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Appendix A

2024 Rules of the Albuquerque Food Service and Retail Ordinance



Environmental Health Department

1 Civic Plaza NW Room 3023

Albuquerque, NM 87102

4/11/2024

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Part 1. Authority

- (A) These rules are promulgated by the Environmental Health Department pursuant to Sections 9-6-1 to -19 ROA 1994 hereafter the "Albuquerque Food Service and Retail Ordinance" or "FSO."
- (B) In the event that these rules are in conflict with the provisions of the FSO, the provisions of the FSO shall prevail.

Part 2. Definitions

For the purpose of these Rules, the following definitions shall apply unless the context clearly indicates or requires a different meaning. Terms include either the singular or the plural as the case may be.

ADDRESS OF RECORD. The mailing address designated by the Permit Holder to receive notices and correspondence from the Enforcement Authority.

ADULT DAY CARE CENTER. As defined in Title 7, Chapter 13, Part 2 of the New Mexico Administrative Code.

ADULT DAY CARE HOME. As defined in Title 7, Chapter 13, Part 2 of the New Mexico Administrative Code.

ADULT LIVING FACILITY. As defined in Title 7, Chapter 8, Part 2 of the New Mexico Administrative Code.

ADULTERATED. The condition of a Food if:

- (A) It bears or contains any poisonous or deleterious substance in a quantity which may render it injurious to health;

1 (B) If it bears or contains any added poisonous or deleterious substance, for
2 which no safe tolerance has been established by regulations, or in excess
3 of such tolerance if one has been established, except that an Edible
4 Cannabis Product manufactured, labeled, and distributed by a cannabis
5 Food Establishment in compliance with the Cannabis Regulation Act,
6 Chapter 26, Article 2C NMSA 1978 shall not be considered Adulterated
7 solely on the basis of its cannabis content;

8 (C) If it consists in whole or in part of any filthy, putrid or decomposed
9 substance, or if it is otherwise unfit for human consumption;

10 (D) If it has been produced, processed, prepared, packed or held under
11 unsanitary conditions, whereby it may have become contaminated with
12 filth, or whereby it may have been rendered diseased, unwholesome or
13 injurious to health;

14 (E) If it is in whole or in part the product of a diseased animal, or an animal
15 which has died otherwise than by slaughter; or

16 (F) If its container is composed in whole or in part of any poisonous or
17 deleterious substance which may render the contents injurious to health.

18 **ADVANCED PREPARATION.** Food preparation with multi-step handling of raw
19 or pre-cooked ingredients including but not limited to the cooking, cooling, or
20 re-heating of TCS Food for holding or immediate service, or where significant
21 risk factors contributing to foodborne illness may occur as determined by the
22 Enforcement Authority.

23 **ANNIVERSARY DATE.** The first day of the calendar month in which the original
24 Permit was issued.

25 **APPROVED.** Acceptable to the Enforcement Authority based on its
26 determination as to conformance with the Food Code, FSO, industry standards
27 including but not limited to the American National Standards Institute and the
28 National Sanitation Foundation Standards, other laws, and good public health
29 practice.

1 BED AND BREAKFAST. An overnight lodging facility with no more than eight
2 (8) guest rooms that are rented at market rates and breakfast is served, or
3 as defined in Chapter 14, Article 16 section 7-1 of the Integrated Development
4 Ordinance.

5 CATERING FOOD ESTABLISHMENT. A Food Establishment where a pre-
6 arranged number of meals or Food products are prepared at one permitted
7 premise for immediate service and consumption at another pre-arranged
8 location and served, including the setup of a buffet, at the second prearranged
9 location by the Food Establishment.

10 CERTIFIED FOOD PROTECTION MANAGER. An Employee that has supervisory
11 and management responsibility and the authority to direct and control Food
12 preparation and service that has shown proficiency in knowledge of required
13 information through passing a test that is part of an accredited Food protection
14 program.

15 CHARITABLE FOOD PROVIDER. A Person who donates Food directly to the
16 consumer on or off the premises of a Food Establishment and does not charge
17 a fee for any Food. Charitable Food Provider does not include Food
18 Establishments providing complimentary Food to patrons as part of a
19 conference, event, lodging, or similar circumstance.

20 CHILD CARE CENTER. As defined in Title 8, Chapter 16, Part 2 of the New
21 Mexico Administrative Code.

22 CITY. The City of Albuquerque.

23 COMMISSARY. A permanent Food Establishment that acts as a base of
24 operation for another Food Establishment where Food is stored,
25 manufactured, Packaged, rePackaged, or prepared and intended for human
26 consumption.

1 COMMERCIAL GRADE KITCHEN. A room, building, or any part thereof used for
2 Food preparation that meets all the requirements of local building codes and
3 the FSO, that is not a residential kitchen.

4 COMMISSARY TYPE 1 PERMIT. A Commissary without a Commercial Grade
5 Kitchen whose services are restricted to storage of non-TCS prePackaged
6 Food, Single-Service Articles, and chemicals necessary for the operations of
7 the Food Establishment being serviced.

8 COMMISSARY TYPE 2 PERMIT. A Commissary with a Commercial Grade
9 Kitchen; whose services allow for Limited Preparation, Advanced Preparation,
10 or Special Processes.

11 CONCESSIONS FOOD ESTABLISHMENT. A Commissary that operates
12 seasonally as part of a venue whose primary purpose is not the sale of Food.

13 CORRECTIVE ACTIONS. Written actions, as defined by the Enforcement
14 Authority, that must be taken to bring a violation of the Food Code, FSO, or
15 other laws into compliance within a specified time period.

16 CORE VIOLATION. A violation of a core item as defined in the Food Code or as
17 otherwise prescribed in these rules.

18 EDIBLE CANNABIS PRODUCT. Any Food containing cannabis allowed under
19 Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978. "EDIBLE
20 CANNABIS PRODUCT" does not include unprocessed cannabis flowers or other
21 unprocessed cannabis plant parts.

22 EDIBLE CANNABIS FINISHED PRODUCT. Any Edible Cannabis Product that is
23 Packaged and labeled for retail sale allowed under the Cannabis Regulation
24 Act, Chapter 26, Article 2C NMSA 1978. "EDIBLE CANNABIS FINISHED
25 PRODUCT" does not include unprocessed cannabis flowers or other
26 unprocessed cannabis plant parts.

1 EMPLOYEE. Includes the Permit Holder, Person In Charge, Person having
2 supervisory or management duties, Person on the payroll, family member,
3 volunteer, Person performing work under a contractual agreement, or any
4 other Person working in a Food Establishment.

5 FAMILY CHILD CARE HOME. As defined in Title 8, Chapter 16, Part 2 of the
6 New Mexico Administrative Code.

7 FOOD BANK. A Food Establishment operated by a non-profit organization that
8 stores Food for distribution to the public and does not charge for the food.

9 FOOD ESTABLISHMENT. Any place where Food is stored, processed,
10 Packaged, rePackaged, or prepared and intended for human consumption. The
11 term includes any such place regardless of whether the consumption is on or
12 off the premises and regardless of whether there is a charge for the Food.

13 (A) FOOD ESTABLISHMENT includes: Adult Day Care Home; Adult Day Care
14 Center; Bed And Breakfast; Catering Establishment; Charitable Food
15 Providers; Commissary; Concessions Food Establishment; Family Child
16 Care Home; Food Bank; Food Establishment Cannabis; Food
17 Establishment Grocery; Food Processing Establishment; Food Processing
18 Establishment Cannabis; Market Food Establishment; Mobile Food
19 Establishment; Restaurants; Retail Establishment; Retail Establishment
20 Cannabis; Retail Establishment Cannabis Plus; Self-Service Food
21 Establishment; Temporary Food Establishment; Vending Machine;
22 Warehouse; Warehouse Cannabis.

23 (B) FOOD ESTABLISHMENT does not include:

24 (1) Any place where Food is produced, sold, distributed, or prepared and
25 exempt from regulation pursuant to the Homemade Food Act, Chapter
26 25, Article 12 NMSA 1978;

27 (2) A kitchen in a private home;

1 (3) Home-delivery vehicle and service including but not limited to pizza
2 delivery, third party ordering and delivery services, and grocery
3 delivery services; and

4 (4) A private home that receives catered or home-delivered Food.

5 FOOD ESTABLISHMENT CANNABIS. A specific, limited type of Food
6 Establishment which is a cannabis establishment licensed under the Cannabis
7 Regulation Act, Chapter 26, Article 2C NMSA 1978, where Edible Cannabis
8 Product is prepared, or prepared and served, and intended for individual
9 portion service. The term includes a licensed cannabis establishment with a
10 licensed cannabis consumption area pursuant to the Cannabis Regulation Act,
11 Chapter 26, Article 2C NMSA 1978. The term does not include private homes.

12 FOOD ESTABLISHMENT CLASS A PERMIT. A Permit that is restricted to the
13 provision of prePackaged Food only.

14 FOOD ESTABLISHMENT CLASS B PERMIT. A Permit that includes the provision
15 of prePackaged Food and Food requiring Limited Preparation.

16 FOOD ESTABLISHMENT CLASS C PERMIT. A Permit that includes the provision
17 of prePackaged Foods, Food requiring Limited Preparation, and Food requiring
18 Advanced Preparation.

