

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

**NOTICE OF ADOPTION
OF A NEW CHAPTER 27 (FOOD ALLERGY INFORMATION)
IN TITLE 24 OF THE RULES OF THE CITY OF NEW YORK**

In compliance with §§1043(a) and 389(b) of the New York City Charter (the “Charter”) and pursuant to §17-195 of the Administrative Code of the City of New York (“Administrative Code”), a notice of intention to amend Title 24 of the Rules of the City of New York (“RCNY”) by adding a new Chapter 27 (Food Allergy Information) and a notice of a public hearing was published in the City Record on September 17, 2009. At a public hearing on October 23, 2009, nine persons testified and six written comments were received. In response to the comments received, changes were made to the proposed rule, as indicated below.

Statutory Authority

This rule is promulgated pursuant to §§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) similarly 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 17-195 (e), added to Title 17 of the Administrative Code by Local Law 17 of 2009 (LL 17) provides that the “commissioner may promulgate any rules necessary for implementing and carrying out the provisions of this section prior to its effective date.”

Statement of Basis and Purpose

LL17 amended Title 17 of the Administrative Code, adding a new §17-195 (Food allergy posters). §17-195 (a)(2) requires that certain food service establishments (“restaurants where food is sold and space is designated specifically as an eating area”) post information about food allergies in areas where the information may be seen by food workers. LL 17 requires the postings to be made in accordance with the rules of the Department.

These rules define the scope and applicability of the law and the terms that are used in the rule, specifically exempting certain kinds of food service establishments such as charitable feeding programs, mobile food vending units, and temporary food service establishments.

§17-195 (c) provides that such posters shall be posted “in a conspicuous location accessible to all employees involved in the preparation of food and the service of food.” The most important areas identified by the Department for such postings are areas where food orders are placed and retrieved by food workers and where raw ingredients are prepared, and §27-02 of the rule specifies such areas.

The rule does not specify the content of postings, since that information may change over time. Instead, the rule authorizes the Department to maintain Department-provided and approved texts in the required languages (English, Spanish, Chinese, Korean and Russian) on its website and to make changes when the Department finds that information should be added or deleted.

Public comments received included the following:

1. One person objected to the rules commenting that the Department should refrain from requiring workers in a food service establishment to provide information to patrons, stating that such

information should be obtained from “information available onsite in poster, brochure or other written form, check company websites, or call corporate headquarters for more information.” This approach disregards LL 17, which mandates such posters. Moreover, §27-05 (“No limitations on voluntary actions”) of the rules does not prevent any establishment from providing more information, or employing food workers with food allergy training.

2. A sample proposed text for the initial posting that was provided in the Statement of Basis and Purpose in the Notice of Intention was uniformly opposed as not being sufficiently comprehensive or educational. The following principles, based on those proposed by the Food Allergy Initiative and the Food Allergy & Anaphylaxis Network, will be incorporated in the poster produced, although these principles may be expressed in different language and graphics.

Sample Text:

Food Allergy Alert!

- **Food allergies are serious and common concerns.**
- **Many people have food allergies.**
- **The eight most common allergy-causing foods are peanuts, tree nuts, fish, shellfish, eggs, milk, wheat and soy.**
- **Even a tiny amount of an allergy-causing food can be harmful.**
- **Therefore, extra steps must be taken to prevent cross-contamination when preparing and serving food to customers who inform restaurant staff that they have an allergy to a specific food. Examples of such steps include washing hands, changing gloves, cleaning work surfaces, avoiding splashes and spills, and keeping the finished dish separated from other dishes.**
- **Check all ingredients in the order, including labels on packaged foods, to find out if the allergy-causing food is in the dish ordered.**
- **Communicate with appropriate staff (chef, servers, preparers) involved in preparing and serving food.**
- **Tell the customer that the allergy-causing food is or may be present in their order if it is an ingredient or could have had contact during preparation.**
- **Call 911 if the customer has an allergic reaction.**

3. Two comments noted that the proposed subdivision (b) (“Penalties”) of §27-07 (“Violations and Penalties”) was inconsistent with the Administrative Code §17-195 (e) (“Any food service establishment that violates subdivision (c) of this section or any of the rules promulgated thereunder shall be liable for a civil penalty not to exceed one hundred dollars for each violation.”). The Department agrees with the comments, and the proposed penalty provision has been deleted from the final rule.

Violations of this Chapter will not be considered sanitary inspection violations, and will not be scored in accordance with Chapter 23 of these rules. However, the Department will check for violations of this rule during inspections and follow-up on complaints in accordance with current Department policies and procedures

Statement Pursuant to Charter Section 1042 - Regulatory Agenda

This proposed rule was not included in the Department’s Regulatory Agenda because the law that necessitated this rule was enacted after the Regulatory Agenda was prepared and published.

