TITLE 7 HEALTH
CHAPTER 6 FOOD HANDLING
PART 2 FOOD SERVICE AND FOOD PROCESSING

7.6.2.1 ISSUING AGENCY: New Mexico Environmental Improvement Board.
[7.6.2.1 NMAC - Rp, 7.6.2.1 NMAC, 12/1/2018]

7.6.2.2 SCOPE: All food establishments and food processing plants.
[7.6.2.2 NMAC - Rp, 7.6.2.2 NMAC, 12/1/2018]

7.6.2.3 STATUTORY AUTHORITY: Section 74-1-8 NMSA 1978 directs the environmental improvement board to promulgate regulations and standards for food protection. Section 74-1-9 NMSA 1978 directs the procedures for adoption. Section 25-1-4 delineates requirements of food service establishments to prepare and serve food in a manner safe for human consumption, free from adulteration, spoilage, contamination and unwholesomeness. Section 25-1-7 NMSA 1978 authorizes the department of environment to execute any provisions of the Food Service Sanitation Act (Chapter 25, Article 1 NMSA 1978).
[7.6.2.3 NMAC - Rp, 7.6.2.3 NMAC, 12/1/2018]

7.6.2.4 DURATION: Permanent.
[7.6.2.4 NMAC - Rp, 7.6.2.4 NMAC, 12/1/2018]

7.6.2.5 EFFECTIVE DATE: December 1, 2018, unless a later date is cited at the end of a section.
[7.6.2.5 NMAC - Rp, 7.6.2.5 NMAC, 12/1/2018]

7.6.2.6 OBJECTIVE: The objective of these regulations is to protect the public health by establishing standards and provisions for the safe operation of food establishments and food processing plants to assure that consumers are not exposed to adverse environmental health conditions.
[7.6.2.6 NMAC - Rp, 7.6.2.6 NMAC, 12/1/2018]

7.6.2.7 DEFINITIONS:

A. Adoption of food code definitions. Except as otherwise provided below, Part 1-2 (Definitions) of the 2017 United States food and drug administration model food code is hereby adopted and incorporated in its entirety.

B. Modifications to food code definitions. The following terms defined in food code Part 1-2 have the meanings set forth herein, in lieu of the meanings set forth in food code, Part 1-2.

(1) **"Adulterated"** has the meaning state in the New Mexico Food Act, Section 25-2-10 NMSA 1978.

(2) **"Critical control point"** means a point, step, or procedure in a food process at which a control measure can be applied and at which control is essential to prevent, reduce to an acceptable level, or eliminate an identified food hazard.

(3) **"Critical limit"** means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food hazard.

(4) **"Drinking water"** means water that meets criteria as specified in 20.7.10 NMAC. Drinking Water is traditionally known as "potable water", and includes the term "water" except where the term used connotes that the water is not potable, such as "boiler water," "mop water," "rainwater," "wastewater," and "non-drinking" water.

(5) **"Food establishment"** means an operation that stores, prepares, packages, serves, or vends food directly to the consumer, or otherwise provides food for human consumption such as a restaurant; satellite or catered feeding location; catering operation if the operation provides food directly to a consumer or to a conveyance used to transport people; market; vending location; conveyance used to transport people; an institution; or food bank; and relinquishes possession of food to a consumer directly, or indirectly through a delivery service such as home delivery of grocery orders or restaurant takeout orders, or delivery service that is provided by common carriers.

(a) Food establishment includes:

(i) an element of the operation such as a transportation vehicle or a central preparation facility that supplies a vending location or satellite feeding location unless the vending or feeding location is permitted by the regulatory authority; or

(ii) an operation that is conducted in a mobile, stationary, temporary, or permanent facility or location; where consumption is on or off the premises; and regardless of whether there is a charge for the food.

(b) Food establishment does not include:

(i) an establishment that offers only prepackaged foods that are not time/temperature control for safety (TCS) foods;

(ii) a produce stand that only offers whole, uncut fresh fruits and vegetables;

(iii) a food processing plant; including those that are located on the premises of a food establishment;

(iv) a kitchen in a private home if only baked goods (e.g., cookies, brownies, cakes, fruit pies) that are not TCS food, are prepared for sale or service at a fundraising function (e.g., a religious or charitable organization's bake sale) if the consumer is informed by a clearly visible placard at the sales or service location that the food is prepared in a kitchen that is not subject to regulation and inspection by the regulatory authority;

(v) an area where food that is prepared as specified in Item (iv) of Subparagraph (b) of Paragraph (5) of Subsection B of 7.6.2.7 NMAC is sold or offered for human consumption;

(vi) a kitchen in a private home, such as a facility licensed by or registered with the department of health (DOH), or the children, youth and families department (CYFD), or a bed-and-breakfast operation that prepares and offers food to guests if the home is owner occupied, the number of available guest bedrooms does not exceed six, breakfast is the only meal offered, the number of guests served does not exceed 18, and the consumer is informed by statements contained in published advertisements, mailed brochures, and placards posted at the registration area that the food is prepared in a kitchen that is not regulated and inspected by the regulatory authority;

(vii) a private home that receives catered or home-delivered food that is served to non-paying guests;

(viii) non-paying guests in private homes;

(ix) a private home or home environment where residents take part in preparing and serving their own meals;

(x) a pot-luck dinner or similar event in which the food is prepared or contributed by the participants and for which no fee is charged;

(xi) a custom exempt meat processing facility where animals are processed for personal use by the animal owner as food and not for sale or service in a food establishment;

(xii) a dairy establishment as defined in the New Mexico Food Act;

(xiii) an animal slaughter facility;

(xiv) an aquaculture facility that raises fish;

(xv) a "pure honey" processing facility; "pure honey" refers to natural liquid or solid honey extracted from the combs or in the comb taken from beehives with no processing or adding of additional ingredients; or

(xvi) an operation that offers to consumers whole raw agricultural products.

(6) "Hazard analysis critical control point (HACCP) plan" means a document prepared in accordance with the principles of HACCP to ensure control of hazards which are significant for food safety.

(7) "Hermetically sealed container" means an airtight container that is designed and intended to be secure against the entry of microorganisms and to maintain the commercial sterility of its contents after processing, or to maintain the controls which prevent potential growth of microorganisms or the elaboration of toxins through acidity (pH) or water activity (a_w).

(8) "Public water system" has the meaning stated in 20.7.10 NMAC.

(9) "Regulatory authority" means the New Mexico environment department.

(10) "Temporary food establishment" (TFE) means a food establishment that operates at a fixed location in conjunction with a single event or celebration for a period not exceeding the length of the event or celebration, and does not exceed 30 days.

C. Additions to food code definitions. The following terms not defined in food code Part 1-2 have the meanings set forth herein when the terms are used in this part.

(1) **"Acid food"** means food that has a natural pH of 4.6 or below.

(2) **"Acidified food"** means low-acid food to which acid(s) or acid food(s) are added and have a water activity (a_w) greater than 0.85 and have a finished equilibrium pH of 4.6 or below. Carbonated beverages and food that are stored, distributed, and retailed under refrigeration are not classified as acidified food.

(3) **"Control point"** means a step at which biological, chemical, or physical factors can be controlled.

(4) **"Corrective action"** means an action to be taken when the results of monitoring at the critical control point indicate a loss of control.

(5) **"Deviation"** means failure to meet a critical limit.

(6) **"Food code"** means the 2017 United States food and drug administration model food code.

(7) **"Food handler card"** means a card issued to an individual after successful completion of a food handler training program to function as a food employee.

(8) **"Food handler training program"** means an ANSI/ASTM E2659-09 accredited food handler training certificate program.

(9) **"Good manufacturing practices"** (GMPs) means the minimum sanitary and processing requirements related to production methods, equipment, facilities, and other controls that a food processing plant must meet to assure that food is safe and wholesome.

(10) **"Hazard analysis and critical control point"** (HACCP) means a food safety management system that focuses on the identification, evaluation, and control of food safety hazards.

(11) **"Hazard analysis"** means the process of collecting and evaluating information on hazards associated with the food under consideration to decide which are significant and must be addressed in the HACCP plan.

(12) **"Home-based food processing operation"** means any business in which a residential kitchen is permitted to process approved food that is not classified as a TCS food and is packaged and is offered directly to the consumer.

(13) **"Jerky"** means a dried, finished meat, poultry, fish, or game animal product having a water activity (a_w) less than 0.85.

(14) **"Low acid food"** means any food, other than alcoholic beverages, with a finished equilibrium pH greater than 4.6 and a water activity (a_w) greater than 0.85. Tomatoes and tomato products having a finished equilibrium pH less than 4.7 are not classified as low acid food.

(15) **"Misbranded"** has the meaning stated in the New Mexico Food Act, Section 25-2-11 NMSA 1978.

(16) **"Mobile food establishment"** means a food establishment that is designed to be readily movable; completely retains its mobility; and is equipped to serve food. Mobile food establishment includes self-contained mobile units, non-self-contained mobile units, pushcarts, and mobile support units.

(17) **"Mobile support unit"** means an enclosed motor vehicle department-licensed driven or towed wheeled vehicle used in conjunction with a New Mexico based servicing area that travels to, and services, other mobile food establishments as needed to replenish supplies, including food and potable water, clean the interior of the unit, or dispose of liquid or solid wastes.