19 FOOD ESTABLISHMENT CLASS D PERMIT. A Permit that includes the provision
20 of prePackaged Foods, Food requiring Limited Preparation, Food requiring
21 Advanced Preparation, and Food requiring Special Processes during
22 preparation.

23 FOOD HANDLER CARD. A card issued to an individual after successful
24 completion of a Food Handler Training Program.

25 FOOD HANDLER TRAINING PROGRAM. An ANSI/ASTM E2659-09 accredited
26 Food handler training certificate program.

1 FOOD PROCESSING ESTABLISHMENT. A Food Establishment that
2 manufactures, packages, repackages, or labels Food for human consumption,
3 including storage of Food manufactured by the Food Establishment and
4 distribution of Food for wholesale.

5 FOOD PROCESSING ESTABLISHMENT CANNABIS. A specific, limited type of
6 Food Processing Establishment which is also a cannabis establishment licensed
7 under the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, where
8 edible cannabis products are processed, prepared, Packaged, stored or
9 distributed for human consumption excluding retail cannabis establishments
10 and warehouses.

11 FOOD PROCESSING ESTABLISHMENT CLASS A PERMIT. A Permit issued to a
12 specific, limited type of Food Processing Establishment which only repackages
13 non-TCS Foods.

14 FOOD PROCESSING ESTABLISHMENT CLASS B PERMIT. A Permit issued to a
15 Food Processing Establishment that manufactures Food using Limited
16 Preparation only.

17 FOOD PROCESSING ESTABLISHMENT CLASS C PERMIT. A Permit issued to a
18 Food Processing Establishment that manufactures Food using Advanced
19 Preparation.

20 FOOD PROCESSING ESTABLISHMENT CLASS D PERMIT. A Permit issued to a
21 Food Processing Establishment that manufactures Food using Special
22 Processes.

23 FOOD PROCESSING ESTABLISHMENT PLUS PERMIT. Can be added to any
24 Food Processing Establishment Permit to allow for the onsite retail sale of Food
25 products manufactured by the Food Processing Establishment.

1 HERMETICALLY SEALED CONTAINER. A container which is designed and
2 intended to be secure against the entry of microorganisms and to maintain
3 the commercial sterility of its contents after processing.

4 INFESTATION. The presence of any insects, rodents, or other pests which is
5 indicated by the observation of living or dead pests, rodent or other pest
6 nesting materials, fecal material, insect casings, eggs, or egg casings on Food
7 contact surfaces, Food storage or preparation area, to such extent that it
8 indicates an active presence of pests and constitutes an Imminent Health
9 Hazard.

10 LIMITED PREPARATION. Food preparation that is restricted to assemble-serve,
11 cook-serve, chill-serve, and/or hold-serve.

12 MARKET. Any temporary gathering of vendors, whether a single or recurring
13 event, organized by a Market Coordinator and operating at a single location,
14 whose primary purpose is the selling of goods.

15 MARKET COORDINATOR. Any Person responsible for the organization and
16 supervision of a Market.

17 MARKET FOOD ESTABLISHMENT. A specific type of Food Establishment that
18 operates at a Market.

19 MARKET FOOD VENDOR. Any Person, including their employees,
20 representatives, and agents, operating a Market Food Establishment.

21 MOBILE FOOD ESTABLISHMENT. A specific type of Food Establishment that is
22 vehicle mounted, self-contained, and designed to be readily movable from
23 location to location. MOBILE FOOD ESTABLISHMENT includes push carts,
24 trailers, and smokers.

25 PACKAGED. Bottled and capped, canned, cartoned, or securely wrapped.
26 PACKAGED does not include wrapped or placed in a carry-out container to
27 protect Food during service or delivery to the consumer.

- 1 PRIMARY PERMIT. The Permit issued that represents the main function of the
2 Food Establishment.
- 3 PRIORITY VIOLATION. A violation of a priority item as defined in the Food
4 Code or as otherwise prescribed in these rules.
- 5 PRIORITY FOUNDATION VIOLATION. A violation of a priority foundation item
6 as defined in the Food Code or as otherwise prescribed in these rules.
- 7 PRIVATE EVENT. An event where Food is distributed and whose participants
8 are limited to invited guests.
- 9 PULL DATE. The end of the last day on which a product is to be sold or offered
10 for human consumption.
- 11 RAW MILK. Any milk which is not pasteurized or has not been treated or
12 manipulated in any manner to destroy pathogens.
- 13 RAW MILK PRODUCT. Any of the following products which have been derived
14 from Raw Milk and have not been treated or manipulated in any manner to
15 destroy pathogens: cream, flavored milk, and half and half.
- 16 RAW MILK PERMIT. A Valid Permit issued by the Enforcement Authority which
17 allows a Person to Vend Raw Milk or a Raw Milk Product and includes the
18 following types of permits:
- 19 (A) Retail Food Establishment Raw Milk Permit: allows the Permit Holder of a
20 Retail Food Establishment Permit Class 4, 5, or 6 to Vend and distribute
21 Raw Milk and Raw Milk Product from the Retail Food Establishment Permit
22 Class 4, 5, or 6 location.
- 23 (B) Market Food Establishment Raw Milk Permit: a specific type of Market
24 Food Establishment Permit that allows a Person to Vend Raw Milk and
25 Raw Milk Product at any Market.

1 RAW MILK VENDOR. Any Person, including their employees, representatives,
2 or agents, operating a Market Food Establishment in possession of a Valid
3 Market Food Establishment Raw Milk Permit.

4 REINSPECTION. One or more inspections conducted subsequent to an
5 inspection that resulted in a Grade of Unsatisfactory or Closed due to
6 noncompliance with the Food Code, the FSO, or other laws, specifically to
7 determine whether compliance with such regulations has been achieved.

8 REQUESTED INSPECTION. An inspection conducted in response to a Permit
9 Holder's request which may be accompanied by a fee.

10 RETAIL FOOD ESTABLISHMENT. A Food Establishment where Food and Food
11 products are offered for sale, donated, or distributed for off-the-premise
12 consumption, to include, but not limited to, grocery stores, meat markets, and
13 warehouses.

14 RETAIL FOOD ESTABLISHMENT CANNABIS. A type of Retail Food
15 Establishment Cannabis, which is also a cannabis establishment licensed
16 under the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, where
17 Edible Cannabis Finished Products are offered for sale, donated, or distributed
18 for off-the-premise consumption, or where edible cannabis products or Edible
19 Cannabis Finished Products are stored.

20 RETAIL FOOD ESTABLISHMENT CANNABIS PLUS. A type of Retail Food
21 Establishment, which is also a cannabis establishment with a cannabis
22 consumption area, both licensed under the Cannabis Regulation Act, Chapter
23 26, Article 2C NMSA 1978, where Edible Cannabis Finished Products are
24 offered for sale, donated, or distributed for either off-the-premise
25 consumption or in a cannabis consumption area. The term also includes the
26 place where Edible Cannabis Finished products are stored.

1 RETAIL FOOD ESTABLISHMENT CLASS 1 PERMIT. A Retail Food Establishment
2 Permit that is restricted to non-TCS prePackaged items and in which the sale
3 or distribution of Food is not the primary function of the Food Establishment.

4 RETAIL FOOD ESTABLISHMENT CLASS 2 PERMIT. A Retail Food Establishment
5 Permit that is restricted to non-TCS prePackaged Food and the sale or
6 distribution of Food is the primary function of the Food Establishment.

7 RETAIL FOOD ESTABLISHMENT CLASS 3 PERMIT. A Retail Food Establishment
8 Permit that includes the provision of TCS prePackaged Food, raw produce, and
9 Food requiring Limited Preparation, and the sale or distribution of Food is not
10 the primary function of the Food Establishment.

11 RETAIL FOOD ESTABLISHMENT CLASS 4 PERMIT. A Retail Food Establishment
12 Permit that includes the provision of TCS prePackaged Food, raw produce, and
13 Food requiring Limited Preparation, and the sale or distribution of Food is the
14 primary function of the Food Establishment.

15 RETAIL FOOD ESTABLISHMENT CLASS 5 PERMIT. A Retail Food Establishment
16 Permit that includes the provision of TCS prePackaged Food, raw produce,
17 Food requiring Limited Preparation, and Food requiring Advanced Preparation.

18 RETAIL FOOD ESTABLISHMENT CLASS 6 PERMIT. A Retail Food Establishment
19 Permit that includes the provision of prePackaged Foods, raw produce, Food
20 requiring Limited Preparation, Food requiring Advanced Preparation, and Food
21 requiring Special Processes during preparation.

22 RETAIL FOOD ESTABLISHMENT PLUS PERMIT. A supplemental Retail Food
23 Establishment Permit that may be added to any other Retail Food
24 Establishment Permit to allow for on-site consumption with seating not to
25 exceed ten (10) persons.

26 UTENSIL. Any Approved implement used in the preparation, storage,
27 transportation or service of Food.

1 VARIANCE. A written document issued by the Enforcement Authority that
2 authorizes a modification or waiver of one or more requirements of these
3 Rules, the Food Code, or the FSO.

4 SAFE TEMPERATURES. Temperatures as provided in the Food Code.

5 SAFETY PLAN. The primary document in a preventive Food safety system that
6 provides a systematic approach to the identification of Food safety hazards
7 that must be controlled to prevent or minimize the likelihood of foodborne
8 illness or injury during storage, processing, Packaging, rePackaging, or
9 preparation of Food for human consumption.

