

DEPARTMENT OF HEALTH AND MENTAL HYGIENE  
COMMISSIONER OF HEALTH AND MENTAL HYGIENE

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NOTICE OF INTENTION TO AMEND CHAPTER 21 OF TITLE 24  
OF THE RULES OF THE CITY OF NEW YORK TO PRESCRIBE A FEE TO  
BE CHARGED TO DEFRAY COSTS INCURRED IN ADMINISTERING  
MOBILE FOOD VENDOR FOOD PROTECTION COURSE

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IN COMPLIANCE WITH SECTION 1043 of the New York City Charter and pursuant to Sections 81.15 and 89.03 of the New York City Health Code, notice is hereby given of the proposed amendment to Chapter 21 of the Rules of the City of New York to prescribe a fee to be charged by the Department to defray the costs incurred in administering the mobile food protection course required to be taken by all mobile food vendors.

NOTICE IS HEREBY GIVEN THAT THE DEPARTMENT WILL HOLD A PUBLIC HEARING ON THE PROPOSAL ON WEDNESDAY, APRIL 21, 2004 FROM 2:00 P.M. TO 4:00 P.M. IN THE THIRD FLOOR BOARDROOM (ROOM 330) AT 125 WORTH STREET, NEW YORK, NEW YORK 10013.

PERSONS INTERESTED IN PREREGISTERING TO SPEAK SHOULD NOTIFY, IN WRITING, RENA BRYANT, SECRETARY TO THE DEPARTMENT, 125 WORTH STREET, CN-31, NEW YORK, NEW YORK (212) 788-5010 BY TUESDAY, APRIL 20, 2004. PLEASE INCLUDE A TELEPHONE NUMBER WHERE, IF NECESSARY, YOU MAY BE REACHED DURING NORMAL WORKING HOURS. SPEAKERS WILL BE LIMITED TO FIVE (5) MINUTES.

PERSONS WHO REQUEST THAT A SIGN LANGUAGE INTERPRETER OR OTHER FORM OF REASONABLE ACCOMMODATION FOR A DISABILITY BE PROVIDED AT THE HEARING ARE ASKED TO NOTIFY RENA BRYANT, SECRETARY TO THE DEPARTMENT, 125 WORTH STREET, CN-31, NEW YORK, NEW YORK 10013; (212) 788-5101 BY WEDNESDAY APRIL 7, 2004.

REGISTRATION WILL BE ACCEPTED AT THE DOOR UNTIL 2:00 P.M. ON APRIL 21, 2004. HOWEVER, PREFERENCE WILL BE GIVEN TO THOSE WHO PREREGISTER.

PERSONS WHO WISH TO COMMENT ON THE PROPOSED RULES, IN WRITING, MUST SUBMIT WRITTEN COMMENTS TO RENA BRYANT, SECRETARY, 125 WORTH STREET, CN-31, NEW YORK, NEW YORK 10013 ON OR BEFORE TUESDAY, APRIL 20, 2004.

WRITTEN COMMENTS RECEIVED BY THE SECRETARY AND A TRANSCRIPT OF THE PUBLIC HEARING WILL BE AVAILABLE FOR PUBLIC INSPECTION WITHIN A REASONABLE TIME AFTER RECEIPT, BETWEEN THE HOURS OF 9:00 A.M. AND 5:00 P.M. AT THE OFFICE OF THE SECRETARY.

### STATUTORY AUTHORITY

This amendment to Chapter 21 of Title 24 of the Rules of the City of New York is authorized pursuant to Sections 389 and 1043 of the New York City Charter granting rulemaking authority to the Commissioner and Department of Health and Mental Hygiene as well various provisions of the New York City Health Code, specifically subsections (a) and (c) of Section 81.15 and subsection (b) of Section 89.03. Subdivision (1) of subsection (a) of Section 81.15 provides that “no person who is charged with the operations of a food service 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.” It provides further “no person required to have a license issued pursuant to Section 89.03 (b) of this Code shall be issued such license unless he or she obtains such a certificate.” Section 89.03(b) provides that no mobile food vendor license “....shall be issued to any person after January 1, 2004 unless such person submits proof satisfactory to the Department of successful completion of a food protection course in accordance with section 81.15 of this Code.” Section 81.15(c) provides that persons enrolling in such food protection 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.”

