

Part 14, Subpart 14-4 Mobile Food Service Establishments and Foodcarts

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Section

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Application and Purpose

14-4.1 Application of Subpart.

This Subpart is applicable to mobile food service establishments and pushcarts notwithstanding any other Subpart of this Part.

14-4.10 Purpose.

The purpose of this code is to protect the public health. Owners and operators of mobile food service establishments and pushcarts are to operate in such a way as to avoid health hazards by limiting operations and the kinds of food to those which can be safely prepared, stored and served with the equipment available.

Public Health Hazards

14-4.20 Definition of Imminent Health Hazard.

- (a) An imminent health hazard is any violation, combination of violations, condition, or combination of conditions making it probable that the food or drink served to the public by the establishment or its continued operation can injure the health of the consumer or the public.
- (b) Any of the following violations are imminent health hazards against the public interest which require the permit-issuing official or his designated representative to order the establishment closed and all service of food stopped immediately if not corrected at the time of the inspection while the permit-issuing official or representative of the permit-issuing official is present:
 - (1) food is present from an unapproved (or unknown source or which is or may be adulterated, contaminated, or otherwise unfit for human consumption;
 - (2) potentially hazardous food is held for a period of time longer than that necessary for preparation or service at a temperature greater than 45 degrees F (7.2 degrees C) or less than 140 degrees F (60 degrees C);
 - (3) potentially hazardous food which has been served to another consumer or which has been exposed to other contamination is served again;
 - (4) toxic items are improperly stored or used;
 - (5) persons with disease or infection which can be transmitted by food or drink are engaged in preparing, handling, serving or otherwise contaminating food at the food service operation;

- (6) the potable water is not in conformance with the requirements of Part 5 of this Title, and it reasonably appears to the permit-issuing official or his designated representative that it can result in an imminent health hazard;
- (7) any cross-connection or other fault in the potable water system may permit contamination of the potable water supply, and it reasonably appears to the permit-issuing official or his designated representative that it can result in an imminent health hazard; or
- (8) sewage or liquid waste is not disposed of in a sanitary manner acceptable to the permit-issuing official.

Mobile Food Service Establishments

14-4.30 Definition of Mobile Food Service Establishment and Pushcart.

- (a) A mobile food service establishment is a self-contained food service operation, located in a vehicle or a movable stand, self or otherwise propelled, used to store, prepare, display or serve food intended for individual portion service.
- (b) A pushcart is a cart or barrow, manually propelled, used to vend food intended for individual portion service.

14-4.31 Definition of Food Processing Establishment and Commissary.

- (a) A food processing establishment is a commercial establishment operated under license or permit of an appropriate regulatory authority where food is manufactured or packaged for human consumption at another establishment or place.
- (b) A mobile food service establishment commissary is an establishment operated under license or permit of an appropriate regulatory authority where food is manufactured, stored, prepared, portioned or packaged, or any combination of these, where such food is intended for consumption at another establishment or place. It is also the place which is used as the base of operations for one or more mobile food service establishments or pushcarts, where such unit or units are serviced, cleaned, supplied, maintained, and where the equipment, utensils and facilities are serviced, cleaned and sanitized.

14-4.32 Definition of Person.

A person, as used by this Subpart, is an individual, firm, estate, partnership, company, corporation, trustee, association, or any public or private entity.

14-4.33 Definition of Law.

Law means and includes Federal, State and local statutes, ordinances and regulations.

14-4.34 Definition of Frozen Desserts.

- (a) "Frozen desserts" are ice cream, frozen custard, French ice cream, French custard ice cream, artificially sweetened ice cream, ice milk, artificially sweetened ice milk, fruit sherbet, non-fruit sherbet, water ices, non-fruit water ices, confection frozen without stirring, dairy confection frozen without stirring, manufactured dessert mix, frozen confection, melloream frozen dessert, parevine, frozen yogurt, freezer made shakes, freezer made milk shakes, dietary frozen dessert, whipped cream confection and bisque tortoni, as all such products are commonly known, together with any mix used in making

such frozen desserts and any products which are similar in appearance, odor or taste to such products, or are prepared or frozen as frozen desserts are customarily prepared and frozen, whether made with dairy products or non-dairy products.

Any operation producing chips or flakes of ice made from water with or without additives, served to the consumer with or without flavorings added by the operator or consumer, is included as a retail frozen dessert within this definition. This operation is commonly known as a slush operation.

- (b) Retail frozen desserts are to be manufactured from ingredients and are to be identified in conformance with the applicable requirements of Part 39 of the rules and regulations of the state Department of Agriculture and Markets (1 NYCRR Part 39).

