



## Department of Health and Mental Hygiene

### Notice of Adoption of Amendments to Chapter 21 of Title 24 Rules of the City of New York

A notice of intention to amend Chapter 21 (Health Academy Course and Fees) of Title 24 of the Rules of the City of New York (24 RCNY) was published in the City Record on March 28, 2014 and a public hearing was held on May 7, 2014. Three written comments were received and four persons testified at the hearing, including one person who also submitted written comments. All comments pertained to the proposed amendments adding a new §21-07 (Food service establishment consultative inspections and fees). After reviewing the comments and testimony, the Commissioner of the Department of Health and Mental Hygiene has adopted the following amendments to this Chapter.

#### Statement of Basis and Purpose of Rule

##### Statutory Authority

Amendment of Chapter 21 of Title 24 of the Rules of the City of New York is authorized by sections 389(b) and 1043(a) of 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.” These rules are also authorized by Local Law 93 for the year 2013, enacted November 9, 2013, which added §17-1504 to the Administrative Code of the City of New York, authorizing the Department of Health and Mental Hygiene (the Department) to provide voluntary consultative inspections to restaurants and establish fees for these inspections.

These rules amend Chapter 21 (Health Academy Courses and Fees) of Title 24 of the Rules of the City of New York, as follows:

- Repeal §21-03, Swimming pool technology course and fee;
- Add a new §21-07, Food service establishment consultative inspections and fees; and
- Amend the title of the chapter and §21-01, Scope and applicability.

##### Repeal §21-03 -- Swimming pool technology course and fee

The section being repealed described a Health Academy course that is no longer being offered. Before being amended by the Board of Health on September 21, 2011, the New York City Health Code (Health Code) §165.15(b)(1) required swimming pool operators to take a Department swimming pool technology course at the Department’s Health Academy. Since being amended, this section of the Health Code only requires that pool operators hold a “certificate indicating successful completion of an adequate course of instruction regarding the safe and effective operation and maintenance of pool treatment equipment . . . ,” but does not require that such courses be offered by the Department. Since the course is no longer offered by the Health Academy, §21-03 is being repealed.

**Add a new §2-07 – Food service establishment consultative inspections and fees**

This section is being added to authorize the Department to offer voluntary consultative inspections, with no risk of receiving notices of violation subject to monetary penalties, to food service establishments in the restaurant inspection program established by Health Code §81.51 and Chapter 23 of these rules. The consultative inspections are intended to provide additional food safety training and education and will be available at the request of a food service establishment permittee, or applicant for a new permit, subject to Department resources. The consultative inspection will be conducted by a Department staff member with extensive knowledge of New York City’s food safety regulations and include an on-site assessment of the establishment’s food handling and preparation practices as well as its facilities, sanitation and food storage. For operating establishments, the Department would also review recent inspection histories.

Administrative Code §17-1504, enacted by Local Law 93 for the year 2013, authorizes the Department to offer these consultative inspections and establish a fee for them. The rule authorizes the Department to charge a \$400 fee for existing restaurants and a \$100 fee for restaurants that register for a consultative inspection before receiving their permit. These fees, which would partially offset the costs of providing this service, have been approved by the City’s Office of Management and Budget.

These consultative inspections are entirely voluntary. To maximize the benefits of the consultation, the Department may require that the owner, operator or manager accompany Department staff during the on-site inspection. Findings would not be graded, and would only be scored if requested by the operator for informational purposes. Findings would not be used to determine the date of the next inspection or the length of the inspection cycle; and would not influence subsequent inspection findings. No notice of violation or grade card would be issued. The results are intended to inform the establishment’s operator of practices and conditions that violate applicable food safety laws and regulations and provide recommendations for improving operations affecting food safety. If the Department observes a condition that constitutes an imminent or public health hazard during the on-site consultative inspection the permittee would be required to correct the condition immediately, and the Department may close the establishment on a temporary, emergency basis to protect the public health, until the condition is corrected.

**Amend the Chapter title and §21-01 Scope and applicability**

Since the new §21-07 will not involve a course offered at the Health Academy, but only describes a consultative inspection and fees to be charged by the Department, the Chapter title and §21-01 are also being amended.

**THE AMENDED RULE IS AS FOLLOWS:**

Note - Matter to be deleted is in [brackets]

Matter underlined is new.

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Section 1. The title of Chapter 21 and the list of sections in Chapter 21 of Title 24 of the Rules of the City of New York is amended to read as follows:

**CHAPTER 21**

**HEALTH ACADEMY COURSES AND DEPARTMENT FEES**

**§21-01 Scope and applicability.**

**§21-02 Food protection courses and fees.**

**[§21-03 Swimming pool technology course and fee.]**

**§21-04 Animal care and handling techniques course and fee.**

**§21-05 Tattooist infection control course and fee.**

**§21-06 Course completion certificate; replacement fee.**

**§21-07 Food service establishment consultative inspections and fees.**

§2. Section 21-01 (Scope and applicability) of Chapter 21 (Health Academy Courses and Fees) of Title 24 of the Rules of the City of New York is amended to read as follows:

**§21-01 Scope and applicability.**

This Chapter describes the courses offered [and fees authorized to be charged] by the Department of Health and Mental Hygiene (the “Department”) Health Academy and fees authorized to be charged by the Department.

§3. Section 21-03 (Swimming pool technology course and fee ) of Chapter 21 of Title 24 of the Rules of the City of New York, related to a course and fee on swimming pool technology offered by the Department, is REPEALED.

§4. Chapter 21 of Title 24 of the Rules of the City of New York is amended by adding a new § 21-07 entitled “Food service establishment consultative inspections and fees” to read as follows:

**§21-07 Food service establishment consultative inspections and fees.**

*(a) Consultative inspections.*

*(1) Voluntary consultation.* In accordance with New York City Administrative Code §17-1504, the Department will provide a consultative inspection to a person operating or applying for a permit to operate a food service establishment, as defined in New York City Health Code §81.03, on how to operate the establishment in compliance with the Health Code and other applicable law.

*(2) Priority and scheduling of consultative inspections.*

*(i) The Department will give priority to conducting consultative inspections at establishments that have a history of two or more inspections with a score of 28 or more points per inspection during the preceding 12 months, and at establishments whose operators request a consultative inspection when they are applying for their first permit, if they have not already been inspected and cited for operating without a permit.*

*(ii) For permitted establishments, consultative inspections will be scheduled so that they do not occur during the establishment's inspection cycle.*

*(iii) All consultative inspections are contingent on the availability of Department resources.*

*(b) Fees.* The fee for a permittee requesting a consultative inspection at an existing establishment is four hundred dollars (\$400). The fee for an applicant for a new permit requesting a consultative inspection prior to the establishment's first inspection by the Department is one hundred dollars (\$100).