

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

NOTICE OF PUBLIC HEARING

**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**

IN COMPLIANCE WITH SECTION 1043(a) OF THE NEW YORK CITY CHARTER NOTICE IS HEREBY GIVEN OF THE PROPOSED AMENDMENT OF 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 WILL HOLD A PUBLIC HEARING ON THE PROPOSAL FROM 10:30 A.M. TO 12:30 P.M. ON MONDAY, JUNE 1, 2009 IN ROOM 908a, 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PRE-REGISTERING TO SPEAK AT THE HEARING SHOULD NOTIFY RENA BRYANT, SECRETARY, IN WRITING, BY MAIL TO 125 WORTH STREET, CN-31, NEW YORK, NEW YORK 10013, OR BY FAX TO (212) 788-4315 BY 5:00 P.M. FRIDAY, MAY 29, 2009. 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, 125 WORTH STREET, CN-31, NEW YORK, NEW YORK 10013, (212) 788-5242, BY MAY 18, 2009.

WRITTEN COMMENTS REGARDING THE PROPOSAL ADDRESSED TO THE ATTENTION OF THE BOARD OF HEALTH MUST BE SUBMITTED TO RENA BRYANT, SECRETARY TO THE BOARD OF HEALTH, 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) AT <http://www.nyc.gov/html/doh/html/notice/notice.shtml> ON OR BEFORE 5:00 P.M., JUNE 1, 2009. ATTACHMENTS TO ONLINE COMMENTS MUST BE MAILED OR FAXED.

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

This amendment 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

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 points and condition 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).

The Department is proposing that Chapter 23 be further amended to delete the point and condition values in Appendix 23-A and Appendix 23-B for administrative and documentation violations that are currently counted in the scores received on sanitary inspections. The Department believes that these violations should not be counted as sanitary violations for the purpose of calculating the total score on a sanitary inspection, particularly if letter grade posting is to become a requirement. However, the Department may issue notices of violation for such violations and conduct compliance inspections to determine whether such violations have been corrected.

In Appendix 23-A and Appendix 23-B, the following “Administration” violations under the heading “Critical Violations” would not be scored and would be deleted from each worksheet:

- 1A Current valid permit, registration or other authorization to operate establishment not available.
- 1B Document issued by the Board of Health, Commissioner or Department unlawfully reproduced or altered.
- 1C Notice of the Department or Board of Health mutilated, obstructed, or removed.
- 1D Failure to comply with an Order of the Board of Health, Commissioner, or Department.
- 1F Failure to report occurrences of suspected food borne illness to the Department.

The only violation in this group that the Department plans to retain as a scored violation is “1E Duties of an officer of the Department interfered with or obstructed” which would be retained as written but renumbered as 7G under “Other Criticals.” This is being retained because a food service establishment that denies an inspection is more suspect of having unsanitary conditions.

Under the heading “General Violations,” the following “Documentation” violations would not be scored and would be deleted from each worksheet:

- 11A Permit not conspicuously displayed.
- 11B Manufacture of frozen dessert not authorized on food service establishment permit.
- 11C Failure of event sponsor to exclude vendor without a current valid permit or registration.
- 11D “Choking first aid” poster not posted. “Alcohol and pregnancy” warning sign not posted. “Wash hands” sign not posted at hand wash facility. Resuscitation equipment: exhaled air resuscitation masks (adult & pediatric), latex gloves, sign not posted. Inspection report sign not posted.

However, part of 11D would be retained as a scored sanitary violation. “Wash hands” sign not posted at hand wash facility’ is renumbered as 10M, a general violation under “Facility Maintenance.”

The removal of administrative and documentation violations from the total inspection score will result in fewer points scored on food service establishment inspections and more accurately reflect sanitary conditions.

These amendments do not affect any other provisions of Chapter 23.

Statement Pursuant to Charter Section 1042 - Regulatory Agenda

The proposed 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 PROPOSAL IS AS FOLLOWS:

Note - Matter to be deleted is in [brackets]

Matter underlined is new

§1 Appendix 23-A (Food Service Establishment Sanitary 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 delete from such appendix violations numbered 1A, 1B, 1C, 1D, 1F, 11A, 11B, 11C, and 11D; to add a new violation numbered 10M; to renumber and reprint violation 1E as number 7G; and to renumber violation number 12B as 99B, 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
	[Administration]					
[1A]	Current valid permit, registration or other authorization to operate establishment not available.	-	-	-	-	28]
[1B]	Document issued by the Board of Health, Commissioner or Department unlawfully reproduced or altered.	-	-	-	-	28]
[1C]	Notice of the Department or Board of Health mutilated, obstructed, or removed.	-	-	-	-	28]
[1D]	Failure to comply with an Order of the Board of Health, Commissioner, or Department.	-	-	-	-	28]
[1E]	Duties of an officer of the Department interfered with or obstructed.	-	-	-	-	28]
[1F]	Failure to report occurrences of suspected food borne illness to the Department.	-	-	-	-	28]