10 SEALED. Free of cracks or other openings that may allow the entry or passage
11 of moisture.

12 SECONDARY PERMIT. Any Food Permit issued as an addition to a Food
13 Establishment with a Primary Permit.

14 SELF-SERVICE FOOD ESTABLISHMENT. A specific and limited type of
15 unattended Food Establishment that offers prePackaged Food for customer
16 self-service.

17 SIGNS OF INFESTATION. The presence of evidence indicating an Infestation
18 on nonFood contact surfaces, nonFood storage or preparation areas, or other
19 such locations, to such extent that without mediation an Imminent Health
20 Hazard would result.

21 SINGLE-SERVICE ARTICLES. Cups, containers, lids or closures, and packaging
22 materials, including bags and all similar articles designed for one-time, one-
23 Person use and then discarded. The term does not include single use articles
24 such as number 10 cans, aluminum pie pans, bread wrappers and similar
25 articles into which Food has been Packaged by the manufacturer.

1 SPECIAL PROCESSES. Actions taken during the storage, manufacturing,
2 packaging, or preparation of Food often using unusual technologies that are
3 not fully addressed in the Food Code.

4 TABLEWARE. All multi-use eating and drinking Utensils.

5 TAMPER-EVIDENT PACKAGING. A package having one or more indicators or
6 barriers to entry which, if breeched or missing, can reasonably be expected to
7 provide visible evidence to consumers that tampering has occurred.

8 TEMPORARY FOOD ESTABLISHMENT. A Food Establishment which operates at
9 a fixed location for a temporary period of time, not to exceed fourteen (14)
10 days, in connection with a single event and at a single location.

11 TIME/TEMPERATURE CONTROL FOR SAFETY FOOD or TCS. Food that requires
12 time or temperature control for safety to limit pathogenic microorganism
13 growth or toxin formation; or as otherwise defined in the Food Code.

14 VEND. The act of selling, trading, bartering or giving away.

15 VENDING MACHINE. A self-service device that, upon insertion of a coin, paper
16 currency, token, card, or key, or by electronic transaction or optional manual
17 operation, dispenses unit servings of Food in bulk or in packages without the
18 necessity of replenishing the device between each vending operation.

19 VENDING MACHINE CLASS A REGISTRATION. A Vending Machine restricted to
20 non-TCS prePackaged Food.

21 VENDING MACHINE CLASS B PERMIT. A Vending Machine Permit that includes
22 the provision of TCS prePackaged Food.

23 WAREHOUSE. A specific type of Food Establishment where Food is stored and
24 distributed to other Food Establishments.

25 WAREHOUSE CANNABIS. A specific, limited type of Food Establishment which
26 is a cannabis establishment licensed under the Cannabis Regulation Act,

1 Chapter 26, Article 2C NMSA 1978, where Edible Cannabis Product is stored
2 and distributed to other Food Establishments Cannabis.

3 **Part 3. Administrative Codes and Regulations Adoption.**

4 (A) The 2022 United States Food and Drug Administration Model Food Code
5 January 18, 2023 Version as published by the U.S. Department of Health
6 and Human Services is hereby adopted and incorporated in its entirety.

7 (B) The following statutes, administrative codes, and regulations are adopted,
8 and incorporated as modifications to the 2022 Food Code:

9 (1) Subsections (C), (D), (E), and (F) of 7.6.2.11 NMAC;

10 (2) 7.6.2.12 NMAC;

11 (3) Subsections (B) and (D) of 7.6. 2.13 NMAC; and

12 (4) The Current Good Manufacturing Practices in Manufacturing, Packing,
13 or Holding Human Food, 21 C.F.R. § 110, Subparts (A), (B), and (C).

14 (C) The following sections of the Food Code are amended as follows:

15 (1) A violation of section 5-205.15(B) shall be a Priority Violation when it
16 is evident that the leak is from a water source that is non-potable,
17 wastewater, or used water; and

18 (2) A violation of 3-307.11 shall be a Priority Foundation Violation.

19 (D) When a conflict exists in a specific requirement between applicable
20 sections of the Food Code and the Albuquerque Food Service and Retail
21 Ordinance or these Rules, the Albuquerque Food Service and Retail
22 Ordinance and the Rules shall control.

23
24 **Part 4. Pre-inspection Application Information.**

1 (A) An Applicant seeking a Permit shall submit a signed pre-inspection
2 application, a copy of the Food Establishment's business registration, and
3 a copy of the Food Establishment's State of New Mexico Taxation and
4 Revenue Department registration certificate to the Enforcement Authority.
5 The pre-inspection application shall be submitted to the Enforcement
6 Authority at least five working days prior to the commencement of
7 operations.

8 (1) In the case of an application for a Food Establishment who is also
9 applying for a license pursuant to the Liquor Control Act, Chapter 60,
10 Article 3A NMSA 1978, a pre-inspection application is required. The
11 Enforcement Authority may issue a Permit while the application for a
12 State issued liquor license pursuant to the Liquor Control Act is
13 pending. The Applicant shall contact the Enforcement Authority at
14 least five (5) working days prior to the anticipated commencement
15 of Food operations to schedule a pre-opening inspection of the Food
16 Establishment.

17 (2) In order to receive a Market Food Establishment, Permit by April 1,
18 an Applicant shall submit a pre-inspection application to the
19 Enforcement Authority by March 15 of each year. In the event that
20 an Applicant submits a pre-inspection application after March 15, the
21 Applicant shall submit the Permit application to the Enforcement
22 Authority at least five (5) business days prior to the anticipated
23 opening date of the Market Food Establishment. Market Food
24 Establishment pre-inspection applications received after March 15
25 may not be processed by April 1.

26 (B) The pre-inspection application shall include the following:

27 (1) The name, Address Of Record, telephone number, and e-mail address

1 of the proposed Permit Holder, and designated agent if different from
2 the owner.

3 (a) The name, mailing address, telephone number, and e-mail
4 address of the Applicant.

5 (b) A list of all Food items to be prepared, offered to the public, or
6 sold.

7 (c) A list of any Valid Food Establishment Permits held by the
8 Applicant, or a disclosure of any Food Establishment Permits
9 previously held by the Food Establishment owner designated
10 agent or Applicant within the last three years.

11 (d) The name, title, mailing address, telephone number, and e-mail
12 address of the Applicant's Commissary when applicable.

13 (e) A copy of the current Commissary agreement, when the
14 Commissary is not owned and operated by the Applicant, that
15 includes the following:

16 (i) A list of all services provided to the Applicant by the
17 Commissary;

18 (ii) Identification of the name, title, mailing address, telephone
19 number, and e-mail address of the Commissary and Food
20 Establishment; and

21 (iii) A statement signed by the Applicant and Commissary owner
22 that attests to the accuracy of the information provided and
23 affirms that the Applicant will visit the Commissary on every
24 day of operations.

25 (C) Corrections. Incomplete pre-inspection applications will not be

1 considered. Incomplete pre-inspection applications will be returned to the
2 Applicant with a list of missing information. The Enforcement Authority's
3 determination that an application is incomplete does not constitute a denial
4 of the pre-inspection application.

5 **Part. 5 Pre-Opening Inspection of Food Establishments.**

6 (A) The Enforcement Authority shall perform a pre-opening inspection of each
7 Food Establishment seeking a Permit except in the following situations:

8 (2) Inspection shall be deferred until five (5) working days prior to the
9 commencement of operations when a Food Establishment is seeking a
10 liquor license from the State of New Mexico in accordance with the
11 Liquor Control Act, Chapter 60, Article 3A NMSA 1978, but the Food
12 Establishment is not yet in operation.

13 (3) The Enforcement Authority may waive the pre-opening inspection for a
14 Temporary Food Establishment or Market Food Establishment when the
15 Enforcement Authority finds that waiver of the pre-opening inspection
16 will not result in a condition injurious to health or safety.

17 **Part 6. Issuance of Permits; Payment of Permit Fees.**

18 (A) The Enforcement Authority shall issue a provisional Permit, Valid for thirty
19 (30) days, when the Applicant receives a Grade of Approved or Conditional
20 Approved from the Enforcement Authority during the pre-opening
21 inspection.

22 (1) A provisional Permit Holder has thirty (30) days from the date of
23 issuance of the provisional Permit to pay all applicable fees.

24 (2) Upon receipt of payment for all applicable fees, the Enforcement
25 Authority shall issue a Permit and the Food Establishment's Grade

1 sticker.

2 (3) The provisional Permit shall expire when payment is not made within
3 the thirty (30) days. If a Permit Holder wishes to obtain a Food
4 Establishment Permit after expiration, the Person must reapply for a
5 Permit as outlined in Part 3 of these rules.

6 (a) When reapplying for a Permit after expiration of a provisional
7 thirty (30) day Permit, the Applicant shall make payment in full
8 before being issued a permit and approved to operate.

9 (B) When an Applicant does not receive a Grade of Approved or Conditional
10 Approved during the pre-opening inspection, the Enforcement Authority
11 shall provide a written list of Corrective Actions to be taken. The Applicant
12 may have up to thirty (30) days to request a Reinspection and receive a
13 Grade of Approved or Conditional Approved.

14 (1) The initial pre-inspection application shall be denied when the
15 Applicant fails to contact the Enforcement Authority to provide proof of the
16 completion of the Corrective Actions provided by the Enforcement
17 Authority at the pre-opening inspection and to request another pre-
18 opening inspection prior to the expiration of the thirty (30) day Corrective
19 Action timeframe.

