2 containers of liquid, frozen, or powdered eggs not pasteurized. Example: 9 dirty and/or cracked eggs; or 2 containers of unpasteurized liquid eggs.	13-24 dirty/cracked eggs; or three containers of liquid, frozen, or powdered eggs not pasteurized. Example: 16 dirty and/or cracked eggs; or 14 dirty and/or cracked eggs and 2 containers of unpasteurized liquid eggs.	25 or more dirty/cracked eggs; or four containers of liquid, frozen, or powdered eggs not pasteurized. Example: 25 or more dirty and/or cracked eggs; or 18 dirty and/or cracked eggs and one container of unpasteurized liquid eggs.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
3D*	Cans of food products swollen, leaking or rusted and not segregated from consumable food.	1-6 cans of food products swollen, leaking or rusted, and not segregated from consumable food. Example: one can of tomato paste swollen and one can of salmon rusted and stored on food storage shelf.	7-12 cans of food products swollen, leaking or rusted not segregated from consumable food. Example: three cans of tomato paste swollen, and two cans of salmon and two cans of mushrooms rusted and stored on food storage shelf.	13-18 cans of food products swollen, leaking or rusted and not segregated from consumable food. Example: 10 cans of tomato paste swollen, two cans of salmon and two cans of mushrooms rusted and stored on food storage shelf.	19 or more cans of food products swollen, leaking or rusted and not segregated from consumable food. Example: 10 cans of tomato paste swollen, two cans of salmon and two cans of mushrooms rusted, and 15 cans of baked beans leaking and stored on food storage shelf.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.

3E*	Potable water supply inadequate. Water or ice not potable or from unapproved source. Cross connection in potable water supply system.				Potable water supply inadequate. Water or ice not potable or from unapproved source. Cross connection in potable water supply system.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
3F*	Unpasteurized milk or milk product present.				Unpasteurized milk or milk product present.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
3G*	Raw food not properly washed prior to serving.	1 kind of raw food type not properly washed prior to serving. Example: 2 heads of lettuce.	2 kinds of raw food types not properly washed prior to serving. Example: two heads of lettuce and 1 bunch of carrots.	3 kinds of raw food types not properly washed prior to serving. Example: 2 heads of lettuce, 1 bunch of carrots and 1 bunch of broccoli.	4 or more kinds of raw food types not properly washed prior to serving. Example: 2 heads of lettuce, 1 bunch of carrots, 1 bunch of broccoli and 1 head of cabbage.	
4A	Food Protection Certificate (FPC) not held by supervisor of food operations.					FPC not held by the supervisor of food operations.
4B*	Food worker prepares food or handles utensil when ill with a disease transmissible by food or has exposed infected cut or burn on hand.				Food worker prepares food or handles utensil when ill with a disease transmissible by food or has exposed infected cut or burn on hand.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.

4C*	Food worker does not use proper utensil to eliminate bare hand contact with food that will not receive adequate additional heat treatment.	One food worker preparing ready-to-eat food with bare hands. Example: one food worker at front food preparation area preparing a sandwich.	Two food workers preparing ready-to-eat foods with bare hands. Example: one food worker at front food preparation area preparing a sandwich and one food worker in kitchen preparing Caesar salad.	Three food workers preparing ready-to-eat foods with bare hands. Example: one food worker at front food preparation area preparing a sandwich, one food worker in kitchen preparing Caesar salad and one food worker in basement preparing shrimp cocktail.	Four or more food workers preparing ready-to-eat foods with bare hands. Example: two food workers at front food preparation area preparing sandwiches, one food worker in kitchen preparing Caesar salad and one food worker in basement preparing shrimp cocktail.	Failure to correct any condition of a PHH at the time of Inspection. Inspector must call office to discuss closing or other enforcement measures.
4D*	Food worker does not wash hands thoroughly after using the toilet, coughing, sneezing, smoking, eating , preparing raw foods or otherwise contaminating hands.				Food worker does not wash hands after visiting the toilet, coughing, sneezing, smoking, preparing raw foods or otherwise contaminating hands.	Failure to correct any condition of a PHH at the time of Inspection. Inspector must call office to discuss closing or other enforcement measures.
4E*	Toxic chemical improperly labeled, stored or used so that contamination of food may occur.	One toxic chemical improperly labeled, stored or used so that contamination of food may occur. Example: roach spray.	Two toxic chemicals improperly labeled, stored or used so that contamination of food may occur. Example: roach spray and bleach.	Three toxic chemicals improperly labeled, stored or used so that contamination of food may occur. Example: roach spray, bleach and butane.	Four or more toxic chemicals improperly labeled, stored, or used so that contamination of food may occur. Example: roach spray, bleach, butane and rat poison.	Failure to correct any condition of a PHH at the time of Inspection. Inspector must call office to discuss closing or other enforcement measures.

