2026 Rules of the
Albuquerque Food Service and Retail Ordinance



Environmental Health Department

1 Civic Plaza NW Room 3023

Albuquerque, NM 87102

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Part 1. Authority

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

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

Part 2. Definitions

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

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

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

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

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

ADULTERATED. The condition of a Food if:

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

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

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

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

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

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

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

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

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

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

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

CATERING FOOD ESTABLISHMENT CLASS B PERMIT. A Permit issued to a Catering Food Establishment that includes provision of Prepackaged Food and Food requiring Limited Preparation

CATERING FOOD ESTABLISHMENT CLASS C PERMIT. A Permit issued to a Catering Food Establishment that includes the provision of Prepackaged Food, Food requiring Limited Preparation, and Food requiring Advanced Preparation.

CATERING FOOD ESTABLISHMENT CLASS D PERMIT. A Permit issued to a Catering Food Establishment that includes the provision of Prepackaged Food, Food requiring Limited Preparation, Food requiring Advanced Preparation, and Food requiring Special Processes during preparation.

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

CHARITABLE FOOD PROVIDER. A Food Establishment that donates Food on or off the premises of a Food Establishment and does not charge a fee for any Food. Charitable Food Provider does not include Food Establishments providing complimentary Food to patrons as part of another service such as a conference, event, lodging, or similar circumstance.

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

CITY. The City of Albuquerque.

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

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

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

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

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

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

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

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

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

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

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

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

(A) FOOD ESTABLISHMENT includes: Adult Day Care Home; Adult Day Care Center; Adult Living Facility; Bed And Breakfast; Catering Food Establishment; Charitable Food Providers; Commissary; Concessions Food Establishment; Family Child Care Home; Childcare Center; Food Establishment Cannabis; Food Establishment Grocery; Food Processing Establishment; Food Processing Establishment Plus; Food Processing Establishment Cannabis; Food Processing Establishment Cannabis Plus; Market Food Establishment; Micro-Market, Mobile Food Establishment; Restaurants; Retail Food Establishment; Retail Food Establishment

Cannabis; Retail Food Establishment Cannabis Plus; Self-Service Food Establishment; Temporary Food Establishment; Vending Machine; Warehouse; Warehouse Cannabis.

(B) FOOD ESTABLISHMENT does not include:

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

(2) A kitchen in a private home;

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

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

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

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

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

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

FOOD ESTABLISHMENT CANNABIS CLASS D PERMIT. A Permit issued to a Food Establishment Cannabis that is restricted to the provision of Prepackaged Edible

Cannabis Finished Products, Edible Cannabis Products requiring Limited Preparation, Edible Cannabis Products requiring Advanced Preparation, and Edible Cannabis Products requiring Special Processes during preparation.

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

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

FOOD ESTABLISHMENT CLASS C PERMIT. A Permit that includes the provision of Prepackaged Food, Food requiring Limited Preparation, and Food requiring Advanced Preparation.

FOOD ESTABLISHMENT CLASS D PERMIT. A Permit that includes the provision of Prepackaged Food, Food requiring Limited Preparation, Food requiring Advanced Preparation, and Food requiring Special Processes during preparation.

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

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

FOOD PROCESSING ESTABLISHMENT. A Food Establishment that manufactures, packages, Repackages, or labels Food for human consumption for wholesale, or other off-site distribution of that Food for retail, resale, or other use; includes storage of Food manufactured by the Food Establishment.

FOOD PROCESSING ESTABLISHMENT CANNABIS. A specific, limited type of Food Processing Establishment which is a cannabis establishment licensed under the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, where only Edible Cannabis Products are processed, prepared, Packaged, stored or distributed for human consumption excluding Retail Food Establishments Cannabis and Warehouses Cannabis.

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

FOOD PROCESSING ESTABLISHMENT CANNABIS CLASS B PERMIT. A Permit issued to a Food Processing Cannabis Establishment that is restricted to the Repackaging of non-TCS Edible Cannabis Finished Product and the manufacturing of Edible Cannabis Finished Products using Limited Preparation.

FOOD PROCESSING ESTABLISHMENT CANNABIS CLASS C PERMIT. A Permit issued to a Food Processing Cannabis Establishment that is restricted to the Repackaging of non-TCS Edible Cannabis Finished Product and the manufacturing of Edible Cannabis Finished Products using Limited Preparation or Advanced Preparation.

FOOD PROCESSING ESTABLISHMENT CANNABIS CLASS D PERMIT. A Permit issued to a Food Processing Cannabis Establishment that is restricted to the Repackaging of non-TCS Edible Cannabis Finished Product and the manufacturing of Edible Cannabis Finished Products using Limited Preparation, Advanced Preparation, or Special Processes.