20 (C) An Applicant seeking a liquor license from the State of New Mexico in
21 accordance with the Liquor Control Act, Chapter 60, Article 3A NMSA 1978,
22 shall remit payment for the Food Establishment Permit prior to issuance of the
23 Permit.

24 (D) An Applicant for a Temporary Food Establishment or Market Food
25 Establishment Permit shall remit payment for the Permit prior to the
26 commencement of operations or within fourteen (14) calendar days of

1 Permit approval, whichever occurs first.

2 **Part 7. Term and Scope of Permit.**

3 (A) A Permit shall be Valid and shall authorize a Food Establishment to operate
4 for one calendar year from the Anniversary Date.

5 (B) Temporary Food Establishment Permits shall be Valid for the duration of
6 the single event or celebration, not to exceed fourteen (14) days.

7 (C) Temporary Mobile Food Establishment permits shall be Valid for up to
8 three (3) months from the date of issuance.

9 (1) Market Food Establishment permits issued on or before April 1 are
10 through March 31. Market Food Establishment permits issued after April
11 1 are Valid from the date of issuance through March 31.

12 **Part 8. Permit Renewal.**

13 (A) A Food Establishment shall renew their Permit(s) on or before the
14 Expiration Date by paying the annual Permit fee.

15 (1) Any Permit operating under a Commissary agreement shall also submit
16 a Valid Commissary agreement at the time of Permit renewal.

17 (2) All Permit Holders shall verify and update any contact information and
18 the Address Of Record on file with the Enforcement Authority at the
19 time of Permit renewal.

20 (3) Any Food Establishment that wishes to permanently cease operations
21 shall notify the Enforcement Authority in writing within thirty (30) days
22 of closure.

23 (B) The Enforcement Authority shall provide a notice and invoice for the
24 amount due at least thirty (30) days prior to the Expiration Date. The

1 Permit Holder is required to renew their Permit(s) regardless of whether
2 the Enforcement Authority issues this notice.

3 (1) The Enforcement Authority shall issue a new Permit to the Food
4 Establishment after receipt of full payment of all applicable fees.

5 (2) When fees are not paid in full prior to the Expiration Date of the Food
6 Establishment's Permit, the Food Establishment will be provided with
7 a notice of past due fees and invoice every thirty (30) days, up to
8 ninety (90) days past the Expiration Date.

9 (3) A Food Establishment that fails to pay its renewal fees within ninety
10 (90) days of the Food Establishment's Permit Expiration Date, shall
11 have its Permit(s) suspended.

12 (4) Following a notice of suspension, A Food Establishment that fails to
13 pay its renewal fees within ninety-five (95) days of the Food
14 Establishment's Permit Expiration Date shall have its Permit(s)
15 revoked.

16 **Part 9. Fees.**

17 (A) Permit fees are non-refundable.

18 (B) First year Permit fees are due prior to the expiration of the provisional
19 Permit.

20 (1) When a Permit is being added to an existing Food Establishment, the
21 initial Permit fee for the new Permit shall be prorated so that the
22 Anniversary Date of the new Permit is the same as the Anniversary
23 Date of the existing Food Establishment's Permit.

24 (2) The proration of fees shall be calculated on a monthly basis and
25 permits issued after the 15th of the current month will not be assessed
26 the monthly fee for that month.

1 (3) No Temporary Food Establishment Permit or Market Food
2 Establishment Permit is Valid until all Permit fees are received by the
3 Enforcement Authority.

4 (4) In the case where there is, under single ownership or management,
5 more than one Food Establishment or more than one place within a
6 Food Establishment where Food is prepared and served within a single
7 building or structure, and separate inspections are required, as
8 determined by the Enforcement Authority based on the Food
9 Establishment's ability to meet the conditions of these Rules and the
10 FSO independent of the Primary Permit, each such Food Establishment
11 or place shall pay a separate annual fee. The Food Establishment or
12 place that represents the main function of the Food Establishment shall
13 be considered the Primary Permit for the purposes of determining fees;
14 all other permits shall be considered Secondary except that:

15 (a) A Food Processing Establishment may only be a Primary or
16 Secondary Permit to another Food Processing Establishment Permit;

17 (b) A Food Establishment may only be a Primary or Secondary Permit
18 to another Food Establishment Permit;

19 (c) A Retail Food Establishment may only be a Primary or Secondary
20 Permit to another Retail Food Establishment Permit;

21 (d) In no case shall a Food Processing Establishment Cannabis Permit
22 be considered as a Primary or Secondary Permit for the purposes of
23 calculating inspection fees for a Food Processing Establishment;

24 (e) In no case shall a Food Establishment Cannabis Permit be considered
25 as a Primary or Secondary Permit for the purposes of calculating
26 inspection fees for Food Establishment permits;

1 (f) In no case shall a Retail Food Establishment Cannabis be considered
2 as a Primary or Secondary Permit for the purposes of calculating
3 inspection fees for Retail Food Establishments;

4 (g) In no case shall a Warehouse Cannabis be considered as a Primary
5 or Secondary Permit for the purposes of calculating inspection fees
6 for Food Establishments;

7 (h) In no case shall a Retail Food Establishments Cannabis Plus Permit
8 be considered as a Primary or Secondary Permit for the purpose of
9 calculating inspection fees for Food Establishments; and

10 (i) A Mobile Food Establishment Permit shall be a standalone permit and
11 in no case be considered as a Primary or Secondary Permit for the
12 purpose of calculating inspection fees for Food Establishments.

13 **Part 10. Risk Categories and Inspection Frequency.**

14 (A) Food Establishments shall be assigned a risk category based on the
15 following criteria:

16 (1) Food Establishments restricted to the distribution of prePackaged Food
17 shall be considered risk category 1 and shall receive and pass an
18 inspection at least once every eighteen (18) months.

19 (2) Food Establishments restricted to the distribution of prePackaged Food
20 where the primary population served is highly susceptible, or Food
21 Establishments that include Limited Preparation of Food shall be risk
22 category 2 and shall receive and pass an inspection at least once every
23 twelve (12) months.

24 (3) Food Establishments that include Limited Preparation of Food and where
25 the primary population served is highly susceptible, or Food
26 Establishments that include Advanced Preparation of Food shall be risk
27 category 3 and shall receive and pass an inspection at least once every
28 six (6) months.

1 (4) Food Establishments that include Advanced Preparation of Food and
2 where the primary population served is highly susceptible, Self-Service
3 Food Establishments that offer TCS Foods, or Food Establishments that
4 include Special Processes shall be risk category 4 and shall receive and
5 pass an inspection at least once every four (4) months.

6 (B) A Food Establishment's risk category may be increased or decreased based
7 on past performance of the Food Establishment to conform with the Food
8 Code, the FSO, these rules, and other laws; or based on the risk to public
9 health.

10 **Part 11. Grading of Food Establishments.**

11 (A) Grades of Food Establishments shall be determined by the score issued
12 after each inspection and remain in effect until the next inspection as
13 follows:

14 (1) APPROVED. A Food Establishment that receives an inspection score of
15 eighty-five (85) points or higher as determined by the Enforcement
16 Authority showing compliance with the standards in the Food Code, the
17 FSO, other industry standards, and other laws will receive a Grade of
18 Approved and is able to operate.

19 (2) CONDITIONAL APPROVED. A Food Establishment that is found to be in
20 violation of the standards in the Food Code, the FSO, other industry
21 standards, and other laws by receiving an inspection score between
22 seventy-five (75) and eighty-four (84) points will receive a Grade of
23 Conditional Approved and the Food Establishment is able to operate but
24 is required to follow Corrective Actions issued by the Enforcement
25 Authority.

26 (3) UNSATISFACTORY. A Food Establishment that meets minimum
27 standards in the Food Code, the FSO, other industry standards, and

Commented [A1]: Add language as subject to supervisory review.

1 other laws by receiving an inspection score between sixty-five (65) and
2 seventy-four (74) points, having any 3 or more priority violations out
3 of compliance during a single inspection, or any Priority Violation,
4 Priority Foundation Violation, or Core Violation being out of compliance
5 on a repeated basis within the last thirty-six (36) months as determined
6 by the Enforcement Authority will receive a Grade of Unsatisfactory but
7 is allowed to continue Food operations while following any Corrective
8 Actions issued by the Enforcement Authority.

9 (a) Any Grade of Unsatisfactory issued to an establishment is subject
10 to supervisory review based on evidence provided by the issuing
11 Enforcement Authority employee.

12 (4) CLOSED. A Food Establishment that receives an inspection score of
13 sixty-four (64) or less due to failure to comply with the minimum
14 standards of the Food Code, the FSO, or these rules, or the Enforcement
15 Authority finding an imminent or substantial health hazard, shall receive
16 a Grade of Closed and shall immediately cease operations until such
17 time that Corrective Actions are completed to the satisfaction of the
18 Enforcement Authority.

19 (a) Any Grade of Closed issued to an establishment is subject to
20 supervisory review based on evidence provided by the issuing
21 Enforcement Authority employee.

22 (b) The Enforcement Authority may issue a Grade of Closed to a portion
23 of a Food Establishment affected by an Imminent Health Hazard
24 when the Food Establishment demonstrates that Food safety is not
25 affected by the partial Closure and the Enforcement Authority
26 determines that no threat to public health will result from allowing
27 other Food operations to continue.

