

**HIDALGO COUNTY, TEXAS**  
**RULES FOR REGULATION OF FOOD**  
**ESTABLISHMENTS**  
**IN THE UNINCORPORATED AREAS OF HIDALGO**

Procedure:	FE.1
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Date Authorized:	
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**Red comments are changes to the current (2008) policy**

## REFERENCE

Form FE.1.1 "How to start a food business in Hidalgo County"  
Form FE.1.2 "Food vendor permit application"  
Form FE.1.3 "What kind of food permit do I need?"  
Form FE.1.4 "Obtaining a temporary food vendor permit"  
Form FE.1.5 "Restroom Agreement for Mobile Food Vendors"  
Form FE.1.6 "Electricity Agreement for Mobile Food Vendors"  
Form FE.1.7 "Requirements for a food vendor"  
Form FE.1.8 "Daily activity log"  
Form FE.1.9 "Maintenance and Service log"

## PREFACE

Hidalgo County Health & Human Services - Environmental Division (HCHHS-ED) is authorized to enforce state and federal laws and rules adopted under state law concerning food service establishments, retail food stores, mobile food units, and roadside food vendors, pursuant to Texas Health and Safety Code Section 437.002(a), as amended. TEX. HEALTH & SAFETY CODE ANN. §§ 437.001 *et seq.*, as amended. 25 TEX. ADM. CODE §§ 229.161-229.171, 229.173 -229.175, as amended. HCHHS is a participating agency in the FDA Voluntary National Retail Food Regulatory Program Standards, 2011.

To enforce state law and rules adopted under state law, Hidalgo County by order may require food service establishments, retail food stores, mobile food units, and roadside food vendors in unincorporated areas of the county, including areas in the extraterritorial jurisdiction of a municipality, to obtain a permit from the County. TEX. HEALTH & SAFETY CODE ANN. §437.003, as amended. 25 TEX. ADM. CODE § 229.373, as amended.

Pursuant to Texas Administration Code Title 25, Chapter 229, Section 169(a)(1), Hidalgo County may impose additional requirements to protect against health hazards related to the conduct of food establishments as a mobile operation, may prohibit the sale of some or all potentially hazardous food, and when no health hazard will result, may waive or modify certain requirements relating to physical facilities. 25 TEX. ADM. CODE § 229.169( a)( 1), as amended.

## I. PURPOSE

The purpose of these **Rules** is to safeguard public health and better assure that consumers obtain food that is safe, unadulterated, and honestly presented by establishing uniform monitoring for food establishments in the unincorporated areas of

Hidalgo County, including areas in the extraterritorial jurisdiction of a municipality, **or a municipality that does not have a health department.**

## II. DEFINITIONS

Words and phrases used in these Rules shall have the meanings provided in Health and Safety Code, Chapter 437 and Texas Administrative Code Title 25, Chapter 229. TEX. HEALTH & SAFETY CODE ANN. §§ 437.001 *et seq.*, as amended. 25 TEX. ADM. CODE §§ 229.161 -229.171, and 229.173 -229.175, as amended.

## III. PERMITS

A. No person shall operate a food establishment in unincorporated areas of the county, including areas in the extraterritorial jurisdiction of a municipality, without having a permit issued by HCHHS-ED. Permits are not transferable from one person to another or from one location to another location, except as permitted by these Rules. A valid permit must be posted in or on every food establishment in a conspicuous place. Only a person who complies with the requirements of state law and regulations and these Rules shall be entitled to a permit.

B. A food establishment operated solely by a nonprofit organization is exempt from the permitting requirement of these Rules, but is not exempt from compliance with state law and regulations. An organization claiming exemption from these Rules as a nonprofit organization shall provide HCHHS-ED with such documentation as HCHHS-ED deems necessary to prove the establishment's current tax-exempt status as a nonprofit organization.

C. An establishment is not a food establishment for the purposes of these Rules if it is excluded from the definition of food establishment under Texas Administrative Code Title 25, Chapter 229, Section 162(40), as amended. 25 TEX. ADM. CODE § 229.162(40), as amended.

