

OFFICIAL RULES OF THE CITY OF NEW YORK
Title 24 Department of Health

ARTICLE 81
FOOD PREPARATION AND FOOD ESTABLISHMENTS

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Introductory Notes:

Section 81.06 was added by resolution adopted on July 7, 2005, when subdivision (j) of §81.09 was deleted from this section, amended, and renumbered, to clarify that such a provision applied to prevention of the occurrence or recurrence of all kinds of imminent health hazards, not just those resulting from out-of-temperature potentially hazardous foods.

Section 81.08 was added by resolution adopted on December 5, 2006 to restrict service of unhealthful artificial trans fat by food service establishments.

The Table of Section Headings was further amended when a new §81.50 was added by resolution adopted on December 5, 2006 to require that food service establishments in New York City that sell food items whose portion size and content are standardized prominently display publicly available information about the calorie content of such items on menu boards and menus in an effort to facilitate patrons' nutritional choices at time of purchase.

Article 81 was repealed and reenacted and Articles 83, 85, 86 and 87 were repealed on June 10, 1996 to modernize the New York City Health Code, to make it consistent with federal guidelines on the control of public health hazards and to make it consistent with New York State laws and regulations.

Section 81.06 was added by resolution adopted on July 7, 2005, when subdivision (j) of §81.09 was deleted from this section, amended, and renumbered, to clarify that such a provision applied to prevention of the occurrence or recurrence of all kinds of imminent health hazards, not just those resulting from out-of-temperature potentially hazardous foods.

Section 81.51 is new. It was adopted on December 14, 1998 to provide up-to-date information to members of the public concerning health and sanitary conditions in restaurants and eating places. It is derived from Section 87.15 of the Code which was

repealed on June 10, 1996 when Articles 83, 85, 86 and 87 were consolidated into a new Article 81.

§81.01 Scope.

The provisions of this Article shall apply equally to all food service establishments and non-retail food processing establishments, except as otherwise limited herein, and shall be construed in a manner that protects the health and safety of the public. All applicable provisions of this Code shall be complied with in addition to the requirements set forth in this Article. Owners and operators of food service establishments and non-retail food processing establishments shall operate so as to prevent health hazards. This Article applies to all establishments formerly classified as eating places, restaurants, retail food processing establishments, retail non-processing food establishments, wholesale food establishments, shellfish and fish markets and commissaries. Any references anywhere in this Code to the aforementioned establishments are hereby deemed to mean the establishments defined and regulated hereunder.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

§81.03 Definitions.

When used in this Title and Code:

(a) Comminuted means reduced in size by methods including chopping, flaking, grinding, mincing; or a mixture of fish or meat products that have been reduced in size and restructured and reformulated.

(b) Contaminated means adulterated or spoiled food, or food and equipment which is exposed to filth, toxic substances, rodent or insect contact or infestation, or potentially hazardous foods held at temperatures between 41 degrees Fahrenheit (5 degrees Celsius) and 140 degrees Fahrenheit 60 degrees Celsius) for a period of time exceeding that reasonably required for preparation, including potentially hazardous foods which are not heated or cooked to the temperatures specified in §81.09, or food in or subject to any condition which could permit the introduction of pathogenic microorganisms or foreign matter, including manual contact during service or preparation if such foods will not be subsequently cooked or heated to the temperatures specified in §81.09.

(c) A controlled-location vending machine means a food vending machine which dispenses only food that is not potentially hazardous, can be serviced in a sanitary manner by an untrained person at the location and is located where it is protected from environmental contamination, abuse and vandalism.

(d) Easily cleanable means readily accessible and of such material and finish that residues may be completely removed by normal cleaning methods.

(e) Easily movable equipment means equipment that is mounted on wheels or casters with flexible, extensible, or quick disconnecting utility connections, if any, so that the equipment may be easily moved for cleaning.

(f) Equipment means all stoves, ranges, microwave ovens, hoods, meatblocks, tables, counters, refrigerators, sinks, dishwashing machines, steamtables and similar items, other than utensils, used in the operation of a food service establishment or non-retail food processing establishment.

(g) Food-contact surfaces mean the surfaces of equipment, utensils, tableware and kitchenware, such as ladles, colanders, serving spoons, spatulas, pots and pans, which normally come into contact with food or from which liquids and residues may drain back into food or onto other food-contact surfaces.

(h) Food-grade means intended to be used with food products, utensils or equipment without reacting with such food products, and without imparting odor, color or taste to such food products, or approved by the National Sanitation Foundation or its equivalent.

(i) Foodworker means foodhandler or any employee who works in a food service establishment or non-retail food processing establishment, including but not limited to any person described in §11.01(f) of this Code.

(j) Food service establishment means a place where food is provided for individual portion service directly to the consumer whether such food is provided free of charge or sold, whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle.

(k) A food vending machine means a self-service device which when activated, dispenses unit servings of food or beverage without requiring replenishing between each vending operation.

(l) A food vending machine commissary means a place where food, containers or supplies are processed or packaged and prepared for use in food vending machines.

(m) A food vending machine operation means the place where food vending machines are located and includes the food vending machines, machine servicing equipment, utensils, personnel, single-service articles, tables, chairs, that part of the premises used in connection with the food vending machine operation and all other appurtenances required and used to operate and maintain the food vending machines.

(n) Imminent health hazard means any violation, condition, combination of violations or conditions making it probable that food served to the public by the establishment or its continued operation will be injurious or dangerous to the health of any person consuming such food.

(o) Indirect drain means a waste line which does not connect directly with the drainage system, but conveys and discharges liquid wastes through an air break into an approved plumbing fixture or receptacle that is directly connected to the drainage system.

(p) Non-retail food processing establishment means a place where food is processed, prepared, stored or packed for consumption off the premises and not given or sold directly to the consumer. This shall include but not be limited to mobile food vending commissaries, food vending machine commissaries and places where fish or shellfish is kept, sold or offered for sale which are not otherwise regulated or permitted by the Department of Agriculture and Markets or other appropriate regulatory agency.

(q) Potentially hazardous food means any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, crustacea, cooked potato, cooked rice, or ingredients in a form capable of supporting rapid and progressive growth of infectious or toxigenic microorganisms, or growth of *C. botulinum*. The term does not include food with a water activity (Aw) value of 0.85 or less, or a hydrogen ion concentration (pH) level of 4.6 or below.

(r) Processed fish means fish that has been cured, salted, marinated, dried, pickled, fermented or smoked for human consumption.

(s) Sanitization means effective bactericidal treatment by heat or chemical means which destroys pathogens on surfaces treated. Acceptable sanitization methods are:

(1) immersion for at least one-half minute in clean hot water at a temperature of not less than 170 degrees Fahrenheit (76.7 degrees Celsius);

(2) immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius);

(3) immersion for at least one minute in a clean solution containing at least 12.5 parts per million of available iodine and having pH not higher than 5.0 and at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius);

(4) immersion in a clean solution containing any other food grade chemical sanitizing agent that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as hypochlorite which has been held at a temperature of at least 75 degrees Fahrenheit (23.9 degrees Celsius) for one minute;

(5) treatment with culinary-quality steam in the case of equipment too large to sanitize by immersion, but in which steam can be confined; or

(6) swabbing fixed equipment with a solution of at least twice the strength required for that sanitizing solution when used for immersion.

(t) Single service articles means cups, containers, lids, or closures, plates, knives, spoons, stoppers, paddles, straws, place mats, napkins, doilies,

wrapping materials, toothpicks and all similar articles which are intended by the manufacturer for single eating and drinking usage and generally recognized by the public as items to be discarded after one usage.

(u) Stand means a movable, portable or collapsible structure, framework, device, container, or other contrivance, other than a vehicle or pushcart, used for displaying, keeping or storing any food.

(v) Temporary food service establishment means any food service establishment which operates at a fixed location for a temporary period of time, not to exceed 14 consecutive days, in connection with a single event or celebration such as a fair, carnival, circus, public exhibition, advertising campaign or business promotion, religious or fraternal organization function or transitory gathering. In addition to the provisions of this Article, a temporary food service establishment shall be operated at all times in compliance with the provisions of Article 88 and all applicable provisions of this Code.

(w) Utensil means any tableware, such as knives, forks, spoons, glasses, cups and the like, and kitchenware, implements or containers used for storage, preparation, transfer, conveyance or service of food.

(x) Wholesale food establishment means any establishment which sells food or which manufactures food for other than retail sale directly to the consumer.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

Subd. (a) added City Record July 1, 1998 eff. July 31, 1998. [See Also Note 1]

Subd. (b) relettered and amended (formerly subd. (a)) City Record July 1, 1998 eff. July 31, 1998.

[See Also Note 1]

Subds. (c)-(i) relettered (formerly subds. (b)-(h)) City Record July 1, 1998 eff. July 31, 1998. [See

Also Note 1]

Subd. (j) relettered and amended (formerly subd. (i)) City Record July 1, 1998 eff. July 31, 1998.

[See Also Note 1]

Subds. (k)-(o) relettered (formerly subds. (j)-(n)) City Record July 1, 1998 eff. July 31, 1998.

Subd. (p) relettered and amended (formerly subd. (o)) City Record July 1, 1998 eff. July 31, 1998.

[See Also Note 1]

Subds. (q), (r) relettered (formerly subds. (p), (q)) City Record July 1, 1998 eff. July 31, 1998.

Subd. (s) relettered (formerly subd. (r)) City Record July 1, 1998 eff. July 31, 1998.

Subd. (s) par (4) amended City Record July 1, 1998 eff. July 31, 1998. [See Also Note 1]

Subds. (t)-(x) relettered (formerly subds. (s)-(w)) City Record July 1, 1998 eff. July 31, 1998.

Notes:

Subsection (a) was added on June 16, 1998 because the term "comminuted" was used, without definition, in §81.09(a)(5); and the new subsection (b) was amended to conform to a temperature recommended in the FDA 1997 Food Code; the new subsection (j) was amended to clarify the definition of a food service establishment; the new subsection (p) was amended to add a missing word; and subdivision (4) of the new subsection (s) was amended to correct a typographical error.

ALSO NOTE

1. Statement of Basis and Purpose in City Record July 1, 1998:

Article 81 of the New York City Health Code regulates the operations of food establishments for the purpose of preventing public health hazards. This Article applies to all food service establishments and non-retail food processing establishments, except as otherwise provided in the Code. It is proposed that Article 81 be amended to revise a number of provisions dealing with the preparation of food and the prevention of contamination.

In 1996, at the request of the Office of the Mayor, the Department of Health reviewed the regulations and laws affecting the food service industry. By amending Articles 5, 81 and 113 and repealing Articles 83, 85, 86 and 87 of the New York City Health Code, the Department modernized the Code, making it consistent with federal recommendations on the control of public health hazards, and making it consistent with the provisions of the New York State Sanitary Code dealing with food service establishments. [Title 10 New York Codes, Rules and Regulations, Subpart 14-1]. The changes became effective September 1, 1996.

The current proposal to amend these regulations is the result of having enforced the 1996 revisions of Article 81 for over one year and having conducted a review of the regulations contained therein. It is now proposed that certain sections of Article 81 be amended further to clarify their meaning, to eliminate redundancies, to maintain consistency with more recent revisions to the New York State Sanitary Code, and to adopt an additional recommendation from the FDA 1997 Food Code on the control of public health hazards. Some of the more significant amendments proposed are as follows:

It is proposed that the temperature at which cold foods are required to be cooled, held, displayed and stored, be amended throughout Article 81 from 45 degrees Fahrenheit (7.2 degrees Celsius) to 41 degrees Fahrenheit (5 degrees Celsius). This temperature requirement is recommended in the FDA 1997 Food Code, and would reduce the amount of growth of some bacteria that are known to grow at 45 degrees Fahrenheit, especially in ready-to-eat foods. However, the current refrigeration equipment in most food establishments is not capable

of cooling foods to 41 degrees Fahrenheit. It is therefore proposed that parts of Section 3-501.16 of the FDA 1997 Food Code be incorporated into Article 81, allowing potentially hazardous foods to be maintained at 45 degrees Fahrenheit, or between 41 and 45 degrees Fahrenheit, in existing refrigeration equipment that is not capable of maintaining foods at 41 degrees Fahrenheit or less, but only when the equipment is in place and already in use in the establishment. It is proposed further, that food establishments be required to upgrade or replace existing equipment to maintain food at 41 degrees Fahrenheit or less within 5 years of the proposed adoption of the temperature requirements.

It is proposed that the definition of a food service establishment, as it now appears in Section 81.03(i) be expanded to clarify that Article 81 is applicable to mobile food carts. Although Article 81 was intended to be applicable to all food service establishments, the Code does not explicitly mention mobile food units.

It is also proposed that Section 81.07(a) be amended to require that raw fruits and raw vegetables be thoroughly washed with potable water before serving. Washing removes the majority of pathogenic organisms and chemicals which may be present on the exterior surfaces of raw fruits and vegetables. This is a requirement of Section 14-1.81 of the Sanitary Code.

The amended Article 81, as proposed, would include two additional subsections of Section 81.07. It is suggested that the expanded section include the requirement that food packages, including hermetically sealed containers, be in good condition to protect the contents from contamination. This is, in part, a requirement of Section 14-1.31(a) of the Sanitary Code. It is also proposed that this section be expanded to include the requirement that only clean, whole eggs with shells intact and without cracks or splits, or pasteurized liquid, frozen or dry eggs or pasteurized dry egg products may be used, and that all containers in which shell eggs are received must identify the source. This is a requirement of Section 14-1.33 of the Sanitary Code.

