

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

IN THE MATTER OF PROPOSED AMENDED REGULATION,
7.6.2 NMAC – *Food Service and Food Handling*

No. EIB 13 - __ (R)

PETITION FOR REGULATORY CHANGE

Front Range Equine Rescue (“FRER”) and The Humane Society of the United States (“HSUS”) (collectively “Petitioners”) petition the New Mexico Environment Department’s Environmental Improvement Board (the “Board”), pursuant to the requirements for such petitions under the New Mexico Food Act, N.M. Stat. § 25-2-1, *et seq.*, its accompanying regulations, and the New Mexico Administrative Procedures Act, N.M. Stat. § 12-8-7.

Petitioners request the Board to classify all meat from horses who were formerly companion animals, wild horses, or work and sport horses (involved in ranching and competitions, including rodeos and racing), and meat from any other horses without a proven lifetime medical history, as adulterated and unqualified for use in the production of horse meat for human consumption.

Petitioners make this request because of the very real potential for consumers to experience severe side effects and adverse reactions, unless adequate screening and verification demonstrates that the horses have not been exposed to any drugs, treatments, or other substances that create the possibility of such problems. While the meat of horses could already be deemed adulterated and thus illegal under New Mexico law, this rulemaking is necessary to provide for the efficient enforcement of the Food Act and to ensure that consumers are protected from adulterated horse meat.

Petitioners request that the Board accept this Petition at its regularly scheduled meeting on June 10, 2013, and adopt the following schedule:

1. Petitioners shall submit their notice of intent to present direct technical testimony, including full written testimony and exhibits, on June 28, 2013.

2. Other interested persons desiring to present technical testimony shall submit their notices of intent to present technical testimony, including full written testimony and exhibits, on July 29, 2013.

3. Petitioners shall submit their notice of intent to present rebuttal technical testimony, including full written testimony and exhibits, on August 16, 2013.

4. The hearing shall commence on September 2, 2013 and continue day-to-day until completed.

Petitioners also request that the Board assign a hearing officer to manage the proceedings.

Petitioners anticipate that their testimony will require approximately three (3) hours and that the hearing will require approximately three (3) days.

Dated: April 8, 2013



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I. INTRODUCTION

In November 2011, after a roughly five-year period in which inspection of horses for slaughter for human consumption was prohibited, Congress authorized the United States Department of Agriculture (“USDA”) to inspect horses destined for slaughter. In February 2013, Petitioners were notified that USDA’s Food Safety Inspection Service (“FSIS”) would begin processing the application for inspection of a New Mexico horse slaughter plant that intends to slaughter horses for human consumption.

If horse slaughter for human consumption begins in New Mexico, the horses’ carcasses will eventually be sold as meat for human consumption in New Mexico, throughout the United States, and abroad. Historically, almost all horses who have been slaughtered for use as human food started their lives in one of three situations – as companions living with families across America and used for pleasure, recreation, and work; as sport horses (involved in, among other things, jumping, vaulting, racing, rodeos, dressage, and other competitive activities); or as wild horses on the public and private lands. These animals are not raised for food in the way other animals, such as cows, pigs, and chickens are, who from before conception are maintained within a regulated industry. Rather, the horses, throughout their lives, are not in any way monitored or controlled by an agricultural industry aware of the legal restraints placed on the presence of contaminants in food animals. Virtually all horses have ingested, or been treated or injected with, multiple chemical substances that are (1) known to be dangerous to humans if eaten, (2) untested on humans, or (3) specifically prohibited for use in animals destined to be slaughtered and turned into meat. These substances to which the horses have been exposed create the potential for great danger to humans if they are eaten. The presence of these substances in horse meat may cause numerous health problems, from the transient to the fatal, the acute to the

chronic. Exposure to these substances puts consumers at the risk of cancer, life-threatening autoimmune diseases, and other illnesses of significant proportion.

The pharmacological history of horses turned into meat, and therefore the potentially toxic nature of the meat from those horses, is almost completely unknown. American horses are often sold from owner to auction and eventually, unbeknownst to the original owners, to slaughter by “killer-buyers” who have purchased them at auctions and from other sources to sell them to slaughterhouses. When the horses are finally transported and sold for slaughter, there is virtually no way to determine what substances they have been administered or that they have ingested, over the course of their lives.

One thing is certain, though. Tainted by prohibited drugs and chemicals, horse meat from American horses is “adulterated” under the New Mexico Food Act (the “Food Act”), and thus must be kept out of the food supply.¹ The objective of the Food Act is the “protection of public health.”² Under the Food Act, the Board has the authority, and the duty, to promulgate regulations to protect the public health.³ Horses loaded up with dangerous and prohibited drugs must be stopped at the slaughterhouse gates, in order for the Board to ensure the enforcement of the Food Act.⁴ Otherwise, the Board will be sanctioning the dissemination of adulterated meat from horses who have been administered harmful substances, with the potential for significant consumer harm.

¹ N.M. Stat. § 25-2-10(A).

² *State v. 44 Gunny Sacks of Grain*, 83 N.M. 755, 756 (1972); *see also* N.M. Admin. Code § 7.6.2.7 (“The objective of these regulations is to protect the public health by establishing standards and provisions for the safe operation of food establishments to assure that consumers are not exposed to adverse environmental health conditions.”).

³ N.M. Stat. § 25-2-15(A). While the Director of the Environment Department has authority under the Food Act, N.M. Stat. § 25-2-6, to label horse meat from American horses as adulterated, the only surefire way to prevent adulterated horse meat from being produced, transported, and sold in New Mexico is for the Board to adopt the rules proposed in this Petition.

⁴ N.M. Stat. § 25-2-15(A).

The condition of horses going to slaughter clearly fits within the Food Act’s definition of “adulterated” meat.⁵ The horses themselves are laced with sufficient foreign and potential toxic substances so that their meat should never satisfactorily pass any inspection that complies with the Food Act. Exhibit 1 to this Petition, “Banned And Dangerous Substances Commonly Given To Horses Sent To Slaughter,” provides a nonexhaustive list of examples of drugs and other substances to which American horses are routinely exposed throughout their lives, through injection, ingestion, or topical application.⁶ Exhibit 1 includes (1) drugs that are expressly prohibited (by law or by label) from use in food animals; (2) drugs and other substances that are known to be harmful to humans when eaten; and (3) drugs and other substances that have never been tested in humans, so that the potential dangers from ingestion of horse meat laced with the residue and byproducts of these substances creates a frightening unknown possibility of medical consequences. It is important for the Board and the public to appreciate that the substances listed on Exhibit 1 are only illustrations of some of the more commonly used drugs and additives that

⁵ See N.M. Stat. § 25-2-10(A)(2), (4) (establishing that food is adulterated if it “bears or contains any added poisonous or added deleterious substance” or if it has been “produced, prepared, packed or held under insanitary conditions whereby it may have been . . . rendered diseased, unwholesome or injurious to health”); see also N.M. Admin. Code § 7.6.2.8(L) (adopting the Federal Food and Drug Administration’s Food Code “as a technical reference and interpretation guide”); Food and Drug Administration Food Code (2009), § 1.2(B), <http://www.fda.gov/downloads/Food/FoodSafety/RetailFoodProtection/FoodCode/FoodCode2009/UCM189448.pdf> (“‘Adulterated’ has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 402.”); 9 C.F.R. § 301.2(2)(iii) (meat with unsafe food additives is adulterated under § 402 of the FDCA); 9 C.F.R. § 318.20 (meat with unapproved animal drug residues is adulterated under § 402 of the FDCA).

⁶ See Exhibit 1; Declaration of Hilary Wood (“Wood Dec.”), ¶¶ 6-7, attached hereto as Exh. 2; Declaration of Peggy W. Larson (“Larson Dec.”), ¶ 7, attached hereto as Exh. 3; Declaration of Joanne Pavlis (“Pavlis Dec.”), ¶¶ 4-5, attached hereto as Exh. 4; Declaration of Randy Parker, D.V.M. (“Parker Dec.”), ¶¶ 7-9, attached hereto as Exh. 5; Declaration of Cynthia Newberry (“Newberry Dec.”), ¶¶ 7-9, attached hereto as Exh. 6; Declaration of Dirk Murphy (“Murphy Dec.”), ¶¶ 4-5, attached hereto as Exh. 7; Declaration of Holly Colella, D.V.M. (“Colella Dec.”), ¶¶ 7-9, attached hereto as Exh. 8; Declaration of Michelle Conner (“Conner Dec.”), ¶¶ 5-7, attached hereto as Exh. 9; Declaration of Ronald T. Fitch (“Fitch Dec.”), ¶¶ 6-8, attached hereto as Exh. 10; Declaration of Sandra Grover, D.V.M. (“Grover Dec.”), ¶¶ 7-10, attached hereto as Exh. 11; Declaration of Gail Vacca (“Vacca Dec.”), ¶¶ 7-8, 12-14, attached hereto as Exh. 12; Declaration of Shirley S. Hoffman (“Hoffman Dec.”), ¶¶ 7-8, attached hereto as Exh. 13.

may potentially be lurking poisons in horse meat. There are multiple products and brand name compounds that may incorporate many of the items listed on Exhibit 1.

The likelihood of tragic human reactions should guide the Board's decisionmaking process with respect to the use of horses for human consumption. Because there is no realistic way to fully assess the risks of eating horse meat, and because all horse meat is potentially dangerous in many ways, there is no other course than for the Board to ban the sale of horse meat from American horses, unless would-be producers of horse meat can prove with a high degree of certainty that consumption of the meat is consistent with food safety. Petitioners are doubtful that the United States federal government will adopt a system that provides the level of certainty needed for American horses to be turned into meat, but have provided the USDA and Food and Drug Administration ("FDA") a list of proposed rules, described below, that, if placed in effect and fully enforced, could meet that challenge. Petitioners request that the Board declare horse meat produced in New Mexico to be adulterated until such a system exists to ensure that horse meat is not adulterated.

II. INTERESTS OF THE PETITIONERS

Petitioner FRER is a Colorado-based nonprofit group incorporated under Section 501(c)(3) of the Internal Revenue Code. FRER is dedicated to stopping cruelty and abuse of horses through rescue and education.⁷ FRER is actively involved in the rescue, rehabilitation, and adoption to good homes of domestic and wild horses found at auctions and horses destined for slaughter; and in educational efforts regarding responsible horse ownership, the cruelty of horse slaughter, and wild horse roundups.⁸ FRER has assisted thousands of horses through its

⁷ Wood Dec., Exh. 2, ¶ 2.

⁸ *Id.*

rescue and educational programs.⁹ While some of FRER's horses are surrendered by their owners or rescued when abandoned, many are rescued from livestock auctions; others are purchased at feed lots before they are sent to slaughter.¹⁰

Petitioner The Humane Society of the United States (HSUS) is a non-profit organization that promotes the protection of all animals.¹¹ The HSUS maintains its headquarters in Washington, DC and is the largest animal protection organization in the United States, with more than eleven million members and constituents.¹² The HSUS actively advocates against practices that injure or abuse horses and opposes the slaughter of horses for human consumption.¹³ The HSUS has been actively involved in litigation and the support of legislation directed at the prohibition of horse slaughter and the transport of horses for slaughter.¹⁴ Furthermore, the HSUS offers information regarding the inhumane treatment of animals on a wide spectrum of topics, including the process of slaughtering horses for their meat.¹⁵

III. ACTION REQUESTED

Based on the facts and law presented here, Petitioners request that the Board adopt a rule that renders the meat of any horse adulterated, unless the slaughterhouse (or its agent) receiving or buying the horse (1) obtains an accurate record of all of the horse's prior owners, (2) obtains a record of all drugs, treatments, and substances administered to the horse since birth, and (3) all drugs, treatments, and substances administered to the horse may be administered to horses who will become food under New Mexico and federal law. Because of the elevated chance that these

⁹ *Id.*

¹⁰ *Id.*

¹¹ Declaration of Keith Dane, attached hereto as Exh. 14, ¶ 2.

¹² *Id.*

¹³ *Id.* at ¶ 3.

¹⁴ *Id.* at ¶ 4.

¹⁵ *Id.*

horses have been exposed to a myriad of substances prohibited for use in food animals, the only way to protect the food supply and the consuming public is for the Board to declare horse meat adulterated unless this level of reassurance can be provided.

Based on the Factual and Legal Background and Statement of Grounds below, Petitioners request that the Board amend N.M. Admin. Code § 7.6.2 as follows:

N.M. Admin. Code § 7.6.2.7.JJJ shall state as follows: “Equine Passport” means an electronic document, approved by the New Mexico or United States government and issued within six months of the birth of an equine, and a corresponding microchip, installed in each equine by a veterinarian prior to the creation of the Equine Passport.

N.M. Admin. Code § 7.6.2.9(12) shall state as follows: Equine meat manufactured, sold or delivered, held or offered for sale for human consumption in New Mexico is adulterated under the New Mexico Food Act unless all of the following criteria are all met:

- (a) An Equine Passport must accompany every equine from which equine meat is derived;
- (b) The Equine Passport must list all owners of the equine at all times, from the equine’s birth until the equine’s death;
- (c) The Equine Passport must contain a complete list of all drugs, treatments, and other substances that have been administered to the equine during the course of the equine’s life, from birth until the time of the equine’s death, in connection with any medical care, prophylactic treatment of diseases, vaccination, pest control, growth promotion or regulation, reproductive or hormone therapy, or other treatment, including but not limited to all prescription and over-the-counter medications, pain medication, sedatives, anesthetics, antibiotics, hormones (synthetic or natural), steroids, dewormers, fly or pest sprays, ointments, liquids or applications;

(d) The administration to equine slaughtered for human consumption of all drugs, treatments, and other substances listed on an Equine Passport must be consistent with New Mexico law, to the extent those laws are identical to regulations promulgated by the United States Food and Drug Administration and the United States Department of Agriculture;

(e) The administration to equine slaughtered for human consumption of all drugs, treatments, and other substances listed on an Equine Passport must be consistent with federal law, including regulations promulgated by the United State Food and Drug Administration and the United States Department of Agriculture; and

(f) All entries on the Equine Passport must be truthful and accurate.

IV. FACTUAL BACKGROUND

A. Americans Love Horses.

Americans have a long relationship with horses. From parades, search and rescue teams, and competitions to police and military support, advertisements, and summer camps, Americans use horses for a vast array of purposes. We keep them as companions. They have stood by, loyal as dogs, during every war from the American Revolution up to the present day. They shoulder the burdens to work for farmers and ranchers. We cheer them on as they race and watch them in the Olympics. We admire their wildness and herd cultures where they are left alone in nature on the open range.

There are over 147,000 horses in New Mexico, including over 80,000 who are involved in showing and recreation.¹⁶ The New Mexico horse industry generates approximately 45,000 jobs annually, and over 90,000 New Mexicans are involved in the horse industry as owners, employees, volunteers, and other service providers.¹⁷ There are approximately nine million

¹⁶ American Hore Counsel Study, <http://www.horsecouncil.org/state-breakout-studies-following-states>.

¹⁷ *Id.*

horses in the U.S. and two million horse owners,¹⁸ and tens of thousands of wild horses. Of the nine million owned horses, a 2005 study concluded that almost four million are used for recreation, three million for showing, eight hundred thousand for racing, and two million for activities ranging from farm and ranch work to police work and rodeos.¹⁹ A 2007 study by the federal government found that almost forty-six percent of horses are used for pleasure, twenty-five percent for farm and ranch work, sixteen percent for breeding, and ten percent for show and competition.²⁰

B. American Horses Are Not Raised to Be Meat.

One purpose horses do not currently serve in America is as a source of meat.²¹ Because of the way Americans treat their horses – as companions, sources of recreation, and tools of labor – they neither raise horses for human consumption nor consume horse meat. Americans treat their horses more like their dogs and cats than other commercial animals. We give horses whatever drugs and substances they need to keep them healthy, strong, and free of pests. Horses’ place in American culture makes their slaughter something that, so far, has never received much support.

Nevertheless, when Americans have lost interest in their horses (whether companions, competitors, or racehorses), or when we capture the wild horses on public land, the profiteers buy them and send them off to be killed. Horses are transported to Canada and Mexico, where

¹⁸ Study by Deloitte Consulting LLP for the American Horse Council Foundation (2005), <http://www.horsecouncil.org/national-economic-impact-us-horse-industry>.

¹⁹ *Id.*

²⁰ USDA Animal and Plant Health Inspection Service Info Sheet (Mar. 2007), http://www.aphis.usda.gov/animal_health/nahms/equine/downloads/equine05/Equine05_is_Demographic_s.pdf.

²¹ *See, e.g., Caval Int’l., Inc. v. Madigan*, 500 F.3d 551, 545 (7th Cir. 2007) (“Americans do not eat horse meat. . . .”); *see also* Terry L. Whiting, *The United States’ prohibition of horse meat for human consumption: Is this a good law?*, 48 CANADIAN VET. J. 1173, 1174 (Nov. 2007) (“A commercial market for horse meat as food has never emerged in the USA.”), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2034431/>.

they are slaughtered, butchered, and their meat eaten. Horse meat is a common food, even a staple, in many regions, from China to Southeast Asia to Europe.²² It regularly appears on menus and in markets. Between 100,000 and 200,000 American horses, from a variety of sources, are slaughtered outside of the United States and end up in restaurants and markets each year, and hundreds of thousands of people around the world eat American horse meat annually.²³

Because Americans view horses as somewhat totemic or “sacred” animals, horse slaughter for human consumption is overwhelmingly unpopular in the U.S.²⁴ A January 2012 poll revealed that eighty per cent of Americans are strongly opposed to horse slaughter.²⁵ The survey found that “Americans oppose horse slaughter overwhelmingly regardless of their gender, political affiliation, whether they live in an urban or rural area, or their geographic location,” or

²² *Cavel*, 500 F.3d at 552.

²³ But, officials from the European Union, the largest market for horse meat from American horses, are becoming increasingly skeptical of this product. In October 2012, a Canadian slaughter establishment that slaughters American horses and exports the meat to European consumers told his buyers to “stay away from horses coming from American racetracks” due to “drug issues.” Joe Drape, *Racetrack Drugs Put Europe Off U.S. Horse Meat*, NY Times, December 8, 2012, <http://www.nytimes.com/2012/12/09/sports/drugs-injected-at-the-racetrack-put-europe-off-us-horse-meat.html?pagewanted=all&r=0>. European Union officials have repeatedly questioned the fitness of horse meat from American horses produced by Canadian and Mexican slaughter establishments due concerns about veterinary drugs and other banned substances. See European Commission Food and Veterinary Office, Final Report of a Mission Carried Out in Mexico From 22 November to 3 December 2010, Ares(2011)398056; European Commission Food and Veterinary Office, Final Report of an Audit Carried Out In Canada From 23 November to 6 December 2010, Ares(2011)1101887; European Commission Food and Veterinary Office, Final Report of an Audit Carried Out In Canada From 13 to 23 September 2011, Ares(2012)257268; European Commission Food and Veterinary Office, Final Report of an Audit Carried Out in Mexico From 29 May to 8 June 2012, Ares(2012)1131051.

²⁴ Christa Weil, *We Eat Horses, Don't We?*, NY Times, March 5, 2007 (“Weil”), www.nytimes.com/2007/03/05/opinion/05weil.html; Josh Ozersky, *The Case for Eating Horse Meat*, TIME (Dec. 28, 2011), <http://ideas.time.com/2011/12/28/the-case-for-eating-horse-meat/>.

²⁵ ASPCA Survey, <http://www.prnewswire.com/news-releases/aspca-research-confirms-americans-strongly-oppose-slaughter-of-horses-for-human-consumption-138494089.html>; see also Press Release, The Humane Society of the United States, USDA Threatened with Suit if Court Order Not Followed Before Horse Slaughter Resumes (Feb. 3, 2012), http://www.humanesociety.org/news/press_releases/2011/11/usda_threatened_02032012.html.

whether they own horses themselves.²⁶ A March 2013 survey confirmed that 70% of registered voters in New Mexico oppose horse slaughter.²⁷

Regardless of the rationale – from the “transcendent relationship” a rider forms with her horse to the popularity of movies like *Seabiscuit* and *War Horse* – Americans do not eat horse meat.²⁸ And they do not want their companions slaughtered and exported for others to eat either.

Americans did eat horses in decades past, but consumption has dropped off to almost nothing in the past thirty or forty years.²⁹ At this point, horse meat is almost never eaten in America. But because of recent legal changes (discussed in this Petition) and a business desire to slaughter horses for profit, it may soon be served again in restaurants and homes in New Mexico and across the nation, and American horses will continue to be shipped over our borders, north and south, for foreign markets.

Although meat from slaughtered American horses has been shipped overseas for years, American horses have never been bred, borne, or raised as food animals. As described below, the horses who end up as meat come from varied backgrounds and have been exposed to a multitude of identifiable and unknown drugs, substances, and treatments that have been applied to, injected in, and ingested by the horses. Many of those substances are dangerous and may even be fatal to humans who ingest them. When meat from horses who have been exposed to those substances is eaten, there is a real potential for extreme consequences.³⁰ Because of the impossibility of knowing these horses’ histories, every bite of American horse meat includes the

²⁶ ASPCA Survey, *supra* Note 25.

²⁷ Survey on Attitudes Toward Horse Slaughter in New Mexico, April 2, 2013, <http://www.aspca.org/Pressroom/press-releases/040413>.

²⁸ *Weil*, *supra* Note 24.

²⁹ *Cavel Int’l.*, 500 F.3d at 552.

³⁰ See Larson Dec., Exh. 3, ¶¶ 8-11, 14, 16; Declaration of Michael Greger (“Greger Dec.”), attached hereto as Exh. 15, ¶¶ 13-15.

potential for death and disease for the consumer; the chance of liability for the manufacturer, producer, and seller; and the corollary need for all involved government agencies to ensure the safety of horse meat to the greatest possible degree.

C. **Horses Used as Food Come from Sources Where They Are Regularly Exposed to the Substances in Exhibit 1 to the Petition.**

As discussed above, and as proven by the evidence submitted with the Petition, American horses who end up as meat almost all begin their lives in factual settings that do not contemplate their ultimate end. Horses who become meat are of all breeds and ages, though most of them are young and healthy.³¹ The horses come from several sources that can first be split into two larger categories – carefully maintained and cared-for, privately owned horses; and wild horses, who then often become privately maintained horses for some time before their sale at auction that sends them on to slaughter. Almost every American horse sent to slaughter fits into one of these categories.³²

A majority of the horses for slaughter, who end up being bought at auction by “killer-buyers” (who often act as middlemen to the final auctioneer or stockyard), spend most of their lives in highly managed, highly medicated home and stable environments. Their lives, before their final weeks or months as commodities in the slaughter industry for meat production, are both privately controlled out of the public eye, and almost completely unregulated.³³ They are

³¹ Larson Dec., Exh. 3, ¶ 22. The USDA has reported that 92.3 percent of horses arriving at slaughterhouses before horse slaughter was effectively banned in 2007 were in “good” condition. http://www.humanesociety.org/issues/horse_slaughter/facts/facts_horse_slaughter.html.

³² Larson Dec., Exh. 3, ¶¶ 20-21, 24-25.

³³ There are federal rules and regulations that limit the use of certain drugs in connection with some competitive use, but most of the substances listed on Exhibit 1 are approved for use in competitive horses. Competitive horses may be treated even with banned substances when they are not actively in competition. It is also the case that abuse of even prohibited drugs in the racing industry is an ongoing problem. Joe Drape, *At Breeders’ Cup, a Volatile Mix of Speed and Drugs*, NY Times, Nov. 3, 2010 (“Numbers suggest there is, indeed, a culture in American horse racing that ultimately rewards those who seek any means, legal and otherwise, to gain an edge.”), <http://www.nytimes.com/2010/11/04/sports/04racing.html>.

treated as pets or as valuable commodities, and they are therefore given a series of medications, and treated with a number of substances, identical or similar to those listed in Exhibit 1 and identified in the following section of this Petition. Some of these substances are *per se* dangerous to humans. All of the Exhibit 1 drugs may be harmful if ingested by at least some portion of the human population, and over the course of her life, each horse is exposed to hundreds of applications of drugs, substances, and treatments that could lead to detrimental side effects in the humans who eventually eat them.

The use of many of these products cannot be avoided in caring for horses, and the use of these substances is often necessary to provide for the health, safety, and comfort of the horses. The substances fall into a number of identifiable categories, each category including tens, if not hundreds, of individual generic or brand names, which are regularly and routinely used on American horses.³⁴

- First, in order to control common pests such as flies, ticks and other insects, horses are regularly treated with a number of substances, either topically or systemically.³⁵ Many of these treatments are specifically labeled with a warning that the treatments should not be used on animals who will be used for food.³⁶
- Second, in order to treat many ailments and medical problems, horses are injected with medications, many of which also are banned from use in animals who will become meat.³⁷

³⁴ See Exhibit 1; Wood Dec., Exh. 2, ¶¶ 6-7; Larson Dec., Exh. 3, ¶ 7; Pavlis Dec., Exh. 4, ¶¶ 4-5; Parker Dec., Exh. 5, ¶¶ 7-9; Newberry Dec., Exh. 6, ¶¶ 7-9; Murphy Dec., Exh. 7, ¶¶ 4-5; Colella Dec., Exh. 8, ¶¶ 7-9; Conner Dec., Exh. 9, ¶¶ 5-7; Fitch Dec., Exh. 10, ¶¶ 6-8; Grover Dec., Exh. 11, ¶¶ 7-10; Vacca Dec., Exh. 12, ¶¶ 7-8, 12-14; Hoffman Dec., Exh. 13, ¶¶ 7-8.

³⁵ Examples include butoxy polypropylene glycol (fly spray), di-n-propyl isocinchomeronate (fly control products), n-(2-ethylhexyl)-5-norbornene-2,3-dicarboximide (fly control), and N-Octyl Bicycloheptene Dicarboximide (fly spray). See Exhibit 1; Wood Dec., Exh. 2, ¶¶ 6-7; Larson Dec., Exh. 3, ¶ 7; Pavlis Dec., Exh. 4, ¶¶ 4-5; Parker Dec., Exh. 5, ¶¶ 7-9; Newberry Dec., Exh. 6, ¶¶ 7-9; Murphy Dec., Exh. 7, ¶¶ 4-5; Colella Dec., Exh. 8, ¶¶ 7-9; Conner Dec., Exh. 9, ¶¶ 5-7; Fitch Dec., Exh. 10, ¶¶ 6-8; Grover Dec., Exh. 11, ¶¶ 7-10; Vacca Dec., Exh. 12, ¶¶ 7-8, 12-14; Hoffman Dec., Exh. 13, ¶¶ 7-8.

³⁶ Examples include ponazuril (for treatment of equine protozoal myeloencephalitis) and eucalyptus oil (for dressing wounds). See Exhibit 1.

³⁷ Examples include moxidectin (a dewormer) and ceftiofur crystalline free acid (for treatment of lower respiratory tract infections). See Exhibit 1.

- Third, many horses are treated with antibiotic and antibacterial compounds that are banned for use in food animals, and that could have a variety of negative health impacts if ingested by humans.³⁸
- Fourth, various hormones and steroids are used on competition and companion horses for various reasons. Even where they are not expressly banned or even approved for human use, the ingestion of these substances could have dramatic effects on all humans, and especially on women of child-bearing age and the unborn.³⁹
- Fifth, many over-the-counter medications used on horses are expressly banned, in federal regulations enacted by the FDA, from use in food animals – something the FDA would not have done without a concern about humans eating meat infected with those medications.⁴⁰
- Sixth, many drugs that are approved for use on horses are specifically excluded from use in food animals, because of the need for all prescription drugs to be given under the direction and supervision of a physician.⁴¹ It is a matter of common understanding that drugs of any kind, but especially prescription medications, should not be anonymously or secretly given to people.⁴² But if those substances are administered to horse who are slaughtered for food, that is exactly what will happen.

D. There are Over 110 Toxic Substances, Many Prohibited for Use in Animals Who Are Made Into Food – All Used on Horses.

Both the federal government and private industry have recognized that many of the drugs, treatments, and other substances that are regularly applied to, injected in, or ingested by American horses create grave dangers if eaten by humans. Because of the possibility of unpleasant to fatal side effects, and the potential for crippling or chronic illnesses or even death

³⁸ See *Natural Resources Defense Council v. U.S. Food & Drug Administration*, No. 11 Civ. 3562 (THK), Memorandum Opinion and Order (Mar. 22, 2012) (granting summary judgment for plaintiff; noting that “[f]or over thirty years, the FDA has taken the position that the widespread use of antibiotics in livestock for purposes other than disease treatment poses a threat to human health”). Examples of antibiotics given to horses include entamicin sulfate solution (for the control of bacterial infections in the uterus and for improving conception), olaquinox (for growth promotion), and furazolidone (for treating wounds and sores). See Exhibit 1; Greger Dec., Exh. 15, ¶¶ 11-12.

³⁹ See Exhibit 1; Greger Dec., Exh. 15, ¶ 13.

⁴⁰ It is illegal to administer over fifty of the drugs listed on Exhibit 1 to animals intended to be used as food. Exhibit 1 also includes citations to the corresponding Code of Federal Regulations sections, which exclude from slaughter for human consumption animals who have received those drugs.

⁴¹ Examples include dimethylsulfoxide (to reduce swelling), xylazine (a common sedative used in veterinary medicine) and prednisone (an anti-inflammatory agent). See Exhibit 1.

⁴² Greger Dec., Exh. 15, at ¶ 3.

that may result from ingestion of meat tainted with these toxic chemicals, literally hundreds of products are clearly labeled “Not for use in animals used for food,” “Not to be given to animals that will be eaten by humans,” or some similar language.⁴³ The message is clear – once a horse (or any animal) has been exposed to even one of these chemicals, the horse must be permanently excluded from any possibility of being used for food. The horse cannot be slaughtered for human consumption and its flesh cannot be turned into meat. This determination, whether made by the agency or by the industry, is a potent declaration that horse meat from horses who have had one of these substances may be dangerous, unhealthy, even deadly.

Exhibit 1 to the Petition is an illustrative, but not complete, list of substances that are routinely given to American horses – and proof positive of the inherent problems with horse meat. Virtually every single substance on the list is used on American horses who may end up as horse meat, sometimes routinely, sometimes by prescription.⁴⁴ And a majority of the substances on the list is actually banned for use on animals who will be consumed by humans – regardless of when, over the course of their lives, the horses were exposed to that substance. There is good reason for the bans, given the potential consequences from human ingestion. Petitioners provide illustrations below:

1. *Acepromazine* is used as a sedative and antiemetic in horses. Its use has been discontinued in humans. While it was previously used in humans, its ingestion can still be harmful or fatal, or cause neurologic symptoms.⁴⁵ Other sedatives have been expressly banned from use in horses who will become food, but they continue to be used by horse owners.⁴⁶

⁴³ Exhibit 1 includes examples of many such drugs only with respect to horses.

