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**202[6][4] Rules of the
Albuquerque Food Service and Retail Ordinance**



Environmental Health Department
1 Civic Plaza NW Room 3023
Albuquerque, NM 87102

[5-21-2026] [~~8/20/2024~~]

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1 **Part 1. Authority**

2 (A) These Rules are promulgated by the Environmental Health Department pursuant to
3 Sections 9-6-1 to -19 ROA 1994 hereafter the “Albuquerque Food Service and Retail
4 Ordinance” or “FSO.”

5 (B) In the event that these rules are in conflict with the provisions of the FSO, the
6 provisions of the FSO shall prevail.

7
8 **Part 2. Definitions**

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

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

14 ADULT DAY CARE CENTER. As defined in Title 8, Chapter 370, Part 20 of the New
15 Mexico Administrative Code.

16 ADULT DAY CARE HOME. As defined in Title 8, Chapter 370, Part 20 of the New Mexico
17 Administrative Code.

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

20 ADULTERATED. The condition of a Food if:

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

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

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

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

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

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

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

12 ANNIVERSARY DATE. The first day of the calendar month in which the original Permit
13 was issued.

14 APPROVED. Acceptable to the Enforcement Authority based on its determination as to
15 conformance with the Food Code, FSO, industry standards including but not limited to the
16 American National Standards Institute and the National Sanitation Foundation Standards,
17 other laws, and good public health practice.

18 BED AND BREAKFAST. An overnight lodging facility with no more than eight (8) guest
19 rooms that are rented at market rates and breakfast is served, or as defined in Chapter
20 14, Article 16 section 7-1 of the Integrated Development Ordinance.

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

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

29 CHARITABLE FOOD PROVIDER. A ~~[Person who]~~[Food Establishment that] donates
30 Food on or off the premises of a Food Establishment and does not charge a fee for any
31 Food. Charitable Food Provider does not include Food Establishments providing

1 complimentary Food to patrons as part of another service such as a conference, event,
2 lodging, or similar circumstance.

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

5 CITY. The City of Albuquerque.

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

9 COMMISSARY. A permanent Food Establishment that acts as a base of operations for
10 another Food Establishment where Food is stored, manufactured, Packaged,
11 ~~rePackaged~~Repackaged, or prepared and intended for human consumption.

12 COMMISSARY TYPE 1 PERMIT. A Commissary without a Commercial Grade Kitchen
13 whose services are restricted to storage of non-TCS ~~prePackaged~~Prepackaged Food,
14 Single-Service Articles, and chemicals necessary for the operations of the Food
15 Establishment being serviced.

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

19 CONCESSIONS FOOD ESTABLISHMENT. A Food Establishment that operates
20 seasonally as part of a venue whose primary purpose is not the sale of Food.

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

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

26 EDIBLE CANNABIS FINISHED PRODUCT. Any Edible Cannabis Product that is
27 Packaged and labeled for retail sale allowed under the Cannabis Regulation Act, Chapter
28 26, Article 2C NMSA 1978. "EDIBLE CANNABIS FINISHED PRODUCT" does not include
29 unprocessed cannabis flowers or other unprocessed cannabis plant parts.

30 EDIBLE CANNABIS PRODUCT. Any Food containing cannabis allowed under Cannabis
31 Regulation Act, Chapter 26, Article 2C NMSA 1978. "EDIBLE CANNABIS PRODUCT"

1 does not include unprocessed cannabis flowers or other unprocessed cannabis plant
2 parts.

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

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

9 ~~[FOOD BANK. A Food Establishment operated by a non-profit organization that stores
10 Food for distribution to the public and does not charge for the food.]~~

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

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

24 (B) FOOD ESTABLISHMENT does not include:
25 (1) Any place where [the only] Food ~~[is]~~ produced, distributed, or prepared ~~[and]~~ [is]
26 exempt from regulation pursuant to the Homemade Food Act, Chapter 25,
27 Article 12 NMSA 1978;
28 (2) A kitchen in a private home;
29 (3) Home-delivery vehicle and service including but not limited to pizza delivery,
30 third party ordering and delivery services, and grocery delivery services; and
31 (4) A private home that receives catered or home-delivered Food.

1 FOOD ESTABLISHMENT CANNABIS. A specific, limited type of Food Establishment
2 which is a cannabis establishment licensed under the Cannabis Regulation Act, Chapter
3 26, Article 2C NMSA 1978, where Edible Cannabis Product is prepared, or prepared and
4 served, and intended for individual portion service. The term includes a licensed cannabis
5 establishment with a licensed cannabis consumption area pursuant to the Cannabis
6 Regulation Act, Chapter 26, Article 2C NMSA 1978. The term does not include private
7 homes.

8 FOOD ESTABLISHMENT CANNABIS CLASS A PERMIT. A Permit issued to a Food
9 Establishment Cannabis that is restricted to the provision of Prepackaged Edible
10 Cannabis Finished Products only.

11 FOOD ESTABLISHMENT CANNABIS CLASS B PERMIT. A Permit issued to a Food
12 Establishment Cannabis that includes the provision of Prepackaged Edible Cannabis
13 Finished Products and Edible Cannabis Products requiring Limited Preparation.

14 FOOD ESTABLISHMENT CANNABIS CLASS C PERMIT. A Permit issued to a Food
15 Establishment Cannabis that includes the provision of Prepackaged Edible Cannabis
16 Finished Products, Edible Cannabis Products requiring Limited Preparation, and Edible
17 Cannabis Products requiring Advanced Preparation.

18 FOOD ESTABLISHMENT CANNABIS CLASS D PERMIT. A Permit issued to a Food
19 Establishment Cannabis that includes the provision of Prepackaged Edible Cannabis
20 Finished, Edible Cannabis Products requiring Limited Preparation, Edible Cannabis
21 Products requiring Advanced Preparation, and Edible Cannabis Products requiring
22 Special Processes during preparation.]

23 FOOD ESTABLISHMENT CLASS A PERMIT. A Permit that is restricted to the provision
24 of [prePackaged] [Prepackaged] Food only.

25 FOOD ESTABLISHMENT CLASS B PERMIT. A Permit that includes the provision of
26 [prePackaged] [Prepackaged] Food and Food requiring Limited Preparation.

27 FOOD ESTABLISHMENT CLASS C PERMIT. A Permit that includes the provision of
28 [prePackaged] [Prepackaged] Food[s], Food requiring Limited Preparation, and Food
29 requiring Advanced Preparation.

30 FOOD ESTABLISHMENT CLASS D PERMIT. A Permit that includes the provision of
31 [prePackaged] [Prepackaged] Food[s], Food requiring Limited Preparation, Food

1 requiring Advanced Preparation, and Food requiring Special Processes during
2 preparation.

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

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

7 FOOD PROCESSING ESTABLISHMENT. A Food Establishment that manufactures,
8 packages, repackages, or labels Food for human consumption for wholesale or other off-
9 site distribution of that ~~[f]~~[E]ood for retail, includes storage of Food manufactured by the
10 Food Establishment.

11 FOOD PROCESSING ESTABLISHMENT CANNABIS. A specific, limited type of Food
12 Processing Establishment which is ~~[also]~~ a cannabis establishment licensed under the
13 Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, where [only] ~~[E]~~[e]dible
14 ~~[e]~~[C]annabis ~~[p]~~[P]roducts are processed, prepared, Packaged, stored or distributed for
15 human consumption excluding ~~[retail—cannabis—establishments]~~ [Retail Food
16 Establishments Cannabis] and ~~[w]~~[W]arehouses [Cannabis].

17 FOOD PROCESSING ESTABLISHMENT CANNABIS CLASS A PERMIT. A Permit
18 issued to a specific, limited type of Food Processing Cannabis Establishment which only
19 Repackages non-TCS Edible Cannabis Finished Product.

20 FOOD PROCESSING ESTABLISHMENT CANNABIS CLASS B PERMIT. A Permit
21 issued to a Food Processing Cannabis Establishment that manufactures Edible Cannabis
22 Finished Products using Limited Preparation.

23 FOOD PROCESSING ESTABLISHMENT CANNABIS CLASS C PERMIT. A Permit
24 issued to a Food Processing Cannabis Establishment that manufactures Edible Cannabis
25 Finished Products using Advanced Preparation.

26 FOOD PROCESSING ESTABLISHMENT CANNABIS CLASS D PERMIT. A Permit
27 issued to a Food Processing Cannabis Establishment that manufactures Edible Cannabis
28 Finished Products using Special Processes.