In order to further maintain the Health Code's consistency with the Sanitary Code, it is proposed that Section 81.09(a)(4) be amended to require that every part of ground meat or foods containing ground meat are to be heated to 158 degrees Fahrenheit, with no time requirement (except poultry which must be cooked to 165 degrees Fahrenheit for 15 seconds), unless a consumer requests preparation of a single order of ground meat which must be prepared at a temperature less than 158 degrees Fahrenheit in order to comply with the request. The Sanitary Code was revised effective January 1, 1997 to include this temperature requirement. It is also a requirement of the U.S.D.A. regulations that govern commercial establishments that pre-cook ground meat prior to the freezing and packaging process.

Section 14-1.85 of the Sanitary Code now requires that metal stem-type, numerically scaled, indicating thermometers accurate to plus or minus two degrees Fahrenheit (1.1 degrees Celsius), or other acceptable devices made from materials that will not subject the product to contamination or toxic materials, are to be provided and used to determine that the internal cooking,

holding or refrigeration of all potentially hazardous foods is done at the proper temperature. It is proposed that Section 81.09 of the Health Code be amended to include this requirement.

Section 81.13 outlines the requirements for the health and clothing of foodworkers to prevent contamination of foods and food contact surfaces. It is proposed that the section be expanded to prohibit the unnecessary traffic of unauthorized persons in the food preparation, storage or warewashing areas, except for brief authorized visits and tours, if steps are taken, during such visits or tours, to ensure that all foods and food contact surfaces are protected from contamination. The prohibition is a requirement of Section 14-1.180(c) of the Sanitary Code.

It is proposed that supervisors of mobile food non-processing units not be required to obtain a Food Protection Certificate. In Section 81.15, supervisors of all food service establishments and non-retail food processing establishments are required to complete courses in food protection. Since mobile food non-processing units are prohibited from preparing or processing foods and typically sell only fruits, candies, pretzels or boiled hot dogs, it is not necessary to require that operators of these units take a 15-hour food protection course.

Section 14-1.88(c) of the Sanitary Code requires that all artificial lighting fixtures located over, near or within food storage, preparation, service or display facilities, and facilities where utensils and equipment are cleaned and stored, must be covered with guards. Currently, Section 81.19(b) only requires such guards above food processing equipment or open containers of food. It is suggested that the section be amended to conform to the Sanitary Code requirements.

Section 81.21(d) of the Health Code deals with the proper discharge of waste water and condensation from refrigerators. It is proposed that this section be repealed and replaced by requirements which are more extensive and which apply not only to refrigerators but to other types of equipment that require the proper discharge of waste water and condensation.

It is proposed that Section 81.23 be amended to include requirements for the proper storage of poisonous and toxic materials including bactericides, cleaning compounds, insecticides and rodenticides. The section should be amended further to prohibit the spraying of insecticides in food preparation and service areas, while food is being processed, prepared or served, or where unprotected food, clean utensils or containers are displayed or stored. This is a requirement of Section 14-1.60 of the Sanitary Code.

Section 14-1.115 of the Sanitary Code requires that mechanical dishwashing machines be equipped with thermometers to check their operation. It is proposed that this requirement be added to Section 81.37(e) of the Health Code. It is also proposed that Section 81.37 be expanded to add the requirement that drainboards of adequate size be provided and used for the proper handling of soiled items prior to washing and of clean items following sanitization. This is a requirement of Section 14-1.114 of the Sanitary Code.

§81.05 Technical review and pre-permitting inspections for food service establishments and non-retail food processing establishments.

(a) An operator of a food service establishment or non-retail food processing establishment shall construct, equip, furnish, maintain and operate such establishment in compliance with this Article and all other applicable federal, state and city laws, rules and regulations.

(b) Prior to new construction or major renovation of a food service establishment or non-retail food processing establishment, or at any time thereafter where the Department determines that the public health and safety requires a Departmental review of the physical plant of such establishment, the Department may require such establishment to submit sketches or plans showing the floor layout, equipment, plumbing, ventilation, refuse storage facilities, sewage disposal facilities and similar information on a form acceptable to the Department. Submission and review of plans shall not relieve the operator of such establishment or his or her successor from meeting all requirements of this section.

(c) Except as specified in this subsection, no person shall operate a food service establishment or non-retail food processing establishment without a permit therefor issued by the Department. An application for a permit shall be submitted to the Department. A request for a pre-permitting inspection shall be submitted to the Department subsequent to the filing of such application, but not less than 21 days before starting operation of such establishment. In the event the Department does not make an inspection of the establishment during the 21-day period after a request for a pre-permitting inspection is submitted, operations may commence without a permit on the 22nd day, and may be continued without such operations being in violation of this section until such time as the Department makes an inspection and issues a permit or issues an order to cease operation for cause pursuant to §81.39 or other applicable provision of this Code.

(d) A permit for a food service establishment or non-retail food processing establishment shall be issued subject to the establishment being constructed, maintained and operated in compliance with this Code, and not presenting a danger to the health or safety of the consumer or to the public. The condition of the establishment, including its equipment, utensils, personnel, mode of operation, surroundings, water supply, sewage disposal, waste handling, furnishings, food and appurtenances, and, if applicable, past history of compliance or non-compliance, shall be considered in determining whether its operation may be dangerous or detrimental to the public health. If the pre-permitting inspection indicates that such conditions are unsatisfactory, the operator shall be advised of the violations which prevent issuance of such permit.

(e) Religious, fraternal and charitable organizations which provide food services more often than once a week shall obtain a permit pursuant to this Article; provided, however, that an organization providing food service less frequently than once a week shall notify the Department in writing of its intention to engage in such food service operations and shall obtain authorization from the Department. Such authorization may be issued for a term not to exceed two years. The payment of a fee for such authorization shall not be required. The provisions of this subsection shall not limit in any way the right of the Department to take any actions necessary to protect the public health.

(f) A permit shall not be issued if the applicant or a principal of an entity applying for such has been denied a permit on the basis of violations of this Code which could have resulted in the suspension or revocation of a permit. A permit may be renewed, provided that the permittee meets all requirements for renewal, the permit has not been revoked or suspended, and the permittee has not been determined to have committed a violation which could be a basis for permit revocation or suspension under this Article.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.
Subd. (c) amended City Record Jan. 14, 2003 eff. Feb. 13, 2003. [See Also Note 1]

Notes:

Subsection (c) was amended by resolution adopted on December 12, 2002 to require permit applicants to submit a request for a pre-permitting inspection not less than 21 days before commencing operations, and to authorize commencement of operations without a permit only where the Department does not conduct a pre-permitting inspection within 21 days of such request.

ALSO NOTE

1. Statement of Basis and Purpose in City Record Jan. 14, 2003:

The New York City Department of Health and Mental Hygiene (the "Department") has proposed that the Board of Health amend section 81.05(c) of the New York City Health Code (the "Health Code") to prohibit operation of a food service establishment or non-retail food processing establishment ("food establishment") unless a request for a pre-permitting inspection is submitted to the Department not less than 21 days before the establishment commences operations.

The Department's Bureau of Food Safety and Community Sanitation (the

"Bureau") is charged with the responsibility of monitoring the safety of food that is commercially prepared, distributed and served throughout New York City, whether the food is sold or provided free of charge. The Bureau's jurisdiction includes all food service establishments and non-retail food processing establishments, as defined in section 81.03(j) and (p) of the Health Code.

Among the Bureau's many responsibilities is to inspect food establishments prior to the issuance of a permit. *See* Health Code §81.05. The purpose of these "pre-permitting inspections" is to assess whether the condition of the establishment may present a danger to the health or safety of the consumer or to the public. Health Code §81.05(d). The demand for pre-permitting inspections is substantial, as the Bureau receives approximately 250 applications for food establishment permits each month. An operator of a food establishment currently must submit an application at least 21 days before starting operations. *See* Health Code §81.05(c). If the Department does not inspect the establishment during this 21-day period, the establishment may commence operations without a permit on the 22nd day and continue operating until the Department makes an inspection and issues a permit or issues an order to cease operations. *Id.*

Although Health Code §81.05(c) requires a food establishment operator to apply for a permit not less than 21 days before the start of operations, the operator is not required to notify the Department in advance of, or even subsequent to, the date he or she commences operations. Because the Bureau does not know when a food establishment intends to start operating, it must conduct all pre-permitting inspections within the 21-day period set forth in Health Code §81.05(c), or as soon as possible thereafter, in order to protect the public from exposure to unpermitted food establishments that may not be constructed, maintained, or operated in compliance with the Health Code.

The Bureau's experience is that food establishments frequently are not prepared to undergo inspection during the 21 days following submission of a permit application. Thus, multiple attempted inspections are required. A sampling of fiscal year 2002 data indicates that 73% of permit applicants required multiple pre-permitting inspections. Multiple incomplete inspections significantly deplete Department resources.

To remedy this problem, the Department has proposed that Health Code §81.05(c) be amended to prohibit operation of a food establishment unless a request for a pre-permitting inspection is submitted to the Department, after filing a permit application, and not less than 21 days before opening for business. This will allow the Bureau to conduct pre-permitting inspections on a date and time prearranged by the food establishment and the Bureau, which should reduce the incidence of multiple pre-permitting inspections.

No testimony or written comment on the merits of the proposal was received at the public hearing and no changes have been made to the proposal.

§81.06 Prevention of imminent health hazards.

Whenever necessary to prevent the occurrence or recurrence of imminent health hazards the Department may, in specific instances, impose additional requirements on an establishment. The Department shall describe in writing the terms and conditions of operation that have been imposed, the reasons therefor, shall provide such document to the permit holder, and shall maintain such document with the records of the Department.

HISTORICAL NOTE

Section added City Record July 19, 2005 eff. Aug. 18, 2005.
[See Also Note 1]

Notes:

Section 81.06 was added to Article 81 by resolution adopted on July 7, 2005. The new section amends former subdivision (j) of §81.09, which has been repealed, and is applicable to all food service establishment operations, not only to handling potentially hazardous foods.

ALSO NOTE

1. Statement of Basis and Purpose in City Record July 19, 2005:

The Department of Health and Mental Hygiene (the "Department") enforces provisions of the New York City Health Code ("Health Code") and other applicable law intended to protect the wholesomeness of food served directly to the consumer throughout the City, including food that is commercially prepared, and sold or distributed for free, by food service establishments, a broad category which includes restaurants, caterers (non-retail food processing establishments), mobile food vending units, and mechanical food dispensing devices. This resolution amends various Health Code provisions regarding the storage temperature of potentially hazardous cold foods, and re-numbers a provision authorizing the Commissioner to impose more stringent requirements on a food service establishment to prevent the recurrence of imminent health hazards.

Holding potentially hazardous cold foods

On June 15, 1998, the Board of Health amended various provisions of Article 81 ("Food Preparation and Food Establishments") of the Health Code, adopting new, more stringent, temperature requirements for maintenance of potentially hazardous foods consistent with standards of the 1997 US FDA *Food Code*. For cold foods, the FDA-recommended maintenance standard of 41 degrees Fahrenheit (5 degrees Celsius) or lower was adopted in amendments to §§81.03(b) and 81.09(a), (c), (e), (f), (g), (h) and (k) of the Health Code,

replacing 45 degrees Fahrenheit (7.2 degrees Celsius). This standard is intended to further retard the growth of some bacteria that are known to grow at 45 degrees Fahrenheit in ready-to-eat potentially hazardous foods. Through an oversight at the time, however, required maintenance temperatures for potentially hazardous cold foods in several other provisions of the Health Code were not amended. The amendments in this proposal substitute the more protective 41 degree Fahrenheit temperature requirement for refrigeration of potentially hazardous cold foods as follows: Health Code §47.37(d) (storage of milk for children in day care services); §81.09(b) (storage of intact shell eggs); §81.41(a)(3) (maintenance of potentially hazardous cold foods in dispensing devices); §88.09(a) (maintenance of potentially hazardous or perishable cold foods by temporary food service establishments, e.g., booths at street fairs); §115.17(d) (labeling of formula milk); and §115.27(a) (post-sterilization formula milk cooling and keeping). The temperature requirements in §111.23 (post-pasteurization milk cooling and keeping temperatures) are not being amended, since the Department will, in the near future, request that the Board repeal nearly all of Article 111 ("Milk and Milk Products"), with the possible exception of its dating provisions, since the Department no longer regulates dairy product processing.

Refrigerated holding equipment

In the resolution adopting the above-referenced refrigeration temperature requirements in 1998, the Board added a new subdivision (k) to §81.09 allowing food service establishment operators to continue to use existing refrigerated holding equipment, regardless of whether such equipment was able to maintain the more stringent cold holding temperature. This provision also states, however, that within five years, or by July 1, 2003, all refrigeration equipment in food service establishments must be able to maintain cold foods at the lower temperature. Since §81.09(k) has expired, and is no longer applicable, it is being repealed.

Renumber §81.09(j)

Subdivision (j) of §81.09, which was included in the repeal and re-enactment of Article 81, effective September 1, 1996, is being deleted from §81.09 and renumbered as a separate section of Article 81 of the Health Code. This subdivision authorizes the Department to impose additional requirements on a food establishment whenever necessary to prevent the occurrence of "public health hazards." This clarifies the Department's interpretation that notwithstanding the original placement of this provision in §81.09, "public health hazards" include not only conditions related to handling of specific potentially hazardous foods, but hazards resulting from such other insanitary conditions as repeated and uncorrected infestations of pests, improper use of toxic chemicals (cleaning supplies and pesticides), poorly maintained, dirty or inoperative equipment, facilities and plumbing, which threaten the health or safety of the establishment's patrons. In addition, since the term "public health hazards" is not defined in either the Health Code or in Part 14 of the State

Sanitary Code, the provision refers to prevention of recurrent "imminent health hazards," a term which is defined in both Article 81 and the Sanitary Code.