FOOD PROCESSING ESTABLISHMENT CANNABIS PLUS PERMIT. Can be added to any Food Processing Establishment Cannabis Permit to allow for the onsite retail sale of Edible Cannabis Finished Products manufactured by the Food Processing Cannabis Establishment.

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

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

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

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

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

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

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

LIMITED PREPARATION. Food preparation that is restricted to activities that do not require cooling of cooked TCS Food, on-premise cooking and hot holding of TCS Food for later use, complex preparation, or multiple preparation steps that significantly increase the risk of contamination or pathogen growth.

(A) Limited Preparation also includes but is not limited to assemble-serve, steaming, boiling, or roasting hot dogs or corn; preparing beverages that are for immediate service, in response to an individual consumer order, cutting of fresh fruits or vegetables that become TCS once cut, for same day use, portioning and hot or cold holding of commercially packaged bulk or single service food.

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

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

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

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

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

MOBILE FOOD ESTABLISHMENT. A specific type of Food Establishment that is vehicle mounted, fully enclosed, and designed to be readily movable from location to location. MOBILE FOOD ESTABLISHMENT includes push carts, trailers, and smokers. MOBILE FOOD ESTABLISHMENT does not include vendors offering only uncut raw produce and/or other Food produced under the Homemade Food Act, Chapter 25, Article 12 NMSA 1978.

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

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

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

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

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

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

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

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

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

(A) Retail Food Establishment Raw Milk Permit: allows the Permit Holder of a Retail Food Establishment Permit Class 4, 5, or 6 to Vend and distribute Raw Milk and

Raw Milk Product from the Retail Food Establishment Permit Class 4, 5, or 6 location.

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

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

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

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

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

REQUESTED INSPECTION. An inspection conducted in response to a Permit Holder's request, including but not limited to changes in Commissary location or Permit class reassessments, which may be accompanied by a fee.

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

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

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

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

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

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

RETAIL FOOD ESTABLISHMENT CANNABIS CLASS 5 PERMIT. A Retail Food Establishment Cannabis Permit that is restricted to the provision of TCS Prepackaged Edible Cannabis Finished Product, Edible Cannabis Product requiring Limited Preparation, and Edible Cannabis Product requiring Advanced Preparation.

RETAIL FOOD ESTABLISHMENT CANNABIS CLASS 6 PERMIT. A Retail Food Establishment Cannabis Permit that is restricted to the provision of Prepackaged Edible Cannabis Finished Product, Edible Cannabis Product requiring Limited Preparation, Edible Cannabis Product requiring Advanced Preparation, and Edible Cannabis Product requiring Special Processes during preparation.

RETAIL FOOD ESTABLISHMENT CANNABIS PLUS. A type of Retail Food Establishment Cannabis, which is also a cannabis establishment with a cannabis consumption area, both licensed under the Cannabis Regulation Act, Chapter 26, Article 2C NMSA 1978, where Edible Cannabis Finished Products are offered for sale, donated,

or distributed for either off-the-premise consumption or in a cannabis consumption area. The term also includes the place where Edible Cannabis Finished products are stored.

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

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

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

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

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

RETAIL FOOD ESTABLISHMENT CLASS 6 PERMIT. A Retail Food Establishment Permit that includes the provision of Prepackaged Food, raw produce, Food requiring Limited Preparation, Food requiring Advanced Preparation, self-service of TCS food, and Food requiring Special Processes during preparation.

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

SAFE TEMPERATURES. Temperatures as provided in the Food Code.

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

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

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

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

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

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

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

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

TABLEWARE. All multi-use eating and drinking Utensils.

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

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

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

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

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

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

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

VENDING MACHINE CLASS A REGISTRATION. A Vending Machine restricted to non-TCS, Hermetically Sealed, Prepackaged Food.

VENDING MACHINE CLASS B PERMIT. A Vending Machine Permit that includes the provision of TCS, Hermetically Sealed, Prepackaged Food.

WAREHOUSE. A specific type of Retail Food Establishment where Food is only stored and distributed off-site.

WAREHOUSE CANNABIS. A specific, limited type of Retail Food Establishment Cannabis where Edible Cannabis Product is only stored and distributed off-site.

Part 3. Administrative Codes and Regulations Adoption.