⁴⁴ See Exhibit 1; Wood Dec., Exh. 2, ¶¶ 6-7; Larson Dec., Exh. 3, ¶ 7; Pavlis Dec., Exh. 4, ¶¶ 4-5; Parker Dec., Exh. 5, ¶¶ 7-9; Newberry Dec., Exh. 6, ¶¶ 7-9; Murphy Dec., Exh. 7, ¶¶ 4-5; Colella Dec., Exh. 8, ¶¶ 7-9; Conner Dec., Exh. 9, ¶¶ 5-7; Fitch Dec., Exh. 10, ¶¶ 6-8; Grover Dec., Exh. 11, ¶¶ 7-10; Vacca Dec., Exh. 12, ¶¶ 7-8, 12-14; Hoffman Dec., Exh. 13, ¶¶ 7-8.

⁴⁵ See further detail included on Exhibit 1.

⁴⁶ See, e.g., 21 C.F.R. § 522.2662 (xylazine, marketed as Anased, a sedative, is prohibited for use in horses who will become food, but its use on horses is allowed).

2. *Acetazolamide* is a diuretic commonly used in horses, and appropriate for use in some humans.⁴⁷ However, for many humans, it can cause serious health consequences, up to and including death.⁴⁸
3. *Blue Kote* is a topical ointment, antiseptic, and protective wound dressing used by many horse owners. Its active ingredient is *acriflavine*. The Material Data Safety Sheet (MSDS)⁴⁹ for this substance states that it is “[h]azardous in case of . . . ingestion” and is “toxic to lungs [and] mucous membranes.”⁵⁰
4. *Adequan*, a commonly used drug for degenerative and traumatic joint problems, and containing the active ingredient *polysulfated glycosaminoglycan*, cannot legally be given to horses used for food.⁵¹ *Adequan* has never been tested on humans, so its potential toxicity and adverse reactions to its use by humans are completely unknown.⁵²
5. *Altrenogest* is the active substance in *Regu-Mate*, an artificial hormone and growth promoter. Even skin contact with the chemical is unsafe, and it is especially dangerous to pregnant women and women of child-bearing age, as it can disrupt biological function.⁵³ Unsurprisingly, the federal government has expressly forbidden its use in animals used for meat.⁵⁴
6. *Amikacin* is used for the treatment of genital tract infections in mares. Use of *amikacin* has been expressly prohibited by law for use “in horses intended for human consumption.”⁵⁵

⁴⁷ Many drugs that are used by humans are also banned for use in animals who will be eaten. This may be because the drugs may be extremely dangerous to some humans, whether because of particular allergies/sensitivities or because they are taking other medications; because the drugs have not been tested on humans who take them orally; or because no tests have ever been done to see what byproducts of the drugs may end up in the meat of animals who take them. Since there is no way of filtering the consuming population to avoid adverse reactions, and no way to identify meat from animals who have had specific substances, the fact that a drug may be safe for some humans does not assure its safety for the consuming public.

⁴⁸ See further detail included on Exhibit 1; *Acetazolamide (sulfonamide)* is contraindicated in patients with hyperchloremic acidosis, angle-closure glaucoma, kidney and liver disease, and in patients with Addison’s disease. Many adverse side effects have been reported. See <http://www.drugs.com/pro/acetazolamide.html>.

⁴⁹ Material Safety Data Sheets are used in industries around the world to provide vital information about the safety, composition, and other aspects of products on the market. They are generally considered conservative reports of the important information on a product, and are relied on by legislatures, courts, and administrative agencies.

⁵⁰ <http://www.sciencelab.com/msds.php?msdsId=9927421>. See further detail included on Exhibit 1.

⁵¹ 21 C.F.R. § 522.1850.

⁵² See further detail included on Exhibit 1.

⁵³ <http://www.drugs.com/vet/regu-mate-solution.html>.

⁵⁴ 21 C.F.R. § 520.48 (“Do not use in horses intended for human consumption.”); see further detail included on Exhibit 1.

⁵⁵ 21 C.F.R. § 529.56; see further detail included on Exhibit 1.

7. Many different *antibiotics*, which help fight infection and the microorganisms that cause infection, are used in horses, in the companion, sport, and wild horse areas. While many of them are the same drugs used in humans, they are potentially dangerous to humans who either have allergies or sensitivities to them. Because of the unknown administration of antibiotics over the course of a horse's life, this problem cannot be avoided.⁵⁶ Additionally, the use of antibiotics in food animals, and the subsequent ingestion by humans of those animals, has the potential to create antibiotic resistance in humans, which can cause significant problems for humans upon subsequent illness.⁵⁷
8. *Antiseptic* compounds are often considered dangerous to humans upon ingestion, and are used regularly to clean horses' skin and wounds. Some of those substances are also expressly labeled to indicate that, as a matter of federal law, they cannot be used in animals who will become food.⁵⁸
9. *Avermectin* is a common chemical component in dewormers used on American horses. Dewormers are part of typical routine care for most horses, in order to prevent worm infestation and the problems related with infestation. The MSDS for this substance directs that upon any human ingestion of the drug, immediate medical attention is required. The MSDS, like the label, also states without limitation that it is not to be used on horses who will be eaten.⁵⁹ The deworming products *Agri-mectin*, *Bimectin*, *Equell*, *Equimax*, *Exodus*, *Farnam Ivercare*, *Horse Health*, *Ivercare*, *Prometin E*, and *Zimecterin* all contain substances prohibited under federal law for use in "horses intended for human consumption."⁶⁰
10. *Equipoise* is an injectable form of *boldenone undecylenate* and is used popularly to treat horses who are debilitated, in order to bolster their physical condition. When men use it (illegally), it has been known to cause blood dyscrasias, psychological aberrations, "sleeplessness, chills, vomiting, diarrhea, hypertension, [and] prolonged blood clotting time." When women use it, hormonal effects occur, including but not limited to menstrual irregularities and post-menopausal bleeding.⁶¹ Probably because of all those potential problems, horses who have received the drug cannot be used for meat,⁶² but its use on horses otherwise is legal.

⁵⁶ See, e.g., 21 C.F.R. § 522.90c (Ampicillin Sodium: "Do not use in horses intended for human consumption."); see also <http://www.drugs.com/vet/equifur-can.html> (*Nitrofurantoin*, marketed as *Equifur* and used for bacterial infections of the urinary tract, "is not to be administered to horses that are to be slaughtered for use in food."); 21 C.F.R. § 524.1580b (*Nitrofurazone*, used as antibacterial on surface wounds but not "for use in horses intended for human consumption" – "Federal law prohibits the use of this product in food-producing animals.").

⁵⁷ Parker Dec., Exh. 5, ¶ 7; see further detail included on Exhibit 1.

⁵⁸ See, e.g., 21 C.F.R. § 524.402 (*Chlorhexidine* topical antiseptic not to be used on horses intended for human consumption); see further detail included on Exhibit 1.

⁵⁹ <http://msds.farnam.com/m001116.htm>.

⁶⁰ See 21 C.F.R. §§ 520.1192, 520.1194, 520.1195, 520.1198, 520.2044; see further detail included on Exhibit 1.

⁶¹ <http://www.anabolicsmall.com/equipoise.html>.

⁶² 21 C.F.R. § 522.204; see further detail included on Exhibit 1.

11. *Butorphanol* is a commonly-used drug for pain relief in a wide variety of situations involving horses. Its effectiveness makes it a regular choice, but, probably because of its severe side effects (see Exhibit 1), federal law forbids the use or sale for human consumption of meat from any horse who has had it.⁶³
12. *Carbadox* is a growth-enhancing antibiotic. If ingested, it can cause serious health problems or even be fatal. Even a single exposure could cause irreversible mutations of human chromosomes.⁶⁴
13. *Excede*, an antibiotic drug containing *ceftiofur crystalline free acid*, is “[n]ot for use in humans” and that if a person is exposed, a physician should be consulted.⁶⁵
14. *Chloramphenicol* is a topical antibiotic ointment. If ingested by humans, it can cause tragic consequences, including death and severe blood disorders.⁶⁶ In some forms, it is wholly prohibited for use on animals who become food.⁶⁷ In others, it is allowed without condition.⁶⁸
15. *Kopertox* is used to treat thrush (a common bacterial infection of the hoof) in horses. Its active ingredient is *copper naphthenate* which, if eaten, may cause vomiting, shock, jaundice, and liver, kidney or central nervous system failures.⁶⁹ The law forbids the use of horses for meat, if they have been treated with *copper naphthenate*.⁷⁰
16. *Cupric sulfate* is the active ingredient in *Proudsoff*, used to treat certain types of unwanted granulation tissue (proud flesh”). If eaten by humans, *cupric sulfate* can cause gastrointestinal tract problems including bleeding, liver damage, anemias, urinary system problems, and cardiovascular problems.⁷¹
17. *Farnam Repel* and other fly sprays used to control flies on horses contain *deodorized kerosene*. If any of that substance was in horse meat, the potential problems upon ingestion could include pulmonary edema, central nervous system depression, convulsions, and loss of consciousness.⁷²

⁶³ 21 C.F.R. § 522.246; see further detail included on Exhibit 1.

⁶⁴ <http://datasheets.scbt.com/sc-204668.pdf>; see further detail included on Exhibit 1.

⁶⁵ [http://animalhealth.pfizer.com/sites/pahweb/US/EN/Products/Documents/Combined%20Full%20PI%20\(8_5x11\)%20-%20EXEQ0110014.pdf](http://animalhealth.pfizer.com/sites/pahweb/US/EN/Products/Documents/Combined%20Full%20PI%20(8_5x11)%20-%20EXEQ0110014.pdf). See also 21 C.F.R. §§ 522.313a, 522.313c (not to be used in horses who are eaten); see further detail included on Exhibit 1.

⁶⁶ <http://www.drugs.com/cdi/chloramphenicol.html>.

⁶⁷ 21 C.F.R. § 524.390 (Chloramphenicol ointment).

⁶⁸ See further detail included on Exhibit 1.

⁶⁹ <http://www.sciencelab.com/msds.php?msdsId=9923553>.

⁷⁰ 21 C.F.R. § 524.463; see further detail included on Exhibit 1.

⁷¹ <http://www.sciencelab.com/msds.php?msdsId=9923598>; see further detail included on Exhibit 1.

⁷² <http://www.sciencestuff.com/msds/C1955.html>; see further detail included on Exhibit 1.

18. *Deslorelin* is used in order to induce ovulation, as a regular tool for successful horse breeding. Federal regulations forbid its use in horses who will be eaten.⁷³ This is undoubtedly because the drug can cause serious adverse reactions related to hormonal effects.⁷⁴
19. *Dexium (dexamethasone)* injection and tablets are used as anti-inflammatory agents in horses, but are expressly banned from use in food animals because of the great danger from ingestion. *Dexium* is a steroid that is very hazardous if eaten.⁷⁵ Any use of it is banned by law for horses “intended for food.”⁷⁶ *Methylparaben*, also in *Dexium* injections, is used as a preservative in cosmetic products, and its toxicity is established; but, the exact scope and nature of the toxicity in humans is unknown.⁷⁷
20. *Diclofenac sodium* (marketed as *Surpass*) is used for pain associated with arthritis in horses. While it is also used in human medicine, the drug is very dangerous, used only when necessary, and in the shortest duration possible. There are many known adverse reactions and side effects,⁷⁸ and the FDA prohibits its use in animals who become food.⁷⁹
21. *Dormosedan*, the brand name for *detomidine hydrochloride*, is a common sedative and analgesic for many routine procedures performed on mature horses. No animal that has been administered this drug can legally be used for food.⁸⁰
22. *Doxycycline*, an antibiotic also used in humans, has several severe side effects for humans who have sensitivities or compromised health that would indicate that they should not take the drug. The potential adverse effects include fetal injury, damage to tooth development in children, kidney problems, and bacterial resistance.⁸¹
23. Injectable *enrofloxacin* can cause significant problems if animals who have been treated with this antibiotic are eaten by humans. The Center for Veterinary Medicine specifically directed that the drug should be removed from use on chickens because chickens treated with the drug, who were then eaten by humans, passed on drug-resistant bacteria, a significant health hazard to humans.⁸²

⁷³ 21 C.F.R. § 522.533.

⁷⁴ See, e.g., <http://www.pdr.net/drugpages/concisemonograph.aspx?concise=2848>; see further detail included on Exhibit 1.

⁷⁵ <http://www.drugs.com/vet/dexium-injection.html>.

⁷⁶ 21 C.F.R. § 522.540.

⁷⁷ <http://www.sciencelab.com/msds.php?msdsId=9926083>; see further detail included on Exhibit 1.

⁷⁸ <http://www.pdr.net/search/searchResult.aspx?searchCriteria=Diclofenac+Sodium>; see further detail included on Exhibit 1.

⁷⁹ 21 C.F.R. § 524.590.

⁸⁰ 21 C.F.R. §§ 522.536, 529.536; see further detail included on Exhibit 1.

⁸¹ <http://www.drugs.com/cdi/doxycycline-capsules.html>; see further detail included on Exhibit 1.

⁸² <http://www.fda.gov/AnimalVeterinary/SafetyHealth/RecallsWithdrawals/ucm042004.htm>; see further detail included on Exhibit 1.

24. *Eucalyptus oil* is used as a topical treatment for horses (also known as “Scarlet Oil”) for small wounds. Despite use in some compounds marketed to humans, eucalyptus is a known extreme human toxin if eaten.⁸³
25. *Flunixin*, the active compound found in many equine pain medications, is a *non-steroidal anti-inflammatory drug*, or NSAID. NSAIDs cause severe and dangerous reactions in some humans. While many NSAIDs are used by people, the NSAIDs have significant potential adverse effects when combined with other drugs. There are also serious contraindications for use of NSAIDs in humans who have heart, liver, or kidney problems; who are taking other types of pain relievers, steroids or anticoagulants; and in third-trimester pregnancies. Several other NSAIDs are on the list as well, all of which could lead to the same problems,⁸⁴ and federal law has banned all of them in horses used for food.⁸⁵
26. *Furaltadone*, a common antibacterial used in horses, is definitely “harmful if swallowed,” has carcinogenic effects and, of even greater concern, the actual detrimental effects of the drug on humans who eat it has not been studied and is not known.⁸⁶ Other antibacterials also threaten human health if ingested, and are banned by law.⁸⁷
27. *Furazolidone* is an antibacterial drug that is used in both horses and humans. Its use is carefully restricted in humans, however, because of the dangerous side effects from ingestion. For example, severe hypertension can result from the combination of furazolidone and certain food and drink, including alcoholic beverages.⁸⁸ It is also banned for use in horses who will be eaten.⁸⁹
28. *Gentamicin sulfate* is used in humans and horses as an antibacterial. However, when prescribed for humans, doctors are careful to ensure that their patients are not taking other medications which can combine with gentamicin and cause severe kidney and hearing problems.⁹⁰ There are

⁸³ See further detail included on Exhibit 1.

⁸⁴ See, e.g., <http://www.drugs.com/vet/ketofen.html>.

⁸⁵ See, e.g., 21 C.F.R. § 522.1225; 21 C.F.R. §§ 520.930; 522.930 (*Equiox*, containing the substance *firocoxib* – “Do not use in horses intended for human consumption”); 21 C.F.R. §§ 520.970; 522.970 (*Banamine*, *Flunazine*, and *Flunixamine* products, containing *Flunixin*); see further detail included on Exhibit 1.

⁸⁶ http://www.chemblink.com/MSDS/MSDSFiles/139-91-3_Sigma-Aldrich.pdf; see further detail included on Exhibit 1.

⁸⁷ See, e.g., 21 C.F.R. § 520.2215 (*Sulfadiazene*, marketed as *Tribrissen 400*, an antibacterial oral paste, not to be used in horses intended for human consumption). See also 21 C.F.R. §§ 520.2611, 520.2613 (*Trimethoprim*, found in multiple products including both *Uniprim* antibiotic powder and *Tribrissen*, is banned by the FDA for use in food animals).

⁸⁸ <http://msds.farnam.com/m000394.htm>; see further detail included on Exhibit 1.

⁸⁹ 21 C.F.R. § 524.1005.

⁹⁰ <http://www.nlm.nih.gov/medlineplus/druginfo/meds/a682275.html>; see further detail included on Exhibit 1.

many other side effects of gentamicin ingestion that patients are warned about, including vomiting, fatigue, and muscle weakness, among others,⁹¹ which is probably also why it has been banned for use in animals intended to be food.⁹²

29. *Hyaluronate Sodium*, marketed as *Legend*, is used to treat an arthritic condition in horses. It is illegal to use this drug on horses who will be food.⁹³
30. The use of *isoflurane*, a commonly used anesthetic gas for humans and horses, renders horses unfit for human consumption.⁹⁴ Federal law has barred other anesthetic compounds as well.⁹⁵ Studies have not addressed the effect of these drugs on the flesh of horses, and so the consequences for humans who eat those horses are completely unknown.
31. *Levothyroxine Sodium* (marketed as Thyro-L) is a thyroid-replacement hormone. The thyroid gland is a very sensitive, vital regulator of various bodily functions. Administration of even small amounts of thyroid replacement hormones can have detrimental effects on humans, including systemic toxicity, cardiovascular problems, aggravation of problems associated with diabetes, and other hormonal effects.⁹⁶
32. *Luprostiol*, a female hormone used in horses to manipulate estrus cycles and to chemically terminate pregnancies, cannot legally be used in food horses.⁹⁷ There is of course a potential for hormonal effects in women who eat horse meat from horses who have been given *luprostiol*.
33. *Methylandrostenediol* is an anabolic steroid used for a variety of reasons for sport horses, and by humans, often in the bodybuilding setting. The use in humans is highly controversial and the effects of exposure potentially detrimental to multiple body systems. Another drug in the same group, *Stanozolol*, is banned in food animals, by law.⁹⁸ Other steroids, perhaps even more dangerously, have no restrictions at all, are used in horses, and can have severe detrimental effects on humans.⁹⁹

⁹¹ <http://www.drugs.com/pro/gentamicin-sulfate.html>.

⁹² 21 C.F.R. § 529.1044a.

⁹³ 21 C.F.R. § 522.1145. See also <http://www.medi-vet.com/Polyglycan.aspx> (Hyaluronic acid sodium salt for use “only in animals not intended for food use.”); see further detail included on Exhibit 1.

⁹⁴ 21 C.F.R. § 520.186.

⁹⁵ See, e.g., 21 C.F.R. § 522.1372 (*mepivacaine*).

⁹⁶ <http://www.drugs.com/vet/thyro-l.html>; see further detail included on Exhibit 1.

⁹⁷ 21 C.F.R. § 522.1290. The drug is so dangerous to humans that the FDA requires that the product include a label that says, among other things, that “[w]omen of child-bearing age, asthmatics, and persons with bronchial and other respiratory problems should exercise extreme caution when handling this product. In the early states, women may be unaware of their pregnancies. Luprostiol is readily absorbed through the skin and can cause abortion and/or bronchiospasm.” See further detail included on Exhibit 1.

⁹⁸ 21 C.F.R. § 522.2150.

⁹⁹ See, e.g., <http://www.drugs.com/vet/uni-bol-can.html> (*Uni-Bol*, containing *testosterone enanthate*, an anabolic steroid simulating a male hormone, used on horses with multiple adverse reactions in humans).

34. *Methylprednisolone* and *prednisone* are used regularly in horses, while use in humans must be undertaken only with careful physician's supervision and with a prescription. The requirement for a physician's approval, coupled with the deleterious side effects, are likely what caused the federal government to ban the drugs for use in horses used for food.¹⁰⁰
35. *Moxidectin* is used as a dewormer and marketed as *Quest*. And like most of the drugs on this list, its sellers must label the product as "[n]ot for horses or ponies intended for human consumption."¹⁰¹
36. *N-(2-Ethylhexyl)-5-norbornene-2,3-dicarboximide*, an active ingredient in "Bug Block" fly control, is "harmful if swallowed [and m]ay cause gastric distress, stomach pains, vomiting and diarrhea."¹⁰²
37. *Neomycin sulfate* and many other antibiotic ointments are used on horses, just as they are on humans. But the strong caution with the use of such substances is that they should not be used unless there is an active infection – otherwise bacterial resistance and other serious side effects can occur.¹⁰³ Additionally, because they are ointments, they are not intended for oral ingestion.
38. *Omeprazole*, marketed as *Gastrogard*, is a commonly used drug to aid in the protection and relief of stomach ulcers. Though also used in human drugs, its use in horses intended for food is expressly prohibited under federal regulations.¹⁰⁴
39. *Phenylbutazone*, marketed as *Butazone*, *Bute* and *Butequine*, is barred by law from use in horses who are eaten,¹⁰⁵ undoubtedly because of its significant adverse effects on humans.¹⁰⁶

¹⁰⁰ 21 C.F.R. §§ 522.1410 (methylprednisolone), 522.1890 (prednisone); see further detail included on Exhibit 1.

¹⁰¹ See 21 C.F.R. §§ 520.1452, 520.1463; see further detail included on Exhibit 1; see also generally FDA Directive 7371.006, *Illegal Residues in Meat, Poultry, Seafood, and Other Animal Derived Foods*, (H.H.S. 2005),

<http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/ComplianceEnforcement/UCM113433.pdf>; 21 C.F.R. § 520.905a (common dewormer *Panacur* (*fenbendazole*) cannot be used on any horse who will be eaten). See also 21 C.F.R. § 520.1638 (*Oxibendazole*, active ingredient in the dewormer *Anthelcide EQ*).

¹⁰² http://www.statelinetack.com/ContentFiles/Associated_Content/absorbinebugblockMSDS.pdf; see further detail included on Exhibit 1.

¹⁰³ See, e.g., <http://www.pdr.net/drugpages/concisemonograph.aspx?concise=3174>; <http://www.drugs.com/vet/equifur-can.html> (*Nitrofurantoin*); <http://www.drugs.com/vet/niderm-ointment-can.html> (*Nitrofurazone*, an active ingredient in *Nitroderm* ointment, an antibacterial ointment that "[f]ederal law prohibits the administration of this preparation to animals that produce food or that are intended for consumption as food.").

¹⁰⁴ 21 C.F.R. § 520.1615; see further detail included on Exhibit 1.

¹⁰⁵ 21 C.F.R. § 520.1770a.

¹⁰⁶ See, e.g., Nicolas Dodman, Nicolas Blondell, Ann M. Marini, "Association of phenylbutazone usage with horses bought for slaughter: A public health risk", *FOOD AND CHEMICAL TOXICOLOGY* 48 (2010) 1270–74, http://www.equinewelfarealliance.org/uploads/Food_and_Chemical_Toxicology_FINAL.pdf

(Footnote continued on next page)

40. Horses are regularly treated with *insecticides* with known health risks for humans and others. For example, *Mosquito Halt*, containing the substance *Prallethrin*, can cause serious problems affecting multiple body systems.¹⁰⁷
41. A series of drugs that affect thyroid function in horses, known as *thyrostats*, are used without significant control in America. However, the European Union has permanently banned the importation, purchase or sale of animals or meat of any animal that has been treated with these substances, because of their adverse characteristics.¹⁰⁸
42. *Triamcinolone acetonide*, an ingredient in popular topical creams and liquids, is applied regularly to American horses in products such as *Animax*. It is specifically prohibited for use in horses who will become meat.¹⁰⁹
43. Many other drugs used on horses for various medical treatments and problems are also directly banned by a series of federal regulations. Because of the Board's concern for public safety, and the FSIS' mandate to protect the public from food that has the potential for consumer harm, any horse who receives these prohibited drugs should be deemed adulterated by the Board. The meat of those horses should be excluded, permanently and as a matter of law, from the food supply.¹¹⁰
44. Other drugs listed on Exhibit 1 are also used by humans, and may even be safe for a significant portion of the human population – but the dangers of ingestion to humans who may have allergies, sensitivities, and adverse reactions to those drugs, have also led to the absolute legal prohibition on use of those drugs in food animals.¹¹¹

(Footnoted continued from previous page)

(“*Phenylbutazone Health Risks*”); U.S. Food & Drug Administration, “FDA Order Prohibits Extralabel Use of Phenylbutazone in Certain Dairy Cattle,” <http://www.fda.gov/AnimalVeterinary/NewsEvents/CVMUpdates/ucm124078.htm> (“Phenylbutazone is known to induce blood dyscrasias, including aplastic anemia, leukopenia, agranulocytosis, thrombocytopenia and deaths . . . [and] is a carcinogen, as determined by the National Toxicology Program.”); see further detail included on Exhibit 1.

¹⁰⁷ See, e.g., http://www.pesticideinfo.org/Detail_Chemical.jsp?Rec_Id=PC35755; see further detail included on Exhibit 1.

¹⁰⁸ See, e.g., FDA Directive 2008/97/EC (2008) http://eur-lex.europa.eu/smartapi/cgi/sga_doc?smartapi!celexplus!prod!CELEXnumdoc&lg=EN&numdoc=32008L0097; see further detail included on Exhibit 1.

¹⁰⁹ 21 C.F.R. §§ 520.2483, 522.2483.

¹¹⁰ See, e.g., 21 C.F.R. § 520.606 (Diclazuril, used for treatment of a form of myeloencephalitis); 21 C.F.R. § 520.1855 (Ponazuril, marketed as Marquis, also used for myeloencephalitis treatment, with no information known on human toxicity); 21 C.F.R. § 520.766 (Domperidone, used for toxicity in pregnant mares); 21 C.F.R. § 520.784 (Doxylamine succinate: used as an antihistamine substitute); 21 C.F.R. § 522.2063 (Pyrilamine maleate).

¹¹¹ See, e.g., Larson Dec., Exh. 3, ¶¶ 8-11. See also 21 C.F.R. §§ 524.660a, 524.660b (Dimethylsulfoxide solution and gel, regularly used for topical relief of swelling due to trauma).

The list above represents only some examples of the substances listed on Exhibit 1, and Exhibit 1 is itself just a sampling of the drugs and substances that American horses are constantly treated with, fed, or injected with during their lives.¹¹² An accurate list cannot be compiled without an extensive review of every equine products catalogue, equine supply store, and equine product website containing the various substances and drugs commonly used on horses in America – and that is without considering all of the homemade remedies that are undoubtedly used on horses around the country. The illustrations here and on Exhibit 1 are telling, however, since they present a long list of substances which, if ingested, could cause a parade of problems and adverse reactions, illnesses and potential fatalities, if American horses continue to be slaughtered for food.¹¹³

E. Commercial Horse Slaughter Cannot Be Accomplished Without Horrendous Treatment of the Horses.

From their acquisition at livestock auctions and other sources to the slaughterhouse, horses destined for human consumption are subject to mistreatment and cruelty.¹¹⁴ Their transportation from the livestock auction to the slaughter facility is often long and grueling, because they are cramped in trucks that do not accommodate their physical requirements and unique temperaments.¹¹⁵ At slaughter facilities, horses are often subject to appalling abuse before and during their slaughter.¹¹⁶ Some horses may even be slaughtered while still

¹¹² See Exhibit 1; Wood Dec., Exh. 2, ¶¶ 6-7; Larson Dec., Exh. 3, ¶ 7; Pavlis Dec., Exh. 4, ¶¶ 4-5; Parker Dec., Exh. 5, ¶¶ 7-9; Newberry Dec., Exh. 6, ¶¶ 7-9; Murphy Dec., Exh. 7, ¶¶ 4-5; Colella Dec., Exh. 8, ¶¶ 7-9; Conner Dec., Exh. 9, ¶¶ 5-7; Fitch Dec., Exh. 10, ¶¶ 6-8; Grover Dec., Exh. 11, ¶¶ 7-10; Vacca Dec., Exh. 12, ¶¶ 7-8, 12-14; Hoffman Dec., Exh. 13, ¶¶ 7-8.

¹¹³ See, e.g., Larson Dec., Exh. 3, ¶¶ 8-11.

¹¹⁴ See *id.*, ¶¶ 12-13, 15-16, 18-19, 25.

¹¹⁵ Larson Dec., Exh. 3, ¶¶ 12-13, 16, 25; see C.L. Stull, *Response of Horses to Trailer Design, Duration, and Floor Area During Commercial Transportation to Slaughter*, J. ANIM. SCI. 77:2925-2933 (1999) (“Horses tend to travel longer distances to slaughter than other livestock, because there is a limited number of equine slaughterhouses.”), <http://jas.fass.org/content/77/11/2925>.

¹¹⁶ See Larson Dec., Exh. 3, ¶¶ 15, 18-19.

conscious.¹¹⁷ Each aspect of this treatment increases the possibility that their meat is inappropriate for consumption under the Food Act.¹¹⁸

Poor conditions during the transportation of horses result in slaughter facilities filled with frightened, food- and water-deprived, sick and injured horses.¹¹⁹ Federal law usually requires transported horses to be off-loaded for food and water every twenty-eight hours, but horses are often transported continuously for over thirty hours.¹²⁰ Traveling in double-deck trailers meant for cows and pigs until late in 2011, some horses were unable to hold their heads in a natural position.¹²¹ Some horses arrive at slaughterhouses with their backs broken or with other serious injuries.¹²² And the lack of proper food and water in already weakened horses can lead to further injuries and death during extended transport. According to a 1999 study of sixty horses transported for slaughter, one animal had to be removed from the transport trailer after twelve hours of transport, dying two days later.¹²³ The fifty-nine arriving horses sustained a total of eighty-one injuries.¹²⁴

The arduous trip to slaughter facilities is frightening for most horses but is especially traumatic for wild horses, who resist handling during gather and transport operations.¹²⁵ Because of their wildness, the fear they display in response to proximity to people in strange

¹¹⁷ *Id.* at ¶ 18.

¹¹⁸ *Id.* at ¶¶ 14, 16.

¹¹⁹ *Id.* at ¶¶ 16, 18.

¹²⁰ T.H. Friend, *A Review of Recent Research on the Transportation of Horses*, J. ANIM. SCI. 79:E32-E40 (2001) (“Continuous transport of slaughter horses for 30 hours is common, and some trips last 36 hours or longer.”), <http://jas.fass.org/content/79/E-Suppl/E32>.

¹²¹ Larson Dec., Exh. 3, ¶ 13.

¹²² See Larson Dec., Exh. 3, ¶ 13; see also 151 CONG. REC. H4247 (horses are “transported in excess of 1,000 miles in the most inhumane conditions perceived”).

¹²³ C.L. Stull, *Response of Horses to Trailer Design, Duration, and Floor Area During Commercial Transportation to Slaughter*, J. ANIM. SCI. 77:2925-2933 (1999), *supra* Note 115.