Changes made in response to public comments

The Department's original proposal to amend the Health Code included a new §81.10 allowing food service establishments to use time as the public health control for holding potentially hazardous ready-to-serve foods. At the public hearing, comments were received from food service establishment industry representatives raising questions concerning handling of ready-to-eat comminuted meat products, procedures in pizzerias, take out food items, and hanging poultry. The Department is currently reconsidering the appropriate approach to these issues. Therefore, the Department has asked the Board to withdraw consideration of the proposed addition of this new section until these issues can be resolved.

§81.07 Food; sanitary preparation, protection against contamination.

(a) Food shall be free of and protected against contamination and shall be manufactured, prepared, processed or packed with clean and sanitary utensils and equipment. Surfaces with which food comes in contact shall be impervious. Food which will not be washed or cooked shall be protected from cross-contamination from food which is required to be washed or cooked. Packaged food shall not be stored in direct contact with ice or water if packaging allows the entry of water. Unpackaged food may be stored in direct contact with drained ice, except that whole, raw fruits or vegetables, cut, raw vegetables such as celery or carrot sticks or cut potatoes, and tofu, may be immersed in clean and sanitary undrained ice or water. Raw fruits and vegetables shall be thoroughly washed with potable water before serving. Raw chicken and raw fish that are received in ice in shipping containers may remain in such condition while being stored or awaiting preparation, display, service or sale.

(b) Food packages, including hermetically sealed containers, shall be in good condition so that food is not exposed to spoilage, filth or other contamination and remains suitable for human consumption.

(c) Only clean, whole eggs with shells intact and free from cracks or splits; or pasteurized, liquid, frozen or dry eggs, or pasteurized dry egg products shall be used. All containers in which eggs are received in a food service establishment or non-retail food processing establishment must identify the source of the eggs.

(d) Food removed from original containers or packages shall be protected from contamination by storing in clean, sanitized and covered containers and by maintaining proper temperature. Containers of food shall be stored at least 6 inches (14.24 centimeters) above the floor, or at a greater height if necessary to permit cleaning of the storage area.

(e) Food shall be displayed only in equipment such as cleanable containers, cabinets, display cases or similar protective equipment, that protects such food from contamination. Self-service equipment shall have protective shields or guards to prevent unnecessary contamination or contact by patrons. The quantity of food displayed shall be minimized to that necessary to meet immediate needs.

(f) Condiments, seasoning, sugar and dressings shall be provided in individual packages, protected dispensers or containers, or in the original container or pour-type dispensers.

(g) Ice for consumption shall be dispensed with scoops, tongs or other utensils, or automatic self-service ice-dispensing equipment. Ice-dispensing utensils shall be stored on a clean surface or in the ice with the dispensing utensil's handle extended out of the ice.

(h) Food-dispensing utensils shall be provided for dispensing food by foodworkers and for self-service.

(i) Food shall be obtained from sources approved by the appropriate regulatory authority having jurisdiction over such food source and shall comply with all federal, state and city laws, rules and regulations related to food, the use of food, and food labeling.

(j) Supplies and equipment shall not be kept or stored under or near any source of contamination, including but not limited to, exposed or unprotected sewer lines. Equipment, unless easily movable, shall be sealed to the floor or raised on concrete or smooth masonry platforms or elevated on legs to provide at least six inches of clearance between the floor and the equipment.

(k) All foodworkers shall maintain hygienic practices and personal cleanliness. Foodworkers shall wash hands and exposed areas of arms thoroughly with soap and warm water before starting work, and as often as necessary to remove soil and any substance that might lead to contamination. Thereafter, hands shall be washed thoroughly after using the toilet, smoking, sneezing, coughing, eating, drinking or otherwise soiling hands before returning to work. Foodworkers shall keep fingernails clean and trimmed.

(l) Food shall be prepared and served without bare hand contact unless the food will be heated to at least the minimum temperature required under §81.09. Convenient and suitable utensils, sanitary gloves, waxed paper or an equivalent barrier shall be provided and used to prepare or serve food to eliminate bare hand contact and prevent contamination.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

Subd. (a) amended City Record July 1, 1998 eff. July 31, 1998. [See §81.03

Also Note 1]

Subds. (b), (c) added City Record July 1, 1998 eff. July 31, 1998. [See §81.03 Also Note 1]

Subd. (d) relettered (formerly subd. (b)) City Record July 1, 1998 eff. July 31, 1998.

Subd. (e) relettered and amended (formerly subd. (c)) City Record July 1, 1998 eff. July 31, 1998.

Subds. (f)-(l) relettered (formerly subds. (d)-(j)) City Record July 1, 1998 eff. July 31, 1998.

Notes:

Subsection (a) was amended and subsections (b) and (c) were added on June 16, 1998 to conform to a requirement of the New York State Sanitary Code; and subsection (e) was amended to clarify the language.

§81.08 Foods containing artificial trans fat.

(a) Artificial trans fat restricted. No foods containing artificial trans fat, as defined in this section, shall be stored, distributed, held for service, used in preparation of any menu item or served in any food service establishment or by any mobile food unit commissary, as defined in §89.01 of this Code or successor provision, except food that is being served directly to patrons in a manufacturer's original sealed package.

(b) Definition. For the purposes of this section, a food shall be deemed to contain artificial trans fat if the food is labeled as, lists as an ingredient, or has vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil. However, a food whose nutrition facts label or other documentation from the manufacturer lists the trans fat content of the food as less than 0.5 grams per serving, shall not be deemed to contain artificial trans fat.

(c) Labels required. (1) Original labels. Food service establishments and mobile food unit commissaries shall maintain on site the original labels for all food products:

(i) that are, or that contain, fats, oils or shortenings, and

(ii) that are, when purchased by such food service establishments or mobile food unit commissaries, required by applicable federal and state law to have labels, and

(iii) that are currently being stored, distributed, held for service, used in preparation of any menu items, or served by the food service establishment, or by the mobile food unit commissary.

(2) Documentation instead of labels. Documentation acceptable to the Department, from the manufacturers of such food products, indicating whether the food products contain vegetable shortening, margarine or any kind of

partially hydrogenated vegetable oil, or indicating trans fat content, may be maintained instead of original labels.

(3) Documentation required when food products are not labeled. If baked goods, or other food products restricted pursuant to subdivision (a) of this section, that are or that contain fats, oils or shortenings, are not required to be labeled when purchased, food service establishments and mobile food commissaries shall obtain and maintain documentation acceptable to the Department, from the manufacturers of the food products, indicating whether the food products contain vegetable shortening, margarine or any kind of partially hydrogenated vegetable oil, or indicating trans fat content.

(d) Effective date. This section shall take effect on July 1, 2007 with respect to oils, shortenings and margarines containing artificial trans fat that are used for frying or in spreads; except that the effective date of this section with regard to oils or shortenings used for deep frying of yeast dough or cake batter, and all other foods containing artificial trans fat, shall be July 1, 2008.

HISTORICAL NOTE

Section added City Record Dec. 11, 2006 eff. Jan. 10, 2007 with special provisions in §81.08(d). [See Also Note 1]

Notes:

Section 81.08 was added by resolution adopted on December 5, 2006 to restrict use of artificial trans fat in food service establishments in New York City in an effort to decrease the well-documented risk of ischemic heart and other disease conditions associated with consumption of such products.

ALSO NOTE

1. Statement of Basis and Purpose in City Record Dec. 11, 2006:

The Department of Health and Mental Hygiene (the "Department") enforces provisions of the New York City Health Code ("Health Code") and other applicable law relating to food served directly to the consumer throughout the City, including food that is commercially prepared, and sold or distributed for free, by food service establishments, a broad category which includes restaurants, caterers and mobile food vending units. The Department also regulates non-retail food processing establishments, such as mobile food vending commissaries, as defined in Health Code §89.01, which supply food for mobile vending units.

Background

Restaurants (the term is being used interchangeably with "food service establishments" or "FSEs") are an important source of daily food intake for New York City residents: an estimated one third of daily caloric intake comes from foods purchased in restaurants. Assuring safe and healthy dining options is a public health priority. The Department issues permits and inspects all New York City FSEs and non-retail food processing establishments, as defined in §81.03(j) and (p) of the Health Code. The public health concern addressed by this amendment is the presence of trans fat in foods served in restaurants, which represents a dangerous and entirely preventable health risk to restaurant goers. Yet New York City restaurant patrons currently have no practical way to avoid this harmful substance.

Accordingly, the Board of Health has amended Article 81 of the New York City Health Code to restrict the service of products containing artificial trans fats at all FSEs. The Department is charged with preventing and controlling diseases, including chronic disease, through approaches, that may address individual behavior or the community environment. By restricting FSEs from serving food that contains artificial trans fat, except for food served in the manufacturer's original sealed package, we can reduce New Yorkers' exposure to an avoidable hazard in the food environment that is associated with increased heart disease risk.

Basis for restricting service of products containing artificial trans fat.

Heart disease is New York City's leading cause of death. In 2004, 23,000 New York City residents died from heart disease and nearly one-third of these individuals died before the age of 75. Scientific evidence demonstrates a clear association between increased trans fat intake and the risk of coronary heart disease. Most dietary trans fat is found in partially hydrogenated vegetable oil ("PHVO")—oil that has been chemically modified. Scientific studies which examine the change in cholesterol levels when trans fat is replaced with currently available heart healthy alternatives conservatively estimate a reduction of 6% in coronary heart disease events such as heart attacks. Even in the most conservative estimates, based on replacing trans fat primarily by saturated fat—an unlikely outcome given the widespread trend to healthier fats by food producers—a significant although smaller reduction in coronary heart disease events is still expected. Other scientific studies, based upon observing large groups of people over time estimate that up to 23% of coronary heart disease events could be avoided by replacing trans fat with healthy alternatives. Because an estimated one third of dietary trans fat comes from foods purchased in restaurants, the continued presence of PHVO in restaurant foods represents an important contribution to cardiovascular risk for New York City diners.

Dietary trans fat increases the risk of heart disease by elevating LDL ("bad") cholesterol, and lowering HDL ("good") cholesterol. Because of its negative effect on "good cholesterol", trans fat appears to be even worse than saturated fat. The Institute of Medicine ("IOM") reviewed the scientific evidence and concluded that there is "a positive linear trend between trans fatty acid intake

and total and LDL concentration, and therefore increased risk of coronary heart disease". The 2005 Dietary Guidelines for Americans, issued by the United States Department of Agriculture ("USDA"), recommends that dietary intake of trans fat be "as low as possible" and the American Heart Association guidelines issued in June 2006 recommend that trans fat intake be kept below 1% of total energy intake. In January of 2006, the FDA's mandatory listing of trans fat content on the nutrition facts labels of packaged foods came into effect.

Approximately 80% of dietary trans fat is found in industrially-produced PHVO, which is used for frying and baking and is present in many processed foods. Approximately 20% is naturally occurring and is found in small amounts in dairy and meat products from ruminant animals.

The artificial trans fat found in PHVO is produced when hydrogen is added to vegetable oil in a process called hydrogenation. Common FSE sources of artificial trans fat include: foods fried in partially hydrogenated vegetable oils; margarine and vegetable shortening; prepared foods such as pre-fried French fries, fried chicken, taco shells and donuts; baked goods such as hamburger buns, pizza dough, crackers, cookies, and pies; and pre-mixed ingredients such as pancake and hot chocolate mix.

Figure 1. Sources of Trans Fat in the U.S. Diet

The major source of dietary trans fat, found in PHVO, can be replaced with currently available heart healthy alternatives. Denmark has recently successfully removed artificial trans fat by limiting industrially produced trans fat content in food to 2% of total calories from fat. In addition, in June 2006 the Canadian Trans Fat Task Force issued a report recommending that Canada limit trans fat in food service establishments to 2% of total fat content in margarines and vegetable oils and 5% of total fat content in all other food ingredients. "Zero grams" trans fat packaged foods in the US, both new products and those already in production, have been extensively marketed since the labeling requirement for packaged foods became effective in January of 2006. Many manufacturers have reformulated a number of their existing products that are now widely available as "zero grams" trans fat (defined by the FDA as <0.5 grams per serving) on supermarket shelves. A recent *New England Journal of Medicine* article reports that industry and government representatives agreed that the restriction of trans fat in Denmark "did not appreciably affect the quality, cost or availability of food." This experience demonstrates that artificial trans fat can be replaced without consumers noticing an effect. Acceptable healthier alternatives to PHVOs include traditional mono and poly unsaturated vegetable oils (e.g., canola, corn, olive, etc.) that have not been hydrogenated, as well as newly developed oils such as those made from specially cultivated varieties of soybeans, safflowers, and sunflowers. Further, many of the newer trans fat-free oils have long "fry lives" and other favored characteristics of PHVOs. Educational and enforcement efforts will seek to promote a shift to healthier fats. In response to increased

demand, US companies are expanding production of products that will increase the market supply of alternatives to hydrogenated oils.

Consumer trans fat consumption and the contribution of FSEs

National surveys show that Americans spend almost half (47%) of their food dollars eating out. One third of daily caloric intake comes from foods purchased in restaurants. The continued presence of artificial trans fat in restaurant foods needlessly increases the risk for heart disease for all of our city's residents.