Food Supplies

14-4.40 Definition of Food; Contamination; Potentially Hazardous Food.

- (a) Food is any edible substance, ice, beverage or ingredient used or intended for use or for sale in whole or in part for human consumption.
- (b) "Contamination" means exposing food to filth, toxic substances, manual contact during service or preparation if such food will not be subsequently cooked prior to service, rodent or insect contact or infestation, or any condition which permits introduction of pathogenic microorganisms or foreign matter. Potentially hazardous foods held at temperatures between 45 degrees Fahrenheit (7.2 degrees Celsius) and 140 degrees Fahrenheit (60 degrees Celsius) for a period of time exceeding that reasonably required for preparation are to be considered contaminated. Intact shell egg temperatures shall be considered acceptable if ambient storage temperature is 45 degrees Fahrenheit (7.2 Celsius) or less. Contaminated food is considered adulterated.
- (c) "Potentially hazardous food" is any food that consists in whole or in part of milk or milk products, eggs, meat, poultry, fish, shellfish, edible crustacea, cooked potato, cooked rice or other ingredients, including synthetic ingredients, in a form capable of supporting (1) rapid and progressive growth of infectious or toxigenic microorganisms; or (2) the slower growth of *C. botulinum*. The term does not include foods with a water activity (*A_w*) value of 0.85 or less, or a hydrogen ion concentration (pH) level of 4.6 or below.

14-4.41 Food; Food Sources; Food Limited.

- (a) Food is to be free from adulteration, spoilage, filth or other contamination, and suitable for human consumption.
- (b) Food is to be obtained from sources that comply with all laws relating to food and food labeling. The use of food prepared in any place that is not operated under jurisdiction of an appropriate regulatory agency and having a current permit or license, if required, to operate from that agency is prohibited. Only clean, whole eggs, with shell intact and free from cracks or checks, or pasteurized liquid, frozen or dry eggs or pasteurized dry egg products are to be used. All containers in which shell eggs are received must identify the source.
- (c) Pushcarts may serve only food which requires limited preparation, such as frankfurters requiring only seasoning and cooking. The preparation or service of other potentially hazardous foods, including pastries filled with cream or synthetic cream, custards and similar products, and salads or sandwiches containing meat, poultry, eggs or fish, is prohibited. Mobile food establishments may serve foods prepared under

conditions that protect it from contamination or adulteration, transported and stored at a temperature of 45 degrees F (7.2 degrees C) or below, or at a temperature of 140 degrees F (60 degrees C) or above, in facilities that maintain these temperatures, and served without contamination to the consumer. The permit-issuing official or his designated representative may require that food be served directly in the unopened container in which it was packaged, unless the equipment and operations of the mobile food service establishment are designed, constructed and operated to protect food from contamination. The foods served are limited to those listed in the permit.

14-4.42 Ice.

Ice that is consumed or that touches food is to be made from potable water, from sources in compliance with Part 5 of this Title, in a manner that protects it from contamination. Such ice is to be obtained only in chipped, crushed or cubed form and single-use safe plastic or wet-strength paper bags filled and sealed at the point of manufacture. The ice is to be held in these bags until it is dispensed in a way that protects it from contamination.

Food Protection

14-4.50 Food Protection: Potentially Hazardous Food, Temperature and Refrigeration Requirements.

- (a) Food is to be protected from contamination during storage, preparation, display, service and transportation. The temperature of potentially hazardous food is to be 45 degrees Fahrenheit (7.2 degrees Celsius) or below, or 140 degrees Fahrenheit (60 degrees Celsius) or above, at all times, except during necessary times of preparation. Intact shell egg temperatures shall be considered acceptable if ambient storage temperature is 45 degrees Fahrenheit (7.2 degrees Celsius) or less.
- (b) Packaged food is not to be stored in contact with water or undrained ice. Ice intended for human consumption is not to be used as a medium for cooling stored food, food containers or food utensils.
- (c) Food, which is not readily identifiable, is to be stored in properly labeled original containers or in containers labeled to identify the food by common name.
- (d) Shell eggs or food containing shell eggs are to be heated to 145 degrees Fahrenheit (62.8 degrees Celsius) or greater unless an individual 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.
- (e) Every part of ground meat or foods containing ground meat are to be heated to 158 degrees Fahrenheit (69.4 Celsius) unless a consumer requests preparation of a single order of ground meat or food containing ground meat which must be prepared at a temperature less than 158 degrees Fahrenheit in order to comply with the request.