4F*	Food, food preparation area, food storage area or area used by employees or patrons contaminated by sewage or liquid waste.				Food, food preparation area, food storage area or area used by employees or patrons contaminated by sewage or liquid waste.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
4G*	Unprotected potentially hazardous food re-served.				Unprotected potentially hazardous food re-served. Example: bowl of cooked rice re-served.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
4H*	Raw, cooked or prepared food is adulterated, contaminated or cross-contaminated, or not discarded in accordance with HACCP plan.	One food item is spoiled, adulterated, contaminated or cross-contaminated. Example: lettuce contaminated by raw chicken or custard cream contaminated by mice droppings; or one package of ROP chicken not discarded in accordance with HACCP plan.	Two food items or two batches of same food located in two areas noted spoiled, adulterated, contaminated or cross-contaminated. Example: lettuce and cooked chicken contaminated by raw chicken; or adulterated sausage and fish; or ROP beef stew and ROP chicken fricassee not discarded in accordance with HACCP Plan.	Three food items or three batches of the same food type located in three areas noted spoiled, adulterated, contaminated or cross-contaminated. Example: lettuce, cooked chicken and raw eggs contaminated by raw chicken; or lettuce, tomatoes and figs contaminated by non-potable water; or ROP beef stew, ROP chicken fricassee and ROP pork tenderloin not discarded in accordance with HACCP Plan; or a tray of chicken contaminated with mice droppings in	Four or more food items or four or more batches of the same food type in different areas noted spoiled, adulterated, contaminated or cross-contaminated. Example: lettuce, cooked chicken, raw eggs and cooked rice contaminated by raw chicken; or ROP beef stew, ROP chicken fricassee, ROP pork tenderloin and meat sauce not discarded in accordance with HACCP Plan; or a tray of chicken contaminated with mice droppings in an upper level walk-in refrigerator, a basket of chicken under the deep fat fryer	Failure to correct any condition of a PHH at the time of Inspection. Inspector must call office to discuss closing or other enforcement measures.

				walk-in refrigerator, a basket of chicken under the deep fat fryer contaminated with dust and debris, and a pan of chicken on the service counter cross-contaminated with raw beef drippings.	contaminated with dust and debris, a pan of chicken on the service counter cross-contaminated with raw beef drippings and chicken contaminated by mice droppings in the basement walk-in refrigerator.	
4I	Unprotected food re-served.	One unprotected food item re-served. Example: unwrapped crackers.	Two unprotected foods items re-served. Example: unwrapped crackers and bread.	Three unprotected food items re-served. Example: unwrapped crackers, bread and pickles.	Four or more unprotected food items re-served. Example: unwrapped crackers, bread, pickles and breadsticks.	
4J	Appropriately scaled metal stem-type thermometer or thermocouple not provided or used to evaluate temperatures of potentially hazardous foods during cooking, cooling, reheating and holding.				Appropriate thermometer(s) or thermocouple not provided or used to measure the temperature of potentially hazardous foods.	

