



**New York City Department of Health and Mental Hygiene
Notice of Adoption of Rules relating to Food Service Establishment
Inspection Procedures**

A notice of public hearing and opportunity to comment on proposed rule amendments for Food Service Establishment (“FSE”) Inspection Procedures, located in Chapter 23 (“Chapter 23”) of Title 24 of the Rules of the City of New York (“RCNY”), was published in the City Record on May 23, 2025, by the New York City Department of Health and Mental Hygiene (“Department”).

In summary, these amendments to Chapter 23:

- Update requirements for reduced-oxygen packaged (“ROP”) food. ROP is food that is placed into a package where oxygen is removed or replaced to keep food fresher for a longer time;
- Add new high-sugar warning menu requirements and violations as required by Local Law 150 of 2023;
- Add penalties for an FSE that fails to post required information on food allergens and intolerances; and
- Add penalties for an FSE that fails to post a hyperlink to the Department’s FSE inspections lookup tool; and,
- Make certain technical changes to Appendix 23-C.

A virtual public hearing on these amendments was held on June 23, 2025. No one testified at the hearing and two written comments were received. One written commenter, a small business owner, requested that all first-time violations issued by the Department should carry a \$0 penalty. The Department responds that its authority to set penalties is conferred by State and local law, which do not permit all first-time violation penalties to be set at \$0. The other written commenter, a commercial food processor that uses ROP foods, expressed “wholehearted support” for the rationale of the Department’s amendments. However, this entity expressed a concern regarding what it views as potential ambiguity in the portion of the Appendices being amended by this rule that could lead to possible misinterpretation by inspectors during inspections. Specifically, the commenter expressed a concern that the language in the Appendices could be read to apply to the re-thermalization of commercially manufactured ROP foods. The Department responds that the commenter misunderstands the intent and implementation of these amendments to the Appendices. These amendments simply implement section 81.12(c) of the Health Code, which provides the substantive requirements enabling retail FSEs to use reduced oxygen packaging as a part of their food processing techniques. The amendments do not pertain to the re-thermalization of food that was previously placed in ROP by a regulated manufacturer and such ROP foods are required to bear proper food labeling as required by federal law. The Appendices are being amended simply to restate the requirements of §81.12(c), and do not create any new substantive requirements.

In response to the above comments, the Department has not made any substantive changes to the rules as proposed. Accordingly, the Department now adopts those rules as provided below.

Statement of Basis and Purpose

Chapter 23 of Title 24 of the Rules of the City of New York (“Chapter 23”) provides Department rules concerning the requirements and procedures for sanitary inspections of food service establishments (“FSEs”). The Department is amending Chapter 23 primarily to update requirements for reduced-oxygen packaged (“ROP”) food. ROP is food that is placed into a package where oxygen is removed or replaced to keep food fresher for a longer time. For example, *sous vide* is a type of ROP food processing. The Department is also

adopting new high-sugar warning menu requirements violations, as required by Local Law 150 of 2023. Local Law 150 of 2023 created Administrative Code section 17-199.18, which requires the Department to issue rules to require chain restaurants to provide an added sugar warning and notification for applicable menu items.

Finally, the Department is adopting penalties that apply when an FSE fails to post required information on food allergens and intolerances, and to add a penalty for an internet-based food delivery service provider that fails to post a hyperlink to the Department's lookup tool to view recent FSE sanitary inspections. This is required by State legislation that amended Public Health Law section 1356 regarding allergy and intolerances notices in restaurants, and that added section 17-195.1 to the NYC Administrative Code regarding availability of sanitary inspection grades to consumers of internet-based food delivery services, respectively. Certain other proposed technical changes to Appendix 23-C are as described below.

ROP Foods

According to Health Code § 81.12(c), ROP foods must be prepared and consumed on the premises of the FSE or may be consumed off premises only if the preparation site is properly permitted and wholly owned and operated by the same business entity as the FSE. No ROP food products are allowed to be sold or distributed by FSEs to any other business entities or consumers. However, despite this prohibition, the Department has become aware of recent instances where such sales or distributions to other business entities or consumers were occurring, either by sales directly to the consumer via the internet or wholesaling ROP foods to other businesses. Accordingly, the Department is now clarifying in Chapter 23 Appendices A, B and C that ROP foods are not allowed to be sold to other businesses or consumers for off-site consumption.

Appendix 23-A

Appendix 23-A (*Food Service Establishment & Non-Retail Food Processing Establishment Inspection Worksheet*) of Chapter 23 summarizes the subjects covered by a Department inspection and the points assessed for each type of violation observed. The Department is amending Appendix 23-A to clarify that offering ROP foods produced in an FSE directly to consumers is a critical violation.

Appendix 23-B

Appendix 23-B (*Food Service Establishment Inspection Scoring Parameters-A Guide to Conditions*) of Chapter 23 provides violation descriptions and examples of different violation condition levels from I (least serious) to V (most serious). The Department is amending Appendix 23-B to clarify that it is a critical violation to sell or offer ROP foods produced in FSEs directly to consumers, whether offered or sold from the FSE, the internet, or from a third-party delivery service.