14-4.51 Refrigerated Storage.

Enough conveniently located refrigeration facilities or effectively insulated facilities are to be provided and used to maintain potentially hazardous food at required temperatures during storage. Each facility storing potentially hazardous food is to have a numerically scaled indicating thermometer, accurate to plus or minus 2 degrees F (1.1 degrees C), which measures air temperature in the warmest part of the unit.

14-4.52 Hot Storage.

Enough conveniently located hot food storage facilities are to be provided and used to maintain potentially hazardous food at the required temperature during storage. Each potentially hazardous food storage facility is to have a numerically scaled indicating thermometer, accurate to plus or minus 2 degrees F (1.1 degrees C), available and used to measure the temperature of food stored in the facility or installed to measure the air temperature in the coldest part of the facility.

Transportation

14-4.60 Transportation.

During transportation, food utensils, equipment and tableware are to be protected from contamination, including maintenance of hot or cold temperature requirements. Original individual packages do not need to be over-wrapped or covered if the original package has not been torn or broken.

Toxic Materials

14-4.70 Poisonous and toxic materials; restrictions; storage.

- (a) In pushcarts, poisonous and toxic materials are restricted to hand and utensil cleaners and utensil sanitizers.
- (b) In mobile food service establishments, poisonous and toxic materials are restricted to hand, utensil and equipment cleaners, and utensil and equipment sanitizers. Vehicle maintenance materials must not be stored in parts of the vehicle where food is stored, prepared or served.
- (c) Poisonous and toxic materials are to be stored in areas designated for such use separate from food storage.
- (d) Bactericides, cleaning compounds and sanitizers used on food-contact surfaces are not to leave toxic residues on such surfaces.
- (e) First-aid supplies and personal medications are to be restricted to designated locations.

Personnel

14-4.80 Personnel

All persons handling food are to be free from infectious disease, which can be transmitted by foods and are not to have a boil, infected cut or sore, or respiratory disease. They are to wear clean clothing, not to smoke or use tobacco while handling food or in food preparation areas, and to use hair restraints that minimize hair contact with hands, food and food-contact surfaces. All personnel handling food are to wash their hands with soap and water after using the toilet, smoking, eating, or when soiled.

14-4.81 Personnel Training.

The permit-issuing official may establish and conduct or designate training programs and require that owners and/or operators of mobile food service establishments or pushcarts attend them.

Food Preparation and Service

14-4.90 Food Preparation and Service.

Food is to be prepared and served with no bare hand contact unless the food will be subsequently heated to 140 degrees Fahrenheit (60 degrees Celsius) or greater for foods that were not previously heated or to 165 degrees Fahrenheit (73.9 degrees Celsius) or greater for foods that are being heated for a second or subsequent time. Convenient and suitable utensils and/or sanitary gloves are to be provided and used to prepare or serve food to eliminate bare hand contact and prevent contamination. Waxed paper, napkins or equivalent barrier to prevent hand contact may be used to serve food.

14-4.91 Product Thermometers.

Metal stem-type numerically scaled indicating thermometers accurate to plus or minus 2 degrees F (1.1 degrees C) are to be provided and used to determine that proper internal cooking, holding or refrigeration temperatures of all potentially hazardous foods are obtained and maintained.

14-4.92 Thawing of Potentially Hazardous Foods.

Potentially hazardous foods are to be thawed:

- (a) in refrigerated facilities at a temperature not to exceed 45 degrees F (7.2 degrees C);
- (b) 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 a microwave oven; or
- (c) as part of the conventional cooking process. Whole frozen poultry or poultry breasts, other than a single portion, must be completely thawed prior to conventional cooking, except for a single portion intended for service to an individual consumer.

14-4.93 Service of Milk and Milk Products, Dairy or Nondairy Creaming and Whitening Agents, Condiments and Ice; Dispensing Utensil Use and Storage.

- (a) Milk and milk products served to the consumer are to be in an unopened commercially filled package.
- (b) Dairy and nondairy creaming or whitening agents are to be provided in an individual service container.
- (c) Condiments, seasoning and dressings are to be provided in individual packages, from protected dispensers or containers or in the original container or pour-type dispenser. Sugar for consumer use is to be provided in individual packages or pour dispensers.
- (d) Ice for consumer use is to be dispensed by using scoops, tongs or other ice-dispensing utensils or through automatic self-service dispensing equipment. Ice dispensing utensils are to be stored on a clean surface or in the ice with the dispensing utensil handle extended out of the ice.
- (e) Suitable dispensing utensils are to be used by employees. Between uses, the utensils are to be:

- (1) stored in the food with the dispensing utensil handle extended out of the food;
or
- (2) stored clean and dry.