¹²⁴ *Id.*

¹²⁵ Larson Dec., Exh. 3, ¶ 25.

environments, and their resistance to handling and transport, wild horses experience extremely high levels of distress and injury during the events leading up to slaughter.¹²⁶

The mistreatment continues at the end of the transport phase. Many horses are not given hay or water in overnight holding pens.¹²⁷ Many of the horses in holding pens are “downers” – animals too sick or injured to stand up and walk, some of whom may be dragged or pushed into the pen.¹²⁸ Some of these ill, diseased, and injured animals are unfit for food under the Food Act and federal law and should not be slaughtered for human consumption.¹²⁹

Because they frighten more easily than cows, horses are unsuited to be processed at a slaughter plant.¹³⁰ As horses are more sensitive to odors than cows, the scent of blood that necessarily exists in the slaughter facility exacerbates their fright.¹³¹ Some horses slip and fall in the stun box.¹³² As a result of their keen perception and subsequent fear, horses are more likely to injure themselves trying to escape the slaughter plant.¹³³

¹²⁶ *Id.*

¹²⁷ See *Pasture to Plate: A Report by the Canadian Horse Defence Coalition on Equine Slaughter*, p. 5 (July 2011), <http://canadianhorsedefencecoalition.files.wordpress.com/2011/12/pasture-to-plate.pdf> (“*Pasture to Plate*”).

¹²⁸ Larson Dec., Exh. 3, ¶ 14; see also Gary D. Anderson & Don R. Lee, *Salmonella in Horses: A Source of Contamination of Horse Meat in a Packing Plant Under Federal Inspection*, 31 *Applied and Environmental Microbiology* 661 (1975) (“[S]laughter horses have usually been trucked for extensive distances. Many times they are injured or unhealthy, housed poorly, fed and watered improperly, and sometimes held for long times, as much as a week, in dirty confined pens at the slaughter plant.”), <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC291172/>.

¹²⁹ See N.M. Stat. § 25-2-10(A)(3), (4) (defining “adulterated” food to include that which “consists in whole or in part of a disease, contaminated, filthy, impure or infested ingredient, putrid or decomposed substance, or if it is otherwise unfit for food” or if it has been “held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health. . . .”).

¹³⁰ See Larson Dec., Exh. 3, ¶¶ 18, 25.

¹³¹ See *id.* at ¶ 18.

¹³² See *id.* at ¶ 4.

¹³³ See *id.* at ¶ 5.

Under federal law, horses must be rendered unconscious prior to slaughter,¹³⁴ but because of their natural agility and flight instinct, many horses are improperly stunned and remain conscious when they are hoisted to have their throats cut.¹³⁵ According to a recent report, almost half of the horses going to slaughter had to be stunned more than once.¹³⁶ The desire to slaughter as many horses as quickly as possible inevitably contributes to the inaccuracy and cruelty of the slaughtering process.

The federal government is aware of and has documented appalling cruelty at slaughter plants, including gruesome descriptions and photographs of the mistreatment inherent in horse slaughter.¹³⁷ The mistreatment seems to be an inevitable occurrence anytime that horses are slaughtered, as documented recently in Canada.¹³⁸ The examples cited in this section, which are only those that were discovered and occurred in a small sampling of plants, speak volumes for the absolute terror that slaughterhouses are for horses, and the danger to them and to the public in processing them for meat.

¹³⁴ See Humane Methods of Slaughter Act, 7 U.S.C. § 1902(a).

¹³⁵ See 151 CONG. REC. S10,220 (daily ed. June 8, 2005) (“horses sometimes remain conscious throughout the slaughter process”). See also Larson Dec., ¶ 3.

¹³⁶ *Pasture to Plate* at 4.

¹³⁷ See, e.g., USDA, Food Safety & Inspection Service, Noncompliance Record No. 0019-2005-8243 (Apr. 13, 2005); see also, e.g., Noncompliance Record Nos. 00 18-2005-8243 (Apr. 4, 2005) (“Nine horses were overcrowded in the alleyway causing undue excitement which was further exacerbated when two more employees from the kill floor began yelling and hitting these horses causing the one in the end of the line to slip and fall.”); 0013-2006-8243 (Oct. 9, 2006) (“horse was down” . . . “in the upper middle compartment of a pot bellied trailer” and “[o]ther horses within the compartment were trampling the downed horse”); 0006-2007-8243 (Jan. 24, 2007) (“two downed horses being trampled upon by the other horses as well as the front horse being kicked with the hind feet from another horse”); Press Release, Animals’ Angels (Nov. 2008), <http://www.kaufmanzoning.net/nov24/pressrelease.pdf>; see also Mary Nash’s Horse Meat Website, <http://www.kaufmanzoning.net/foia.htm> (making available for download USDA documents describing and depicting regulatory violations, mistreatment, and cruelty).

¹³⁸ See generally *Pasture to Plate*.

V. LEGAL BACKGROUND

A. State Regulation of Horses Slaughtered for Human Consumption Under the New Mexico Food Act, N.M. Stat. § 25-2-1, et seq. (the “Food Act”).

The New Mexico legislature enacted the Food Act to protect the public health.¹³⁹ Under the Food Act, the “manufacture, sale or delivery, holding, or offering for sale” of any adulterated food is prohibited.¹⁴⁰ Violators of the Food Act are guilty of a misdemeanor.¹⁴¹

The Food Act prohibits the production or sale of adulterated food, including horse meat, and establishes the standard for adulteration.¹⁴² Food is adulterated if, among other reasons, it (1) “bears or contains any added poisonous or added deleterious substance which may render it injurious to health,” including certain animal drugs or food additives; (2) is “unfit for food”; or (3) has been “produced, prepared, packed or held under insanitary conditions whereby it may have been . . . rendered diseased, unwholesome or injurious to health. . . .”¹⁴³ Food additives are substances that are intended or reasonably expected to become a component or otherwise affect the characteristics of any food.¹⁴⁴ New animal drugs are drugs intended for use for nonhuman

¹³⁹ *State v. 44 Gunny Sacks of Grain*, 83 N.M. 755, 756 (1972); *see also* N.M. Admin. Code § 7.6.2.7 (“The objective of these regulations is to protect the public health by establishing standards and provisions for the safe operation of food establishments to assure that consumers are not exposed to adverse environmental health conditions.”).

¹⁴⁰ N.M. Stat. § 25-2-3(A).

¹⁴¹ N.M. Stat. § 25-2-5(A).

¹⁴² N.M. Stat. § 25-2-10. The Food Act definition of adulteration is modeled on the FDCA definition. *Compare* 25-2-10 with 21 U.S.C. § 342(a). Additionally, the Board has adopted the FDCA definition of adulteration for the purposes of the Food Act. *See* N.M. Admin. Code § 7.6.2.8(L) (adopting the Federal Food and Drug Administration’s Food Code “as a technical reference and interpretation”); Food Code § 1.2(B) (“‘Adulterated’ has the meaning stated in the Federal Food, Drug, and Cosmetic Act, § 402.”).

¹⁴³ N.M. Stat. § 25-2-10(A)(1), (3), (4); N.M. Admin. Code § 7.6.2.8(L); Food Code § 1.2(B); 21 U.S.C. § 342(a)(2)(C) (establishing that food containing certain veterinary drugs and similar substances—called “new animal drugs” and “food additives”—is adulterated unless those substances have explicitly been approved for use in that food); *see also* 21 U.S.C. § 348 (food additives); 21 U.S.C. § 360b (new animal drugs).

¹⁴⁴ 21 U.S.C. § 321(s). More precisely, a food additive is any substance that may be used in such a way that it becomes a component part of the food, unless (1) the substance is already generally recognized as safe; or (2) it is one of the substances enumerated in the statute, including a “New Animal Drug.”

animals that are not “generally recognized . . . as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof.”¹⁴⁵ Food, including horse meat, is deemed to have been held under insanitary conditions if it could have been rendered “injurious to health,” which occurs when the animal’s producers fail to maintain complete treatment records of the drugs to which the animal has been exposed.¹⁴⁶

Horse meat that contains an additive or comes from a horse that was treated with a new animal drug is presumed unsafe and its sale is prohibited unless all of the additives and new animal drugs that may be in the meat have been approved for use in the meat.¹⁴⁷ If a food such as horse meat contains an additive, the food is *automatically* adulterated and unsafe unless there is in effect a regulation prescribing the conditions under which the additive may be safely used and the additive is used in conformity with the regulation.¹⁴⁸ Similarly, if horse meat contains a

¹⁴⁵ 21 U.S.C. § 321(v)(1); *see also* 21 U.S.C. § 360b(a)(1). Contrary to the facial meaning of “generally recognized as safe and effective” (“GRASE”), drugs do not easily qualify as GRASE, which requires a finding by experts based on substantial evidence of adequate and well-controlled investigations by qualified experts backed by substantial support in scientific literature – plus a determination by the fact-finder that there is a general recognition of safety and effectiveness among the qualified experts. *See, e.g., United States v. Pro-Ag, Inc.*, 796 F. Supp. 1219, 1229-30 (D. Minn. 1991), *aff’d*, 968 F.2d 681 (8th Cir. 1992). All drugs approved by the FDA for some use but that fail to qualify as GRASE are “new animal drugs.” *See id.* at 1230. New animal drugs are subject to the FDA’s premarketing clearance process. *See id.* If a new animal drug is not approved by the FDA for any use, then its manufacturer may not market it for any purpose. *See* 21 U.S.C. § 360b(a)(1)(A)-(C).

¹⁴⁶ N.M. Stat. § 25-2-10(A)(4); N.M. Admin. Code § 7.6.2.8(L); Food Code § 1.2(B); 21 U.S.C. § 342(a)(4); Patron Farms, LLC 7/9/12, Department of Health and Human Services Warning Letter CIN-12-302058-21, <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm313462.htm> (horse); Christ S. King 4/11/12 Warning Letter, <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm310106.htm> (bob veal calf); Snellman Farms 6/1/12 Warning Letter, <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/ucm306939.htm> (calves); Brouillette Farm, Inc. Warning Letter 6/11/12, <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm309832.htm> (cow); John Malcore Livestock LLC 6/27/12 Warning Letter, <http://www.fda.gov/ICECI/EnforcementActions/WarningLetters/2012/ucm309932.htm> (steer).

¹⁴⁷ *See* N.M. Stat. § 25-2-10(A)(1), (3); N.M. Admin. Code § 7.6.2.8(L); Food Code § 1.2(B); 21 U.S.C. § 342(a) (food additives); 21 U.S.C. § 360b(a)(1) (new animal drugs).

¹⁴⁸ *See* N.M. Stat. § 25-2-10(A)(1), (3); N.M. Admin. Code § 7.6.2.8(L); Food Code § 1.2(B); 21 U.S.C. § 348(a)(2). Other exceptions (irrelevant to the issues raised in the Petition) exist for additives “intended
(Footnote continued on next page)

new animal drug, it is *automatically* adulterated and unsafe unless there is in effect an approved application for use of the drug and the use conforms to the approved application.¹⁴⁹ Further, horse meat is *automatically* adulterated if it comes from a horse who was administered any substances that are absolutely prohibited for use in horses who will become food.¹⁵⁰ If, at any time, a horse has been given a product containing any of those substances, the Food Act prohibits the sale of the horse's meat for human consumption.¹⁵¹

B. Federal Regulation of Horses Slaughtered for Human Consumption.

Under the FDCA¹⁵² and the Federal Meat Inspection Act,¹⁵³ the FDA and FSIS, respectively, share federal responsibility for guaranteeing the safety of meat.¹⁵⁴ While the FDA focuses on setting food safety standards and FSIS focuses on slaughterhouse inspections, both agencies are responsible for designing a testing regime to hold meat producers accountable to the standards.

(Footnoted continued from previous page)

solely for investigational use by qualified experts” and additives that are “food contact substances.” 21 U.S.C. § 348(a)(1), (3).

¹⁴⁹ See N.M. Stat. § 25-2-10(A)(1), (3); N.M. Admin. Code § 7.6.2.8(L); Food Code § 1.2(B); 21 U.S.C. § 360b(a)(1)(A). Exceptions also exist for conditionally approved applications, which are available only for “a minor use or a minor species,” 21 U.S.C. § 360ccc, neither of which are at issue here. See 21 U.S.C. § 360b(a)(B)-(C); 21 U.S.C. § 321(oo) (horses are not a “minor species”).

¹⁵⁰ See N.M. Stat. § 25-2-10(A)(1), (3); N.M. Admin. Code § 7.6.2.8(L); Food Code § 1.2(B); 21 C.F.R. §§ 520, 522, 524, 526, 529 (prohibiting the use of dozens of new animal drugs in animals intended for human consumption).

¹⁵¹ See 21 C.F.R. §§ 520, 522, 524, 526, 529. One example of the many drugs in this category is phenylbutazone, which has five separate sections of the C.F.R. identifying different forms of the drug that are completely barred from any use in animals who become food. See 21 C.F.R. § 520.1720a (tablets and boluses of phenylbutazone cannot be used “in horses intended for human consumption”); 21 C.F.R. § 520.1720b (granules: “Treated animals should not be slaughtered for food use.”); 21 C.F.R. § 520.1720c (paste: “Do not use in horses intended for human consumption.”); 21 C.F.R. § 520.1720d (gel: not for animals used as food); 21 C.F.R. § 520.1720e (powder: cannot be used on horses used for human consumption).

¹⁵² 21 U.S.C. §§ 301, *et seq.*

¹⁵³ 21 U.S.C. §§ 601, *et seq.*

¹⁵⁴ Whereas the FDA is responsible for all food, including meat, FSIS is only responsible for meat and poultry.

The National Residue Program (“NRP”) is the primary means by which the FDA and FSIS attempt to keep harmful substances, including veterinary drugs, from entering the food supply. The NRP includes two types of testing – (1) “Scheduled Sampling,” in which inspectors apply statistical sampling methods and randomly collect tissue samples from a pre-designated number of different types of animals who have passed ante-mortem inspection,¹⁵⁵ and (2) “Inspector Generated Sampling,” in which inspectors collect tissue samples when they have reason to believe that a violative residue is present.¹⁵⁶

Recent USDA reports have identified significant flaws in the NRP. The scheduling algorithm is based on a “one size fits all” strategy.¹⁵⁷ The NRP provides minimal information on the “true chemical residue burden” in inspected meat,¹⁵⁸ and is “slow to respond to emerging residue issues.”¹⁵⁹ And according to a 2010 report from the USDA’s Office of the Inspector General, the NRP for cows, a highly regulated traditional food animal, was not “accomplishing its mission of monitoring the food supply for harmful residues.”¹⁶⁰

¹⁵⁵ Report on the Food Safety and Inspection Service’s Microbiological and Residue Sampling Programs, at 69, http://www.fsis.usda.gov/PDF/FSIS_Sampling_Programs_Report.pdf; FSIS Notice 65-12, Instructions for Carcass Selection for the National Residue Program Scheduled Samples, <http://www.fsis.usda.gov/OPPDE/rdad/FSISNotices/65-12.pdf>.

¹⁵⁶ FSIS Notice 65-12; FSIS Directive 10,800.1, Procedures for Residue Sampling, Testing, and Other Responsibilities for the National Residue Program, at 10, <http://www.fsis.usda.gov/OPPDE/rdad/FSISDirectives/10800.1.pdf>. A “violative residue” is residue from a substance in excess of the permitted amount under the FMIA, FDCA, or related FSIS or FDA regulations.

¹⁵⁷ Report on the Food Safety and Inspection Service’s Microbiological and Residue Sampling Programs, at 71, *supra* Note 155.

¹⁵⁸ *Id.*

¹⁵⁹ *Id.*

¹⁶⁰ USDA Office of the Inspector General, Audit Report 24601-08-KC, FSIS National Residue Program for Cattle, p. 1 (2010), <http://www.usda.gov/oig/webdocs/24601-08-KC.pdf> (“USDA OIG Audit Report”).

These flaws will be particularly acute if horse slaughter is permitted and the NRP is required to test horses for harmful substances.¹⁶¹ Specifically, the NRP's design is based on the faulty assumption that regulators know which drugs to look for in horses. Data used to devise the NRP's annual scheduled sampling plans comes from NRP sample results, prior investigations of residue violations for each animal-compound combination, and veterinary inventories completed during on-farm visits.¹⁶² For horses, this means that data from sample results is at least six years old and grossly inadequate, as the NRP only tested for 11 of the 115 substances listed on Exhibit 1 when horses were last tested in 2006 and 2007.¹⁶³ Moreover, even if the data was more recent, evidence collected on farm visits reveals little, if any information regarding the drugs administered to horses by the myriad of potential previous owners they had, because regulators do not inspect horses found on farms. Further, many of the substances commonly administered to horses render a horse's flesh adulterated *regardless of whether testing reveals the presence of violative residues*. Therefore, the NRP will fail to detect numerous instances of adulterated horse meat.

Until 2006, FSIS carried out inspections of horse slaughter plants. In an amendment to the 2006 Agricultural Appropriations Act, on November 10, 2005, Congress withdrew funding for the inspection of horses transported for slaughter, and at slaughterhouses where horses were going to be slaughtered for human consumption.¹⁶⁴ Congress intended this act to end horse

¹⁶¹ The NRP's 2013 Residue Sampling Plan includes nine classes of animals, but none of them are equine, so that horses are not even considered by the current NRP. Food Safety and Inspection Service's Annual Sampling Program Plan, Fiscal Year 2013, p. 16, http://www.fsis.usda.gov/PDF/Sampling_Program_Plan_FY2013.pdf.

¹⁶² See, e.g., United States National Residue Program, 2011 Scheduled Sampling Plans, p. vi (USDA 2011), http://www.fsis.usda.gov/PDF/2011_Blue_Book.pdf.

¹⁶³ See 2006 FSIS National Residue Program Data (USDA 2007), http://www.fsis.usda.gov/PDF/2006_Red_Book.pdf; 2007 FSIS National Residue Program Data (USDA 2008), http://www.fsis.usda.gov/PDF/2007_Red_Book_Complete.pdf; Exhibit 1.

¹⁶⁴ Pub. L. 109-97, § 794, 119 Stat. 2120, 2164 (A.R. 51).

slaughter for human consumption in America,¹⁶⁵ reinstating the funding prohibition annually through 2011.

The horse slaughter industry first responded by trying to circumvent the congressional act, working together with the FSIS to establish a set of “fee-for-service” inspections, which would allow the slaughter to continue.¹⁶⁶ Even though Congress plainly wanted to end horse slaughter in America, not just save some money, the slaughterers convinced FSIS to take their money and continue the inspections.¹⁶⁷

The fee-for-service program did not last. First a federal court held that the program was invalid,¹⁶⁸ once again ending horse slaughter for human consumption in America. In 2007, the last three American facilities slaughtering horses for human consumption were shut down,¹⁶⁹ and in 2008 the fee-for-service inspections formally ended when Congress withdrew funding even for that program.¹⁷⁰

In November 2011, at least partly in response to an inconclusive report by the federal Government Accountability Office,¹⁷¹ Congress removed the prohibition on funding of FSIS inspections for horse slaughter within America.¹⁷² For the first time in approximately five years,

¹⁶⁵ *The Humane Society of the United States v. Johanns*, 520 F. Supp. 2d 8, 19 (D.D.C. 2007).

¹⁶⁶ *Id.* at 11. The USDA program was part of the Agricultural Marketing Act, which has been used for inspection of wild animals. United States Government Accountability Office, Report to Congressional Committees, “Horse Welfare: Action Needed to Address Unintended Consequences From Cessation of Domestic Slaughter,” GAO-11-228 (June 2011), <http://www.gao.gov/assets/320/319926.pdf> (“GAO Report”), at 3, n.2.

¹⁶⁷ *Id.*

¹⁶⁸ *Id.* at 12.

¹⁶⁹ *Cavel Int’l.*, 500 F.3d at 552; *Empacadora de Carnes de Fresnillo, S.A. de C.V. v. Curry*, 476 F.3d 326 (5th Cir. 2007).

¹⁷⁰ *GAO Report*, *supra* Note 166, at 3.

¹⁷¹ *See id.* at Highlights section (“GAO suggests that Congress may wish to reconsider restrictions on the use of federal funds to inspect horses for slaughter or, instead, consider a permanent ban on horse slaughter.” (emphasis added))

¹⁷² 2011 FD H.B. 2112 (NS) (H.R. 2112).

funding was, and still is, available to inspect horse slaughter operations, despite a growing national revulsion of the possibility.¹⁷³ And despite the opposition of numerous public officials throughout New Mexico, including Governor Susana Martinez, Attorney General Gary King, and Land Commissioner Ray Powell,¹⁷⁴ FSIS will soon process, and may approve, the application of a New Mexico slaughterhouse to begin slaughtering horses for human consumption.¹⁷⁵

Petitioners have filed this Petition because of the immediate need for rules to be adopted to remove the danger of the potential adverse health consequences, in New Mexico and throughout the United States, described above.

VI. STATEMENT OF GROUNDS

A. Meat from American Horses Is Unfit For Human Consumption Because The Horses Are Not Raised for Food and Create the Potential for Myriad Health Hazards Upon Ingestion of Their Flesh.

There is an important health and food safety distinction to be made between *horses* sent to slaughter and eventual human food production, and the several other, more commonly eaten species, such as cows, pigs, chickens, turkeys, and sheep. The traditional livestock are, from before their birth, raised in an environment that contemplates their growth and eventual transformation into food products that will be consumed here and abroad. The individuals involved in the breeding, raising, and slaughter of those animals are aware, every step of the

¹⁷³ See, e.g., ASPCA Survey, *supra* Note 25.

¹⁷⁴ Rene Romo, *Updated: Governor Opposes Horse Slaughterhouse*, ALBUQUERQUE JOURNAL, Apr. 13, 2012, <http://www.abqjournal.com/main/2012/04/13/news/nm-firm-seeks-horse-slaughter-inspection.html>; Stephen Dinan, *New Mexico firm applies for first horse meat slaughterhouse*, THE WASHINGTON TIMES, Apr. 13, 2012, <http://www.washingtontimes.com/news/2012/apr/13/new-mexico-firm-applies-first-horse-meat-slaughter/?page=all>; Rene Romo, *Horse Slaughter Request Spurs Outcry*, ALBUQUERQUE JOURNAL, Apr. 14, 2012, <http://www.abqjournal.com/main/2012/04/14/news/horse-slaughter-request-spurs-outcry.html>.

¹⁷⁵ Stephanie Strom, *U.S.D.A. May Approve Horse Slaughtering*, NY TIMES, Feb. 28, 2013, http://www.nytimes.com/2013/03/01/business/usda-may-approve-horse-slaughter-plant.html?_r=2&adxnml=1&adxnmlx=1362101663-8cAb45GrdpMTeK6+d0QhZA&.

way, that their animals are destined for human consumption. But this is not the case with horses, who come from a variety of factual settings, *none of which* involves contemplation of the horses' ultimate end as being human food. This fundamental distinction between horses and all other animals that humans eat creates a severe, drastically increased, and particularized danger connected to the consumption of horse meat that does not exist in connection with other food animals.

Horse meat carries such an escalated risk of negative consequences because horses who eventually become meat are given multitudes of drugs over the course of their lives. The drugs given to horses lead to these health and safety concerns because of a number of considerations that may not be immediately obvious, but that are explained below.

First, many drugs commonly administered to horses have proven unsafe for human use – so that their ingestion via horse meat creates great cause for alarm.¹⁷⁶ This includes drugs that are prohibited for use on humans, as well as those that humans take, but only in very controlled situations, with knowledge of potential severe side effects.¹⁷⁷ Many of the drugs and other substances that fit into this category have been banned for use in horses intended for human consumption. The message is clear – there is an identified significant danger if humans are exposed to these products, and the scientists responsible for making these decisions have concluded unequivocally that under no circumstance can exposure to or ingestion of these products be safe. Nevertheless, because American horses *not* raised for human consumption end up as horse meat, these drugs and their byproducts will be ingested by humans who eat horse meat from American horses.

¹⁷⁶ See Exhibit 1; see Greger Dec, Exh. 15. For example, dexamethasone, an anti-inflammatory agent for horses, causes muscle weakness, osteoporosis, peptic ulcer, pancreatitis, growth suppression (in children), glaucoma, and weight gain in humans

¹⁷⁷ See Exhibit 1; see Greger Dec, Exh. 15.

Second, other drugs commonly administered to horses are not at this point known to be unsafe when used by humans, but only because they *have never been tested on humans*.¹⁷⁸ There is absolutely no evidence that they are safe, either. Rather, because there has never been any expectation that humans would be exposed to or ingest these drugs, there has simply been no testing. This does not make these drugs safe; to the contrary, it makes every piece of horse meat a walking health time bomb for unsuspecting humans eating meat from horses who have been treated with these drugs.

Third, even drugs that are safe for some human use may be unsafe when ingested through horse meat. First, as with any drug prescribed or recommended for humans, there will be a certain percentage of the population that has mild to severe (including fatal) allergic reactions to some drugs.¹⁷⁹ It is well known that many drugs, such as commonly used antibiotics, are safe for most individuals under most conditions; but for humans with allergies or drug sensitivities, these drugs can lead to anaphylactic shock, injury, and even death.¹⁸⁰ Therefore, any meat that comes from an animal who may pass on that drug could lead to terrible effects on consumers.¹⁸¹ Additionally, many drugs ingested by humans who consume horse meat may ordinarily be safe for human use, but may be especially dangerous upon interaction with other drugs commonly taken by humans.¹⁸² Physicians routinely inquire about medications patients are currently taking before prescribing new medicine, because many drugs have the potential to combine with,

¹⁷⁸ See Exhibit 1. Clenbuterol, for example, is used for growth promotion purposes in horses but has not been approved for human use.

¹⁷⁹ Greger Dec., Exh. 15, ¶¶ 5-6. Sucralfate, for example, is commonly administered to horses and approved for use in humans for short-term treatment of ulcers but may cause humans numerous adverse reactions, including diarrhea, pruritus, rash, and dizziness.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*

¹⁸² Greger Dec., Exh. 15, ¶ 4. Hydroxyzine pamoate, for example, becomes more potent when taken by someone who also takes antidepressants. See Exhibit 1.

exaggerate the effects of, or nullify other medications.¹⁸³ The dangers of taking two different drugs without consulting a doctor are well understood. But because there is no way of controlling what drug residues might be in horse meat, and because horse meat may contain a wide variety of drugs, it is unfit for human food.

B. Horse Meat that Contains Unapproved Substances or Is Derived from a Horse Who Was Treated with a Prohibited Substance Is Adulterated and Unsafe for Human Consumption.

As established above, most American horses are of three identified types – companion horses, sport horses, and wild horses, and the use of substances listed on Exhibit 1 is widespread among all three groups. As also established above, the indiscriminate use of substances listed on Exhibit 1 occurs because the owners of the horses who end up in production for meat have no intention or expectation that their horses will end up on someone’s plate. Accordingly, virtually all horse meat is “adulterated” under the Food Act because (1) many of the substances listed on Exhibit 1 have not been approved for use in horse meat;¹⁸⁴ and (2) many of the substances listed on Exhibit 1 are explicitly banned from use in foods intended for human consumption.¹⁸⁵

First, under the Food Act, horse meat that contains an additive or new animal drug is adulterated unless the substance has been approved for use in horse meat.¹⁸⁶ For example, olaquinox, an antibiotic used to promote the growth of horses, is a food additive that has not

¹⁸³ Greger Dec., Exh. 15, ¶ 4.

¹⁸⁴ See N.M. Stat. § 25-2-10(A)(1), (3); N.M. Admin. Code § 7.6.2.8(L); Food Code, § 1.2(B); 21 U.S.C. § 342(a)(2)(C); 21 U.S.C. § 348(a)(2) (food additives); 21 U.S.C. § 360b(a)(1) (new animal drugs); Exhibit 1.

¹⁸⁵ See N.M. Stat. § 25-2-10(A)(3); N.M. Admin. Code § 7.6.2.8(L); Food Code, § 1.2(B); 21 C.F.R. Parts 520, 522, 524, 526, 529; Exhibit 1.

¹⁸⁶ See N.M. Stat. § 25-2-10(A)(1), (3); Food Code, § 1.2(B); 21 U.S.C. § 342(a)(2)(C)(i); 21 U.S.C. § 348(a)(2) (food additives); 21 U.S.C. § 360b(a)(1) (new animal drugs).

been approved for use in food.¹⁸⁷ Accordingly, any horse meat containing olaquinox is adulterated and cannot be sold or transported for human consumption.¹⁸⁸ And, any horse meat containing any other food additives that have not been approved for use in food is adulterated and cannot be sold or transported for human consumption.¹⁸⁹ Similarly, metronidazole, even though used by humans, and used to treat bacterial and parasitic infections in horses, is a new animal drug that has not been approved for use in food, including horse meat.¹⁹⁰ Consequently, any horse meat containing metronidazole is adulterated, and cannot be sold or transported for human consumption.¹⁹¹ And, any horse meat containing any other new animal drugs that have not been approved for use in food is adulterated and cannot be sold or transported for human consumption.¹⁹²

Second, horse meat is automatically adulterated under the Food Act if it comes from a horse who was administered any substance, including many listed on Exhibit 1, that is absolutely

¹⁸⁷ See FDA Food Additive Status List (omitting olaquinox), <http://www.fda.gov/Food/IngredientsPackagingLabeling/FoodAdditivesIngredients/ucm091048.htm>; Exhibit 1.

¹⁸⁸ See N.M. Stat. § 25-2-3(A) (prohibiting the manufacture, sale or delivery, holding or offering for sale of any food that is adulterated); N.M. Stat. § 25-2-10(A)(1), (3); N.M. Admin. Code § 7.6.2.8(L); Food Code, § 1.2(B); 21 U.S.C. § 342(a)(2)(C)(i); 21 U.S.C. § 348(a)(2) (declaring, with a few irrelevant exceptions, that food additives for which there is no regulation prescribing the conditions under which they may be used safely are unsafe); FDA Food Additive Status List; Exhibit 1.

¹⁸⁹ See *id.*

¹⁹⁰ See 21 U.S.C. § 342(a)(2)(C)(ii); 21 U.S.C. § 360b(a)(1); 21 C.F.R. Parts 520, 522, 524, 526, 529; FDA Green Book On-Line (omitting metronidazole) (H.H.S. 2012), <http://www.fda.gov/AnimalVeterinary/Products/ApprovedAnimalDrugProducts/ucm042847.htm>; Exhibit 1.

¹⁹¹ See N.M. Stat. § 25-2-3(A) (prohibiting the manufacture, sale or delivery, holding or offering for sale of any food that is adulterated); N.M. Stat. § 25-2-10(A)(1), (3); N.M. Admin. Code § 7.6.2.8(L); Food Code, § 1.2(B); 21 U.S.C. § 342(a)(2)(C)(i); 21 U.S.C. § 360b(a)(1) (declaring, with a few irrelevant exceptions, that new animal drugs for which there is no approved application prescribing the conditions under which they may be used safely are unsafe); 21 C.F.R. Parts 520, 522, 524, 526, 529; Exhibit 1.