(18) **"Monitoring"** means to conduct a planned sequence of observations or measurements to assess whether a process, point, or procedure is under control and to produce an accurate record for future use in verification.

(19) **"Non self-contained mobile unit"** means an enclosed motor vehicle department-licensed driven or towed wheeled vehicle that is required to operate from a New Mexico based servicing area.

(20) **"Operational plan"** means a written plan outlining the product formulation, production steps, safety requirements, distribution, labeling, and recall procedures of a food product that will be implemented by a food establishment or food processing plant when processing packaged food.

(21) **"Process authority"** means an expert in the processes for controlling pathogenic microorganisms in food, and as such, is qualified by education, training and experience to evaluate all of the aspects of pathogen control measures-and determine if such control measures, when properly implemented, will control pathogens effectively.

(22) **"Pushcart"** means a human propelled unit, equipped to serve food, that is required to operate from a New Mexico based servicing area.

(23) **"Recall"** means a return of food products that are either known or suspected to be adulterated, misbranded, or otherwise unsafe for human consumption, to the manufacturer or distributor, or that are disposed of by approved methods.

(24) **"Sanitation standard operating procedures"** (SSOPs) means written procedures specific to a single food processing plant to be followed routinely for the performance of designated operations to ensure sanitary conditions and to prevent product adulteration in a food processing plant.

(25) **"Self-contained mobile unit"** means an enclosed motor vehicle department-licensed driven or towed wheeled vehicle that is not required to operate from a New Mexico based servicing area.

(26) **"Shelf-stable product"** means a product that is hermetically sealed and, when stored at room temperature, should not demonstrate any microbial growth.

(27) **"Standard operating procedures"** (SOPs) means written procedures to be followed routinely for the performance of designated operations in a food processing plant.

(28) **"Standards of identity"** means legal standards, defined by the food and drug administration (FDA), for foods regarding minimum quality specifications, including permitted ingredients and processing requirements, to be marketed under a certain name.

(29) **"Sub-ingredient"** means an ingredient within another ingredient that has been added to a food and is declared parenthetically following the name of the ingredient or by dispersing each ingredient in its order of predominance in the ingredient statement without naming the original ingredient.

(30) **"Validation"** means that element of verification focused on collecting and evaluating scientific and technical information to determine whether the HACCP system, when properly implemented, will control effectively the identified food hazards.

(31) **"Verification"** means those activities, other than monitoring, that establish the validity of the HACCP plan and that the system is operating according to the plan. It includes validation procedures.

[7.6.2.7 NMAC - Rp, 7.6.2.7 NMAC, 12/1/2018]

7.6.2.8 FOOD ESTABLISHMENT REQUIREMENTS:

A. Adoption of food code. Except as otherwise provided, the 2017 United States food and drug administration model food code and the supplement to the 2017 food code are hereby adopted and incorporated in their entirety.

B. Modifications to food code. Except as otherwise provided, the following modifications are made to the incorporated food code.

(1) 2-102.12 Certified food protection manager.

(a) At least one employee per food establishment that has supervisory and management responsibility and the authority to direct and control food preparation and service shall be a certified food protection manager who has shown proficiency of required information through passing a test that is part of an accredited program.

(b) This section applies to food establishments, temporary food establishments, and mobile food establishments.

(c) This section does not apply to certain types of food establishments deemed by the regulatory authority to pose minimal risk of causing, or contributing to, foodborne illness based on the nature of the operation and extent of food preparation.

(d) A single certified food protection manager may be responsible for more than a single food establishment, provided that a variance is approved by the regulatory authority as specified in Paragraph (12) of Subsection B of 7.6.2.8 NMAC and Section 8-103.11 of the food code.

(e) The effective date of Paragraph (1) of Subsection B of 7.6.2.8 NMAC shall be three months from the effective date of 7.6.2.8 NMAC.

(2) 2-102.20 Food protection manager certification

(a) A person in charge who demonstrates knowledge by being a food protection manager that is certified by a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the conference for food protection standards for accreditation of food protection manager certification programs is deemed to comply with Paragraph 2-102.11(B).

(b) A food establishment that has an employee that is certified by a food protection manager certification program that is evaluated and listed by a Conference for Food Protection-recognized accrediting agency as conforming to the Conference for Food Protection Standards for Accreditation of Food Protection Manager Certification Programs is deemed to comply with Section 2102.12.

(3) 3-201.15 Molluscan shellfish.

(a) Molluscan shellfish shall be obtained from sources according to law and the requirements specified in the United States (U.S.) DOH and human services, public health service, FDA, national shellfish sanitation program guide for the control of molluscan shellfish.

(b) Molluscan shellfish shall be from sources that are listed in the interstate certified shellfish shippers list.

(4) 3-202.18 Shellstock identification.

(a) Shellstock shall be obtained in containers bearing legible source identification tags or labels that are affixed by the harvester or dealer that depurates, ships, or reships the shellstock, as specified in the national shellfish sanitation program guide for the control of molluscan shellfish, and that list:

(i) except as specified under Subparagraph (c) of Paragraph (3) of Subsection B of 7.6.2.8 NMAC, on the harvester's tag or label, the following information in the following order: the harvester's identification number that is assigned by the shellstock control authority, the date of harvesting, the most precise identification of the harvest location or aquaculture site that is practicable based on the system of harvest area designations that is in use by the shellstock control authority and including the abbreviation of the name of the state or country in which the shellfish are harvested, the type and quantity of shellfish, the following statement in bold, capitalized type: "this tag is required to be attached until container is empty or retagged and thereafter kept on file for 90 days";

(ii) except as specified in Subparagraph (d) of Paragraph (3) of Subsection B of 7.6.2.8 NMAC, on each dealer's tag or label, the following information in the following order: the dealer's name and address, the certification number assigned by the shellstock control authority, the original shipper's certification number including the abbreviation of the name of the state or country in which the shellfish are harvested, the same information as specified for a harvester's tag under Item (i) of Subparagraph (a) of Paragraph (3) of Subsection B of 7.6.2.8 NMAC, and the following statement in bold, capitalized type: "this tag is required to be attached until container is empty and thereafter kept on file for 90 days."

(b) A container of shellstock that does not bear a tag or label or that bears a tag or label that does not contain all the information as specified under Subparagraph (a) of Paragraph (3) of Subsection B of 7.6.2.8 NMAC shall be subject to a hold order or seizure and destruction in accordance with Section 25-2-6 NMSA 1978.

(c) If a place is provided on the harvester's tag or label for a dealer's name, address, and certification number, the dealer's information shall be listed first.

(d) If the harvester's tag or label is designed to accommodate each dealer's identification as specified under Item (ii) of Subparagraph (a) of Paragraph (3) of Subsection B of 7.6.2.8 NMAC, individual dealer tags or labels need not be provided.

(5) 3-502.11 Variance requirement. A food establishment shall obtain a variance from the regulatory authority as specified in Sections 8-103.10 and 8-103.11 of the food code before:

(a) smoking food as a method of food preservation rather than as a method of flavor enhancement;

(b) curing food;

(c) using food additives or adding components such as vinegar:

(i) as a method of food preservation rather than as a method of flavor enhancement; or

(ii) to render a food so that it is not TCS food;

(d) packaging TCS food using a reduced oxygen packaging method except where the growth of and toxin formation by clostridium botulinum and the growth of listeria monocytogenes are controlled as specified under Section 3-502.12 of the food code;

(e) operating a molluscan shellfish life-support system display tank used to store or display shellfish that are offered for human consumption;

(f) preparing food by another method that is determined by the regulatory authority to require a variance; or

(g) sprouting seeds or beans.

(6) 4-205.10 Food equipment, certification and classification.

(a) Food equipment, including new and replacement equipment, shall be certified or classified for sanitation by an American national standards institute (ANSI) - accredited certification program. Such accredited programs include, but are not limited to, the national sanitation foundation (NSF), underwriters laboratories (UL), intertek ETL, or the Canadian standards administration (CSA).

(b) Food equipment that is certified or classified for sanitation by an ANSI - accredited certification program is deemed to comply with Parts 4-1 and 4-2 of the Food Code.

(7) 4-301.11 Cooling, heating, holding capacities and use.

(a) Equipment for cooling and heating food, and holding cold and hot food, shall be sufficient in number and capacity to provide food temperatures as specified under Chapter 3 of the food code.

(b) Steam tables, slow cookers, and other hot holding devices shall not be used in cooking, heating or reheating food as specified under Sections 3-401 and 3-403 of the food code.

(8) 5-102.11 Standards. Except as specified under Section 5-102.12 of the food code:

(a) Water from a public water system shall meet the construction and drinking water quality standards specified in 20.7.10 NMAC; and

(b) Water from a non-public water system shall meet:

(i) the construction requirements and drinking water quality standards of a non-community water system as specified in 20.7.10 NMAC; and

(ii) the drinking water source setback requirements as specified in 20.7.3 NMAC.

(9) 5-102.13 Sampling. Except when used as specified under Section 5-102.12 of the Food Code, water from a non-public water system shall meet the sampling requirements of a non-community water system as specified in 20.7.10 NMAC.

(10) 5-203.13 Service sink.

(a) Except as specified in Paragraph (C) of Section 5-203.13 of the food code, at least one service sink or one curbed cleaning facility equipped with a floor drain shall be provided and conveniently located for the cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and similar liquid waste.