14-4.94 Display and Service of Food.

- (a) Food placed on display is to be protected against contamination. The quantity of food displayed is to be limited to immediate needs.
- (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 are to be protected to prevent broken glass from falling into food or onto food-contact surfaces.

14-4.95 Commissaries.

- (a) All mobile food service establishments and pushcarts are to be serviced only at a commissary operated under a valid permit issued under Subpart 14-1 of this Part or operated under license or permit of an appropriate regulatory authority at a frequency necessary to maintain the sanitary conditions of the mobile unit or pushcart, and in any event at least daily for pushcarts and every 72 hours for mobile food service establishments.
- (b) All food served by mobile food service establishments and pushcarts is to be obtained from its commissary or other source meeting the requirements of section 14-1.31 of this Part.

Equipment and Utensils

14-4.100 Construction.

Equipment and utensils are to be constructed of safe materials, which will not contaminate or otherwise affect food. Such materials are to be resistant to denting, buckling, pitting, chipping, distortion, cracking and crazing, and are to be smooth, easily cleanable and free from breaks, open seams, cracks, chips, pits and similar imperfections. Equipment and utensils are to be free from difficult-to-clean internal corners and crevices. Food-contact surfaces are to be readily accessible for cleaning.

14-4.101 Equipment and Utensils; Material Permitted and Prohibited.

- (a) Materials, including food-grade plastics used in the construction and repair of equipment and utensils, are to be nontoxic, not affected by foods, cleaning compounds, or such other substances, which may be found in the use environment, nonabsorbent and durable under normal use. They are not to impart odor, color or taste nor to contribute to the contamination of food, and are to maintain their original properties under repeated use. Painted food-contact surfaces are prohibited.
- (b) Hard maple or other equivalent nonabsorbent material meeting the above criteria may be used for cutting boards and work surfaces, and are to be maintained in a smooth, clean condition.
- (c) Tubing conveying beverages or beverage ingredients is to be fabricated from safe materials. All lines conducting carbon dioxide gas are to be stainless steel, food-grade

plastic or other material that will not produce toxic substances when exposed to carbon dioxide or carbonated water.

14-4.102 Equipment Acceptable.

Equipment installed in mobile food service establishments is acceptable in that establishment provided that it is in good repair, maintained in a sanitary condition, the food-contact surfaces are nontoxic and it performs its intended function in a satisfactory manner without contaminating food by normal use.

14-4.103 Definitions Relating to Equipment and Utensils.

- (a) Approved means that under conditions of use the State Commissioner of Health, based on evaluation of the physical characteristics and usual usages, has determined it to be in conformance with good public health practices.
- (b) Easily cleanable means readily accessible and of material and finish fabricated so that residues may be completely removed by normal cleaning methods.
- (c) Equipment is all stoves, ranges, hoods, tables, counters, refrigerators, sinks and similar items other than utensils, used in the operation of a mobile food establishment.
- (d) Food-contact surfaces are the surfaces of equipment, utensils, kitchenware and tableware which are normally contacted by food or which food may contact and drain back into food or onto food-contact surfaces.
- (e) Food-grade when used as a description means that the material, object, equipment or item is nontoxic, will not contribute any contaminant to food through migration or its own deterioration under usual conditions of regular use, and is constructed or fabricated to perform its intended function in an acceptable manner.
- (f) Kitchenware is all multi-use utensils other than tableware used in the storage, preparation, transfer, conveyance or service of food.
- (g) Nonfood-contact surfaces are surfaces other than food-contact surfaces.
- (h) Single-service articles are items intended by the manufacturer to be discarded after using item once for eating and drinking.
- (i) Tableware is all multi-use eating and drinking utensils.
- (j) Utensil is any tableware and kitchenware used in the storage, preparation, transfer or service of food.

14-4.104 Single-Service Articles; When Required.

Single service articles are to be furnished to consumers at all mobile food service establishments and pushcarts. Single-service articles are to be discarded after use.

14-4.105 Equipment Location.

Equipment is to be located and installed in a way that prevents food contamination and facilitates cleaning the establishment. Unobstructed working spaces are to be provided sufficient to permit employees to perform their duties readily without contamination of food or food-contact surfaces by clothing or personal contact.

Equipment and Utensil Cleaning and Sanitation

14-4.110 Cleaning Frequency.