28 **Part 12. Scoring of Food Establishments.**

1 (A) Each inspection shall be scored out of one-hundred (100) points with a
2 predetermined point value deducted for each violation applicable to their
3 Food operations.

4 (1) The Enforcement Authority shall deduct six (6) points from the total
5 score for each Priority Violation;

6 (2) The Enforcement Authority shall deduct three (3) points from the total
7 score for each Priority Foundation Violation; and

8 (3) The Enforcement Authority shall not deduct points from the total score
9 but shall mark each Core Violation as out of compliance.

10 (B) Food Establishments shall be provided a score during each inspection
11 based on the scoring rubric.

12 (C) Scoring Rubric. If multiple violations apply to the same infraction, only the
13 highest violation score will apply.

14 **Part 13. Corrective Actions.**

15 (A) A Food Establishment shall provide evidence of compliance with
16 Corrective Actions through the submission of work orders, photographs,
17 receipts, and/or reinspection. When compliance with Corrective Actions
18 cannot be verified through the presentation of documentary evidence
19 alone, the Enforcement Authority shall perform a reinspection of the Food
20 Establishment within the timeframe provided. When the reinspection does
21 not result in a Grade of Approved or Conditional Approved, any
22 subsequent reinspection required to verify compliance with the Corrective
23 Actions may be assessed a fee as specified in Appendix D. Fees are due
24 at the time the request for reinspection is made.

25 (B) The Enforcement Authority may grant an extension of the Corrective
26 Action timeframe when the Permit Holder can demonstrate reasonable
27 efforts to comply with the Corrective Actions. In order to be granted an

1 extension, the Permit Holder shall request an extension of the Corrective
2 Action timeframe in writing. The Enforcement Authority shall review the
3 request and provide a written determination approving or denying the
4 request. If the request for extension is approved the Enforcement
5 Authority shall provide a written addendum with a new timeframe.

6 (C) Food Safety Training Required. When a Food Establishment receives a
7 Grade of Unsatisfactory or Closed, the Food Establishment's Food
8 Employees shall complete an Approved Food safety training.

9 (D) Infestation Corrective Actions.

10 (1) Food Establishments shall hire a professional pest control applicator
11 licensed through the New Mexico Department of Agriculture to treat
12 any Infestation.

13 (2) Food Establishments shall remove rodent droppings in accordance with
14 current Centers for Disease Control and Prevention recommendations
15 published on the Enforcement Authority's website.

16 (3) Food Establishments that receive a Grade of Closed due to Infestation
17 shall remain closed for a minimum of two (2) calendar days and shall
18 not be Reinspected until such time professional pest control reports and
19 documentation of other completed Corrective Actions are provided to
20 the Enforcement Authority.

21 (4) Reinspection may occur prior to two (2) calendar days and without the
22 presentation of professional pest control records when a Food
23 Establishment receives a Grade of Closed due to Signs Of Infestation.

24 **Part 14. Construction, Remodeling, and Conversions.**

25 (A) Prior to when a Food Establishment is hereafter constructed or extensively
26 remodeled, or when an existing structure is converted for use as a Food
27 Establishment, the appropriate permits shall be obtained from the City of
28 Albuquerque's Planning Department in accordance with the Uniform
29 Administrative Code of the City of Albuquerque.

1 (B) Following the completion of construction, extensive remodeling, or
2 conversion; the Food Establishment shall pass an inspection conducted by
3 the Enforcement Authority prior to the commencement of operations.

4 **Part 15. Condemnation of Food and Equipment.**

5 (A) If after examination, the Enforcement Authority determines or has reason
6 to suspect that Food is Adulterated or misbranded:

7 (1) The Food Establishment may be issued a Grade of Closed for an
8 Imminent Health Hazard;

9 (2) The Food may be discarded voluntarily by the Person In Charge; or

10 (3) Upon written notice to the Permit Holder or Person In Charge at the
11 time of inspection, the Enforcement Authority may label and seal such
12 Food as "embargoed." Such labeled and sealed Food shall then be
13 separated from other Food and shall not be used in the operations of
14 the Food Establishment or distributed until the Enforcement Authority
15 has examined the Food and determined whether such Food is safe for
16 human consumption. After making a determination, the Enforcement
17 Authority may remove the label and seal, or may require the Permit
18 Holder or Person In Charge of the Food to denature, remove, or destroy
19 such Food or to bring the Food into compliance with the requirements
20 of the Food Code, the FSO, these rules, or other laws.

21 (4) If the suspected Adulterated or misbranded Food has been distributed,
22 the Permit Holder shall be given the opportunity to recall the Food
23 voluntarily at the Permit Holder's expense. If the Permit Holder refuses
24 to recall the suspected Food, the Enforcement Authority may order a
25 mandatory recall of the suspected Food and recover the cost associated
26 with mandatory recall from the Permit Holder.

1 (a) Food Processing Establishments and Food Establishments
2 manufacturing Food for distribution to other Food Establishments
3 under their control shall have recall procedures prepared and on file
4 at the Food Establishment where the Food was manufactured.
5 Procedures shall include plans for recalling products which may be
6 injurious to human health; for identifying products which may be
7 injurious to human health; for identifying, collecting, warehousing,
8 and controlling products; for determining the effectiveness of
9 recalls; and for notifying the Enforcement Authority, and if
10 applicable, the Food and Drug Administration, and United States
11 Department of Agriculture of any recalls.

12 (B) If after examination, the Enforcement Authority determines or has reason
13 to suspect that a Food Utensil or piece of Food equipment is worn,
14 defective, unsanitary, or otherwise injurious to health:

15 (1) The Food Utensil or piece of Food equipment shall be discarded
16 voluntarily by the Person In Charge;

17 (2) Such Utensil or equipment may be labeled "condemned" by the
18 Enforcement Authority. The Utensil or Food equipment so labeled shall
19 not thereafter be used for Food storage, preparation, handling, or
20 serving; or

21 (3) The Enforcement Authority may require the Food Establishment to
22 bring the condemned Utensil or Food equipment into compliance with
23 the requirements of these rules, the Food Code, the FSO, or to remove
24 it from the Food Establishment.

25 (a) Upon presentation of sufficient evidence that the condemned Utensil
26 or Food equipment has been brought into compliance with
27 requirements of these rules, the Food Code, or the FSO, the
28 Enforcement Authority shall remove the "condemned" label and

1 allow the Utensil or Food equipment to be used for Food storage,
2 preparation, handling, or serving.

3 (C) Removal of Seal. An “embargoed” or “condemned” label, tag, or seal,
4 having once been affixed by the Enforcement Authority to Food or
5 equipment, shall be removed only by the Enforcement Authority except as
6 otherwise provided by law.

7 **Part 16. Food Safety Training Requirements.**

8 (A) All Food Establishments shall have at least one Certified Food Protection
9 Manager.

10 (1) A Certified Food Protection Manager shall pass a test accredited and
11 listed by the Conference for Food Protection, and such Employee shall
12 have supervisory and management responsibility with the authority to
13 direct and control Food preparation and service.

14 (2) The Enforcement Authority may waive this requirement for certain
15 types of Food Establishments deemed by the Enforcement Authority to
16 pose minimal risk of causing or contributing to Foodborne illness based
17 on the nature of the operation and extent of Food preparation.

18 (3) A single Certified Food Protection Manager may be responsible for more
19 than a single Food Establishment, provided that a Variance is Approved
20 by the Enforcement Authority as specified in §9-6-16 of the FSO.

21 (4) A Person In Charge who demonstrates knowledge by being a food
22 protection manager that is certified by a food protection manager
23 certification program, evaluated and listed by a Conference for Food
24 Protection-recognized accrediting agency as conforming to the
25 conference for food protection standards for accreditation of food
26 protection manager certification programs, is deemed to comply with
27 paragraph 2-102.11(B) of the FDA Food Code.

1 (5) A Food Establishment that has an employee that is certified by a food
2 protection manager certification program, evaluated and listed by a
3 Conference for Food Protection-recognized accrediting agency as
4 conforming to the conference for food protection standards for
5 accreditation of food protection manager certification programs, is
6 deemed to comply with paragraph 2-102.12 of the FDA Food Code.

Commented [A2]: This is very wordy.

7 (6) The Certified Food Protection Manager requirements of Part 15 of these
8 rules shall become effective ninety (90) days after the effective date of
9 these rules.

10 (B) Food Handler Cards. Employees who handle open Food shall demonstrate
11 their knowledge of safe Food handling practices through passing a test
12 from a Food Handler Training Program, Approved by the Enforcement
13 Authority, and possess a Valid Food Handler Card within thirty (30) days
14 of employment in a Food Establishment unless:

15 (1) The Food Employee is a Certified Food Protection Manager;

Commented [A3]: Check with Kell if county adopted this portion in line with the State as well.

16 (2) The Food Employee does not prepare or handle TCS Food, provided that
17 at a minimum, the Permit Holder assures the Food Employee complies
18 with Part 16 of these rules; or

19 (3) The Food Employee is working as a Food Employee or volunteer of a
20 Temporary Food Establishment or Charitable Food Provider, provided
21 that at minimum, the Person In Charge is a Certified Food Protection
22 Manager or has a Valid Food Handler Card, either of which shall be
23 obtained prior to the issuance of a Temporary Food Establishment
24 Permit or Charitable Food Provider Permit, and the Person In Charge
25 ensures the Food Employee complies with Part 16 of these rules.