(b) Toilets and urinals may not be used as a service sink for the disposal of mop water and similar liquid waste.

(c) When no health hazard will exist, the regulatory authority may approve an alternative method.

(11) 6-501.115 Prohibiting animals.

(a) Except as specified in Subparagraphs (b) and (c) of Paragraph (10) of Subsection B of 7.6.2.8 NMAC, live animals may not be allowed on the premises of a food establishment.

(b) Live animals may be allowed in the following situations if the contamination of food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles cannot result:

(i) edible fish or decorative fish in aquariums, shellfish or crustaceans on ice or under refrigeration, and shellfish and crustaceans in display tank systems;

(ii) patrol dogs accompanying police or security officers in offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced areas;

(iii) in areas that are not used for food preparation and that are usually open for customers, such as dining and sales areas, service animals that are controlled by the disabled employee or person, if a health or safety hazard will not result from the presence or activities of the service animal;

(iv) pets in the common dining areas of institutional care facilities such as nursing homes, assisted living facilities, group homes, or residential care facilities at times other than during meals if effective partitioning and self-closing doors separate the common dining areas from food storage or food preparation areas, condiments, equipment, and utensils are stored in enclosed cabinets or removed from the common dining areas when pets are present, and dining areas including tables, countertops, and similar surfaces are effectively cleaned before the next meal service;

(v) in areas that are not used for food preparation, storage, sales, display, or dining, in which there are caged animals or animals that are similarly confined, such as in a variety store that sells pets or a tourist park that displays animals; and

(vi) pet dogs in outdoor dining areas, if allowed by the food establishment, and pet dogs are excluded from any area where food is prepared, pet dogs are kept on a leash and under reasonable control at all times, pet dogs are not allowed on chairs, consumer's laps, tables, or other furnishings, consumers shall not feed pet dogs on food establishment tableware, and a sign approved by the regulatory authority is posted at each entrance to the designated outdoor dining area stating the conditions under which pet dogs are allowed and alerting patrons that pet dogs are allowed and may be present.

(c) Live or dead fish bait may be stored if contamination of food, clean equipment, utensils, and linens, and unwrapped single-service and single-use articles cannot result.

(12) 8-103.10 Modifications and waivers.

(a) The regulatory authority may grant a variance by modifying or waiving the requirements of the food code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under Section 8-103.11 of the food code in its records for the food establishment.

(b) The regulatory authority shall grant the variance, grant the variance subject to conditions, or deny the variance within 15 working days following the receipt of the variance request and payment of the applicable variance application fee as specified under Item (iii) of Subparagraph (a) of Paragraph (3) of Subsection D of 7.6.2.8 NMAC.

(13) 8-201.11 When plans are required. Except for temporary food establishments, a permit applicant or permit holder shall submit to the regulatory authority the applicable plan review application fee as specified under Items (iv) and (v) of Subparagraph (a) of Paragraph (3) of Subsection D of 7.6.2.8 NMAC, properly prepared plans and specifications for review and approval at least 30 calendar days before:

(a) the construction of a food establishment;

(b) the conversion of an existing structure for use as a food establishment;

(c) the remodeling of a food establishment or a change of type of food establishment or food operation as specified under Subparagraph (c) of Paragraph (17) of Subsection B of 7.6.2 NMAC if the regulatory authority determines that plans and specifications are necessary to ensure compliance with the food code; or

(d) opening or changing ownership of an existing food establishment, if current plans and specifications are not on file with the regulatory authority.

(14) 8-301.11 Prerequisite for operation.

(a) A person may not operate a food establishment or servicing area without a valid permit to operate issued by the regulatory authority.

(b) Except as specified in Subparagraphs (c) and (d) of Paragraph (13) of Subsection B of 7.6.2 NMAC, when more than a single food establishment is operated on the premises, each one shall be separately permitted.

(c) Bars operating in conjunction with a food establishment do not require a separate permit.

(d) A food establishment used as a servicing area does not require a separate permit.

(e) Prior to the issuance of a permit or the renewal of a permit, the regulatory authority shall make inspections of the food establishment or food processing plant as it deems necessary.

(15) 8-302.11 Submission 30 calendar days before proposed opening. An applicant shall submit an application for a permit at least 30 calendar days before the date planned for opening a food establishment, mobile food establishment, food processing plant, or home-based food processing operation.

(16) 8-302.13 Qualifications and responsibilities of applicants. To qualify for a permit, an applicant shall:

(a) be an owner of the food establishment or an officer of the legal ownership;

(b) comply with the requirements of 7.6.2 NMAC;

(c) as specified under Paragraph (21) of Subparagraph B of 7.6.2.8 NMAC, agree to allow access to the food establishment and to provide required information; and

(d) pay the applicable permit fees when approval to open is granted by the regulatory authority.

(17) 8-302.14 Contents of the application. The application shall include:

(a) the name, mailing address, telephone number, and signature of the person applying for the permit and the name, mailing address, and location of the food establishment;

(b) information specifying whether the food establishment is owned by an association, corporation, individual, partnership, or other legal entity;

(c) a statement specifying whether the food establishment:

(i) is mobile or stationary and temporary or permanent;

(ii) prepares, offers for sale, or serves time/temperature control for safety food only to order upon a consumer's request, or in advance in quantities based on projected consumer demand and discards food that is not sold or served at an approved frequency, or using time as the public health control as specified under Section 3-501.19 of the food code;

(iii) prepares time/temperature control for safety food in advance using a food preparation method that involves two or more steps which may include combining time/temperature control for safety food ingredients, cooking, cooling, reheating, hot or cold holding, freezing or thawing;

(iv) prepares food as specified under Item (ii) of Subparagraph (c) of Paragraph (16) of Subparagraph B of 7.6.2.8 NMAC for delivery to and consumption at a location off the premises of the food establishment where it is prepared;

(v) prepares food as specified under Item (ii) of Subparagraph (c) of Paragraph (16) of Subparagraph B of 7.6.2.8 NMAC for service to a highly susceptible population;

(vi) prepares only food that is not time/temperature control for safety food;

(vii) does not prepare, but offers for sale only prepackaged food that is not time/temperature control for safety food;

(d) the name, title, address, and telephone number of the person directly responsible for the food establishment;

(e) the name, title, address, and telephone number of the person who functions as the immediate supervisor of the person specified under Subparagraph (d) of Paragraph (16) of Subsection B of 7.6.2.8 NMAC, such as the zone, district, or regional supervisor;

(f) the names, titles, and addresses of the persons comprising the legal ownership as specified under Subparagraph (b) of Paragraph (16) of Subsection B of 7.6.2.8 NMAC, including the owners and officers, and the local resident agent if one is required based on the type of legal ownership;

(g) a statement signed by the applicant that attests to the accuracy of the information provided in the application and affirms that the applicant will comply with the food code, and allow the regulatory authority access to the food establishment as specified under Subparagraph (a) of Paragraph (20) of Subsection B of 7.6.2.8 NMAC and to the records specified under Sections 3-203.12 and 5-205.13 of the food code and Subparagraph (6) of Paragraph (D) of Section 8-201.14 of the food code; and

(h) other information required by the regulatory authority.

(18) 8-303.20 Existing establishments, permit renewal, and change of ownership.

(a) The regulatory authority may renew a permit for an existing food establishment upon submission of a renewal form provided by the regulatory authority and the required fee(s) as specified in Roman numerals (i) and (ii) of Subparagraph (a) of Paragraph (3) of Subsection D of 7.6.2.8 prior to the expiration date of the permit. Permit renewals that are not submitted before the expiration date shall be assessed a late fee as specified in Subparagraph (c) of Paragraph (3) of Subsection D of 7.6.2.8 NMAC, regardless of whether a permit fee is required.

(b) The regulatory authority may issue a permit to a new owner of an existing food establishment, mobile food establishment, servicing area, or food processing plant upon completion of requirements as specified in Paragraph (13) of Subsection B of 7.6.2.8 and Paragraph (15) of Subsection B of 7.6.2.8 NMAC, and an inspection shows it is in compliance with 7.6.2 NMAC.

(19) 8-401.10 Establishing inspection interval.

(a) Except as specified in Subparagraph (b) of Paragraph (18) of Subsection B of 7.6.2.8 NMAC, the regulatory authority shall inspect a food establishment, mobile food establishment, food processing plant, or home-based food processing operation at least annually to determine compliance with the Food Service Sanitation Act, the New Mexico Food Act, and 7.6.2 NMAC.

(b) The regulatory authority may periodically inspect throughout its permit period a temporary food establishment that prepares, sells, or serves unpackaged time/temperature control for safety food and that:

(i) has improvised rather than permanent facilities or equipment for accomplishing functions such as handwashing, food preparation and protection, food temperature control, warewashing, providing drinking water, waste retention and disposal, and insect and rodent control; or

(ii) has inexperienced food employees.

(c) When an inspection conducted by the regulatory authority reveals a violation of a priority item, or repeat violation of a priority foundation or core item within the last 25 months of 7.6.2 NMAC and a re-inspection is scheduled by the regulatory authority, a re-inspection fee shall be assessed by the regulatory authority and paid by the operator as specified in Subparagraph (d) of Paragraph (3) of Subsection D of 7.6.2.8 NMAC.