¹⁹² See *id.*

prohibited for use in horses who will become food.¹⁹³ Drugs commonly administered to horses but banned for administration to horses intended for human consumption include the following: boldenone undecylenate (used for physical improvement in debilitated horses),¹⁹⁴ butorphanol (used for pain relief),¹⁹⁵ ceftiofur crystalline free acid (used to treat lower respiratory tract infections),¹⁹⁶ ceftiofur sodium (used to treat respiratory infections),¹⁹⁷ and copper naphthenate (used to treat sores on the mouth and tongue).¹⁹⁸ This list of substances only includes drugs on Exhibit 1 beginning with the letters “b” and “c”, all of which are commonly administered to horses but which automatically render meat from those horses adulterated.¹⁹⁹ Meat from any horse who has ever been administered any of the above prohibited substances, in addition to all of the other banned substances listed on Exhibit 1 and those not listed on Exhibit 1, is adulterated and may not be sold or transported for human consumption.²⁰⁰

¹⁹³ See N.M. Stat. § 25-2-10(A)(1), (3); N.M. Admin. Code § 7.6.2.8(L); Food Code, § 1.2(B); 21 C.F.R. Parts 520, 522, 524, 526, 529 (prohibiting the use of dozens of “new animal drugs” in animals intended for human consumption).

¹⁹⁴ 21 C.F.R. § 522.204(c) (“Do not administer to horses intended for human consumption.”).

¹⁹⁵ 21 C.F.R. § 522.246(d)(3)(iii) (“Do not use in horses intended for human consumption.”).

¹⁹⁶ 21 C.F.R. § 522.313a(e)(3)(iii) (“Do not use in horses intended for human consumption.”).

¹⁹⁷ 21 C.F.R. § 522.313c(e)(7)(iii) (“Do not use in horses intended for human consumption.”).

¹⁹⁸ 21 C.F.R. § 524.463(c)(3) (“Do not use in horses intended for human consumption.”).

¹⁹⁹ See Exhibit 1; Wood Dec., Exh. 2, ¶¶ 6-7; Larson Dec., Exh. 3, ¶ 7; Pavlis Dec., Exh. 4, ¶¶ 4-5; Parker Dec., Exh. 5, ¶¶ 7-9; Newberry Dec., Exh. 6, ¶¶ 7-9; Murphy Dec., Exh. 7, ¶¶ 4-5; Colella Dec., Exh. 8, ¶¶ 7-9; Conner Dec., Exh. 9, ¶¶ 5-7; Fitch Dec., Exh. 10, ¶¶ 6-8; Grover Dec., Exh. 11, ¶¶ 7-10; Vacca Dec., Exh. 12, ¶¶ 7-8, 12-14; Hoffman Dec., Exh. 13, ¶¶ 7-8.

²⁰⁰ See N.M. Stat. § 25-2-3(A) (prohibiting the manufacture, sale or delivery, holding or offering for sale of any food that is adulterated); N.M. Stat. § 25-2-10(A)(1), (3); N.M. Admin. Code § 7.6.2.8(L); Food Code, § 1.2(B); 21 U.S.C. § 342(a)(2)(C)(i); 21 U.S.C. § 360b(a)(1) (declaring, with a few irrelevant exceptions, that new animal drugs for which there is no approved application prescribing the conditions under which they may be used safely are unsafe); 21 C.F.R. Parts 520, 522, 524, 526, 529; Exhibit 1.

C. Horse Meat Derived from a Horse Whose Owners Do Not Maintain Complete Treatment Records Is Held Under “Insanitary Conditions” that May Have Rendered it Injurious to Health and Is, Thus, Adulterated.

Horse meat is adulterated under the Food Act for an additional reason: virtually all horses are raised under conditions where their meat may be rendered injurious to health.²⁰¹ Specifically, virtually all American horses lack complete treatment records because their owners do not consider their horses to be potential food and administer numerous substances on Exhibit 1 without regard to their effects on someone who later consumes their horses’ flesh.²⁰² Consequently, horse meat is adulterated under the Food Act.

D. Federal Inspection Protocols and Procedures Are Insufficient to Prevent the Entry of Adulterated Horse Meat into the Food Supply.

The primary types of evidence gathered by federal food safety investigators do not address the time periods in which horses have been administered prohibited substances. Without a complete list containing lifetime treatment records that is kept for horses’ entire lives, and can be viewed at the time of their slaughter, the determination of drugs and prohibited substances used on the horses in their last few days or weeks will not come close to telling the full story needed to ensure the public is safe when consumers eat the flesh of those horses. In order to protect the public and the food supply, regulators must know about all of the drugs and drug-containing products administered to the horse *before* the horse was sent off to be slaughtered.

²⁰¹ See N.M. Stat. § 25-2-10(A)(4) (establishing that food is adulterated if it has been “produced, prepared, packed or held under insanitary conditions whereby it may have been . . . rendered injurious to health”); N.M. Admin. Code § 7.6.2.8(L); Food Code, § 1.2(B); 21 U.S.C. § 342(a)(4); 21 U.S.C. § 601(m)(4); Patron Farms, LLC 7/9/12 Warning Letter, *supra* Note 146; Christ S. King 4/11/12 Warning Letter, *supra* Note 146 (finding that meat is adulterated as injurious to health where the producers of the animal from which it is derived fail to maintain complete treatment records for the animal); Brouillette Farm, Inc. 6/11/12 Warning Letter, *supra* Note 146 (same); Snellman Farms 6/1/12 Warning Letter, *supra* Note 146 (same); John Malcore Livestock LLC 6/27/12 Warning Letter, *supra* Note 146 (same).

²⁰² See Exhibit 1; Wood Dec., Exh. 2, ¶¶ 6-7; Larson Dec., Exh. 3, ¶ 7; Pavlis Dec., Exh. 4, ¶¶ 4-5; Parker Dec., Exh. 5, ¶¶ 7-9; Newberry Dec., Exh. 6, ¶¶ 7-9; Murphy Dec., Exh. 7, ¶¶ 4-5; Colella Dec., Exh. 8, ¶¶ 7-9; Conner Dec., Exh. 9, ¶¶ 5-7; Fitch Dec., Exh. 10, ¶¶ 6-8; Grover Dec., Exh. 11, ¶¶ 7-10; Vacca Dec., Exh. 12, ¶¶ 7-8, 12-14; Hoffman Dec., Exh. 13, ¶¶ 7-8.

With respect to the long list of drugs that are completely prohibited, so that horses who have had them simply cannot be turned into meat no matter how much time has elapsed, it does not matter where and how those drugs are stored, who gave them, or when they were given.²⁰³

Comprehensive medical records from birth are the only way to ascertain drug exposures. But, given the various purposes for which humans own a horse before the horse enters the slaughter pipeline, those records are unlikely to exist and virtually impossible to locate. Put differently, the information currently collected by federal inspectors does not and cannot provide the full drug history of an animal such as a horse who has had multiple owners, especially where those prior owners are unknown and effectively unidentifiable. And even when federal regulators investigate other individuals involved with a potentially tainted horse, such as “a hauler, buyer, dealer, auction barn, veterinarian, or slaughter house,” that jurisdictional reach will not provide a full complement of information on horses who began their lives years earlier as companion animals, sport horses, or wild horses on the open range.²⁰⁴ As the necessary data to ensure public safety is simply unascertainable when horses are the species being slaughtered, federal inspection procedures are unable to capture the necessary information.²⁰⁵

Even if the FDA and FSIS overcome resource constraints and alter their investigation procedures and protocols to address the unique problems inherent to the slaughter of horses for human consumption, whether they will enforce their tissue residue limitations is an additional concern. As documented in the recent Inspector General Report on the National Residue Program for Cattle, the FDA and FSIS failed to adequately monitor the presence of banned and limited substances in animals intended to be slaughtered for human consumption even when

²⁰³ See 21 C.F.R. §§ 520, 522, 524, 526, 529.

²⁰⁴ FDA Directive 7371.006, *supra* Note 101, at 6.

²⁰⁵ See *id.*

focused directly on those substances.²⁰⁶ And these agencies failed to recall tainted meat when tests confirmed the presence of excessive amounts of harmful substances.²⁰⁷ Monitoring the known food supply is easier than monitoring the unknown food supply, but the Inspector General Report demonstrates that the FDA and FSIS failed to even do the former adequately.²⁰⁸

Moreover, the lack of a mandatory identification system for horses will make it virtually impossible for slaughter facilities and inspectors to identify the source of adulterated horse meat.²⁰⁹ It is far more difficult to identify the source of adulterated horse meat than of other meat because Americans do not raise their horses to become food and slaughter facilities will be unable to trace the source of any violation to the owner's practices to avoid purchasing animals from that owner in the future.²¹⁰ While identifying the source of violations in cattle is difficult enough because dairy cows are passed between several buyers before slaughter, identifying the source of violations in horses is even more difficult: horses are not only passed between several buyers, but many of the initial owners are unlikely to keep records of drug administration that affects the safety of their horses' meat because they do not intend or expect their horses to one day be slaughtered for human consumption.²¹¹ Just as livestock auctions, cattle sales facilities, and cattle traders often fail to completely list their animals' prior owners, the problem will be hopelessly compounded when adding in the unknowns of early owners of horses.²¹² The federal agencies will need to expend extensive resources in the identification process, and still there will

²⁰⁶ See *USDA OIG Audit Report*, *supra* Note 160.

²⁰⁷ See *id.* at 1.

²⁰⁸ See *id.*

²⁰⁹ See *id.* at 26-27.

²¹⁰ See *id.* at 27.

²¹¹ See *id.*

²¹² See *id.*

be an insurmountable chance that adulterated horse meat, tainted with multiple dangerous drugs, will enter the marketplace and be purchased and consumed.²¹³

If American horses are transported or slaughtered for human consumption, federal regulators will be responsible for regulating new drugs, establishing new standards, updating investigation protocols, performing more investigations and testing, and enforcing more violations, all in the face of “resource constraints.”²¹⁴ The FDA and FSIS are ill-equipped to perform these tasks. As a result, federal regulators will be unable to prevent the infliction of illness, disease, and death on an unsuspecting public. The only possible hope to prevent the production and sale of tainted horse meat in New Mexico is for the Board to grant Petitioners’ request and promulgate a rule that classifies horse meat as adulterated unless the slaughterhouse (or its agent) receiving or buying the horse obtains complete treatment records for the horse, which prove that the horse’s flesh is fit for human consumption.

E. The Food Act Requires Classification of Horse Meat for Human Consumption as Adulterated.

Based on the Board’s mandate under the Food Act, its only response can be to prohibit the slaughter of horses and sale of horse meat for human consumption where those horses are former companion animals, wild horses, or work and sport horses (involved in ranching and competitions, including rodeos and racing), or any other horses without a proven lifetime medical history. Based on the inherent dangers of this horse meat, the Board’s duties, and the evidence presented in this Petition, this is the only reasonable approach to protecting the public from horse meat derived from American horses.

²¹³ See *id.*

²¹⁴ See FDA Directive 7371.006, *supra* Note 101, p. 10.

Since there is no supportable reason to ignore the mountain of evidence of the potential for harm from the consumption of meat from American horses, the request made in the Petition is the only viable option for the Board, given the facts presented here.

F. The Treatment of Horses Going to Slaughter and the Processing of the Horses Increases the Chance the Horse Meat is Adulterated and Unfit for Food.

As documented in Sections IV.E and IV.F above, the conditions in which horses are transported to slaughter and then slaughtered also call into question the fitness of horse meat. Because of the documented suffering of horses shipped to slaughter, and the treatment of the horses while they are at the slaughter house, the potential for the spread of bacterial diseases, blood-borne infecting agents, and other health hazards is high. And because of the ingestion by the horses of a long list of dangerous, often toxic, substances, the entire environment around a horse slaughter plant is in danger of contamination. In addition to the unpredictable and unidentifiable presence of the substances on Exhibit 1 in horse meat, the potential that horses going to slaughter are also sick presents a further reason for the Board to seriously consider the consequences of horse meat produced, sold, or distributed in New Mexico.²¹⁵

VII. CONCLUSION

American horses are cared for, used, and treated as companions, as competitors, as work partners. Their owners, caregivers, and veterinarians administer a wide array of drugs and other substances to keep the horses healthy, strong, and productive. Most, if not all, of these substances are either prohibited for use in animals who will become meat, or are potentially dangerous to a significant percentage of humans who ingest them. Not only do Americans not eat horses, but their horses are not meant to be meat. Therefore, any American horse that

²¹⁵ See Wood Dec., Exh. 2, ¶ 9.

becomes meat is a danger to the consuming public. It is imperative that the Board act to prevent the spread of unsafe meat in New Mexico and throughout the country.

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EXHIBIT LIST

<u>Exh.#</u>	<u>Document</u>
1.	Banned and Dangerous Substances Commonly Given to Horses Sent to Slaughter.
2.	Declaration of Hilary Wood.
3.	Declaration of Peggy W. Larson, DVM, MS, JD.
4.	Declaration of Joanne Pavlis.
5.	Declaration of Randy Parker, DVM.
6.	Declaration of Cynthia Newberry.
7.	Declaration of Dirk Murphy.
8.	Declaration of Holly Colella.
9.	Declaration of Michelle Conner.
10.	Declaration of Ronald T. Fitch.
11.	Declaration of Sandra Grover.
12.	Declaration of Gail Vacca.
13.	Declaration of Shirley S. Hoffman.
14.	Declaration of Keith Dane.
15.	Declaration of Dr. Michael Greger, M.D.

1 **TITLE 7 HEALTH**
2 **CHAPTER 6 FOOD HANDLING**
3 **PART 2 FOOD SERVICE AND FOOD PROCESSING**
4

5 **7.6.2.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.
6 [7.6.2.1 NMAC - Rp, 7 NMAC 6.1.001, 08/12/2000]
7

8 **7.6.2.2 SCOPE:** All food service establishments and food processing establishments.
9 [7.6.2.2 NMAC - Rp, 7 NMAC 6.1.002, 08/12/2000]
10

11 **7.6.2.3 STATUTORY AUTHORITY:** Section 74-1-8 NMSA 1978 directs the Environmental Improvement Board to
12 promulgate regulations and standards for food protection. Section 74-1-9 NMSA 1978 directs the procedures for adoption.
13 Section 25-1-4 delineates requirements of food service establishments to prepare and serve food in a manner safe for human
14 consumption, free from adulteration, spoilage, contamination and unwholesomeness. Section 25-1-7 NMSA 1978 authorizes
15 the department of environment to execute any provisions of the Food Service Sanitation Act (Chapter 25, Article 1 NMSA
16 1978.) [Section 25-2-15 NMSA 1978 authorizes the Environmental Improvement Board to promulgate regulations for the](#)
17 [efficient enforcement of the New Mexico Food Act.](#)
18

19 [7.6.2.3 NMAC - Rp, 7 NMAC 6.1.003, 08/12/2000]
20

21 **Credits**

22 **7.6.2.4 DURATION:** Permanent.
23 [7.6.2.4 NMAC - Rp, 7 NMAC 6.1.004, 08/12/2000]
24

25 **7.6.2.5 EFFECTIVE DATE:** August 12, 2000 unless a later date is cited in the History of 7.6.2 NMAC.
26 [7.6.2.5 NMAC - Rp, 7 NMAC 6.1.005, 08/12/2000]
27

28 **7.6.2.6 OBJECTIVE:** The objective of these regulations is to protect the public health by establishing standards and
29 provisions for the safe operation of food establishments to assure that consumers are not exposed to adverse environmental
30 health conditions.
31 [7.6.2.6 NMAC - Rp, 7 NMAC 6.1.006, 08/12/2000]
32

33 **7.6.2.7 DEFINITIONS:**

34 **A. “Approved”** means acceptable to the Secretary based on determinations of conformance with appropriate standards
35 and good public health practices and applicable state and federal laws.

36 **B. “Bed and breakfast establishment”** means a lodging facility that offers a breakfast, which is included in the room
37 rate, and the owner or manager is a permanent resident of the facility. The total number of people regularly served
38 breakfast shall not exceed twenty-four, including overnight guests, residents and staff. For permitting purposes, the two
39 types of bed and breakfast establishments are continental-menu and expanded-menu.

40 **C. “Caterer”** means a food establishment, other than a mobile unit, which may prepare or serve food at locations other
41 than on the premises of the permitted food establishment. Catering does not include operations that only deliver foods
42 such as pizza delivery.

43 **D. “Closed”** means fitted together snugly leaving no openings larger than 1/16 inch.

44 **E. “Commissary”** means a permitted catering establishment, restaurant, or any food establishment in which food, food
45 containers or food supplies are kept, handled, prepared, packaged or stored from which meals are catered and mobile
46 food service units or pushcarts are serviced.

47 **F. “Continental-menu bed and breakfast”** means a bed and breakfast establishment that serves only a
48 continental-style breakfast. An afternoon snack consisting only of commercially-prepared, non-potentially hazardous
49 foods is also allowed.

50 **G. “Corrosion-resistant material”** means a material that maintains its original surface characteristics under prolonged
51 influence of the food, cleaning compounds, and sanitizing solutions that may contact it.

52 **H. “Critical control point”** means any point or procedure in a specific food system where loss of control may result in
53 an unacceptable health risk.

54 **I. “Cross-contamination”** means the contamination or potential contamination of food by contact with potentially
55 hazardous foods or substances (such as blood from raw meat), or by contact with unsanitized surfaces or unwashed
56 hands.

57 **J. “Easily cleanable”** means readily accessible and of such material and finish, and so fabricated that residue may be
58 effectively removed by normal cleaning methods.

59 **K. “Employee”** means any individual who works in a food establishment and who:

- (1) transports food or food containers;
- (2) handles food during storage, preparation or serving;
- (3) comes in contact with any utensils;
- (4) works in a room in which food is stored, prepared or served; or
- (5) is responsible for directing food handling operations or supervises other employees.

L. “Embargo” means an order of prohibition issued by the secretary to prevent the movement and/or sale of food products which are suspected or known to be adulterated or do not meet appropriate health or legal standards.

M. “Equipment” means all stoves, ranges, hoods, meat blocks, tables, counters, refrigerators, sinks, dishwashing machines, steam tables, and similar items, other than utensils, used in the operation of a food establishment.

N. “Expanded-menu bed and breakfast” means a bed and breakfast establishment that is inspected and permitted to prepare and serve potentially hazardous foods to the clientele for breakfast and light foods or snacks in the afternoon for guest self-service.

O. “Food” means any solid or liquid substance intended for human consumption by eating or drinking.

P. “Food-contact surfaces” means those surfaces of equipment and utensils with which food normally comes in contact, and those surfaces with which food may come in contact and drain back onto surfaces normally in contact with food.

Q. “Food establishment” means a food processing establishment, home-based food processing operation, or a food service establishment.

R. “Food processing establishment” means any food establishment (other than a “dairy establishment” as defined in the New Mexico Food Act) where food is processed in a sealed original package for human consumption and is not provided directly to the consumer.

S. “Food service establishment” means:

- (1) any fixed or mobile place where food is served or sold for consumption on the premises;
- (2) any fixed or mobile place where food is prepared for sale to or consumption by the general public either on or off the premises, including any place (other than a “dairy establishment” as defined in the New Mexico Food Act) where food is processed for ultimate sale in a sealed original package; but “prepared” as used in this paragraph does not include the preparation of raw fruits, vegetables or pure honey for display and sale in a grocery store or similar operations or reheating of packaged food for sale in a retail store, and for purposes of this paragraph, “pure honey” means natural liquid or solid honey, extracted from the combs or in the comb, taken from beehives, with no processing or additional ingredients; or
- (3) any meat market, whether or not operated in conjunction with a grocery store.

T. “Frozen food” means food that is in a frozen state.

U. “General public” means all individuals who have access to facilities that sell or serve food, including, but not limited to, beneficiaries of governmental or private charitable feeding programs and residents and employees of institutions that provide meals to their residents or employees either with or without direct payment to the institution by the residents or employees, **but does not include:**

- (1) residents of private homes or home environments where residents take part in preparing or serving their own meals;
- (2) non-paying guests in private homes;
- (3) clients of facilities operated in private homes that are licensed by or registered with the department of health, or the department of children, youth and families; or
- (4) participants in a pot-luck dinner, covered dish supper, or similar event in which the food is prepared and/or contributed by the participants and for which no fee is charged.

V. “HACCP” means hazard analysis critical control point.

W. “Hazard” means the unacceptable contamination of foods by any foreign materials, chemical agents, or the growth or survival of pathogenic or spoilage microorganisms in processed or prepared foods and/or the unacceptable production or persistence in foods of toxins produced by such microorganisms.

X. “Hazard analysis” means an evaluation of all procedures concerned with the production, distribution, and use of raw materials and food products to:

- (1) identify potentially hazardous raw materials and foods that may contain poisonous substances, foreign materials, pathogens, or large numbers of food spoilage microorganisms, and/or that can support microbial growth;
- (2) find sources and specific points of contamination by observing each step in the food preparation process; and
- (3) determine the potential for microorganisms to survive or multiply during production, processing, distribution, storage, or preparation of food for consumption.

Y. “Hazard analysis critical control point” means an inspectional or quality assurance method that consists of:

- (1) an assessment of hazards associated with growing, harvesting, processing/manufacturing, marketing, preparation and/or use of a given raw material or food product;
- (2) determination of critical control points required to control any identified hazard(s); and
- (3) establishment of procedures to evaluate, monitor and record critical control points.

1 **Z. “Health authority”** means the New Mexico environment department.
2 **AA. “Highly susceptible population”** means a group of persons who are more likely than other populations to
3 experience foodborne disease because they are immunocompromised or older adults in a facility that provides health
4 care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides
5 custodial care, such as a day care center.
6 **BB. “Home prepared foods”** means foods that have not been processed in a commercial food establishment and are not
7 prepared by a permitted home-based food processing operation.
8 **CC. “Home-based food processing operation”** means any business in which a residential kitchen is permitted to be
9 used to process food not classified as potentially hazardous in a sealed original package for human consumption and is
10 offered directly to the consumer.
11 **DD. “Imminent health hazard”** means a significant threat or danger to health that is considered to exist when there is
12 evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate
13 correction or cessation of operation.
14 **EE. “Mobile food service unit”** means a motor vehicle department-licensed vehicle-mounted food service
15 establishment designed to be readily movable and which serves multiple locations on a daily basis for not more than two
16 (2) hours at each location and not less than one thousand (1000) feet apart, except for single, temporary events or
17 celebrations.
18 **FF. “Monitoring”** means the checking or verifying that the processing or handling procedures at the critical control
19 points are properly carried out.
20 **GG. “Perishable food”** means any food of such type or in such condition as may spoil and become unwholesome.
21 **HH. “Permittee”** means the person responsible for the operation of the food establishment for which the permit is
22 issued.
23 **II. “Person”** means an individual or any other legal entity.
24 **JJ. “pH”** refers to the hydrogen ion concentration within any solid or liquid medium and is a measurement of the degree
25 of acidity or alkalinity of a food or food product.
26 **KK. “Potentially hazardous food”** means:
27 (1) any food or food ingredient, natural or synthetic, that is capable of supporting:
28 (a) the rapid and progressive growth of infectious or toxicogenic microorganisms; or
29 (b) the growth and toxin production of “clostridium botulinum”; or
30 (2) all raw or heat-treated foods of animal origin, heat-treated foods of plant origin, and raw seed sprouts, unless
31 they:
32 (a) have a water activity (a_w) value of 0.85 or below; or
33 (b) have a pH of 4.60 or below; or
34 (c) have been commercially processed by an approved method and remain in their unopened hermetically
35 sealed containers.
36 **LL. “Premises”** means all areas either indoors or outdoors used in conjunction with the operation of a food
37 establishment.
38 **MM. “Product thermometer”** means a thermometer, thermocouple, thermistor, or other device that, when the sensor is
39 inserted into food, indicates the internal temperature of the food, but does not include non-product or ambient
40 temperature sensing devices.
41 **NN. “Pushcart”** means a human propelled, self-contained food service establishment that operates at approved
42 locations for no more than two (2) hours, except for single temporary events or celebrations. It is limited to the
43 preparation and serving of hot dogs or commercially prepared, prepackaged, potentially hazardous foods such as
44 burritos and tamales, served in their original packaging, maintained at safe temperatures, or limited to serving
45 non-potentially hazardous foods.
46 **OO. “Recall”** means a return of food products that are either known or suspected to be adulterated, misbranded, or
47 otherwise unsafe for human consumption to the manufacturer or distributor, or are disposed of onsite by approved
48 methods.
49 **PP. “Refuse containers”** means any type of receptacle that is used inside the food establishment to store refuse,
50 including but not limited to trash, garbage and food waste.
51 **QQ. “Refuse bins”** means any type of receptacle that is used outside the food establishment to store refuse for later
52 removal.
53 **RR. “Remodeled”** means any changes involving structure or location of walls, openings, floors or counters, or
54 replacement or modification of plumbing, mechanical or electrical components other than fixtures.
55 **SS. “Revocation”** means the permanent removal of a permit to operate a food establishment after a hearing has been
56 held.
57 **TT. “Safe temperatures”** as applied to potentially hazardous food, means temperatures of 41 degrees F or below and
58 140 degrees F or above.
59 **UU. “Sanitize”** means effective treatment of clean, food-contact surfaces of equipment and utensils by a process which

1 has been either specified by this part or approved by the secretary as being effective in destroying microorganisms,
2 including pathogens.

3 **VV. “Sealed”** means free of cracks or other openings which permit the entry or passage of moisture.

4 **WW. “Seasonal food establishment”** means any food establishment that operates for more than thirty (30) days, but
5 not more than nine (9) months during any twelve (12) consecutive months.

6 **XX. “Secretary”** means the secretary of environment or a designated representative.

7 **YY. “Self-contained mobile food service unit”** means a mobile food service establishment that meets all equipment
8 requirements of this part with the exception of **7.6.2.10.B(1) NMAC**.

9 **ZZ. “Single-service articles”** means cups, chopsticks, containers, lids, closures, plates, knives, forks, spoons, stirrers,
10 paddles, straws, napkins, wrapping materials, toothpicks, and similar articles intended for one-person use and then
11 discarded.

12 **AAA. “Sulfiting agents”** means sulfur dioxide or any chemical that produces sulfur dioxide when used to treat foods,
13 including:

- 14 (1) sodium sulfite;
- 15 (2) sodium bisulfite;
- 16 (3) potassium bisulfite;
- 17 (4) sodium metabisulfite; and
- 18 (5) potassium metabisulfite.

19 **BBB. “Suspension”** means the temporary removal of a permit to operate a food establishment.

20 **CCC. “Temporary food service establishment”** means a food service establishment operating at a fixed location in
21 conjunction with a single event or celebration for a period not exceeding the length of the event or celebration, or thirty
22 days, whichever is shorter.

23 **DDD. “Toxic material”** means any substance or product that can cause a deleterious effect when ingested or contacted,
24 including, but not limited to, cleaning compounds, bactericides, and insecticides.

25 **EEE. “Utensil”** means any implement used in the storage, processing, preparation, transportation, service or
26 consumption of food.

27 **FFF. “Warewashing”** means the cleaning and sanitizing of utensils and food-contact surfaces of equipment.

28 **GGG. “Water activity (aw)”** refers to the amount of free moisture present in a food or food product.

29 **HHH. “Wet storage of food”** refers to food which may not be stored in direct contact with ice or water if the food is
30 subject to the entry of water because of the nature of its packaging, wrapping, container or its positioning in ice or
31 water.

32 **III. “Wholesome”** means in sound condition, clean, free from adulteration, and otherwise suitable for use as human
33 food.

34 **JJJ. “Equine Passport”** means [an electronic document, approved by the New Mexico or United States government](#)
35 [and issued within six months of the birth of an equine, and a corresponding microchip, installed in each equine by a](#)
36 [veterinarian prior to the creation of the Equine Passport.](#)

37
38 [7.6.2.7 NMAC - Rp, 7 NMAC 6.1.103, 08/12/2000; A, 01/01/2010]

39 40 **7.6.2.8 GENERAL PROVISIONS AND PROCEDURES:**

41 **A. Plan Review:**

42 (1) The plan review applicant for a new or remodeled food establishment shall submit plans and specifications for
43 evaluation and approval by the health authority thirty (30) days prior to start of construction. Plans and
44 specifications shall be submitted thirty (30) days prior to the opening of an existing facility by a new permittee
45 where current plans and specifications are not on file with the health authority.

46 (2) Plans and specifications shall include, but are not limited to, major menu items, anticipated volume of food to
47 be prepared, served or sold and detailed information on refrigeration, cooking, hot-holding and warewashing
48 equipment to determine adequacy of such equipment to meet requirements outlined in **7.6.2.9 NMAC**. If for any
49 reason, the plans and specifications as originally specified are to be altered or changed, the health authority shall be
50 contacted prior to making any changes or alterations. Plans and specifications for food processing establishments
51 shall include all information required by **7.6.2.12.G NMAC**.

52 **B. Permits: Issuance, Expiration And Renewal:**

53 (1) No person shall operate a food establishment without a current permit. Permits are not transferable from person
54 to person or from location to location.

55 (2) Prior to the issuance of any permit or the renewal of an annual permit, the health authority shall make
56 inspections of the food establishment as it deems necessary, and the person in charge should be able to demonstrate
57 knowledge of food operations as contained in this part (**7.6.2 NMAC**). For a new establishment, a permit fee
58 submittal form with the fee required by **7.6.2.8.K NMAC** shall be provided to the health authority at the time of the
59 final pre-opening inspection when approval-to-open is granted.