### STATEMENT OF BASIS AND PURPOSE

On December 12, 2002, the Board of Health adopted a resolution amending Sections 81.15(a) and 89.03(b) of the Health Code to require that all applicants for mobile food vendor licenses successfully complete a course in food protection. Specifically, Section 81.15(a) was amended to require that all mobile food vendors, including those operating non-processing units, must successfully complete a food protection course, pass an examination administered by the Department and obtain the certificate evidencing the course’s successful completion in order to obtain a mobile food vendor license. Section 89.03(b) was also amended to specify that no food vendor license would be issued to any person after January 1, 2004 unless they submit proof satisfactory to the Department of successful completion of the food protection course (the certificate) in accordance with Section 81.15.

Prior to these amendments, mobile food vendors operating processing units had been required to successfully complete a food protection course, as were all supervisors of other food establishments. Those operating mobile food non- processing units, however, were not so

required. The Department conducts its general food protection course at the Health Academy but also has approved courses administered by others. The courses given, however, do not provide training on how to safely operate a mobile food unit. As licensed mobile food vendors may operate both processing and non-processing units, and due to Bureau of Food Safety and Community Sanitation data evidencing a high percentage of violations issued to food vendors and failed operational inspections by these vendors, it was decided that all mobile food vendor licensees would be required to successfully complete a food protection course.

The inspection data compiled by the Bureau suggested that the food protection course offered to supervisors of food establishments was inadequate for mobile food vendors. Mobile food vending differed from conventional food establishments in important respects. For example, unlike restaurants, mobile food vendors do not usually have access to facilities such as sinks and toilets. Mobile food units are also generally operated outdoors on crowded streets and in all kinds of weather. The general food protection course did not deal with how to cope with such circumstances.

Accordingly, we are proposing that the Health Academy be authorized to provide more relevant instruction to mobile food vendors as part of a new food protection course tailored specifically to the mobile food vendor experience. The Department has prepared this course to last for eight hours and to be given over a two day period. The course will provide training/instruction to mobile food vendors in areas/principles deemed necessary by the Department to ensure compliance with the requirements of the New York City Health Code, the State Sanitary Code and other applicable laws and Departmental rules and procedures. For example, the course given is expected to cover such areas as personal hygiene, the cleaning of equipment and utensils and principles of food safety and food handling in a setting that simulates actual mobile food vending conditions.

Pursuant to Section 81.15(c) of the Health Code, the Department "...may conduct food protection courses, or any part thereof...." This provision also provides that those "...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." As a result of a fee analysis performed by the Department's Bureau of Financial Systems and Analysis, it has been determined that the cost per registrant to the Department in administering the newly instituted Food Vendor Food Protection Course is fifty-six dollars (\$56.00).

As a result of the above, we are proposing that Chapter 21 of Title 24 of the Rules of City of New York, be amended to codify the fee to be charged for the new food protection course for mobile food vendors to be administered at the Health Academy. A proposed new section 21-06 is to be added entitled Mobile Food Vendor Food Protection Course. Subsection (a) of this section will outline the contents of the Food Protection Course for mobile food vendors. Subsection (b) prescribes the fee to be payable to the Department by those taking the course.

STATEMENT PURSUANT TO SECTION 1042----- REGULATORY AGENDA

The proposal to amend Section 81.15 of the Health Code to require that a food protection course be taken by every licensed food vendor, including those operating non-processing units, was included in the Fiscal Year 2003 Regulatory Agenda. However, the necessity for this proposal to amend Chapter 21 of Title 24 of the Rules of the City of New York to codify a fee for the new food protection course for all mobile food vendor licensees was not realized until after the FY 2004 Regulatory Agenda was published.

THE PROPOSAL IS AS FOLLOWS:

Note - Matter underlined is new:

RESOLVED, that Chapter 21 of Title 24 of the Rules of the City of New York as added on the 23<sup>rd</sup> day June of 1997 be and the same hereby is amended by adding a new Section 21-06, to be printed together with explanatory notes as follows:

Section 21-06 Mobile Food Vendor Food Protection Course; fee

(a) In accordance with Sections 81.15(a) and (c) and 89.03(b) of the New York City Health Code, the Department conducts a mobile food vendor food protection course at its Health Academy that is required to be taken by all licensed mobile food vendors. This course is designed to provide training/instruction to mobile food vendors in areas/principles deemed necessary by the Department to ensure compliance by mobile food vendors with the requirements of the New York City Health Code, the State Sanitary Code and other applicable laws, rules and Departmental procedures.

(b) The fee payable to the Department for this course, which includes the issuance of a Mobile Food Vendor Food Protection Course Certificate, shall be fifty-six dollars (\$56.00).

Notes: This rule was adopted on \_\_\_\_\_ to prescribe a fee to be charged to defray the costs incurred by the Department in administering the mobile food vendor food protection course.

If adopted this proposed rule amending Chapter 21 of Title 24 the Rules of the City of New York will take effect in accordance with Section 1043 of the New York City Charter.