29 FOOD PROCESSING ESTABLISHMENT CANNABIS PLUS PERMIT. Can be added to
30 any Food Processing Establishment Cannabis Permit to allow for the onsite retail sale of

1 Edible Cannabis Finished Products manufactured by the Food Processing Cannabis
2 Establishment.]

3 FOOD PROCESSING ESTABLISHMENT CLASS A PERMIT. A Permit issued to a
4 specific, limited type of Food Processing Establishment which only repackages non-TCS
5 Food[s].

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

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

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

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

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

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

23 LIMITED PREPARATION. Food preparation that is restricted to assemble-serve and
24 reheat-serve.

25 (A) Limited Preparation includes steaming, boiling, or roasting hot dogs or corn; preparing
26 beverages that are for immediate service, in response to an individual consumer order,
27 [cutting of fresh fruits or vegetables that become TCS once cut, for same day use,]
28 portioning and hot or cold holding of commercially packaged bulk or single service food.

29 (B) Limited Preparation does not include cooling of cooked TCS Food [~~cutting of fresh~~
30 ~~fruits or vegetables that become TCS once cut, for same day use,]~~ or on-premise cooking
31 and hot holding of TCS food[s] for later use.

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

4 MARKET COORDINATOR. Any Person responsible for the organization and supervision
5 of a Market.

6 MARKET FOOD ESTABLISHMENT. A specific type of Food Establishment that operates
7 at a Market.

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

10 ~~[MICROBUSINESS. A company that employs no more than five (5) employees at any~~
11 ~~time during the calendar year. Employees include part-time, temporary, or limited~~
12 ~~service workers. For startup businesses, the responsible company official shall certify~~
13 ~~that the business does not expect to employ more than five (5) employees in the first~~
14 ~~year of operations. For existing businesses seeking certification as a Microbusiness,~~
15 ~~the responsible company official shall submit the business's Form ES-903A, Quarterly~~
16 ~~Wage and Contribution Report, submitted to the New Mexico Department of~~
17 ~~Workforce Solutions, or Form TRD-31109, Quarterly Wage, Income Withholding~~
18 ~~and Workers' Compensation Fee Report submitted to the New Mexico Taxation~~
19 ~~and Revenue Department as proof of meeting the definition of Microbusiness.]~~

20 [MICRO-MARKET. A specific, limited type of Retail Food Establishment, where the sale
21 or distribution of Food is the primary function of the Food Establishment, the square
22 footage of the Food Establishment operation is no greater than 3,000 sq. ft., and there
23 are no sales of tobacco, tobacco products, smoking or vaping paraphernalia, Cannabis,
24 Cannabis Products, hemp, hemp finished products, or alcoholic beverages.]

25 MOBILE FOOD ESTABLISHMENT. A specific type of Food Establishment that is vehicle
26 mounted, fully enclosed, and designed to be readily movable from location to location.

27 MOBILE FOOD ESTABLISHMENT includes push carts, trailers, and smokers. [MOBILE
28 FOOD ESTABLISHMENT does not include vendors offering only uncut raw produce
29 and/or other Food produced under the Homemade Food Act, Chapter 25, Article 12
30 NMSA 1978.]

1 PACKAGED. Bottled and capped, canned, cartoned, or securely wrapped. PACKAGED
2 does not include wrapped or placed in a carry-out container to protect Food during service
3 or delivery to the consumer [by a Food employee, or third-party delivery service, by
4 consumer request].

5 [PREPACKAGED FOOD. Food that is delivered to a Food Establishment that has already
6 been packaged by another Food Establishment in a manner that prevents contamination
7 of the Food and is not opened, portioned, or otherwise modified by the receiving Food
8 Establishment.]

9 PRIMARY PERMIT. The Permit issued that represents the main function of the Food
10 Establishment.

11 PRIORITY FOUNDATION VIOLATION. A violation of a priority foundation item as defined
12 in the Food Code or as otherwise prescribed in these rules.

13 PRIORITY VIOLATION. A violation of a priority item as defined in the Food Code or as
14 otherwise prescribed in these rules.

15 PRIVATE EVENT. An event where Food is distributed and whose participants are limited
16 to invited guests.

17 PULL DATE. The end of the last day on which a product is to be sold or offered for human
18 consumption.

19 RAW MILK. Any milk which is not pasteurized or has not been treated or manipulated in
20 any manner to destroy pathogens.

21 RAW MILK PERMIT. A Valid Permit issued by the Enforcement Authority which allows a
22 Person to Vend Raw Milk or a Raw Milk Product and includes the following types of
23 permits:

24 (A) Retail Food Establishment Raw Milk Permit: allows the Permit Holder of a Retail
25 Food Establishment Permit Class 4, 5, or 6 to Vend and distribute Raw Milk and
26 Raw Milk Product from the Retail Food Establishment Permit Class 4, 5, or 6
27 location.

28 (B) Market Food Establishment Raw Milk Permit: a specific type of Market Food
29 Establishment Permit that allows a Person to Vend Raw Milk and Raw Milk Product
30 at any Market.

1 RAW MILK PRODUCT. Any of the following products which have been derived from Raw
2 Milk and have not been treated or manipulated in any manner to destroy pathogens:
3 cream, flavored milk, and half and half.

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

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

11 [REPACKAGED FOOD. Food that has been removed from its original Packaging or
12 whose original Packaging has been opened, broken, or otherwise compromised by a
13 Food Establishment, and is subsequently placed into new or different packaging,
14 regardless of whether the food is altered.]

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

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

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

25 RETAIL FOOD ESTABLISHMENT CANNABIS PLUS. A type of Retail Food
26 Establishment [Cannabis], which is also a cannabis establishment with a cannabis
27 consumption area, both licensed under the Cannabis Regulation Act, Chapter 26, Article
28 2C NMSA 1978, where Edible Cannabis Finished Products are offered for sale, donated,
29 or distributed for either off-the-premise consumption or in a cannabis consumption area.
30 The term also includes the place where Edible Cannabis Finished products are stored.

1 RETAIL FOOD ESTABLISHMENT CANNABIS CLASS 1 PERMIT. A Retail Food
2 Establishment Cannabis Permit that is restricted to non-TCS Prepackaged Edible
3 Cannabis Finished Product and in which the sale or distribution of Food is not the primary
4 function of the Food Establishment.

5 RETAIL FOOD ESTABLISHMENT CANNABIS CLASS 2 PERMIT. A Retail Food
6 Establishment Cannabis Permit that is restricted to non-TCS Prepackaged Edible
7 Cannabis Finished Product and the sale or distribution of Food is the primary function of
8 the Food Establishment.

9 RETAIL FOOD ESTABLISHMENT CANNABIS CLASS 3 PERMIT. A Retail Food
10 Establishment Cannabis Permit that includes the provision of TCS Prepackaged Edible
11 Cannabis Finished Product, and Edible Cannabis Products requiring Limited Preparation,
12 and the sale or distribution of Food is not the primary function of the Food Establishment.

13 RETAIL FOOD ESTABLISHMENT CANNABIS CLASS 4 PERMIT. A Retail Food
14 Establishment Cannabis Permit that includes the provision of TCS Prepackaged Edible
15 Cannabis Finished Product, and Edible Cannabis Product requiring Limited Preparation,
16 and the sale or distribution of Food is the primary function of the Food Establishment.

17 RETAIL FOOD ESTABLISHMENT CANNABIS CLASS 5 PERMIT. A Retail Food
18 Establishment Cannabis Permit that includes the provision of TCS Prepackaged Edible
19 Cannabis Finished Product, Edible Cannabis Product requiring Limited Preparation, and
20 Edible Cannabis Product requiring Advanced Preparation.

21 RETAIL FOOD ESTABLISHMENT CANNABIS CLASS 6 PERMIT. A Retail Food
22 Establishment Cannabis Permit that includes the provision of Prepackaged Edible
23 Cannabis Finished Product, Edible Cannabis Product requiring Limited Preparation,
24 Edible Cannabis Product requiring Advanced Preparation, and Edible Cannabis Product
25 requiring Special Processes during preparation.]

26 RETAIL FOOD ESTABLISHMENT CLASS 1 PERMIT. A Retail Food Establishment
27 Permit that is restricted to non-TCS [~~prePackaged items~~] [Prepackaged Food] and in
28 which the sale or distribution of Food is not the primary function of the Food
29 Establishment.

