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**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 NMAC 6.1.001, 08/12/2000]

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

**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 NMAC 6.1.003, 08/12/2000]

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

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

**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 to assure that consumers are not exposed to adverse environmental health conditions.  
[7.6.2.6 NMAC - Rp, 7 NMAC 6.1.006, 08/12/2000]

**7.6.2.7           DEFINITIONS:**

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

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

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

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

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

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

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

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

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

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

- 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.

**Z.** “**Health authority**” means the New Mexico environment department.

**AA.** “**Highly susceptible population**” means a group of persons who are more likely than other populations to experience foodborne disease because they are immunocompromised or older adults in a facility that provides health care or assisted living services, such as a hospital or nursing home; or preschool age children in a facility that provides custodial care, such as a day care center.

**BB.** “**Home prepared foods**” means foods that have not been processed in a commercial food establishment and are not prepared by a permitted home-based food processing operation.

**CC.** “**Home-based food processing operation**” means any business in which a residential kitchen is permitted to be used to process food not classified as potentially hazardous in a sealed original package for human consumption and is offered directly to the consumer.

**DD.** “**Imminent health hazard**” means a significant threat or danger to health that is considered to exist when there is evidence sufficient to show that a product, practice, circumstance, or event creates a situation that requires immediate correction or cessation of operation.

**EE.** “**Mobile food service unit**” means a motor vehicle department-licensed vehicle-mounted food service establishment designed to be readily movable and which serves multiple locations on a daily basis for not more than two (2) hours at each location and not less than one thousand (1000) feet apart, except for single, temporary events or celebrations.

**FF.** “**Monitoring**” means the checking or verifying that the processing or handling procedures at the critical control points are properly carried out.

**GG.** “**Perishable food**” means any food of such type or in such condition as may spoil and become unwholesome.

**HH.** “**Permittee**” means the person responsible for the operation of the food establishment for which the permit is issued.

**I.** “**Person**” means an individual or any other legal entity.

**JJ.** “**pH**” refers to the hydrogen ion concentration within any solid or liquid medium and is a measurement of the degree of acidity or alkalinity of a food or food product.

**KK.** “**Potentially hazardous food**” means:

(1) any food or food ingredient, natural or synthetic, that is capable of supporting:

(a) the rapid and progressive growth of infectious or toxicogenic microorganisms; or

(b) the growth and toxin production of “*clostridium botulinum*”; or

(2) all raw or heat-treated foods of animal origin, heat-treated foods of plant origin, and raw seed sprouts, unless they:

(a) have a water activity (aw) value of 0.85 or below; or

(b) have a pH of 4.60 or below; or

(c) have been commercially processed by an approved method and remain in their unopened hermetically sealed containers.

**LL.** “**Premises**” means all areas either indoors or outdoors used in conjunction with the operation of a food establishment.

**MM.** “**Product thermometer**” means a thermometer, thermocouple, thermistor, or other device that, when the sensor is inserted into food, indicates the internal temperature of the food, but does not include non-product or ambient temperature sensing devices.

**NN.** “**Pushcart**” means a human propelled, self-contained food service establishment that operates at approved locations for no more than two (2) hours, except for single temporary events or celebrations. It is limited to the preparation and serving of hot dogs or commercially prepared, prepackaged, potentially hazardous foods such as burritos and tamales, served in their original packaging, maintained at safe temperatures, or limited to serving non-potentially hazardous foods.

**OO.** “**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 are disposed of onsite by approved methods.

**PP.** “**Refuse containers**” means any type of receptacle that is used inside the food establishment to store refuse, including but not limited to trash, garbage and food waste.

**QQ.** “**Refuse bins**” means any type of receptacle that is used outside the food establishment to store refuse for later removal.

**RR.** “**Remodeled**” means any changes involving structure or location of walls, openings, floors or counters, or replacement or modification of plumbing, mechanical or electrical components other than fixtures.

**SS.** “**Revocation**” means the permanent removal of a permit to operate a food establishment after a hearing has been held.

**TT.** “**Safe temperatures**” as applied to potentially hazardous food, means temperatures of 41 degrees F or below and 140 degrees F or above.

**UU.** “**Sanitize**” means effective treatment of clean, food-contact surfaces of equipment and utensils by a process which has been either specified by this part or approved by the secretary as being effective in destroying microorganisms, including pathogens.

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

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

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

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

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

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

- (1) sodium sulfite;
- (2) sodium bisulfite;
- (3) potassium bisulfite;
- (4) sodium metabisulfite; and
- (5) potassium metabisulfite.