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

(1) The Enforcement Authority may implement any subsequent edition, amendment, revision, or supplement by issuing a public notice identifying the specific edition being adopted and its effective date. The Enforcement Authority shall:

(a) Public Notice of Intent. The Enforcement Authority shall publish a public notice of intent to adopt a subsequent edition, amendment, revision, or supplement to the FDA Food Code. The notice shall remain available for public review and comment for a minimum of sixty (60) calendar days and shall include the proposed regulation, a summary of substantive changes

from the currently adopted regulation, and instructions for submitting public comments.

(b) Public Notice of Decision. Following the conclusion of the public comment period, the Enforcement Authority shall review comments received and publish a public notice of decision identifying whether the proposed regulation will be adopted. If adoption is approved, the notice shall include a summary of substantive changes, a copy of or electronic access to the regulation being adopted, and the effective date of adoption. The notice and supporting materials shall be made publicly available on the Enforcement Authority's website for a minimum of one hundred twenty (120) calendar days.

(c) Effective Date. Any regulation adopted pursuant to this Section shall become effective no earlier than one hundred twenty (120) calendar days following publication of the public notice of decision, unless a later effective date is established by the Enforcement Authority.

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

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

(2) 7.6.2.12 NMAC;

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

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

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

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

(2) A violation of 3-307.11 shall be a Priority Foundation Violation; and

(3) A violation of 3-602.12(C) shall be a Priority Foundation Violation.

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

Part 4. Pre-inspection Application Information.

(A) An Applicant seeking a Permit shall submit a signed pre-inspection application, a copy of the Food Establishment's City of Albuquerque business license, a copy of the Food Establishment's State of New Mexico Taxation and Revenue Department registration certificate, proof of the federal employee identification number through presentation of official government issued documentation, and a copy of the Certified Food Protection Manager certificate, belonging to an employee of the Food Establishment, to the Enforcement Authority. The pre-inspection application shall be submitted to the Enforcement Authority at least five business days prior to the commencement of operations.

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

(a) Food Establishments found to be in operation without having notified the Enforcement Authority and having not completed a pre-opening inspection with a Grade of Approved or Conditional Approved may be issued a Civil Citation.

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

pre-inspection applications received after March 15 may not be processed by April 1.

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

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

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

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

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

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

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

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

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

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

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

(D) When an Applicant has a known history of non-compliance with the FSO, these Rules, or the Food Code, the Enforcement Authority may require that the Applicant enter into a written agreement that outlines conditions of Permit retention which may include, but are not limited to an increase in inspection frequency, provision of pest

control documentation, or temperature logs. Agreements shall have expiration dates.

Part. 5 Pre-Opening Inspection of Food Establishments.

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

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

(2) The Enforcement Authority may waive the pre-opening inspection for:

(a) Temporary Food Establishments or Market Food Establishments when the Enforcement Authority finds that waiver of the pre-opening inspection will not result in a condition injurious to health or safety.;

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

(c) A Food Establishment is undergoing a change of ownership and the Enforcement Authority finds that waiver of the pre-opening inspection will not result in a condition injurious to health or safety; or

(d) A Food Establishment undergoing new construction or remodeling and the preliminary inspection of construction work is sufficient for the Enforcement Authority to find that waiver of the pre-opening food safety inspection will not result in a condition injurious to health or safety.

(B) When a Food Establishment ceases operations for a temporary period of time, the Enforcement Authority may require the Food Establishment to pass a pre-opening inspection with a grade of Conditional Approved or Approved prior to resuming operations.

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

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

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

(2) Upon receipt of payment for all applicable fees, the Enforcement Authority shall issue a Permit.

(a) When a provisional Permit is issued after the fifteenth (15^{th}) of the month, the Permit will have an Anniversary Date of the first day of the following month.

(3) When payment is not made prior to the Expiration Date of the provisional Permit a Reinspection fee will be assessed for every thirty (30) days of non-payment, not to exceed the assessment of two (2) Reinspection fees; the Reinspection fee(s) shall be paid prior to the issuance of the Permit.

(a) The Reinspection fee may be waived by the Enforcement Authority when the Permit Holder has demonstrated a good-faith effort to submit timely payment.

(b) If, after the assessment of two (2) Reinspection fees, or ninety (90) days, payment has not been received, the Enforcement Authority shall void the application and issue a cease and desist to the Food Establishment, and the Person must reapply for a Permit as outlined in Part 4 of these Rules.

(i) When reapplying for a Permit, the Applicant shall pay any outstanding fees associated with the original application and the new application prior to being issued a Permit and approved to operate; no provisional Permit shall be issued.

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

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

(c) When reapplying for a Permit, the Applicant shall pay any outstanding fees associated with the original application and the new application prior to being issued a Permit and Approved to operate; no provisional Permit shall be issued.