1 RETAIL FOOD ESTABLISHMENT CLASS 2 PERMIT. A Retail Food Establishment
2 Permit that is restricted to non-TCS [~~prePackaged~~] [Prepackaged] Food and the sale or
3 distribution of Food is the primary function of the Food Establishment.

4 RETAIL FOOD ESTABLISHMENT CLASS 3 PERMIT. A Retail Food Establishment
5 Permit that includes the provision of TCS [~~prePackaged~~] [Prepackaged] Food, raw
6 produce, and Food requiring Limited Preparation, and the sale or distribution of Food is
7 not the primary function of the Food Establishment.

8 RETAIL FOOD ESTABLISHMENT CLASS 4 PERMIT. A Retail Food Establishment
9 Permit that includes the provision of TCS [~~prePackaged~~] [Prepackaged] Food, raw
10 produce, and Food requiring Limited Preparation, and the sale or distribution of Food is
11 the primary function of the Food Establishment.

12 RETAIL FOOD ESTABLISHMENT CLASS 5 PERMIT. A Retail Food Establishment
13 Permit that includes the provision of TCS [~~prePackaged~~] [Prepackaged] Food, raw
14 produce, Food requiring Limited Preparation, and Food requiring Advanced Preparation.

15 RETAIL FOOD ESTABLISHMENT CLASS 6 PERMIT. A Retail Food Establishment
16 Permit that includes the provision of [~~prePackaged~~] [Prepackaged] Food[s], raw produce,
17 Food requiring Limited Preparation, Food requiring Advanced Preparation, self-service of
18 TCS food[s], and Food requiring Special Processes during preparation.

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

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

23 SAFETY PLAN. The primary document in a preventive Food safety system that provides
24 a systematic approach to the identification of Food safety hazards that must be controlled
25 to prevent or minimize the likelihood of foodborne illness or injury during storage,
26 processing, Packaging, [~~rePackaging~~] [Repackaging], or preparation of Food for human
27 consumption.

28 SEALED. Free of cracks or other openings that may allow the entry or passage of
29 moisture.

30 SECONDARY PERMIT. Any [renewable] Food Permit issued as an addition to a Food
31 Establishment with a Primary Permit.

1 SELF-SERVICE FOOD ESTABLISHMENT. A specific and limited type of unattended
2 Food Establishment that offers [~~prePackaged~~] [Prepackaged] Food for customer self-
3 service.

4 SIGNS OF INFESTATION. The presence of evidence indicating an Infestation on non[-
5]Food contact surfaces, non[-]Food storage or preparation areas, or other such locations,
6 to such extent that without mediation an Imminent Health Hazard would result.

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

12 SOUND AMPLIFYING EQUIPMENT. Any machine or device for the sound amplification
13 of the human voice, music, or any other sound. "Sound amplifying equipment" shall not
14 include warning devices on authorized emergency vehicles or horns or other warning
15 devices on any motor vehicles used only for traffic safety purposes.

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

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

20 TAMPER-EVIDENT PACKAGING. A package having one or more indicators or barriers
21 to entry which, if bre[a][e]ched or missing, can reasonably be expected to provide visible
22 evidence to consumers that tampering has occurred.

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

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

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

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

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

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

9 VENDING MACHINE CLASS A REGISTRATION. A Vending Machine restricted to non-
10 TCS[, Hermetically Sealed], [~~prePackaged~~] [Prepackaged] Food.

11 VENDING MACHINE CLASS B PERMIT. A Vending Machine Permit that includes the
12 provision of TCS [Hermetically Sealed], [~~prePackaged~~] [Prepackaged] Food.

13 WAREHOUSE. A specific type of [Retail] Food Establishment where Food is stored and
14 distributed to other Food Establishments.

15 WAREHOUSE CANNABIS. A specific, limited type of [Retail] Food Establishment
16 [Cannabis] [~~which is a cannabis establishment licensed under the Cannabis Regulation~~
17 ~~Act, Chapter 26, Article 2C NMSA 1978,~~] where Edible Cannabis Product is stored and
18 distributed to other Food Establishments Cannabis.

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

20 (A) The 2022 United States Food and Drug Administration Model Food Code January
21 18, 2023 Version as published by the U.S. Department of Health and Human
22 Services is hereby adopted and incorporated in its entirety.

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

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

26 (2) 7.6.2.12 NMAC;

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

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

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

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

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

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

8 **Part 4. Pre-inspection Application Information.**

9 (A) An Applicant seeking a Permit shall submit a signed pre-inspection application, a
10 copy of the Food Establishment's City of Albuquerque business
11 [license][registration], ~~[and]~~ a copy of the Food Establishment's State of New Mexico
12 Taxation and Revenue Department registration certificate, and a copy of the
13 Certified Food Protection Manager certificate, belonging to an employee of the Food
14 Establishment, to the Enforcement Authority. The pre-inspection application shall
15 be submitted to the Enforcement Authority at least five ~~[working]~~ [business] days
16 prior to the commencement of operations.

17 (1) In the case of an application for a Food Establishment who is also applying for
18 a license pursuant to the Liquor Control Act, Chapter 60, Article 3A NMSA 1978
19 or the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, a pre-
20 inspection application is required. The Enforcement Authority may issue a
21 Permit while the application for a State issued liquor or cannabis license
22 pursuant to the Liquor Control Act or the Cannabis Regulation Act, Chapter 26,
23 Article 2C NMSA 1978 is pending. The Applicant shall contact the Enforcement
24 Authority at least five (5) ~~[working]~~ [business] days prior to the anticipated
25 commencement of Food operations to schedule a pre-opening inspection of the
26 Food Establishment.

27 (2) In order to receive a Market Food Establishment, Permit by April 1, an Applicant
28 shall submit a pre-inspection application to the Enforcement Authority by March
29 15 of each year. In the event that an Applicant submits a pre-inspection
30 application after March 15, the Applicant shall submit the Permit application to
31 the Enforcement Authority at least five (5) business days prior to the anticipated

1 opening date of the Market Food Establishment. Market Food Establishment
2 pre-inspection applications received after March 15 may not be processed by
3 April 1.

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

5 (1) The name, Address Of Record, all trade names under which the applicant
6 conducts business, telephone number, and e-mail address of the proposed
7 Permit Holder, and designated agent if different from the owner.

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

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

11 (c) A list of any Valid Food Establishment Permits held by the Applicant, or a
12 disclosure of any Food Establishment Permits previously held by the Food
13 Establishment owner designated agent or Applicant within the last three
14 years.

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

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

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

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

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

25 (C) Corrections. Incomplete pre-inspection applications will not be considered.
26 Incomplete pre-inspection applications will be returned to the Applicant with a list of
27 missing information. The Enforcement Authority's determination that an application
28 is incomplete does not constitute a denial of the pre-inspection application.

29 (D) When an Applicant has a known history of non-compliance with the FSO, these
30 Rules, or the Food Code, the Enforcement Authority may require that the Applicant
31 enter into a written agreement that outlines conditions of Permit retention which may

1 include, but are not limited to an increase in inspection frequency, provision of pest
2 control documentation, or temperature logs. Agreements shall have expiration
3 dates.]

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

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

7 (1) Inspection shall be deferred until five (5) ~~[working]~~ [business] days prior to the
8 commencement of operations when a Food Establishment is seeking a liquor
9 license from the State of New Mexico in accordance with the Liquor Control Act,
10 Chapter 60, Article 3A NMSA 1978, or a cannabis license in accordance with
11 ~~[under]~~ the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, but
12 the Food Establishment is not yet in operation.

13 (2) The Enforcement Authority may waive the pre-opening inspection for[:] [a]

14 (a) Temporary Food Establishment[s] or Market Food Establishment[s] when
15 the Enforcement Authority finds that waiver of the pre-opening inspection will
16 not result in a condition injurious to health or safety[.]; or]

17 (b) [A Food Establishment that is applying for a Secondary Permit and the
18 Primary Permit has been inspected within the last six (6) months and the
19 Enforcement Authority finds that waiver of the pre-opening inspection will not
20 result in a condition injurious to health or safety.]

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

22 (A) The Enforcement Authority shall issue a provisional Permit, Valid for thirty (30)
23 [calendar] days, when the Applicant receives a Grade of Approved or Conditional
24 Approved from the Enforcement Authority during the pre-opening inspection.

25 (1) A provisional Permit Holder has thirty (30) [calendar] days from the date of
26 issuance of the provisional Permit[, the provisional Permit Expiration Date,] to
27 pay all applicable fees.