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

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

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

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

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

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

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

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

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

#### **7.6.2.8 GENERAL PROVISIONS AND PROCEDURES:**

##### **A. Plan Review:**

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

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

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

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

(2) Prior to the issuance of any permit or the renewal of an annual permit, the health authority shall make inspections of the food establishment as it deems necessary, and the person in charge should be able to demonstrate knowledge of food operations as contained in this part (**7.6.2 NMAC**). For a new establishment, a permit fee 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 final pre-opening inspection when approval-to-open is granted.

(3) Any person seeking an initial permit or applying for a new permit after a permit revocation shall file a written application with the health authority. The application shall:

- (a) be made on forms furnished by the health authority;
- (b) state the applicant's name, mailing address, and telephone number;
- (c) state the date of the application and anticipated opening date;
- (d) state the name and location of the food establishment;
- (e) state that a copy of this part (**7.6.2 NMAC**) has been received from the health authority;
- (f) contain the health authority's evaluations of all plans and specifications as required in

**7.6.2.8.A NMAC;**

- (g) include any variances or grandfathered equipment which does not meet the requirements of

**7.6.2.10.A(8) NMAC;**

(h) include the vehicle identification number (VIN), New Mexico license plate numbers and approved commissary locations for mobile food service units; and

- (i) be signed by the applicant or the applicant's representative.

(4) The health authority shall either grant the permit, grant the permit subject to conditions, deny the permit, or restrict the permit to menu items or process as specified within:

- (a) thirty (30) days after final facility inspection has been completed, for an annual permit; or
- (b) ten (10) days after the filing of a permit application, for a temporary permit.

(5) The health authority may deny any application for a permit if it deems that the operation of the food establishment will not comply with:

- (a) the Food Service Sanitation Act, Chapter 25, Article 1 NMSA 1978;
- (b) the New Mexico Food Act, Chapter 25, Article 2 NMSA 1978; or
- (c) any applicable provision of this part (**7.6.2 NMAC**).

(6) If the health authority denies a permit, grants a permit subject to conditions, or restricts a permit, the health authority shall notify the applicant by certified mail of the action taken and the reasons for that action.

(7) Each permit issued by the health authority shall include an expiration date.

(a) The expiration date for an annual permit shall be:

(i) June 30 of each year, for any permit issued or renewed prior to January 1, 1993, provided the permit is renewed annually as provided in **7.6.2.8.B(10) NMAC** and has not been revoked; or

(ii) the last day of the anniversary month of the date of original issue, provided the permit is renewed annually as provided in **7.6.2.8.B(10)**, for any permit issued on or after January 1, 1993.

(b) The expiration date for a temporary permit shall be the earlier of:

(i) the last day of the event in conjunction with which the temporary food service establishment is operated; or

(ii) thirty (30) days after the date of issue.

(8) If the applicant is dissatisfied with the action taken by the health authority, the applicant may request a hearing before the secretary. The request must be made in writing to the secretary within fifteen (15) working days after the applicant has received notice of the health authority's action. Unless a timely request for a hearing is made, the decision of the health authority shall be final.

(9) Hearings before the secretary shall be conducted in accordance with **7.6.2.8.E NMAC** of this part. In the hearing the burden of proof shall be upon the applicant. Hearings shall be held within fifteen (15) working days after receipt of the request. The secretary shall notify the applicant by certified mail of the date, time and place

of the hearing.

(10) Annual permits may be renewed upon submission of a renewal form provided by the health authority and payment of:

(a) the annual permit fee specified in **7.6.2.8.K NMAC**, if applicable, prior to the expiration date of the permit; or

(b) the annual permit fee specified in **7.6.2.8.K NMAC**, if applicable, plus a penalty of twenty-five dollars (\$25.00), regardless of whether a permit fee is required, within thirty (30) days after expiration of the permit.

(11) After expiration of an annual permit, the food establishment shall not be operated until a new permit is issued, unless the renewal form and annual permit fee, if applicable, were received by the health authority on or before the expiration date of the permit.

(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 submission of a new permit application and the applicant's compliance with all applicable provisions of **7.6.2.8.A & B NMAC** for a new food establishment.

(13) Permits for temporary food establishments shall be for use at a fixed location in conjunction with a single event or celebration for a period not exceeding the event or celebration, or thirty (30) days, whichever is shorter, and may not be renewed.