4K	Evidence of rats or live rats present in facility's food and/or non-food areas.	Rats present in the facility's food or non-food areas. Example: 1-10 fresh rat droppings in one area.	Rats present in the facility's food or non-food areas, demonstrated by 11-30 fresh rat droppings in one area or 1-10 fresh or rat droppings in two areas. Example: 25 fresh rat droppings in the food preparation area; or 10 fresh rat droppings in dry food storage area and 10 fresh rat droppings in the basement, food preparation area, bathroom and garbage disposal area.	Rats present in the facility's food or non-food areas, demonstrated by 31-70 rat droppings one area; 11-30 fresh rat droppings in two areas; or 1-10 fresh rat droppings in three areas. Example: 55 fresh rat droppings in food preparation area; or 14 fresh rat droppings in dry food storage area and 16 in basement; or less than 10 fresh rat droppings in the basement, food preparation area and bathroom.	Rats present in the facilities food or non-food areas, demonstrated by 1-2 live rats and/or 71-100 rat droppings in one area; 31-70 fresh rat droppings in two areas; 11-30 fresh rat droppings in three areas; or 1-10 fresh droppings in four areas. Example: 80 fresh rat droppings in food preparation area; or 30 fresh rat droppings in dry food storage area and 16 in basement or less than 10 fresh rat droppings in basement, food prep.	Three or more live rats and/or greater than 100 rat droppings; and/or other conditions conducive to infestation of rats, i.e. holes/openings, water, food, unused equipment/material. Inspector must call office to discuss closing or other enforcement measures.
4L	Evidence of mice or live mice present in facility's food and/or non-food areas.	Mice present in the facility's food or non-food areas; 1-10 fresh mice droppings in one area. Example: 8 fresh mice droppings found in pantry.	Mice present in the facility's food or non-food areas. 11-30 fresh mice droppings in one area; or 1-10 in two areas. Example: 25 fresh mice droppings in the food preparation area; or 10 fresh mice droppings in dry food storage area and 10 in the basement.	Mice present in the facility's food or non-food areas. 31-70 mice droppings in one areas, 11-30 in two areas; or 1-10 in three areas. Example: 55 fresh mice droppings in food preparation area; 14 fresh mice droppings in dry food storage area and 16 in basement; or fewer than 10 fresh mice droppings in the basement, food preparation area and bathroom.	Mice present in the facility's food or non-food areas; 1-2 live mice and/or 71-100 mice droppings in one area; 31-70 in two areas, 11-30 in three areas; or 1-10 in four areas. Example: 80 fresh mice droppings in food preparation area; 30 fresh mice droppings in dry food storage area and 16 in basement; or fewer than 10 fresh mice droppings in basement, food	Two or more live mice and/or greater than 100 fresh mice droppings; and/or other conditions exist conducive to infestation of mice. Example: holes/openings, water, food, unused equipment/material. Inspector must call office to discuss closing or other enforcement measures.

