



NEW YORK CITY DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Notice of Public Hearing and Opportunity to Comment on

Proposed Amendments to Title 24 of the Rules of the City of New York

What are we proposing? The Department of Health and Mental Hygiene (“the Department”) is proposing to add a new Chapter 39 (Added Sugar Warning) to Title 24 of the Rules of the City of New York, requiring food service establishments to warn consumers about menu items containing high amounts of added sugar. While the Department invites comment regarding the entire proposal, the Department is particularly seeking comments on the health outcomes included in the proposed warning statement: “Eating too many added sugars can contribute to type 2 diabetes and weight gain”.

When and where is the hearing? The Department will hold a public hearing on the proposed rule. The public hearing will take place from 10:00 a.m. until 12:00 p.m. on Thursday, May 23, 2024. The hearing will be conducted by video conference accessible via internet or telephone:

- **Internet.** To participate in the public hearing, enter to register at this Webex URL: <https://nycdohmh.webex.com/nycdohmh/j.php?MTID=m8c74b6a9c2b8d0ea84ae5eb76a6c259b>
If prompted to provide an event number or password, please enter the following:
Event number: **2349 265 9116**, Password: **Health** (432584 from phones)
- **Phone:** For access, dial: (646) 992-2010 or (408) 418-9388; then please enter the following
Access Code: **234 926 59116**

How do I comment on the proposed amendments? Anyone can comment on the proposed rule by:

- **Website.** You can submit comments to the Department through the NYC Rules website at: <http://rules.cityofnewyork.us>
- **Email.** You can email written comments to: ResolutionComments@health.nyc.gov
- **Mail.** You can mail comments to:
New York City Department of Health and Mental Hygiene
Gotham Center, 42-09 28th Street, CN31
Long Island City, New York 11101-4132
- **Fax.** You can fax written comments to the Department at: (347) 396-6087
- **Speaking at the hearing.** Anyone who wants to comment on the proposed rules at the public hearing must sign up to speak. You can sign up before the hearing by calling Svetlana Burdeynik at 347-396-6078 or by emailing at ResolutionComments@health.nyc.gov before the hearing begins at 10:00 AM on May 23, 2024. While you will be given the opportunity during the hearing to indicate that you would like to comment, we prefer that you sign-up in advance. You can speak for up to three minutes.

Is there a deadline to submit written comments? Written comments must be received on or before 5:00 PM on May 23, 2024.

Do you need assistance to participate in the hearing? You must tell us if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You can tell us by mail at the address given above. You may also tell us by telephone at 347-396-6078. You must tell us by May 9, 2024.

Can I review the comments made on the proposed rules? You may review the comments made online at <http://rules.cityofnewyork.us/> on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>.

All written comments and a summary of the oral comments received by the Department will be made available to the public within a reasonable period of time by the Department’s Office of the General Counsel.

Where can I find the Department’s rules? The rules of the Department can be found in Title 24 of the Rules of the City of New York.

What rules govern the rulemaking process? This notice is made according to the requirements of New York City Charter §1043.

Statement of Basis and Purpose of Proposed Rule

Statutory Authority

This amendment to Title 24 of the Rules of the City of New York (“RCNY”) is promulgated pursuant to sections 556 and 1043 of the New York City Charter and section 17-199.18 of the Administrative Code.

Background

Local Law 33 of 2022 (“Local Law 33”) and Local Law 150 of 2023 (“Local Law 150”) amend the Administrative Code of the City of New York (“Administrative Code”) by adding a new section 17-199.18, requiring Food Service Establishments (“FSE” or “restaurant”) that are part of chains with 15 or more locations across the nation to display added sugar notifications for certain food items displayed and listed on menus or menu boards that contain high levels of added sugar and a warning statement about the harms of high added sugars intake.

Sugar Consumption That Exceeds Dietary Recommendations is Associated with Negative Health Outcomes

The 2020-2025 Dietary Guidelines for Americans (“2020 DGA”) recommends limiting consumption of added sugars, starting at age 2 years, to less than 10% of daily caloric intake, the equivalent of 200 calories of added sugars per day for a 2,000-calorie daily diet. The 2020 DGA also recommends children younger than age 2 avoid foods and beverages with added sugars. Despite national recommendations, the average American consumes more than 13 percent of total daily calories from added sugars, about 270 calories. There is an established body of scientific literature demonstrating the health harms of added sugar intake. Regarding excess body weight and type 2 diabetes, the Scientific Report of the 2015 Dietary Guidelines Advisory Committee concluded the following:

“Strong and consistent evidence shows that intake of added sugars from food and/or sugar sweetened beverages are associated with excess body weight in children and adults. The reduction of added sugars and sugar-sweetened beverages in the diet reduces body mass index (BMI) in both children and adults. Comparison groups with the highest versus the lowest intakes of added sugars in cohort studies were compatible with a recommendation to keep added sugars intake below 10 percent of total energy intake.”

