

**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 public hearing was held June 1, 2009 on a proposal to amend Chapter 23 (Food Service Establishment Sanitary Inspection Procedures) of Title 24 of the Rules of the City of New York. Three representatives of the Greater New York City Chapters of the New York State Restaurant Association testified. No changes have been made in response to their comments.

**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).

Chapter 23 has been further amended to delete the point and condition values in Appendix 23-A and Appendix 23-B for administrative and documentation violations that had been counted in the scores received by food service establishments 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” will not be scored and will 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 7A. The current violation designated as 7A (Administration) would be deleted. This is being retained because a food service establishment that denies access or obstructs an inspection, or whose operator or employees threaten an inspector, 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 so that the total points recorded for an inspection more accurately reflect sanitary conditions.

The comments received from the Greater New York City chapters of the New York State Restaurant Association representatives supported these changes but argued that even more violations related to facility maintenance and other aspects of operation that are allegedly not related to food safety should not be counted in the scoring. Such violations include citations for “excessive” grease under frying equipment; failure to wear hair restraints while adding milk to coffee; failure of the food protection certificate holder to be present at all times of operation; condition of entry doors at patron toilets; leaky faucets; cracked or missing tiles and holes in walls; unshielded light bulbs and conditions of non-food contact surfaces. The Department believes, however, that control of these conditions constitutes an important component of sanitary operation and affords necessary protection to the public health, and should therefore be kept in the scoring. Accordingly, no changes have been made to the proposal.

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 7A; 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**

	<b>Critical Violations</b>	<b>Conditions</b>				
		<b>I</b>	<b>II</b>	<b>III</b>	<b>IV</b>	<b>V</b>
	<b>[Administration]</b>					
<b>[1A]</b>	Current valid permit, registration or other authorization to operate establishment not available.	-	-	-	-	28]
<b>[1B]</b>	Document issued by the Board of Health, Commissioner or Department unlawfully reproduced or altered.	-	-	-	-	28]
<b>[1C]</b>	Notice of the Department or Board of Health mutilated, obstructed, or removed.	-	-	-	-	28]
<b>[1D]</b>	Failure to comply with an Order of the Board of Health, Commissioner, or Department.	-	-	-	-	28]
<b>[1E]</b>	Duties of an officer of the Department interfered with or obstructed.	-	-	-	-	28]
<b>[1F]</b>	Failure to report occurrences of suspected food borne illness to the Department.	-	-	-	-	28]

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

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

<b>[Documentation]</b>						
<b>[11A]</b>	Permit not conspicuously displayed.	2	-	-	-	]
<b>[11B]</b>	Manufacture of frozen dessert not authorized on Food Service Establishment permit.	2	--	--	--	--]
<b>[11C]</b>	Failure of event sponsor to exclude vendor without a current valid permit or registration.	2	3	4	5	28]
<b>[11D]</b>	“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	--	--	--	--]
<b>12A.</b>	Equipment used for ROP Processing not approved by the Department.	2	3	4	5	28
<b>[12B] 99B</b>	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, 7A, 11A, 11B, 11C, and 11D; to add a new violation numbered 10M; to renumber and reprint violation 1E as number 7A; 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**

<b>CRITICAL VIOLATIONS</b>						
<b>Violation</b>		<b>Condition I</b>	<b>Condition II</b>	<b>Condition III</b>	<b>Condition IV</b>	<b>Condition V</b>
<b>[1A]</b>	Current valid permit, registration or other authorization to operate establishment not available					Current valid permit, registration or other authorization not available.]
<b>[1B]</b>	Document issued by the Board of Health,					Document issued by the Department, Commissioner or

	Commissioner or Department unlawfully reproduced or altered.					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.]
**	* * *					* * *
7A	[Administration.] <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	
* * *	* * *	* * *	* * *	* * *	* * *	
<b>10M</b>	<u>“Wash hands” sign not posted at hand wash facility.</u>	<u>“Wash hands” sign not posted at hand wash facility.</u>				
<b>[11A]</b>	Permit not conspicuously displayed.	Permit or license not conspicuously displayed.]				
<b>[11B]</b>	Manufacture of frozen dessert not authorized on food service establishment permit.	Manufacture of frozen dessert not authorized on establishment’s permit.]				
<b>[11C]</b>	Failure of event sponsor to exclude vendor without a current	Failure of event sponsor to exclude one vendor without a	Failure of event sponsor to exclude two vendors without a	Failure of event sponsor to exclude three vendors without a current	Failure of event sponsor to exclude four vendors without a current	Failure of event sponsor to exclude five or more vendors without a

	valid permit or registration.	current valid permit or registration.	current valid permit or registration.	valid permit or registration.	valid permit or registration.	current valid permit or registration.]
<b>[11D]</b>	“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.]				
<b>[12B] 99B</b>	General other.	Inspector must call office to discuss corrective action, enforcement measures or appropriate code citations.				