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

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

Part 7. Term and Scope of Permit.

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

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

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

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

Part 8. Permit Renewal.

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

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

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

(3) Microbusinesses may be required to recertify their status through presentation of the appropriate documentation.

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

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

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

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

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

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

Part 9. Fees.

(A) Permit fees are non-refundable.

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

(1) When a Permit is being added to an existing Food Establishment, the initial Permit fee for the new Permit shall be prorated so that the Anniversary Date of

the new Permit is the same as the Anniversary Date of the existing Food Establishment's Permit.

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

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

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

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

(C) Administrative Fees.

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

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

(D) Change of Commissary Fees.

(1) Any Food Establishment utilizing a Commissary that wishes to change Commissary locations may be required to pay a Requested Inspection fee.

(E) Civil Penalty Fees.

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

(a) When fees are not paid in full prior to the due date of the Civil Penalty invoice, the Food Establishment will be provided with a notice of past due fees and invoice every thirty (30) calendar days, up to ninety (90) calendar days past the invoice issuance date.

(b) A Food Establishment that fails to pay its Civil Penalty fees within ninety (90) calendar days of the issuance date of the Civil Penalty invoice, may have its Permit(s) suspended.

(c) Following a notice of suspension, A Food Establishment that fails to pay its Civil Penalty fees within ninety-five (95) calendar days of the Civil Penalty invoice issuance date may have its Permit(s) revoked.

(2) Any outstanding Civil Penalty imposed prior to the effective date of these Rules shall be paid in full prior to renewal of the Food Establishment Permit associated with the violation for which the Civil Penalty was imposed.

(F) Payment Plans.

(1) A Permit holder who is unable to remit an amount due in full may request a payment plan from the Enforcement Authority. Approval of a payment plan shall be at the discretion of the Enforcement Authority and subject to the requirements of this Section.

(a) Upon approval of a request, the Enforcement Authority shall prepare a written payment plan agreement specifying the total amount due, payment amounts, payment frequency, due dates, and any other applicable terms. The payment plan shall become effective upon execution by both the Permit holder and the Enforcement Authority. While the Permit holder remains in compliance with the terms of the payment plan, the outstanding balance subject to the agreement shall not, by itself, constitute a failure to comply with the FSO or these rules.

(b) A payment plan shall not exceed four (4) months. Payments shall be made at least weekly and shall be no less than one hundred dollars ($100.00) per payment, except that the final payment may be less than one hundred dollars

($100.00) when necessary to satisfy the remaining balance.

(c) A Permit holder with an outstanding balance subject to an active payment plan shall not be issued an additional Food Establishment Permit until the payment plan has been satisfied in full.

(d) A payment plan may be amended by written agreement between the Permit holder and the Enforcement Authority; provided, however, that an amendment shall not extend the payment plan beyond the maximum period established in Subsection (b).

(e) Failure to make a required payment or otherwise comply with the terms of an executed payment plan constitutes a default of the payment plan and may be grounds for suspension of the Permit and any other enforcement action authorized by the FSO or these Rules.

Part 10. Risk Categories and Inspection Frequency.

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

(1) Food Establishments restricted to the distribution of Prepackaged Food shall be considered risk category 1 and is assigned an inspection interval of once every eighteen (18) months.

(2) Food Establishments restricted to the distribution of Prepackaged Food where the primary population served is highly susceptible, or Food Establishments that include Limited Preparation of Food shall be risk category 2 and is assigned an inspection interval of once every twelve (12) months.

(3) Food Establishments that include Limited Preparation of Food and where the primary population served is highly susceptible, or Food Establishments that include Advanced Preparation of Food shall be risk category 3 and is assigned an inspection interval of once every six (6) months.

(4) Food Establishments that include Advanced Preparation of Food and where the primary population served is highly susceptible, or Food Establishments that include Special Processes shall be risk category 4 and shall and is assigned an inspection interval of once every four (4) months.

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

(1) Any change in fees due to the change in risk category will be reflected on the next regularly scheduled invoice for that Food Establishment.

(C) The Enforcement Authority may allocate inspection resources based on its assessment of public health risk, including the assigned risk category, compliance history, complaint investigations, outbreak response, and other relevant factors. Inspection intervals established by the Enforcement Authority are intended to guide the allocation of inspection resources and do not create a mandatory duty to inspect within a specified timeframe. Failure to inspect a Food Establishment within an established inspection interval does not limit the Enforcement Authority's authority to conduct inspections or take enforcement action under the FSO or these Rules.

Part 11. Grading of Food Establishments.