“Strong evidence shows that higher consumption of added sugars, especially sugar-sweetened beverages, increases the risk of type 2 diabetes among adults and this relationship is not fully explained by body weight.”

Type 2 diabetes is among the leading causes of premature deaths in New York City.

Added Sugar is Pervasive in the Food Supply

Restaurants are an important source of food for Americans, with an estimated 35% of adults in the United States consuming food from fast-food restaurants and 28% from full-service restaurants on a given day. Also, added sugar is widespread in the national food supply. More than 60% of packaged foods in the U.S. contain added sugars, making it difficult for individuals to reduce their sugar consumption. Further, most added sugars consumed in the U.S. diet comes from processed and packaged foods.

Sugary drinks are the leading contributor to added sugars in the American diet: nearly 25% of all added sugars consumed comes from sodas, fruit drinks, sports and energy drinks, and other sugar drinks. Just one bottled sugary drink can exceed the daily added sugar limit for adults, for example: a 20 oz. bottle of Coca-Cola, Red Bull and Arizona Iced-Tea contains 65, 64 and 60 grams of added sugar, or the equivalent of approximately 260, 256, and 240 calories of added sugar, respectively. And a 2020 study found that 32% of fast-food or quick-service restaurants (“QSR”) respondents and 21% of full-service restaurant (“FSR”) respondents ordered sugary drinks, including fountain drinks and bottle drinks: at QSR, among those who did so, mean sugary drink caloric contributions was 262 calories, and 71% purchased sugary drinks containing at least 200 calories, or 50 grams of added sugars. At FSR, mean sugary drink calories amounted to 133 calories, and 10% of respondents had 200 or more calories, or 50 or more grams of added sugar, from sugary drinks, among those who purchased one.¹

Foods that are Not Offered Prepackaged but Are Represented as the Same Brand and Product as a Prepackaged Food Item

The U.S. Food and Drug Administration requires disclosure of added sugar content on the Nutrition Facts label of prepackaged foods but does not currently require such disclosure for non-prepackaged food offered by chain restaurants. However, the New York City Administrative Code does require the notification label on chain restaurant’s non-prepackaged food items that are identical to prepackaged food items because foods offered that are non-prepackaged in chain restaurants have essentially the same high sugar content, as the same prepackaged foods sold in retail stores.

When products available in chain restaurants are represented to the public as the same brand and product as a prepackaged food item, the Department can apply the prepackaged food item’s disclosure on the Nutrition Facts label used in retail stores to the food offered in restaurants, enhancing the public’s ability to make informed decisions about chain restaurant food. Identical to prepackaged food items include, but are not limited to, fountain sodas, coffee beverages and salad dressings.

Consumers must be able to easily identify items that exceed nationally recommended limits for daily added sugar consumption to decide whether they want to purchase an item that may harm their health. The proposed warning label would provide this information for prepackaged foods, and items identical to prepackaged foods that mirror formulation of packaged foods and contain exceedingly high amounts of added sugar.

¹ Prasad D, Mezzacca TA, Anekwe AV, Lent M, Farley SM, Kessler K, Angell SY. Sodium, calorie, and sugary drink purchasing patterns in chain restaurants: Findings from NYC. *Prev Med Rep.* 2020 Jan 7;17:101040. doi: 10.1016/j.pmedr.2019.101040. PMID: 32055437; PMCID: PMC7005460.

Proposed Changes

The Department proposes to add a Chapter 39 to Title 24 of the RCNY requiring food service establishments with 15 or more locations nationally to display added sugar warning icons informing consumers about food items for which a serving size contains added sugars in an amount that is equal to or more than the daily value for added sugars (currently 50 grams of added sugar or (200 calories)).

The amendment is as follows:

Underlined language is new.

Section one. Title 24 of the Rules of the City of New York is amended by adding a new Chapter 39 to read as follows:

§39-01 Added Sugar Warning.

(a) Definitions. When used in this section the following words and terms have the following meanings:

(1) *Added sugars* has the meaning set forth in title 21, section 101.9 (c)(6)(iii) of the code of federal regulations, or any successor regulations.

(2) *Covered establishment* means any food service establishment inspected pursuant to the restaurant grading program established pursuant to subdivision a of section 81.51 of the Health Code that is part of a chain with 15 or more locations doing business under the same name and offering for sale substantially the same food items.

(3) *Covered food item with a high added sugar content* means any prepackaged food item and any food item identical to a prepackaged food item for which a serving size contains added sugars in an amount that is equal to or more than the daily value for added sugars.