- 1 (3) Any person seeking an initial permit or applying for a new permit after a permit revocation shall file a written
2 application with the health authority. The application shall:
- 3 (a) be made on forms furnished by the health authority;
 - 4 (b) state the applicant's name, mailing address, and telephone number;
 - 5 (c) state the date of the application and anticipated opening date;
 - 6 (d) state the name and location of the food establishment;
 - 7 (e) state that a copy of this part (7.6.2 NMAC) has been received from the health authority;
 - 8 (f) contain the health authority's evaluations of all plans and specifications as required in 7.6.2.8.A NMAC;
 - 9 (g) include any variances or grandfathered equipment which does not meet the requirements of 7.6.2.10.A(8)
10 NMAC;
 - 11 (h) include the vehicle identification number (VIN), New Mexico license plate numbers and approved
12 commissary locations for mobile food service units; and
 - 13 (i) be signed by the applicant or the applicant's representative.
- 14 (4) The health authority shall either grant the permit, grant the permit subject to conditions, deny the permit, or
15 restrict the permit to menu items or process as specified within:
- 16 (a) thirty (30) days after final facility inspection has been completed, for an annual permit; or
 - 17 (b) ten (10) days after the filing of a permit application, for a temporary permit.
- 18 (5) The health authority may deny any application for a permit if it deems that the operation of the food
19 establishment will not comply with:
- 20 (a) the Food Service Sanitation Act, Chapter 25, Article 1 NMSA 1978;
 - 21 (b) the New Mexico Food Act, Chapter 25, Article 2 NMSA 1978; or
 - 22 (c) any applicable provision of this part (7.6.2 NMAC).
- 23 (6) If the health authority denies a permit, grants a permit subject to conditions, or restricts a permit, the health
24 authority shall notify the applicant by certified mail of the action taken and the reasons for that action.
- 25 (7) Each permit issued by the health authority shall include an expiration date.
- 26 (a) The expiration date for an annual permit shall be:
 - 27 (i) June 30 of each year, for any permit issued or renewed prior to January 1, 1993, provided the permit is
28 renewed annually as provided in 7.6.2.8.B(10) NMAC and has not been revoked; or
 - 29 (ii) the last day of the anniversary month of the date of original issue, provided the permit is renewed
30 annually as provided in 7.6.2.8.B(10), for any permit issued on or after January 1, 1993.
 - 31 (b) The expiration date for a temporary permit shall be the earlier of:
 - 32 (i) the last day of the event in conjunction with which the temporary food service establishment is
33 operated; or
 - 34 (ii) thirty (30) days after the date of issue.
- 35 (8) If the applicant is dissatisfied with the action taken by the health authority, the applicant may request a hearing
36 before the secretary. The request must be made in writing to the secretary within fifteen (15) working days after the
37 applicant has received notice of the health authority's action. Unless a timely request for a hearing is made, the
38 decision of the health authority shall be final.
- 39 (9) Hearings before the secretary shall be conducted in accordance with 7.6.2.8.E NMAC of this part. In the
40 hearing the burden of proof shall be upon the applicant. Hearings shall be held within fifteen (15) working days
41 after receipt of the request. The secretary shall notify the applicant by certified mail of the date, time and place of
42 the hearing.
- 43 (10) Annual permits may be renewed upon submission of a renewal form provided by the health authority and
44 payment of:
- 45 (a) the annual permit fee specified in 7.6.2.8.K NMAC, if applicable, prior to the expiration date of the
46 permit; or
 - 47 (b) the annual permit fee specified in 7.6.2.8.K NMAC, if applicable, plus a penalty of twenty-five dollars
48 (\$25.00), regardless of whether a permit fee is required, within thirty (30) days after expiration of the permit.
- 49 (11) After expiration of an annual permit, the food establishment shall not be operated until a new permit is issued,
50 unless the renewal form and annual permit fee, if applicable, were received by the health authority on or before the
51 expiration date of the permit.
- 52 (12) If a permit is not renewed as provided in 7.6.2.8.B(10) NMAC, no new permit shall be issued except upon
53 submission of a new permit application and the applicant's compliance with all applicable provisions of
54 7.6.2.8.A&B NMAC for a new food establishment.
- 55 (13) Permits for temporary food establishments shall be for use at a fixed location in conjunction with a single
56 event or celebration for a period not exceeding the event or celebration, or thirty (30) days, whichever is shorter,
57 and may not be renewed.
- 58 (14) Self-contained mobile food service units shall notify the health authority office of jurisdiction at least twenty
59 four (24) hours before operating in any jurisdictional area of New Mexico other than that of the permitted address.

1 (15) The permit shall be posted in a conspicuous place within the food establishment where the general public can
2 readily see it.

3 (16) Any food establishment that caters or otherwise serves food at locations other than on the primary premises of
4 the permitted establishment shall do so only in compliance with this part (7.6.2 NMAC) The fact that catering or
5 remote service operations will be conducted shall be indicated fully on the permit and the application for the food
6 establishment. When a food establishment has an adjunct/additional food catering business, each such business
7 shall be permitted separately.

8 (17) A permittee shall be responsible for all food service operations conducted on the premises for which the permit
9 is issued, except for any such operations conducted by another permittee who holds a valid permit for the same
10 premises. Each permittee shall be responsible for any shared facilities or equipment.

11 (18) The issuance of a permit does not relieve any person operating a food establishment from the responsibility of
12 complying with other laws, ordinances and regulations.

13 C. Permit Suspension And Revocation:

14 (1) Except as otherwise provided in 7.6.2.8.D NMAC, the health authority may suspend or revoke a permit for a
15 food establishment for repeated violations of:

16 (a) the Food Service Sanitation Act, Chapter 25, Article 1 NMSA 1978;

17 (b) the New Mexico Food Act, Chapter 25, Article 2 NMSA 1978; or

18 (c) any applicable provision of this part (7.6.2 NMAC).

19 (2) Not less than seven (7) working days prior to the suspension or revocation of a food service or food processor
20 permit, the health authority shall notify the permittee by certified mail of the impending suspension or revocation
21 and the reasons for suspension or revocation. The notice shall state the date, time and place where a hearing on the
22 suspension or revocation will take place. Failure to appear shall result in immediate suspension/revocation as
23 appropriate. The permittee of any temporary food service establishment may be notified of the impending
24 suspension or revocation hearing immediately after the repeated violations are noted. Hearings for temporary food
25 service establishments may be held as soon as practicable after such notification.

26 (3) Hearings shall be conducted by the secretary in accordance with 7.6.2.8.E NMAC. In the hearing, the burden of
27 establishing the violations shall rest upon the health authority. The permittee must then show why the permit should
28 not be suspended or revoked.

29 (4) The suspension of a permit following a hearing shall not continue beyond the time that the conditions leading to
30 the suspension cease to exist as determined by the health authority. The inspection to determine whether such
31 conditions have been corrected must be at the request of the food establishment permittee. Training of staff and/or
32 implementation of operating procedures to address those conditions that led to the suspension may be considered
33 satisfactory evidence of compliance.

34 (5) Except as provided by 7.6.2.8.E(6) & 7.6.2.8.G(3) & 7.6.2.8.I(2) NMAC revocation proceedings pursuant to
35 7.6.2.8.C(2) NMAC shall not be undertaken unless a permittee's permit has previously been suspended for
36 violations of a similar nature for which the health authority now proposes revocation. In all instances the revocation
37 of a permit under this section shall require prior notice and hearing to the permittee.

38 (6) The health authority shall not consider the reapplication for a permit from a permittee whose permit has been
39 revoked until:

40 (a) the permittee has successfully completed a course in Food Protection and Sanitation approved by the
41 health authority;

42 (b) the permittee has demonstrated to the satisfaction of the health authority that the food establishment will
43 comply with all requirements of this part; and specifically,

44 (c) all applicable conditions of 7.6.2.8.B(3) have been met.

45 D. Immediate Suspension:

46 (1) Notwithstanding the provisions of 7.6.2.8.C NMAC, the health authority may suspend a permit without prior
47 notice to the permittee if the health authority determines, after inspection, that conditions within a food
48 establishment covered by this part (7.6.2 NMAC), present a substantial danger of illness, serious physical harm, or
49 death to persons who might patronize or be employed at the food establishment. Communication to the permittee or
50 the permittee's designated agent, or in the absence of either, to any employee on the premises, is sufficient to make
51 the suspension effective.

52 (2) No suspension taken under 7.6.2.8.D NMAC shall continue beyond the time that the conditions causing the
53 suspension cease to exist, as determined by an inspection by the health authority upon request of the permittee. The
54 health authority shall conduct a requested inspection within three (3) working days of a verbal or written request.

55 (3) When suspension is ordered pursuant to 7.6.2.8.D NMAC, the health authority shall inform the permittee that
56 the health authority shall afford a hearing within seven (7) working days, upon request of the permittee. If such a
57 request is received, the health authority shall notify the permittee, within two (2) working days after receipt of the
58 request, of the date, time, and place of the hearing.

59 E. Hearings:

- 1 (1) Hearings shall be before the secretary.
2 (2) A record shall be made of each hearing, the cost of which shall be borne by the health authority. Those persons
3 requesting transcripts shall pay transcript costs.
4 (3) In hearings, the Rules of Civil Procedure and the Rules of Evidence shall not apply, but the hearings shall be
5 conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue
6 repetition.
7 (4) The secretary shall allow the health authority and the affected food establishment permittee to call and examine
8 witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross-examine persons
9 who testify.
10 (5) Action taken by the secretary shall be by written order within five (5) working days following the hearing. A
11 copy of the order shall be sent by certified mail to the affected food establishment permittee. The order of the
12 secretary shall state:
13 (a) the name and location of the affected food establishment;
14 (b) the date the order is made;
15 (c) the decision of the secretary;
16 (d) the reasons for the secretary's decision;
17 (e) conditions, if any, under which the permittee may be allowed to continue operating; and
18 (f) failure of the permittee to adhere to conditions shall be grounds for suspension/revocation.
19 (6) Failure of the permittee or the permittee's designee to appear for the hearing shall result in immediate permit
20 revocation and establishment closure.

21 **F. Timeliness:**

- 22 (1) When the last day for performing an act falls on Saturday, Sunday, or a legal state or national holiday, the
23 performance of the act is timely if performed on the next day that is not a Saturday, Sunday, or a legal state or
24 national holiday.
25 (2) All matters required to be filed or mailed in this part (7.6.2 NMAC) are timely if deposited in the United States
26 mail on or before the required date.

27 **G. Compliance With Regulations:**

- 28 (1) An "approved" emblem shall be posted by the health authority at a food establishment that is operated in
29 compliance with this part (7.6.2 NMAC).
30 (2) An "unsatisfactory" emblem may be posted by the health authority at a food establishment when:
31 (a) any of the following portions of this part (7.6.2 NMAC) are violated on any inspection:
32 (i) 7.6.2.9.A(1), (2), (3), (4), (6), (7), (8), (9), (10);
33 (ii) 7.6.2.9.B(1), (3), (4), (5), (6), (7), (8), (9) NMAC;
34 (iii) 7.6.2.9.C(3), (4), (9), (11), (12), (14), (17) NMAC;
35 (iv) 7.6.2.9.D(3), (6), (13), (14), (17) NMAC;
36 (v) 7.6.2.9.F(1), (2), (3), (4), (5) NMAC;
37 (vi) 7.6.2.9.G(1), (4), (5), (6) NMAC;
38 (vii) 7.6.2.9.H(1), (2), (5) NMAC;
39 (viii) 7.6.2.9.I(1), (2), (3), (4) NMAC;
40 (ix) 7.6.2.9.J NMAC;
41 (x) 7.6.2.9.K(4) NMAC;
42 (xi) 7.6.2.10.B(1) NMAC; or
43 (b) any portion of this part (7.6.2 NMAC) is violated on a repeated basis.
44 (3) An emblem shall be posted in a conspicuous place at each entry to the food establishment where it can be
45 readily seen by the general public and shall be posted or removed only by an authorized agent of the health
46 authority. Removal, defacing, or obstruction of an emblem by any person other than an authorized agent of the
47 health authority shall result in immediate permit suspension or revocation. Temporary food service establishments
48 and food processing establishments shall be exempt from 7.6.2.8.G(3) NMAC.

49 **H. Procedures When Infection Is Suspected:**

- 50 (1) When the health authority has reasonable cause to suspect possibility of disease transmission from any food
51 establishment employee, the secretary shall secure the morbidity history of the suspected employee, or make other
52 investigations as may be indicated, and take appropriate action including immediate permit suspension.
53 (2) No person who is infected with a disease in a communicable form that can be spread through food shall work in
54 a food establishment. Such diseases would include but are not limited to salmonella, shigella, E. coli, or hepatitis A.
55 Also excluded from working in a food establishment is anyone suffering symptoms of acute gastrointestinal illness.
56 Such an individual shall not return to work until certified by a physician, in writing, to be infection-free and no
57 longer considered a significant health risk.
58 (3) Employees engaged in food processing, preparation or service who have communicable forms of skin infections
59 to include but not restricted to cuts, burns, abrasions, boils or bandages on the hands, forearms or face shall be

temporarily excluded from work activities in which there is a likelihood of contaminating food or food contact surfaces, unless plastic or surgical gloves are utilized. Other moisture-proof barriers may be approved by the secretary.

(4) Refusal to comply with any provisions of **7.6.2.8.H NMAC** shall be grounds for immediate suspension of the permit.

I. Inspection By Health Authority:

(1) The health authority shall inspect food establishments at least annually to determine compliance with the Food Service Sanitation Act, the New Mexico Food Act if applicable, and this part (**7.6.2 NMAC**). Upon request by, and after proper identification of, the health authority official, the permittee shall allow the health authority official to enter and inspect all areas of the premises unhindered. Inspection may be done at any time, based upon health risk, and as often as deemed necessary by the health authority, to insure the safety of the public health. The health authority official shall be allowed to copy any records pertaining to food service and purchases by the food establishment. Proprietary documents shall not be released, and confidentiality will be protected by the health authority, as provided by law.

(2) The permittee or an authorized agent shall be given an opportunity to accompany the health authority official on inspection of the establishment and a report shall be furnished to the permittee or other employee as soon as possible after the inspection and prior to any enforcement action(s). Refusal to allow an inspection is grounds for immediate permit suspension or revocation.

(3) During an inspection, the health authority may take samples of food and other substances found on the premises for the purpose of determining compliance with provisions of the Food Service Sanitation Act, the New Mexico Food Act and this part (**7.6.2 NMAC**)

J. Variances:

(1) Any person seeking a variance from any provisions of this part shall do so by filing a written petition with the health authority. Petitions shall:

- (a) be made on forms obtained from the health authority;
- (b) state the petitioner's name and mailing address;
- (c) state the name and location of the food establishment;
- (d) state the date of the petition;
- (e) state the portion of this part (**7.6.2 NMAC**) from which the variance is sought;
- (f) state the period of time for which the variance is sought;
- (g) state why the petitioner believes the variance is justified;
- (h) be accompanied by any relevant documents or material that the petitioner believes would support the petition; and
- (i) contain such other relevant information as the health authority may reasonably require, based upon widely recognized scientific information or technological advances.

(2) The health authority may grant a petitioner a variance from any requirement prescribed under this part when it is found, upon presentation of adequate proof, that the granting of the variance will not result in exposing employees, consumers, or the general public to adverse health and safety conditions arising from the operation of the food establishment. Any variance granted shall be for specific time periods and under conditions consistent with the reasons for the variance.

(3) Within ten (10) working days following receipt of the variance petition, the health authority shall grant the variance, grant the variance subject to conditions, or deny the variance. The action taken by the health authority shall be by written order, a copy of which shall be sent by certified mail to the petitioner. The order shall:

- (a) state the petitioner's name and address;
- (b) state the date the order is made;
- (c) state the name and location of the food establishment;
- (d) state the decision of the health authority;
- (e) if a variance is granted, state the period of time for which it is granted and any conditions that apply; and
- (f) state the reasons for the decision of the health authority.

(4) The health authority shall maintain a file of all orders issued. The file shall be open for public inspection in accordance with the provisions of law.

(5) Any person who is dissatisfied with the action taken by the health authority may request a hearing before the secretary.

- (a) A request for hearing shall be filed with the secretary:
 - (i) by the petitioner within ten (10) working days after receipt of written notification of the action taken by the health authority; and
 - (ii) by any other person within ten (10) working days after the health authority's action.
- (b) Unless a timely request for hearing is made, the decision of the health authority shall be final.

(6) If a timely request for hearing is made, the secretary shall hold a hearing within fifteen (15) working days after

1 receipt of the request. The health authority shall notify the person requesting a hearing, by certified mail, of the
2 date, time and place of the hearing. In the hearing, the burden of proof shall be upon the person requesting the
3 hearing.

4 (7) In hearings, the Rules of Civil Procedure and the Rules of Evidence shall not apply, but the hearings shall be
5 conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue
6 repetition. The secretary shall allow the health authority, the petitioner and designated representatives to call and
7 examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross-examine
8 persons who testify.

9 (8) Based upon the evidence presented at the hearing, the secretary shall sustain, modify or reverse the action of the
10 health authority. The action taken shall be by written order within ten (10) working days following the hearing. The
11 order shall contain the same information as that required for the health authority in **7.6.2.8.J(3) NMAC**. A copy of
12 the order shall be sent to the petitioner.

13 **K. Permit Fees:**

14 (1) Except as provided in **Paragraph (2) of Subsection K of 7.6.2.8 NMAC**, permit fees shall be:

15 (a) twenty-five dollars (\$25.00) for a temporary food service establishment;

16 (b) one hundred twenty five dollars (\$125.00) per year as of December 1, 2005 for all other food
17 establishments except home-based food processing operations:

18 (i) effective December 1, 2006 \$150.00

19 (ii) effective December 1, 2007 \$175.00

20 (iii) effective December 1, 2008 \$200.00; and

21 (c) one hundred dollars (\$100.00) per year as of January 1, 2010 for home-based food processing operations.

22 (2) The fee established by **Paragraph (1) of Subsection K of 7.6.2.8 NMAC** shall be waived for:

23 (a) any temporary food establishment:

24 (i) serving only non-potentially hazardous food; or

25 (ii) operating no more than two (2) consecutive calendar days at an event;

26 (b) any food establishment that provides food to the general public at no charge.

27 (3) No discount or refund shall be made for partial years or for permit suspension, revocation or denial in
28 accordance with **Subsections B, C, or D of 7.6.2.8 NMAC**. After permit revocation, the full fee must be paid for a
29 new permit.

30 (4) For new food establishments and temporary food service establishments, including permits for new permittees,
31 new locations, or new events, permit fees shall be paid when the application for permit is submitted and shall be
32 verified by the health authority before the permit is issued.

33 (5) Payments shall be accompanied by submittal forms available from the health authority.

34 **L. Current Food And Drug Administration Food Code Applicability:** The current United States public health
35 service, food and drug administration Food Code is hereby adopted as a technical reference and interpretation guide.

36 **M. Procedures For Embargo, Recall, And Condemnation:**

37 (1) Whenever the secretary finds, or has probable cau-se to believe, that any food product fails to meet health
38 standards or is adulterated with any substance, or is found to be misbranded, such that it may be injurious to human
39 health, the suspected lot shall be embargoed or detained, if not yet distributed to consumers or any retail outlet.

40 (2) If the suspected lot has been distributed, the food processor, including home-based food processing operations,
41 shall be given the opportunity to recall the product voluntarily or the suspected lot may be disposed of onsite by
42 methods approved by the health authority.

43 (3) If a voluntary recall is refused, the secretary may order a mandatory recall of the suspected lot.

44 (4) When any food product is found, by examination or laboratory analysis, to be in violation of safe health
45 standards, the secretary may order condemnation and disposal of the product lot, at the expense of the food
46 processor.

47
48 [7.6.2.8 NMAC - Rp, 7 NMAC 6.1.104 to 114, 08/12/2000; A, 12/01/05; A, 01/01/2010]

49
50 **7.6.2.9 FOOD PROTECTION REQUIREMENTS:**

51 **A. Wholesomeness Of Food And Drink:**

52 (1) Food shall be from an approved source. Food from such sources shall have been protected from contamination
53 and spoilage during subsequent handling, packaging, storage and while in transit. Dry milk may be reconstituted in
54 a food establishment if it has been manufactured from pasteurized milk or milk products at the milk processing
55 plant. No raw milk or raw milk products shall be used in food preparation. Grade A raw milk products may be
56 served only in sealed, individual, labeled containers as received from the milk plant.

57 (2) Shellstock shall be identified with an official tag giving the name and the certificate number of the original
58 shellstock shipper and the kind and quantity of shellstock. Shellstock shippers and shellstock reshippers, other than
59 the original shellstock shipper, shall also add their name and certification number to the original shellstock shippers

1 tag. Fresh and frozen shucked oysters, clams and mussels shall be packaged in non-returnable containers identified
2 with the name and address of the packer, repacker, or distributor and the certificate number of the packer or
3 repacker preceded by the abbreviated name of the state, as required in **7.6.2.15** of this Part. Upon receiving
4 shellstock, restaurateurs should check to see that the required information is on the shellstock tag; if not, then the
5 delivery should be rejected as the restaurateur may be dealing with an uncertified dealer ('bootlegger'). Restaurants
6 shall retain such tags for ninety (90) days, before discarding.

7 **(3)** The use or sale of home-canned or home-prepared potentially hazardous foods is prohibited.

8 **(4)** All raw eggs shall be refrigerated at 41 degrees F or below during storage, except as provided for in
9 **7.6.2.10.A(10)**.

10 **(5)** Additional safeguards to be practiced in food establishments serving highly susceptible populations require the
11 use of pasteurized apple juices, apple cider, other fresh fruit juices, and pasteurized eggs as well as prohibiting
12 service of raw animal foods, and partially or lightly cooked food of animal origin. Pasteurized liquid, frozen, or dry
13 eggs or egg products shall be substituted for shell eggs in the preparation of:

14 **(a)** foods such as Caesar salad, hollandaise or béarnaise sauce, noncommercial mayonnaise, eggnog, ice
15 cream, and egg-fortified beverages that are not cooked; and

16 **(b)** eggs for a highly susceptible population, if the eggs are broken, combined in a container, and not cooked
17 immediately or if the eggs are held before service following cooking.

18 **(6)** All ice shall be made from potable water sources that meet public water supply standards outlined in the New
19 Mexico Water Supply Regulations.

20 **(7)** Commercially raised game animals, donated wild game, and other exotic animals shall be processed as follows:

21 **(a)** Game animals and other exotic animals such as ratites, which are commercially raised for food, may be
22 received for sale or service if they are slaughtered and processed according to laws governing meat and
23 poultry as determined by the agency that has animal health jurisdiction and the agency that conducts the
24 inspection program.

25 **(b)** Donated wild game meat shall be processed in New Mexico Livestock Board licensed and Health
26 Authority permitted facilities. Unless served within forty-eight (48) hours of processing, donated wild game
27 meat shall be frozen prior to distribution. Wild game meat shall only be donated to charitable organizations
28 operating permitted facilities for the needy.

29 **(8)** Refrigerated, ready to eat, potentially hazardous food prepared on site and held for more than twenty four (24)
30 hours shall be marked with the date of preparation. Such food shall be discarded if not served within seven (7)
31 calendar days from date of preparation.

32 **(9)** Food establishments that use a reduced oxygen packaging method to package food shall have an approved
33 HACCP plan that:

34 **(a)** identifies the food to be packaged;

35 **(b)** limits the food packaged to a food that does not support the growth of *Clostridium botulinum* or other
36 pathogens because it complies with one of the following:

37 **(i)** has a water activity (a_w) of 0.91 or less,

38 **(ii)** has a pH of 4.6 or less,

39 **(iii)** is a meat product cured at a food processing plant regulated by U.S. Department of Agriculture using
40 a combination of nitrites, nitrates, and salt that at the time of processing consists of 120 mg/liter or higher
41 concentration of sodium nitrite and a brine concentration of at least 3.50 % and is received in an intact
42 package, or

43 **(iv)** is a food with a high level of competing organisms such as raw meat or raw poultry;

44 **(c)** specifies methods for maintaining food at 41 degrees F or below;

45 **(d)** describes how the packages shall be prominently and conspicuously labeled on the principal display panel
46 in bold type on a contrasting background, with instructions to:

47 **(i)** maintain the food at or below 41 degrees F, and

48 **(ii)** discard the food if within fourteen (14) calendar days of its packaging it is not served for on-premises
49 consumption, or consumed if served or sold for off-premises consumption;

50 **(e)** limits the shelf life to no more than fourteen (14) calendar days from packaging to consumption or the
51 original manufacturer's "sell by" or "use by" date, whichever occurs first;

52 **(f)** includes operational procedures that:

53 **(i)** prohibit food contact with bare hands,

54 **(ii)** identify a designated area and the method by which physical barriers or methods of separation of raw
55 foods and ready-to-eat foods minimize cross-contamination, and access to the processing equipment is
56 restricted to responsible, trained personnel familiar with the potential hazards of the operation, and

57 **(iii)** delineate cleaning and sanitization procedures for food-contact surfaces; and

58 **(g)** describes the training program that ensures that the individual responsible for the reduced oxygen
59 packaging operation understands the:

- (i) concepts required for a safe operation,
- (ii) equipment and facilities, and
- (iii) procedures specified in 7.6.2.9.A(9).

(h) Except for fish that is frozen before, during, and after packaging, a food establishment shall not package fish using a reduced oxygen packaging method.

(10) Before service or sale in ready-to-eat form, raw, marinated, or partially cooked fish other than molluscan shellfish shall be frozen throughout to a temperature of:

(a) -4.0 degrees below zero F or colder for seven (7) days in a freezer; or

(b) -31 degrees below zero F or colder for fifteen (15) hours in a blast freezer.

(11) 7.6.2.9.A(10) shall not apply to tuna of the genus *Thunnus* as follows:

(a) *Thunnus alalunga*,

(b) *Thunnus albacares* (yellowfin tuna),

(c) *Thunnus atlanticus*,

(d) *Thunnus maccoyii* (bluefin tuna, southern),

(e) *Thunnus obesus* (bigeye tuna), and

(f) *Thunnus thunnus* (bluefin tuna, northern).

(12) Equine meat manufactured, sold or delivered, held or offered for sale for human consumption in New Mexico is adulterated under the New Mexico Food Act unless all of the following criteria are all met:

(a) An Equine Passport must accompany every equine from which equine meat is derived;

(b) The Equine Passport must list all owners of the equine at all times, from the equine's birth until the equine's death;

(c) The Equine Passport must contain a complete list of all drugs, treatments, and other substances that have been administered to the equine during the course of the equine's life, from birth until the time of the equine's death, in connection with any medical care, prophylactic treatment of diseases, vaccination, pest control, growth promotion or regulation, reproductive or hormone therapy, or other treatment, including but not limited to all prescription and over-the-counter medications, pain medication, sedatives, anesthetics, antibiotics, hormones (synthetic or natural), steroids, dewormers, fly or pest sprays, ointments, liquids or applications;

(d) The administration to equine slaughtered for human consumption of all drugs, treatments, and other substances listed on an Equine Passport must be consistent with New Mexico law, to the extent those laws are identical to regulations promulgated by the United State Food and Drug Administration and the United States Department of Agriculture;

(e) The administration to equine slaughtered for human consumption of all drugs, treatments, and other substances listed on an Equine Passport must be consistent with federal law, including regulations promulgated by the United State Food and Drug Administration and the United States Department of Agriculture; and

(f) All entries on the Equine Passport must be truthful and accurate.

B. Food Establishment Time And Temperature Requirements:

(1) Refrigeration facilities, cooking facilities, hot food storage and display facilities, and effectively insulated facilities shall be provided as needed to assure maintenance of required temperatures during storage, preparation, display, transportation, and service.

(2) All perishable food shall be stored at such temperatures as will protect against spoilage.

(3) All potentially hazardous food shall, other than fresh live shellstock except during necessary periods of preparation, cooking or cooling, be kept at 41 degrees F or below, or at 140 degrees F or above.

(4) Frozen food shall be kept at such temperature as to remain in the frozen state except when being thawed for preparation or use. Potentially hazardous food, shall be:

(a) thawed at refrigerator temperatures of 41 degrees F or below or under cool, potable running water;

(b) quick thawed as part of the cooking process; or

(c) thawed in a microwave oven only when the food will be immediately transferred to conventional cooking facilities as part of a continuous process or when the entire cooking process takes place in a microwave oven.

(5) Unless otherwise ordered by the immediate consumer, all raw animal products such as eggs, fish, lamb, beef, and commercially raised game, and foods containing these raw ingredients, shall be cooked to heat all parts of the food to 145 degrees F or above, except that:

(a) rare roast beef or rare steak shall be cooked to an internal temperature of 130 degrees F;

(b) ground beef, pork and pork products, ratites, comminuted fish and other meats such as commercially raised game, and injected meats shall be cooked to 160 degrees F, or cooked to one of the following

MONITORED temperature/time combinations:

(i) cook to 158 degrees F for less than one (1) second,

(ii) cook to 150 degrees F for one (1) minute,

(iii) Cook to 145 degrees F for three (3) minutes.

- (c) stuffing, poultry, stuffed meats, and stuffed poultry, shall be heated throughout to a minimum temperature of 165 degrees F, with no interruption of the initial cooking process; and
- (d) wild game meat shall be thoroughly cooked to heat all parts of the meat to at least 165 degrees F; and
- (e) raw animal foods cooked or reheated in a microwave oven shall be:

- (i) rotated or stirred throughout or midway during cooking to compensate for uneven distribution of heat;
- (ii) covered to retain surface moisture;
- (iii) heated to 165 degrees F or above to compensate for shorter cooking times; and
- (iv) allowed to stand covered for 2 minutes after cooking to obtain temperature equilibrium.

(6) Cooked potentially hazardous foods shall be cooled in accordance with either of the time and temperature criteria as follows:

- (a) within two (2) hours from 140 degrees F to 70 degrees F followed by within four (4) hours to 41 degrees F or less (documentation is required for this process); or
- (b) within four (4) hours from 140 degrees F to 41 degrees F or less.

(7) Potentially hazardous foods other than fresh live shellstock that spend more than four (4) hours **TOTAL CUMULATIVE TIME** in the temperature danger zone (41 degrees F to 140 degrees F) shall be discarded, except during cooling as specified in **7.6.2.9.B(6)(a)&(b)** and except during cooking as specified in **7.6.2.9.B(5)&(8)**.

(8) Potentially hazardous food that has been cooked and cools to less than 140 degrees F, which is to be reheated for serving or hot holding, shall be reheated so that all parts of the food reach a minimum of 165 degrees F within two (2) hours, except as described in **7.6.2.9.B(5)(a)** for rare beef.

(9) Potentially hazardous ingredients for foods that are in a form to be consumed without further cooking such as salads, sandwiches, filled pastry products and reconstituted foods shall have been chilled to 41 degrees F or below prior to preparation. Such ingredients shall be handled with a minimum of manual contact; and on surfaces or with utensils that have been cleaned and sanitized prior to use. Until service, the finished products shall be held in or on refrigerated equipment that maintains an internal product temperature of 41 degrees F or below.

(10) Cooked and refrigerated food, maintained at or below 41 degrees F, that is to be reheated and prepared for immediate service in response to an individual consumer order, such as a roast beef sandwich, may be served at any temperature.

(11) Steam tables, hot food tables, slow cookers, crock pots, and other hot food holding devices shall not be used in heating or reheating food. Food temperatures should be checked periodically to insure that a minimum of 140 degrees F is being maintained.

(12) Each refrigeration and hot storage facility used for the storage of potentially hazardous food shall be provided with an indicating thermometer accurate to plus or minus 3 degrees F, located in the warmest section of the refrigeration facility and in the coldest section of the hot storage facility and of such type and so situated that the thermometer can be easily read. Thermostats shall not be relied upon to maintain temperatures at correct levels in the absence of thermometers.

(13) Metal, stem-type, numerically scaled, indicating thermometers, accurate to plus or minus 2 degrees F shall be available for use and used to assure the attainment and maintenance of proper internal cooking, holding or refrigeration temperatures of all potentially hazardous foods.

C. Storage, Display, Transporting, And Serving Of Food And Drink:

(1) All food items shall be stored a minimum of six (6) inches above the floor to provide for cleaning and air circulation on clean racks or other clean surfaces.

(2) Unless its identity is unmistakable, bulk food not stored in its original container or package shall be stored in a properly labeled, clean container constructed of food grade material. Milk and milk products shall be stored in the original container received from the milk plant. Uncut milk tubes for dispenser milk shall be kept refrigerated and inside the original container.

(3) Food shall be protected to prevent cross-contamination. Food not subject to further washing or cooking before serving shall be stored in such a manner as to be protected against contamination.