(A) Grades of Food Establishments shall be determined by the score issued after each inspection and remain in effect until the next inspection, or the provision of sufficient Corrective Action documentation as determined by the Enforcement Authority, as follows:

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

(2) CONDITIONAL APPROVED. A Food Establishment that is found to be in violation of the standards in the Food Code, the FSO, other industry standards, and other laws by receiving an inspection score between seventy-five (75) and eighty-four (84) points will receive a Grade of Conditional Approved, have a yellow Conditional Grade sticker above a Green Approved Grade sticker affixed

to the Food Establishment, and the Food Establishment is able to operate but is required to follow Corrective Actions issued by the Enforcement Authority.

(3) UNSATISFACTORY. A Food Establishment that meets minimum standards in the Food Code, the FSO, other industry standards, and other laws by receiving an inspection score between sixty-five (65) and seventy-four (74) points, having any five (5) or more priority violations out of compliance during a single inspection, or any Priority Violation, Priority Foundation Violation, or Core Violation being out of compliance on a repeated basis within the last thirty-six (36) months as determined by the Enforcement Authority will receive a Grade of Unsatisfactory, have an orange Unsatisfactory Grade sticker affixed to the Food Establishment, and is allowed to continue Food operations while following any Corrective Actions issued by the Enforcement Authority.

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

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

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

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

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

(c) The Enforcement Authority may issue a Grade of Closed to a portion of a Food Establishment affected by an Imminent Health Hazard when the Food

Establishment demonstrates that Food safety is not affected by the partial Closure and the Enforcement Authority determines that no threat to public health will result from allowing other Food operations to continue.

(d) When a facility is issued a Grade of Closed due to an imminent or substantial health hazard, only, the Food Establishment shall be reopened under the Grade the establishment would have received without the imminent health hazard.

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

(B) Every Food Establishment shall display and cause to be maintained, in a conspicuous location, which is readily visible to the public, a placard stating the Grade received at the time of the most recent inspection of the Food Establishment.

(a) The Enforcement Authority shall ensure the appropriate Grade sticker is posted to each public entrance, and drive through window, of the Food Establishment following each inspection.

(i) When the Food Establishment is located in a shared space and does not have a dedicated public entrance, the Grade sticker shall be posted at the point of sale of the Food Establishment.

Part 12. Scoring of Food Establishments.

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

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

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

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

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

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

Part 13. Corrective Actions.

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

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

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

(1) Trainings shall be completed within thirty (30) days of receipt of the Grade of Unsatisfactory or Closed.

(2) The Enforcement Authority may issue a Civil Citation to Food Establishments who fail to complete the training requirement.

(D) Infestation Corrective Actions.

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

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

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

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

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

(E) On Site Corrective Actions.

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

(a) A Corrective Action compliance inspection may increase a Food Establishment's Grade by no more than one Grade level.

Part 14. Construction, Remodeling, and Conversions.

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

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

(1) A preliminary inspection of construction work is required;

(2) A Food safety inspection is required prior to operations and issuance of a Food Establishment Permit.

(C) Food Establishments hereafter constructed or extensively remodeled, or when an existing structure is converted for use as a Food Establishment, shall not:

(1) Have a toilet room door that opens directly into an area where open Food is stored, processed, or prepared for human consumption;

(2) Install a service sink within a toilet room.

(D) Food Establishments with active construction may be required to cease operations when the Enforcement Authority has reason to believe that the Food cannot be adequately protected from contamination.

Part 15. Condemnation of Food and Equipment.

(A) The Enforcement Authority may determine that a Food is Adulterated, contaminated, misbranded, unsafe, or otherwise unfit for human consumption when, based upon the totality of the circumstances and available evidence, the Food presents a risk to public health. Such determination may be based upon the Food's ingredients, composition, source, condition, handling, preparation, storage, contamination, labeling, or any other circumstance that may render the Food injurious to health and safety or not in compliance with the FSO, these rules, or other laws. The absence of a specific prohibition, ingredient, contaminant, condition, or circumstance within the FSO, these rules, or other laws shall not preclude such a determination.

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

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

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

(3) Upon written notice to the Permit Holder or Person In Charge at the time of inspection, the Enforcement Authority may label and seal such Food as

"embargoed." Such labeled and sealed Food shall then be separated from other Food and shall not be used in the operations of the Food Establishment or distributed until the Enforcement Authority has examined the Food and determined whether such Food is safe for human consumption. After making a determination, the Enforcement Authority may remove the label and seal, or may require the Permit Holder or Person In Charge of the Food to denature, remove, or destroy such Food or to bring the Food into compliance with the requirements of the Food Code, the FSO, these rules, or other laws. If the Permit Holder refuses to denature, remove, or destroy such Food, the Enforcement Authority may seize and denature or destroy the Food.