(20) 8-401.20 Performance- and risk-based. The regulatory authority shall prioritize, and conduct more frequent inspections based upon its assessment of a food establishment's history of compliance with the food code and the establishment's potential as a vector of foodborne illness by evaluating:

(a) past performance, for nonconformance with code or HACCP plan requirements that are priority items or priority foundation items;

(b) past performance, for numerous or repeat violations of Food Code or HACCP plan requirements that are core items;

(c) past performance, for complaints investigated and found to be valid;

(d) the hazards associated with the particular foods that are prepared, stored, or served;

(e) the type of operation including the methods and extent of food storage, preparation, and service;

(f) the number of people served; and

(g) whether the population served is a highly susceptible population.

(21) 8-402.11 Allowed at reasonable times after due notice.

(a) After the regulatory authority presents official credentials and provides notice of the purpose of, and an intent to conduct, an inspection, the person in charge shall allow the regulatory authority to determine if the food establishment, mobile food establishment, food processing plant, or home-based food processing operation is in compliance with the food code by allowing access to the establishment, allowing inspection, and providing information and records specified in the food code and to which the regulatory authority is entitled according to law, during the food establishment's hours of operation and other reasonable times.

(b) The regulatory authority shall be allowed to copy any records pertaining to the manufacture, processing, packing, distribution, receipt, holding, or importation of food maintained by or on behalf of a food establishment, mobile food establishment, food processing plant, or home-based food processing operation in any format, including paper and electronic formats, and at any location. Proprietary documents shall be protected by the regulatory authority as specified in Section 8-202.10 of the food code.

(22) 8-402.20 Refusal, notification of right to access, and final request for access. If a person denies access to the regulatory authority, the regulatory authority shall:

(a) inform the person that:

(i) the permit holder is required to allow access to the regulatory authority as specified under Section 8-402.11 of the food code;

(ii) access is a condition of the acceptance and retention of a food establishment permit to operate as specified under Section 8-304.11 of the food code;

(iii) if access is denied, an order issued by the appropriate authority allowing access, hereinafter referred to as an inspection order, may be obtained according to law; and

(iv) refusal to allow access is grounds for immediate permit suspension or revocation;

(b) make a final request for access.

(23) 8-403.30 Issuing report and obtaining acknowledgement of receipt. The regulatory authority shall provide a copy of the completed inspection report and the notice to correct violations, as soon as possible after the inspection, to the permit holder or to the person in charge, and request a signed acknowledgment of receipt.

(24) 8-801.10 Proper methods. A notice issued in accordance with the food code shall be considered to be properly served if it is served by one of the following methods:

(a) the notice is personally served by the regulatory authority, a law enforcement officer, or a person authorized to serve a civil process to the permit holder, the person in charge, or person operating a food establishment without a permit; or

(b) the notice is sent by the regulatory authority to the last known address of the permit holder or the person operating a food establishment without a permit, by registered or certified mail or by other public means so that a written acknowledgment of receipt may be acquired.

(25) 8-801.20 Restriction or exclusion order, hold order or immediate suspension. An employee restriction or exclusion order, an order to hold and not distribute food, such as a hold, detention, embargo, or seizure order which is hereinafter referred to as a hold order, or an immediate suspension order shall be:

(a) served as specified in Paragraph (24) of Subsection B of 7.6.2.8 NMAC; or

(b) clearly posted by the regulatory authority at a public entrance to the food establishment and a copy of the notice sent by first class mail to the permit holder or to the owner or custodian of the food, as appropriate.

(26) 8-901.10 Conditions warranting remedy. The regulatory authority may seek an administrative or judicial remedy to achieve compliance with the provisions of the food code if a person operating a food establishment or employee:

(a) fails to have a valid permit to operate a food establishment as specified under Section 8-301.11 of the food code;

(b) violates any term of condition of a permit as specified under Section 8-304.11 of the food code;

(c) allows repeated violations of the Food Service Sanitation Act, Chapter 25, Article 1 NMSA 1978; the New Mexico Food Act, Chapter 25, Article 2 NMSA 1978; or serious or repeated food code violations to reoccur or remain uncorrected beyond time frames for correction approved, directed, or ordered by the regulatory authority;

(d) fails to comply with a regulatory authority order issued as specified in Section 8-501.20 of the food code concerning an employee or conditional employee suspected of having a disease transmissible through food by infected persons;

(e) fails to comply with a hold order as specified in Paragraph (27) of Subsection B of 7.6.2.8 NMAC;

(f) fails to comply with an order issued as a result of a hearing for an administrative remedy as specified in Section 8-906.40 of the food code; or

(g) Fails to comply with an immediate suspension order issued by the regulatory authority as specified in Paragraph (24) of Subsection B of 7.6.2.8 NMAC and Paragraph (30) of Subsection B of 7.6.2.8 NMAC.

(27) 8-903.10 Hold order, justifying conditions and removal of food.

(a) The regulatory authority may place a hold order on a food that:

(i) originated from an un-approved source;

(ii) may be unsafe, adulterated, or not honestly presented;

(iii) is not labeled according to law, or, if raw molluscan shellfish, is not tagged or labeled according to law; or

(iv) is otherwise not in compliance with the food code.

(b) If the regulatory authority has reasonable cause to believe that the hold order will be violated, of finds that the order is violated, the regulatory authority may remove the food that is subject to the order to a place of safekeeping.

(28) 8-903.20 Hold order, warning or hearing not required.

(a) The regulatory authority may issue a hold order to a permit holder or to a person who owns or controls the food, as specified in Paragraph (26) of Subsection B of 7.6.2.8 NMAC, without prior warning, notice of a hearing, or a hearing on the hold order.

(b) If the suspected food has been distributed, the permit holder shall be given the opportunity to recall the food voluntarily at the permit holder's expense.

(c) If the permit holder refuses to recall the suspected food, the regulatory authority may order a mandatory recall of the suspected food at the permit holder's expense.

(29) 8-903.60 Examining, sampling, and testing food. The regulatory authority may examine, sample, and test food in order to determine its compliance with the Food Service Sanitation Act, Chapter 25, Article 1 NMSA 1978; the New Mexico Food Act, Chapter 25, Article 2 NMSA 1978; and 7.6.2 NMAC.

(30) 8-903.80 Destroying or denaturing food. When any food is found, by examination or laboratory analysis, to be in violation of safe health standards, the regulatory authority may order condemnation and disposal of the product lot, at the expense of the permit holder.

(31) 8-904.10 Conditions warranting action. The regulatory authority may immediately suspend a permit if it determines through inspection, or examination of employees, food records, or other means as specified in the food code, that an imminent health hazard exists.

(32) 8-904.20 Immediate suspension, warning or hearing not required. The regulatory authority may immediately suspend a person's permit as specified in Paragraph (31) of Subsection B of 7.6.2.8 NMAC by providing written notice as specified in Section Paragraph (25) of Subsection B of 7.6.2.8 NMAC of the immediate suspension to the permit holder or person in charge, without prior warning, notice of a hearing, or a hearing.

(33) 8-904.30 Contents of the notice. An immediate suspension notice shall state:

(a) that the food establishment permit is immediately suspended and that all food operations shall immediately cease;

(b) the reasons for the immediate suspension with reference to the provisions of the food code that are in violation;

(c) the name and address of the regulatory authority representative to whom a written request for re-inspection may be made and who may certify that reasons for the suspension are eliminated; and

(d) that the permit holder may request an appeal hearing by submitting a timely request as specified in Paragraph (35) of Subsection B of 7.6.2.8 NMAC and Paragraph (36) of Subsection B of 7.6.2.8 NMAC.

(34) 8-904.50 Term of suspension, reinstatement of permit.

(a) An immediate suspension shall remain in effect until the conditions cited in the notice of suspension no longer exist and their elimination has been confirmed by the regulatory authority through re-inspection and other means as appropriate.

(b) The suspended permit shall be reinstated immediately if the regulatory authority determines that the public health hazard or nuisance no longer exists. A notice of the reinstatement shall be provided to the permit holder or person in charge.

(35) 8-905.10 Response to notice of hearing or request for hearing, basis and time frame.

(a) A permit applicant may request a hearing regarding the disposition of an application for a new or revised permit if the regulatory authority does not issue or deny the permit within the time frame specified in the Food Code.

(b) A permit holder may request a hearing to address concerns about the regulatory authority's denial of application for a permit or request for a variance, or compliance actions, except that a hearing request does not stay the regulatory authority's restriction or exclusion of employees specified in Section Paragraph (31) of Subsection B of 7.6.2.8 NMAC.

(c) A person desiring a hearing in response to a denial of an application for permit or an adverse administrative determination shall submit a hearing request to the regulatory authority within 10 calendar days of the date of the denial, inspection, or compliance action.

(36) 8-905.20 Request for hearing, required form and contents. A request for hearing as specified in Section 8-905.10 of the food code shall be in written form and contain the following information.

(a) If a request for hearing:

(i) a statement of the issue of fact specified in Paragraph (B) of Section 8-905.30 of the food code for which the hearing is requested; and

(ii) a statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(b) If either a response to notice of hearing or a request for a hearing:

(i) a statement indicating whether the presence of witnesses for the regulatory authority is required; and

(ii) the name and address of the respondent's or requestor's legal counsel, if any.