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		Conditions				
		I	II	III	IV	V
Other Criticals						
* *	* * *	*	*	*		
7F	Personal Hygiene and other food protection.	5	6	7	8	28
7G	<u>Duties of an officer of the Department interfered with or obstructed.</u>	--	--	--	--	<u>28</u>

		CONDITIONS				
		I	II	III	IV	V
General Violations						
Facility Maintenance						
* *	* * *	*	*	*		
10L	Single service item reused, improperly stored, dispensed; not used when required.	2	3	4	5	_
10M	<u>“Wash hands” signs not posted at hand wash facility.</u>	<u>2</u>	--	--	--	--

[Documentation]						
[11A]	Permit not conspicuously displayed.	2	-	-	-]
[11B]	Manufacture of frozen dessert not authorized on Food Service Establishment permit.	2	--	--	--	--]
[11C]	Failure of event sponsor to exclude vendor without a current valid permit or registration.	2	3	4	5	28]
[11D]	“Choking first aid” poster not posted. “Alcohol and pregnancy” warning sign not posted. “Wash hands” sign not posted at hand wash facility. Resuscitation equipment: exhaled air resuscitation masks (adult & pediatric), latex gloves, sign not posted. Inspection report sign not posted.	2	--	--	--	--]
12A.	Equipment used for ROP Processing not approved by the Department.	2	3	4	5	28
[12B] 99B	General other	2	3	4	5	28

§2 Appendix 23B (Food Service Establishment Sanitary 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 delete from such appendix violations numbered 1A, 1B, 1C, 1D, 1F, 11A, 11B, 11C, and 11D; to add a new violation numbered 10M; to

renumber and reprint violation 1E as number 7G; and to renumber violation number 12B as 99B, 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
[1A]	Current valid permit, registration or other authorization to operate establishment not available					Current valid permit, registration or other authorization not available.]
[1B]	Document issued by the Board of Health, Commissioner or Department unlawfully reproduced or altered.					Document issued by the Department, Commissioner or Board unlawfully reproduced or altered.]
[1C]	Notice of the Department or Board mutilated, obstructed, or removed.					Notice of the Department or Board mutilated, obstructed or removed.]
[1D]	Failure to comply with an Order of the Board, Commissioner or Department.					Failure to comply with an Order of the Board, Commissioner or Department.]
[1E]	Duties of an officer of the Department interfered with or obstructed.					Officer of the Department interfered with or obstructed from carrying out duties.]
[1F]	Failure to report occurrences of suspected foodborne illness to the Department.					Failure to report occurrences of suspected foodborne illness.]
**	* * *					* * *
<u>7G</u>	<u>Duties of an officer of the Department interfered with or obstructed.</u>					<u>Duties of an officer of the Department interfered with or obstructed.</u>

GENERAL VIOLATIONS						
Violation	Condition I	Condition II	Condition III	Condition IV	Condition V	
* * *	* * *	* * *	* * *	* * *	* * *	* * *
10M	“Wash hands” sign not posted at hand wash facility.	“Wash hands” sign not posted at hand wash facility.				
[11A]	Permit not conspicuously displayed.	Permit or license not conspicuously displayed.]				
[11B]	Manufacture of frozen dessert not authorized on food service establishment permit.	Manufacture of frozen dessert not authorized on establishment’s permit.]				
[11C]	Failure of event sponsor to exclude vendor without a current valid permit or registration.	Failure of event sponsor to exclude one vendor without a current valid permit or registration.	Failure of event sponsor to exclude two vendors without a current valid permit or registration.	Failure of event sponsor to exclude three vendors without a current valid permit or registration.	Failure of event sponsor to exclude four vendors without a current valid permit or registration.	Failure of event sponsor to exclude five or more vendors without a current valid permit or registration.]
[11D]	“Choking first aid” poster not posted. “Alcohol and pregnancy” warning sign not posted. “Wash hands” sign not posted at hand wash facility. Resuscitation equipment: exhaled air resuscitation masks (adult & pediatric), latex gloves, sign not posted. Inspection report sign not posted.	“Choking first aid” poster not posted.]				
[12B] 99B	General other.	Inspector must call office to discuss corrective action, enforcement measures or appropriate code citations.				