(4) *Daily value for added sugars* means the daily reference value established in title 21, section 101.9(c)(9) of the code of federal regulations, or any successor regulation, for adults and children aged 4 years and older.

(5) *Food* has the meaning set forth in article 71 of the Health Code.

(6) *Food item on display* means any food item that is visible to the customer before the customer makes a selection.

(7) *Identical to prepackaged food item* means a non-prepackaged food item offered by a food service establishment that has the same product name as a prepackaged food item and is promoted, advertised, or presented as substantially the same as that prepackaged food item as determined by the Department, such as a fountain soda, coffee beverage, salad dressing, or dessert product that is sold under the same brand name, whether in the covered establishment or in other retail locations.

(8) *Menu or menu board* has the meaning set forth in section 81.49 of the Health Code.


(9) Menu item means any food item listed on a menu or menu board, as well as any seasonal menu item as defined by the Department and any temporary menu item or variable menu item as defined in section 81.49 of the Health Code.

(10) Point of purchase has the meaning set forth in section 81.49 of the Health Code.

(11) Prepackaged food item means any food item that is packaged by the manufacturer and required to have a nutrition facts label pursuant to title 21, part 101 of the code of federal regulations, or any successor regulations.


(b) Required warning icon. A covered establishment that offers for sale any covered food item with a high added sugar content must display an added sugar warning icon as follows:

(1) The added sugar warning icon must appear on any menu or menu board next to the name of any covered food item with a high added sugar content, and on a tag next to any food item on display that is a

covered food item with a high added sugar content: 

(2) The added sugar warning icon must be a black and white triangle with an image of a spoon bearing a heap of sugar and must be the same size and font and be equal in height to the largest letter in the name of the covered food item with a high added sugar content, as displayed on the menu, menu board, or tag next to any food item on display that is a covered food item with a high added sugar content; and

(c) Required warning statement. The following statement must be posted prominently and conspicuously

at the point of purchase of a covered establishment: “Warning:  indicates that the added sugar content of this item is higher than the total daily recommended limit of added sugar for a 2,000 calorie diet (50g). Eating too many added sugars can contribute to type 2 diabetes and weight gain.”

(d) Sugar density of identical to prepackaged food items. For the purposes of this chapter, a food item that is identical to a prepackaged food item will be presumed to have the same density of added sugars as is displayed on the nutrition facts panel of the corresponding prepackaged food item, unless the food service establishment demonstrates otherwise to the satisfaction of the Department.

(e) Effective date. This section takes effect for prepackaged food items on June 19, 2024 and for identical to prepackaged food items on December 1, 2024.

(f) Severability. If any provision of this section, or its application to any person or circumstance, is held invalid by any court of competent jurisdiction, the remaining provisions or application of the section to other persons or circumstances shall not be affected.

**NEW YORK CITY MAYOR'S OFFICE OF OPERATIONS
253 BROADWAY, 10th FLOOR
NEW YORK, NY 10007
212-788-1400**

**CERTIFICATION / ANALYSIS
PURSUANT TO CHARTER SECTION 1043(d)**

RULE TITLE: Rules Relating to High Sugar Warnings on Food Service Establishment Menus

REFERENCE NUMBER: DOHMH-140

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has analyzed the proposed rule referenced above as required by Section 1043(d) of the New York City Charter, and that the proposed rule referenced above:

- (i) Is understandable and written in plain language for the discrete regulated community or communities;
- (ii) Minimizes compliance costs for the discrete regulated community or communities consistent with achieving the stated purpose of the rule; and
- (iii) Does not provide a cure period because the violation cannot be corrected or undone.

/s/ Francisco X. Navarro
Mayor's Office of Operations

April 19, 2024
Date

**NEW YORK CITY LAW DEPARTMENT
DIVISION OF LEGAL COUNSEL
100 CHURCH STREET
NEW YORK, NY 10007
212-356-4028**

**CERTIFICATION PURSUANT TO
CHARTER §1043(d)**

RULE TITLE: Rules Relating to High Sugar Warnings on Food Service Establishment Menus

REFERENCE NUMBER: 2024 RG 009

RULEMAKING AGENCY: Department of Health and Mental Hygiene

I certify that this office has reviewed the above-referenced proposed rule as required by section 1043(d) of the New York City Charter, and that the above-referenced proposed rule:

- (i) is drafted so as to accomplish the purpose of the authorizing provisions of law;
- (ii) is not in conflict with other applicable rules;
- (iii) to the extent practicable and appropriate, is narrowly drawn to achieve its stated purpose; and
- (iv) to the extent practicable and appropriate, contains a statement of basis and purpose that provides a clear explanation of the rule and the requirements imposed by the rule.

/s/ STEVEN GOULDEN
Acting Corporation Counsel

Date: April 19, 2024