Consumer concern about trans fat in food is evidenced by the increase in national sales of products labeled "no trans fat" by 12% to \$6.4 billion for the 52 weeks ended October 2, 2004, compared with the previous 52-week period. Nutrition ranks second after taste as the factor most frequently influencing food purchases. Moreover, artificial trans fat can be replaced with heart-healthier oils and fats without changing the taste of foods.

Prevalence of use of partially hydrogenated vegetable oil in NYC FSEs

In June 2005, the Department launched the Trans Fat Education Campaign. The campaign called on all NYC FSEs to voluntarily remove FHVO from the foods they were serving. This was supported by extensive educational outreach to food suppliers, consumers and to every licensed restaurant in New York City.

To assess use of PHVO-containing products by FSEs, the Department conducted two surveys: one prior to the campaign (May 9 through June 10, 2005) and another nine months after the campaign (April 3 through May 5, 2006).

In both the 2005 and 2006 survey findings, the prevalence of PHVO-containing oils used for frying, baking or spreads was approximately 50% at FSEs where product content could be determined. While a lack of labeling or product identification of some products precludes a precise estimate of the prevalence of use, the data show that PHVO use remained common and has not declined substantially despite the Trans Fat Education Campaign.

Why focus on trans fat over other fats?

The IOM conclusion that there is no safe level of artificial trans fat consumption is in contrast to other dietary fats which, when consumed in moderation, are a natural part of a healthy diet. Artificially produced trans fat is relatively new to our food supply and confers no known health benefit. Because healthy, inexpensive alternatives exist for the most common source of trans fat, PHVO, their continued use by FSEs poses an unnecessary public health threat.

Why use 0.5 grams per serving of trans fat as a threshold?

Current FDA labeling regulations allow manufacturers of foods packaged for direct sale to consumers in retail markets to list trans fat content as "0 grams" if the product contains less than 0.5 grams per serving. This allows for the presence of naturally occurring trans fat in meat and dairy foods as well as

newer "low trans fat" foods, which may have PHVO listed as an ingredient. The proposed provision intentionally allows for products that have less than 0.5 grams per serving (evidenced either on a Nutrition Facts label or in information provided by the manufacturer) in order to accommodate most of the newly formulated low trans fat margarines on the market, and allows for substitute spreads.

Response to comments

The Department received more than 2,200 written and oral comments in favor of the amendment, and 70 comments opposed to the proposed amendment. It was brought to the Department's attention that the term "margarine" is found in some ingredients lists on labels of products, and that margarines may contain artificial trans fat. While only subdivision (d) of the original proposal included the term "margarine," the proposal has been amended to clarify that it is intended to restrict use of margarine that contains artificial trans fat. In addition, since some comments stated that in practice it could take longer to reformulate recipes to accommodate the restriction on artificial trans fat in baked goods and deep fried yeast dough and cake batter, the proposal has been amended. Accordingly, the effective date of the restriction on use of oils, margarines and vegetable shortenings containing artificial trans fats that are used for frying and as spreads will remain July 1, 2007, but the effective date for oils and shortenings used for deep frying yeast dough and cake batter and for all other foods containing artificial trans fat has been extended to July 1, 2008.

§81.09 Food; temperature requirements.

(a) Potentially hazardous food shall be refrigerated at a temperature of 41 degrees Fahrenheit (5 degrees Celsius) or below or kept heated to 140 degrees Fahrenheit (60 degrees Celsius) or above, except during necessary preparation. All parts of potentially hazardous foods requiring cooking are to be heated to 145 degrees Fahrenheit (62.7 degrees Celsius) or above for 15 seconds, except that:

- (1) poultry, poultry stuffing, stuffed meats and stuffing containing meat shall be heated so all parts are at least 165 degrees Fahrenheit (73.9 degrees Celsius) for 15 seconds;
- (2) pork and food containing pork shall be heated so all parts of the food are at least 155 degrees Fahrenheit (68.3 degrees Celsius) for 15 seconds;
- (3) rare roast beef and/or rare beef steaks shall be heated to the following minimum temperatures unless otherwise ordered by the consumer:

Temperature °C (°F)	Time	Temperature °C (°F)	Time	Temperature °C (°F)	Time
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54 (130)	121 minutes	58 (136)	32 minutes	61 (142)	8 minutes
56 (132)	77 minutes	59 (138)	19 minutes	62 (144)	5 minutes
57 (134)	47 minutes	60 (140)	12 minutes	63 (145)	3 minutes

(4) ground meat and food containing ground meat shall be heated so that all parts of the food are at least 158 degrees Fahrenheit (69.4 degrees Celsius), unless otherwise ordered by the consumer;

(5) poultry, poultry stuffing, stuffed meats and stuffing containing meat; ground or comminuted poultry, beef, pork and other meat products, shall be heated with no interruption of the cooking process;

(6) shell eggs or foods containing shell eggs shall be heated to 145 degrees Fahrenheit (62.8 degrees Celsius) or greater for 15 seconds unless the consumer requests preparation of a shell egg or food containing shell eggs in a style such as raw, poached or fried which must be prepared at a temperature less than 145 degrees Fahrenheit in order to comply with the request;

(7) potentially hazardous food that is cooked, cooled and reheated for hot holding shall be reheated so that all parts of the food reach a temperature of at least 165 degrees Fahrenheit (73.9 degrees Celsius) for 15 seconds. The minimum temperature of 165 degrees Fahrenheit (73.9 degrees Celsius) shall be reached within 2 hours of commencing reheating. Reheated food shall be held at or above 140 degrees Fahrenheit (60 degrees Celsius) until served;

(8) cooked and refrigerated food that is prepared for immediate service in response to an individual consumer order may be served at any temperature;

(9) food reheated in a microwave oven shall be covered during heating; food shall be rotated or stirred during heating, or otherwise manipulated according to label instructions, and shall be reheated to a temperature of at least 190 degrees Fahrenheit (88 degrees Celsius) and allowed to stand covered for 2 minutes after reheating;

(10) commercially processed pre-cooked potentially hazardous food in hermetically sealed containers and precooked potentially hazardous food in intact packages from non-retail food processing establishments shall be heated to 140 degrees Fahrenheit (60 degrees Celsius) within 2 hours of removal from container or package and held at such temperature until served.

(b) Intact shell eggs shall be stored at an ambient temperature of 41 degrees Fahrenheit (5 degrees Celsius) or below.

(c) All processed fish products shall be prepared, distributed and sold at a temperature that does not exceed 38 degrees Fahrenheit (3.3 degrees Celsius) without interruption until served to the ultimate consumer, except that:

(1) processed fish which contains a water phase salt level of at least 17 percent shall not require refrigerated storage and;

(2) processed fish which contains a water phase level of at least 10 percent, salt water activity of less than 0.85 Aw, or a pH of 4.6 or lower may be distributed or sold at refrigerated temperatures that do not exceed 41 degrees Fahrenheit (5 degrees Celsius).

(d) When meat, fish or molluscan shellfish is served raw or after heat treatment at a temperature or a time less than that prescribed in this Code, the consumer shall be notified unless the consumer has previously indicated that he or she desires food to be prepared in such manner.

(e) Potentially hazardous food requiring refrigeration shall be cooled so that every part of the product is reduced from 140 degrees Fahrenheit (60 degrees Celsius) to 70 degrees Fahrenheit (21.1 degrees Celsius) within 2 hours and to 41 degrees Fahrenheit (5 degrees Celsius) or below within 4 additional hours.

(f) Potentially hazardous foods shall be cooled to 41 degrees Fahrenheit (5 degrees Celsius) or below within 4 hours of preparation when prepared from ingredients at ambient temperature, such as reconstituted foods and canned tuna.

(g) Potentially hazardous food shall be thawed:

(1) in refrigerated facilities at a temperature not to exceed 41 degrees Fahrenheit (5 degrees Celsius); or

(2) completely submerged under potable running water at a temperature of 70 degrees Fahrenheit (21.1 degrees Celsius) or below, with sufficient water velocity to agitate and float off loose particles into the overflow; or

(3) in a microwave oven when the food will be immediately transferred to conventional cooking facilities as part of a continuous cooking process, or when the entire uninterrupted cooking process takes place in the microwave oven; or

(4) as part of the conventional cooking process, without interruption.

(5) Whole frozen poultry shall be completely thawed prior to conventional cooking. A single portion may be thawed during the cooking process.

(h) Ready-to-eat potentially hazardous food shall be thawed for a period of time that does not allow thawed portions to rise above 41 degrees Fahrenheit (5 degrees Celsius).

(i) Thermometers for measuring the temperature of food shall be provided and readily accessible to ensure compliance with the temperature requirements specified in this Section. Metal stem-type, numerically scaled, indicating thermometers accurate to plus or minus 2 degrees Fahrenheit (1.1 degrees

Celsius) which are made from materials that will not subject the food to contamination or toxic materials, shall be provided to ensure that proper internal cooking, holding and refrigeration temperatures of all potentially hazardous foods are maintained.

- (j) Repealed.
- (k) Repealed.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

Subd. (a) amended City Record July 1, 1998 eff. July 31, 1998. [See §81.03 Also Note 1]

Subd. (b) amended City Record July 19, 2005 eff. Aug. 18, 2005. [See §81.06 Also Note 1]

Subd. (c) amended City Record July 1, 1998 eff. July 31, 1998. [See §81.03 Also Note 1]

Subd. (e) amended City Record July 1, 1998 eff. July 31, 1998. [See §81.03 Also Note 1]

Subd. (f) amended City Record July 1, 1998 eff. July 31, 1998. [See §81.03 Also Note 1]

Subd. (g) amended City Record July 1, 1998 eff. July 31, 1998. [See §81.03 Also Note 1]

Subd. (h) amended City Record July 1, 1998 eff. July 31, 1998.

Subd. (i) added City Record July 1, 1998 eff. July 31, 1998. [See §81.03 Also Note 1]

Subd. (j) repealed City Record July 19, 2005 eff. Aug. 18, 2005. [See §81.06 Also Note 1]

Subd. (j) relettered (former subd. (i)) City Record July 1, 1998 eff. July 31, 1998.

Subd. (k) repealed City Record July 19, 2005 eff. Aug. 18, 2005. [See §81.06 Also Note 1]

Subd. (k) added City Record July 1, 1998 eff. July 31, 1998. [See §81.03 Also Note 1]

Notes:

Subsection (a), subdivision (2) of subsection (c), subsection (e), subsection (f), subdivision (1) of subsection (g), subsection (h) were amended and new subsections (i) and (k) were added on June 16, 1998 to conform to temperature recommended in the FDA 1997 Food Code.

Subdivision (b) of §81.09 was amended on July 7, 2005 to reflect the appropriate temperature for refrigeration of potentially hazardous cold foods.

Subdivision (j) of §81.09 was repealed by resolution adopted on July 7, 2005, renumbered as §81.06, and amended to clarify that such provision is applicable to

prevention of imminent health hazards with respect to all food service establishment operations, not only to handling potentially hazardous foods.

Subdivision (k) of §81.09 was repealed on July 7, 2005 since its provisions, allowing refrigeration equipment incapable of maintaining required cold temperatures until July 1, 2003, are no longer applicable.

§81.11 Food; disposition if unfit for human consumption; re-service of food prohibited.

(a) Food which has become unfit for human consumption shall be promptly denatured, its label defaced and the product marked condemned, and shall be kept separate and apart from foodstuffs which are held or offered for sale. As used in this subsection, to denature means to treat the food with a disinfectant or other substance satisfactory to the Department which alters the appearance or odor of the food such that the denatured food is clearly identified as being inedible.

(b) Food which has been served to the public without protection from contamination shall not be re-served.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

§81.13 Foodworkers; health; clothing.

(a) No person shall work or shall be knowingly or negligently permitted to work in a food establishment while afflicted with a boil or infected wound and unless he or she is free from acute, infectious diarrhea, amebiasis, cholera, cryptosporidiosis, diphtheria, E. coli 0157:H7, giardiasis, hepatitis A, poliomyelitis, salmonellosis, shigellosis, streptococcal sore throat (including scarlet fever), superficial staphylococcal infection, tuberculosis, typhoid, or yersiniosis and is not a carrier of organisms causing the above conditions or other disease listed in §11.03 in a communicable form and unless the period of isolation or exclusion prescribed by Article 11 of this Code has ended.

(b) All foodworkers shall wear clean, washable outer garments, and whenever working in an area where food is prepared, shall wear caps, hats or hair nets to minimize contact between hair and hands, food, and food-contact surfaces.

(c) Persons who are not essential to the food establishment operations shall not be allowed in the food preparation, food storage or warewashing areas, except that brief visits and tours may be authorized by the operator if steps are taken to ensure that exposed food, clean equipment, utensils, linens and unwrapped single-service and single-use articles are protected against contamination.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

Subd. (c) added City Record July 1, 1998 eff. July 31, 1998. [See §81.03 Also Note 1]

Notes:

Section 81.13 was amended on June 16, 1998 to conform to a requirement of the New York State Sanitary Code. The exception to allow for brief visits and tours is recommended in §2-103.11(b) of the FDA 1997 Food Code.

§81.15 Food protection course.