26 (C) Food handler cards shall be kept by the Food Employee on their Person
27 while working as a Food Employee or volunteer for a Food operation, or a

1 copy shall be kept on file by the current employer and upon request be
2 immediately made available for inspection by the Enforcement Authority.

3 (D) Alternative to Food Handler Cards. The Enforcement Authority may
4 approve a Food Establishment's training program to be used in lieu of
5 requiring a Food Handler Card training of its Food Employees when the
6 training program is found to be comparable to a Food handler card training
7 course. A Food Employee must complete the Food Establishment's
8 Approved training program at least once every three years. This
9 exemption is only valid during the Food Employee's time of employment
10 with the Food Establishment that administered the training;

11 (1) A Food Employee must be trained in safe Food handling by the Certified
12 Food Protection Manager within thirty (30) days of employment at the
13 Food Establishment and the Food Establishment must maintain records
14 of training including the name of the Certified Food Protection Manager,
15 date of training, and name(s) of Food employees. Such records shall be
16 maintained on file and made available to the Enforcement Authority
17 upon request; and

18 (2) Records of the training shall be maintained for the duration of the Food
19 Employee's employment.

20 **Part 17. General Sanitation**

21 (A) The Permit Holder has the duty to take all necessary, reasonable, and
22 usual precautions to keep, place, and preserve the Food Establishment in
23 such condition, and to conduct and maintain the Food Establishment in
24 such sanitary manner, that it shall not be dangerous or deleterious to the
25 public or in violation of the FSO, and all other laws.

26 (B) All parts, equipment, and facilities of every Food Establishment, and all

1 vehicles used in transporting Food, shall be kept in a clean, healthful, and
2 sanitary condition, and in compliance with the FSO.

3 (C) All Food equipment in a Food Establishment shall be certified by the
4 American National Standards Institute and the National Sanitation
5 Foundation.

6 (D) A Food Establishment shall not use steam tables, slow cookers, or other
7 hot holding devices in cooking, heating, or reheating. Food shall only be
8 cooked, heated, or reheated as specified under Sections 3-401 and 3-403
9 of the Food Code.

10 (E) Food Source.

11 (1) A Food Establishment shall obtain all Food from an Approved source.

12 (2) TCS Foods and Food in a Hermetically Sealed Container shall not be
13 home prepared or obtained from sources other than Food
14 Establishments in possession of a Valid Permit.

15 (3) Nothing in the FSO or these rules shall be construed to prohibit the
16 donation or distribution of Food pursuant to NMSA 1978, §41-10-3.

17 (F) Special Processes.

18 (1) Any Food Establishment that performs Advanced Preparation that
19 includes Special Processes requires a written safety plan.

20 (2) A safety plan may include Hazard Analysis and Critical Control Point
21 plans, Standard Operating Procedures, or Variances.

22 (3) It is a Civil Penalty for a Food Establishment to prepare Food in any
23 other manner than those practices in the written safety plan.

1 (G) Food Protection.

2 (1) TCS Foods shall be kept at Safe Temperatures at all times and Food
3 Establishments shall maintain adequate and contemporaneous
4 temperature logs of TCS Foods while being stored, thawed, cooled,
5 prepared, displayed, dispensed, or transported.

6 (2) Food Establishments shall calibrate measuring equipment in
7 accordance with the manufacturer recommendations and shall maintain
8 adequate and contemporaneous calibration logs for calibration of
9 equipment.

10 (3) Food Establishments shall date mark raw meat or raw meat products
11 that have been combined with ready-to-eat Food, as defined in the
12 Food Code, in the same manner as prescribed by section 3-501.17 of
13 the Food Code.

14 (4) A Food Establishment shall store liquid milk, liquid milk products, and
15 shellfish at forty-one degrees Fahrenheit (41°F) or less.

16 (5) Food Establishments shall not use raw unpasteurized eggs that have
17 been cracked and combined together (pooled eggs). Food
18 Establishments shall only combine enough raw eggs for immediate
19 service in response to a customer's order; or use pooled eggs mixed
20 with other ingredients immediately before cooking such as in baking
21 batters.

22 (6) Food Establishments shall properly rotate Retail Food stock with the
23 first in, first out method.

24 (7) Food Establishments shall segregate spoiled, damaged, returned,
25 embargoed, or condemned Food items in designated areas pending
26 final disposition.

1 (H) Pet dogs in outdoor dining areas; requirements.

2 (1) A Food Establishment may allow pet dogs in outdoor dining areas
3 designated by the Food Establishment if the following requirements are
4 met:

5 (a) No pet dog shall be allowed in any area where Food is prepared;

6 (b) Patrons shall keep their pet dogs on a leash and patrons shall
7 have full control of their pet dogs at all times;

8 (c) Pet dogs shall not be allowed on chairs, tables, or other
9 furnishings;

10 (d) Pet dogs shall only use designated water dishes or Single-Service
11 Articles such as water dishes; and

12 (e) Signs shall be posted to place the public on notice that the
13 designated outdoor dining area is available for the use of patrons
14 with pet dogs.

15 (i) Signs shall be at a minimum eight and one-half inches by
16 eleven inches in size and use type that is uniform in size and
17 no smaller than necessary to fill the sign to within two inches
18 of the borders.

19 (ii) Signs shall contain language reasonably designed to inform
20 the public that dogs are allowed in outdoor dining areas and
21 may be present.

22 (iii) Signs shall be posted prominently and be easily visible in both
23 the area where dogs are allowed and at each entrance of the
24 Food Establishment.

25 (2) Food Employees shall:

1 (a) Wash hands when inadvertently coming into contact with a pet
2 dog. Food Employees are prohibited from touching, petting, or
3 otherwise handling pet dogs.

4 (b) Immediately clean up accidents involving pet waste in a manner
5 consistent with FDA Food Code section 2-501.11 and with
6 equipment designated for the cleaning of pet waste. Pet waste
7 shall be disposed of in outdoor covered receptacles.

8 (3) Nothing in this section shall be interpreted to prohibit a Food
9 Establishment from excluding any pet dog from a Food Establishment
10 or impacting the rights of service animals.

11 **Part 18. Permit Specific Requirements.**

12 (A) Cannabis Food Establishments.

13 (1) Applicants and Permit Holders for Food Establishment Cannabis, Food
14 Processing Establishment Cannabis, Retail Food Establishment
15 Cannabis, Retail Food Establishment Cannabis Plus, and Warehouse
16 Cannabis Permits shall provide a copy of any license issued to the Food
17 Establishment under the Cannabis Regulation Act, Chapter 26, Article
18 2C NMSA 1978, as part of the pre-inspection application and Permit
19 renewal.

20 (2) In the event that both Food and Edible Cannabis Products are
21 processed, prepared, packed, stored, distributed, or prepared and
22 intended for individual portion service in the same Food Establishment,
23 the Permit Holder shall ensure that:

24 (a) Equipment, Food contact surfaces, and utensils are cleaned and
25 sanitized in a manner consistent with sections 4-6 and 4-7 of the
26 Food Code when alternating between preparation of Edible
27 Cannabis Products to Food; or separate equipment, Food contact

1 surfaces, and utensils for Food and Edible Cannabis Products are
2 used;

3 (b) A Person washes their hands in a manner consistent with section
4 2-301.12 of the Food Code when alternating between the
5 preparation of Edible Cannabis Products and Food; and

6 (c) When required to wear gloves consistent with the Food Code, a
7 Person changes gloves when alternating between handling Edible
8 Cannabis Products and Food.

9 (B) Catering Food Establishments.

10 (1) Catering Food Establishments operating as an extension of a permitted
11 Food Establishment do not require a separate catering Permit when
12 delivering Food for service by the customer, but shall comply with ii and
13 v of this section.

14 (2) All Catering Food Establishments are required to maintain, for ninety
15 (90) days, and make available for inspection by the Enforcement
16 Authority, adequate and contemporaneous records identifying:

17 (a) Dates, times, and menus for all events; and

18 (b) Temperatures for TCS Foods while in transport and at the time of
19 delivery and service.

20 (3) Catering Food Establishments shall operate from a Commissary with a
21 Commissary Type 2 Permit and shall report each day of operation. All
22 catering activities that occur prior to service must occur at the
23 Approved Commissary.

24 (4) Catering Food Establishment Class C and D Permits require that
25 applicable standard operating procedures, safety plans, and

1 transportation plans be submitted to and Approved by the Enforcement
2 Authority.

3 (5) Catering Food Establishments shall construct, equip, and maintain all
4 vehicles carrying Food and Food products so as to protect the purity
5 and wholesomeness of the transported products. Personal vehicles are
6 prohibited for use with a Food catering operation.

7 (6) Catering Food Establishments shall discard Food products that have
8 been cooked or prepared at the event at the end of each day.

9 (7) Acceptable booth enclosure for all Food activities is required where Food
10 service occurs outdoors.

11 (8) Catering Food Establishments shall protect all Foods offered for
12 customer self-service, such as a buffet, from contamination by the use
13 of packaging, Food guards, display cases, or other effective means. In
14 addition, Foods that have been offered in this manner shall not be
15 offered for human consumption after the completion of each day.

16 (C) Charitable Food Providers.