Appendix 23-C

Appendix 23-C (*Food Service Establishment and Non-Retail Food Processing Establishment Penalty Schedule*) of Chapter 23 specifies monetary penalties for FSE violations that are adjudicated at the Office of Administrative Trials and Hearings. These amendments to Appendix 23-C shall:

- establish violations for failure to comply with sugar warning requirements;
- reduce the violation penalty for beverage options for children's meals;
- waive penalties for certain initial organic waste disposal violations by designated covered entities;
- correct a typographical error for the penalty for violating Administrative Code § 16-329(c) concerning expanded polystyrene single service food articles;
- add the penalty for violating Public Health Law § 1356 that requires a food allergy notice on menus and in food preparation areas for restaurants, catering halls and online food ordering

- services; and
- include a penalty for an internet-based food delivery service provider failure to conspicuously post a hyperlink to the Department’s food establishment inspection lookup tool on their website or mobile application.

Statutory Authority

The authority for these rule amendments is found in New York City Charter §§ 389, 556 and 1043, New York City Administrative Code §§ 16-324(e) and (f), 17-195.1, 17-199.11(d), 17-199.18(b), and New York City Health Code § 81.12. Additionally, Public Health Law §1356 authorizes rules to ensure its compliance.

The adopted rule amendments are as follows:

“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.

New text is underlined.

Deleted text is in [brackets].

Adopted Rule

Section 1. The row containing item 3A in the critical violations table of Appendix 23-A of Chapter 23 of Title 24 of the Rules of the City of New York is amended to read as follows:

APPENDIX 23-A: FOOD SERVICE ESTABLISHMENT & NON-RETAIL FOOD PROCESSING ESTABLISHMENT INSPECTION WORKSHEET						
Critical Violations	Conditions					Score
	I	II	III	IV	V	
Food Source						
3A* Food from unapproved or unknown source or home canned or home prepared. Live animal slaughtered in establishment. ROP fish not frozen before processing; or ROP foods prepared on premises [transported to another site] <u>sold or distributed to another business entity or offered packaged directly to consumers.</u>	—	—	—	10	28	

§ 2. The row containing item 3A in the critical violations table in Appendix 23-B of Chapter 23 of Title 24 of the Rules of the City of New York is amended to read as follows:

APPENDIX 23-B: FOOD SERVICE ESTABLISHMENT INSPECTION SCORING PARAMETERS - A GUIDE TO CONDITIONS						
	Violation	Condition I	Condition II	Condition III	Condition IV	Condition V
Critical Violations						

3A*	Food from unapproved or unknown source or home canned or home prepared; or live animal slaughtered in establishment; or ROP fish not frozen before processing; or ROP food prepared on premises [transported to another site] <u>sold or distributed to another business entity or offered packaged directly to consumers.</u>		One or more food items from an unapproved or unknown source, or home canned or home prepared; or live animal slaughtered in establishment. Example: wild mushrooms or home canned beets or ROP fish not frozen before processing or home prepared meat balls, curry, rice, [or] lasagna <u>or frozen ROP chicken with mushroom sauce offered directly to the customer, through the internet, or through a third-party delivery service.</u>	Failure to correct any condition of a PHH at the time of inspection. Inspector must call office to discuss closing or other enforcement measures.
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§ 3. The row containing violation code 03A concerning the citation to subdivision (c) of New York City Health Code § 81.12 in the scored violations table of Appendix 23-C of Chapter 23 of Title 24 of the Rules of the City of New York is amended to read as follows:

APPENDIX 23-C: FOOD SERVICE ESTABLISHMENT AND NON-RETAIL FOOD PROCESSING ESTABLISHMENT PENALTY SCHEDULE									
SCORED VIOLATIONS									
VIOLATION CODE	CITATION	CATEGORY	VIOLATION DESCRIPTION	CURE ACCEPTED OR \$0 PENALTY FIRST-TIME VIOLATIONS	VIOLATION PENALTY CONDITION I*	VIOLATION PENALTY CONDITION II*	VIOLATION PENALTY CONDITION III*	VIOLATION PENALTY CONDITION IV*	VIOLATION PENALTY CONDITION V*
03A	NYCHC § 81.12(c)	Public Health Hazard	[Reduced oxygen packaged foods not from an approved source] <u>ROP food products sold or distributed to another business entity or directly to consumers.</u>					\$400	\$600

§ 4. The rows containing violation codes 16-11 and 19-01 through 19-04 of the unscored violations table of Appendix 23-C of Chapter 23 of Title 24 of the Rules of the City of New York are amended to read as follows:

APPENDIX 23-C: FOOD SERVICE ESTABLISHMENT AND NON-RETAIL FOOD PROCESSING ESTABLISHMENT PENALTY SCHEDULE					
UNSCORED VIOLATIONS					
VIOLATION CODE	CITATION	VIOLATION DESCRIPTION	CURE ACCEPTED OR \$0 PENALTY FIRST-TIME VIOLATIONS	APPEARANCE PENALTY*	DEFAULT PENALTY

16-11	Admin. Code § 17-199.11(b)	Prohibited drink listed on children's meal menu***	\$0	\$[100] <u>50</u>	Same as appearance penalty
19-01	16 RCNY § 1-11(c)(2)	Organics mixed with non-organics materials*****		\$[250] <u>0</u> (1st violation); \$500 (2nd violation in 12 months); \$1,000 (3rd and subsequent violations in 12 months)	Same as appearance penalties
19-02	16 RCNY § 1-11(c)(1)	Organics containers not labeled*****		\$[250] <u>0</u> (1st violation); \$500 (2nd violation in 12 months); \$1,000 (3rd and subsequent violations in 12 months)	Same as appearance penalties
19-03	16 RCNY § 1-11(d)(2)	Failure to post sign in organics collection areas*****		\$[250] <u>0</u> (1st violation); \$500 (2nd violation in 12 months); \$1,000 (3rd and subsequent violations in 12 months)	Same as appearance penalties
19-04	Admin. Code § 16-329(c)	Possess, sell expanded polystyrene single service articles		\$[100] <u>150</u> (1st violation); \$250 (2nd violation) \$500 (3rd and subsequent violations in 12 months)	Same as appearance penalties

§ 5. The unscored violations table of Appendix 23-C of Chapter 23 of Title 24 of the Rules of the City of New York is amended by adding new rows containing violation codes 16-15 through 16-17 to read as follows:

APPENDIX 23-C: FOOD SERVICE ESTABLISHMENT AND NON-RETAIL FOOD PROCESSING ESTABLISHMENT PENALTY SCHEDULE					
UNSCORED VIOLATIONS					
VIOLATION CODE	CITATION	VIOLATION DESCRIPTION	CURE ACCEPTED OR \$0 PENALTY FIRST-TIME VIOLATIONS	APPEARANCE PENALTY*	DEFAULT PENALTY
<u>16-15</u>	<u>Admin. Code § 17-199.18</u>	<u>No added sugar warning icon where required.</u>		<u>\$200</u>	<u>Same as appearance penalty</u>
<u>16-16</u>	<u>Admin. Code § 17-199.18</u>	<u>Added sugar icon non-compliant with design specifications.</u>		<u>\$200</u>	<u>Same as appearance penalty</u>
<u>16-17</u>	<u>Admin. Code § 17-199.18</u>	<u>No added sugar warning statement where required.</u>		<u>\$200</u>	<u>Same as appearance penalty</u>

§ 6. The unscored violations table of Appendix 23-C of Chapter 23 of Title 24 of the Rules of the City of New York is amended by adding three new rows for violation code 20-01 to read as follows:

APPENDIX 23-C: FOOD SERVICE ESTABLISHMENT AND NON-RETAIL FOOD PROCESSING ESTABLISHMENT PENALTY SCHEDULE					
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UNSCORED VIOLATIONS					
VIOLATION CODE	CITATION	VIOLATION DESCRIPTION	CURE ACCEPTED OR \$0 PENALTY FIRST-TIME VIOLATIONS	APPEARANCE PENALTY*	DEFAULT PENALTY
<u>20-01</u>	<u>NYSPHL § 1356</u>	<u>Allergen or intolerance statement or information not provided when required.</u>		<u>\$100</u>	<u>Same as appearance penalty</u>
<u>20-01</u>	<u>NYSPHL § 1356</u>	<u>Allergen or intolerance notice not translated into common language when required.</u>		<u>\$100</u>	<u>Same as appearance penalty</u>
<u>20-01</u>	<u>NYSPHL § 1356</u>	<u>No method for patrons to indicate food allergies, and/or no allergy information provided for each menu item.</u>		<u>\$100</u>	<u>Same as appearance penalty</u>

§ 7. The unscored violations table of Appendix 23-C of Chapter 23 of Title 24 of the Rules of the City of New York is amended by adding a new row containing violation code 20-02 to read as follows:

APPENDIX 23-C: FOOD SERVICE ESTABLISHMENT AND NON-RETAIL FOOD PROCESSING ESTABLISHMENT PENALTY SCHEDULE					
UNSCORED VIOLATIONS					
VIOLATION CODE	CITATION	VIOLATION DESCRIPTION	CURE ACCEPTED OR \$0 PENALTY FIRST-TIME VIOLATIONS	APPEARANCE PENALTY*	DEFAULT PENALTY
<u>20-02</u>	<u>Admin. Code § 17-195.1</u>	<u>Failure to conspicuously post a hyperlink to the Department's inspection lookup tool as required.</u>		<u>\$100</u>	<u>Same as appearance penalty</u>

§8. This rule takes effect 30 days after publication of its notice of adoption.