					preparation area, bathroom and garbage disposal area.	
4M	Live roaches present in facility's food and/or non-food areas.	Roaches present in the facility's food and non-food areas. Example: 2 live roaches in the dry-food area.	Roaches present in the facility's food and non-food areas. 6-10 roaches in one area; or 1-5 in two areas. Example: 7 live roaches in the food preparation area; or 2 roaches in the dry food storage area and 1 in the basement.	Roaches present in the facility's food and non-food areas; 11-15 roaches in one area; 6-10 in two areas; or 1-5 in three areas. Example: 12 live roaches in the food preparation area; 4 roaches in the dry food storage area and 5 roaches in the basement; or 1 live roach observed in walk-in, food preparation area and dry storage.	Roaches present in the facility's food and non-food areas; 16-20 roaches in one area, 11-15 in two areas; 6-10 in three areas; or 1-5 in four areas. Example: 17 live roaches in the food preparation area; 10 roaches in the dry food storage area and 5 roaches in the basement; or 1 live roach observed in walk-in, food preparation area, garbage area and dry storage area.	Greater than 20 live roaches and/or other conditions exist conducive to infestation of roaches. Example: 45 live roaches and condition conducive to infestation such as holes/openings, water, food, unused equipment/material. Inspector must call office to discuss closing or other enforcement measures.
4N	Filth flies or food/refuse/sewage/associated (FRSA) flies in facility's food and/or non-food areas. Filth flies include house flies, little house flies, blow flies, bottle flies and flesh flies. Food/refuse/sewage/associated flies include fruit flies, drain flies and Phorid flies.	2-5 filth flies or FRSA flies in the food preparation or food storage area during November 1 through March 1. Example: 2 flies in dry non-food area in January.	6-10 filth flies or FRSA flies in one area; or 2-5 filth flies in two areas. Example: 7 live flies in food preparation area; or 2 flies in the dry food storage area and 1 in basement.	11-15 filth flies or FRSA flies in one area; 6-10 in two areas; or 2-5 flies in three areas. Example: 12 live flies in food preparation area; 4 flies in the dry food storage area and 5 flies in basement; or 1 fly observed in walk-in refrigerator, food preparation area and dry storage area.	16-20 filth flies or FRSA flies in one area; 11-15 in two areas; 6-10 filth flies in three areas; or 1-5 in four areas. Example: 17 filth flies in food preparation area; 10 filth flies in dry food storage area and 5 filth flies in basement; or 2 filth flies observed in walk-in refrigerator, food preparation area, garbage area and dry storage area.	More than 30 filth flies, FRSA flies and/or other conditions exist conducive to infestation of filth flies. Example: 40 flies in the basement garbage area; and other conditions exist conducive to filth fly infestation, i.e. openings to the outer air, water, food, decaying matter, and/or sewage. Inspector must call office to discuss closing or other enforcement measures.

40	Live animal other than fish in tank or service animal present in facility's food and/or non-food areas.	Live animal in establishment.	Two live animals in establishment.	Three live animals in establishment.	Four or more live animals in establishment.	
5A*	Sewage disposal system improper or unapproved.				Sewage or liquid waste is not disposed of in an approved or sanitary manner; or sewage or liquid waste contaminating food, food storage area, food preparation area, or area frequented by consumers or employees or used as a storage, preparation or utility area.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
5B*	Harmful, noxious gas or vapor detected. CO \geq 13 ppm.				Harmful, noxious gas or vapor detected. CO equal to or greater than 13ppm.	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
5C+	Food contact surface improperly constructed or located; or unacceptable material used.	One food contact surface or piece of equipment improperly constructed, located and/or unacceptable material used. Example: painted shelves in a walk-in unit.	Two food contact surfaces or pieces of equipment improperly constructed, located and/or unacceptable material used. Example: painted shelves in a walk-in unit and cutting board made from untreated wood.	Three food contact surfaces or pieces of equipment improperly constructed, located, and/or unacceptable material used. Example: painted shelves of a walk-in unit, cutting board made from untreated wood and acidic foods placed in pewter bowl.	Four or more contact surfaces or pieces of equipment improperly constructed, located, and/or unacceptable material used. Example: painted shelves in a walk-in unit, cutting board made from untreated wood, acidic food placed in pewter bowl and solder and flux used to repair food	Failure to correct as pre-permit serious (PPS) on an initial inspection, re-inspection, or compliance inspection results in a follow up inspection, and/or closure. Inspector must call office to discuss closing or other enforcement measures.

					contact equipment.	
5D+	Hand washing facility not provided in or near food preparation area and toilet room. Hot and cold running water at adequate pressure to enable cleanliness of employees not provided at facility. Soap and an acceptable hand-drying device not provided.				Fully equipped hand wash sinks, to include soap and paper towels not provided or conveniently located in all food preparation areas.	Failure to correct as pre-permit serious (PPS) on an initial inspection, re-inspection, or compliance inspection results in a follow up inspection, and/or closure. Inspector must call office to discuss closing or other enforcement measures.
5E+	Toilet facility not provided for employees or for patrons when required				Toilet facility not provided for employees or for patrons when required.	Failure to correct as pre-permit serious (PPS) on an initial inspection, re-inspection, or compliance inspection results in a follow up inspection, and/or closure. Inspector must call office to discuss closing or other enforcement measures.

