

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

**NOTICE OF ADOPTION OF AMENDMENTS TO CHAPTER 23
(FOOD SERVICE ESTABLISHMENT SANITARY INSPECTION PROCEDURES)
OF TITLE 24 OF THE RULES OF THE CITY OF NEW YORK**

In compliance with §1043(a) of the New York City Charter (the Charter), a notice of intention to amend Chapter 23 (Food Service Establishment Sanitary Inspection Procedures) of Title 24 of the Rules of the City of New York was published in the City Record on July 18, 2008 and a public hearing was held on August 20, 2008. There was no testimony, no written comments were submitted, and no changes have been made to the amendments originally proposed.

Statutory Authority

This amendment is authorized by §§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.”

Statement of Basis and Purpose

Chapter 23 (Food Service Establishment Sanitary Inspection Procedures) was added to the rules of the Department of Health and Mental Hygiene (the Department) in 2005 to codify inspection procedures of the Bureau of Food Safety and Community Sanitation (BFSCS) of restaurants and other kinds of food service establishments operating pursuant to Department permits. These procedures establish objective measures of sanitary inspections, assigning point values for sanitary violations of Article 81 of the Health Code and Subpart 14-1 of the New York State Sanitary Code (10 NYCRR Chapter 1).

This rule amends Chapter 23 to include point values for violations of provisions regulating reduced oxygen packaging (ROP) and hazard analysis critical control point (HACCP) plans added to Article 81 of the New York City Health Code (Health Code) in March 2008.

At that time, the Board of Health added a new subdivision (b) to §81.06 (Prevention of imminent health hazards) authorizing the Department to require that a HACCP plan be prepared by a food service establishment or non retail food service establishment whenever such establishment prepares, processes, cooks, holds, and stores foods, in a manner other than as specified in the Health Code. A new §81.12 (Reduced oxygen packaging; cook chill and *sous vide* processing) was added to establish minimum requirements for safe use of ROP techniques.

The amendments to Chapter 23 include changes to the charts in Appendix 23-A and Appendix 23-B, and add definitions of HACCP and ROP to §23-02 to reflect those in Health Code §81.03.

Statement Pursuant to Charter Section 1042 - Regulatory Agenda

This rule change was not included in the Department’s Regulatory Agenda because the need for the rule was not known at the time the Regulatory Agenda was published.

THE RULE IS AS FOLLOWS:

Note - Matter to be deleted is in [brackets]

Matter underlined is new

§1. Section 23-01 (Definitions and Construction of Words and Terms) of Chapter 23 (Food Service Establishment Sanitary Inspection Procedures) of Title 24 of the Rules of the City of New York, is amended, by adding, in alphabetical order, new definitions for “Hazard Analysis Critical Control Point (HACCP) plan” and “Reduced Oxygen Packaging,” to be printed to read as follows:

§23-02 Definitions and Construction of Words and Terms.

* * *

Hazard Analysis Critical Control Point (HACCP) plan shall have the same meaning as the definition in §81.03 of the Health Code.

* * *

Reduced Oxygen Packaging (ROP) shall have the same meaning as the definition in §81.03 of the Health Code.

§2. Appendix 23-A (Food Service Establishment Inspection Score Worksheet) of Chapter 23 (Food Service Establishment Sanitary Inspection Procedures) of Title 24 of the Rules of the City of New York, is amended, to be printed to read as follows:

APPENDIX 23-A

FOOD SERVICE ESTABLISHMENT SANITARY INSPECTION SCORE WORKSHEET

| | Critical Violations | Conditions | | | | |
|-----|--|------------|----------|----------|-----------|-----------|
| | | I | II | III | IV | V |
| *2G | Cold food held above 41 F, (smoked fish <u>and ROP foods</u> above 38° F), except during necessary preparation | 7 | 8 | 9 | 10 | 28 |
| *2J | <u>ROP processed food not cooled by an approved method whereby the internal food temperature is reduced to 38° F within two hours of cooking, and if necessary further cooled to a temperature of 34° F within four hours of reaching 38° F.</u> | <u>7</u> | <u>8</u> | <u>9</u> | <u>10</u> | <u>28</u> |
| *3A | Food from unapproved or unknown source, or home canned; <u>ROP fish not frozen before processing; or ROP foods prepared on premises transported to another site.</u> | - | - | - | 10 | 28 |
| 4I* | Raw, cooked or prepared food is | 7 | 8 | 9 | 10 | 28 |