28 (2) Upon receipt of payment for all applicable fees, the Enforcement Authority shall
29 issue a Permit~~[-and the Food Establishment's Grade sticker].~~

- 1 (a) [When a provisional Permit is issued after the fifteenth (15th) of the month,
2 the Permit will have an Anniversary Date of the first day of the following
3 month.
- 4 (3) When payment is not made prior to the Expiration Date of the provisional Permit
5 a Reinspection fee will be assessed for every thirty (30) days of non-payment,
6 not to exceed the assessment of two (2) Reinspection fees; the Reinspection
7 fee(s) shall be paid prior to the issuance of the Permit.
- 8 (a) The Reinspection fee may be waived by the Enforcement Authority when the
9 Permit Holder has demonstrated a good-faith effort to submit timely
10 payment.
- 11 (b) If, after the assessment of two (2) Reinspection fees, or ninety (90) days,
12 payment has not been received, the Enforcement Authority shall void the
13 application and issue a cease and desist to the Food Establishment, and the
14 Person must reapply for a Permit as outlined in Part 3 of these Rules.
- 15 (i) When reapplying for a Permit, the Applicant shall pay any outstanding
16 fees associated with the original application and the new application
17 prior to being issued a Permit and approved to operate; no provisional
18 Permit shall be issued.]
- 19 (4) ~~[The provisional Permit shall expire when payment is not made within the thirty~~
20 ~~(30) days. If a Permit Holder wishes to obtain a Food Establishment Permit after~~
21 ~~expiration, the Person must reapply for a Permit as outlined in Part 3 of these~~
22 ~~rules.~~
- 23 (a) ~~When reapplying for a Permit after expiration of a provisional thirty (30) day~~
24 ~~Permit, the Applicant shall make payment in full before being issued a permit~~
25 ~~and approved to operate.]~~
- 26 (B) When an Applicant does not receive a Grade of Approved or Conditional Approved
27 during the pre-opening inspection, the Enforcement Authority shall provide a written
28 list of Corrective Actions to be taken. The Applicant may have up to thirty (30)
29 [calendar] days to request a Reinspection and receive a Grade of Approved or
30 Conditional Approved.

1 (1) The initial pre-inspection application shall be denied when the Applicant fails to
2 contact the Enforcement Authority to provide proof of the completion of the
3 Corrective Actions provided by the Enforcement Authority at the pre-opening
4 inspection and to request another pre-opening inspection prior to the expiration
5 of the thirty (30) calendar day Corrective Action timeframe.

6 (C) An Applicant seeking a liquor license from the State of New Mexico in accordance
7 with the Liquor Control Act, Chapter 60, Article 3A NMSA 1978, or cannabis license
8 in accordance with under the Cannabis Regulation Act, Chapter 26, Article 2C
9 NMSA 1978, shall remit payment for the Food Establishment Permit prior to
10 issuance of the Permit.

11 (D) An Applicant for a Temporary Food Establishment or Market Food Establishment
12 Permit shall remit payment for the Permit prior to the commencement of operations
13 or within fourteen (14) calendar days of Permit approval, whichever occurs first.

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

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

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

19 (1) Temporary Mobile Food Establishment permits shall be Valid for up to thirty (30)
20 calendar days from the date of issuance.

21 (2) Market Food Establishment permits issued on or before April 1 are through
22 March 31. Market Food Establishment permits issued after April 1 are Valid from
23 the date of issuance through March 31.

24 **Part 8. Permit Renewal.**

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

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

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

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

4 (B) The Enforcement Authority shall provide a notice and invoice for the amount due at
5 least thirty (30) calendar days prior to the Expiration Date. The Permit Holder is
6 required to renew their Permit(s) regardless of whether the Enforcement Authority
7 issues this notice.

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

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

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

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

20 **Part 9. Fees.**

21 (A) Permit fees are non-refundable.

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

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

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

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

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

10 (5) [In the case where a Person is applying for a Permit and that Person owes
11 outstanding fees on any other Permit, the outstanding fees must be brought into
12 financial compliance prior to any new Permit being issued.]

13 (6) ~~[Mobile Food Establishments, Non-Profit Organizations designated as a 501(c)~~
14 ~~under 26 U.S. Code § 501, Adult Daycare Establishments, Child Daycare~~
15 ~~Establishments, and Microbusinesses shall become eligible for a .25 multiplier~~
16 ~~variance to the Primary Permit Fees of the FSO when determining the~~
17 ~~appropriate annual fee for the Permit issued to the establishment by the~~
18 ~~Enforcement Authority.]~~

19 (C) Administrative Fees.

20 (1) Hazard Analysis and Critical Control Point (HACCP) plan review and Variance
21 Requests fees are due at the time the HACCP or Variance Request is submitted
22 to the Enforcement Authority for review.

23 (2) Requested Inspection and Re-inspection fees are due prior to the time the
24 inspection is performed and the inspection shall not be performed until payment
25 is received by the Enforcement Authority.

26 (D) Civil Penalty Fees.

27 (1) Civil penalty fees are due within thirty (30) calendar days from the date of
28 penalty issuance.

29 (2) Non-payment of Civil Penalties within the allotted timeframe shall be considered
30 financial non-compliance and the Enforcement Authority may pursue

1 Enforcement Actions up to and including permit revocation in accordance with
2 §9-6-8 of the FSO.]

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

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

6 (1) Food Establishments restricted to the distribution of non-TCS Prepackaged
7 Food shall be considered risk category 1 and shall receive inspections in
8 response to complaints, or at the discretion of the Enforcement Authority.]

9 (2) Food Establishments restricted to the distribution of [~~pre~~Packaged]
10 Prepackaged Food shall be considered risk category 1 and shall receive and
11 pass an inspection at least once every eighteen (18) months.

12 (3) Food Establishments restricted to the distribution of [~~pre~~Packaged]
13 Prepackaged Food where the primary population served is highly susceptible,
14 or Food Establishments that include Limited Preparation of Food shall be risk
15 category 2 and shall receive and pass an inspection at least once every twelve
16 (12) months.

17 (4) Food Establishments that include Limited Preparation of Food and where the
18 primary population served is highly susceptible, or Food Establishments that
19 include Advanced Preparation of Food shall be risk category 3 and shall receive
20 and pass an inspection at least once every six (6) months.

21 (5) Food Establishments that include Advanced Preparation of Food and where the
22 primary population served is highly susceptible, or Food Establishments that
23 include Special Processes shall be risk category 4 and shall receive and pass
24 an inspection at least once every four (4) months.

25 (B) A Food Establishment's risk category may be increased or decreased based on past
26 performance of the Food Establishment to conform with the Food Code, the FSO,
27 these rules, and other laws; service of high-risk Food[s] such as oysters, shellfish,
28 or sushi; Food service practices such a buffet or serving a high-risk population; or
29 based on the risk to public health.

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

- 1 (A) Grades of Food Establishments shall be determined by the score issued after each
2 inspection and remain in effect until the next inspection, [or the provision of sufficient
3 Corrective Action documentation as determined by the Enforcement Authority,] as
4 follows:
- 5 (1) APPROVED. A Food Establishment that receives an inspection score of eighty-
6 five (85) points or higher as determined by the Enforcement Authority showing
7 compliance with the standards in the Food Code, the FSO, other industry
8 standards, and other laws will receive a Grade of Approved[, have a green
9 Approved Grade sticker affixed to each public entrance, and drive through
10 window, of the Food Establishment,] and is able to operate.
- 11 (2) CONDITIONAL APPROVED. A Food Establishment that is found to be in
12 violation of the standards in the Food Code, the FSO, other industry standards,
13 and other laws by receiving an inspection score between seventy-five (75) and
14 eighty-four (84) points will receive a Grade of Conditional Approved[, have a
15 yellow Conditional Grade sticker above a Green Approved Grade sticker affixed
16 to each public entrance, and drive through window, of the Food Establishment,]
17 and the Food Establishment is able to operate but is required to follow
18 Corrective Actions issued by the Enforcement Authority.
- 19 (3) UNSATISFACTORY. A Food Establishment that meets minimum standards in
20 the Food Code, the FSO, other industry standards, and other laws by receiving
21 an inspection score between sixty-five (65) and seventy-four (74) points, having
22 any [five (5)] [5] or more priority violations out of compliance during a single
23 inspection, or any Priority Violation, Priority Foundation Violation, or Core
24 Violation being out of compliance on a repeated basis within the last thirty-six
25 (36) months as determined by the Enforcement Authority will receive a Grade
26 of Unsatisfactory[, have a red Unsatisfactory Grade sticker affixed to each public
27 entrance, and drive through window, of the Food Establishment, and] [~~but~~] is
28 allowed to continue Food operations while following any Corrective Actions
29 issued by the Enforcement Authority.