(a)(1) No person who is charged with supervision of the operations of a food service establishment or non-retail food processing establishment shall engage or be employed in such capacity unless he or she obtains a certificate issued by the Department subsequent to successful completion of a course in food protection, and passage of an examination administered by the Department. No person required to have a license issued pursuant to §89.03(b) of this Code shall be issued such license unless he or she obtains such a certificate. A person holding such certificate shall be on the premises or, in the case of a mobile food vendor, at a vending site, and shall supervise all food preparation activities during all hours of operation. This paragraph shall not apply to food service establishments operated by religious, fraternal or charitable organizations which are open to the public for the purpose of providing food to the needy, free of charge. Such establishments shall be subject to paragraph (2) of this subsection.

(2) In a food service establishment operated by religious, fraternal or charitable organizations that are exempt from the requirements of paragraph (a)(1) of this section, the person responsible for the supervision of the food preparation or processing shall not engage or be employed in such capacity unless he or she has obtained a certificate pursuant to (a)(1) above, or he or she has first completed a course in food protection and obtained a certificate issued by the Department. Such course shall be provided by the Department or conducted by others approved by the Department. Such certificate may be used by the individual only while working at food service establishments subject to this paragraph. A person holding the certificate shall be on the premises during all hours of operation. This paragraph shall not apply to persons already holding a food protection certificate who is or has been charged with

supervision of the operations of a regular food service establishment or a non-retail food processing establishment.

(b) Such certificate shall be available for inspection at all times by the Department.

(c) The Department may conduct such food protection courses, or any part thereof, or approve courses conducted by others. Persons electing to enroll in such courses conducted by the Department may be charged a reasonable fee to defray all or part of the costs incurred by the Department for course registration, materials, training, testing and certificate issuance. Persons covered under §81.15(a)(2) will not be charged a fee for a food protection course conducted by the Department and are not required to take the Department's supplemental food protection course required pursuant to 24 R.C.N.Y., Chapter 21, §21-02.

(d) The Department may require the holder of a certificate to complete a course when the Department finds continuing violations of the Code or when a food borne outbreak implicates food prepared or processed under the supervision of such person, or when the Department determines that such a course is necessary to acquaint a supervisor with current developments in food protection principles, or when otherwise deemed necessary by the Department for the protection of the public.

(e) Two (2) full-face photographs shall be taken by the Department or by others approved by the Department when an applicant registers for such course or applies for such certificate. One photograph shall be affixed to the certificate of completion and the other maintained in the records of the Department. Persons covered under §81.15(a)(2) shall not be subject to this subsection.

HISTORICAL NOTE

Section amended City Record Apr. 5, 2000 eff. Apr. 5, 2000 as per City Record notice. [See Also Note 1]

Section added City Record June 14, 1996 eff. July 14, 1996.

Subd. (a) par (1) amended City Record Jan. 14, 2003 eff. Jan. 1, 2004.

[See Also Note 2]

Subd. (a) par (1) amended City Record July 1, 1998 eff. July 31, 1998.

[See §81.03 Also Note 1]

Subd. (d) amended City Record Jan. 14, 2003 eff. Feb. 13, 2003.

[See Also Note 2]

Notes:

Subsection (a)(1) was further amended on December 12, 2002, to be effective January 1, 2004, to require every mobile food vendor licensee to have taken a food protection course. On or after January 1, 2004, subsection (b) of §89.03 requires that no applicant

for a mobile food vending license or renewal of such license may be issued such license or renewal without having completed a food protection course.

Subsection (a)(1) was amended on March 13, 2000 to exempt food service establishments operated by religious, fraternal or charitable organizations open to the public for the purpose of providing prepared food to the needy, free of charge, from the food protection course requirement ordinarily designed for other commercial food service establishments, as well as to exempt them from the examination requirement.

Subsection (a)(2) was added on March 13, 2000 to include specific requirements applicable to the person responsible for the supervision of food preparation or processing in a food service establishment operated by religious, fraternal or charitable organizations open to the public for the purpose of providing prepared food to the needy, free of charge.

Subsection (a) of §81.15 was amended on June 16, 1998 because mobile food non-processing units are prohibited from preparing or processing; and typically selling only fruits, candies, pretzels or boiled hot dogs, it is not necessary to require that supervisors of these operations take a 15-hour food protection course.

Subsection (c) was amended on March 13, 2000 to provide that individuals covered under (a)(2) are not charged a fee when taking the food protection course offered by the Department, and are not required to take the supplemental food protection course required pursuant to §21-02 of Title 24 of the Rules of the City of New York.

Subsection (d) was further amended on December 12, 2002 to delete the word "refresher" from the provision that authorizes the Department to require a food protection certificate holder to take a course again in certain defined circumstances.

Subsection (d) was amended on March 13, 2000 to clarify that the holder of any food protection certificate issued by the Department may be required to take a refresher course and that such a course may be required when deemed necessary by the Department for the protection of the public.

Subsection (e) was amended on March 13, 2000 to provide that individuals covered under (a)(2) are not required to have two photographs taken.

ALSO NOTE

1. Statement of Basis and Purpose in City Record Apr. 5, 2000:

The Bureau of Inspections within the Department of Health is charged with the responsibility for ensuring the safety of food that is commercially prepared, distributed and served throughout the City, whether the food is sold or provided free of charge. The Bureau's jurisdiction includes food service establishments and non-retail food processing establishments. Article 81 of the Health Code sets forth requirements for the operation of food service establishments for the purpose of preventing public health hazards. Establishments, such as "soup kitchens", which are run by religious, fraternal or charitable organizations which provide prepared food free of charge to the needy, are required to satisfy the applicable requirements of Article 81. The Department proposes that provisions in Article 81 addressing the required food protection course be amended to include provisions which are relevant to the particular structure and functions of these establishments.

Since the 1980s, religious organizations and other community groups have set up emergency food programs to feed the hungry on a regular basis. These programs commonly referred to as "soup kitchens" typically serve cooked or prepared meals on-site at no cost to the patron. Some kitchens provide individual bags or packaged prepared meals to the individuals they serve. Many "soup kitchens" receive funding from federal, state and/or local government sources. These include the Federal Emergency Management Act and Shelter Program (FEMA), the New York State Department of Health Hunger Prevention and Nutrition Assistance Program (HPNAP), the New York City Human Resources Administration Office of Domestic Violence and Emergency Intervention Services and the Emergency Food Assistance Program (EFAP). Government agencies, through a contractual agreement, provide monies and other services to non-profit organizations whose main purpose is to feed the hungry. In addition, food may be received from the community, which may include food drives or donated food from local grocery stores and restaurants.

Currently, §81.15 of the Health Code specifies that supervisors of food service establishments and non-retail food processing establishments complete a course in food protection. Such course is a comprehensive five day course culminating in an examination. It is proposed that §81.15 be amended to exempt food service establishments operated by religious, fraternal or charitable organizations, that are open to the public for the purpose of providing prepared food free of charge to the needy from the standard five day food protection course. It is proposed that these establishments be subject to a modified version of the food protection course covering the basic principles of safe food preparation.

The proposed amendments to §81.15 seek to account for the special nature of food service establishments operated by religious, fraternal or charitable organizations, that are open to the public for the purpose of providing prepared food free of charge to the needy. "Soup kitchens", and other such establishments, operate with limited funding and consist of staff who are mostly transient volunteer workers.

The proposed §81.15(a)(2) requires the person responsible for the supervision of the food preparation or processing in these food service establishments operated by religious, fraternal or charitable organizations to obtain a certificate issued by the Department after successfully completing the modified course in food protection which could either be offered by the Department or by others approved by the Department. These individuals would be exempt from the examination requirement and would not be charged a fee for taking the course conducted by the Department. In addition, these individuals would not be required to take the Department's supplemental food protection course required pursuant to §21-02 of Title 24 of the Rules of the City of New York, which course provides training regarding the New York City Health Code, the State Sanitary Code and other relevant laws. The certificate issued to an individual in a food establishment operated by religious, fraternal or charitable organizations may be used by the certificate holder while he or she works at any such establishment. In addition, a person holding the

certificate must be on the premises during all hours of operation. However, any person who has obtained a food protection certificate to supervise a regular food service establishment or a non-retail food processing establishment would not be required to complete the modified "soup kitchen" course.

Under the current §81.15(d), "the Department may require the holder of . . . certificate to complete a refresher course when the Department finds continuing violations of the Code or when a food borne outbreak implicates food processed in the establishment . . . , or when the Department determines that such a course is necessary to acquaint a supervisor with current developments in food protection principles." It is proposed that the language in subsection (d) be amended to indicate that holders of any food protection certificate—either the comprehensive food protection course or the modified course—may be required to complete a refresher course in food protection. Further, it is proposed that the Department may when it deems necessary to protect the public require the holder of a certificate to take a refresher course in food protection.

Section 81.15(e) of the Code currently requires that upon registration or upon applying for a certificate, two full-face photographs be taken of the applicant, one of which will be affixed to the certificate and the other maintained in the Department's records. It is proposed that this subsection be amended to exempt individuals covered under §81.15(a)(2) from the photograph requirement in order that there be no cost incurred by these individuals.

2. Statement of Basis and Purpose in City Record Jan. 14, 2003:

In the course of enforcing New York City Health Code (the "Health Code") provisions applicable to mobile food vending operations, the New York City Department of Health and Mental Hygiene (the "Department") has found that a significant percentage of food vendors lack an adequate understanding of basic food handling and sanitary practices, which may endanger public health. Requiring all mobile food vendors to successfully complete a food protection course that provides instruction on mobile food vending operations can minimize this public health risk.

Accordingly, sections 81.15(a) and 89.03(b) of the Health Code have been amended, to require all applicants for mobile food vendor licenses to successfully complete a food protection course. Health Code §81.15(d) has also been amended to clarify that the Department may require a certificate holder to take a food protection course for the listed reasons, as opposed to a "refresher" course.

Basis to Amend Health Code §§81.15(a)(1) and 89.03(b)

The Department's Bureau of Food Safety and Community Sanitation (the "Bureau") is charged with the responsibility of monitoring the safety of food that is commercially prepared, distributed and served throughout New York City, whether the food is sold or provided free of charge, in a food service

establishment and non-retail food processing establishment. A food service establishment is "a place where food is provided for individual portion service directly to the consumer, whether such food is provided free of charge or sold and whether consumption occurs on or off the premises or is provided from a pushcart, stand or vehicle." Health Code §81.05(j). All mobile food vending, including commissaries, are either food service establishments or non-retail processing establishments, and thus fall within the scope of the Bureau's jurisdiction.

There are approximately 10,000 Department-licensed individual mobile food vendors currently operating in New York City, and the Department issues approximately 4,000 mobile food unit permits annually. A mobile food unit is "any food establishment which is readily movable, including, but not limited to, vehicles, pushcarts and stands, and on or in which food is prepared, stored, served, distributed, transported, offered for sale or sold at retail or given away without charge." Health Code §89.01(c). There are two types of mobile food units: processing and non-processing. A mobile food processing unit is "a mobile food unit on or in which foods are prepared or processed, or on or in which potentially hazardous foods are handled." Health Code §89.01(d). Foods typically sold from processing units include kebab, gyros, falafel, baked potatoes, soft ice cream, and roasted nuts. A mobile food non-processing unit, on the other hand, is "a mobile food unit on or in which foods other than potentially hazardous foods are handled and on or in which foods are not prepared or processed." Health Code §89.01(e). Foods typically sold from such units include fruit, candy, pretzels, bottled soft drinks, pre-packaged ice cream, and boiled hot dogs.

A licensed food vendor may operate both types of mobile food units described above. However, currently only a food vendor who operates a processing unit is required to successfully complete a food protection course pursuant to Health Code §81.15(a)(1), as are supervisors of all other food establishments. The Department conducts food protection courses at its Health Academy, and also approves courses conducted by others. The current curriculum is the same, or nearly the same, for every course. Among the topics covered are microbiology, harmful pathogens, epidemiology of food borne disease, and the principles and implementation of food safety procedures known as Hazard Analysis Critical Control Point (HACCP).

Although no food protection course in New York provides training on how to safely handle food on a mobile food vending unit, all mobile food vendors were required to complete a food protection course until June 16, 1998, when the Board of Health amended the Health Code to eliminate the requirement. The Department supported that amendment because the only food protection courses then available focused solely on activities that operators of mobile food non-processing units do not perform, namely, handling potentially hazardous foods and preparing or processing food. Thus, the benefits of the course were minimal and substantially outweighed by the costs to the Department and food vendors.

The Bureau has since found, however, that a significant percentage of

mobile food vendors do not observe basic food handling and sanitary practices, and that such lapses may endanger public health. Bureau data indicate that food vendors failed nearly 40 percent of operational inspections in fiscal year 2002. Food vendors fared only slightly better in fiscal years 2001, 2000, and 1999, when they failed 36, 35, and 36 percent of field operational inspections, respectively.

This high percentage of failed inspections is attributable, in part, to the fact that many supervisor/operators of mobile food processing units do not complete a food protection course. Since 1999, the Department has issued nearly 2,000 violations to licensed food vendors for handling potentially hazardous food or preparing or processing food without a food protection certificate. Eighty-eight percent of violations were issued to operators of processing units. The inspections data also suggest that the current food protection course is inadequate for mobile food vendors. Mobile food vending differs from conventional food establishment operations in several important respects, including lack of immediate direct access to sinks and toilets. Moreover, mobile food units generally are operated outdoors on crowded streets and exposed to rain, snow, and extreme heat and cold. The present food protection course does not account for such differences. The Department expects to remedy this problem by establishing a new curriculum for all mobile food vendors, in conjunction with these Health Code amendments.