(4) Where unwrapped food is placed on display in all types of food service operations, including smorgasbords, buffets, and cafeterias, it shall be protected against contamination by consumers and other sources by effective, easily cleanable, and protective equipment. All cold held potentially hazardous foods other than fresh live shellstock shall be kept at 41 degrees F or less, or at 45 degrees F for not more than two (2) hours. All hot held potentially hazardous foods shall be kept at 140 degrees F or more. Self-service openings in counter guards shall be so designed and arranged as to minimize manual contact by customers. Clean plates shall be provided for additional servings.

(5) Suitable serving utensils, disposable gloves, or both, shall be used in conjunction with proper handwashing to minimize barehand contact during processing or serving ready to eat foods. Utensils shall be stored in an appropriate manner so as not to contaminate food. Suitable utensils shall be provided for serving each food item to avoid manual contact with food where customer self-service displays are utilized. In all cases, no utensil shall be used for both raw and cooked foods. Dispensing utensils used in serving food shall be stored, between use, either in

1 an approved running potable water dipper well, stored in the food with the dispensing utensil handle extended out
2 of the food or stored clean, sanitized and dry.

3 (6) Sugar shall be provided only in closed dispensers or in individual packages. Condiments, cream, or half and
4 half shall be provided in individual packages, from an approved dispenser or shall be individually portioned.

5 (7) All raw fruits and vegetables shall be washed thoroughly before being cooked or served.

6 (8) Foods which are not potentially hazardous, such as crackers and condiments, in unopened original packages,
7 and maintained in sound condition, may be re-served or resold.

8 (9) All foods being transported other than fresh shellstock from a food service establishment or from one location
9 to another location for service, shall follow all requirements for storage, display and protection against
10 contamination. All potentially hazardous food shall be kept at 41 degrees F or below, or 140 degrees F or above.
11 All food shall be in covered containers or completely wrapped or packaged to protect against contamination.
12 Containers and covers shall be non-absorbent, impervious and shall be stored in such a manner to maintain
13 temperature as described above.

14 (10) Only those toxic materials required to maintain the establishment in a sanitary condition, and for sanitization
15 of equipment and utensils used in connection with the food establishment, shall be present.

16 (11) All containers of toxic materials shall be prominently and distinctively marked or labeled for easy
17 identification of contents. Toxic material containers shall not be reused for food or food storage.

18 (12) When not in use, toxic materials shall be stored in cabinets that are used for no other purpose, or in a place that
19 is located outside the food storage, food preparation, and clean equipment and utensil storage areas. Bactericides,
20 cleaning agents, and sanitizing agents shall not be stored in the same cabinet or area of the room in which
21 pesticides or other toxic materials are stored. This paragraph does not apply to equipment and utensil cleaners and
22 sanitizers that are normally stored in warewashing areas for availability and convenience, if the materials are stored
23 in such a manner as to prevent contamination of food, equipment, utensils, linens, and single-use articles.

24 (13) Bactericides, cleaning compounds or other compounds intended for use on food-contact surfaces shall not be
25 used in such a manner as to leave a toxic residue on the surfaces, or otherwise constitute a hazard to employees or
26 consumers.

27 (14) Toxic compounds, such as insecticides and rodenticides, in powdered form, shall have a distinctive color so
28 not to be mistaken for food. Toxic materials shall not be used in any way as to contaminate food, equipment, or
29 utensils nor to constitute other hazards to employees or consumers. No pesticide shall be used unless it is registered
30 with the United States Environmental Protection Agency and the New Mexico Department of Agriculture, and in
31 all cases such registered pesticides must be used in conformity with the manufacturer's label instructions.

32 (15) All first aid supplies and personal medications shall be stored in a designated area away from food, equipment,
33 utensils and other toxics that may result in food contamination.

34 (16) Wet storage of packaged food shall be prohibited except for commercially canned or bottled beverages, as
35 provided in 7.6.2.11.A(5)(c).

36 (17) Food may not be stored in locker rooms; in toilet rooms; in dressing rooms; in garbage rooms; in mechanical
37 rooms; under sewer lines that are not shielded to intercept potential drips; under open stairwells; under leaking
38 water lines, including leaking automatic fire sprinkler heads; under lines on which water has condensed; or under
39 any other source of contamination.

40 **D. Cleaning And Sanitizing Of Utensils And Equipment:**

41 (1) After each usage, all kitchenware, and food-contact surfaces or equipment, exclusive of cooking surfaces, used
42 in the preparation, serving, display, or storage of food, shall be thoroughly cleaned and sanitized. The cooking
43 surfaces of grills, griddles and similar cooking devices shall be cleaned to sight and touch at least once a day.

44 (2) Non-food-contact surfaces in food establishments shall be cleaned at such frequency as is necessary to be clean
45 to sight and touch.

46 (3) All kitchenware and food-contact surfaces of equipment used in the preparation, service, display, or storage of
47 potentially hazardous food shall be cleaned and sanitized prior to each use, each time there is a change from
48 working with raw foods to working with ready-to-eat foods, between uses with raw fruits and vegetables and with
49 potentially hazardous foods, and following any interruption of operations during which contamination of the
50 food-contact surfaces is likely to have occurred. When equipment and utensils are used for the preparation of
51 potentially hazardous food on a continuous or production-line basis, in rooms with ambient air temperatures higher
52 than 41 degrees F, the food-contact surfaces of such equipment and utensils shall be cleaned and sanitized at
53 frequent intervals not to exceed four hours to prevent cross contamination and bacterial growth, except as follows:

54 (a) when the ambient room temperature is 41degrees F or less the cleaning frequency shall not be less than
55 once every twenty-four (24) hours,

56 (b) at 45 degrees F , not less than once every twenty (20) hours,

57 (c) at 50 degrees F, not less that once every sixteen (16) hours, and

58 (d) at 55 degrees F, not less than once every ten (10) hours.

59 (4) Wash water shall be kept clean utilizing, when necessary, pre-soaking, pre-scraping or pre-flushing procedures.

- 1 (5) Effective concentrations of a suitable detergent shall be used in both manual and mechanical dishwashing.
- 2 (6) When manual dishwashing is employed, equipment and utensils shall be thoroughly washed in a detergent
3 solution that is kept clean and then shall be completely rinsed. All eating and drinking utensils, and the
4 food-contact surfaces of all other equipment and utensils shall then be sanitized by one of the following methods:
- 5 (a) Immersion for at least thirty (30) seconds in clean hot water at a temperature of at least 171 degrees F;
- 6 (b) Immersion in a sanitizing solution containing:
- 7 (i) 50-200 parts per million of available chlorine at a temperature not less than 75 degrees F for 10
8 seconds;
- 9 (ii) 100-200 parts per million of available chlorine at a temperature not less than 55 degrees F for 10
10 seconds;
- 11 (iii) 12.5-25.0 parts per million of available iodine in a solution having a pH not higher than 5.0 and a
12 temperature of not less than 75 degrees F; or
- 13 (iv) quaternary ammonium compound solutions shall be at a concentration indicated by the
14 manufacturer's label instructions.
- 15 (c) Equipment too large to be treated by the methods set forth in **7.6.2.9.D(6)(a)&(b)** may be treated:
- 16 (i) with steam free from materials or additives harmful to human health; or
- 17 (ii) by applying a chemical sanitizing solution of at least twice the minimum strength required for
18 chlorine and iodine-based sanitizers or as specified by the manufacturer's label in the case of quaternary
19 ammonium compounds.
- 20 (7) If the sanitization method set forth in **7.6.2.9.D(6)(b)** or **(6)(c)ii** is used, the food establishment shall maintain
21 and use suitable test kits for testing solution strength.
- 22 (8) A three-compartment sink, the first for washing, the second for rinsing, and the third for sanitizing, shall be
23 provided and used wherever washing and sanitization of equipment or utensils are conducted manually. The
24 Secretary may approve a two-compartment sink for food establishments where the only utensils to be washed are
25 limited to spatulas, tongs and similar devices, and when the only equipment to be cleaned is stationary and does not
26 require disassembly for proper cleaning.
- 27 (9) Sinks used for manual washing and sanitizing operations shall be of adequate length, width and depth to permit
28 the complete immersion of the utensils, and each compartment of the sink shall be supplied with hot and cold
29 running water (under pressure) from fixtures so designed and constructed as to preclude potential back siphonage.
- 30 (10) When hot water is used as the sanitizing agent in manual operations, numerically scaled thermometers,
31 accurate to plus or minus 3 degrees F shall be provided, convenient to the sink, to permit frequent checks of the
32 water temperature. An integral heating device or fixture shall be installed in, on, or under the sanitizing
33 compartment of the sink capable of maintaining the water at a temperature of at least 170 degrees F. Complete
34 immersion of the utensils and equipment components being sanitized is required.
- 35 (11) Dish tables and drain boards, of adequate size shall be provided for safe handling of soiled utensils prior to
36 washing and for cleaned utensils following rinsing and sanitization. Dish tables and drain boards shall be so located
37 or constructed as not to interfere with the proper use of the dishwashing facilities.
- 38 (12) Sinks, dish tables and drain boards shall be constructed of non-corrodible, non-toxic material, suitably
39 reinforced, of such thickness and design and so installed as to resist denting and buckling, and be self-draining.
- 40 (13) When spray-type dishwashing machines are used, they shall be installed, maintained and operated in
41 accordance with the manufacturer's specifications and instructions and shall meet the following requirements:
- 42 (a) Wash water shall be kept clean. Rinse water tanks shall be supplied with fresh water from the supply line
43 and be so protected by distance, baffles, or other effective means as to prevent the entry of wash water into the
44 rinse water.
- 45 (b) A suitable pressure gauge and gauge cock shall be provided immediately upstream from the final rinse
46 sprays to permit checking the flow pressure, which shall be 15-25 psi, of the final rinse water.
- 47 (c) When chemicals are relied upon for sanitization, the chemicals shall be of the same type and concentration
48 as **7.6.2.9.D(6)(b)**, and be automatically dispensed. When hot water is relied upon for sanitization the dish or
49 utensil shall reach a surface temperature of 160 degrees F or above. Suitable testing devices, such as a
50 maximum-temperature-recording-thermometer, shall be maintained within the establishment to check
51 sanitization.
- 52 (d) Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and
53 rinse cycles as specified by the manufacturer.
- 54 (e) An easily readable, numeric thermometer shall be provided which will indicate to an accuracy of plus or
55 minus 3 degrees F, the temperature of the water or solution in each tank of the dishwashing machine. In
56 addition, a thermometer of equal accuracy shall be provided which will indicate the temperature of the final
57 rinse water as it enters the manifold.
- 58 (f) Jets, nozzles and all other parts of each machine shall be maintained free of chemical deposits, debris and
59 other soil. Automatic dispensers, if used, shall be kept in proper operating condition.

1 (14) When an immersion-type dishwashing machine is employed for equipment and utensil washing and sanitizing,
2 the applicable requirements pertaining to manual dishwashing shall be met. However, a two-compartment system is
3 adequate when the temperature of the wash water is maintained at or above 140 degrees F and hot water at a
4 temperature of at least 171 degrees F is used as the sanitizing agent.

5 (15) Any other procedure may be approved for cleaning or sanitizing equipment and utensils, if it can be readily
6 established that such a procedure will routinely render effective sanitization as demonstrated to the satisfaction of
7 the Secretary or as recommended by the manufacturer.

8 (16) "Clean in place" equipment shall be so designed and constructed so that cleaning and sanitizing solutions
9 circulate in such a manner that all interior food-contact surfaces come in contact with the solutions. The system
10 shall be self-draining and capable of being completely drained.

11 (17) All food service establishments which have limited facilities for cleaning and sanitizing utensils shall use only
12 single-service articles (refer to 7.6.2.9.D(8)).

13 (18) Warewashing sinks, use limitations:

14 (a) warewashing sinks may not be used for handwashing or dumping mop water; and

15 (b) warewashing sinks may be used to wash wiping cloths, wash produce, or thaw food if the sink is cleaned
16 before and after each time it is used to wash wiping cloths or wash produce or thaw food. Sinks used to wash
17 or thaw food shall be sanitized before and after using the sink.

18 **E. Storage And Handling Of Cleaned Equipment And Utensils:**

19 (1) Cleaned and sanitized, portable equipment and utensils shall be stored above the floor in a clean, dry location
20 and suitable space and facilities shall be provided for the storage so that food-contact surfaces are protected from
21 contamination. The food-contact surfaces of fixed equipment shall also be protected from contamination. Utensils
22 shall be air dried before being stored and shall be stored in a self-draining position on suitably located hooks or
23 racks constructed of corrosion-resistant material. Stored containers and utensils shall be covered, inverted or
24 enclosed. Facilities for the storage of flatware (silverware) shall be provided and shall be designed and maintained
25 to present the handle to the employee or consumer.

26 (2) Single-service utensils shall be stored in such a manner as to be protected from contamination.

27 **F. Plumbing And Disposal Of Wastes:**

28 (1) All sewage or waste water shall be disposed of by means of:

29 (a) a public sewerage system; or

30 (b) a sewage disposal system that is constructed and operated in conformance with all applicable state laws
31 and regulations.

32 (2) All plumbing shall be sized, installed and maintained in accordance with all applicable state laws and
33 regulations.

34 (3) Potable water systems shall be installed in such a manner as to preclude the possibility of back-siphonage or
35 backflow. Potable water supply piping shall not be directly connected with any system whereby non-potable water
36 can be drawn or discharged into the potable water supply system. The piping of any non-potable water shall not be
37 connected to equipment or have any outlets in the food processing or preparation areas and shall be permanently
38 marked to identify it from potable water piping. This does not preclude the use of fire sprinklers in these areas.

39 (4) Dishwashing machines, refrigerators, food sinks, steam kettles, potato peelers, ice storage bins, ice machines
40 and similar food-contact equipment shall not be directly connected to the drainage system. Each waste pipe from
41 such equipment shall discharge into an open accessible waste sink, floor drain or other suitable fixture. Indirect
42 connections of drain lines from other equipment used in the preparation of food, washing of food, or washing of
43 equipment and utensils may be required by the Secretary when the installation is such that backflow of sewage may
44 occur.

45 (5) Drain lines shall not discharge or allow discharge of waste water in such a manner as will permit:

46 (a) the flooding of floors;

47 (b) the flowing of water across working or walking areas;

48 (c) flooding into difficult-to-clean areas;

49 (d) pooling on the ground around or under buildings; or

50 (e) creation of a nuisance in any other manner.

51 (6) All refuse shall be kept in containers, constructed of durable, impermeable and non-absorbent material.

52 (7) All food waste containers shall be kept in good repair and be provided with tight-fitting lids or covers, and shall
53 be kept covered when stored or not in continuous use.

54 (8) After being emptied, refuse containers shall be thoroughly cleaned. Waste water from the cleaning operations
55 shall be disposed of as sewage.

56 (9) There shall be a sufficient number of containers to hold all of the refuse which accumulates between periods of
57 removal from the premises.

58 (10) It is the food establishment's responsibility to see that all refuse bins utilized for refuse collection (whether or
59 not they are owned by another establishment) be maintained in a clean condition (inside and out) after being

emptied and prior to further use. Wastewater from the cleaning operations shall be disposed of as sewage.

(11) Refuse bin holding areas shall be easily cleanable. If enclosed, the floors and walls shall be constructed of non-absorbent materials. Refuse bins that are manually lifted shall not exceed a 32-gallon capacity and shall be stored at least 18 inches above the ground or on concrete or asphalt pads. Whether indoors or outdoors, floors or pads must slope for drainage to an approved disposal system that will not allow the accumulation of standing water.

(12) All refuse shall be disposed of daily, or at such intervals as approved by the Secretary, and in such a manner as to prevent a hazard or nuisance.

G. Lavatory Facilities:

(1) Lavatories shall be located within or immediately adjacent to all toilet rooms and within the immediate area of food preparation or food processing, and shall be used for no other purpose than handwashing.

(2) Lavatories shall be of such size, number and location as to permit convenient access and frequent use by all employees.

(3) All establishments are required to install a mixing valve or combination faucet for hot and cold running water. Steam mixing valves are prohibited.

(4) Sanitary hand-drying devices shall be available and conveniently located. Where disposable towels are used, waste receptacles shall be located, conveniently, near the hand-washing facilities and a sufficient quantity of disposable towels shall be supplied at all times for each lavatory. Cloth towels are prohibited in food preparation or processing areas and employee restrooms.

(5) Lavatories, soap dispensers, hand-drying devices and all other components of the handwashing facilities shall be kept sanitary and in good working order.

(6) A sufficient quantity of hot and cold (or tempered) water, under pressure, and soap or other hand cleanser shall be supplied at all times for each lavatory.

(7) Spring-loaded faucets shall not be installed, but if already being used shall be adjusted to an appropriate **TIMED** interval as to allow sufficient time for adequate cleansing and rinsing, a minimum of 15 seconds. Self-closing or slow-closing faucets that remain open for a minimum of 15 seconds, or for the duration of the handwashing process, or motion activated faucets, shall be acceptable.

H. Cleanliness Of Employees:

(1) All employees shall thoroughly wash their hands and forearms with hand cleanser and warm water before starting work. All food handlers shall wash hands during work hours as often as may be required to remove soil and contamination, after working with raw meat products, before handling ready-to-eat foods, after visiting the toilet room, after using tobacco, or after eating or drinking.

(2) No person shall use tobacco in any form or consume food or drink in the food preparation or processing areas, in equipment and utensil washing areas, or while engaged in serving food except that a food employee may drink from a closed beverage container if the container is equipped with a straw and is handled to prevent contamination of food, hands, equipment, utensils, and linens. Appropriate locations for food handlers to smoke, eat or drink shall be designated for their use separate from the above-mentioned areas, assuring that no hazard will result and that contamination will be prevented.

(3) Effective hair restraints shall be used by employees who process, prepare or serve food to keep exposed hair from food or food-contact surfaces.

(4) Employees shall maintain a high degree of personal cleanliness and shall conform to good hygienic practices during all working periods. Personal cleanliness includes clean clothing.

(5) Employees engaged in food processing, preparation or service who have skin infections or communicable forms of infection, including but not limited to cuts, burns, abrasions, boils or bandages on the hands or face, shall be temporarily excluded from work activities in which there is a likelihood of contaminating food or food-contact surfaces.

(6) Hand sanitizers are only acceptable as a supplement to proper handwashing.

I. Water Supply:

(1) The water supply system shall be constructed, protected, operated and maintained in conformance with applicable local, state and federal laws, ordinances and regulations.

(2) Hot and cold running water, under pressure, shall be provided in all areas where food is prepared and where equipment and utensils are washed.

(3) Where a food establishment is supplied by its own water system, the system shall meet the sampling and construction requirements of a non-community water system as defined by the current New Mexico Drinking Water Regulations.

(4) All water not piped into the establishment directly from a public water supply system shall be from an approved source, disinfected, transported, handled, stored and dispensed in a sanitary manner. Such water shall be prevented from entering potable water systems by appropriate cross connection and backflow prevention devices.

J. Sulfiting Agents: On-premise application of sulfiting agents on food shall not be allowed in any food service

1 establishment or by a contractor hired for final preparation of food for that establishment.

2 **K. Miscellaneous:**

3 (1) Vacuum cleaning, wet cleaning or other dustless methods of ceiling, floor and wall cleaning shall be used; or
4 dust-arresting sweeping compounds and push brooms shall be employed. All such cleaning, except emergency
5 floor cleaning, shall be done during periods when the least amount of food is exposed, such as after closing or
6 between meals.

7 (2) Laundered cloths and napkins shall be stored in a clean place until used and shall be protected against
8 contamination.

9 (3) Non-absorbent containers or laundry bags shall be provided for storage of damp or soiled linens.

10 (4) Wiping cloths, or commercially prepared sanitizing sponges, unless used once and discarded, shall comply with
11 the following:

12 (a) cook's cloths used for wiping food spills on tableware, such as plates or bowls being served for the
13 consumer, shall be clean, dry and used for no other purpose;

14 (b) moist cloths used for wiping food spills on kitchenware and food-contact surfaces of equipment shall be
15 clean and rinsed frequently in one of the sanitizing solutions permitted in **7.6.2.9.D(6)(b)**, and used for no
16 other purposes. These cloths shall be stored in the sanitizing solution between uses; and

17 (c) moist cloths or sponges used for cleaning non-food-contact surfaces of equipment such as counter, dining
18 table tops, and shelves shall be clean and rinsed with a solution as specified in **7.6.2.9.D(6)** and used for no
19 other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

20 (5) Animals shall not be permitted in food processing, preparation, storage, display and serving areas, or in
21 equipment or utensil washing areas. Edible fish, crustacea, or shellfish, or fish in aquariums are permitted. Guide
22 dogs for the blind and deaf, service animals for the handicapped and police patrol dogs shall be permitted in dining
23 areas.

24 (6) Safe and effective control measures shall be utilized where necessary to eliminate insects and rodents. The
25 premises shall be kept in such sanitary condition that will prevent the harborage or feeding of insects or rodents.

26 (7) When dressing areas are provided for employees, these areas shall be used for changing from street clothes to
27 work clothes and shall not be used for food storage, preparation or utensil washing. Such areas shall be maintained
28 in a clean and sanitary manner. Lockers or other devices shall be provided for the storage of clothing and personal
29 items.

30 (8) No operation of a food establishment shall be conducted in any room or quarters used for any domestic purpose,
31 and shall be separated from such quarters by complete partitioning and solid self-closing doors. All such rooms and
32 facilities used for food operations, including toilet and lavatory facilities, shall not be used for any domestic
33 purpose, and entry of the public shall not be through the living or domestic quarters.

34 (9) Laundry facilities in a food establishment shall be restricted to the washing and drying of linens, cloths,
35 uniforms and aprons necessary to the operation. Laundry facilities shall not be located where contamination of
36 food, equipment or utensils may occur.

37 (10) The food establishment and all parts of the property used in connection with the operation shall be free of
38 litter, debris or trash that could harbor insects or rodents or become a nuisance.

39 (11) Maintenance and cleaning equipment such as brooms, mops, vacuum cleaners, and similar tools shall be
40 maintained and stored in a way that does not allow contamination of food, utensils, equipment or linens. All
41 unnecessary items shall be removed from the premises.

42 (12) Use limitation of certain metals as food-contact surfaces:

43 (a) cast iron may not be used as a food-contact surface except as a surface for cooking;

44 (b) copper or brass may not be used in contact with foods having a pH below 6.0 such as vinegar, fruit juice or
45 wine;

46 (c) galvanized metal may not be used for food-contact surfaces for beverages, acidic, moist, or hygroscopic
47 food;

48 (d) pewter may not be used in contact with any food;

49 (e) solder and flux containing lead in excess of 0.2 % may not be used on surfaces which contact food; and;

50 (f) pottery glazed or painted with compounds containing lead may not be used in contact with food.

51 (13) Food thermometers may not be constructed of glass except for candy thermometers which are encased in a
52 shatterproof coating.

53 (14) "V" type threads may not be used on food-contact surfaces except in hot oil cooking or filtering equipment.

54
55 (15) Linens, napkins, and sponges, use limitation:

56 (a) except as specified in **7.6.2.9.K(4)(a)**, **(4)(b)** and **(4)(c)**, linens, napkins, and sponges may not be used in
57 contact with food;

58 (b) linens and napkins may be used to line containers used for the service of foods if the linens and napkins
59 are replaced each time the container is refilled for a new consumer;

- 1 (c) clean cloth or slash resistant gloves may be used in direct contact with food that is subsequently cooked
2 such as frozen food or a primal cut of meat; and
3 (d) sponges may not be used in contact with cleaned and sanitized or in-use food-
4 contact surfaces, except as stated in 7.6.2.9.K(4).
5

6 [7.6.2.9 NMAC - Rp, 7 NMAC 6.1.201 to 211, 08/12/2000]
7

8 7.6.2.10 GENERAL EQUIPMENT AND CONSTRUCTION REQUIREMENTS:

9 A. Equipment Design, Construction And Materials:

- 10 (1) All utensils shall be easily cleanable and so durable as to withstand hot water, sanitization and repeated use.
11 (2) Surfaces of equipment and utensils shall be smooth, easily cleanable, non-absorbent, nontoxic, and in good
12 repair.
13 (3) Lubricated bearings and gears of equipment shall be so constructed that lubricants cannot get into the food or
14 onto food-contact surfaces. Where there is a possibility of a lubricant entering into a food product, the lubricant
15 shall be nontoxic food grade.
16 (4) Single-service articles shall be made of safe, nontoxic materials and shall not be reused. Mollusk and crustacean
17 shells shall be used only once as serving containers.
18 (5) Equipment which is placed on tables or counters, unless readily movable, shall be sealed to the table or
19 mounted on legs or feet at least four inches high, or shall meet the National Sanitation Foundation standards, or
20 other equivalent approving authorities and shall be so installed as to facilitate cleaning of the equipment and
21 adjacent areas.
22 (6) Floor-mounted equipment, unless readily movable, shall be sealed to the floor, or shall be installed on raised
23 platforms of concrete or other smooth masonry in such a manner as to prevent liquids or debris from seeping or
24 settling underneath, between, or behind such equipment in spaces which are not fully open for cleaning and
25 inspection or such equipment shall be elevated at least six inches above the floor. The space between adjoining
26 units, and between a unit and the adjacent wall, shall be closed unless exposed to seepage, in which event it shall be
27 sealed; or sufficient space shall be provided to facilitate easy cleaning between, behind, and beside all such
28 equipment.
29 (7) Aisles or working spaces between equipment, and between equipment and walls, shall be unobstructed, and of
30 sufficient width to permit employees to perform their duties readily.
31 (8) All equipment, including new and replacement equipment, shall comply with the standards of an American
32 National Standards Institute (ANSI) - accredited certification program. Such an accredited program includes, but is
33 not limited to, one offered by the National Sanitation Foundation, or Underwriters Laboratories.
34 (9) Grandfathered equipment is equipment that does not meet the standards of 7.6.2.10.A(8), and is in use at the
35 establishment on the effective date of this part and it has been accepted for use by the Health Authority. Such
36 equipment shall be capable of meeting all requirements of this part pertaining to food temperature during
37 preparation, storage, display and serving. Further, it shall be in good repair and capable of being maintained in a
38 sanitary condition. All food contact surfaces shall be non-toxic. Grandfathered equipment shall not be used beyond
39 five (5) years after the effective date of this part or if the establishment closes and is subsequently reopened under a
40 new permittee, whichever occurs first.
41 (10) Commercially-rated refrigeration equipment (manufactured prior to 1997) used for potentially hazardous
42 foods, which is in place and in use in a food establishment and is not capable of maintaining food at 41 degrees F
43 may operate at 45 degrees F for ten (10) years from the adoption of this Part and then shall be upgraded or replaced
44 to maintain food at 41 degrees F or less.

45 B. Toilet Facilities:

- 46 (1) Toilet facilities for employees shall be provided on the premises.
47 (2) All fixtures shall be of sanitary design and readily cleanable, and shall be kept clean and in good repair.
48 (3) Toilet rooms shall be completely enclosed, and shall have tight-fitting, self-closing doors unless they do not
49 open directly into the food storage, food preparation, utensil-washing and utensil storage areas, or dining rooms.
50 Self-closing doors shall not be left open except during cleaning or maintenance.
51 (4) Floors, walls, ceiling, doors, and windows of toilet rooms shall be kept clean and in good repair, and shall
52 comply with 7.6.2.10.C, D and E.
53 (5) Toilet facilities, including the toilet room and fixtures, shall be kept free of objectionable odors.
54 (6) A supply of toilet tissue shall be provided at all times.
55 (7) Easily cleanable receptacles shall be provided for waste materials. Receptacles shall be emptied at least once a
56 day, and more frequently when necessary to prevent excessive accumulation of waste materials.
57 (8) Toilet rooms and vestibules shall not be used for storage of food, single-service items, utensils, or food
58 preparation equipment.
59 (9) Access to toilet facilities provided for patrons shall be directly from the dining area, from outside the building,

1 or through an approved corridor. Passage of patrons through the food preparation area is prohibited. Such facilities
2 shall fully meet the requirements of **7.6.2.10.B**, except that toilet facilities installed prior to the effective date of this
3 Part which do not meet the accessibility requirements of **7.6.2.10.B**, shall be deemed acceptable in that
4 establishment.

5 **C. Floors:**

6 (1) The floors of all food preparation, food storage and utensil-washing rooms and areas, walk-in refrigerators,
7 dressing or locker rooms and toilet rooms shall be constructed of durable and nonabsorbent materials and shall be
8 kept clean and in good repair.

9 (2) Floor drains or floor sinks shall be provided in floors that are water flushed for cleaning or that receive
10 discharges of water or other fluid waste from equipment. The floors shall be graded to the drains.

11 (3) Carpeting may be used on the floors of dining areas only. Any carpeting shall be in good repair and kept clean.
12 Carpeting hereafter installed shall be of tight knit materials.

13 (4) Mats or duckboards, if used, shall be nonabsorbent and so constructed as to facilitate being cleaned, and shall be
14 kept clean and in good repair.

15 (5) All floors installed in food preparation, food storage, utensil-washing rooms and areas, and in walk-in
16 refrigerators, shall provide a concave sealed juncture between the floor and wall. The coving material shall provide
17 a smooth and continuous juncture with the wall.

18 **D. Walls And Ceilings:**

19 (1) Walls and ceilings, including doors, windows, attached equipment and shelving, skylights and similar closures,
20 shall be kept clean and in good repair.

21 (2) Wall and ceiling covering materials in food preparation and utensil-washing areas shall be smooth, easily
22 cleanable and so constructed as to leave no open space or cracks that would permit accumulation of grease or debris
23 or provide harborage for vermin. Walls and ceilings hereafter installed in food preparation and utensil-washing
24 rooms shall be light in color.

25 (3) Studs, joists, and rafters; sewers and drain lines; heating pipes and utility service lines shall not be left exposed
26 unless they are suitably finished and easily cleanable, are kept clean and in good repair, and preclude harborage for
27 vermin.

28 **E. Doors And Windows:**

29 (1) All openings to the outer air shall be effectively protected against the entrance of animals, birds, insects and
30 rodents. Proposed protective measures shall be submitted in writing to the Health Authority for approval.

31 (2) Except as specified in paragraphs (3), (4), and (6) and under paragraph (5) of 7.6.2.10.E, outer openings of a
32 food establishment shall be protected against the entry of insects and rodents by:

33 (a) Filling or closing holes and other gaps along floors, walls, and ceilings:

34 (b) Closed, tight-fitting windows; and

35 (c) Solid, self-closing, tight-fitting doors.

36 (3) Paragraph (2) of this section does not apply if a food establishment opens into a larger structure, such as a mall,
37 airport, or office building, or into an attached structure, such as a porch, and the outer openings from the larger or
38 attached structure are protected against the entry of insects and rodents.

39 (4) Exterior doors used as exits need not be self-closing if they are:

40 (a) Solid and tight-fitting;

41 (b) Designated for use only when an emergency exists, by the fire protection authority that has jurisdiction
42 over the food establishment; and

43 (c) Restricted so they are not used for entrance or exit from the building for purposes other than the designated
44 emergency exit use.