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

4 (b) Unsatisfactory is a temporary grade with a maximum duration of five [(5)]
5 [working] [business] days.

6 (4) CLOSED. A Food Establishment that receives an inspection score of sixty-four
7 (64) or less due to failure to comply with the minimum standards of the Food
8 Code, the FSO, or these rules, or the Enforcement Authority finding an imminent
9 or substantial health hazard, shall receive a Grade of Closed~~[, have an orange~~
10 Closed Grade sticker affixed to each public entrance, and drive through window,
11 of the Food Establishment,] and shall immediately cease operations until such
12 time that Corrective Actions are completed to the satisfaction of the
13 Enforcement Authority.

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

17 (b) [The Enforcement Authority may issue a Civil Penalty to a Food
18 Establishment found to be operating with an Imminent Health Hazard.]

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

24 (d) When a facility is issued a Grade of Closed due to an imminent or substantial
25 health hazard the Food Establishment shall be reopened under the
26 ~~[g]~~[G]rade the establishment would have received without the imminent
27 health hazard.

28 (e) [When a facility is issued a Grade of Closed due to a score of sixty-four (64)
29 or less, the Food Establishment shall be reopened under the grade of
30 Unsatisfactory and shall be reinspected within the following five (5) business
31 days, and while the Food Establishment is in operation.]

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

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

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

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

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

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

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

15 **Part 13. Corrective Actions.**

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

25 (B) The Enforcement Authority may grant an extension of the Corrective Action
26 timeframe when the Permit Holder can demonstrate reasonable efforts to comply
27 with the Corrective Actions. In order to be granted an extension, the Permit Holder
28 shall request an extension of the Corrective Action timeframe in writing. The
29 Enforcement Authority shall review the request and provide a written determination
30 approving or denying the request. If the request for extension is approved the
31 Enforcement Authority shall provide a written addendum with a new timeframe.

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

4 (D) Infestation Corrective Actions.

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

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

10 (3) Food Establishments that receive a Grade of Closed due to Infestation shall
11 remain closed for a minimum of two (2) [~~calendar~~] [business] days and shall not
12 be Reinspected until such time professional pest control reports and
13 documentation of other completed Corrective Actions are provided to the
14 Enforcement Authority.

15 (a) [In the case of cockroach infestation, Reinspection shall not occur until two
16 (2) business days following treatment of the infestation by a professional
17 pest control operator.]

18 (4) Reinspection may occur prior to two (2) [~~calendar~~] [business] days and without
19 the presentation of professional pest control records when a Food
20 Establishment receives a Grade of Closed due to Signs Of Infestation.

21 (E) [On Site Corrective Actions.

22 (1) [When a Food Establishment can complete sufficient Corrective Actions prior to
23 the conclusion of the inspection, so that the resulting Grade would change, an
24 accompanying Corrective Action compliance inspection report shall be
25 completed by the Enforcement Authority.

26 (a) [A Corrective Action compliance inspection may increase an establishment's
27 grade by no more than one level.]

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

29 (A) Prior to when a Food Establishment is hereafter constructed or extensively
30 remodeled, or when an existing structure is converted for use as a Food
31 Establishment, the appropriate permits shall be obtained from the City of

1 Albuquerque's Planning Department in accordance with the Uniform Administrative
2 Code of the City of Albuquerque.

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

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

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

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

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

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

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

28 (a) Food Processing Establishments and Food Establishments manufacturing
29 Food for distribution to other Food Establishments under their control shall
30 have recall procedures prepared and on file at the Food Establishment
31 where the Food was manufactured. Procedures shall include plans for

1 recalling products which may be injurious to human health; for identifying
2 products which may be injurious to human health; for identifying, collecting,
3 warehousing, and controlling products; for determining the effectiveness of
4 recalls; and for notifying the Enforcement Authority, and if applicable, the
5 Food and Drug Administration, and United States Department of Agriculture
6 of any recalls.

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

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

12 (2) Such Utensil or equipment may be labeled “condemned” by the Enforcement
13 Authority. The Utensil or Food equipment so labeled shall not thereafter be used
14 for Food storage, preparation, handling, or serving; or

15 (3) The Enforcement Authority may require the Food Establishment to bring the
16 condemned Utensil or Food equipment into compliance with the requirements
17 of these rules, the Food Code, the FSO, or to remove it from the Food
18 Establishment.

19 (a) Upon presentation of sufficient evidence that the condemned Utensil or Food
20 equipment has been brought into compliance with requirements of these
21 rules, the Food Code, or the FSO, the Enforcement Authority shall remove
22 the “condemned” label and allow the Utensil or Food equipment to be used
23 for Food storage, preparation, handling, or serving.

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

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

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

29 (1) A Certified Food Protection Manager shall pass a test accredited and listed by
30 the Conference for Food Protection, and such Employee shall have supervisory

1 and management responsibility with the authority to direct and control Food
2 preparation and service.

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

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

10 (3) A Person In Charge who demonstrates knowledge by being a food protection
11 manager that is certified by a food protection manager certification program,
12 evaluated and listed by a Conference for Food Protection-recognized
13 accrediting agency as conforming to the conference for food protection
14 standards for accreditation of food protection manager certification programs, is
15 deemed to comply with paragraph 2-102.11(B) of the FDA Food Code.

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

22 (a) ~~[The Certified Food Protection Manager requirements of Part 16 of these~~
23 ~~rules shall become effective ninety (90) days after the effective date of these~~
24 ~~rules.]~~

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

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

- 1 (2) The Food Employee does not prepare or handle TCS Food, provided that at a
2 minimum, the Permit Holder assures the Food Employee complies with Part 16
3 of these Rules; or
- 4 (3) The Food Employee is working as a Food Employee or volunteer of a
5 Temporary Food Establishment or Charitable Food Provider, provided that at
6 minimum, the Person In Charge is a Certified Food Protection Manager or has
7 a Valid Food Handler Card, either of which shall be obtained prior to the
8 issuance of a Temporary Food Establishment Permit or Charitable Food
9 Provider Permit, and the Person In Charge ensures the Food Employee
10 complies with Part 16 of these rules.
- 11 (4) ~~[The Food Handler Card requirements of Part 16 of these rules shall become~~
12 ~~effective ninety (90) days after the effective date of these rules.]~~
- 13 (C) Food handler cards shall be kept by the Food Employee on their Person while
14 working as a Food Employee or volunteer for a Food operation, or a copy shall be
15 kept on file by the current employer and upon request be immediately made
16 available for inspection by the Enforcement Authority.
- 17 (D) Alternative to Food Handler Cards. The Enforcement Authority may approve a Food
18 Establishment's training program to be used in lieu of requiring a Food Handler Card
19 training of its Food Employees when the training program is found to be comparable
20 to a Food Handler Card training course. A Food Employee must complete the Food
21 Establishment's Approved training program at least once every three years. This
22 exemption is only valid during the Food Employee's time of employment with the
23 Food Establishment that administered the training;
- 24 (1) A Food Employee must be trained in safe Food handling by the Certified Food
25 Protection Manager within thirty (30) days of employment at the Food
26 Establishment and the Food Establishment must maintain records of training
27 including the name of the Certified Food Protection Manager, date of training,
28 and name(s) of Food employees. Such records shall be maintained on file and
29 made available to the Enforcement Authority upon request; and
- 30 (2) Records of the training shall be maintained for the duration of the Food
31 Employee's employment.

1 **Part 17. General Sanitation**

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

7 (B) All parts, equipment, and facilities of every Food Establishment, and all vehicles
8 used in transporting Food, shall be kept in a clean, healthful, and sanitary condition,
9 and in compliance with the FSO.

10 (C) All Food equipment in a Food Establishment shall be certified by the American
11 National Standards Institute, the National Sanitation Foundation, or comply with
12 comparable standards.

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

16 (E) Food Source.

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

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

20 (F) Special Processes.

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

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

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

27 (G) Food Protection.

28 (1) TCS Food[s] shall be kept at Safe Temperatures at all times and Food
29 Establishments shall maintain adequate and contemporaneous temperature
30 logs of TCS Food[s] while being stored, thawed, cooled, prepared, displayed,
31 dispensed, or transported.