| | | | | | | |
|-----|---|-------------------|-----------|------------|-----------|-----------|
| | <u>adulterated, cross-contaminated, contaminated, or not discarded in accordance with HACCP plan.</u> | | | | | |
| 4K | Appropriately scaled metal stem-type thermometer or <u>thermocouple</u> not provided or used to evaluate temperatures of potentially hazardous foods during cooking, cooling, reheating, and holding. | - | - | - | 8 | - |
| 5K | <u>Refrigeration used to implement HACCP plan not equipped with an electronic system that continuously monitors time and temperature.</u> | <u>5</u> | <u>6</u> | <u>7</u> | <u>8</u> | - |
| 6G* | <u>HACCP plan not approved or approved HACCP plan not maintained on premises.</u> | - | - | - | <u>10</u> | <u>28</u> |
| 6H | <u>Records and logs not maintained to demonstrate that HACCP plan has been properly implemented.</u> | - | - | - | - | <u>28</u> |
| 6I | <u>Food not labeled in accordance with HACCP plan.</u> | - | - | - | <u>10</u> | <u>28</u> |
| | Other Generals | Conditions | | | | |
| | | I | II | III | IV | V |
| 12A | [General] <u>Equipment used for ROP processing not approved by the Department</u> | 2 | 3 | 4 | 5 | 28 |
| 12B | <u>General other</u> | <u>2</u> | <u>3</u> | <u>4</u> | <u>5</u> | <u>28</u> |

§2. Appendix 23-B (Food Service Establishment Inspection Scoring Parameters – A Guide to Conditions) of Chapter 23 (Food Service Establishment Sanitary Inspection Procedures) of Title 24 of the Rules of the City of New York, is amended, to be printed to read as follows:

APPENDIX 23B

FOOD SERVICE ESTABLISHMENT SANITARY INSPECTION SCORING PARAMETERS-

A GUIDE TO CONDITIONS

| CRITICAL VIOLATIONS | | | | | | |
|--|---|--|---|--|--|--------------------|
| Violation | Condition I | Condition II | Condition III | Condition IV | Condition V | Condition V |
| 2G* Cold food item held above 41° F (smoked <u>fish and ROP food</u> above 38° F), except during necessary preparation. | One cold food item out of temperature. Example: smoked salmon <u>or ROP food</u> above 38° F. | Two cold food items out of temperature. Example: smoked salmon above 38° F and potato salad above 41° F. | Three cold food items out of temperature. Example: smoked salmon above 38° F, potato salad and sushi above 41° F. | Four or more cold food items out of temperature. Example: smoked salmon above 38° F, potato salad, sushi above 41° F, and <u>ROP food</u> above 38° F. | Failure to correct any conditions of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures. | |