5F+	Insufficient or no refrigerated or hot holding equipment to keep potentially hazardous foods at required temperatures.				Refrigerated or hot holding equipment for PHFs not provided.	Failure to correct as pre-permit serious (PPS) on an initial inspection, re-inspection, or compliance inspection results in a follow up inspection, and/or closure. Inspector must call office to discuss closing or other enforcement measures.
5G +	Separate, enclosed, properly equipped cleaning and service area not provided. (Mobile Vending Commissary)				Separate, enclosed, properly equipped cleaning and service area not provided.	Failure to correct as pre-permit serious (PPS) on an initial inspection, re-inspection, or compliance inspection results in a follow up inspection, and/or closure. Inspector must call office to discuss closing or other enforcement measures.
5H+	No facilities available to wash, rinse, and sanitize utensils and/or equipment.				No facility available to wash, rinse, and sanitize utensils and equipment.	Failure to correct. Inspector must call office to discuss enforcement measures.
5I+	Refrigeration used to implement HACCP plan not equipped with an electronic system that continuously monitors time and temperature.				Refrigeration used to implement HACCP plan not equipped with an electronic system that continuously monitors time and temperature.	Inspector must call office to discuss closing or other enforcement measures.

6A	Personal cleanliness inadequate. Outer garment soiled with possible contaminant. Effective hair restraint not worn in an area where food is prepared.	One food worker observed without clean outer garment or hair restraint.	Two food workers observed without clean outer garments and/or hair restraints.	Three food workers observed without clean outer garments and/or hair restraints.	Four or more food workers observed without clean outer garments and/or hair restraints.	
6B	Tobacco use, eating, or drinking from open container in food preparation, food storage or dishwashing area.	One food worker eating, smoking and/or drinking from open container in food or ware washing areas or evidence of tobacco use, eating or drinking in food preparation, food storage and dishwashing area.	Two food workers eating, smoking and/or drinking from open container in food or ware washing areas.	Three food workers eating, smoking and/or drinking from open container in food or ware washing areas.	Four or more food workers eating, smoking and/or drinking from open container in food or ware washing areas.	
6C	Food not protected from potential source of contamination during storage, preparation, transportation, display or service.	One food item not protected during storage, preparation, transportation, display or service.	Two food items not protected during storage, preparation, transportation, display or service.	Three food items not protected during storage, preparation, transportation, display or service.	Four or more food items not protected during storage, preparation, transportation, display or service.	
6D	Food contact surface not washed, rinsed and sanitized after each use and following any activity when contamination may have occurred.	One food contact surface not washed, rinsed or sanitized after any activity when contamination may have occurred. Example: Meat slicer encrusted with old food debris.	Two food contact surfaces not washed, rinsed or sanitized after any activity when contamination may have occurred. Example: Meat slicer and cutting board encrusted with old food debris.	Three food contact surfaces not properly washed, rinsed or sanitized after any activity when contamination may have occurred. Example: Meat slicer, wooden cutting board, and can opener encrusted with old food debris.	Four or more food contact surfaces not properly washed, rinsed or sanitized after any activity when contamination may have occurred. Example: Meat slicer, wooden cutting board, can opener, and food preparation table encrusted with old food debris, and the interior of the ice machine observed with	

					mold.	
6E	Sanitized equipment or utensil, including in-use food dispensing utensil, improperly used or stored.	One sanitized piece of equipment or utensil improperly used or stored	Two sanitized pieces of equipment or utensils improperly used or stored.	Three sanitized pieces of equipment or utensils improperly used or stored.	Four or more sanitized pieces of equipment or utensils improperly used or stored.	
6F	Wiping cloths soiled or not stored in sanitizing solution.	Two or more wiping cloths used to clean food contact surfaces not stored in sanitizing solution; or test kit to measure sanitizing solution to ensure proper sanitization of wiping cloths not provided; or sanitizer solution not at appropriate level to effectively remove contaminants from wiping cloths.	Two or more wiping clothes used to clean food contact surfaces not stored in sanitizing solution; and the test kit to measure sanitizing solution to ensure proper sanitization of wiping cloths not provided; or wiping cloths used to clean food contact surfaces not stored in sanitizing solution and test kit to measure sanitizing solution to ensure proper sanitization of wiping cloths not provided.	Two or more wiping cloths used to clean food contact surfaces are not stored in sanitizing solutions, the test kit to measure sanitizing solution to ensure proper sanitization of wiping cloths not provided and sanitizer solution not at appropriate level to effectively remove contaminants from wiping cloths.		
6G	HACCP plan not approved or approved HACCP plan not maintained on premises.				Approved HACCP plan not maintained on premises.	HACCP plan not approved. Inspector must call office to discuss enforcement measures.