(37) 8-905.60 Notice, contents. A notice of hearing shall contain the following information:

(a) time, date and place of the hearing;

(b) purpose of the hearing;

(c) the rights of the respondent, including the right to be represented by counsel and to present witnesses and evidence on the respondent's behalf as specified in Paragraph (39) of Subsection B of 7.6.2.8 NMAC; and

(d) the consequences of failing to appear at the hearing.

(38) 8-905.100 Record of proceeding. A complete digital recording of a hearing shall be made and maintained as part of the regulatory authority's records.

(39) 8-907.10 Rights of parties.

(a) The rules of civil procedure and the rules of evidence shall not apply, but a hearing shall be conducted so that all relevant views, arguments, and testimony are amply and fairly presented.

(b) Parties to a hearing may be represented by counsel, examine and cross examine witnesses, and present evidence in support of their position.

(40) 8-907.30 Evidence to be excluded. Evidence shall be excluded that is irrelevant, immaterial, unduly repetitious, or excludable on constitutional or statutory grounds, or on the basis of evidentiary privilege.

(41) 8-909.10 Gaining access to premises and records. The regulatory authority may seek access for one or more of the following purposes, according to law for gaining access:

(a) if admission to the premises of a food establishment, mobile food establishment, temporary food establishment, food processing plant, or home-based food processing operation is denied or other circumstances exist that would justify an inspection order under law, to make an inspection including taking photographs;

(b) to examine and sample the food or other substances found on the premises; and

(c) to examine and copy the records on the premises relating to food as specified in Section 8-402.11 of the food code.

C. Omissions. The following provisions are omitted from the incorporated food code:

(1) 5-203.11(C) Handwashing sinks.

(2) 8-7 Authority.

(3) 8-902.20 Content of inspection order.

(4) 8-905.30 Provided upon request.

(5) 8-905.40 Provided in accordance with law.

(6) 8-905.50 Timeliness, appeal proceeding within five business days, other proceeding within 30 calendar days.

(7) 8-905.70 Proceeding commences upon notification.

(8) 8-905.80 Procedure, expeditious and impartial.

(9) 8-905.90 Confidential.

(10) 8-906.10 Appointment by regulatory authority and purpose.

(11) 8-906.20 Qualifications.

(12) 8-906.30 Powers, administration of hearings.

(13) 8-906.40 Powers, administrative remedies.

(14) 8-909.20 Contents of court petition.

(15) 8-909.30 Sworn statement of denied access.

(16) 8-909.40 Contents of an order.

(17) 8-909.50 Optional contents of an order.

(18) 8-910.10 Institution of proceedings.

(19) 8-911.10 Authorities, methods, fines, and sentences.

(20) 8-912.10 Petitions of injunction.

(21) 8-913.10 Petitions, penalties, and continuing violations.

D. Additional requirements. Except as otherwise provided, the following additions are made to the incorporated food code:

(1) 2-104.11 Food handler cards.

(a) Except as specified in Subparagraphs (b) and (g) of Paragraph (1) of Subsection D of 7.6.2.8 NMAC, food employees shall demonstrate their knowledge of safe food handling practices through passing a test from a food handler training program and possess a valid food handler card.

(b) Except as specified in Subparagraph (g) of Paragraph (1) of Subsection D of 7.6.2.8 NMAC, individuals who do not possess a valid food handler card prior to employment as a food employee shall obtain such card within 30 calendar days from the beginning of employment.

(c) Food handler cards shall be kept by the food employee on his or her person while working at a food establishment or a copy kept on file by the current employer and be made available for inspection by the regulatory authority.

(d) The regulatory authority may approve an entity's training program to be used in lieu of requiring a food handler card of its food employees. A food employee must complete the entity's approved training program at least every three years. This exemption is only valid during the food employees' time of employment with the entity that administered the training.

(e) An employee or person in charge at any food establishment, food processing plant, temporary food establishment, or mobile food establishment must provide training regarding pertinent safe food handling practices to food employees prior to beginning food handling duties, if the food employee does not hold a valid food handler card. Record of the training, including name of instructor, date of training, and name(s) of food employees shall be maintained on file and made available to the regulatory authority upon request. The record of training shall be maintained for the duration of the food employee's employment.

(f) Food handler cards shall be valid for three years from the date of issuance.

(g) This paragraph does not apply to:

(i) food employees who comply with Paragraph (1) of Subsection B of Section 7.6.2.8 NMAC;

(ii) food employees who comply with Subparagraph (b) of Paragraph (1) of Subsection D of 7.6.2.8 NMAC;

(iii) food employees who do not prepare or handle Time/Temperature Control for Safety Food, provided that at a minimum the permit holder assures the employee complies with Subparagraph (e) of Paragraph (1) of Subsection D of 7.6.2.8 NMAC;

(iv) employees or volunteers who occasionally function as a food employee, provided that at a minimum the permit holder assures the employee complies with Subparagraph (e) of Paragraph (1) of Subsection D of 7.6.2.8 NMAC;

(v) food employees or volunteers working as food employees of temporary food establishments, provided that at a minimum the person in charge during hours of operation complies with Paragraph (1) of Subsection B of Section 7.6.2.8 NMAC or has a valid food handler card, either of which shall be obtained prior to issuance of a temporary food establishment permit, and the permit holder assures the food employee or volunteer complies with Subparagraph (e) of Paragraph (1) of Subsection D of 7.6.2.8 NMAC;

(vi) food employees or volunteers working as food employees for charitable organizations serving the needy, provided that at a minimum the person in charge during hours of operation complies with Paragraph (1) of Subsection B of Section 7.6.2.8 NMAC; or

(vii) employees who do not function as food employees.

(h) The food handler card requirements of Paragraph (1) of Subsection D of Section 7.6.2.8 NMAC shall become effective three months after the effective date of 7.6.2.8 NMAC.

(2) 8-301.12 Responsibility for operation.

(a) Except as specified in Subparagraphs (b) and (c) of Paragraph (2) of Subsection D of 7.6.2.8 NMAC, the permit holder shall be responsible for all food operations conducted on the premises for which a permit is issued.

(b) Permit holders shall not be responsible for food operations on the premises when another permit holder is operating with a permit.

(c) Each permit holder shall be responsible for shared facilities or equipment on the premises.

(3) 8-303.15 Fees and expiration dates.

(a) Except as specified in Subparagraph (b) of Paragraph (3) of Subsection D of 7.6.2.8 NMAC, fees shall be:

(i) $200.00 permit fee for food establishments, mobile food establishments, servicing areas, and food processing plants;

(ii) $25.00 permit fee for temporary food establishments for each single event or celebration.

(iii) $400.00 variance application fee;

(iv) plan review application fee, Food Establishment;

$300.00 – 0 - 1000 square feet of kitchen, storage and ware washing areas;

$600.00 – 1001 - 2000 square feet of kitchen, storage and ware washing areas;

$900.00 – 2001+ square feet of kitchen, storage and ware washing areas.

(v) Plan review application fee, Food Processing Plant;

$400.00 – 0 - 1000 square feet of processing, storage and ware washing areas;

$900.00 – 1001 - 2000 square feet of processing, storage and ware washing areas;

$1,400.00 – 2001+ square feet of processing, storage and ware washing areas.

(b) Permit fees shall be waived for food establishments, mobile food establishments, and temporary food establishments that provide food to consumers at no charge, as well as temporary food establishments that serve only non-TCS food or operate no more than two days in a calendar month.

(c) In addition to the permit fees specified above, a $175.00 late fee shall be added to the permit fee if the permit is not renewed on or before the expiration date of the permit.

(d) A re-inspection fee of $500.00 shall be assessed by the regulatory authority and paid by the operator when a re-inspection is scheduled by the regulatory authority as specified in Subparagraph (c) of Paragraph (18) of Subsection B of 7.6.2.8 NMAC.

(e) If a permit is not renewed as specified in Section 8-303.20 of the food code, and applicable re-inspection fees are not paid within 30 days after the expiration of the permit, a new permit shall not be issued except upon completion of requirements specified in Section 8-303.10 of the food code and the plan review application fee is paid.

(f) Permits issued by the regulatory authority shall include an expiration date, which shall be:

(i) The last day of the anniversary month of the date of original issue for food establishments, mobile food establishments, servicing areas, and food processing plants.

(ii) The last day of the single event or celebration for temporary food establishments.

(g) No discount or refund shall be made for any fees paid to the regulatory authority.

(h) Any persons who violate NMAC Title 7, Chapter 6 are subject to administrative compliance costs in addition to civil penalties under Section 25-1-12 NMSA 1978, and any other remedies available under law.

(4) 8-407.11 Posting of compliance emblems.

(a) Except as specified in Subparagraph (e) of Paragraph (4) of Subsection D of 7.6.2.8 NMAC, an emblem indicating the compliance status of a food establishment shall be posted in a conspicuous place at each entrance to the food establishment where it can be easily seen by consumers and shall be posted or removed only by the regulatory authority.

(b) An "approved" emblem shall be posted at a food establishment that is operated in compliance with the food code.

(c) An "unsatisfactory" emblem may be posted at a food establishment when any priority items are out of compliance during an inspection; or any priority item, priority foundation item, or core item is out of compliance on a repeated basis within the last 25 months.