1 (a) [Food that is actively being hot held and found to be below Safe
2 Temperatures may be reheated, prior to continued service, to Safe
3 Temperatures so long as through the presentation of contemporaneous
4 temperature logs, the Food Establishment can demonstrate that the Food
5 has not been below Safe Temperatures for more than two (2) hours and has
6 not dropped below one-hundred- and twenty-five-degrees Fahrenheit
7 (125°F). The reheating process shall not take longer than the difference
8 between the time the Food was below Safe Temperatures and two (2) hours.
9 Food that has been below Safe Temperatures for longer than two (2) hours
10 or has dropped below one-hundred- and twenty-five-degrees Fahrenheit
11 (125°F) shall not be used in the operations of the Food Establishment.

12 (b) Food that is actively being cold held and found to be above Safe
13 Temperatures may be cooled, prior to continued service, to Safe
14 Temperatures so long as through the presentation of contemporaneous
15 temperature logs, the Food Establishment can demonstrate that the Food
16 has not been above Safe Temperatures for more than two (2) hours and has
17 not risen above seventy-degrees Fahrenheit (70°F). The cooling process
18 shall not take longer than the difference between the time the Food was
19 above Safe Temperatures and two (2) hours. Food that has been above Safe
20 Temperatures for longer than two (2) hours or has risen above seventy-
21 degrees Fahrenheit (70°F) shall not be used in the operations of the Food
22 Establishment.]

23 (2) Food Establishments shall calibrate measuring equipment in accordance with
24 the manufacturer recommendations and shall maintain adequate and
25 contemporaneous calibration logs for calibration of equipment.

26 (3) [All ready-to-eat, TCS Food shall be clearly date marked, in the same manner
27 as prescribed by section 3-501.17 of the Food Code, upon preparation or
28 opening, regardless of the length of time the food is held.]

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

- 1 (5) A Food Establishment shall store liquid milk, liquid milk products, and shellfish
2 at forty-one degrees Fahrenheit (41°F) or less.
- 3 (6) Food Establishments shall not use raw unpasteurized eggs that have been
4 cracked and combined together (pooled eggs). Food Establishments shall only
5 combine enough raw eggs for immediate service in response to a customer's
6 order; or use pooled eggs mixed with other ingredients immediately before
7 cooking, such as in baking batters.
- 8 (7) Food Establishments shall properly rotate Retail Food stock with the first in, first
9 out method.
- 10 (8) Food Establishments shall segregate spoiled, damaged, returned, embargoed,
11 or condemned Food items in designated areas pending final disposition.
- 12 (9) [The name and Address of Record for any Food Establishment transporting
13 Food shall be legibly painted or permanently affixed in letters no less than three
14 inches high by one-half inch wide on each side of all transportation vehicles
15 operated by such Food Establishment. All food transportation shall be in
16 enclosed van-type vehicles.]
- 17 (10) Allergen Consumer Advisory.
- 18 (a) If a Food Establishment serves Food containing a major allergen, the Permit
19 Holder shall inform consumers of the risk through disclosure and reminder
20 using brochures, deli case or menu advisories, label statements, table tents,
21 placards, or other effective written means.
- 22 (i) Disclosure shall include:
- 23 (1) A description of the allergen derived Food, such as "contains
24 peanuts" or "peanut curry;"
- 25 (2) All allergens are listed as an ingredient in the Food item on the
26 menu;
- 27 (3) Identification of the allergen containing Food by asterisking them
28 to a footnote that states that the items contain a major allergen; or
- 29 (4) Asterisking the allergen containing Food requiring disclosure to a
30 footnote that states: "Contains a major allergen, written
31 information is available upon request"

1 (11) All Food, Food additives, and Food ingredients processed, prepared, packed,
2 stored, or distributed shall be generally recognized as safe (GRAS), and/or used
3 in a manner consistent with all legal requirements.

4 (a) Food Establishments shall not process, prepare, pack, store, distribute, or
5 vend any product containing Kratom, *Mitragyna speciosa*.

6 (b) Food Establishments shall not process or pack Kava, *Piper methysticum*.
7 Food Establishments distributing, vending, or serving Kava, *Piper*
8 *methysticum*, shall not use Kava as an ingredient in conventional food.

9 (i) Kava, *Piper methysticum*, may be steeped in water only and served to a
10 customer; it may be prepared or served in no other fashion and may not
11 be otherwise used as a Food additive or Food ingredient. Pet dogs in
12 outdoor dining areas; requirements.

13 (12) A Food Establishment may allow pet dogs in outdoor dining areas designated
14 by the Food Establishment if the following requirements are met:

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

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

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

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

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

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

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

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

31 (f) Food Employees shall:

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

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

8 (g) Nothing in this section shall be interpreted to prohibit a Food Establishment
9 from excluding any pet dog from a Food Establishment or impacting the
10 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 Cannabis,
15 Retail Food Establishment Cannabis Plus, and Warehouse Cannabis Permits
16 shall:

17 (a) Submit a copy of the Certificate of Occupancy for any location occupied by
18 the Food Establishment as part of the pre-inspection application;

19 (b) Submit a copy of the Zoning Approval Letter issued by the City for any
20 location occupied by the Food Establishment as part of the pre-inspection
21 application;

22 (c) Provide a copy of any license issued to the Food Establishment under the
23 Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978 prior to
24 operating as a Food Establishment;

25 (d) Provide a copy of any City of Albuquerque business [~~registration~~] [license]
26 issued to the Food Establishment, prior to operating as a Food
27 Establishment;

28 (2) Cannabis Food Establishments found to be operating as a Food Establishment
29 without having received a grade of Approved or Conditional Approved during a
30 pre-opening inspection shall have its Permit(s) suspended.

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

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

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

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

16 (4) [In the event that both Food and Edible Cannabis Products are processed,
17 prepared, packed, stored, distributed, or prepared and intended for individual
18 portion service in the same Food Establishment, separate permits are required
19 for Food and Edible Cannabis Products.]

20 (B) Catering Food Establishments.

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

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

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

28 (b) Temperatures for TCS Food[s] while in transport and at the time of delivery
29 and service.

30 (3) Catering Food Establishments shall operate from a Commissary with a
31 Commissary Type 2 Permit[, when the Commissary is not owned and operated

1 by the Catering Food Establishment,] and shall report each day of operation. All
2 catering activities that occur prior to service must occur at the Approved
3 Commissary.

4 (4) Catering Food Establishment Class C and D Permits require that applicable
5 standard operating procedures, safety plans, and transportation plans be
6 submitted to and Approved by the Enforcement Authority.

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

11 (a) Catering Food Establishments shall provide the license plate number[and
12 proof of current registration] for their registered transportation vehicle(s),[
13 and photos of the inside and outside of the registered transportation
14 vehicle(s),] if applicable, with their pre-inspection application.

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

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

19 (8) Catering Food Establishments shall protect all Food[s] offered for customer self-
20 service, such as a buffet, from contamination by the use of packaging, Food
21 guards, display cases, or other effective means. In addition, Food[s] that [~~have~~]
22 [~~has~~] been offered in this manner shall not be offered for human consumption
23 after the completion of each day.

24 (C) Charitable Food Providers. [The designation of Charitable Food Provider can be
25 applied to any permit type under a business meeting the definition.]

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

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

30 (3) Charitable Food Providers shall keep, and make readily available to the
31 Enforcement Authority for inspection, records of all Food items prepared and

1 distributed, and locations where those Food items were delivered or provided to
2 the public.

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

6 (D) Commissaries.

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

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

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

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

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

- 27 (6) Any Person operating a Commissary shall maintain and make available for
28 inspection by the Enforcement Authority:

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

- 1 (b) Logs of visits for each Food Establishment making use of the Commissary
2 for the duration of the Food Establishment's use of the Commissary, plus
3 one calendar year.
- 4 (E) Family Child Care Homes and Adult Day Care Homes.
- 5 (1) Family Child Care Homes and Adult Day Care Homes serving six or fewer
6 persons are exempt from the requirement to obtain a Permit from the
7 Enforcement Authority.
- 8 (F) Childcare Centers.
- 9 (1) Child Care Centers may not allow children in the kitchen except under careful
10 supervision.
- 11 (2) If Food is brought to a Childcare Center from a child's home, the Childcare
12 Center shall label it with the child's name and refrigerate, if necessary. A
13 Childcare Center shall label and refrigerate bottles of infant formula or breast
14 milk.
- 15 (3) Nothing in this section shall be interpreted to require a Child Care Center to
16 accept Food from a child's home.
- 17 (G) Mobile Food Establishments.
- 18 (1) Push Carts are limited to the preparation and serving of hot dogs, or food
19 packaged commercially or at an approved commissary, maintained at Safe
20 Temperatures [and served to the consumer in the original Packaging;] or limited
21 to serving non-TCS food.
- 22 (2) Smokers permitted as a Mobile Food Establishment are limited to the service of
23 Food Packaged commercially or at an approved Commissary, maintained at
24 Safe Temperatures and served to the consumer in the original Packaging.
- 25 (3) Trailers must be fully enclosed or be limited to the preparation and serving of
26 hot dogs, Food Packaged commercially or at an approved Commissary,
27 maintained at Safe Temperatures and served to the consumer in the original
28 Packaging.
- 29 (4) Mobile Food Establishments shall provide the license plate number [, proof of
30 current registration] for their [Mobile Food Establishment, and photos of the

1 inside and outside of the Mobile Food Establishment] [~~registered vehicle~~], if
2 applicable, with their pre-inspection application.