6H	Records and logs not maintained to show HACCP plan has been properly implemented.					Record and logs not maintained to show HACCP plan has been properly implemented. Inspector must call office to discuss corrective action or other enforcement measures.
6I	Food not labeled in accordance with HACCP plan.				Food not labeled in accordance with HACCP plan.	Inspector must call office to discuss corrective action or other enforcement measures.
7A	Duties of an officer of the department interfered with or obstructed.					Duties of an officer of the department interfered with or obstructed.
General Violations						
8A	Facility not vermin proof. Harborage or conditions conducive to attracting vermin to the premises and/or allowing vermin to exist.			Doors and door thresholds not adequately pest proofed, and/or one or two openings in the facility façade (walls, floors, ceilings) and/or other condition conducive to pest entry or breeding.	Doors and door thresholds not adequately pest proofed, with quality materials, and/or three or more openings in the facility façade (walls, floors, ceilings) or other condition conducive to pest entry or breeding.	

8B	Covered garbage receptacle not provided or inadequate, except that garbage receptacle may be uncovered during active use. Garbage storage area not properly constructed or maintained; grinder or compactor dirty.	Garbage equipment and facilities not maintained or provided. Example: tight fitting lid not provided for 32-gallon garbage can used to put garbage out overnight.	Garbage equipment and facilities not maintained or provided. Example: tight-fitting lids not provided for 32-gallon garbage can used to put garbage out overnight and garbage grinder encrusted with old food.	Garbage equipment and facilities not maintained or provided. Example: tight-fitting lids not provided for two 32-gallon garbage cans used to put garbage out overnight and garbage grinder encrusted with old food.	Garbage equipment and facilities not maintained or provided. Example: tight-fitting lids not provided for two 32-gallon garbage cans used to put garbage out overnight, garbage grinder encrusted with old food and cardboard boxes, food wrappers and 15 empty carton of milk strewn in the backyard.	
8C	Pesticide use not in accordance with label or applicable laws. Prohibited chemical used/stored. Open bait station used.	One prohibited pesticide, chemical or bait station not used in accordance with label or applicable laws.	Two types of prohibited pesticides, chemicals or bait stations not used in accordance with label or applicable laws.	Three types of prohibited pesticides, chemicals or bait stations not used in accordance with label or applicable laws.	Four or more types of prohibited pesticides, chemicals or bait stations not used in accordance with label or applicable laws.	Failure to correct. Inspector must call office to discuss enforcement measures.
9A	Canned food product dented and not segregated from consumable food.	1-6 cans dented. Example: one dented can of tomato paste stored on food storage shelf not segregated.	7-12 cans dented. Example: seven dented cans of tomato paste stored on food storage shelf not segregated.	13-24 cans dented. Example: seven dented cans of tomato paste and six dented cans of soy sauce stored on food storage shelf not segregated.	25 or more cans dented. Example: seven dented cans of tomato paste, ten dented cans of soy sauce, and five dented cans of tuna fish stored on food storage shelf not segregated.	