- (a) Food-contact surfaces are to be washed, rinsed and sanitized before use and after any interruption of operations and when contamination may have occurred.
- (b) Equipment and utensils used for the preparation of potentially hazardous foods are to be washed, rinsed and sanitized before use each day and during the day when required to protect food from contamination. The food-contact surfaces of grills, griddles and similar cooking devices and the cavities and door seals of microwave ovens are to be cleaned at least once a day. This does not apply to hot oil cooking equipment and hot oil filtering systems. Food-contact surfaces of all cooking equipment are to be kept free of encrusted grease deposits and other accumulated soil.
- (c) Nonfood-contact surfaces of equipment are to be cleaned as often as necessary to keep the equipment free of accumulations of dust, dirt, food particles and debris.
- (d) Clean and sanitized equipment and utensils, including single-serve articles, are to be protected from contamination at all times prior to use.

14-4.111 Manual Facilities.

- (a) The preferred manual method of cleaning and sanitizing equipment and utensils is to use a three-compartment sink; to wash in the first compartment with hot water and a detergent; rinse in clean hot water in the second compartment; and sanitize in the third compartment.
- (b) A two-compartment sink is an acceptable method where equipment and utensils are washed in a hot detergent-sanitizer solution kept clean and at the manufacturer's recommended concentration in the first compartment and rinsed in a solution containing the same detergent-sanitizer at a kept concentration recommended by the manufacturer. The detergent-sanitizer must be one acceptable to the Commissioner of Health.
- (c) The procedure used to clean and sanitize must produce an average plate count of not more than 100 colonies on the surface of utensils examined and free from coliform bacteria.

14-4.112 Definition of Sanitization; General Requirements.

Sanitization is effective bactericidal treatment by heat or chemical means, acceptable to the Commissioner of Health, which destroys pathogens on surfaces treated.

- (a) The following are acceptable methods of sanitizing in a mobile food service establishment:
 - (1) immersion for at least one minute in a clean solution containing at least 50 parts per million of available chlorine and a temperature of at least 75 degrees F (23.9 degrees C);
 - (2) 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 F (23.9 degrees C);
 - (3) immersion in a clean solution containing any other chemical sanitizing agent acceptable to the State Commissioner of Health that will provide the equivalent bactericidal effect of a solution containing at least 50 parts per million of available chlorine as hypochlorite at a temperature of at least 75 degrees F (23.9 degrees C) for one minute; or

- o (4) swabbing with a solution of at least twice the strength required for that sanitizing solution when used for immersion.
- (b) Chemicals used for sanitizing are not to have concentrations which will leave toxic residues on surfaces treated. A test kit or other device is to be provided and used that accurately measures the parts per million concentration and pH when required of the solution used.

14-4.113 Drainboards.

Drainboards of adequate size are to be provided and used for the proper handling of solid items prior to washing and of clean items following sanitization. Drainboards are to be self-draining and to be 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 clean items following sanitization is allowed.

14-4.114 Drying.

All equipment and utensils are to be air-dried after sanitizing.

14-4.115 Wiping Cloths.

- (a) Moist cloths used for wiping food spills on kitchenware and food-contact surfaces of equipment are to be used only for this purpose. These cloths are to be stored in a clean sanitizing solution between uses.
- (b) Moist cloths used for cleaning nonfood-contact surfaces of equipment such as counters and shelves are to be stored in a sanitizing solution between uses and are to be used only for this purpose.

Water Supply

14-4.120 Water Supply.

- (a) Water supplied to a mobile food service establishment or pushcart is to be obtained from a supply complying with the requirements of Part 5 of this Title. The water storage tank, fill piping and distribution piping are to be installed and maintained to protect the water from contamination. The entire system is to be constructed to be drained by gravity.
- (b) A water system with a storage tank of at least 40 gallons is to be provided in a mobile food service establishment unless all food served is prepackaged and wrapped at a commissary or food processing establishment, or a lesser or greater amount is acceptable to the permit-issuing official. The permit-issuing official may allow mobile food service establishments that perform minimal food handling away from the commissary to carry less than 40 gallons of water, providing that a sufficient quantity of water be stored for food preparation, utensil cleaning and handwashing.
- (c) Bottled and packaged potable water is to be obtained from a source approved by the State Commissioner of Health and handled and stored in a way that protects it from contamination. Bottled and packaged potable water is to be dispensed in the original container.

Liquid Wastes and Sewage

14-4.130 Liquid Wastes and Sewage Holding and Disposal.

