



# New Beverage Portion Rule for Food Service Establishments

## What You Need to Know

### What is the new rule?

The health code rule:

- **Limits the portion size for sugary drinks:** Food service establishments cannot sell, offer or provide sugary drinks in cups, cans, bottles or containers that hold more than 16 ounces.
- **Limits the portion size for self-service cups:** Food service establishments cannot sell, offer or provide self-service cups that hold more than 16 ounces if the establishment makes self-service sugary drinks available.

### Why limit the portion size of drinks?

By addressing the increasing size of sugary drinks, the Health Department is taking an important step in reducing sugary drink consumption and combating the obesity epidemic in New York City.

### What is considered a sugary drink?

A sugary drink is a carbonated or non-carbonated beverage that:

- is non-alcoholic
- is sweetened by the manufacturer or establishment with sugar or another sweetener that has calories
  - The rule applies to drinks pre-packaged in bottles or cans, served from a soda fountain or prepared by the establishment.
  - The rule does not apply to drinks that do not have added sweetener, or to drinks sweetened by the consumer.
- has more than 25 calories per eight fluid ounces (3.125 calories per ounce)
- is no more than half milk or milk substitute (any liquid that is soy-based and intended by the manufacturer to be a substitute for milk)

### Does this rule apply to my business?

The rule applies to all food service establishments that require a Health Department permit. This includes restaurants, cafeterias, mobile food vendors, street fair vendors and commissaries.

### What are examples of drinks that must be served in portions of 16 ounces or smaller?

- non-diet soda, sports drinks, energy drinks and fruit drinks
- fruit smoothies that are less than half milk or milk substitute with added sugar
- milk shakes that are less than half milk, ice cream or milk substitute
- coffee or tea specialty drinks that are less than half milk or milk substitute with added sugar

### What are examples of drinks that can be served in portions greater than 16 ounces?

- diet drinks
- unsweetened seltzer or soda water
- 100% fruit smoothies with no added sweetener
- 100% juice
- milk shakes that are at least half milk, ice cream or milk substitute

*Note:* For self service, see [What is the new rule?](#) for details on limiting the portion size of self-service cups.

## How do I know whether a drink includes sweetener that contains calories?

Check the ingredients. Sweeteners that contain calories include:

- Sugar (raw, brown, table)
- High fructose corn syrup
- Dextrose
- Fructose
- Maltose
- Sucrose
- Maple syrup
- Honey
- Agave or agave nectar
- Molasses
- Simple syrup

## How do I calculate calories per ounce for prepackaged drinks?

- Determine the drink size: If a sugary drink is 16 ounces or smaller, it is not subject to the rule.
- For drinks larger than 16 ounces, look at the Nutrition Facts label and find the serving size.
  - If the serving size is eight ounces, check the calories per serving on the label. If it is more than 25 calories, the drink can only be served in portion sizes of 16 ounces or smaller.
  - If the serving size is not eight ounces, you can figure out the calories per eight ounces by:
    - using the Department's sugary drink calorie calculator at [nyc.gov/health/foodservice](http://nyc.gov/health/foodservice) or
    - dividing the number of calories per serving by the number of ounces in each serving. If the result is greater than 3.125, the drink must be served in portions of 16 ounces or smaller
- If the Nutrition Facts label lists the serving as the entire bottle, can or box, check how many ounces are in the drink, then calculate calories per eight ounces by using one of the methods above.

## What about custom-made drinks, like coffee?

Custom-made drinks over 16 ounces are subject to the new rule. For example, black coffee has almost no calories. If a customer orders a 20-ounce black coffee with sugar (one teaspoon of sugar is 15 calories), the establishment can add as much as about three teaspoons of sugar to the drink. Customers can add any amount of sweetener on their own.

## What about drinks an establishment makes in batches?

If an establishment prepares large quantities of a drink, it must consider the drink's ingredients and calculate calories per ounce. If the drink has more than 3.125 calories per ounce, the establishment must either serve it in cups or containers 16 ounces or smaller, or change the recipe to reduce the number of calories.

## I provide free drinks to my customers. Does the rule apply to these drinks?

Yes.

## What about drinks for takeout and delivery orders?

The regulation applies to drinks offered for takeout or delivery. For instance, you cannot provide a two-liter bottle of a sugary drink as part of a delivery order.

## What about refills?

Refills are allowed, as long as the cup or container does not hold more than 16 ounces.

## How will the Health Department enforce this rule?

The regulation is scheduled to take effect on March 12, 2013. Failure to comply can result in a notice of violation and a \$200 fine. Only one violation will be cited at each inspection. Violations of this rule are not scored when determining a restaurant's letter grade.

## How can I read this fact sheet in other languages or see the actual regulation?

Visit [nyc.gov/health/foodservice](http://nyc.gov/health/foodservice) or call **311**, and ask for **beverage portion rule**.

## What if I have questions or need more information?

Health inspectors are available to answer questions. Call **311** and ask for **beverage portion rule**.