(a) When a Food Establishment is operating without a Valid Food Establishment Permit, the Enforcement Authority may seize, embargo, denature, or require the destruction or disposal of Food when the Enforcement Authority determines that the Food is from an unapproved source; has been prepared, processed, stored, handled, or distributed under conditions that may render the Food unsafe, adulterated, or otherwise unfit for human consumption; or when the source, safety, or condition of the Food cannot be reasonably verified.

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

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

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

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

(3) The Enforcement Authority may require the Food Establishment to bring the condemned Utensil or Food equipment into compliance with the requirements of these rules, the Food Code, the FSO, or to remove it from the Food Establishment. If the Permit Holder refuses to remove such equipment, the Enforcement Authority may seize and dispose of such equipment and recover any cost associated from the Permit Holder.

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

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

Part 16. Food Safety Training Requirements.

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

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

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

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

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

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

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

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

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

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

(C) Food handler cards shall be kept by the Food Employee on their Person while working as a Food Employee or volunteer for a Food operation, or a copy shall be kept on file by the current employer and upon request be immediately made available for inspection by the Enforcement Authority.

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

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

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

Part 17. General Sanitation

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

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

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

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

(E) Food Source.

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

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

(F) Special Processes.

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

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

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

(G) Food Protection.

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

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

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

(2) Food Establishments shall calibrate measuring equipment in accordance with the manufacturer recommendations, or as necessary, and shall maintain adequate and contemporaneous calibration logs for calibration of equipment.

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

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

(5) A Food Establishment shall store liquid milk, liquid milk products, and shellfish at forty-one degrees Fahrenheit (41ºF) or less.

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

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

(8) Food Establishments shall segregate spoiled, damaged, returned, recalled embargoed, or condemned Food items in designated areas pending final disposition.

(9) Refrigeration equipment used for the storage of TCS Food shall be commercial Food equipment certified to NSF/ANSI 7, or an equivalent Food equipment sanitation standard recognized by the Enforcement Authority.

(10) Allergen Consumer Advisory.

(a) If a Food Establishment serves Food containing a major allergen, the Permit Holder shall inform consumers of the risk through disclosure and reminder using brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means.

(i) Disclosure shall include:

(1) A description of the allergen derived Food, such as “contains peanuts” or “peanut curry;”

(2) All allergens are listed as an ingredient in the Food item on the menu;

(3) Identification of the allergen containing Food by asterisking them to a footnote that states that the items contain a major allergen; or

(4) Asterisking the allergen containing Food requiring disclosure to a footnote that states: “Contains a major allergen, written information is available upon request”

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

(a) Food Establishments shall not process, prepare, pack, store, distribute, or vend any product containing Kratom (*Mitragyna speciosa*), or any derivative, extract, concentrate, isolate, alkaloid, synthetic analog, or constituent thereof, including but not limited to mitragynine and 7-hydroxymitragynine (7-OH).

(b) Food Establishments shall not process or pack Kava, *(Piper methysticum),* or any derivative, extract, concentrate, isolate, constituent, synthetic analog,

or preparation thereof, including but not limited to kavalactones. Food Establishments distributing, vending, or serving Kava (Piper methysticum), or any derivative, extract, concentrate, isolate, constituent, synthetic analog, or preparation thereof, shall not use such substance as an ingredient in conventional food.

(i) Kava (*Piper methysticum*) may be steeped in water only and served to a customer; it may be prepared or served in no other fashion and may not be otherwise used as a Food additive or Food ingredient.

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

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

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

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

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

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

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

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

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

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

(f) Food Employees shall:

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

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

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

Part 18. Permit Specific Requirements.

(A) Cannabis Food Establishments.

(1) Applicants and Permit Holders for Food Establishment Cannabis, Food Processing Establishment Cannabis, Retail Food Establishment Cannabis, Retail Food Establishment Cannabis Plus, and Warehouse Cannabis Permits shall:

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

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

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

(d) Provide a copy of any City of Albuquerque business license issued to the Food Establishment, prior to operating as a Food Establishment;

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

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

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

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

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

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

(B) Catering Food Establishments.

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

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

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

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

(3) Catering Food Establishments shall operate from a Commissary with a Commissary Type 2 Permit, when the Commissary is not owned and operated by the Catering Food Establishment, and shall report each day of operation. All catering activities that occur prior to service must occur at the Approved Commissary.