(d) Removal, defacing, or obstruction of an emblem by any person other than the regulatory authority shall result in immediate permit suspension or revocation.

(e) Food processing plants and temporary food establishments are exempt from the posting of compliance emblems.

(5) 8-901.201 Permit suspension and revocation.

(a) The regulatory authority may suspend or revoke a permit for reasons specified in Section 8-901.10 of the food code.

(b) The regulatory authority shall conduct a hearing as specified in Section 8-905 of the food code, as amended in 7.6.2 NMAC, prior to suspending or revoking a permit.

(c) The permit holder shall be notified of the hearing at least seven days prior to the hearing as specified in Paragraph (37) of Subsection B of 7.6.2.8 NMAC.

(d) Failure by the permit holder to appear shall result in immediate suspension or revocation of the permit.

(e) The suspension of a permit shall remain in effect until the conditions leading to the suspension no longer exist and their elimination has been confirmed by the regulatory authority through re-inspection and other means as appropriate.

(f) A permit shall only be revoked if a permit has previously been suspended.

(g) A permit that has been revoked shall not be considered for reapplication until the permit holder has demonstrated to the satisfaction of the regulatory authority that the food establishment will comply with the food code.

[7.6.2.8 NMAC - Rp, 7.6.2.8 NMAC, 12/1/2018; A, 10/1/2026]

7.6.2.9 MOBILE FOOD ESTABLISHMENT REQUIREMENTS:

A. In addition to meeting the applicable requirements of 7.2.6.8 NMAC, with the exception of Section 5-203.12 of the food code, mobile food establishments shall comply with the requirements specified in this section.

B. The regulatory authority may impose additional requirements for mobile food establishments as specified in Section 8-102.10 of the food code. Additional requirements may include, but are not limited to:

(1) limiting or restricting the number and type of food items to be prepared and served;

(2) limiting or restricting preparation steps;

(3) limiting or restricting hours of operation, or hours of operation before returning to a servicing area; or

(4) requiring a servicing area or mobile support unit.

C. The regulatory authority may modify or waive requirements for mobile food establishments as specified in Paragraph (12) of Subsection B of 7.6.2.8 NMAC and Section 8-103.11 of the food code.

D. Mobile food establishments shall provide the following required information as specified in Paragraph (F) of Section 8-201.12 of the food code:

(1) the location of the potable water source;

(2) the location and method of solid and liquid waste disposal; and

(3) the identifying system used to distinguish the permitted unit from others.

E. Mobile food establishments shall have adequate electrical and fuel capacity, as determined by the regulatory authority, to allow proper operation of equipment. The electrical and fuel sources shall be adequately supplied at all times when food temperature control is required.

F. Mobile food establishments shall be operated within 200 feet of toilet facilities as specified in Sections 5-203.11 and 5-203.12 of the food code whenever the unit is stopped to operate for more than a two hour period.

G. The operation of mobile food establishments shall be conducted within the enclosure of the permitted unit. During a single event or celebration, certain operations (e.g., additional covered storage, additional food preparation area, outdoor serving counter) may be conducted outside of the enclosure, when approved. If approved, an additional temporary food establishment permit shall be required.

H. Mobile food establishments shall provide only single-service articles for use by consumers.

I. Self-contained mobile food establishment requirements. Self-contained mobile food establishments shall:

(1) meet all of the equipment requirements of the food code;

(2) include adequate storage facilities on the unit for all food, equipment, utensils, supplies, potable water, and waste water used in the operation of the unit;

(3) be capable of accomplishing all steps of the operation, including required food preparation and warewashing, within the enclosure of the unit;

(4) provide, as specified in Paragraph (F) of Section 8-201.12 of the food code, how and where the unit will be cleaned and serviced and where it will be stored during non-operating hours; and

(5) notify the regulatory authority office of jurisdiction at least 24 hours in advance before operating in a jurisdictional area outside of the permitting office.

J. Non-self-contained mobile unit and pushcart requirements.

(1) Non-self-contained mobile units and pushcarts shall provide, as specified in Paragraph (F) of Section 8-201.12 of the food code, an agreement between the operator and the servicing area that includes:

(a) the days and hours the servicing area will be used;

(b) the extent of support services to be provided; and

(c) a copy of the current servicing area permit.

(2) Prior to discontinuing use of a servicing area, the operator shall provide a revised agreement as specified in Paragraph (1) of Subsection J of 7.6.2.9 NMAC for a new servicing area. Mobile food establishments shall not operate prior to the approval of a new servicing area.

(3) Non-self-contained mobile units and pushcarts shall operate within a reasonable distance, and report at least daily, to the servicing area for support services.

(4) Non-self-contained mobile units and pushcarts shall notify the regulatory authority in writing and receive prior approval to operate outside of a reasonable distance of the servicing area.

K. Additional pushcart requirements.

(1) Pushcarts are limited to:

(a) serving non-TCS foods or drinks;

(b) serving individually commercially packaged TCS foods in the original packaging and maintained at proper temperatures; and

(c) assembling and serving of pre-cooked sausage (e.g., hot dog, bratwurst, frankfurter) with commercially prepared toppings (e.g., chili, sauerkraut, relish).

(2) Pre-preparation, such as washing, slicing, peeling, cutting of food intended for use on a pushcart, shall occur at the servicing area.

(3) Food handling shall be conducted under an overhead protective cover.

(4) Grills shall include a protective lid that can be readily closed.

(5) Operators of pushcarts shall ensure the following are contained on, or within, the cart in sufficient supply for daily operation:

(a) food, utensils, single service articles, and cleaning supplies;

(b) handwashing sink as specified in Section 5-202.12 of the food code with a minimum of five gallons of potable water; and

(c) wastewater holding tank meeting the requirements of Section 5-401.11 of the food code.

(6) TCS food served on pushcarts shall not be subsequently cooled and reheated.

(7) Ice chests may be utilized for packaged food provided that they are continuously drained in an approved manner and the food is maintained at temperatures as specified in Section 3-202.11 of the food code. [7.6.2.9 NMAC - Rp, 7.6.2.9 NMAC, 12/1/2018]

7.6.2.10 TEMPORARY FOOD ESTABLISHMENT REQUIREMENTS:

A. In addition to meeting the applicable requirements of 7.6.2.8 NMAC, with the exception of Section 5-203.12 of the food code, temporary food establishments shall comply with the requirements specified in this section.

B. The regulatory authority may impose additional requirements for temporary food establishments as specified in Section 8-102.10 of the food code. Requirements may include, but are not limited to:

(1) require food safety training for employees prior to issuing a permit;

(2) restrict the number and type of food items to be prepared and served;

(3) restrict preparation steps;

(4) restrict hours of operation; or

(5) require a servicing area for advanced preparation of food.

C. The regulatory authority may modify or waive requirements for temporary food establishments as specified in Paragraph (12) of Subsection B of 7.6.2.8 NMAC and Section 8-103.11 of the food code.

D. Temporary food establishment requirements.

(1) Temporary food establishments shall serve only food that has been approved.

(2) Except as specified in this subparagraph, temporary food establishments shall conduct all food operations within the approved enclosure. Temporary food establishments may, after approval, store or prepare food at an offsite food establishment prior to operation when:

(a) the food establishment has adequate equipment for the type and volume of food and preparation steps required; and

(b) the temporary food establishment operator provides to the regulatory authority a letter of agreement between the operator and the food establishment that includes:

(i) the days and hours the food establishments will be used;

(ii) a list of tasks that will be performed at the food establishments; and

(iii) a copy of the current food establishment permit.

(3) Temporary food establishments shall provide, in writing, to the regulatory authority for approval the:

(a) location of the approved potable water source;

(b) location and method of solid waste disposal; and

(c) location and method of liquid waste disposal.

(4) Temporary food establishments shall supply a handwashing sink, located as specified in Section 5-204.11 of the food code, for employee hand washing. At a minimum, a handwashing sink shall consist of a container with a faucet-type spigot filled with warm water and a catch bucket for the wastewater. The water shall be maintained at a minimum of 100 degrees fahrenheit as specified in Section 5-202.12 of the food code.

(5) Temporary food establishments shall maintain an adequate supply of liquid soap and single use paper towels at the handwashing sink at all times.

(6) Temporary food establishments shall provide a warewashing station as specified in Section 4-301.12 of the food code. Extra utensils may be approved in lieu of a warewashing station as specified in Table 10-1, below.

(7) Temporary food establishments shall maintain an adequate supply of potable water at all times during operation for tasks such as: handwashing; food preparation; and washing, rinsing, and sanitizing of

surfaces, utensils, and equipment. Except as specified in Table 10-1, below, auxiliary heating units capable of producing an adequate supply of hot water for such purposes shall be provided.

(8) Temporary food establishments shall provide an adequate supply of ice, as necessary, to maintain TCS food at temperatures as specified in Section 3-501.16 of the food code.

(9) Temporary food establishments shall not store packaged food in undrained ice or iced water, except for pressurized containers of non-TCS beverages. The water or ice shall contain at least 10 parts per million of available chlorine and shall be changed as necessary to keep the water and container clean. Ice used to store food shall not be used as food.

(10) Temporary food establishments shall not store raw meat, poultry, fish, or eggs in the same ice chests as ready-to-eat food when ice chests are approved for use to store food as specified in Table 10-1, below.