45 (5) Except as specified in paragraphs (3) and (6) of this section, if the windows or doors of a food establishment, or
46 of a larger structure within which a food establishment is located are kept open for ventilation or other purposes or
47 a temporary food establishment is not provided with window and doors as specified in **7.6.2.10E(1)**, the openings
48 shall be protected against the entry of insects and rodents by:

49 (a) 16 mesh to 25.4mm (16 mesh to 1 inch) screens;

50 (b) Properly designed and installed air curtains; or

51 (c) Other effective means.

52 (6) Paragraph (5) of this section does not apply if flying insects and other pests are absent due to the location of the
53 Establishment, the weather, or other limiting conditions.

54 **F. Electrical And Lighting:**

55 (1) Adequate lighting, as determined by the Health Authority, shall be provided for food preparation, storage,
56 serving, utensil-washing, and cleaning activities.

57 (2) Lights in exhaust hoods, over open containers of food, and over food preparation areas shall be provided with
58 protective devices to prevent breakage and contamination of food. The installations shall be of smooth
59 construction, easily removable, and kept clean and in good repair.

1 (3) Infrared or other heat lamps shall be protected against breakage by a shield surrounding and extending beyond
2 the bulb leaving only the face of the bulb exposed.

3 **G. Ventilation:**

4 (1) All rooms shall have sufficient ventilation, as determined by the Health Authority, to keep them reasonably free
5 of excessive heat, steam, condensation vapors, obnoxious odors, smoke fumes, grease vapor, and dust.

6 (2) Obnoxious odors, cooking fumes and vapors shall be effectively vented to the outside and shall be discharged in
7 a manner that will not create a nuisance.

8 (3) Exhaust hoods, or other ventilation devices required by applicable codes shall be designed, installed, and
9 maintained to prevent grease or condensate from dripping into food or onto food preparation surfaces. Filters shall
10 be kept clean and in good repair.

11 (4) Clean-out openings of sufficient size and number shall be provided into the horizontal exhaust ducts serving
12 exhaust hoods over cooking areas. Intake and exhaust ducts shall be designed and maintained to prevent the
13 entrance and accumulation of noxious fumes, dust, dirt, rodents, insects, or other contamination materials.

14
15 [7.6.2.10 NMAC - Rp, 7 NMAC 6.1.301 to 307, 08/12/2000]

16
17 **7.6.2.11 TEMPORARY, MOBILE, SEASONAL, RESTRICTED MENU, BED AND BREAKFAST, AND CATERER**
18 **FOOD SERVICE ESTABLISHMENT REQUIREMENTS:**

19 **A. Temporary Food Service Establishments:**

20 (1) A temporary food service establishment shall generally comply with all provisions of this Part. The Secretary
21 may augment such requirements, including operator training, when needed to assure the service of safe food, and
22 may prohibit, limit, or restrict the sale of certain potentially hazardous foods. The Secretary may modify specific
23 requirements for physical facilities when no health hazard will result and more extensive preparation of potentially
24 hazardous foods may be allowed when the applicant demonstrates capability through facility, equipment, and
25 procedures to prepare and maintain foods in a safe manner.

26 (2) Food preparation at temporary food service establishments shall be conducted in an enclosed shelter or booth
27 that conforms with the following requirements:

28 (a) floors shall be of tight wood, asphalt, or other cleanable material; provided that the Secretary may accept
29 gravel-covered floors, or other surfaces when graded to preclude the accumulation of liquids;

30 (b) ceilings shall be made of wood, canvas, or other materials that protect the interior of the establishment
31 from weather. Walls and ceilings of the food preparation areas shall be constructed in a way that prevents the
32 entrance of insects or other vermin. Screening material used for walls, doors, or windows shall be at least 16
33 mesh to the inch; and

34 (c) counter-service openings shall be no larger than 1 1/2 by 2 1/2 feet in size, except as approved by the
35 Health Authority for the particular operation conducted. Openings shall be provided with tight fitting solid or
36 screened doors or windows or shall be provided with fans installed and operated to restrict the entrance of
37 flying insects. Counter-service openings shall be kept closed, except when in actual use.

38 (3) All potentially hazardous foods to be served by a temporary food service establishment shall be specified in
39 writing on the permit application and shall be approved by the Health Authority at the time the permit is issued.
40 Only those menu items approved by the Health Authority will be allowed for sale during operation of the
41 establishment.

42 (4) For food service operations with unrestricted menus, a temporary food service establishment shall meet fully
43 the requirements of this Part.

44 (5) Food service operations that do not fully meet the requirements of this Part may be permitted to operate when
45 food preparation and service are restricted and deviations from full compliance are covered by the following
46 additional or modified requirements:

47 (a) The preparation of potentially hazardous food shall be restricted to food that, prior to service, requires only
48 limited preparation, such as seasoning and cooking. Potentially hazardous food that is obtained in individual
49 servings, stored in approved facilities maintained at safe temperatures, and served directly in the individual,
50 original container in which it was packaged at a commercial food establishment may also be allowed;

51 (b) Ice that will be consumed, or which will come in contact with food, shall be obtained from an approved
52 source in chipped, crushed, or cubed form. Such ice shall be obtained in single use, closed containers of an
53 approved type, and shall be held therein until used. Such ice shall not be used for other purposes, such as for
54 food storage.

55 (c) Wet storage of packaged food and beverage shall be prohibited; provided, that wet storage of pressurized
56 containers may be permitted when:

57 (i) the water contains at least 50 parts per million of available chlorine or 12.5 parts per million iodine;

58 (ii) the iced water is changed frequently enough to keep both the water and containers clean; and

59 (iii) the water level is not allowed to submerge the cap, valves, or other openings into the containers.

- (d) Food-contact surfaces of food preparation equipment such as grills, stoves, and work tables shall be protected from contamination by consumers and dust. Where necessary, effective shields shall be provided.
- (e) Equipment shall be installed in such a manner that the establishment can be kept clean, and so that food will not become contaminated.
- (f) An adequate supply of water for cleaning shall be maintained in the establishment, and auxiliary heating facilities, capable of producing an ample supply of hot water for such purpose(s) shall be provided.
- (g) Liquid waste, including gray water, that is not discharged into a sewage system shall be disposed of in such a manner as not to create an environmental hazard or nuisance. Health Authority approval of disposal methods shall be requested at the time of permit application.
- (h) Adequate facilities and water shall be provided for employee hand washing. Such facilities shall consist of at least a catch bucket, a pressurized or gravity fed supply of warm water, soap, and individual paper towels.
 - (i) No prepared foods shall be carried over from one day to the next.
 - (j) Any other requirement deemed necessary by the Secretary to protect the public in view of the particular nature of the food service operation shall be met by the permittee.

(6) Temporary food permits shall be subject to immediate suspension/revocation as provided in **7.6.2.8.C&D**.

B. Mobile Food Service Units And Pushcarts:

- (1) All non-self-contained mobile food service units and pushcarts shall operate from a commissary or other fixed food service establishment. Non-self-contained mobile food service units and pushcarts shall report at least daily to their commissary or fixed food service establishment for all supplies and for cleaning and servicing operations. Commissaries or other fixed food service establishments used as a base of operation for mobile food service units or pushcarts shall be constructed and operated in compliance with the requirements of this Part and shall hold a valid permit issued by the Health Authority. Service areas acceptable to the Department shall be required for mobile food service units, which utilize fresh water tanks and liquid waste tanks.
- (2) All non-self-contained mobile food service units and pushcarts shall operate from a New Mexico based and permitted facility and shall generally comply with all provisions of this Part. The Secretary may augment such requirements when needed to assure the service of safe food, and may prohibit the sale of certain potentially hazardous food. The Secretary may modify specific requirements for physical facilities; toilet facilities, lavatories, water, and sewage on a case by case basis when no health hazard will result.
 - (a) Mobile food service units and pushcarts which serve only food that has been prepared, packaged in individual servings, transported and stored under conditions meeting the requirements of this Part need not comply with the requirements pertaining to water, sewage, lavatory, and toilet facilities.
 - (b) Mobile food service units, with the exception of those referred to in **7.6.2.11.B(2)(a)**, unless otherwise exempted, shall be provided with a lavatory with adequate hot and cold water under pressure, soap, and sanitary towels. Storage and disposal of liquid wastes must be in an approved manner.
 - (c) Mobile food service units and pushcarts shall provide only single-service articles for use by consumers.
- (3) Self-contained mobile food service units shall generally comply with all requirements of this Part. Such units are not required to have a commissary or other fixed food service establishment, but shall fill fresh water holding tanks only from approved sources with approved dispensing equipment and dispose of liquid and solid waste in an approved manner.
- (4) The Secretary may add any additional requirements deemed necessary to protect the public in view of the particular nature of the food service operation.

C. Seasonal Or Restricted Menu Food Service Establishments:

- (1) A seasonal food service establishment shall be issued an annual food service permit for a fixed site and for a period not to exceed nine (9) months in any twelve (12) consecutive months.
- (2) A restricted menu food service establishment shall be issued an annual food service permit.
- (3) For unrestricted food service operations, seasonal food service establishments shall fully meet the requirements of this Part.
- (4) When the Health Authority determines that no hazard to the public health will result, seasonal or restricted menu food service establishments that do not fully meet the requirements of this Part may be permitted to operate when food preparation and service are restricted and deviations from full compliance are covered by the additional and modified requirements set forth for restricted temporary food service establishments in **7.6.2.11.A(5)**.

D. Bed And Breakfast Food Service Establishments:

- (1) **Categories of "Bed and Breakfast"** food service establishments are:
 - (a) Continental-menu Bed and Breakfast establishments that limit their breakfast food service to "Continental" or non-potentially hazardous food menus such as coffee, tea, hot chocolate, juices, whole fruits, toast, commercially-prepared rolls, muffins, donuts, bagels, cereals, fruit bowls; and single-service containers of milk, creamers, spreadable cheeses, and butter.
 - (b) Expanded-menu Bed and Breakfast food service establishments that serve an expanded-menu breakfast that may include potentially hazardous foods such as eggs, bacon, sausages, ham, steak, chops and other

1 meats, beans, peppers, onions, pancakes, waffles, cooked cereals, potatoes; and other foods that are prepared
2 and receive no cooking such as cut up citrus fruits, melons, lettuce, carrots, and other vegetables and
3 garnishing herbs. An expanded-menu Bed and Breakfast food service establishment may serve light foods or
4 snacks presented in the afternoon for guest self-service.

5 (2) Every Bed and Breakfast establishment shall be subject to an initial plan review, including menu, physical
6 layout and equipment, to be classified as to category. Any menu, layout or equipment changes to an establishment,
7 once categorized, must be submitted to the Health Authority for review and approval.

8 (3) All plumbing and disposal of sewage and wastewater shall comply with all applicable portions of 7.6.2.9.F,
9 except that all existing establishments shall have backflow preventors on drains for food sinks by one (1) year from
10 the adoption of this Part;

11 (4) All lavatory facilities shall comply with all applicable portions of 7.6.2.9.G, except existing establishments shall
12 have a **designated** handwashing sink approved by the Health Authority by one (1) year from adoption of this Part.

13 (5) All establishments with automatic dishwashers may not be required to have a three compartment sink, but shall
14 have at least a two compartment sink and shall clean and sanitize as defined in 7.6.2.9.D.

15 (6) All Bed and Breakfast establishments not served by a public water supply shall be required to sample the water
16 supply defined in 7.6.2.9.I(3). When construction or siting requirements of the New Mexico Drinking Water
17 Regulations for a public water supply are not met, the Bed & Breakfast establishment shall increase sampling per
18 Health Authority Guidance. A violation of sampling or maximum contaminant level standards shall constitute a
19 violation of 7.6.2.9.I(4).

20 (7) Equipment meeting the standards from an ANSI-accredited certification program (7.6.2.10.A(8)) and the
21 exclusion of the public from kitchens and other food preparation areas (7.6.2.9.K(8)) do not apply to Bed &
22 Breakfast establishments.

23 (8) All establishments shall comply with all requirements of this Part, except as noted in this subsection,
24 7.6.2.11.D.

25 E. Caterer Food Service Establishments:

26 (1) All caterers shall operate from a New Mexico permitted food establishment or commissary.

27 (2) Catering operations shall be permitted and operated separately from other permitted food establishments or
28 commissaries.

29 (3) Caterers shall fully meet the requirements of this Part. For inspectional purposes, upon request by the Health
30 Authority, caterers shall provide a quarterly schedule of events to be catered.

31 (4) Hand washing facility requirements are as follow:

32 (a) when the intent to cater food includes the preparation and delivery of food to a private party or special
33 event and does not include any service or restocking of foods, no hand washing facility is required at the
34 service site;

35 (b) when the intent to cater foods includes the preparation, delivery, display, service, and restocking of foods,
36 other than prepackaged foods, a hand washing facility is required and shall consist of at least a catch bucket, a
37 pressurized or gravity fed supply of warm water, soap, and individual paper towels at the service site.

38 (5) At all times, catered foods shall meet the time and temperature requirements of this Part. Time and temperature
39 records may be required by the Health Authority to document this requirement.

40 (6) All foods, display and service utensils, and other food-contact surfaces shall be protected from contamination
41 throughout operations.

42
43 [7.6.2.11 NMAC - Rp, 7 NMAC 6.1.401 to 403, 08/12/2000]

44 45 7.6.2.12 GENERAL FOOD PROCESSING REQUIREMENTS:

46 A. Specific Food Processing Definitions, as used in 7.6.2.12:

47 (1) **“Acidified Foods”** means low acid foods to which acid(s) or acid food(s) are added and which have a water
48 activity (a_w) greater than 0.85 and a finished equilibrium pH of 4.6 or below;

49 (2) **“Code of Federal Regulations”** (CFR) means the compilation of general and permanent rules published in the
50 federal register by the Executive departments and agencies of the federal government. It is published annually by
51 the United States Government Printing Office. FDA rules appear in Title 21, USDA rules in Title 7 and EPA rules
52 in Title 40;

53 (3) **“EPA”** means the United States Environmental Protection Agency;

54 (4) **“FDA”** means the United States Food and Drug Administration;

55 (5) **“USDA”** means the United States Department of Agriculture;

56 (6) **“hermetically sealed container”** means an airtight container that is designed and intended to be secure against
57 the entry of microorganisms and to maintain the commercial sterility of its contents after processing, or to maintain
58 the controls which prevent potential growth of microorganisms or the elaboration of toxins through acidity (pH) or
59 water activity (a_w);

- 1 (7) “jerky” means a dried finished meat product having a water activity (a_w) less than 0.85 and includes, but is not
2 limited to, beef, poultry, lamb, pork, fish, ratites, organ meats, and wild game;
3 (8) “low acid foods” means any foods, other than alcoholic beverages, with a finished equilibrium pH greater than
4 4.6 and a water activity (a_w) greater than 0.85; and
5 (9) “packaged” means bottled, canned, bagged, securely wrapped, or in a carton.

6 **B. Food Processor Permit Requirements:**

- 7 (1) All food processing establishments shall comply with all applicable provisions of 7.6.2.9 and 7.6.2.10.
8 (2) No person shall operate a food processing establishment without a permit issued by the Health Authority under
9 the conditions outlined in 7.6.2.8.A through K and 7.6.2.12.G.
10 (3) When a food service establishment has an adjunct/additional food processing business, each such business may
11 be permitted separately.

12 **C. Sale Of Adulterated Or Misbranded Food:**

- 13 (1) No person shall sell or offer, or expose for sale, or have in possession with intent to sell, any processed and
14 packaged food product that is adulterated or misbranded.
15 (2) The term “adulterated” includes products that are defective, unsafe, filthy, or produced under unsanitary
16 conditions (Section 25-2-10 NMSA 1978).
17 (3) “Misbranding” includes statements, designs, or pictures in labeling that are false or misleading, and/or failure to
18 provide required information outlined in 7.6.2.12.D(2).
19 (4) Adulterated or misbranded food products shall be reconditioned, condemned or destroyed in accordance with
20 Section 25-2-6 NMSA 1978.

21 **D. Labeling Requirements:**

- 22 (1) All packaged food shall be labeled in accordance with the applicable requirements of the Federal Food, Drug
23 and Cosmetic Act as amended, the Fair Packaging and Labeling Act, regulations developed thereunder, and the
24 New Mexico Food Act. Details concerning type, size and location of required labels are contained in FDA
25 regulations covering the requirements of the Federal Acts (Code of Federal Regulation, Title 21, Part 101.)
26 (2) At least the following information shall appear on the label of any packaged food:
27 (a) the name, street address, city, state and zip code of either the manufacturer, packer, or distributor;
28 (b) an accurate statement of the net amount of food in the package, in terms of weight measure, volume
29 measure (listed in both “English” and metric units) or numerical count;
30 (c) the common or usual name of the food contained in the package; and
31 (d) ingredients of the food, listed by their common names, in order of their predominance by weight.
32 (3) If the label of a food bears representation in a foreign language, the label must bear all the required statements
33 in the foreign language, as well as in English. This requirement does not apply to Spanish names that are
34 commonly used in New Mexico.
35 (4) Any food product that does not comply with all applicable labeling requirements shall be deemed to be
36 misbranded.

37 **E. Standards Of Identity:**

- 38 (1) Standards of identity define what a given food product is, its name and the ingredients that must be used, or are
39 allowed to be used, and the ones that must be declared on the label. FDA food standards govern both labeling and
40 composition of such foods, and must be consulted for detailed specifications. The standards are published in the
41 annual editions of the Code of Federal Regulations, Title 21, Parts 103 through 169.
42 (2) Any food product that is represented as, or purports to be, a food for which a standard of identity has been
43 promulgated, must comply with the specifications of the standard in every respect. A food product that does not
44 comply fully with the applicable standard is misbranded, unless its label bears the word “Imitation” or meets the
45 descriptive label requirements in the Code of Federal Regulations, Title 21, Part 101.

46 **F. Low-Acid Canned Foods And Acidified Foods:**

- 47 (1) All processors of low-acid canned foods or foods that have been acidified must comply with specific federal
48 regulations contained in the Code of Federal Regulations, Title 21, Parts 108, 113, and 114.
49 (2) All processors of low-acid canned foods and acidified foods are required by federal regulation to register their
50 establishments and file processing information for all products with the FDA using appropriate forms. Registration
51 and processing information forms are obtainable on request from: Food and Drug Administration, LACF
52 Registration Coordinator (HFF-233), 200-C Street, SW, Washington, D.C. 20204.
53 (3) Any low-acid canned food product that does not comply with the federal requirements will be considered
54 adulterated under this Part.

55 **G. Operational Plans:**

- 56 (1) In addition to the permit requirements of 7.6.2.8.B of this Part, a food processor shall, at the time of application
57 for a permit for review and acceptance by the Health Authority:
58 (a) provide the following information for the product(s) to be manufactured and/or distributed:
59 (i) names of the ingredient(s);

- 1 (ii) the final product pH if appropriate;
- 2 (iii) the final product water activity (a_w) if appropriate;
- 3 (iv) names of preservative(s);
- 4 (v) the type of packaging to be used and whether the packaging is integral to product stability (e.g. the
- 5 vacuum packing of fresh meat); and
- 6 (vi) the complete operational procedure for product formulation, using a flow chart to show at what
- 7 stage(s) each ingredient is added;
- 8 (b) provide the following information about product distribution:
- 9 (i) the intended distribution and use condition of the product;
- 10 (ii) if the product is to be distributed at ambient, refrigerated or frozen temperature;
- 11 (iii) the expected shelflife during distribution, retail storage, and in the hands of the ultimate consumer;
- 12 (iv) how the product should be prepared for consumption; and
- 13 (v) what mishandling of the product might occur in the merchandising channels or in the hands of the
- 14 consumer;
- 15 (c) state the intended process (cooking time and temperatures). This information may be included in the flow
- 16 chart required in **7.6.2.12.G(1)(a)(vi)**. Consideration must be given to those steps that lead to the destruction
- 17 or inhibition of disease causing or spoilage organisms if done properly, or the growth of such organisms if
- 18 done improperly;
- 19 (d) submit product labels that comply with all requirements of **7.6.2.12.D** of this Part.
- 20 (2) Prior to adding any new product to the product line, or changing the manufacturing process or product
- 21 distribution for any existing product in the product line, the food processor shall provide to the Health Authority:
- 22 (a) for each new product, the same information specified for the initial application in **7.6.2.12.G(1)**; and
- 23 (b) for each existing product for which a change will be made in the manufacturing process or product
- 24 distribution, the applicable changes to the information previously submitted pursuant to **7.6.2.12.G(1)**.
- 25 (3) All food processors shall design, maintain and use a coding system that will identify the date and place of
- 26 manufacture of each product on the product label, or securely affixed to the body of the container. A description of
- 27 the proposed coding system shall be included in the application.
- 28 (4) The Health Authority may require that the food manufacturer's process(es) be reviewed by a competent process
- 29 authority to approve all critical factors of public health significance as defined in the Code of Federal Regulations,
- 30 Title 21, Sections 114.83 and 114.89.
- 31 (5) In lieu of a process authority, the Health Authority may accept those processes which comply with
- 32 **7.6.2.12.E(1) and (2)** of this Part.
- 33 (6) Recall procedures shall be prepared and must be on file at the food processing establishment. Procedures shall
- 34 include plans for recalling products which may be injurious to human health; for identifying products which may
- 35 be injurious to human health; for identifying, collecting, warehousing, and controlling products; for determining the
- 36 effectiveness of recalls; for notifying the Health Authorities, FDA, and USDA of any recalls; and for implementing
- 37 recall programs.
- 38 (7) Whenever the Secretary finds or has probable cause to believe that any food processor's product fails to meet
- 39 standards or is adulterated with any substance that may be injurious to human health, the suspected lot of product
- 40 shall be embargoed or detained at the processing establishment, if not yet distributed to consumers or retail outlets,
- 41 until a determination of ultimate disposition is made.
- 42 (8) If the suspected lot has been distributed, the food processor shall be given the opportunity to recall the product
- 43 voluntarily at the processor's expense.
- 44 (9) If a food processor refuses to conduct a voluntary recall, the Secretary may order a mandatory recall of the
- 45 suspected product lot at the processor's expense.
- 46 (10) When any food product is found, by examination or laboratory analysis, to be in violation of the standards of
- 47 **7.6.2.12.C, E or F**, the Secretary may order condemnation and disposal of the product lot at the processor's
- 48 expense.

49 **H. Compliance With Accepted Operational Procedures:**

- 50 (1) A copy of the accepted process and procedures shall be on file at the food processing establishment. It shall be
- 51 available for review by the Health Authority at all times. A food processor shall not deviate from the accepted
- 52 process and operational procedures without written consent of the Health Authority.
- 53 (2) Samples of ingredients, materials obtained from selected points during the course of processing or handling, and
- 54 final products shall be examined for pathogenic microorganisms as often as necessary for quality assurance. Food
- 55 products may also be tested for organisms that are indicative of the possible presence of pathogens or for specific
- 56 spoilage organisms. The Secretary may request that certain foods be examined for specific pathogenic
- 57 microorganisms or their toxins.
- 58 (3) Routine inspections of facilities, equipment and operations will be conducted as specified in this Part. In
- 59 addition, Hazard Analysis Critical Control Point (HACCP) evaluations will be conducted by the Health Authority

1 and/or the food processor as needed to identify hazards, critical control points, and daily monitoring requirements.

2
3 [7.6.2.12 NMAC - Rp, 7 NMAC 6.1.501 to 508, 08/12/2000]

4
5 **7.6.2.13 JERKY PROCESSING REQUIREMENTS:**

6 **A. Specific Jerky Processing Definitions, as used in 7.6.2.13:**

- 7 (1) **“curing”** means to prepare by a chemical or physical process for keeping;
8 (2) **“marinade”** means to soak meat in a sauce to enrich its flavor or to tenderize it;
9 (3) **“jerky”** means a finished product as defined by the Meat Inspection Division Regulations of the New Mexico
10 Livestock Board and **7.6.2.12.A(7)** of this Part; and
11 (4) **“jerky processing establishment”** means a meat market which prepares jerky for retail sale or any
12 establishment where jerky is manufactured, prepared, processed, packaged, or repackaged for ultimate sale.

13 **B. Jerky Processing Methods:**

- 14 (1) If the same rooms and equipment are used for preparation and packaging, then after the completion of the
15 slicing of the meat and placing the product in the drying rooms or dehydrators, all process ware and food-contact
16 surfaces of equipment used in the preparation shall be cleaned and sanitized before any finished product is
17 packaged using that same process ware or equipment.
18 (2) The establishment shall facilitate the inspection and monitoring of the treatment process by providing
19 appropriate time and temperature recording equipment approved by the Health Authority.
20 (3) The establishment shall record the time, internal temperature, and other critical factors for each lot of product
21 produced. This information shall be available at the establishment for inspection at all times.
22 (4) The establishment shall have on file in the establishment, a copy of the current accepted processing method for
23 each product produced. The processing method description shall include a description of:
24 (a) handling procedures for meat ingredients including maximum time and temperature exposures during
25 thawing, trimming, curing, slicing, marinating, other preparation steps, and other applicable product factors
26 the establishment and the Health Authority identify as critical;
27 (b) a procedure for identifying a product lot during processing, its lot identification codes, and how the
28 finished product package codes can be identified with a specific production lot. The establishment shall divide
29 production lots into one day’s production or less;
30 (c) procedures used to comply with the treatment process;
31 (d) the drying procedures and methods used to prevent recontamination of the treated product; and
32 (e) the equipment and procedures for measuring and recording time and temperature required by the treatment
33 used by the establishment. The measuring devices shall be both readable and accurate within plus or minus 2
34 degrees F or 1 minute.
35 (5) All meats shall be heated so that all parts reach the temperatures specified in **7.6.2.13.B(5)(a) and (b)**, as
36 applicable, within three (3) hours or less.
37 (a) Beef, lamb and fish products shall be heated to at least 145 degrees F.
38 (b) Poultry, pork products, and all other meats shall be heated to at least 165 degrees F.
39 (6) In lieu of **7.6.2.13.B(5)**, upon petition by the processing establishment, the Health Authority shall consider
40 alternative methods for treating product and may accept any whose safety is adequately documented by data
41 developed according to an experimental protocol previously reviewed and accepted by the Health Authority.

42
43 [7.6.2.13 NMAC - Rp, 7 NMAC 6.1.60. to 602, 08/12/2000]

44
45 **7.6.2.14 BOTTLED WATER PROCESSING REQUIREMENTS:**

46 **A. Specific Bottled Water Processing Definitions, as used in 7.6.2.14:**

- 47 (1) **“adulteration”** means the contamination of a bottled water product with any poisonous or deleterious material,
48 substance, or agent that would render the bottled water injurious to health; or if the bottled water consists in part of
49 a contaminated, filthy, impure additive or ingredient; or if the bottled water has been produced, prepared, bottled,
50 or held under unsanitary conditions whereby it may have been rendered unwholesome or injurious to health; or if
51 the container is composed, in whole or in part, of any poisonous or deleterious substance which may render the
52 contents injurious to health;
53
54 (2) **“bottled water”** means water that is from an approved source and is placed in a sealed container or package
55 and is offered for sale for human consumption or other consumer uses;
56 (3) **“bottled water plant”** means any place or establishment in which bottled water is prepared for sale; and
57 (4) **“water source”** means water for processing bottled water which shall be from a source approved as a “public
58 water system” as defined and monitored under the New Mexico Drinking Water Regulations.

59 **B. Bottled Water Processing Operational Requirements And Standards:**

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1 (1) The bottled water plant operator shall follow generally accepted Good Manufacturing Practice such as
2 contained in 21 CFR Part 129 or the International Bottled Water Association Model Bottled Water Regulations and
3 shall meet all the structural and equipment requirements of **7.6.2.10.A through G** of this Part.

4 (2) Plants that bottle products through lines or equipment used for food or milk products shall demonstrate (assure)
5 that the cleaning process prevents adulteration of the bottled water. Bottled water shall not be transported or stored
6 in bulk tanks used for any non-food product, nor processed or bottled through equipment or lines used for any
7 non-food product.

8 (3) At the time of application for a permit from the Health Authority, the following information shall be provided,
9 in addition to that required in **7.6.2.8.B, 7.6.2.12.B,C,D,G and H:**

10 (a) a statement describing the proposed water source(s) with a site plan where applicable;

11 (b) a floor plan layout of the plant with a description of major equipment items;

12 (c) a description of the cleaning and sanitization process for all containers and equipment and a frequency
13 schedule; and

14 (d) an example of each product label and a description of the batch code system to be used as required in
15 **7.6.2.14.C.**

16 (4) Each bottled water plant operator shall develop and maintain procedures for notification of the Health
17 Authority, for consumer notification, and for product recall. The operator shall implement any such procedure as
18 necessary with respect to any product for which the operator or the Health Authority knows or has reason to believe
19 circumstances exist that may adversely affect product safety for the consumer. Each bottled water product shall
20 exhibit a code that is designed to remain affixed to the container during use and that contains either the date of
21 manufacture or a lot or batch number to facilitate product identification for recall.

22 **C. Bottled Water Labeling Requirements And Batch Code Identification:**

23 (1) All bottled water product labels shall conform to **7.6.2.12.D.**

24 (2) The label shall not state or imply any component or health benefit which cannot be substantiated in fact.
25 Substantiation shall be at the expense of the water bottler.

26 (3) For any statement on the label implying a specific type of water source, the product shall be from such a source.
27 Terms used to describe the type of finished bottled water product shall conform to 21 CFR Section 165.110 or
28 recognized bottled water industry standards such as the International Bottled Water Association Model Bottled
29 Water Regulations.

30 (4) A statement of any treatment or type of process used for the finished product shall be included on the label.

31 (5) There shall be a code system to identify each batch of product, (or continuous run) as to at least date and place
32 of bottling.

33 (6) Such code may appear on the container or the label but not on the closure (lid, cap).

34 **D. Analytical Requirements:** Unless otherwise provided in this Part, samples shall be collected, prepared, and
35 examined using the most current methods for the examination of drinking water listed in the Code of Federal
36 Regulations (40 C.F.R. 141) or by other methods for the examination of drinking water approved by the United States
37 Environmental Protection Agency. Examination of samples shall be performed by a laboratory:

38 (1) approved by the Health Authority;

39 (2) certified by the United States Environmental Protection Agency (EPA);

40 (3) certified by the primary enforcement agency in any state that has been granted primacy by EPA; or

41 (4) certified or accredited by a third-party organization acceptable to a primacy state.

42 **E. Monitoring Requirements:**

43 (1) All water bottling plants shall be required to submit one microbiological sample per finished product per week.
44 A copy of the microbiological analysis report shall be submitted within ten (10) working days of analysis to the
45 Health Authority.

46 (a) Any coliform or fecal coliform positive result shall require the plant owner or operator to notify the Health
47 Authority within twenty-four (24) hours and to submit a confirmation sample within twenty-four (24) hours.

48 (b) Compliance with the maximum contaminant level (MCL) for microbiological contamination is based on
49 no more than one positive coliform or fecal coliform sample within twenty-four (24) hours.