Health Code §§81.15(a)(1) and 89.03(b) have accordingly been amended to require all mobile food vendors to complete a food protection course before receiving a license. The initial course to be offered will be specifically directed to food vendors, require attendance for two eight hour sessions, and will cover such topics as personal hygiene, cleaning of equipment and utensils, and principles of food safety and handling in a practical setting that simulates actual vending conditions.

Health Code §81.15(a)(1), which currently exempts operators of mobile food non-processing units from the list of food handlers who must successfully complete a food protection course, has been amended to eliminate this exemption.

Health Code §89.03(b) currently provides that "[n]o person shall act as a food vendor without first having obtained a license issued by the Commissioner and a badge issued by the Department." In the Department's initial proposal, Health Code §89.03(b) would have been amended to add that no licenses shall be issued to a mobile food vendor on or after July 1, 2003, unless the applicant submits a certificate showing that the applicant has successfully completed a food protection course approved by the Department. After the proposal was published, it became apparent that because of the City's fiscal constraints, it would be necessary to further amend this provision so that this requirement will not be effective until after January 1, 2004.

Basis to Amend Health Code §81.15(d)

This provision currently authorizes the Department to require certificate holders to complete a "refresher" food protection course in various

circumstances, whenever "deemed necessary by the Department for the protection of public health." However, the meaning of the term "refresher" is ambiguous. For example, it is unclear whether a "refresher course" includes a course with a new or different curriculum, such as the proposed course for food vendors. The Department should have the discretion to determine what type of course must be completed in any of the circumstances specified in subsection (d). The word "refresher" has, accordingly, been deleted.

Two persons testified at the public hearing and one written comment was submitted, opposing reinstatement of the requirement that all food vendors have a food protection certificate. One person testified in favor of the requirement. For all the reasons already stated above, the Department does not believe that any further amendments are required based on the testimony or written comment. Clarifying changes have, however, been made in the Notes to subsection (a)(1) of §81.15 and subsection (b) of §89.03 based upon suggestions of the New York City Law Department, and the effective implementation date of these amendments has been changed from July 1, 2003 to January 1, 2004.

§81.17 Food service establishments and non-retail food processing establishments; premises; location; general requirements.

(a) Food shall not be processed, prepared, packed or stored in, and food service establishments and non-retail food processing establishments shall not be located in, rooms used for dwelling purposes or in any room used for sleeping purposes. The premises shall be of a size sufficient to prevent overcrowding and adequate space shall be provided for the conduct of operations and for effective cleaning and inspection.

(b) Food service establishments and non-retail food processing establishments shall have unobstructed aisles and working spaces of sufficient width to permit employees to perform their duties readily and without contaminating food or food-contact surfaces.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

§81.19 Food service establishments and non-retail food processing establishments; premises; lighting and ventilation.

(a) Food service establishments and non-retail food processing establishments shall be permanently lighted to provide at least 30 footcandles of light on all food preparation surfaces and at equipment or utensil washing work levels, and at least 20 footcandles of light at a distance of 30 inches from the floor in utensil and equipment storage areas, lavatory and toilet areas, walk-

in refrigerating units, dry food storage areas, and in dining areas during cleaning operations.

(b) All artificial lighting fixtures located over, by or within food storage, preparation, service or display facilities, and facilities where utensils and equipment are cleaned and stored, which may shatter due to extreme heat, temperature changes or accidental contact and are likely to contaminate food, shall be provided with suitable guards to prevent broken glass from falling into food or onto food-contact surfaces.

(c) Food service establishments and non-retail food processing establishments shall be adequately ventilated to prevent excessive heat, steam, condensation, vapors, odors, smoke and fumes. Ventilation to the outside air shall comply with applicable law and regulation and shall not create a nuisance or unlawful emission. Intake and exhaust ducts shall be constructed and maintained to prevent dust, dirt or other contaminants from entering the establishment. Mechanical ventilation shall be installed in rooms where odors, vapors or fumes originate. Ventilation hoods and devices shall be constructed and installed to prevent grease or condensation from collecting on walls or ceilings and from dripping into food or onto food-contact surfaces.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

Subd. (b) amended City Record July 1, 1998 eff. July 31, 1998. [See §81.03

Also Note 1]

Notes:

Subsection (b) of §81.19 was amended on June 16, 1998 to conform to requirements in the New York State Sanitary Code.

§81.21 Food service establishments and non-retail food processing establishments; premises, plumbing, water supply, floors, walls and ceilings, vehicles.

(a) Food service establishments and non-retail food processing establishments shall have plumbing and plumbing fixtures to carry potable hot and cold water adequate to supply all parts of the establishment. Plumbing and fixtures shall be properly connected, vented and drained to prevent contamination of the City water supply or any other potable water supply. Water supply outlets and connections to water supply fixtures or equipment shall be designed and constructed to prevent back-flow into the water supply.

(b) Sewage and liquid wastes shall be carried to the sewer or sewage disposal system so as to prevent contamination of the premises and its contents.

There shall be no direct connection between the sewage system and any drains from fixtures and equipment used for storage, preparation, or processing of food.

(c) Condensation and waste water pipes from such fixtures and equipment shall be discharged into a properly trapped, sewer-connected, clean, open sink, or other acceptable method of drainage. Waste lines from equipment required to have indirect drains shall be installed to prevent back-flow from sewers and other drains and waste lines. Condensation pipes shall be located and protected to prevent condensation or dropping of any liquid on foodstuffs or food equipment.

(d) All lines conducting carbon dioxide gas or carbonated beverages shall be stainless steel, food-grade plastic or other material that will not produce toxic substances when exposed to carbon dioxide or carbonated water.

(e) Floors and floor coverings of food storage, food preparation, and utensil washing areas, and floors of walk-in refrigerating units, dressing rooms, locker rooms, lavatories and rest rooms shall be constructed of a hard, smooth, durable, non-absorbent and easily cleanable material and shall be kept clean and in good repair. Carpeting is prohibited in food preparation areas.

(f) Walls and ceilings of food storage, food preparation and utensil-washing areas shall be smooth and non-absorbent, constructed of a hard, light colored material, and, along with doors and windows, shall be easily cleanable, and kept clean and in good repair. Light fixtures, vent covers, fans, ducts, decorative materials and other materials affixed to walls and ceilings shall be easily cleanable and shall be kept clean and in good repair, and installed and sealed to prevent insect harborage.

(g) Vehicles used for the transportation of food shall be kept clean and sanitary at all times.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

Subds. (a), (b) amended City Record July 1, 1998 eff. July 31, 1998.

[See §81.03 Also Note 1]

Subds. (c), (d) repealed and added City Record July 1, 1998 eff. July 31, 1998.

[See §81.03 Also Note 1]

Notes:

Section 81.21 was amended on June 16, 1998 to delete redundancies and to clarify the requirement for indirect wastes and backflow prevention devices as well as the proper installation of such plumbing devices.

§81.23 Food service establishments and non-retail food processing establishments; premises; conditions conducive to rodent or insect and pest life prohibited; rodent proofing.

(a) Food service and non-retail food processing establishments shall be kept free of rodents, insects and other pests, and of any condition conducive to rodent or insect and other pest life. Premises, equipment and fixtures shall be of construction, design and material so as to be rodent proof.

(b) All openings into the outer air shall be effectively screened and doors shall be self-closing, unless other effective means such as effective fly fans or effective air curtains are provided to prevent the access by insects and other pests.

(c) Operators of food service establishments and non-retail food processing establishments shall take extermination and preventive measures necessary to maintain the establishment free of rodents, insects and other pests. Pesticides shall be properly labeled, authorized for use, and used in accordance with the New York State Environmental Conservation Law and Title 6 of the New York Codes, Rules and Regulations (N.Y.C.R.R.) Part 325, or any successor regulation.

(d) Poisonous and toxic materials shall be stored in areas designated solely for such purpose, or in a storage area outside the food, equipment and utensil storage area. Bactericides and cleaning compounds shall not be stored with insecticides, rodenticides or other poisonous materials. Insecticides and rodenticides shall be kept in their original containers. Insecticide spraying is prohibited in food preparation and service areas while food is being processed, prepared or served, or where unprotected food, clean utensils or containers are displayed or stored.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

Subd. (d) added City Record July 1, 1998 eff. July 31, 1998.

[See §81.03 Also Note 1]

Notes:

Section 81.23 was amended on June 16, 1998 to conform to requirements in the New York State Sanitary Code.

§81.25 Food service establishments and non-retail food processing establishments; animals prohibited.

No live animal shall be kept, housed or permitted to enter into or remain in any food service establishment or non-retail food processing establishment.

This section shall not apply to edible fish, crustacea, shellfish, fish in aquariums, seeing-eye dogs accompanying sightless persons, hearing or service dogs accompanying and assisting disabled persons, or patrol dogs accompanying police officers.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

§81.27 Food service establishments and non-retail food processing establishments; foodworker use of tobacco and consumption of food on premises; spitting prohibited.

Smoking or use of tobacco in any form in any room where food is prepared, processed or packaged is prohibited. Foodworkers shall eat only in designated areas and in a manner that protects food, equipment and utensils from contamination. Spitting anywhere in an establishment is prohibited.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

§81.29 Food service establishments and non-retail food processing establishments; premises; employee toilets, wash basins, lockers and patron toilets to be provided.

(a) Food service establishments and non-retail food processing establishments shall have a sufficient number of toilets for the employees which shall be clean, sanitary and in good repair so as to comply with the New York City Administrative Code, Title 27, Building Code Reference Standards, RS 16, §P104.0 (Plumbing Fixtures), et seq., or successor provision.

(b) A supply of toilet tissue shall be provided at all times at each toilet. Easily cleanable receptacles for waste paper and other refuse shall be provided. At least one receptacle shall be covered in any toilet room used by women.

(c) Food service establishments and non-retail food processing establishments shall have a sufficient number of wash basins with hot and cold running water in or near the lavatory and in or near food preparation areas to assure cleanliness of employees. Soap and single use towels or mechanical drying devices shall be provided. There shall be conspicuously posted near or above the wash basins signs directing employees to wash hands after use of the toilet. The use of common drinking cups is prohibited.

(d) Dressing and locker areas shall not be located as to present a contamination hazard.

(e) Food service establishments with a seating capacity of 20 or more, except those in operation on or before December 5, 1977 shall provide toilet facilities for patrons. The requirements outlined in subsection (a) above shall also apply to patron toilets.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

§81.31 Food service establishments and non-retail food processing establishments; equipment and utensils to be made of nontoxic materials.

(a) No food service establishment or non-retail food processing establishment shall have or use any equipment or utensil in the manufacture, processing, preparation or service of food, containing lead, cadmium or any other substance which is toxic or may react with food, cleaning or sanitizing materials, to form harmful compounds, or render food unwholesome or detrimental to health. Food contact surfaces of utensils and equipment shall not be painted, and shall not impart odor, color or taste to food. Materials used to construct or repair equipment shall be of sufficient strength and thickness to withstand ordinary usage and to permit cleaning and sanitizing. The use or keeping of utensils and containers which are chipped, cracked, rusted, corroded, badly worn, or in such condition that they cannot be easily rendered clean and sanitary is prohibited.

(b) Cutting blocks and boards shall be smooth and clean, and constructed of hard maple or equivalent nonabsorbent material.

(c) Tubing used for beverages or beverage ingredients shall be fabricated from food-grade materials.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

§81.33 Food service establishments and non-retail food processing establishments; equipment and utensils; design, construction and placement.

Equipment shall be constructed to be easily cleanable, shall be clean and in good repair, shall have nontoxic food-contact surfaces, and shall not contaminate food. Equipment using lubricants shall use food-grade lubricants which shall not leak or contact food or food-contact surfaces. Where disassembly is required for cleaning, such disassembly shall not require more than the use of simple tools such as mallet, screwdriver and open-end wrench, which tools shall be readily available near the equipment. Equipment designed

for in-place cleaning shall be constructed so that cleaning and sanitizing solutions circulate through an effective fixed system that allows such solutions to contact all interior food-contact surfaces, and so that the system is self-draining or can be completely evacuated.

§81.35 Food service establishments and non-retail food processing establishments; refrigerators and hot storage facilities.

A food service establishment or non-retail food processing establishment shall have a sufficient number of refrigerators, hot food storage facilities, and accurate thermometers or other temperature recording instruments, to ensure food is kept at temperatures required by this Code. Temperature measuring devices shall be accurate to plus or minus two degrees Fahrenheit (1.1 degrees Celsius) and shall be located to measure the temperature in the warmest part of the refrigerator or coolest part of the hot storage facility. Refrigerators and hot storage facilities shall be kept clean, sanitary and in good repair.

HISTORICAL NOTE

Section amended City Record July 1, 1998 eff. July 31, 1998.

[See §81.03 Also Note 1]

Section added City Record June 14, 1996 eff. July 14, 1996.

Notes:

Section 81.35 was amended on June 16, 1998 to delete a requirement which was already outlined in Section 81.21.

§81.37 Food service establishments and non-retail food processing establishments; cleaning of premises, equipment and utensils; cleaning methods.

(a) The premises of a food service establishment or non-retail food processing establishment, its equipment and utensils shall be cleaned at least once a day and more frequently when necessary. Cloths used for wiping food spills from tables and tableware shall be kept clean and dry and used only for this purpose. Moist cloths used for wiping food spills from kitchenware and food-contact surfaces shall be used only for this purpose and shall be stored in a sanitizing solution between uses. Moist cloths used for wiping non-food-contact surfaces shall be used only for this purpose and shall be stored in a sanitizing solution between uses.