Sewage and liquid wastes are to be stored in a permanently installed holding tank that has at least 15 percent greater capacity than the water supply tank in a manner which protects the premises, personnel and contents within the establishment and surroundings from contamination. All plumbing is to be constructed and maintained to prevent contamination of the potable water supply, food equipment, utensils, the premises, contents, employees and patrons. All sewage and liquid waste is to be disposed of in a public sanitary sewer or a sewer disposal system constructed and operated in a manner acceptable to the permit-issuing official.

Handwashing

14-4.140 Mobile Food Service Establishment Handwashing Facilities.

- (a) Mobile food service establishments are to have adequate handwashing facilities provided and maintained in the food preparation areas. Sinks not in use for food storage, preparation or processing or not in use for utensil or dishwashing may be used for handwashing.
- (b) Each handwashing facility is to be provided with running hot and cold or tempered potable water.
- (c) Each handwashing facility is to be provided with handcleaning soap or detergent kept in a sanitary storage receptacle. Individual single-service towels are to be provided. Common towels are prohibited.
- (d) Handwashing facilities are to be kept clean and in good repair.
- (e) Handwashing signs are to be posted at handwashing facilities.

14-4.141 Pushcard Handwashing Facilities.

Pushcarts are to have handwashing facilities for the operator. This handwashing facility is to be a supply of clean, potable water, soap or detergent, a receptacle to hold waste water and paper towels.

14-4.142 Handwashing Facilities Exemption.

Handwashing facilities are not required where the food served is limited to prepackaged, prewrapped items.

Gargage and Refuse

14-4.150 Garbage and Refuse Storage and Disposal.

Within a mobile food service establishment, garbage and refuse is to be stored, handled and disposed of in a manner that protects food and food-contact surfaces from contamination and the premises from litter.

- (a) Garbage and refuse is to be kept in durable, easily cleanable, insect-proof and rodent-proof containers.

- (b) Adequate refuse containers are to be made available for customer use to dispose of refuse, wrapping materials, single-service items and uneaten food resulting from the operation of the mobile establishment.
- (c) The operator is responsible to maintain, empty and clean all refuse containers furnished as part of the operation.

14-4.151 Receptacles.

Pushcart operators are to furnish and maintain refuse receptacles for wastes generated by their own operations and for wrapping materials or single-service articles furnished consumers.

14-4.152 Debris and Consumer Litter - Operator Responsibility.

The operator of a mobile food service establishment or pushcart is responsible for cleanup of debris caused by the operation and consumer littering.

Insect and Rodent Control

14-4.160 Insect and Rodent Control.

The interior of pushcarts and mobile food service establishments are to be free of insects, rodents, harborage, and insect or rodent breeding conditions. Openings to the outside are to be protected against the entrance of insects and rodents. Pesticides are not to be used in place of or as a substitute for proper sanitation.

Construction and Maintenance of Physical Facilities

14-4.170 Floors.

- (a) Floors and floor coverings of mobile food service establishments are to be maintained clean and in good repair and are to be smooth, durable and nonabsorbent. The use of sawdust, wood shavings, peanut hulls or similar material as a floor covering in food preparation and storage areas is prohibited.

14-4.171 Walls and Ceilings.

- (a) Walls and ceilings, including doors, windows, skylights and similar closures of mobile food service establishments are to be maintained clean and in good repair.
- (b) Light fixtures, vent covers, wall-mounted fans, decorative materials and similar equipment attached to walls and ceilings are to be maintained clean and in good repair.
- (c) Wall and ceiling covering materials are to be attached and sealed to be easily cleanable and to prevent insect harborage.

14-4.172 Lighting.

Permanent artificial light sources are to be installed and maintained to provide at least 30 footcandles of light on all food preparation surfaces and at equipment or utensil washing work levels.

14-4.173 Ventilation.

Enclosed mobile food service establishments and pushcarts are to be provided with sufficient ventilation to keep them free of excessive heat, steam, condensation, vapors, odors, smoke and fumes. Ventilation systems are not to create an unsightly or harmful discharge or create a nuisance.

Miscellaneous

14-4.180 Premises.

- (a) Mobile food service establishments and all parts of the property used in connection with operations of the establishment are to be kept clean and free from litter.
- (b) Only articles necessary to the operation and maintenance of the mobile food service establishment are to be in the establishment.

14-4.181 Commissary.