The proposal is as follows.

Matter underlined is new.

Section 1. Title 24 of the Rules of the City of New York is hereby amended by adding a new Chapter 27 (Food Allergy Information).

CHAPTER 27
FOOD ALLERGY INFORMATION

§27-01. Scope and applicability.

§27-02 Definitions.

§27-03 Posting and placement of food allergy information.

§27-04. Disclosure.

§27-05 No limitations on voluntary actions.

§27-06. No third party beneficiary.

§27-07. Violations.

§27-01. Scope and applicability. This Chapter implements Local Law 17 of 2009 (adding Administrative Code of the City of New York §17-195) requiring that signs with food allergen information be posted in certain food service establishments where food is sold and seating areas are provided for patrons. This Chapter does not apply to: food service establishments that are mobile food vending units and mobile food vending commissaries, as defined in Article 89 of the Health Code; temporary food service establishments, as defined in Article 88 of the Health Code; or food service programs for children, the elderly and institutionalized populations operated by government agencies or health care, educational, religious, charitable or fraternal organizations.

§27-02 Definitions. When used in this Chapter, the following terms shall have the following meanings.

(a) Food means any raw, cooked or processed edible substance, beverage, ingredient, ice or water used or intended for use or for sale, in whole or in part, for human consumption.

(b) Food allergen means a food that triggers an allergic response when ingested by a sensitized person. The symptoms in an allergic response to a food allergen may include: hives, itching, swelling of the eyelids, face, lips, and tongue, runny nose, abdominal cramps, nausea, vomiting, diarrhea, hoarse voice, difficulty breathing, anaphylaxis, and death. The most common food allergens include: peanuts, tree nuts (such as cashews, hazelnuts and walnuts), fish, shellfish or crustacea (such as shrimp, crab, lobster and clams), eggs, milk or milk products, wheat (gluten) and soy.

(c) Food worker means a food worker or food handler as defined in Article 81 of the Health Code, except that it shall not mean a person who delivers food prepared in a food service establishment to patrons' homes, offices or other locations.

(e) Patron or customer means a person who orders from or is served food at a food service establishment.

(f) Poster or posting means a placard, paper or other poster, or a magnetized or other display, that contains information about food allergens and that is provided or approved by the Department pursuant to this Chapter.

§27-03 Posting and placement of food allergy information.

(a) Posting of information. Food allergy information provided or approved by the Department shall be posted in a food service establishment.

(b) Languages and texts. Information shall be posted in languages that are understood by all food workers in an establishment. The Department shall provide posters with texts in English, Spanish, Chinese, Korean and Russian, shall maintain the texts of posters on its web site, may approve texts of posters in other languages upon request, and, as it deems necessary, may change and provide approved texts if new or different information about food allergens becomes known.

(c) Placement. Information shall be posted in conspicuous locations where it will be visible to all food workers including, but not limited to, food preparation areas and kitchens where food orders and raw ingredients are processed or prepared and places where food orders are placed and retrieved.

§27-04. Disclosure. Food service establishment operators shall disclose to a patron, on request, whether an ingredient containing a specific food allergen is used in the preparation of any menu item.

§27-05. No limitations on voluntary actions. Nothing in this Chapter shall prohibit a food service establishment operator from taking any other measures to provide information to patrons or employees of the establishment to assist in avoiding patron contact with food allergens, including but not limited to providing additional information to patrons about food allergens in any format or soliciting patron allergen information.

§27-06. No third party beneficiary. Nothing in this Chapter is intended to create any benefit or support a cause of action for any third persons, including individuals with food allergens.

§27-07. Violations.

(a) It shall be a violation of this Chapter for an operator of a food service establishment:

(1) To fail to post the information required by this Chapter in a conspicuous place or places in the establishment;

(2) To fail to post the information in areas where it is visible to food workers;

(3) To fail to post the information in languages understood by food workers; or

(4) To post texts that are not provided or approved by the Department.

(b) Violations shall not be scored as sanitary inspection violations pursuant to Chapter 23 of Title 24 of these Rules.

Section 2. The list of Chapter headings in Title 24 of the Rules of the City of New York is hereby amended as follows:

TITLE 24

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

CHAPTER 1 Posting Regulations for Vendors of Alcoholic Beverages

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26 Establishment and Maintenance of Separate Borough Specific Waiting Lists for Those Seeking Fresh Fruits and Vegetables Permits

27 Food Allergy Information

11/30/09
Chapter 27 food allergy adopt.DOC