(b) Equipment and utensils shall be effectively cleaned and sanitized. Unless it is specifically constructed to permit in-place cleaning and inspection, equipment shall be disassembled prior to each cleaning.

(c) Hot water used for sanitizing in a manual operation shall be 170 degrees Fahrenheit (76.6 degrees Celsius). A numerically scaled, indicating thermometer accurate to plus or minus 2 degrees Fahrenheit (1.1 degrees Celsius) shall be readily available at the sink for frequent checks of water temperature. Dish baskets of such size and design to permit complete immersion of the tableware, kitchenware and equipment in the hot water shall be provided.

(d) Chemicals used for sanitizing shall not be used in concentrations which will leave toxic residues on surfaces treated. A test kit or other device shall be used that accurately measures the parts per million concentration of the solution used, and the pH when it affects the performance of the chemical sanitizer.

(e) Cleaning and sanitizing machines or other mechanical equipment and devices used for the cleaning and sanitizing of utensils, equipment and food contact surfaces shall be installed and maintained in good repair and operated in accordance with manufacturer's instructions. Mechanical dishwashing machines shall be equipped with thermometers to check their operation.

(f) Utensils used in the preparation, service or transportation of food shall be cleansed after each use, effectively cleaned and sanitized and shall be air dried after sanitizing. Between uses, food dispensing utensils shall be stored in the food with the handle extended out of the food, or clean and dry, or in a dipper well with running water at an adequate velocity and volume to cleanse them during intervals between intermittent use.

(g) All new bottles, receptacles and other containers, other than paper or plastic single service containers, shall be thoroughly rinsed or subjected to a cleansing process for the purpose of removal of lint, glass splinters and other foreign materials, prior to their being used in the preparation, service or transportation of food.

(h) No substance containing any cyanide preparation shall be used for the cleaning or polishing of copper, nickel, silver, silverplated ware or any other utensils or appliances used in preparation or service of food.

(i) Food service establishments and non-retail food processing establishments, where food is processed for distribution in containers designed to be used more than once, shall have separate areas with suitable troughs and sinks for the cleansing of such containers.

(j) Drainboards of adequate size shall be provided and used for the proper handling of soiled items prior to washing and of clean items following sanitization. Drainboards shall be self-draining and located and constructed so that they do not interfere with the proper use of the dishwashing facilities. Use of easily movable tables for the storage of soiled items or the use of easily movable tables for the storage of clean items following sanitization is allowed.

(k) Garbage and waste materials shall not be permitted to accumulate or to become a nuisance, but shall be stored, handled and disposed of in a sanitary manner that protects food and food-contact surfaces from contamination. Such materials shall be kept in easily cleanable, tightly covered, watertight, rodent-proof, insect-proof containers, which shall be lined with plastic or wet-strength paper bags or shall be disposed of promptly, without intervening storage. The garbage receptacles and their covers shall be properly cleansed immediately upon emptying.

(l) Laundry facilities shall be used only for the washing and drying of linens, clothes, uniforms and aprons. Laundry facilities shall be in a separate room for such purpose except that such room may also be used for storage of packaged foods, packaged single-service articles and employee clothing. Clean laundry shall be protected from contamination. Dirty laundry shall be stored in non-absorbent laundry containers or bags until removed for laundering.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

Subd. (e) amended City Record July 1, 1998 eff. July 31, 1998. [See §81.03

Also Note 1]

Subd. (j) added City Record July 1, 1998 eff. July 31, 1998. [See §81.03 Also Note 1]

Subds. (k), (l) relettered (former subds. (j), (k)) City Record July 1, 1998 eff. July 31, 1998.

Notes:

Section 81.37 was amended on June 16, 1998 to conform to requirements of the New York State Sanitary Code.

§81.39 Food service establishments and non-retail food processing establishments; sealing of unclean equipment, utensils and vehicles; denial, suspension and revocation of permits; enforcement.

(a) When, in the opinion of an inspector or authorized employee of the Department, any equipment, utensil or vehicle in a food service establishment or non-retail food processing establishment presents an imminent health hazard, is in an unclean condition, or in disrepair or damaged to such an extent so as to render it unsafe, such equipment, utensil, vehicle or any part thereof may be ordered sealed and its use immediately discontinued upon the approval of the director of the bureau of the Department enforcing this Article. Upon such sealing, the representative of the Department shall affix thereto labels or conspicuous signs bearing the word "unclean" or any other wording necessary to describe the sanitary condition or safety of the sealed equipment, utensil or

vehicle, and he or she shall also prepare or cause to be prepared an order of the Commissioner or Department. The order and notice shall direct the discontinuance of the use or operation of the unclean article until it shall have been cleaned and made sanitary and safe, and the seals, labels or signs removed by a representative or with the authorization of the Department.

(b) When a food service establishment or non-retail food processing establishment is found upon inspection to be operating without a valid permit in violation of §81.05 of this Code, the Department may order such establishment to close and cease all food operations immediately, and to remain closed until the establishment or operation has obtained and displays a valid permit.

(c) In addition to the forfeitures and penalties set forth in Articles 3 and 5 of this Code, the Department may deny, suspend or revoke any permit or authorization issued pursuant to this Article when serious, repeated or persistent violations of any of the provisions of this Code have been found, or where interference with personnel of the Department in the performance of their duties or a violation of §5.17 occurs. Any person ordered to cease operation and service pursuant to this Article shall comply with such order immediately, and shall thereafter be provided with an opportunity to be heard pursuant to rule of the Department.

(d) The Department may deny or suspend a permit or authorization and order immediate cessation of operations and/or service of food at a food service establishment or non-retail food processing establishment if continued operation is an imminent hazard to public health. Any person ordered to cease operations and/or service of food pursuant to this subsection shall comply with such order immediately, and shall thereafter be provided with an opportunity to be heard pursuant to rule of the Department.

(e) Any order or notice issued pursuant to this section shall be served by personal delivery to the owner or person in charge of the food establishment, or by any method authorized by §§17-141 or 17-148 of the New York City Administrative Code, and an original thereof shall be filed with the Department.

(f) Seals, labels, signs, notices and orders affixed by the Department shall not be removed except by order of the Commissioner or his or her designated representative and not until the objectionable condition is removed or corrected.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

CASE AND ADMINISTRATIVE NOTES

¶ 1. Pursuant to paragraph (d) of this section, the administrative law judge determined that resumed operation of restaurant, with a record of serious violations, would constitute an imminent health hazard as defined in the state Sanitary Code and therefore respondent's permit, which had expired, should not be renewed. *Dep't of Health v. Liznick Restaurant Corp.*, OATH Index No. 1648/98 (July 7, 1998).

§81.41 Dispensing devices used to dispense food; construction, cleanliness, refrigeration, safety.

(a) No person shall employ a food vending machine for the sale of packaged food or beverages in closed bottles or containers unless:

(1) the machine is designed and constructed to allow effective cleaning and maintenance and to remain free from insect and rodent harborages and other nuisances;

(2) the machine is designed and constructed so as not to become a hazard to children or others while in use or under foreseeable conditions of abuse;

(3) potentially hazardous foods shall be kept at or below 41 degrees Fahrenheit (5 degrees Celsius) or at or above 140 degrees Fahrenheit (60 degrees Celsius);

(4) the machine and the surrounding area are kept clean and sanitary.

(b) No person shall employ a food vending machine for the sale of unpackaged food or for the sale of beverages other than in closed bottles or containers unless the requirements of subsection (a) of this section are met and, in addition, the device is free from lead, cadmium or any other substance which may be so affected by the food or beverage as to form dangerous or deleterious compounds, or as to render food or beverage which comes into contact with such substance unwholesome or detrimental to health, or to impart odor, color or taste to the food. When the food vending machine is connected to a water supply system, it shall be designed and constructed to prevent contamination of the water supply system. Devices which dispense carbonated beverages shall be equipped with an air gap at the water inlet, or a protective device to vent any leaking carbon dioxide to the atmosphere, or any other protective device approved by the Department which will provide positive protection against the entrance of carbon dioxide or carbonated water into the water supply system. The water supply contact surfaces in devices which dispense carbonated beverages, from the protective device downstream including the protective device itself, shall not have any copper or copper-lined components in contact

with the water supply or the beverage and its other components including any ice making and dispensing apparatus.

(c) There shall be provided in the immediate vicinity of all coin-operated or other mechanical dispensing devices, receptacles for the disposal of food or beverage containers.

(d) Potentially hazardous food shall be dispensed in individual, original containers or wrappers in which it was packaged at the food vending machine commissary or non-retail food processing establishment. Potentially hazardous food shall not be dispensed from bulk supplies.

(e) All food, other than fresh fruit, shall be stored or packaged in clean protective containers, or dispensed into clean single-use containers, and all food shall be prepared and vended in a sanitary manner and shall in all respects comply with the provisions of this Article.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

Subd. (a) par (3) amended City Record July 19, 2005 eff. Aug. 18, 2005. [See §81.06 Also Note 1]

Notes:

Paragraph (3) of subdivision (a) of §81.41 was amended on July 7, 2005 to reflect the appropriate temperature for refrigeration of potentially hazardous cold foods, in accordance with the 2001 US FDA *Food Code*.

§81.43 Reporting complaints of patrons' illness, emergency occurrences.

(a) When a food service establishment or non-retail food processing establishment learns, has reason to suspect that a person has a food related illness, or is notified of any illness of a person diagnosed by a physician which allegedly resulted from food served at, or originating from, such establishment, the owner or person in charge shall immediately notify the Department. The Department may require the owner or the person in charge to submit, within 24 hours of the telephone report, a written report giving such additional information concerning the complaint as the Department may require. Under applicable provisions of the New York State Public Officers Law, reports may be subject to inspection by persons other than the Commissioner and authorized personnel of the Department but personal information about the patrons shall be redacted. Such reports shall not be used as a basis for prosecution by the Department.

(b) When a food service establishment or non-retail food processing establishment is subject to an occurrence which might result in contamination

of food or food being held out of temperature limits, including but not limited to fire, power outage, or flood, the owner or person in charge shall immediately notify the Department.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

§81.45 Drinking straws and single service utensils.

(a) Drinking straws shall not be offered to the consumer unless they are completely enclosed in a wrapper or dispensed from a sanitary device. Drinking straws shall be discarded immediately after use.

(b) Single service articles shall be manufactured from clean, non-toxic materials and fulfill the requirements of the Food, Drug and Cosmetic Act, as amended. Such articles shall not be reused and shall be discarded immediately after use.

(c) When, in the opinion of an inspector or authorized employee of the Department, a food service establishment or non-retail food processing establishment lacks adequate facilities for cleaning and sanitizing utensils, the director of the bureau having the responsibility to enforce this Article may require the use of single service utensils.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

§81.47 Water potability certificates.

(a) No person shall conduct or operate a wholesale food establishment without a Certificate of Water Potability issued by the Commissioner when such certificate is required to be obtained by an agency of the United States government or other agency having jurisdiction. Such certificate shall not be issued unless said person shall have first registered with the Department and an inspection for cross-connections is completed and a satisfactory water quality analysis is obtained. The fee for such registration shall be paid pursuant to Subsection (i) of §5.09 of this Code.

(b) Registration shall be made on forms furnished by the Department and shall contain the information required thereon.

(c) When any change or alteration is made in such registrant's establishment so that the information registered with the Department is no longer accurate, the registrant shall notify the Department of such change or alteration within 72 hours after it is effected. A change of ownership or address of the facility shall automatically terminate the registration.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

§81.49 Modification by Commissioner.

When the strict application of any provision of this Article presents practical difficulties or unusual hardships, the Commissioner, in a specific instance, may modify the application of such provision consistent with the general purpose of this Article and upon such conditions as in his or her opinion are necessary to provide for clean and sanitary food manufactured, processed or served in clean and sanitary establishments. The denial of a request for modification by the Commissioner shall be deemed a final agency determination.

HISTORICAL NOTE

Section added City Record June 14, 1996 eff. July 14, 1996.

§81.50 Calorie labeling.

(a) Scope and applicability. This section shall apply to menu items that are served in portions the size and content of which are standardized and for which calorie content information is made publicly available on or after March 1, 2007, by or on behalf of the food service establishment serving the items.

(b) Calorie information for menu items. Food service establishments shall post on menu boards and menus the calorie content values (in kcal) that have been made publicly available as specified in subdivision (a) for each menu item next to the listing of each menu item. Posted calorie content shall be calculated in accordance with 21 CFR §101.9(c)(1)(i) or its successor regulation. Subject to prior approval by the Department, food service establishments may use alternative means for making calorie information available to patrons, provided such information is made available at the point of purchase and is at least as prominent as required in paragraph (1) below.

(1) Menu boards and menus. The term "calories" or "cal" shall appear as a heading above a column listing the calorie content value of each menu item, or adjacent to the calorie content value for each menu item, in the same or larger typeface as the calorie content values for individual menu items.

(A) Menu boards. On menu boards, calorie content values shall be posted in a size and typeface at least as large as the name of the menu item or price, whichever is larger.

(B) Menus. On printed menus, calorie content values shall be legible and shall be printed in a size and typeface at least as large as the name or price of the menu item.

(2) Range of calorie content values for different flavors and varieties. For menu items that come in different flavors and varieties but that are listed as a single menu item, including, but not limited to, beverages, ice cream, pizza or doughnuts, the range of calorie content values showing the minimum to maximum numbers of calories for all flavors or varieties of that item shall be listed on menu boards and menus for each size offered for sale.

(c) Effective date. This section shall take effect on July 1, 2007.