9B	Thawing procedures improper.	One frozen food item improperly thawed. Example: whole chicken or beefsteak improperly thawed.	Two frozen food items improperly thawed or the same type of food improperly thawed in two different areas. Example: two chickens and beefsteak improperly thawed or chicken breast improperly thawed in sink and chicken legs thawed on kitchen counter.	Three frozen food items improperly thawed or the same type of food improperly thawed in three different areas. Example: three chickens, beefsteak, and pork shoulder improperly thawed; or chicken breast improperly thawed in sink, chicken legs improperly thawed on kitchen counter, and chicken breast improperly thawed in bowl in food preparation area.	Four or more frozen food item improperly thawed or the same type of food improperly thawed in four different areas. Example: four chickens, chicken breast, beefsteak, and shrimp improperly thawed; or chicken breast improperly thawed in sink, chicken legs improperly thawed on kitchen counter, chicken breast improperly thawed in bowl in food preparation area, and chicken wings improperly thawed near the deep fat fryer.	
9C	Food contact surface not properly maintained.	One food contact surface not properly maintained. Example: one cutting board discolored.	Two food contact surfaces not properly maintained. Example: one cutting board discolored and one plastic cutting board pitted and scratched.	Three food contact surfaces not properly maintained. Example: three cutting boards pitted and scratched.	Four or more contact surfaces not properly maintained. Example: three cutting board pitted and scratched and four cutting boards at the bar area discolored.	
10A	Toilet facility not maintained and provided with toilet paper, waste receptacle and self-closing door.	One toilet facility not maintained and provided with toilet paper, waste receptacle and self-closing door.	Two toilet facilities not maintained and provided with toilet paper, waste receptacle and a self-closing door.	Three toilet facilities not maintained and provided with toilet paper, waste receptacle and a self-closing door.	Four or more toilet facilities not maintained and provided with toilet paper, waste receptacle and a self-closing door.	

10B	Plumbing not properly installed or maintained; anti-siphonage or backflow prevention device not provided where required; equipment or floor not properly drained; sewage disposal system in disrepair or not functioning properly.	One backflow prevention device not installed, or equipment or floor not properly drained. Example: refrigerator condensation draining into a bucket.	Two backflow prevention devices not installed, or equipment or floor not properly drained. Example: refrigerator condensation drained into a bucket and air conditioner draining onto sidewalk.	Three backflow prevention devices not installed, or equipment or floor not properly drained. Example: refrigerator condensation draining into bucket, air conditioner draining onto sidewalk and no vacuum breaker provided on the hose connected to faucet.	Four or more backflow prevention devices not installed or equipment or floor not properly drained. Example: refrigerator condensation draining into bucket, two air conditioners draining onto sidewalk and no vacuum breaker provided on the hose connected to faucet or ice machine.	Sewage disposal system in disrepair or not functioning properly, 5A also cited.
10C	Lighting inadequate; permanent lighting not provided in food preparation areas, ware washing areas, and storage rooms.	One instance of inadequate lighting.	Two instances of inadequate lighting.	Three instances of inadequate lighting.	Four or more instances of inadequate lighting.	
10D	Mechanical or natural ventilation system not provided, improperly installed, in disrepair and/or fails to prevent excessive build-up of grease, heat, steam condensation vapors, odors, smoke, and fumes.	One mechanical or natural ventilation system not provided or inadequate. Example: no ventilation provided in bathroom.	Two mechanical or natural ventilation systems not provided or inadequate. Example: no ventilation provided in bathroom and exhaust hood not sufficient to remove excess fumes in kitchen.	Three mechanical or natural ventilation systems not provided or inadequate. Example: no ventilation provided in bathroom, exhaust hood not sufficient to remove excess fumes in kitchen and grease collecting on walls.	Four mechanical or natural ventilation systems not provided or inadequate. Example: no ventilation provided in bathroom, exhaust hood not sufficient to remove excess fumes in kitchen, grease collecting on walls, and smoke from smokehouse drifting into dining area.	