17 (1) Charitable Food Providers shall renew their Permits annually and
18 Charitable Food Providers are subject to inspection by the Enforcement
19 Authority.

20 (2) Charitable Food Providers shall prepare all TCS Food in a Commercial
21 Grade kitchen that complies with the Food Code and the FSO.

22 (3) Charitable Food Providers shall keep, and make readily available to the
23 Enforcement Authority for inspection, records of all Food items
24 prepared and distributed, and locations where those Food items were
25 provided to the public.

1 (4) When Food is being distributed off the premises of a Commercial
2 Kitchen the Person In Charge must be in possession of a Valid
3 Charitable Food Provider Permit.

4 (D) Commissaries.

5 (1) No Food Establishment shall act as a Commissary for another Food
6 Establishment without first obtaining a Commissary Permit from the
7 Enforcement Authority unless the Commissary is in possession of a
8 Valid Food Establishment Permit and the Food Establishment requiring
9 a Commissary is owned by the same Permit Holder.

10 (2) Food Establishments whose primary function is the service of Food to
11 highly susceptible populations shall not act as a Commissary for any
12 other Food Establishment.

13 (3) All Commissaries shall provide separate designated and labeled spaces
14 for the proper storage of Food, Food containers, and Food supplies to
15 each Food Establishment serviced.

16 (4) When Food preparation is conducted at the Commissary, the
17 Commissary must be equipped with adequate cleaning and sanitizing
18 equipment for use by Food Establishments.

19 (5) Commissary facilities servicing Mobile Food Establishments must
20 provide for the sanitary disposal of liquid waste; handling and disposal
21 of garbage, grease, and rubbish originating from the Food
22 Establishment; and facilities for filling the potable water holding tank.
23 Those commissaries with an outdoor servicing area shall include an
24 adequate area for washing and storing of the Mobile Food
25 Establishment and sufficient electrical outlets.

26 (6) Any Person operating a Commissary shall maintain and make available

1 for inspection by the Enforcement Authority:

2 (a) A list of all Food Establishments making use of the Commissary
3 with a copy of their current Permit; and

4 (b) Logs of visits for each Food Establishment making use of the
5 Commissary for the duration of the Food Establishment's use of
6 the Commissary, plus one calendar year.

7 (E) Family Child Care Homes and Childcare Centers.

8 (1) Family Child Care Homes and Child Care Centers may not allow children
9 in the kitchen except under careful supervision.

10 (2) If Food is brought to a Family Child Care Home or Childcare Center from
11 a child's home, the Family Child Care Home or Childcare Center shall
12 label it with the child's name and refrigerate, if necessary. A Family
13 Child Care Home or Childcare Center shall label and refrigerate bottles
14 of infant formula or breast milk.

15 (F) Mobile Food Establishments.

16 (1) Mobile Food Establishments shall provide the license plate number for
17 their registered vehicle, if applicable, with their pre-inspection
18 application.

19 (2) Mobile Food Establishments shall operate from a Commissary and shall
20 report to the Commissary each day of operation, or as otherwise
21 provided by these Rules. The Commissary used must be in possession
22 of a Commissary Permit issued by the Enforcement Authority unless
23 otherwise exempt under these rules. The use of a private residence for
24 the storage of food utensils and equipment or food is prohibited.

25 (3) Mobile Food Establishments may submit a request to modify its

1 Commissary from one location to another location within the City by
2 submitting a written request on a form provided by the Enforcement
3 Authority. The Enforcement Authority shall review the request and
4 make a determination within a reasonable time.

5 (a) The Mobile Food Establishment may be required to receive a Grade
6 of Approved or Conditional Approved during an inspection at the
7 new Commissary prior to approval of the request.

8 (4) The following acts are prohibited:

9 (a) The operation of any Mobile Food Establishment on the property
10 of a residence unless the Mobile Food Establishment has obtained
11 a Temporary Food Permit from the Enforcement Authority to
12 participate in a private event;

13 (b) The operation of any Mobile Food Establishment on the residential
14 side of any street for a period longer than five minutes, unless
15 the Mobile Food Establishment is participating in a private event;

16 (i) Mobile Food Establishments shall obtain, keep, and
17 make available for inspection by the Enforcement
18 Authority, an event agreement with the owner or occupant
19 of the residence listing the date and times the event will
20 occur;

21 (c) Operating a Mobile Food Establishment for more than twelve (12)
22 days in any calendar year from the same residential street.

23 (d) The vending or serving of Food to students of public, private or
24 parochial schools from a Mobile Food Establishment on a public
25 street, thoroughfare, boulevard or alley or other public way in
26 the City is prohibited within 900 feet from the outermost
27 boundary of the grounds of any public, private, or parochial

1 school during school hours or school events, and within one hour
2 before school begins or ends. The 900 feet is to be measured by
3 the most direct traveled route from the nearest boundary of the
4 school grounds to the Mobile Food Establishment;

5 (e) Mobile Food Establishments conducting business with the use of
6 amplified sound within 900 feet of a residential street before
7 10:00 a.m. or after sunset;

8 (f) Mobile Food Establishments using amplified sound soliciting their
9 products on the same residential street more than once before
10 noon and more than once after noon in any twenty-four-hour
11 day.

12 (g) This section shall not prohibit the sale and delivery of Food or
13 any Food product to a house, business, manufacturing plant,
14 construction site, institution, or any place of like nature.

15 (5) Parking.

16 (a) Where parking stalls have been marked by sign, meter, or
17 painted lines on the pavement, a Mobile Food Establishment shall
18 pay all applicable parking fees and shall not exceed the
19 boundaries of the painted lines.

20 (b) It is a violation of these rules to violate City of Albuquerque Traffic
21 Code § 8-5-1-42, ROA 1994 *Mobile Food Units on Public Streets*.

22 (G) Processing Food Establishments. Any Processing Food Establishment
23 Permitted after the enactment of These Rules shall not:

- 24 (1) Have open rafters over any area where Food is exposed;
- 25 (2) Have garage type doors that open directly into an area where Food
26 is exposed;

1 (3) Conduct any step of processing in an area where access is granted
2 to the general public.

3 (H) Raw Milk.

4 (1) General Requirements.

5 (a) A Retail Food Establishment shall possess a Valid Retail Food
6 Establishment Raw Milk Permit and any required Permit from the
7 New Mexico Department of Agriculture.

8 (b) Retail Food Establishment Raw Milk Permits shall not be granted to
9 any Retail Food Establishment whose primary function is to serve a
10 highly susceptible population as defined in Part 1-9 of the Food
11 Code.

12 (c) A Raw Milk Vendor shall possess a Valid Market Food Establishment
13 Raw Milk Permit and any Valid Permit from the New Mexico
14 Department of Agriculture pursuant to Title 21, Chapter 34, Part 2
15 of the New Mexico Administrative Code and a Raw Milk Permit prior
16 to vending or storing Raw Milk or Raw Milk Product at a Market.

17 (2) Food Safety.

18 (a) Raw milk and Raw Milk Product shall be wholesome; free from
19 adulteration, spoilage, filth, and any other contamination.

20 (b) Raw milk and Raw Milk Product shall be received Packaged from a
21 facility in possession of a Valid Permit from the New Mexico
22 Department of Agriculture pursuant to Title 21, Chapter 34, Part 2
23 of the New Mexico Administrative Code and shall be kept in the
24 Hermetically Sealed Container in which the Raw Milk or Raw Milk
25 Product was received until vended;

26 (c) Raw milk and Raw Milk Product may only be vended to a consumer
27 for personal consumption;

28 (d) Except in a private home, a Person in possession of a Raw Milk
29 Permit shall not allow Raw Milk or Raw Milk Product to be served to

1 any Person, removed from any package, offered as a sample, or
2 used as an ingredient in any Food Establishment;

3 (e) All Packaged Raw Milk or Raw Milk Product shall be conspicuously
4 labeled or marked as "RAW MILK" in addition to all legally required
5 labels or markings, and shall meet the labeling requirements as
6 specified in 21.34.2.12 NMAC now adopted and incorporated herein;

7 (f) Raw milk and Raw Milk Product shall be displayed separately from
8 and shall not be commingled with pasteurized milk or other
9 pasteurized dairy product; and

10 (g) The length of the pull date of Raw Milk or Raw Milk Product shall not
11 exceed five (5) days including the date the Raw Milk or Raw Milk
12 Product was Packaged.

13 (h) The Permit Holder shall maintain, for ninety (90) days, and make
14 available for inspection by the Enforcement Authority, adequate and
15 contemporaneous records identifying:

16 (i) The name and address of facility in possession of a Valid
17 Permit from the New Mexico Department of Agriculture
18 pursuant to Title 21, Chapter 34, Part 2 of the New Mexico
19 Administrative Code where Raw Milk or Raw Milk Product were
20 obtained;

21 (ii) The Pull Date of each Raw Milk or Raw Milk Product offered for
22 human consumption; and

23 (iii) The location(s) where Raw Milk or Raw Milk Product were
24 distributed by the Permit Holder.

25 (i) The Permit Holder shall maintain, for ninety (90) days, and make
26 available for inspection by the Enforcement Authority, adequate
27 and contemporaneous temperature logs of Raw Milk and Raw
28 Milk Product while being stored, vended, held, or transported.