HISTORICAL NOTE

Section added City Record Dec. 11, 2006 eff. July 1, 2007 per §81.50(c).
[See Also Note 1]

Notes:

Section 81.50 was added by resolution adopted on December 5, 2006 to require that food service establishments in New York City that sell food items whose portion size and content are standardized prominently display publicly available information about the calorie content of such items on menu boards and menus in an effort to facilitate patrons' nutritional choices at time of purchase.

ALSO NOTE

1. Statement of Basis and Purpose in City Record Dec. 11, 2006:

The Department of Health and Mental Hygiene (the "Department") enforces provisions of the New York City Health Code ("Health Code") and other applicable law relating to food served directly to the consumer throughout the City, including food that is commercially prepared, and sold or distributed for free, by food service establishments, a broad category which includes restaurants, caterers and mobile food vending units. The Department also regulates non-retail food processing establishments, such as mobile food vending commissaries, as defined in Health Code §89.01, which supply food for mobile vending units.

Background

Restaurants (the term is being used interchangeably with "food service establishments" or "FSEs") are an important source of daily food intake for New York City residents: an estimated one third of daily caloric intake comes from foods purchased outside of the home. Assuring safe and healthy dining options is a public health priority. The Department issues permits and inspects all New York City FSEs and non-retail food processing establishments, as defined in §81.03(j) and (p) of the Health Code. Although federally mandated nutrition labeling on food products for sale in supermarkets facilitates informed choice, consumers lack such essential information to make healthy choices

when eating in restaurants. Calorie information, if provided at the time of food selection, would allow New Yorkers to make more informed choices. Accordingly, Article 81 of the New York City Health Code is being amended to require that information on calorie content values of menu items be available to patrons of FSEs at the time of ordering when such information is otherwise made publicly available by or on behalf of the FSEs.

The Department is charged with preventing and controlling diseases, including chronic disease, through approaches that may address individual behavior or the community environment. By requiring posting of available information concerning restaurant menu item calorie content, so that such information is accessible at the time of ordering, this Health Code amendment will allow individuals to make more informed choices that can decrease their risk for the negative health effects of overweight and obesity associated with excessive calorie intake.

Obesity is epidemic

According to measured height and weight data from the National Health and Nutrition Examination Survey (NHANES), the obesity rate among U.S. adults more than doubled over the past three decades from 14.5% in 1971–1974 to 32.2% in 2003–2004. In New York City, more than half of adults are overweight and one in six is obese. Obesity begins early—21% of New York City kindergarten children are obese. People who are overweight are at increased risk for diabetes, heart disease, stroke, high blood pressure, arthritis, and cancer. Diagnosed diabetes more than doubled over the past decade and now affects three quarters of a million New Yorkers.

If rates of obesity continue to rise unabated, it has been estimated that one in three children (and half of Hispanic children) born in 2000 will develop diabetes in his or her lifetime.

'Away from Home' food consumption increasingly fuels obesity and chronic illness

Americans are increasingly eating meals away from home. In 1970, Americans spent 26% of their food dollars on foods prepared outside their homes while by 2006 they spent almost half (48%) of their food dollars eating out. As previously noted, the average American consumes about one third of calories from foods from restaurants. Children eat almost twice as many calories when they eat out than when they eat at home.

Nutrition labeling works and is supported by consumers and leading experts

Since 1994, the federal Nutrition Labeling and Education Act (NLEA) has made nutrition information available to consumers on packaged foods purchased in retail stores. This information is widely used. Three-quarters of American adults report using food labels, and about half (48%) report that nutrition information on food labels has caused them to change their food purchasing habits. However, NLEA explicitly exempts restaurants from

nutrition labeling requirements, and at most restaurants, people can only guess the nutrient content of foods at the point of purchase. Current voluntary attempts by some food service establishments to make available nutrition information are inadequate particularly because the information is usually not displayed where consumers are making their choices and purchases. When FSEs' nutrition information is available on the internet, patrons need to have access to off-site websites. Such information may also be available in brochures, on placemats covered with food items, or on food wrappers, where the information is hard to find or difficult to read and only accessible after the purchase is made. Thus the information provided has little impact on choice.

Without calorie information, it is difficult for consumers to compare options and make informed decisions. People do not accurately guess the calorie content of foods and beverages, and calorie information will help guide food choices. Recent studies found that 9 out of 10 people underestimated the calorie content of less-healthy items by an average of more than 600 calories (almost 50% less than the actual calorie content). When calorie information was provided on food items, consumers chose high-calorie items 24% to 37% less often.

Additional marketing research has shown that providing nutrition information affects consumer attitudes and purchasing intentions. Consumers consistently underestimate the nutrient levels in food items and overestimate the healthfulness of restaurant items. When consumers are made aware of nutrition information at the point of purchase, disease risk perceptions increase, attitudes toward the product change, and purchasing intentions for unhealthy products decrease. Presenting nutrition information on restaurant menus empowers consumers and influences food choices.

Studies consistently show that consumers would like to have this information. Six nationally representative polls have found that between 62% to 87% of Americans support requiring restaurants to list nutrition information.

A key recommendation of a recent Food and Drug Administration-sponsored expert group report on obesity and eating away from the home was that, "Away-from-home food establishments should provide consumers with calorie information in a standard format that is easily accessible and easy to use. Participants believe that information should be provided in a manner that is easy for consumers to see and use a part of their purchasing and eating decisions. Information should be provided for any standard menu item offered on a regular and ongoing basis that is prepared from a standardized recipe, whether the item is an entire meal or a meal component. Non-standard items, including daily specials and experimental items, may be exempted. Information should be provided for the standard menu item as usually offered for sale (i.e., the base product, in the portion size as offered for sale), since most means of providing information cannot easily account for changes due to customization and special orders."

Changes to Health Code to require calorie labeling

New York City needs to address the rapidly growing twin epidemics of obesity and diabetes. Calorie labeling is a public health intervention to help address these problems. Providing simple, point-of-purchase calorie information would allow consumers to make more informed food choices in restaurants just as they currently can in supermarkets.

As amended, Health Code §81.50 requires FSEs that make calorie information for standardized menu items publicly available (published by or on behalf of the FSE) on or after March 1, 2007, to post such calorie (kcal) information on menu boards and menus, next to each menu item (Figure 1). Of course, in order for the calorie information to be accurate, such a requirement can only be implemented for food items that are standardized with regard to portion size, formulation, and ingredients. Therefore, it is expected that the proposal would apply only to the approximately 10% of New York City food service establishments that serve food menu items in portions that are standardized for size and content and currently post calorie information on these items. Posting of calorie content information will be required for any menu items for which calorie content has been made publicly available. Calorie amounts shall be posted in a size and typeface at least as large as the price or name of the menu item. This provision does not require any FSE to engage in analysis of the nutrition content of its menu items, but does require restaurants that make such information publicly available to their customers to post it in plain sight, so it is available at the time of ordering. By doing so, these FSEs will enable New Yorkers to have the information they need to make more informed choices.

MENU	Calories	Price
HAMBURGER	280	.89
CHEESEBURGER	330	.99
FISH FILET	470	1.99
CRUNCHY CHICKEN	550	2.79
4 OZ HAMBURGER	430	2.29
EXTRA BIG HAMBURGER	540	2.29
BIG BIG BURGER	590	2.39
GRILLED CHICKEN	450	2.89
8 OZ BURGER	760	2.99

FIGURE 1: Example of Menu Board with Calorie Labeling

Only FSEs that make nutritional information publicly available on or after March 1, 2007, such as in brochures, signage, websites, or other means, will be required to post calorie information. Posted calorie content information will be calculated in accordance with 21 CFR §101.9(c)(1)(i) or its successor regulation. FSEs would not be precluded from providing additional nutrition information voluntarily.

The Department's restaurant inspectors would be responsible for enforcing the requirement that nutrition information is provided on menu boards and menus.

Changes made in response to public comments

Substantial support was received for the proposal in written comments and oral testimony. Of the approximately 2,200 written and oral comments received, all but 22 supported the amendment. The proposal has been further amended in response to the comments and for clarity. To clearly identify the number of calories displayed as in Figure 1, above, FSEs will be required to place the word "calories" or "cal" as a heading above the column listing the number of calories, or adjacent to the calorie content value for each menu item. In response to comments that requiring display of the median calorie content value for menu items offered in a range of flavors or varieties could be confusing, the proposal has been amended so that FSEs will now be required to display the range (minimum to maximum) of calories applicable to all flavors or varieties rather than calculating the median number of calories for the menu item. Finally, FSEs will also be allowed to exercise flexibility in how they display calorie information at the point of purchase, subject to the Department's prior approval.

§81.51 Examination of most recent inspection report by patron or customer; posting sign.

Each food service establishment shall post a sign in a conspicuous place near its public entrance or entrances advising that a copy of the most recent inspection report of the Department is available from the New York City Department of Health and Mental Hygiene. Such sign shall contain the telephone number at the Department of Health and Mental Hygiene where such request for an inspection report may be made. Such sign shall set forth the name of the permittee, business name, address and permit number of the establishment, and such other identifying information as may be required by the Department. Such sign, which shall be designed and manufactured by the Department, shall be printed in clear and legible type, and in such a manner as to be readily visible to patrons or customers. Identifying information added to the sign by the permit holder shall also be legible. This section shall not apply to food vendors or food vending businesses as such terms are defined in §17-306 of the Administrative Code or successor statutes regulating such businesses.

HISTORICAL NOTE

Section amended City Record Jan. 14, 2003 eff. Feb. 13, 2003.

Section added City Record Dec. 30, 1998 eff. Jan. 29, 1999. [See Also Note 1]

Notes:

Section 81.51 was amended by resolution adopted on December 12, 2002 following amendment of Chapter 22 of the New York City Charter by the electorate in the

November 6, 2001 general election, which merged the Departments of Health and Mental Health, Mental Retardation and Alcoholism Services, and enactment of Local Law of 2002, which further amended the Charter and changed the name of the merged agency to Department of Health and Mental Hygiene.

This section is new. It was adopted on December 14, 1998 to provide up-to-date information to members of the public concerning health and sanitary conditions in restaurants and eating places. It is derived from §87.15 of the Code which was repealed on June 10, 1996 when Articles 83, 85, 86 and 87 were consolidated into a new Article 81.

ALSO NOTE

1. Statement of Basis and Purpose in City Record Dec. 30, 1998:

This amendment to the New York City Health Code is promulgated pursuant to Sections 558 and 1043 of the New York City Charter ("Charter"). Section 558(b) and (c) of the Charter empower the Board of Health to amend the Health Code and to include in the Health Code all matters to which the Department's authority extends. Section 1043 grants the Department of Health rulemaking authority.

Environmental Health Services is responsible for supervising and regulating the public health aspects of the food supply that is commercially prepared, distributed, and served throughout New York City. This jurisdiction includes the permitting and regulation of food services establishments.

Beginning October 12, 1995 the Department began making restaurant inspection reports more easily available to the general public. A person seeking the most recent inspection report for up to five restaurants needed only to make his or her request in writing to the Department. There is no charge for these reports. For those requests for more than five inspection reports, a charge of 25 cents per page continues to be assessed pursuant to the Freedom of Information Law.

In 1995, within the context of the administration's Regulatory Reform for the Restaurant Industry initiative, the Department was asked to review all laws, regulations, policies, and procedures under its purview that affect restaurants, and in the course of the review to identify regulations that were outdated or unnecessarily burdensome. Toward this end, the Department completed a thorough review of the New York City Health Code provisions relating to the restaurant industry, as well as the New York State Sanitary Code (10 N.Y.C.R.R. Subpart 14-1), identifying requirements that might be clarified, simplified, or eliminated without compromising our commitment to the protection of public health.

The revision of the food sections of the Code, which became effective on September 30, 1996 repealed Section 87.15, which had been added on October 28, 1971 and which read as follows:

- (a) A restaurant or eating place shall make available for examination by any prospective patron or customer who requests it, the most recent

inspection report of the Department.

- (b) A restaurant or eating place shall post a sign in a conspicuous place near its public entrance or entrances advising that a copy of the most recent inspection report of the Department is available for examination by any prospective patron or customer who requests it. Such sign shall be printed in clear and legible type and in such manner as to be readily visible to patrons and customers.

There is no comparable requirement in the New York State Sanitary Code.

The rationale for repeal included the opinion that the requirements were ineffective and generally unenforceable in that a restaurant could, if it so chose, easily thwart the intent of the provisions by simply telling a patron that the inspection report could not be found at that particular point in time. The Department also felt that the procedure that had been established in 1995 for responding to requests for reports provided a more reliable way for the public to obtain the last report.

It has recently come to the attention of the Department that the public is unaware that these reports are easily available by mail. The Department has recently added an option to its 24-hour complaint and information line whereby a person can leave a message requesting the most recent inspection report for up to 5 food service establishments, and will receive them at no cost. To better inform the public, the Department is proposing that all food service establishments be required to post a sign informing the public of the telephone number to call to obtain the most recent inspection report.

Therefore, it is proposed that Article 81 be amended to require that food service establishments post a sign in a conspicuous place that is near its public entrance or entrances advising that a copy of the most recent inspection report may be obtained from the Department by calling a telephone number at the Department that will be printed on the sign, and providing the name and the address of the establishment, and that the sign must be printed in clear and legible type and in such a manner as to be readily visible to patrons and customers. It is also proposed that mobile food vending units be exempted from this requirement.

This proposal was not published in the Department's regulatory agenda because the need for wider notice of the availability of Department inspection report was unanticipated at the time Health Code §87.15 was repealed.