**D. If an inspector finds that a food vendor is operating without a valid permit issued by HCHHS-ED, the food establishment will be closed for business until the permit is appropriately acquired by the vendor at HCHHS-ED.**

- 1. 1<sup>st</sup> violation: Verbal and/or written notice to begin permitting process before next operational period.**
  - a. Establishment/vendor must close for business until permit is obtained.**
- 2. 2<sup>nd</sup> violation: If same vendor continues to operate without a valid permit**
  - a. Vendor will be closed for business until valid permit is obtained.**
  - b. Voluntary destruction of food product will be requested by inspector.**
  - (Texas Food Establishment Rules 229.161 -175) and**
  - c. Citation issued to vendor**

#### IV. ISSUANCE OF PERMIT

- A. Any person desiring to operate a food establishment must make a written application for a permit on forms provided by HCHHS. The application must contain the name and address of each applicant, the location and type of the proposed food establishment, the applicable fee, and signature of applicant(s). An incomplete application will not be processed, even if initially accepted. Failure to provide all required information or falsifying information required may result in denial or revocation of the permit. Payment for a permit by a check that is returned for insufficient funds may result in revocation of the permit. Renewals of permits are required on an annual basis, unless otherwise specified and the same information is required for a renewal permit as for an initial permit.
- B. Prior to the approval of an initial permit or the renewal of an existing permit, HCHHS shall inspect the proposed food establishment to determine compliance with state law and local regulations. The applicant or permit holder must pay all applicable fees before a permit is issued.
- C. Any person desiring to construct or extensively remodel a food establishment and whenever a fixed existing structure is converted to use as a food establishment, a person must comply with policies and procedures of the Hidalgo County Planning Department, the Office of Environmental Compliance, and the Office of the Fire Marshal including but not limited to the On-Site Sewage Facility (OSSF) policies and procedures.
- D. The person must present to HCHHS-ED: a routing sheet **with approval** from Planning Department, **Environmental Health (OSSF Division), Environmental Compliance, and an** approved inspection from Fire Marshal. No permit shall be issued until HCHHS-ED determines by final inspection that all construction, remodeling or conversion has been performed in accordance with the approved plans and specifications.
- E. Whenever a food establishment is constructed or extensively remodeled, or whenever a fixed existing establishment is converted to a food establishment, at least one pre-opening inspection shall be made. The purpose of the pre-opening inspection(s) is to ensure compliance with the approved submitted plans, state law, federal regulations, and rules adopted by Hidalgo County.
- 1. Flea market facilities with a permanent restaurant must obtain a food establishment permit and comply with all requirements A-D.**
- F. There shall be an annual renewal, unless otherwise specified of a permit issued under these Rules. The renewal process shall be initiated by inspection to assure compliance with federal, state, and local regulations adopted by Hidalgo County.
- G. Any false statement made in an **application, inspection, and/or maintenance log** is a basis for denial or revocation of the permit.

1. A mobile food vendor must present at every inspection a maintenance log of waste disposal and corresponding receipts.
2. The permit-holder shall maintain a log of all daily operational periods to include:
  - a. date of operation
  - b. time open for business
  - c. time closed for business
  - d. location of operation.

H. Prior to the issuance of a permit, the applicant or permit holder must pay all applicable fees, which may include a new facility inspection fee. HCHHS shall issue a permit to the applicant only if its inspection reveals that the food establishment complies with requirements of these Rules and state law and regulations.

J. An applicant or permit holder that does not comply with federal, state law and local regulations may be denied a permit or the renewal of a permit.

**V. ADDITIONAL REQUIREMENTS FOR MOBILE FOOD ESTABLISHMENTS.  
25 TEX. ADM. CODE § 229.169  
HIDALGO COUNTY COMMISSIONERS COURT**

A. All mobile food establishments including pushcarts and roadside food vendors, shall be readily identifiable by business name, printed in bold black letters not less than three (3) inches in height, no less than one and one-half (1.5) inches in width, permanently affixed, and prominently displayed upon at least two (2) sides of the units.

B. Prior to the approval of the initial permit or renewal of an existing permit, the applicant or permit holder shall provide written details or plans regarding the systems installed for approved water source, distribution, delivery, and retention and for waste, sewage, and wastewater retention, drainage, and disposal or removal. **In addition, a person must comply with policies and procedures of the Hidalgo County Planning Department, Right of Way Department, the Office of Environmental Compliance, and the Office of the Fire Marshal including but not limited to the On-Site Sewage Facility (OSSF) policies and procedures.**

**C. The person must present to HCHHS-ED: a routing sheet with approval from Planning Department, Environmental Health (OSSF Division), Environmental Compliance, and an approved inspection from Fire Marshal. No permit shall be issued until HCHHS-ED determines by final inspection that all referenced County departments recommend approval for the mobile food vendor permit according to the proposed specifications listed on the application.**

D. A pushcart unit shall not exceed four (4) feet in width, eight (8) feet in length, and eight (8) feet in height including a unit's shade umbrella. In the event of an emergency situation, the unit shall be easily movable, controllable, and maneuverable by one (1)

person when the unit is fully loaded. The bottom of the unit shall be at least one (1) foot from the ground. The unit shall not be self-propelled.