- 1 (j) Any Person vending Raw Milk and Raw Milk Product at a Market
2 shall:
- 3 (i) Have a placard displayed at the point of sale and any location
4 offering Raw Milk or Raw Milk Product that is easily visible to
5 the public and that conforms to the labeling requirements as
6 specified in 21.34.2.12(C) NMAC; and
- 7 (ii) Transport and store Raw Milk and Raw Milk Product in an on-
8 site powered refrigeration unit at 41°F or lower;
- 9 (iii) Not display Raw Milk or Raw Milk Product outside of the on-
10 site powered refrigeration unit.
- 11 (3) Suspension of Raw Milk Permits. Raw milk Permits may be suspended
12 whenever the Enforcement Authority finds:
- 13 (a) Raw milk or Raw Milk Product vended were not obtained from a Raw
14 Milk distributor in possession of a Valid Permit from the New Mexico
15 Department of Agriculture pursuant to Title 21, Chapter 34, Part 2
16 of the New Mexico Administrative Code;
- 17 (b) Raw milk or Raw Milk Product are offered for human consumption
18 past the Pull Date;
- 19 (c) Raw milk or Raw Milk Product are offered for sale without the proper
20 markings, labels, or signage;
- 21 (d) The Permit Holder has failed to comply with a recall of Raw Milk or
22 Raw Milk Product;
- 23 (e) The Permit Holder has offered for sale Raw Milk or Raw Milk Product
24 that the Permit Holder knows to contain unsafe levels of coliforms
25 or bacterial colonies; or
- 26 (f) The Raw Milk or Raw Milk Product markings, label, or signage contain
27 any misleading statement(s).

1 (I) Self-Service Food Establishments.

2 (1) Self-Service Food Establishments located in a place where no Food
3 Employee is present shall:

4 (a) Place TCS Food in a device equipped with a digital temperature
5 measuring device and notification system that can be remotely
6 monitored, and an automatic shut off switch that prevents
7 consumers from continuing to access Food when unSafe
8 Temperatures have been detected for a period of time as listed in
9 the Food Code 4-204.111; and

10 (b) Serve Food in Tamper-Evident Packaging.

11 (J) Retail Food Establishments.

12 (1) Retail Food Establishment Class 1 permits are exempt from the
13 inspection frequency requirements in Part 9(A)(1), but are subject to
14 periodic inspection by the Enforcement Authority.

15 (2) Retail Food Establishments shall receive Food containing CBD or Hemp
16 Packaged from a facility in possession of a Valid Permit from the New
17 Mexico Environment Department pursuant to the Hemp Manufacturing
18 Act, Chapter 76, Article 24 NMSA 1978, and sell the product in the same
19 package as it was received.

20 (K) Temporary Food Establishments and Market Food Establishments.

21 (1) Temporary Food Establishment Permits are not required for Private
22 Events where the Food being distributed is limited to non-TCS Food, is
23 provided by a Food Establishment in possession of a Valid Food
24 Establishment Permit, or the of participants is limited to twenty-five
25 (25) persons or less.

- 1 (2) No Market Coordinator shall allow a Temporary Food Establishment or
2 Market Food Establishment to operate at their Market without a Valid
3 Permit issued by the Enforcement Authority.
- 4 (3) Temporary Food Establishments and Market Food Establishments are
5 subject to inspection each day of operation.
- 6 (4) All Temporary Food Establishments and Market Food Establishments,
7 with the exception of Food Establishments vending only raw, uncut
8 produce, shall operate out of a Commissary and shall report at least
9 once each day of operation to the Commissary for all supplies, cleaning,
10 and servicing operations.
- 11 (5) Temporary Food Establishment Permits are Valid for one location for up
12 to fourteen (14) consecutive days. Temporary Food Establishments
13 shall obtain a Permit for each location, each time the Food
14 Establishment locates or relocates at the same or other location.
- 15 (6) All Temporary Food Establishments and Market Food Establishments,
16 operating on private property shall provide an agreement, signed by
17 the property owner, to the Enforcement Authority when submitting a
18 permit application.
- 19 (7) Market Food Establishment Permits authorize a Market Food Vendor to
20 operate at any Market in the City.
- 21 (8) Food Safety.
- 22 (a) Food must be kept at Safe Temperatures and protected from
23 contamination during transportation of Food from the Commissary
24 to a Temporary Food Establishment or Market Food Establishment.
- 25 (b) Enough potable water shall be available in each Temporary Food
26 Establishment or Market Food Establishment for Food preparation,
27 cleaning and sanitizing utensils and equipment, and handwashing.
- 28 (i) When a conventional handwashing sink is not available or in close

1 proximity to the Temporary Food Establishment or Market Food
2 Establishment, an Approved temporary hand wash station shall
3 be made available and consist of an insulated container that is
4 equipped with a minimum five (5) gallon capacity and a spigot to
5 allow for the continuous flow of water; a wastewater container
6 capable of properly retaining wastewater from the hand wash
7 station; and an adequate supply of hand soap and paper towels.

8 (ii) Each Temporary Food Establishment and Market Food
9 Establishment without effective facilities for cleaning and
10 sanitizing Tableware shall provide only Single-Service Articles for
11 use by the consumer.

12 (c) Temporary Food Establishments or Market Food Establishments
13 using ice that is consumed or that contacts Food shall use ice that
14 has been made under conditions meeting the requirements of the
15 FSO. The ice shall be obtained only in chipped, crushed, or cubed
16 form and in single-use safe plastic or wet strength paper bags filled
17 and Sealed at the point of manufacture. The ice shall be held in
18 these bags until it is dispensed in a way that protects it from
19 contamination. The bags shall be stored at least four (4) inches off
20 the ground.

21 (d) Food Display and Storage.

22 (i) All Temporary Food Establishment and Market Food
23 Establishment Food displays and preparation areas shall be
24 smooth, durable, and easily cleanable.

25 (ii) Temporary Food Establishment and Market Food Establishment
26 Food displays shall be confined to tables or to the bed of a vehicle.
27 Food must be at least six (6) inches above the ground.

1 (iii) Temporary Food Establishment and Market Food Establishment
2 Food contact surfaces of equipment shall be protected from
3 contamination by consumers and other contaminating agents.
4 Effective shields for such equipment shall be provided, as
5 necessary, to prevent contamination. Servicing areas shall be
6 provided with overhead protection.

7 (e) Retail of Raw Animal Foods; Additional Restrictions.

8 (i) A Temporary Food Establishment or Market Food Establishment
9 shall not remove, or allow to be removed, raw animal Foods from
10 the original packaging in which the Foods were Packaged.

11 (ii) A Temporary Food Establishment or Market Food Establishment
12 shall not Vend raw animal Food products in any condition other
13 than frozen.

14 (iii) A Temporary Food Establishment or Market Food Establishment
15 shall not Vend raw animal Foods unless they have the Federal
16 USDA mark of inspection. A copy of the Valid Federal USDA mark
17 of inspection shall be provided with the pre-inspection
18 application.

19 (f) Prohibited Sales. A Temporary Food Establishment or Market Food
20 Establishment shall not Vend live animals, uncooked seafood,
21 uncooked shellfish, or cannabis products.

22 (L) Vending Machines.

23 (1) Class A Vending Machines are exempt from the requirement to obtain
24 a Permit, but shall register with the Enforcement Authority, and comply
25 with these rules and the FSO.

26 (a) Each Vending Machine shall display the registration number
27 assigned by the Enforcement Authority and a statement

1 informing the public that the machine is not subject to inspection
2 and include contact information where requests for inspection can
3 be directed.

4 (2) Vending machines located on the premises of a permitted Food
5 Establishment and operated under the control of the Permit Holder are
6 exempt from the requirement to obtain a Permit.

7 (3) Each Applicant and Permit Holder for a Vending Machine Permit or
8 registration shall maintain, and make available for inspection by the
9 Enforcement Authority, a current list of machines by location to be
10 covered by the Permit. The list shall provide the unique identifiers and
11 locations for all machines, frequency of service, type of machine (class
12 A or B), and the permitted Commissary or other Food Establishment
13 from which each machine is serviced.

14 (4) A permanent sign, visible to consumers, showing the Permit number
15 assigned by the Enforcement Authority to the Permit Holder, the Permit
16 Holder's business name, a unique identifier assigned to the machine by
17 the Permit Holder, and a telephone number that consumers may use to
18 contact the Permit Holder, of an Approved size and style, shall be
19 permanently and conspicuously affixed to each Vending Machine.

20 (5) Commissary Required. Every Permit Holder or registrant of a Vending
21 Machine shall designate and use an Approved Commissary for all Food
22 storage. Vending Machine Permit Holders or registrants that operate
23 their own Commissary shall obtain the appropriate Permit for that Food
24 Establishment. Water vending machines do not require a Commissary.

25 (6) Notwithstanding the other provisions of the FSO, a Permit Holder for a
26 Vending Machine may submit a request to modify its Commissary from
27 one location to another location within the City by submitting a written

1 request on a form provided by the Enforcement Authority. The
2 Enforcement Authority shall review the request and make a
3 determination within a reasonable time.

4 (a) The Vending Machine establishment may be required to receive
5 a score of Approved during an inspection at the new Commissary
6 prior to approval of the request.

7 (7) The Vending Machine Permit Holder shall notify the Enforcement
8 Authority whenever adding new types of vending machines, or
9 converting existing Vending Machines to dispense TCS Food other than
10 those for which the Vending Machine Permit was issued.

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