(11) Temporary food establishments shall transport food at temperatures as specified in Section 3-501.16 of the Food Code and protect food from contamination as specified in Part 3-3 of the food code.

(12) Temporary food establishments shall not carry over previously heated or cooked food from one day to the next. This requirement may be waived for Type 3 temporary food establishments (as identified in Table 10-1, below) or for food prepared in advance at an offsite food establishment.

(13) Temporary food establishments shall operate on a surface that is smooth, easily cleanable, and non-absorbent (e.g., concrete, machine laid asphalt). Grass may be approved as specified in Table 10-1, below.

(14) Temporary food establishments shall operate under a weather-resistant covering that is smooth, easily cleanable and nonabsorbent to protect the operation from overhead contamination.

(15) Temporary food establishments shall be constructed in a manner that prevents the entrance of insects or other vermin and adequately protects food from consumers and environmental contamination.

(16) Temporary food establishments shall provide separation (e.g. table) to keep consumers from entering the food operation.

(17) Temporary food establishments shall provide walls that are smooth, easily cleanable, and non-absorbent. This requirement may be waived when flying insects and other pests are absent due to location, weather, or other limiting conditions. Except as specified in Table 10-1, below, walls shall meet the following requirements:

(a) cover tightly from ceiling to floor;

(b) use an approved counter-serving opening with tight fitting screened doors or air curtain; counter-serving openings shall be kept closed, except when in use; and

(c) when approved for use, screening shall be 16 mesh to 1 inch.

(18) In conjunction with the requirements specified in this section, a temporary food establishment shall, based upon risk, be classified as a Type 1, 2 or 3 temporary food establishment and meet the corresponding requirements specified in Table 10-1, below.

Table 10-1

	Type 1	**Type 2**	**Type 3**
Menu	unpackaged non-TCS commercially processed packaged TCS in original package (receive-store-hold)	no cook (receive-store-minimum prep*-hold-serve) same day prep (receive-store-minimum prep*-cook-hold-serve) reheat commercially processed (receive-store-reheat-hold-serve)	complex food prep (receive-store-prep-cook-cool-reheat-hot hold-serve) serving highly susceptible population
Handwashing	gravity fed <= 4 hrs - insulated container or auxiliary heating source > 4 hrs - auxiliary heating source	same as Type 1	hot & cold running water under pressure
3-compartment sink	unpackaged non-TCS <= 4 hrs - 3-comp or extra utensils > 4 hrs - 3-comp required	same as Type 1 unpackaged non-TCS	3-comp required w/hot & cold running water under pressure

	Type 1	Type 2	Type 3
	packaged TCS: not required		
Refrigeration	unpackaged non-TCS: not required packaged TCS: <= 1 day - insulated ice chest w/drained ice 2-3 days - mechanical equipment > 3 days - mechanical ANSI equipment only	same as Type 1 packaged TCS	mechanical ANSI equipment only
Cold holding (e.g., prep table, display case)	unpackaged non-TCS: not required packaged TCS: ice bath 2-3 days - mechanical equipment recommended > 3 days - mechanical ANSI equipment recommended	same as Type 1 packaged TCS	same as Type 1 packaged TCS
Hot holding	not allowed	covered non-ANSI equipment allowed**	covered ANSI equipment only
Cooking/ reheating	not allowed	covered non-ANSI equipment allowed**	covered ANSI equipment only
Flooring	grass; smooth, durable, easily cleanable such as: concrete, machine-laid asphalt, sealed wood, tile, impermeable tarp	<= 2 days - same as Type 1 > 2 days - same as Type 1, no grass	<= 3 days - same as Type 1, no grass > 3 days - constructed flooring
Walls	unpackaged non-TCS <= 3 days - no sides, ability to cover solid > 3 days - 3.5 side screening, ability to cover solid packaged TCS: not required	<= 1 day - no sides, ability to cover solid 1 to 3 days - 3.5 side screening, ability to cover solid > 3 days - complete enclosure w/approved opening	complete enclosure w/approved opening
Training	as required by regulatory authority	as required by regulatory authority	certified food protection manager required

*Minimum preparation includes activities such as: slicing/cutting fruits and vegetables, opening commercially packaged TCS foods, and seasoning TCS foods. Minimum preparation does not include activities such as: cutting, slicing, or forming raw meat, poultry, or fish; assembly of complex menu items.
**Chafing dishes may be allowed for events of four hours or less. Insulated ice chests and slow cookers are not allowed for hot holding. Slow cookers are not allowed for heating, cooking, or reheating.
[7.6.2.10 NMAC - Rp, 7.6.2.10 NMAC, 12/1/2018]

7.6.2.11 GENERAL FOOD PROCESSING REQUIREMENTS:

A. Food processing plant permit requirements.

(1) All food processing plants shall comply with all applicable provisions of 7.6.2.8 NMAC.

(2) No person shall operate a food processing plant without a permit issued by the regulatory authority.

(3) When a food establishment has an adjunct/additional food processing plant, each such business may be permitted separately.

(4) Adoption of 21 CFR 117 Subparts A, B, and F. Except as otherwise provided, Subparts A, B, and F of the United States code of federal regulations, title 21, part 117 are hereby adopted and incorporated in their entirety.

(5) Modifications. Except as otherwise provided, the following modifications are made to the incorporated subparts of 21 CFR 117:

(a) 117.301: All records required by this part are subject to all requirements of this subpart;

(b) 117.315(c): Offsite storage of records is permitted if such records can be retrieved and provided onsite within 24 hours of request for official review. Electronic records are considered to be onsite if they are accessible from an onsite location; and

(c) 117.320: All records required by this part must be made promptly available to the regulatory authority for official review and copying upon oral or written request.

(6) Omissions. The following provisions are omitted from the incorporated subparts of 21 CFR 117:

(a) 117.1;

(b) 117.5;

(c) 117.7;

(d) 117.8;

(e) 117.310;

(f) 117.315(d);

(g) 117.325; and

(h) 117.335.

B. Sale of adulterated or misbranded food.

(1) No person shall sell or offer, or expose for sale, or have in possession with intent to sell, any processed and packaged food product that is adulterated or misbranded.

(2) Adulterated or misbranded food products shall be reconditioned, condemned or destroyed in accordance with Section 25-2-6, NMSA 1978.

C. Labeling requirements.

(1) All packaged food shall be labeled in accordance with the applicable requirements of the Federal Food, Drug and Cosmetic Act as amended, the Fair Packaging and Labeling Act, regulations developed thereunder, and the New Mexico Food Act. Details concerning type, size and location of required labels are contained in FDA regulations covering the requirements of the federal acts (Code of Federal Regulation, Title 21, Part 101.)

(2) At least the following information shall appear on the label of any packaged food:

(a) the name, street address, city, state and zip code of either the manufacturer, packer, or distributor;

(b) an accurate statement of the net amount of food in the package, in terms of weight measure, volume measure (listed in both "English" and metric units) or numerical count;

(c) the common or usual name of the food contained in the package; and

(d) ingredients of the food, listed by their common names, in order of their predominance by weight.

(3) If the label of a food bears representation in a foreign language, the label must bear all the required statements in the foreign language, as well as in English. This requirement does not apply to Spanish names that are commonly used in New Mexico.

(4) Any food product that does not comply with all applicable labeling requirements shall be deemed to be misbranded.

D. Standards if identity.

(1) Standards of identity define what a given food product is, its name and the ingredients that must be used, or are allowed to be used, and the ones that must be declared on the label. FDA food standards govern both labeling and composition of such foods, and must be consulted for detailed specifications. The standards are published in the annual editions of the Code of Federal Regulations (CFR), Title 21, Parts 103 through 169.

(2) Any food product that is represented as, or purports to be, a food for which a standard of identity has been promulgated, must comply with the specifications of the standard in every respect. A food product that does not comply fully with the applicable standard is misbranded, unless its label bears the word "imitation" or meets the descriptive label requirements in the CFR, Title 21, Part 101.

E. Low acid canned foods and acidified foods.

(1) All processors of low acid canned foods or foods that have been acidified must comply with specific federal regulations contained in the CFR, Title 21, Parts 108, 113, and 114.

(2) All processors of low acid canned foods and acidified foods are required by federal regulation to register their food processing plants and file processing information for all products with the FDA using appropriate forms.

(3) Any low acid canned food product that does not comply with the federal requirements will be considered adulterated.

F. Operational plans.

(1) Food processing plants shall, at the time of application for a permit for review and acceptance by the regulatory authority, provide the following information for the product(s) to be manufactured and distributed:

(a) names of the ingredient(s);

(b) the final product pH if appropriate;

(c) the final product water activity (a_w) if appropriate;

(d) names of preservative(s);

(e) the type of packaging to be used and whether the packaging is integral to product stability (e.g. the vacuum packing of fresh meat); and

(f) the complete operational procedure for product formulation, using a flow chart to show at what stage(s) each ingredient is added.

(2) Food processing plants shall, at the time of application for a permit for review and acceptance by the regulatory authority, provide the following information about product distribution:

(a) the intended distribution and use condition of the product;

(b) if the product is to be distributed at ambient, refrigerated or frozen temperature;

(c) the expected shelf life during distribution, retail storage, and in the hands of the ultimate consumer;

(d) how the product should be prepared for consumption; and

(e) what mishandling of the product might occur in the merchandising channels or in the hands of the consumer.