10E	Accurate thermometer not provided in refrigerated or hot holding equipment.	One refrigeration or hot holding unit not provided with accurate thermometer to measure the temperature in the warmest part of the refrigerator or coolest part of the hot storage facility.	Two refrigeration or hot holding units not provided with accurate thermometers to measure the temperature in the warmest part of the refrigerator or coolest part of the hot storage facility.	Three refrigeration or hot holding units not provided with accurate thermometers to measure the temperature in the warmest part of the refrigerator or coolest part of the hot storage facility.	Four refrigeration or hot holdings units not provided with accurate thermometers to measure the temperature in the warmest part of the refrigerator or coolest part of the hot storage facility.	
10F	Non-food contact surface improperly constructed. Unacceptable material used. Non-food contact surface or equipment improperly maintained and/or not properly sealed, raised, spaced or movable to allow accessibility for cleaning on all sides, above and underneath the unit.	One non-food contact surface improperly constructed. Unacceptable material used. Non-food contact surface or equipment improperly maintained and/or not properly sealed, raised, spaced or movable to allow accessibility for cleaning on all sides, above and underneath the unit. Example: wall in food preparation area made of material not easily cleaned.	Two Non-food contact surfaces improperly constructed. Unacceptable material used. Non-food contact surfaces or equipment improperly maintained and/or not properly sealed, raised, spaced or movable to allow accessibility for cleaning on all sides, above and underneath the unit. Example: wall in food preparation area made of <u>material not easily cleaned and build-up of grease on the wall adjacent to permanently</u>	Three non-food contact surfaces improperly constructed. Unacceptable material used. Non-food contact surfaces or equipment improperly maintained and/or not properly sealed, raised, spaced or movable to allow accessibility for cleaning on all sides, above and underneath the unit. Example: wall in food preparation area made of material not easily cleaned, build-up of grease on the wall adjacent to permanently installed convection oven which is not easily <u>moveable or properly spaced to allow cleaning, dried</u>	Four non-food contact surfaces improperly constructed. Unacceptable material used. Non-food contact surfaces or equipment improperly maintained and/or not properly sealed, raised, spaced or movable to allow accessibility for cleaning on all sides, above and underneath the unit. Example: wall in food preparation area made of brick a material not easily cleanable, build-up of grease on on the wall adjacent to permanently installed convection oven which is not easily <u>moveable or properly spaced to allow cleaning, dried encrusted grease</u>	

			<u>installed convection oven which is not easily moveable or properly spaced to allow cleaning.</u>	<u>encrusted grease and old food debris under the walk-in refrigerator which is not properly sealed to the floor.</u>	<u>and old food debris under the walk-in refrigerator which is not properly sealed to the floor, and a rug in the food storage area.</u>	
10G	Food service operation occurring in room used as living or sleeping quarters.	Food service operation occurring in one room used as living or sleeping quarters.	Food service operation occurring in two rooms used as living or sleeping quarters	Food service operation occurring in three rooms used as living or sleeping quarters.	Food service operation occurring in four or more rooms used as living or sleeping quarters.	
10H	Proper sanitization not provided for utensil ware washing operation.	Manual ware washing inadequate in that one immersion basket not provided or of incorrect size.	Manual ware washing inadequate in that one immersion basket not provided or of incorrect size and manual ware washing procedure <u>incorrect.</u>	Manual ware washing inadequate in that one immersion basket not provided or of incorrect size, manual ware washing procedure incorrect and <u>sanitizing test kit or thermometer not provided.</u>	Minimum final rinse temperature of 170° F not maintained or mechanical dishwasher is not operated as per manufacturer's specifications (time or temperature or chemical concentration).	
10I	Single service item reused, improperly stored, dispensed; not used when required.	Single service item reused, improperly stored, dispensed or not used when required. Example: drinking straws not protected from contamination.	Single service item reused, improperly stored, dispensed or not used when required. Example: drinking straws not properly dispensed and paper plates not protected from contamination.	Single service item reused, improperly stored, dispensed, not used when required. Example: drinking straws not properly dispensed, paper plates not protected from contamination and forks not protected from contamination.	Single service item reused, improperly stored, dispensed, not used when required. Example: drinking straws not properly dispensed, paper plates not protected from contamination, forks not protected from contamination and plastic forks reused.	

10J	"Wash hands" sign not posted at hand wash facility.	"Wash hands" sign not posted at hand wash facility.				
99B	General other.					

8/19/10