3 (5) Mobile Food Establishments shall operate from a Commissary and shall report
4 to the Commissary each day of operation, or as otherwise provided by these
5 Rules. The Commissary used must be in possession of a Commissary Permit
6 issued by the Enforcement Authority unless otherwise exempt under these
7 rules. The use of a private residence for the storage of food utensils and
8 equipment or Food is prohibited.

9 (6) Mobile Food Establishments may submit a request to modify its Commissary
10 from one location to another location within the City by submitting a written
11 request on a form provided by the Enforcement Authority. The Enforcement
12 Authority shall review the request and make a determination within a reasonable
13 time.

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

17 (7) [Mobile Food Establishments found to be disposing of liquid or solid waste in
18 any manner inconsistent with the Food Code shall be subject to Enforcement
19 Action up to and including permit revocation in accordance with §9-6-8 of the
20 FSO.]

21 (8) Mobile Food Establishments operating in the Downtown Center, as defined by
22 the IDO, shall be equipped with inverter generators.]

23 (9) The following acts are prohibited:

24 (a) The operation of any Mobile Food Establishment between the hours of
25 2:~~3~~0 am and 7:00 am.

26 (b) The operation of any Mobile Food Establishment on the property of a
27 residence unless the Mobile Food Establishment has obtained a Temporary
28 Food Permit from the Enforcement Authority to participate in a private event;

29 (c) The operation of any Mobile Food Establishment on the residential side of
30 any street for a period longer than five minutes, unless the Mobile Food
31 Establishment is participating in a private event;

- 1 (i) Mobile Food Establishments shall obtain, keep, and make available for
2 inspection by the Enforcement Authority, an event agreement with the
3 owner or occupant of the residence listing the date and times the event
4 will occur;
- 5 (d) Operating a Mobile Food Establishment for more than twelve (12) days in
6 any calendar year from the same residential street.
- 7 (e) The vending or serving of Food to students of public, private or parochial
8 schools from a Mobile Food Establishment on a public street, thoroughfare,
9 boulevard or alley or other public way in the City is prohibited within 900 feet
10 from the outermost boundary of the grounds of any public, private, or
11 parochial school during school hours or school events, and within one hour
12 before school begins or ends. The 900 feet is to be measured by the most
13 direct traveled route from the nearest boundary of the school grounds to the
14 Mobile Food Establishment;
- 15 (f) Mobile Food Establishments using any sound amplifying equipment[, that
16 causes noise to be heard from outside the Mobile Food Establishment,]
17 before 10:00 a.m. or after [~~sunset~~][10:00 p.m.];
- 18 (i) [~~Mobile Food Establishments shall comply with all applicable noise~~
19 ~~regulations as a condition of the Permit.~~][It is a violation of these Rules
20 to violate the City of Albuquerque Noise Control Ordinance §9-9-1 et
21 seq.]
- 22 (ii) Mobile Food Establishments using amplified sound soliciting their
23 products on the same residential street more than once before noon and
24 more than once after noon in any twenty-four-hour day.
- 25 (iii) This section shall not prohibit the sale and delivery of Food or any Food
26 product to a house, business, manufacturing plant, construction site,
27 institution, or any place of like nature.

28 (10) Parking.

- 29 (a) Mobile Food Establishments shall comply with all applicable parking and
30 zoning regulations[; and to obtain and maintain any additional permits as
31 required by law,] as a condition of the Permit.

- 1 (i) Mobile Food Establishment permits may be suspended or revoked for
2 repeat violations of applicable parking or zoning regulations.
- 3 (b) Where parking stalls have been marked by sign, meter, or painted lines on
4 the pavement, a Mobile Food Establishment shall pay all applicable parking
5 fees and shall not exceed the boundaries of the painted lines.
- 6 (c) It is a violation of these rules to violate City of Albuquerque Traffic Code § 8-
7 5-1-42, ROA 1994 *Mobile Food Units on Public Streets*.
- 8 (H) Processing Food Establishments. Any Processing Food Establishment Permitted
9 after the enactment of These Rules shall not:
- 10 (1) Have open rafters over any area where Food is exposed;
11 (2) Have garage type doors that open directly into an area where Food is exposed;
12 (3) Conduct any step of processing in an area where access is granted to the
13 general public.
- 14 (I) Raw Milk.
- 15 (1) General Requirements.
- 16 (a) A Retail Food Establishment shall possess a Valid Retail Food
17 Establishment Raw Milk Permit and any required Permit from the New
18 Mexico Department of Agriculture.
- 19 (b) Retail Food Establishment Raw Milk Permits shall not be granted to any
20 Retail Food Establishment whose primary function is to serve a highly
21 susceptible population as defined in Part 1-9 of the Food Code.
- 22 (c) A Raw Milk Vendor shall possess a Valid Market Food Establishment Raw
23 Milk Permit and any Valid Permit from the New Mexico Department of
24 Agriculture pursuant to Title 21, Chapter 34, Part 2 of the New Mexico
25 Administrative Code and a Raw Milk Permit prior to vending or storing Raw
26 Milk or Raw Milk Product at a Market.
- 27 (2) Food Safety.
- 28 (a) Raw milk and Raw Milk Product shall be wholesome; free from adulteration,
29 spoilage, filth, and any other contamination.
- 30 (b) Raw milk and Raw Milk Product shall be received Packaged from a facility
31 in possession of a Valid Permit from the New Mexico Department of

- 1 Agriculture pursuant to Title 21, Chapter 34, Part 2 of the New Mexico
2 Administrative Code and shall be kept in the Hermetically Sealed Container
3 in which the Raw Milk or Raw Milk Product was received until vended;
- 4 (c) Raw milk and Raw Milk Product may only be vended to a consumer for
5 personal consumption;
- 6 (d) Except in a private home, a Person in possession of a Raw Milk Permit shall
7 not allow Raw Milk or Raw Milk Product to be served to any Person, removed
8 from any package, offered as a sample, or used as an ingredient in any Food
9 Establishment;
- 10 (e) All Packaged Raw Milk or Raw Milk Product shall be conspicuously labeled
11 or marked as "RAW MILK" in addition to all legally required labels or
12 markings, and shall meet the labeling requirements as specified in
13 21.34.2.12 NMAC now adopted and incorporated herein;
- 14 (f) Raw milk and Raw Milk Product shall be displayed separately from and shall
15 not be commingled with pasteurized milk or other pasteurized dairy product;
16 and
- 17 (g) The length of the pull date of Raw Milk or Raw Milk Product shall not exceed
18 five (5) days including the date the Raw Milk or Raw Milk Product was
19 Packaged.
- 20 (h) The Permit Holder shall maintain, for ninety (90) days, and make available
21 for inspection by the Enforcement Authority, adequate and
22 contemporaneous records identifying:
- 23 (i) The name and address of facility in possession of a Valid Permit from
24 the New Mexico Department of Agriculture pursuant to Title 21, Chapter
25 34, Part 2 of the New Mexico Administrative Code where Raw Milk or
26 Raw Milk Product were obtained;
- 27 (ii) The Pull Date of each Raw Milk or Raw Milk Product offered for human
28 consumption; and
- 29 (iii) The location(s) where Raw Milk or Raw Milk Product were distributed by
30 the Permit Holder.