A mobile food service establishment and pushcart commissary is to meet the requirements of this Subpart and Subpart 14-1 of this Part and is to be constructed, equipped and maintained so that:

- (a) the interior of the building is clean, free from rodents and insects, odors, pooled water, garbage, debris and unnecessary materials and equipment;
- (b) there is adequate space in the building to permit access for cleaning of the largest mobile unit, separate from storage areas for food, ingredients, equipment, tableware and utensils;
- (c) acceptable cleaning and sanitizing facilities are provided, including storage for cleaned equipment and utensils which protects them from contamination;
- (d) lighting is not less than 30 foot-candles at working surfaces in food handling and equipment cleaning areas;
- (e) toilet and adjacent handwashing facilities are readily available to all employees of mobile units and the depot, together with lockers for clothing and personal possessions;
- (f) storage facilities are constructed and maintained to prevent contamination of all materials and supplies, including mixes, flavors, syrups, edibles, single-service items;
- (g) a supply of hot and cold potable water under pressure is available whenever needed in quantities required for sanitation and other operations;
- (h) all plumbing is constructed and installed in a manner to protect the water supply, food, equipment and utensils from contamination;
- (i) all waste, sewage and waste water is disposed of in a system accepted by the permit-issuing official without contamination of the premises; and
- (j) the entire premises is operated and maintained in a sanitary condition, does not create a nuisance, and is not a potential source of contamination.

14-4.182 Animals.

Live animals, including birds and turtles are to be excluded from mobile food service operations.

Enforcement

14-4.190 Permits; Application, Issuance, Inspection.

- (a) A valid permit issued by the permit-issuing official having jurisdiction is required for lawful operation of a mobile food service establishment or pushcart. This permit is to be prominently displayed where it can be seen by the consumer. At establishments that serve retail frozen desserts the \$25 permit fee imposed by Public Health Law Section 225(5)(s) shall be paid at the time any other permit fees related to the operation of the food service establishment are collected by the permit-issuing official and the establishment's permit shall indicate that the facility can manufacture and sell retail frozen desserts.
- (b) The term permit-issuing official means the health commissioner or health officer of a city of 50,000 population or over, the health commissioner or health officer of a county or part-county health district, the State regional health director or area director having jurisdiction, a grade I or grade II public health administrator qualified and appointed pursuant to Part 11 of this Title, a public health director or any county health director having all the powers and duties prescribed in Section 352 of the Public Health Law. The health commissioner or health officer of a city of 50,000 population or over, or the health commissioner or health officer of a county or part-county health district, or such grade I or grade II public health administrator or public health director or county health director may designate the director of environmental health of such district; and the State regional health director, or area director may designate the district director as additional persons authorized to issue the permits required by this Subpart.
- (c) Not less than 21 days before starting operation, an application for a permit is to be submitted to the permit-issuing official having jurisdiction. This application is to be completed in full on forms acceptable to the permit-issuing official. This application is to include a complete list of all food which will be served. The permit, when issued, will be valid for service of the items of food listed thereon.
- (d) A permit will be issued subject to the mobile food service establishment or pushcart being constructed, maintained and operated in compliance with this Subpart and not presenting a danger to the health of the consumer or to the public. An applicant's past history of compliance or non-compliance will be a consideration in evaluating each of the previously mentioned criteria. The condition of the mobile food service establishment or pushcart, its equipment, utensils, personnel, mode of operation, surroundings, water supply, sewage disposal, waste handling, furnishings, food and appurtenances are all factors in determining whether its continued operation may affect public health. After reviewing the application and, in the case of a mobile food service establishment making a preliminary inspection, a permit may be issued or the operator advised of reasons prohibiting issuance of such a permit by the permit-issuing official.
- (e) It is unlawful for a mobile food service establishment or pushcart to operate without a permit during the 21 days from the time a permit has been requested. In the event the permit-issuing official or his designated representative does not make an inspection of the mobile food service establishment or pushcart during this 21-day period, operations may commence without a permit on the 22nd day and may be continued without violation of this Subpart until such time as the permit-issuing official or his designated representative makes an inspection and issues a permit or issues an order to cease operation for cause.
- (f) The designated representative of the permit-issuing official is a person authorized to perform inspections of mobile food service establishments or pushcarts on behalf of the permit-issuing official. Persons authorized to make inspections are to complete required inspection report forms and to take mandated enforcement actions required by this Subpart.

14-4.191 Preoperational Review.

It is the responsibility of the operator of a mobile food service establishment or pushcart to construct, equip, furnish, maintain and operate the mobile food service establishment or pushcart under his control in compliance with the requirements of this Subpart and other applicable laws, rules and regulations. Prior to constructing, major renovation, or commencing operation of a mobile food service establishment or pushcart, the permit-issuing official may require all mobile food service establishment and pushcarts under his control to submit sketches or plans showing the floor layout, equipment, plumbing, ventilation, refuse storage facilities and similar information. Submission and review of plans does not relieve the operator of a food service establishment or his successor from meeting all requirements of this code.