50 (2) If required by the Secretary, initial sampling of a water source shall meet all requirements of the New Mexico
51 Water Supply Regulations, including the following minimum requirements:

52 (a) Maximum contaminant levels for inorganic compounds.

53 (b) Maximum contaminant levels for water properties.

54 (c) Maximum contaminant levels for radionuclides.

55 (d) Maximum contaminant levels for volatile organic compounds.

56 (e) Maximum contaminant levels for semi-volatile organic compounds.

57 (3) More frequent sampling of the finished product(s) or water source shall be conducted when ordered by the
58 Secretary in the event of possible contamination or when changes in the distribution system or treatment processing
59 occurs which may increase the concentration of a contaminant whether listed in the regulations or not. All expenses

1 incurred for sampling, transportation of samples, and sample analysis shall be borne by the water bottler.

2 (4) A bottled water supplier who knows that a primary Maximum Contaminant Level, as specified in the New
3 Mexico Drinking Water Regulations, has been exceeded or who has reason to believe circumstances exist that may
4 adversely affect the safety of bottled water, including but not limited to source contamination, spills, accidents,
5 natural disasters, or breakdowns in treatment, shall notify the Health Authority within twenty-four (24) hours.

6 **F. Record Maintenance:**

7 (1) The following records shall be retained for the period of no less than five (5) years:

8 (a) bacteriological and chemical analyses made pursuant to this Part;

9 (b) copies of any written reports, correspondence, or communications relating to inspections; and

10 (c) records concerning any waivers granted to the facility.

11 (2) The following records shall be retained on the premises at all times:

12 (a) plans and specifications of the facility and any modification thereof; and

13 (b) plans and flow charts indicative of the current water bottling processing.

14 **G. Waivers From Source Water Sampling And Testing:** A water bottling plant operator is granted a waiver from
15 sampling a water source, if the water source is a public water supply system for which all sampling requirements
16 outlined in the New Mexico Water Supply Regulations are being met. A water bottling plant operator may not receive a
17 waiver from sampling finished products as required in 7.6.2.14.E(1) and (3) of this Part.

18
19 [7.6.2.14 NMAC - Rp, 7 NMAC 6.1. 701 to 708, 08/12/2000]

20
21 **7.6.2.15 SHELLFISH PROCESSING AND CERTIFICATION REQUIREMENTS:**

22 **A. Specific Shellfish Processing Definitions, as used in 7.6.2.15:**

23 (1) **“certification”** means a State program whereby the State of New Mexico assures receiving jurisdictions that a
24 shellfish processor meets criteria of the National Shellfish Sanitation Program (NSSP) and is eligible for interstate
25 shipment and listing in the Interstate Certified Shellfish Shippers list;

26 (2) **“certification number”** means the number assigned by the Health Authority to each certified shellfish dealer,
27 consisting of a three digit number preceded by two letter state abbreviation (NM) and followed by the two letter
28 symbol designating the type of operation certified (RP, RS, SS or SP);

29 (3) **“commingling”** means the act of combining different species of shellfish or lots of shellfish or shucked
30 shellfish;

31 (4) **“controlled purification”** means the process of using a controlled aquatic environment to reduce the level of
32 bacteria and viruses in live shellfish;

33 (5) **“dealer”** means a commercial shellfish shipper, reshipper, shucker-packer, repacker, or depuration processor or
34 operation;

35 (6) **“depuration”** means a process to reduce the number of pathogenic organisms that may be present in shellfish
36 harvested from moderately polluted (restricted) waters to such levels that the shellfish will be rendered safe for
37 human consumption without further processing;

38 (7) **“dry storage”** means the storage of shellstock out of water;

39 (8) **“Interstate Certified Shellfish Shippers List”** means the listing, published by FDA, of dealers certified by the
40 states to pack and ship shellfish;

41 (9) **“ICSSL”** means the Interstate Certified Shellfish Shippers List;

42 (10) **“label”** means any written, printed, or graphic matter affixed to or appearing upon any package containing
43 shellfish;

44 (11) **“lot of shellstock”** means a collection of bulk shellstock or containers of shellstock of no more than one day’s
45 harvest from a single defined growing area harvested by one or more harvesters;

46 (12) **“lot of shucked shellfish”** means a collection of containers of no more than one day’s shucked shellfish
47 product produced under conditions as nearly uniform as possible, and designated by a common container code or
48 marking;

49 (13) **“National Shellfish Sanitation Program”** means the Cooperative State - FDA - Industry Program for the
50 sanitary control of harvesting, shipping and processing of shellfish and the certification of interstate shellfish
51 shippers;

52 (14) **“NSSP”** means the National Shellfish Sanitation Program;

53 (15) **“processor”** means a person who depurates, shucks, packs, or repacks shellfish;

54 (16) **“Repacker” or “RP”** means a person other than the original certified shucker-packer who repacks shucked
55 shellfish into other containers. A repacker may also repack and ship shellstock. A repacker shall not shuck
56 shellfish;

57 (17) **“Reshipper” or “RS”** means a person who purchases already packaged and tagged shucked shellfish or
58 shellstock from other certified shippers and sells the product without repacking or relabeling to other certified
59 shippers, wholesalers, or retailers;

1 (18) “shellfish” means all edible species of oysters, clams, and mussels either shucked, in the shell, fresh or fresh
2 frozen, whole or in part; but does not include scallop species from the family *Pectinidae*;

3 (19) “shellstock” means fresh, live shellfish in the shell;

4 (20) “Shellstock Shipper” or “SS” means a person who grows, harvests, buys, or repacks and sells shellstock.
5 Shellstock shippers are not authorized to shuck shellfish nor to repack shucked shellfish. A shellstock shipper may
6 ship shucked shellfish maintained in their original package;

7 (21) “shucked shellfish” means shellfish, whole or in part, from which one or both shells have been removed;

8 (22) “Shucker-Packer” or “SP” means a person who shucks and packs shellfish. A shucker-packer may act as a
9 shellstock shipper or reshipper or may repack shellfish originating from other certified dealers;

10 (23) “transaction record” means a form or forms used to document each purchase or sale of shellfish at the
11 wholesale level; and

12 (24) “wet storage” means the temporary storage of shellfish from approved sources, intended for marketing, in
13 containers or floats in natural bodies of water or in tanks containing natural or synthetic seawater.

14 **B. General Shellfish Processing Requirements:**

15 (1) Raw shellfish shall be obtained from approved waters and produced, handled, and distributed in a sanitary
16 manner.

17 (2) Shellfish shall comply with the general requirements of the Federal Food, Drug, and Cosmetic Act, and also
18 with requirements of the National Shellfish Sanitation Program administered by FDA and the Interstate Shellfish
19 Sanitation Conference.

20 (3) All applicable portions of this Part shall apply to shellfish shipping, reshipping, repacking and wet storage.

21 (4) No shellfish shall be offered for sale for food in New Mexico unless it is obtained from shellfish dealers
22 currently certified by the appropriate state authority. Shellfish obtained from sources other than those listed in the
23 most current monthly publication of the Interstate Certified Shellfish Shippers List, shall be considered unfit for
24 human consumption.

25 (5) No person shall engage in any activity requiring certification under this Part without having applied for, and
26 obtained, a certification number issued by the Health Authority for the particular activity.

27 **C. Permits And Certification:**

28 (1) The permit requirements of 7.6.2.8.E apply to shellfish shippers, reshippers, repackers and wet storage.

29 (2) In addition to the requirements of 7.6.2.8.A, repackers of shucked shellfish and operators of wet storage
30 facilities shall submit for review and approval, complete operational procedures for all phases of the activity, as
31 required in 7.6.2.12.G.

32 (3) A certificate and certification number shall be issued to persons who obtained shellstock and shucked shellfish
33 from certified dealers and sell their shellfish to instate wholesale or retail outlets, other certified shippers or in
34 interstate commerce.

35 (4) Shellstock shippers, repackers, and reshippers who fully comply with all certification requirements and also sell
36 their shellfish in interstate commerce will be included in the Interstate Certified Shellfish Shippers List. Lack of
37 compliance with the certification requirements may result in decertification or permit suspension.

38 (5) Transportation agents or common carriers utilized by certified dealers do not have to be certified.

39 **D. Shellfish Certificate:**

40 (1) The Health Authority’s certifying officer responsible for completing forms FDA 3038b, SHELLFISH
41 CERTIFICATE, shall forward the complete form to FDA. (HFF-340), 200 “C” Street, SW, Washington, D.C.
42 20204 for publication in the monthly listing and a copy to the FDA. Regional or District office. The interstate
43 shellfish certificate shall provide the following information:

44 (a) the usual business name that will appear on the Interstate Certified Shellfish Shippers List;

45 (b) a unique certificate number for each establishment consisting of a one to five digit Arabic number,
46 preceded by the letters (NM) and followed by the two letter abbreviations for the type of operation the dealer
47 is qualified to perform; repacker (RP), shellstock shipper (SS), or reshipper (RS);

48 (c) a business address where inspections are conducted; and

49 (d) an expiration date.

50 (2) Each shipper’s certification shall be renewed annually. Certification renewal shall be completed at least fifteen
51 (15) days prior to the expiration date each year. The renewal certificate should be sent to the FDA’s Shellfish
52 Sanitation Branch at least fifteen (15) days prior to the date of printing of the ICSSL during the month the current
53 certificate expires.

54 **E. Shellstock Shippers:**

55 (1) Persons who buy and sell shellstock from a harvester or other certified dealer and who repackage and relabel
56 shellstock shall be certified by the Health Authority as a shellstock shipper. A shellstock shipper shall not shuck,
57 relabel or repackage shucked shellfish, but may reship already packaged shellstock or shucked shellfish.

58 (2) All shellstock shall originate from an approved source and be packaged, protected and identified as specified in
59 7.6.2.15.E. All shellstock received from other certified shellfish dealers shall have a durable, waterproof tag (at

1 least 2-5/8 inches by 5-1/4 inches) on each container with the following information:

- 2 (a) the dealer's name and address;
- 3 (b) the dealer's certification number;
- 4 (c) the original shellstock shipper's certification number;
- 5 (d) the date of harvest; and
- 6 (e) the most precise identification of the harvest location as is practicable.

7 (3) Fresh, living shellstock shall be shipped and stored at ambient air temperatures of 50 degrees F or below and
8 under such conditions as to prevent contamination. Shellstock shall be identified and records maintained in such a
9 manner that containers can be traced back to their source.

10 (4) All repacking and relabeling of shellstock shall be done as follows:

- 11 (a) only clean and wholesome shellfish shall be repacked. Repacking facilities and equipment shall meet all
12 applicable sanitation requirements of these regulations to assure that microbiological deterioration does not
13 occur;
- 14 (b) shellstock from different lots shall not be commingled; and
- 15 (c) each container of repacked or relabeled shellstock shall be identified as to harvest area, date of harvest,
16 type and quantity of shellfish, and the certifications number of the shellstock shippers.

17 (5) Records shall be maintained for one year which will permit a package of shellstock to be traced back to the
18 harvest area. Records shall also include the date of harvest and if possible, the harvester.

19 **F. Shellfish Reshippers:**

20 (1) Persons who obtain shellstock or shucked shellfish from certified dealers and sell the shellstock to other
21 certified shippers, non-certified retailers, or in interstate commerce shall be certified by the Health Authority as
22 shellstock reshippers. Shellstock reshippers may not buy or sell shellstock from a harvester but must obtain
23 shellstock from a certified dealer.

24 (2) A shellstock reshipper shall not repack shellstock or shuck or repack shucked shellfish, nor shall a reshipper
25 remove or alter any existing label information on any packaged shellstock. By contrast, a shellstock shipper may
26 repackage shellstock but not shucked shellfish.

27 (3) The original labels on shucked shellfish and certified dealer's tags or labels on shellstock shall be maintained on
28 the product containers. Labeling or tagging information shall not be altered or removed, nor shall shellstock be
29 commingled, resorted, or repackaged. The name and certification number of the reshipper shall be added to the
30 package.

31 **G. Shellfish Repackers:**

32 (1) Persons who remove shucked shellfish from one package and place and relabel them in another package shall
33 be certified by the Health Authority as a shellfish repacker.

34 (2) Shucked shellfish to be repacked shall originate only from a certified shucker-packer and upon receipt, shall be
35 refrigerated, protected and labeled in compliance with 7.6.2.15.H.

36 (3) Records of each purchase shall be maintained by the dealer who will permit all shucked shellfish to be traced
37 back to the source.

38 (4) Shellfish from different lots shall not be commingled during repacking.

39 (5) The internal temperature of the fresh shellfish shall be 45 degrees F or less at the time of receipt, while frozen
40 shellfish shall be at 0 degrees F or less.

41 (6) Only wholesome shellfish shall be repacked, and good sanitary practices shall be followed to minimize
42 microbial growth and product deterioration.

43 (7) The facilities in which shucked shellfish are repacked shall comply with the general sanitation requirements of
44 this Part.

45 **H. Shellfish Quality Control:**

46 (1) When shucked shellfish are handled, the following requirements shall apply:

- 47 (a) The certified dealer receiving shellfish shall assure that incoming shellfish are:
 - 48 (i) obtained from a certified dealer;
 - 49 (ii) properly tagged or otherwise identified to show their source;
 - 50 (iii) accompanied by all required transaction records; and
 - 51 (iv) clean and wholesome.

52 (b) Shucked shellfish shall be held and transported at 41 degrees F or less. Storage and shipping of sealed
53 containers of shucked shellfish in wet ice is highly recommended.

54 (c) Packaged shellfish to be frozen shall be arranged to insure rapid freezing, and shall be frozen at a
55 temperature of 0 degrees F or less, with packages frozen solid within twelve (12) hours after the start of
56 freezing. Frozen shellfish shall be handled in such a manner as to remain frozen solid, and held at 0 degrees F
57 or less.

58 (d) All containers holding shucked shellfish shall be kept covered during refrigeration.

59 (e) Ice shall be manufactured at the establishment from potable water in a commercial machine which has

1 been properly installed without cross connections, or in another establishment approved by the Health
2 Authority.

3 (f) Complete and accurate legible transaction records shall be maintained by each certified dealer that provide
4 all information necessary to trace all purchases and sales of shellfish back to their source.

5 (g) The general equipment and construction requirements outlined in **7.6.2.10.A through G** shall apply to all
6 buildings, structures, and equipment.

7 (2) When shellstock is handled, the following requirements shall apply:

8 (a) Shellstock shall be obtained from a certified dealer which are properly tagged or identified to show their
9 source, and which are accompanied by all required transaction records. Reshippers shall not obtain shellstock
10 directly from harvesters.

11 (b) Complete, accurate and legible transaction records shall be maintained by each certified dealer which
12 provide all information necessary to trace all purchases and sales of shellstock back to their source.

13 (c) Shellstock in dry storage shall be protected from contamination and maintained in ambient air temperatures
14 of 41 degrees F or below. Shellstock from different sources shall be separated as necessary to avoid
15 commingling and aid in maintaining source identity.

16 (d) Wet storage shall be in accordance with **7.6.2.15.I**.

17 (e) All trucks used for hauling bulk, bagged or otherwise packaged shellstock shall be constructed, operated,
18 and maintained so as to prevent contamination, deterioration, or decomposition of the shellfish, and shall be
19 kept clean.

20 (f) Adequately refrigerated trucks shall be used to transport shellstock when the ambient air temperature is
21 such that unacceptable bacterial growth or deterioration may occur.

22 (g) The general equipment and construction requirements outlined in **7.6.2.10.A through G** shall apply to all
23 buildings, structures and equipment.

24 (3) If a shellfish reshipper business consists only of a truck, a permanent business address where vehicles and
25 records are available for inspection shall be maintained. The following requirements shall apply:

26 (a) Such vehicles shall comply with the requirements of **7.6.2.15.H(2)(e)**.

27 (b) The source of shellfish shall comply with the requirements of **7.6.2.15.H(1)(a) and 7.6.2.15.H(2)(a)**.

28 (c) Refrigeration and shipping of shucked shellfish shall comply with provisions of **7.6.2.15.H(1)(b) and (c)**.

29 (d) Records shall be maintained as specified in **7.6.2.15.H(2)(b)**.

30 **I. Wet Storage Of Shellfish:**

31 (1) Shellfish for wet storage shall originate only from a certified dealer and shall be identified and shipped in
32 accordance with this Part. Wet storage may be used for temporary storage of approved shellfish, for desanding and
33 for improving palatability.

34 (2) Each wet storage site or facility shall be inspected and approved annually by the Health Authority. Factors to be
35 reviewed include, but are not limited to:

36 (a) a plan giving the design of the storage facility;

37 (b) the source of water to be used for wet storage and details of any water treatment system;

38 (c) the purpose of the wet storage operation such as holding, conditioning, or salinization, and any species
39 specific physiologic factors that may affect design criteria;

40 (d) the design, construction and operation of the facility and equipment; and

41 (e) the effectiveness of cleaning and sanitization.

42 (3) Wet storage operations shall be conducted in structures that comply with the general equipment and
43 construction requirements outlined in **7.6.2.10.A through G**.

44
45 [7.6.2.15 NMAC - Rp, 7 NMAC 6.1.801 to 809, 08/12/2000]

46 **7.6.2.16 HOME-BASED FOOD PROCESSING:**

47 **A. Plan Review, Permitting, Inspection, and Training Requirements:**

48 (1) No person shall operate a home-based food processing operation without a permit issued by the health authority
49 under **7.6.2.8 NMAC** and **Subsection G** of **7.6.2.12 NMAC**, except as specified in **7.6.2.16 NMAC**.

50 (2) During the initial plan review, proof of attendance of a health authority-approved food safety course within the
51 last five (5) years must be provided.

52 (3) Changes made to a home-based food processing operation from the initial plan review must be submitted to the
53 health authority for review and approval.

54 (4) The health authority may renew an annual permit for a home-based food processing operation if the applicant
55 adheres to **7.6.2.8 NMAC** and submits proof of attendance of a health authority-approved food safety course within
56 the last five (5) years.

57 (5) The permit issued shall be displayed at the home-based food processing operation. A copy of the permit shall be
58 displayed at places at which the operator sells food at times when the operator is selling the home-based processed
59

1 food.

2 **B. Food Protection Requirements:**

- 3 (1) All home-based food processing operations shall comply with **7.6.2.9 NMAC, 7.6.2.10 NMAC and 7.6.2.12**
4 **NMAC**, except as specified in **7.6.2.16 NMAC**.
5 (2) Products processed by home-based food processing operations shall be packaged in food grade material.
6 (3) Home-based processed food products and components shall be stored separate and apart from residential foods
7 and protected from contamination, insects, rodents, pests, water leaks, dust, dirt and other contaminants.
8 (4) Home-based food processing operations must keep a sample of each processed food batch for fourteen (14)
9 days. The samples shall be labeled with the production date and time.
10 (5) Vehicles used in transporting home-based processed food products shall be maintained in a safe and sanitary
11 manner. Vehicle compartments used to transport animals shall not be used for transporting home-based processed
12 foods.

13 **C. Exceptions and Limitations:**

- 14 (1) The following provisions shall not apply to home-based food processing operations:
15 (a) **Subsection G of 7.6.2.8 NMAC;**
16 (b) **Paragraph (8) of Subsection D of 7.6.2.9 NMAC;**
17 (c) **Paragraph (11) of Subsection F of 7.6.2.9 NMAC;**
18 (d) **Paragraphs (2), (3), (8) and (9) of Subsection K of 7.6.2.9 NMAC;**
19 (e) **Paragraphs (5), (6), (7), (8), (9) and (10) of Subsection A of 7.6.2.10 NMAC;**
20 (f) **Paragraph (3) of Subsection B of 7.6.2.10 NMAC (self-closing door requirement only);**
21 (g) **Paragraph (9) of Subsection B of 7.6.2.10 NMAC;**
22 (h) **Paragraphs (3) and (5) of Subsection C of 7.6.2.10 NMAC;**
23 (i) **Subparagraph (c) of Paragraph (2) of Subsection E of 7.6.2.10 NMAC.**
24 (2) Food products processed by a home-based food processing operation shall not be potentially hazardous foods.
25 The health authority shall review the home-based food products to determine the hazard category and may approve
26 the products for home-based processing.
27 (3) A home-based food processing operation shall only sell its products at farmer's markets, roadside stands,
28 festivals, or other venues in which the producer sells directly to the consumer.
29 (4) Products processed by a home-based food processing operation shall not be sold, used, or offered for
30 consumption in retail food establishments including, but not limited to, grocery stores and convenience stores, by
31 internet sales, or sold in interstate commerce.
32 (5) Pets shall not be permitted in the kitchen and shall be kept out of food preparation areas during home-based
33 food processing related activities.
34 (6) Non-employees shall not be allowed entry into the kitchen during home-based food processing related
35 activities.
36 (7) A home-based food processing operation shall not wash out or clean pet cages, pans or similar items in the
37 kitchen.
38 (8) Household cooking may not occur in the kitchen during home-based food processing related activities.
39 (9) The following provisions are applicable to home-based food processing operations only during home-based
40 food processing related activities:
41 (a) **Paragraphs (1) and (18) of Subsection D of 7.6.2.9 NMAC;**
42 (b) **Paragraph (1) of Subsection G of 7.6.2.9 NMAC (handwashing usage only);**
43 (c) **Paragraph (4) of Subsection G of 7.6.2.9 NMAC;**
44 (d) **Paragraph (2) of Subsection H of 7.6.2.9 NMAC;**
45 (e) **Paragraph (5) of Subsection K of 7.6.2.9 NMAC;**
46 (f) **Paragraph (7) of Subsection B of 7.6.2.10 NMAC (emptying requirements only).**
47 (10) A home-based food processing operation shall submit in its operational plan required by **Subsection G** of
48 **7.6.2.12 NMAC** a detailed procedure to be used to clean and sanitize the kitchen sink before and during
49 home-based food processing related activities.
50 (11) A home-based food processing operation shall comply with **Paragraph (4) of Subsection F** of **7.6.2.9 NMAC**
51 unless an alternative method is approved by the health authority. Submittal of an alternative method shall comply
52 with the variance procedures found in **Subsection J** of **7.6.2.8 NMAC**.
53 (12) A home-based food processing operation shall comply with **Subsection G** of **7.6.2.9 NMAC** unless an
54 alternative method is approved by the health authority. Submittal of an alternative method shall comply with the
55 variance procedures found in **Subsection J** of **7.6.2.8 NMAC**.

56 **D. Home-Based Food Labeling:**

- 57 (1) A home-based food processing operation shall properly label all foods in accordance with state and federal law,
58 including **Subsection D** of **7.6.2.12 NMAC**.
59 (2) Label information shall also include the words "Home Produced" in bold conspicuous 12 point type on the

1 principal display panel.

2
3 [7.6.2.16 NMAC - Rp, 7 NMAC 6.1.901 to 905, 08/12/2000; 7.6.2.16 NMAC - N, 01/01/2010]

4
5 **7.6.2.17 MISCELLANEOUS:**

6 **A. Severability:** If any portion or application of this part (7.6.2 NMAC) is held invalid for any reason, the remainder of
7 this part or application to other persons or situations shall not be affected.

8 **B. Amendment And Supersession Of Prior Regulations; References In Other Regulations:** This part shall be
9 construed as amending and superseding the Food Service and Food Processing Regulations, EIB FQM 2, filed October
10 27, 1995, as amended. Any reference to the Food Service and Food Processing Regulations or to any prior version of the
11 Food Service Regulations in any other rule shall be construed as a reference to this part.

12 **C. Savings Clause:** Supersession of the Food Service and Food Processor Regulations shall not affect any permit issued
13 pursuant to, nor any administrative or judicial action for the enforcement of, those regulations.

14 **D. Collateral Requirements:** Compliance with this part does not relieve any person from the responsibility of meeting
15 more stringent municipal regulations or ordinances or other requirements of state or federal laws governing food service
16 establishments or food processing establishments.

17 **E. Limitation Of Defense:** The existence of a valid permit for operation of a food establishment shall not constitute a
18 defense to any action for violation of this part except for the requirement to obtain a permit.

19
20 [7.6.2.17 NMAC - Rn, 7.6.2.16 NMAC, 01/01/2010]

21
22 **HISTORY OF 7.6.2 NMAC:**

23 **Pre-NMAC History:** Material in the part was derived from that previously filed with the commission of public records -
24 state records center and archives:

25 EIB Rule 73-1, Regulations Governing Food Protection In Food-Service Establishments, 6/25/73

26 EIB Rule FQM 2, Food Service Regulations; 10/15/80

27 EIB Rule FQM 2, Food Service Regulations; 11/14/85

28 EIB Rule FQM 2, Food Service and Processor Regulations; 5/22/90

29 EIB Rule FQM 2, Food Service And Processor Regulations; 12/02/92

30 **History of Repealed Material:**

31 7 NMAC 6.1 Food Service And Food Processing Regulations - Repealed, 08/12/2000

32 All new rules, amendments, and repeals effective prior to March 1, 2013N.M. Admin. Code 7.6.2, NM ADC 7.6.2

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

IN THE MATTER OF PROPOSED AMENDED REGULATION,
7.6.2 NMAC – *Food Service and Food Handling*

No. EIB 13 - __ (R)

STATEMENT OF REASONS

Front Range Equine Rescue (“FRER”) and The Humane Society of the United States (“HSUS”) submit this Statement of Reasons in support of amending regulation 7.6.2 NMAC – *Food Service and Food Handling*. The amendment to this regulation (the “Proposed Regulation”) would prohibit the manufacture, sale or delivery, holding or offering for sale for human consumption of horse meat unless certain measures are taken to ensure that the meat is unadulterated and safe for human consumption. Specifically, the Proposed Regulation classifies horse meat as adulterated under the New Mexico Food Act unless:

1. Lifetime treatment records, called an “Equine Passport,” exist for the horse from which the horse meat is derived;
2. The Equine Passport lists all of the horse’s owners;
3. The Equine Passport lists all drugs, treatments, and other substances that have been administered to the horse throughout the course of the horse’s life;
4. The administration to the horse of those drugs, treatments, and other substances is consistent with New Mexico and federal law regarding animals slaughtered for food, with appropriate consideration of federal preemption issues; and
5. All entries on the Equine Passport are truthful and accurate.

Under the Proposed Regulation, there are no new obligations placed on the State, and the New Mexico government is not required to establish an Equine Passport system, but horses may not be slaughtered for human consumption unless such a system is established and those horses are raised consistent with this system.

Additionally, no horse owners would be required to comply with this provision. Rather than limiting how any owners conduct their business with respect to owned horses, the Proposed Regulation addresses only the situation in which horses will be used for human food. In those situations, any horse without an Equine Passport would be ineligible for slaughter for human consumption.

In short, this provision requires that horse meat produced, sold, or distributed in New Mexico is consistent with food safety to the same extent that meat from cows, pigs, and chickens is consistent with food safety.

I. STATUTORY AUTHORITY

1. The Environmental Improvement Board (the “Board”) is authorized to adopt the Proposed Regulation. Unlike traditional food animals such as cows, pigs, and chickens, virtually all American horses are administered and treated with, throughout their lives, dozens of substances that render their flesh adulterated, unsafe, and unfit for human consumption. These substances are given to horses without regard to food safety because most horse owners, similar to owners of dogs and cats, do not contemplate that their animals will one day be eaten. These substances create the potential for great danger to humans who unknowingly consume them, including cancer, life-threatening autoimmune diseases, and unpredictable interactions with other substances, including over-the-counter and prescription drugs, that humans consume.

2. Food, including horse meat, is adulterated under the Food Act, N.M. Stat. § 25-2-10(A)(1), (3), (4), if it “bears or contains any added poisonous or added deleterious substance which may render it injurious to health,” if it is “unfit for food,” or if it has been “held under insanitary conditions . . . whereby it may have been rendered diseased, unwholesome or injurious to health. . . .” Because the Board adopted the federal definition of “adulteration” under N.M.

Admin. Code § 7.6.2.8(L), food is also adulterated under the Food Act if it is adulterated under the Federal Food, Drug, and Cosmetic Act. Meat from virtually all American horses is adulterated under the New Mexico Food Act (the “Food Act”) due to the veterinary drugs and treatments with which horses are regularly treated and the lack of complete treatment records kept for horses. Without these records, it is impossible to determine which substances a horse has been administered and which substances a consumer of horse meat may unknowingly ingest.

3. The Board may adopt regulations to facilitate the execution of the Food Act. The Food Act, N.M. Stat. § 25-2-15, authorizes the Board to “promulgate regulations for the efficient enforcement of the New Mexico Food Act. . . .” The Proposed Regulation advances efficient enforcement of the Food Act because it requires producers of a product that currently is almost certainly adulterated to change the circumstances in which the product is produced or cease producing the adulterated product, rather than food safety regulators taking an inadequate, reactive approach to the problem of adulterated horse meat.

II. BASIS AND NEED

4. The purpose of the Proposed Regulation is to require producers of horse meat to abide by food safety standards that provide protection to consumers similar to protections provided by producers of meat from traditional food animals.

5. The Proposed Regulation requires would-be producers of horse meat to ensure that their product is not adulterated as a result of the circumstances in which their horses are raised or the drugs and other substances to which the horses are exposed. Horse meat from American horses threatens the health of consumers in New Mexico, the United States, and throughout the world. As illustrated by the recent horse meat scandal in Europe, in which numerous beef products were tainted with horse meat, the production of horse meat in New

Mexico could even taint otherwise wholesome meat products and destroy public confidence in their purity.

III. PROPOSED REGULATION

6. There are no technical impediments to the Proposed Regulation because it merely classifies an adulterated product as adulterated. While the Proposed Regulation prohibits the slaughter of horses for human consumption unless the horses are raised within a system that provides food safety assurances similar to the assurances provided for meat from traditional food animals, the Proposed Regulation does not require or expect New Mexico to construct such a system.

7. The Proposed Regulation is economically reasonable because there are currently no New Mexico facilities that produce horse meat for human consumption and only one known facility that seeks to slaughter horses for human consumption. And as explained by the former mayor of Kaufman, Texas, former home of the Dallas Crown horse slaughterhouse, horse slaughter overwhelms the local tax base, drains money from the community, harms the environment, overwhelms regulators, diminishes quality of life, and threatens public health.¹

8. In developing the Proposed Regulation, the Petitioners consulted a wide variety of sources, including stakeholders in the State of New Mexico and resources created by private organizations that issue similar Equine Passports throughout the European Union, the world's largest market for horse meat for human consumption.

9. The Proposed Regulation would require a transparent, accurate food safety system before horse meat is produced, sold, or distributed for human consumption in New Mexico.

Only this type of system can efficiently ensure that adulterated horse meat is not produced, sold,

¹ An open letter from Kaufman's Former Mayor, Paula Bacon, is available at <http://www.animallawcoalition.com/horse-slaughter/article/686>.

or distributed in New Mexico and that consumers are protected from unknowingly consuming any of the numerous veterinary drugs and other substances, from vaccinations and anti-inflammatories to steroids and dewormers, with which virtually all American horses are routinely treated.