- 1 (i) The Permit Holder shall maintain, for ninety (90) days, and make available
2 for inspection by the Enforcement Authority, adequate and
3 contemporaneous temperature logs of Raw Milk and Raw Milk Product while
4 being stored, vended, held, or transported.
- 5 (j) Any Person vending Raw Milk and Raw Milk Product at a Market shall:
- 6 (i) Have a placard displayed at the point of sale and any location offering
7 Raw Milk or Raw Milk Product that is easily visible to the public and that
8 conforms to the labeling requirements as specified in 21.34.2.12(C)
9 NMAC; and
- 10 (ii) Transport and store Raw Milk and Raw Milk Product in an on-site
11 powered refrigeration unit at 41°F or lower;
- 12 (iii) Not display Raw Milk or Raw Milk Product outside of the on-site powered
13 refrigeration unit.
- 14 (k) Suspension of Raw Milk Permits. Raw milk Permits may be suspended
15 whenever the Enforcement Authority finds:
- 16 (i) Raw milk or Raw Milk Product vended were not obtained from a Raw
17 Milk distributor in possession of a Valid Permit from the New Mexico
18 Department of Agriculture pursuant to Title 21, Chapter 34, Part 2 of the
19 New Mexico Administrative Code;
- 20 (ii) Raw milk or Raw Milk Product are offered for human consumption past
21 the Pull Date;
- 22 (iii) Raw milk or Raw Milk Product are offered for sale without the proper
23 markings, labels, or signage;
- 24 (iv) The Permit Holder has failed to comply with a recall of Raw Milk or Raw
25 Milk Product;
- 26 (v) The Permit Holder has offered for sale Raw Milk or Raw Milk Product
27 that the Permit Holder knows to contain unsafe levels of coliforms or
28 bacterial colonies; or
- 29 (vi) The Raw Milk or Raw Milk Product markings, label, or signage contain
30 any misleading statement(s).
- 31 (J) Self-Service Food Establishments.

- 1 (1) Self-Service Food Establishments located in a place where no Food Employee
2 is present shall:
- 3 (a) Place TCS Food in a device equipped with a digital temperature measuring
4 device and notification system that can be remotely monitored, and an
5 automatic shut off switch that prevents consumers from continuing to access
6 Food when unSafe Temperatures have been detected for a period of time
7 as listed in the Food Code 4-204.111; and
8 (b) Serve Food in Tamper-Evident Packaging.
- 9 (K) Retail Food Establishments.
- 10 (1) Retail Food Establishment Class 1 permits are exempt from the inspection
11 frequency requirements in Part 9(A)(1), but are subject to periodic inspection by
12 the Enforcement Authority.
- 13 (2) Retail Food Establishments shall receive Food containing CBD or Hemp
14 Packaged from a facility in possession of a Valid Permit from the New Mexico
15 Environment Department pursuant to the Hemp Manufacturing Act, Chapter 76,
16 Article 24 NMSA 1978, and sell the product in the same package as it was
17 received.
- 18 (L) Temporary Food Establishments and Market Food Establishments.
- 19 (1) Temporary Food Establishment Permits are not required for Private Events
20 where the Food being distributed is limited to non-TCS Food, is provided by a
21 Food Establishment in possession of a Valid Food Establishment Permit, or the
22 number of participants is limited to twenty-five (25) persons or less.
- 23 (2) No Market Coordinator shall allow a Temporary Food Establishment or Market
24 Food Establishment to operate at their Market without a Valid Permit issued by
25 the Enforcement Authority.
- 26 (3) Temporary Food Establishments and Market Food Establishments are subject
27 to inspection each day of operation.
- 28 (4) All Temporary Food Establishments and Market Food Establishments, with the
29 exception of Food Establishments vending only raw, uncut produce, shall
30 operate out of a Commissary and shall report at least once each day of
31 operation to the Commissary for all supplies, cleaning, and servicing operations.

- 1 (5) Temporary Food Establishment Permits are Valid for one location for up to
2 fourteen (14) consecutive days. Temporary Food Establishments shall obtain a
3 Permit for each location, each time the Food Establishment locates or relocates
4 at the same or other location.
- 5 (6) All Temporary Food Establishments and Market Food Establishments,
6 operating on private property shall provide an agreement, signed by the property
7 owner, to the Enforcement Authority when submitting a permit application.
- 8 (7) Market Food Establishment Permits authorize a Market Food Vendor to operate
9 at any Market in the City.
- 10 (8) Food Safety.
- 11 (a) Food must be kept at Safe Temperatures and protected from contamination
12 during transportation of Food from the Commissary to a Temporary Food
13 Establishment or Market Food Establishment.
- 14 (b) Enough potable water shall be available in each Temporary Food
15 Establishment or Market Food Establishment for Food preparation, cleaning
16 and sanitizing utensils and equipment, and handwashing.
- 17 (i) When a conventional handwashing sink is not available or in close
18 proximity to the Temporary Food Establishment or Market Food
19 Establishment, an Approved temporary hand wash station shall be
20 made available and consist of an insulated container that is equipped
21 with a minimum five (5) gallon capacity and a spigot to allow for the
22 continuous flow of water; a wastewater container capable of properly
23 retaining wastewater from the hand wash station; and an adequate
24 supply of hand soap and paper towels.
- 25 (ii) Each Temporary Food Establishment and Market Food Establishment
26 without effective facilities for cleaning and sanitizing Tableware shall
27 provide only Single-Service Articles for use by the consumer.
- 28 (c) Temporary Food Establishments or Market Food Establishments using ice
29 that is consumed or that contacts Food shall use ice that has been made
30 under conditions meeting the requirements of the FSO. The ice shall be
31 obtained only in chipped, crushed, or cubed form and in single-use safe

1 plastic or wet strength paper bags filled and Sealed at the point of
2 manufacture. The ice shall be held in these bags until it is dispensed in a
3 way that protects it from contamination. The bags shall be stored at least
4 four (4) inches off the ground.

5 (d) Food Display and Storage.

6 (i) All Temporary Food Establishment and Market Food Establishment
7 Food displays and preparation areas shall be smooth, durable, and
8 easily cleanable.

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

12 (iii) Temporary Food Establishment and Market Food Establishment Food
13 contact surfaces of equipment shall be protected from contamination by
14 consumers and other contaminating agents. Effective shields for such
15 equipment shall be provided, as necessary, to prevent contamination.
16 Servicing areas shall be provided with overhead protection.

17 (e) Retail of Raw Animal Food[s]; Additional Restrictions.

18 (i) A Temporary Food Establishment or Market Food Establishment shall
19 not remove, or allow to be removed, raw animal Food[s] from the original
20 packaging in which the Food[s] were Packaged.

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

23 (iii) A Temporary Food Establishment or Market Food Establishment shall
24 not Vend raw animal Food[s] unless they have the Federal USDA mark
25 of inspection. A copy of the Valid Federal USDA mark of inspection shall
26 be provided with the pre-inspection application.

27 (f) Prohibited Sales. A Temporary Food Establishment or Market Food
28 Establishment shall not Vend live animals, uncooked seafood, uncooked
29 shellfish, or cannabis products.

1 (g) [Time as a Public Health Control Prohibition. Temporary Food
2 Establishments shall not utilize time as a public health control for the service
3 of TCS Food.]

4 (M) Vending Machines.

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

8 (a) Each Vending Machine shall display the registration number assigned by the
9 Enforcement Authority and a statement informing the public that the machine
10 is not subject to inspection and include contact information where requests
11 for inspection can be directed.

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

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

21 (4) A permanent sign, visible to consumers, showing the Permit number assigned
22 by the Enforcement Authority to the Permit Holder, the Permit Holder's business
23 name, a unique identifier assigned to the machine by the Permit Holder, and a
24 telephone number that consumers may use to contact the Permit Holder, of an
25 Approved size and style, shall be permanently and conspicuously affixed to
26 each Vending Machine.

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

1 (a) Notwithstanding the other provisions of the FSO, a Permit Holder for a
2 Vending Machine may submit a request to modify its Commissary from one
3 location to another location within the City by submitting a written request on
4 a form provided by the Enforcement Authority. The Enforcement Authority
5 shall review the request and make a determination within a reasonable time.

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

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

13 (7) Vending Machines performing Limited Preparation or Advanced Preparation
14 and dispense or otherwise utilize TCS Food, including but not limited to liquid
15 dairy products, shall be permitted and regulated as a Retail Food Establishment.
16 The regulations in the FSO, these Rules, and the Food Code related to Vending
17 Machines shall also apply.

18 (a) Applicants for Vending Machines performing Limited Preparation or
19 Advanced Preparation shall provide:

20 (i) Documentation showing that all food equipment located within the
21 machine meets NSF, ANSI, or comparable standards; and

22 (ii) A safety plan that includes how Food contact surfaces and equipment
23 will be sanitized at the appropriate intervals.]

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