CRITICAL VIOLATIONS

| Violation | Condition I | Condition II | Condition III | Condition IV | Condition V |
|---|---|--|--|--|---|
| 2J* <u>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 fours hours of reaching 38 ° F .</u> | <u>One ROP food item not cooled by approved method.</u> Example: <u>ROP beef stew (twelve - 4 oz packages).</u> | <u>Two ROP food items not cooled by approved method.</u> Example: <u>ROP beef stew (twelve - 4 oz packages) and ROP chicken fricassee (two – 2 lb packages).</u> | <u>Three ROP food items not cooled by approved method.</u> Example: <u>ROP beef stew (twelve - 4 oz packages), ROP chicken fricassee (two - 2 lb packages) and ROP pork tenderloin (sixteen - 8 oz packages).</u> | <u>Four ROP food items not cooled by approved method.</u> Example: <u>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).</u> | <u>Failure to correct any conditions of a PHH at the time of inspection.</u> <u>Inspector must call office to discuss closing or other enforcement measures.</u> |
| 3A* <u>Food from unapproved or unknown source or home canned; ROP fish not frozen before processing; or ROP food prepared on premises transported to another site.</u> | | | | <u>One or more food items not from an approved source, or home canned.</u> Example: <u>unpasteurized milk or wild mushrooms or home canned jellies or ROP fish not frozen before processing.</u> | <u>Failure to correct any condition of a PHH at the time of Inspection.</u> <u>Inspector must call office to discuss closing or other enforcement measures.</u> |
| 4I* <u>Raw, cooked or prepared food is adulterated, contaminated or cross-contaminated, or not discarded in accordance with HACCP plan.</u> | <u>One food item or 1-5 lbs of food is spoiled, adulterated, contaminated or cross-contaminated.</u> Example: <u>lettuce contaminated by raw chicken or 3 lbs of custard cream contaminated by mice droppings; or one 3 lb. package of ROP chicken not discarded in accordance with HACCP plan.</u> | <u>Two food items or 6-10 lbs of food are spoiled, adulterated, contaminated or cross-contaminated.</u> Example: <u>lettuce and cooked chicken contaminated by raw chicken or 10 lbs of adulterated sausage; or ROP beef stew (twelve - 4 oz packages) and ROP chicken fricassee (two – 2 lb packages) not discarded in accordance with HACCP Plan, or ROP beef stew (one - 7 lb package) not discarded in accordance with HACCP Plan.</u> | <u>Three food items or 11-15 lbs of lbs of food is spoiled, adulterated, contaminated or cross-contaminated.</u> Example: <u>lettuce, cooked chicken and raw eggs contaminated by raw chicken; or 11 lbs of lettuce, and 4 lbs of figs contaminated by non-potable water; or ROP beef stew (twelve - 4 oz packages), ROP chicken fricassee (two - 2 lb packages) and ROP pork tenderloin (sixteen - 8 oz packages) not discarded in accordance with HACCP Plan, or ROP beef stew (two - 7 lb</u> | <u>Four or more food items or 16 lbs or more food are spoiled, adulterated, contaminated or cross-contaminated.</u> Example: <u>lettuce, cooked chicken, raw eggs and cooked rice contaminated by raw chicken; or 25 lbs of mashed potatoes contaminated by raw pork tripe; or 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) not discarded in</u> | <u>Failure to correct any condition of a PHH at the time of inspection.</u> <u>Inspector must call office to discuss closing or other enforcement measures.</u> |

CRITICAL VIOLATIONS

| Violation | | Condition I | Condition II | Condition III | Condition IV | Condition V |
|------------------|--|--------------------|---------------------|---|---|---|
| | | | | <u>packages) not discarded in accordance with HACCP Plan.</u> | <u>accordance with HACCP Plan, or ROP beef stew (two - 12 lb packages) not discarded in accordance with HACCP Plan.</u> | |
| 4K | Appropriately scaled metal stem-type thermometer or <u>thermocouple</u> not provided or used to evaluate temperatures of potentially hazardous foods during cooking, cooling, reheating and holding. | | | | Appropriate thermometer(s) or <u>thermocouple</u> not provided or used to measure the temperature of potentially hazardous foods. | |
| 5K+ | <u>Refrigeration used to implement HACCP plan not equipped with an electronic system that continuously monitors time and temperature</u> | | | | <u>Refrigeration not equipped with an electronic system that continuously monitors time and temperature.</u> | <u>Inspector must call office to discuss enforcement measures.</u> |
| 6G* | <u>HACCP plan not approved or approved HACCP plan not maintained on premises.</u> | | | | <u>Approved HACCP plan not maintained on premises.</u> | <u>No approved HACCP plan. Inspector must call office to discuss enforcement measures.</u> |
| 6H | <u>Records and logs not maintained to show HACCP plan has been properly implemented.</u> | | | | | <u>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</u> |
| 6I | <u>Food not labeled in accordance with HACCP plan.</u> | | | | <u>Food not labeled in accordance with HACCP plan.</u> | <u>Inspector must call office to discuss corrective action or other enforcement measures.</u> |

GENERAL VIOLATIONS

| Violation | | Condition I | Condition II | Condition III | Condition IV | Condition V |
|------------------|---|--|---------------------|----------------------|---------------------|--------------------|
| 12A | [General Other] <u>Equipment used for ROP processing not approved by the Department.</u> | | | | | |
| 12B | <u>General other.</u> | <u>Inspector must call office to discuss corrective action, enforcement measures or appropriate code citations.</u> | | | | |

Chapter 23 Adopt HACCP.doc