14-4.192 Term of Permits; Nontransferable.

- (a) Permits will be issued for a period of time not to exceed one year. The permit-issuing official will determine the term of the permit based on the record of compliance of the establishment and the potential for risks to public health presented by operation of the establishment. After due notice and an opportunity for a hearing, the permit-issuing official may at any time change the term of any permit, or the items of food, which may be served.
- (b) Permits are nontransferable from one owner or operator to another, or from one mobile food service establishment or pushcart to another.

14-4.194 Enforcement.

- (a) Operation of a mobile food service establishment or pushcart without a permit is a violation of this Subpart. The permit-issuing official or his designated representative may order any mobile food service establishment or pushcart in his jurisdiction, operating without a valid permit, to close and cease all food operation immediately and to remain closed until the establishment or operation has obtained and displays a valid permit.
- (b) For serious, repeated or persistent violations of any of the requirements of this Subpart, or for interference with the permit-issuing official or his designated representative in the performance of his duties, the permit may be revoked after notice and an opportunity for a hearing has been provided by the permit-issuing official.
- (c) The permit-issuing official may suspend a permit and order immediate cessation of operations and service of food at a mobile food service establishment or pushcart within his jurisdiction when, in his opinion, continued operation is an imminent hazard to public health. Any person so ordered is to comply immediately, and within 15 days is to be provided with an opportunity to be heard and to present proof that continued operation does not constitute a danger to the public health

14-4.195 Access.

The permit-issuing official or his designated representative is to be permitted access for purposes of inspection at all times while the mobile food service establishment or pushcart is in operation, whether open to the public for service of food or not. Refusal of admittance after proper identification, is cause for action to obtain permit revocation and an order to close.

14-4.196 Embargo.

- (a) The permit-issuing official or his designated representative may, by written order, place an embargo order on food which he determines or has reason to believe to be contaminated, unfit for human consumption, or from an unapproved source. Such food may not be used, sold, donated, discarded, repackaged or otherwise disposed of until such embargo is lifted by the permit-issuing official, his designated representative, or court of competent jurisdiction. The permit-issuing official shall provide the owner of the food embargoed, or the representative of the owner, an opportunity to be heard within 15 calendar days after the date of order of embargo. The hearing officer, based on the evidence produced at such hearing, will make a recommendation to the permit-issuing official that he vacate the order of embargo or, by written order, direct the embargoed food, or any part of it, to be continued to be held under embargo pending further testing, analysis or court action, to be destroyed, to be denatured and rendered inedible, or to be released for return to a food-processing plant for further processing or to be released to another regulatory agency. The permit-issuing official will consider the hearing officer's recommendation in determining the disposition of the embargoed food. The owner of the food embargoed shall be deemed to have received notice delivered to any of his employees or agents.
- (b) The permit-issuing official or his designated representative may take representative samples of the suspected food for analysis upon payment of retail value of the sample taken.

14-4.197 Suspension of Permits.

Permits may be suspended temporarily by the permit-issuing official, after notice and an opportunity to be heard, for failure of the permit holder to comply with the requirements of this Subpart or with any lawful notice or order issued by the permit-issuing official or his designated representative.

14-4.198 Closure.

When action is taken to order closure and cessation of operations, the permit-issuing official or his designated representative is to:

- (a) conspicuously post a notice or placard at each entrance of the food-vending commissary, or on the mobile food service vehicle, stating the existence of such order and the authority for such order. This order is not to be concealed, mutilated or altered by any person or removed without permission of the permit-issuing official; and
- (b) public notice of the order, with the reasons for the order, in one or more newspapers in the county or city in which the commissary is located, or the mobile food establishment operates.

14-4.199 Waiver.

The permit-issuing official may waive, in writing, any of the requirements of this Subpart, and the waiver included as a condition of the permit to operate, when it reasonably appears that the public health will not be endangered by such waiver. All such waivers are to be only for the same period as the term of the permit.

14-4.200 Reporting of Foodborne Disease.

Any food service operator having actual or constructive knowledge of the occurrence of illness allegedly due to the consumption of food served at the establishment, shall report the same within 24 hours by telephone, telegram or in person to the permit-issuing official.

14-4.201 Separability.

If any provision of this Subpart is held invalid such invalidity shall not affect other provisions which shall be given effect without the invalid provisions.