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

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

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

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

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

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

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

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

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

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

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

(D) Commissaries.

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

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

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

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

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

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

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

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

(7) Commissaries shall not allow other Food Establishments to operate within the Commissary until such time that Food Establishment has obtained the appropriate Permit(s) issued by the Enforcement Authority.

(E) Family Child Care Homes and Adult Day Care Homes.

(1) Family Child Care Homes and Adult Day Care Homes serving six or fewer persons are exempt from the requirement to obtain a Permit from the Enforcement Authority.

(F) Childcare Centers.

(1) Child Care Centers may not allow children in the kitchen except under careful supervision.

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

(3) Nothing in this section shall be interpreted to require a Child Care Center to accept Food from a child's home.

(G) Mobile Food Establishments.

(1) Push Carts are limited to the preparation and serving of boiled or steamed hot dogs, or food packaged commercially or at an approved commissary, maintained at Safe Temperatures and served to the consumer in the original Packaging; or limited to serving non-TCS food.

(2) Smokers permitted as a Mobile Food Establishment are limited to the service of Food Packaged commercially or at an approved Commissary, maintained at Safe Temperatures and served to the consumer in the original Packaging.

(3) Trailers must be fully enclosed or be limited to the preparation and serving of boiled or steamed hot dogs, Food Packaged commercially or at an approved Commissary, maintained at Safe Temperatures and served to the consumer in the original Packaging.

(4) Mobile Food Establishments shall provide the license plate number, proof of current vehicle or trailer registration for their Mobile Food Establishment, and

photos of the inside and outside of the Mobile Food Establishment, if applicable, with their pre-inspection application.

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

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

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

(b) The Mobile Food Establishment may be assessed a Requested Inspection Fee prior to the inspection at the new commissary.

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

(8) Mobile Food Establishments utilizing a generator in the Downtown Center, as defined by the IDO, between the hours of 10:00 p.m. to 7:00 a.m., shall be equipped with inverter generators.

(9) The name and Address of Record for any Mobile Food Establishment shall be legibly painted or permanently affixed in letters no less than three inches high by one inch wide on each side of the Mobile Food Establishment. Permanently affixed shall include the use of vinyl lettering or other like material.

(10) The following acts are prohibited:

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

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

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

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

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

(e) The vending or serving of Food to students of public, private or parochial schools from a Mobile Food Establishment on a public street, thoroughfare, boulevard or alley or other public way in the City is prohibited within 900 feet from the outermost boundary of the grounds of any public, private, or parochial school during school hours or school events, and within one hour before school begins or ends. The 900 feet is to be measured by the most direct traveled route from the nearest boundary of the school grounds to the Mobile Food Establishment;

(f) Mobile Food Establishments using any sound amplifying equipment, that causes noise to be heard from outside the Mobile Food Establishment, before 10:00 a.m. or after 10:00 p.m.;

(i) It is a violation of these Rules to violate the City of Albuquerque Noise Control Ordinance §9-9-1 et seq.

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

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

(11) Parking.

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

(i) Mobile Food Establishment permits may be suspended or revoked for repeat violations of applicable parking or zoning regulations.

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

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

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

(1) Have open rafters over any area where Food is exposed;

(2) Have garage type doors that open directly into an area where Food is exposed;

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

(I) Raw Milk.

(1) General Requirements.

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

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

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

(2) Food Safety.

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

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

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

(d) Except in a private home, a Person in possession of a Raw Milk Permit shall not allow Raw Milk or Raw Milk Product to be served to any Person, removed from any package, offered as a sample, or used as an ingredient in any Food Establishment;

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

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

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

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

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

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

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

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

(j) Any Person vending Raw Milk and Raw Milk Product at a Market shall:

(i) Have a placard displayed at the point of sale and any location offering Raw Milk or Raw Milk Product that is easily visible to the public and that conforms to the labeling requirements as specified in 21.34.2.12(C) NMAC; and

(ii) Transport and store Raw Milk and Raw Milk Product in an on-site powered refrigeration unit at 41ºF or lower;

(iii) Not display Raw Milk or Raw Milk Product outside of the on-site powered refrigeration unit.