1. The unit must have at least 2 (two) reflective devices on each side to be seen in low-light conditions.
2. The unit must be affiliated with a certified commercial vendor.
3. The operator of the unit must wear a reflective safety vest at all times while the unit is in operation.
4. Shall only sell pre-packaged, sealed foods and/or beverages.
5. Shall not sell or prepare fresh food and/or beverages, hot or cold, on the unit.

E. Live animals shall be excluded from the immediate adjacent onsite or adjoining property within 100 feet of surrounding areas of all mobile food establishments.

F. If toilet facilities are not provided on a mobile food establishment, a toilet facility shall be located on an onsite or adjoining property within 300 feet of the mobile food establishment. Upon application for a permit hereunder, a mobile unit operator must provide HCHHS-ED with written and notarized permission by the owner of the toilet facility for use of restrooms by the permit holder and corresponding schedule every 120 days. A mobile unit may not operate when the facility providing the toilet facilities are not accessible. Restroom facilities must be located within a building and must include a flush-type toilet and hand lavatory supplied with hot and cold running water under pressure. If the toilet facilities are Port-A-Cans or similar facilities, the permit will not be approved. This provision does not apply to restricted mobile units (i.e., mobile units that do not engage in any food preparation.).

G. All motor vehicles and/or pull trailers operating as mobile food establishments upon open roads, streets, and highways shall maintain a current Texas motor vehicle inspection sticker and a current Texas motor-vehicle license-plate registration sticker.

1. All mobile units, including push carts, must comply with all Texas Traffic and Safety Laws while the unit is in operation; including Section 285.001 of the Texas Transportation Code, as amended.

H. All mobile vehicles must be commercial grade, generator-powered, and certified to meet all State health standards and Texas Department of Transportation standards.

I. If a mobile vendor is going to utilize electricity of an adjacent commercial business by plugging into an electrical outlet during hours of operation, the mobile vendor must submit a notarized letter of permission for use of electricity by the commercial business owner.

1. The letter should be updated every 120 days and be on file with HCHHS-ED.
2. Outlet must comply with Hidalgo County Fire Marshal, National Fire Protection Association, and International Code Council – International Fire Code rules, regulations, and standards.
3. Outlet must be a standard plug-in type and all cords readily removable.

J. All mobile food vendors serving fresh food must do so in single-serve, single-use containers designed for transport.

K. Flea market establishments allowing the sale of food:

1. Permanent structure food court must have:
  - a. Restroom facilities within 300 feet
  - b. Plumbing with hot and cold water
  - c. Proper waste disposal and
  - d. A permanent structure food court shall consist of at least two (2) or more food vendors operating from a permanent or semi-permanent structure (i.e., not readily moveable).
2. Mobile vendor food courts must have:
  - a. Restroom facilities within 300 feet
  - b. Paved parking space
  - c. Electrical outlet and
  - d. Waste disposal connection
3. All flea market food vendors regardless of type must be in compliance with Hidalgo County Planning Department, Right of Way Department, the Office of Environmental Compliance, and the Office of the Fire Marshal including but not limited to the On-Site Sewage Facility (OSSF) policies and procedures.
4. Flea market owners with a permanent or mobile food court must maintain a current Food Manager's Certification at all times of operation.
5. All persons engaged in the sale and/or preparation of food must maintain a current Food Handler's Certification at all times of operation.

L. Mobile Vendor Food Courts

1. Mobile vendor food courts must have:
  - a. Paved parking space
  - b. Electrical outlet
  - c. Waste disposal connection and
  - d. Appropriate restroom facilities within 300 feet of mobile food vendor vehicles

## **VI. ADDITIONAL REQUIREMENTS**

A. As approved by Order by the Hidalgo County Commissioners Court, HCHHS may impose additional requirements for all food establishments, as follows:

1. *Food Manager's Certificate: The owner of the food establishment and the Manager of the food establishment must obtain a Food Manager's Certificate before a permit is issued.*

2. *Food Handler's Certificate: All employees of a food establishment must obtain a Food Handler's Certificate.*

a. *The Food Handler's Class will be conducted at HCHHS as scheduled.*

- b. The individual must call the HCHHS-ED to register for the class.*
- c. Term: The Food Handler's Certificate shall be valid for two (2) years from the date issued.*
- d. Fee: A fee of \$20.00 (twenty dollars) shall be paid prior to attending the Food Handler's Class.*
- e. A picture identification card will be issued to each individual that satisfactorily completes all requirements of the Food Handler's Class.*

B. As approved by Order of the Hidalgo County Commissioners Court, HCHHS may impose additional requirements for all mobile food vendors, as follows:

- 1. Display: A valid decal shall be displayed by a mobile food vendor.*
  - a. Outside of the service window on the left or right side, used in connection with the mobile food vending operation.*
  - b. On the trailer fender above the tailgate and license plate of an open, flat bed or enclosed trailer used in connection with the mobile food vending operation.*
  - c. At the top right-hand corner on the front of a pushcart, used in connection with the mobile food vending operation.*
  - d. Non-transferability: Mobile food vendor permits shall not be transferred or assigned to alternate units and shall be considered revoked should the character of the food vending operation be changed from that specified in the permit.*
- 2. Term: Mobile food vendor permits shall be valid for one (1) year from the date of issue unless sooner suspended or revoked.*
  - a. Mobile food vendors shall be required to submit to a scheduled inspection every 120 days at Hidalgo County Health & Human Services Environmental Division. Failure to submit to scheduled inspection shall be grounds for suspension or revocation of vendor permit.*
- 3. Notice: All mobile food vendors shall provide and maintain on file with HCHHS Environmental Division current hours of operation at all times.*
  - a. All vendors are subject to random inspection during normal business hours.*

4. *Violation(s): during a scheduled or random inspection*
- a. *Verbal and/or written notice to correct violation(s): May be issued at the discretion of the inspector depending on the type and severity of the violation(s).*
    1. *1<sup>st</sup> violation: Establishment must close for business until violations are corrected.*
      - a. *These violations must be fixed on-site or within the allotted time specified by the inspector.*
      - b. *Voluntary disposal of food product may be requested by the inspector.*
      - c. *Citation may be issued by inspector*
    2. *2<sup>nd</sup> violation: If vendor does not comply within the allotted time, the permit shall be suspended or revoked until violations are corrected.*
      - a. *Voluntary disposal of food product may be requested by the inspector.*
      - b. *Citation may be issued by inspector.*

## **VII. APPLICATION AFTER REVOCATION**

Whenever a revocation of a permit has become final, the holder of the revoked permit shall make written application for a new permit, and the food establishment may be required to submit plans and be subject to a pre-opening inspection.

## **VIII. CRIMINAL PENALTY**

- A. A person commits an offense if the person operates a food service establishment, retail food store, mobile food unit, or roadside food vendor without a permit required by Hidalgo County. TEX. HEALTH & SAFETY CODE ANN. § 437.016, as amended.
- B. An offense under this Section is a Class C Misdemeanor.
- C. Each day on which a violation occurs constitutes a separate offense.

## **IX. INJUNCTION**

The District Attorney of Hidalgo County may sue in district court to enjoin a food establishment, retail food store, mobile food unit, or roadside food vendor from operating without a permit, if one is required. TEX. HEALTH & SAFETY CODE ANN. § 437.015, as amended.

## X. FEES

The following fees are to be paid in connection with applications submitted pursuant to these Rules for the issuance or renewal of a permit.

<u>Type of Establishment</u>	<u>Fee</u>
*Temporary Food Permit (14 days)	\$25.00
**Mobile Food Vendor Permit (1 year)	\$100.00
Food Establishments with 1 – 10 employees	\$100.00
Food Establishments with 10 – 20 employees	\$125.00
Food Establishments with 21 or more employees	\$150.00

\*Separate businesses occupying the same booth must purchase individual permits. A business or individual who operates more than one booth at an event must designate the specific location of each booth at the event and must purchase a separate permit for each booth location.

\*\*If a mobile food vendor has more than one (1) mobile unit to conduct the sale of food products, a separate permit must be obtained for each mobile unit.

## XI. ENFORCEMENT

The provisions of these Rules shall be enforced by the Chief Administrative Officer of HCHHS (the CAO) or the CAO's authorized representative. It shall be a violation of these Rules for any person in a food establishment to deny access to the CAO or authorized representatives in the performance of the CAO's duties.

HCHHS employees who are not police officers but who have been trained to enforce the health and safety laws relating to food, water, waste control, general sanitation, or vector control are authorized pursuant to Sections 121.031 and 121.032 of the Texas Health and Safety Code and these Rules by Order of Hidalgo County Commissioners Court, to issue citations for violations occurring in the unincorporated areas of Hidalgo County, including areas in the extraterritorial jurisdiction of a municipality. Such citations must state the name of the person cited, the violation charged, and the time and place the person is required to appear in court.

## XII. SEVERABILITY

If any section, subsection, clause, phrase, or portion of these Rules is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision, and such holding shall not affect the validity of the remaining portions of these Rules.

bgsalazar  
1/13/2014

DRAFT