(3) Food processing plants shall, at the time of application for a permit for review and acceptance by the regulatory authority, state the intended process (cooking time and temperatures). This information may be included in the flow chart required in Subparagraph (f) of Paragraph (1) of Subsection F of 7.6.2.11 NMAC. Consideration must be given to those steps that lead to the destruction or inhibition of disease causing or spoilage organisms if done properly, or the growth of such organisms if done improperly.

(4) Food processing plants shall, at the time of application for a permit for review and acceptance by the regulatory authority, submit product labels that comply with all requirements of Subsection C of 7.6.2.11 NMAC.

(5) Prior to adding any new product to the product line, or changing the manufacturing process or product distribution for any existing product in the product line, the food processor shall provide to the regulatory authority:

(a) for each new product, the same information as specified for the initial application in Paragraphs (1), (2), (3) and (4) of Subsection F of 7.6.2.11 NMAC; and

(b) for each existing product for which a change will be made in the manufacturing process or product distribution, the applicable changes to the information previously submitted pursuant to Paragraphs (1), (2), (3) and (4) of Subsection F of 7.6.2.11 NMAC.

(6) All food processing plants shall design, maintain and use a coding system that will identify the date and place of manufacture of each product on the product label, or securely affixed to the body of the container. A description of the proposed coding system shall be included in the application.

(7) The regulatory authority may require that the food processing plant's processes be reviewed by a competent process authority to approve all critical factors of public health significance as defined in the CFR, Title 21, Sections 114.83 and 114.89.

(8) In lieu of a process authority, the regulatory authority may accept those processes which comply with Paragraphs (1) and (2) of Subsection E of 7.6.2.11 NMAC.

(9) Recall procedures shall be prepared and must be on file at the food processing plant. Procedures shall include plans for recalling products which may be injurious to human health; for identifying products which may be injurious to human health; for identifying, collecting, warehousing, and controlling products; for determining the effectiveness of recalls; for notifying the regulatory authority, FDA, and United States department of agriculture (USDA) of any recalls; and for implementing recall programs.

(10) Whenever the regulatory authority finds or has probable cause to believe that any food processing plant's product fails to meet standards or is adulterated with any substance that may be injurious to human health, the suspected lot of product shall be embargoed or detained at the food processing plant, if not yet distributed to consumers or retail outlets, until a determination of ultimate disposition is made.

(11) If the suspected lot has been distributed, the food processing plant shall be given the opportunity to recall the product voluntarily at the processor's expense.

(12) If a food processing plant refuses to conduct a voluntary recall, the secretary of the New Mexico environment department may order a mandatory recall of the suspected product lot at the processor's expense.

(13) When any food product is found, by examination or laboratory analysis, to be in violation of the standards of Subsections B, D or E, of 7.6.2.11 NMAC, the secretary of the New Mexico environment department may order condemnation and disposal of the product lot at the food processing plant's expense.

G. Compliance with accepted operational procedures.

(1) A copy of the accepted process and procedures shall be on file at the food processing plant. It shall be available for review by the regulatory authority at all times. A food processing plant shall not deviate from the accepted process and operational procedures without written consent of the regulatory authority.

(2) Samples of ingredients, materials obtained from selected points during the course of processing or handling, and final products shall be examined for pathogenic microorganisms as often as necessary for quality assurance. Food products may also be tested for organisms that are indicative of the possible presence of pathogens or for specific spoilage organisms. The secretary of the New Mexico environment department may request that certain foods be examined for specific pathogenic microorganisms or their toxins.

(3) Routine inspections of facilities, equipment and operations will be conducted as specified in this section. In addition, HACCP evaluations will be conducted by the regulatory authority of the food processing plant as needed to identify hazards, critical control points, and daily monitoring requirements.

[7.6.2.11 NMAC - Rp, 7.6.2.11 NMAC, 12/1/2018; A, 10/1/2026]

7.6.2.12 JERKY MANUFACTURED FOOD REQUIREMENTS:

A. In addition to complying with the requirements specified in 7.6.2.11 NMAC, food processing plants that produce jerky shall comply with the requirements specified in this section.

B. Food processing plants that produce jerky shall have the appropriate approved equipment to measure and monitor food safety factors related to the production of jerky.

C. Cooking. The following parameters shall be achieved in a sealed oven, for a minimum of one hour, and no less than fifty percent of the cooking time, during the jerky cooking process:

(1) a minimum internal temperature of 145 degrees fahrenheit for four minutes for meat and 165 degrees fahrenheit instantaneous for poultry; and

(2) maintain a steady or increasing relative humidity level throughout the cooking process.

D. In lieu of complying with the cooking parameters specified in Subsection C of 7.6.2.12 NMAC the regulatory authority may approve alternative methods for treating product provided that the proposed method is scientifically-based and adequately documented by data developed according to an experimental protocol.

E. Food establishments that produce jerky shall:

(1) meet the requirements of Subsections B and C of 7.6.2.12 NMAC;

(2) have an approved operational plan for each product produced;

(3) keep the operational plan on file at the food establishment;

(4) follow the approved operational plan and not deviate from it without approval from the regulatory authority; and

(5) monitor and record food safety factors, including but not limited to, time, temperature, and humidity and make the records available to the regulatory authority.

[7.6.2.12 NMAC - Rp, 7.6.2.12 NMAC, 12/1/2018]

7.6.2.13 BOTTLED DRINKING WATER MANUFACTURED FOOD REQUIREMENTS:

A. In addition to meeting the requirements specified in 7.6.2.11 NMAC, food processing plants that produce bottled drinking water shall comply with the requirements specified in this section.

B. Bottled drinking water processing operational requirements and standards.

(1) The bottled drinking water plant shall follow generally accepted good manufacturing practice such as contained in 21 CFR Part 129 or the international bottled water association bottled water code of practice.

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

C. Bottled drinking water labeling requirements. All bottled drinking water labels shall meet the requirements specified in Subsection C of 7.6.2.11 NMAC.

D. Analytical requirements. Unless otherwise provided, samples shall be collected, prepared, and examined using the most current methods for the examination of drinking water listed in 40 CFR Part 141 or by other methods for the examination of drinking water approved by the United States environmental protection agency. Examination of samples shall be performed by an approved laboratory.

E. Monitoring requirements.

(1) Bottled drinking water plants shall be required to submit one microbiological sample per finished product per week. A copy of the microbiological analysis report shall be submitted within 10 working days of analysis to the regulatory authority. Any coliform or fecal coliform positive result shall require the plant owner or operator to notify the regulatory authority within 24 hours and to submit to resampling guidelines specified in 20.7.10 NMAC.

(2) Bottled drinking water plants that know that a maximum contaminant level, as specified in 20.7.10 NMAC, has been exceeded or who have reason to believe circumstances exist that may adversely affect the safety of bottled drinking water, including but not limited to source contamination, spills, accidents, natural disasters, or breakdowns in treatment, shall notify the regulatory authority within 24 hours.

[7.6.2.13 NMAC - Rp, 7.6.2.13 NMAC, 12/1/2018]

7.6.2.14 SHELLFISH REQUIREMENTS: Adoption of national shellfish sanitation program (NSSP) guide for control of molluscan shellfish. Except as otherwise provided, the [~~2017~~] 2023 NSSP guide for control of molluscan shellfish is hereby adopted and incorporated in its entirety.

[7.6.2.14 NMAC - Rp, 7.6.2.14 NMAC, 12/1/2018]

7.6.2.15 [Reserved]

[7.6.2.15 NMAC - Rp, 7.6.2.15 NMAC, 12/1/2018; Rp, 10/1/2026]

7.6.2.16 CATERING FOOD ESTABLISHMENTS:

A. In addition to complying with the requirements specified in 7.6.2.8 NMAC food establishments that cater shall comply with the requirements specified in the section.

B. Catering food establishments shall:

(1) operate from a permitted food establishment or servicing area,

(2) be permitted and operated separately from other permitted food establishments or servicing areas,

(3) upon request by the regulatory authority, provide a schedule of events to be catered, and

(4) supply a handwashing sink and adequate supply of liquid soap and single use paper towels as specified in Paragraph (4) and (5) of Subsection D of 7.6.2.10 NMAC when the catering activity includes preparation, delivery, and/or display, service, and restocking of food that is not packaged.

[7.6.2.16 NMAC, N, 12/1/2018]

HISTORY OF 7.6.2 NMAC:

Pre-NMAC History: Material in the part was derived from that previously filed with the commission of public records - state records center and archives:

EIB Rule 73-1, Regulations Governing Food Protection In Food-Service Establishments, 6/25/1973.
EIB Rule FQM 2, Food Service Regulations; 10/15/1980.
EIB Rule FQM 2, Food Service Regulations; 11/14/1985.
EIB Rule FQM 2, Food Service and Processor Regulations; 5/22/1990.
EIB Rule FQM 2, Food Service And Processor Regulations; 12/02/1992.

History of Repealed Material:

7 NMAC 6.1 Food Service And Food Processing Regulations - Repealed, 8/12/2000.

7.6.2 NMAC, Food Service And Food Processing, filed 7/13/2000 - Repealed effective 3/1/2016.
7.6.2 NMAC, Food Service and Food Processing, filed 3/1/2016 - Repealed effective 12/1/2018.