(k) Suspension of Raw Milk Permits. Raw milk Permits may be suspended whenever the Enforcement Authority finds:

(i) Raw milk or Raw Milk Product vended were not obtained from a Raw Milk distributor in possession of a Valid Permit from the New Mexico Department of Agriculture pursuant to Title 21, Chapter 34, Part 2 of the New Mexico Administrative Code;

(ii) Raw milk or Raw Milk Product are offered for human consumption past the Pull Date;

(iii) Raw milk or Raw Milk Product are offered for sale without the proper markings, labels, or signage;

(iv) The Permit Holder has failed to comply with a recall of Raw Milk or Raw Milk Product;

(v) The Permit Holder has offered for sale Raw Milk or Raw Milk Product that the Permit Holder knows to contain unsafe levels of coliforms or bacterial colonies; or

(vi) The Raw Milk or Raw Milk Product markings, label, or signage contain any misleading statement(s).

(J) Self-Service Food Establishments.

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

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

(b) Serve Food in Tamper-Evident Packaging.

(K) Retail Food Establishments.

(1) Retail Food Establishment Class 1 permits are exempt from the inspection interval in Part 10(A)(1), but are subject to periodic inspection by the Enforcement Authority.

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

(L) Temporary Food Establishments and Market Food Establishments.

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

(2) Temporary Food Establishment Permits are not required for vendors offering only uncut raw produce and/or other Food produced under the Homemade Food Act, Chapter 25, Article 12 NMSA 1978.

(3) No Market Coordinator shall allow a Temporary Food Establishment or Market Food Establishment to operate at their Market without a Valid Permit issued by the Enforcement Authority.

(4) Temporary Food Establishments and Market Food Establishments are subject to inspection each day of operation.

(5) All Temporary Food Establishments and Market Food Establishments, with the exception of Food Establishments vending only raw, uncut produce, shall operate out of a Commissary and shall report at least once each day of operation to the Commissary for all supplies, cleaning, and servicing operations.

(6) Temporary Food Establishment Permits are Valid for one location for up to fourteen (14) consecutive days. Temporary Food Establishments shall obtain a Permit for each location, each time the Food Establishment locates or relocates at the same or other location.

(7) All Temporary Food Establishments and Market Food Establishments, operating on private property shall provide an agreement, signed by the property owner, to the Enforcement Authority when submitting a permit application.

(8) Temporary Food Establishment Permits are required when a Food Establishment is preparing Food outside of the bounds of its annual Permit including but not limited to temporary outdoor grills, temporary drink stands outside of the Food Establishment, chile roasting, or temporary implementation of a process that would increase the risk category of the Food Establishment. A Temporary Food Establishment Permit is not required when a Food Establishment is only serving or distributing Food outside of its Permitted area at an event, provided that all preparation, assembly, and processing of the Food occurs within the establishment's Permitted Area.

(9) Market Food Establishment Permits authorize a Market Food Vendor to operate at any Market in the City.

(10) Food Safety.

(a) Food must be kept at Safe Temperatures and protected from contamination during transportation of Food from the Commissary to a Temporary Food Establishment or Market Food Establishment.

(b) Enough potable water shall be available in each Temporary Food Establishment or Market Food Establishment for Food preparation, cleaning and sanitizing utensils and equipment, and handwashing.

(i) When a conventional handwashing sink is not available or in close proximity to the Temporary Food Establishment or Market Food Establishment, an Approved temporary hand wash station shall be made available and consist of an insulated container that is equipped with a minimum five (5) gallon capacity and a spigot to allow for the continuous flow of water; a wastewater container capable of properly retaining wastewater from the hand wash station; and an adequate supply of hand soap and paper towels.

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

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

(d) Food Display and Storage.

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

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

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

(e) Retail of Raw Animal Food; Additional Restrictions.

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

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

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

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

(g) Time as a Public Health Control. Temporary Food Establishments and Market Food Establishments may utilize time as a public health control, for TCS Food, subject to the following requirements:

(i) Written procedures for the use of Time as a Public Health Control, written in accordance with 3-501.19(A)(1) of the Food Code, shall be submitted to the Enforcement Authority with the Temporary Food Establishment Permit pre-inspection application, no fewer than five (5) business days prior to the event.

(1) The use of Time as a public health control shall be subject to approval by the Enforcement Authority and shall comply with all applicable provisions of the FDA Food Code.

(2) Approved Time as a public health control procedures shall be implemented and maintained throughout the event. Failure to implement or comply with the approved procedures may result in the immediate revocation of authorization to utilize Time as a public health control for the remainder of the event.

(3) Upon revocation of authorization, the Temporary Food Establishment shall maintain TCS Food under approved temperature controls and shall not use any food previously held under time as a public health control in the operations of the Food Establishment.

(ii) Failure to provide the appropriate documentation and receive written approval from the Enforcement Authority prohibits the Temporary Food Establishment from being able to use time as a public health control for that event.

(M) Vending Machines.

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

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

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

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

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

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

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

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

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

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

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

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

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