(14) Self-contained mobile food service units shall notify the health authority office of jurisdiction at least twenty four (24) hours before operating in any jurisdictional area of New Mexico other than that of the permitted address.

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

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

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

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

**C. Permit Suspension And Revocation:**

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

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

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

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

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

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

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

(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 **7.6.2.8.C(2) NMAC** shall not be undertaken unless a permittee's permit has previously been suspended for violations of a similar nature for which the health authority now proposes revocation. In all instances the

revocation of a permit under this section shall require prior notice and hearing to the permittee.

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

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

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

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

**D. Immediate Suspension:**

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

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

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

**E. Hearings:**

(1) Hearings shall be before the secretary.

(2) A record shall be made of each hearing, the cost of which shall be borne by the health authority. Those persons requesting transcripts shall pay transcript costs.

(3) In hearings, the Rules of Civil Procedure and the Rules of Evidence shall not apply, but the hearings shall be conducted so that all relevant views, arguments and testimony are amply and fairly presented without undue repetition.

(4) The secretary shall allow the health authority and the affected food establishment permittee to call and examine witnesses, to submit written and oral evidence and arguments, to introduce exhibits and to cross examine persons who testify.

(5) Action taken by the secretary shall be by written order within five (5) working days following the hearing. A copy of the order shall be sent by certified mail to the affected food establishment permittee. The order of the secretary shall state:

(a) the name and location of the affected food establishment;

(b) the date the order is made;

(c) the decision of the secretary;

(d) the reasons for the secretary's decision;

(e) conditions, if any, under which the permittee may be allowed to continue operating; and

(f) failure of the permittee to adhere to conditions shall be grounds for suspension/revocation.

(6) Failure of the permittee or the permittee's designee to appear for the hearing shall result in immediate permit revocation and establishment closure.

**F. Timeliness:**

(1) When the last day for performing an act falls on Saturday, Sunday, or a legal state or national holiday, the performance of the act is timely if performed on the next day that is not a Saturday, Sunday, or a legal state or national holiday.

(2) All matters required to be filed or mailed in this part (**7.6.2 NMAC**) are timely if deposited in the United States mail on or before the required date.

**G. Compliance With Regulations:**

(1) An "approved" emblem shall be posted by the health authority at a food establishment that is operated in compliance with this part (**7.6.2 NMAC**).

(2) An "unsatisfactory" emblem may be posted by the health authority at a food establishment when:

(a) any of the following portions of this part (**7.6.2 NMAC**) are violated on any inspection:

(i) 7.6.2.9.A(1), (2), (3), (4), (6), (7), (8), (9), (10);

- (ii) 7.6.2.9.B(1), (3), (4), (5), (6), (7), (8), (9) NMAC;
- (iii) 7.6.2.9.C(3), (4), (9), (11), (12), (14), (17) NMAC;
- (iv) 7.6.2.9.D(3), (6), (13), (14), (17) NMAC;
- (v) 7.6.2.9.F(1), (2), (3), (4), (5) NMAC;
- (vi) 7.6.2.9.G(1), (4), (5), (6) NMAC;
- (vii) 7.6.2.9.H(1), (2), (5) NMAC;
- (viii) 7.6.2.9.I(1), (2), (3), (4) NMAC;
- (ix) 7.6.2.9.J NMAC;
- (x) 7.6.2.9.K(4) NMAC;
- (xi) 7.6.2.10.B(1) NMAC; or

(b) any portion of this part (7.6.2 NMAC) is violated on a repeated basis.

(3) An emblem shall be posted in a conspicuous place at each entry to the food establishment where it can be readily seen by the general public and shall be posted or removed only by an authorized agent of the health authority. Removal, defacing, or obstruction of an emblem by any person other than an authorized agent of the health authority shall result in immediate permit suspension or revocation. Temporary food service establishments and food processing establishments shall be exempt from 7.6.2.8.G(3) NMAC.

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

(1) When the health authority has reasonable cause to suspect possibility of disease transmission from any food establishment employee, the secretary shall secure the morbidity history of the suspected employee, or make other investigations as may be indicated, and take appropriate action including immediate permit suspension.

(2) No person who is infected with a disease in a communicable form that can be spread through food shall work in a food establishment. Such diseases would include but are not limited to salmonella, shigella, E. coli, or hepatitis A. Also excluded from working in a food establishment is anyone suffering symptoms of acute gastrointestinal illness. Such an individual shall not return to work until certified by a physician, in writing, to be infection-free and no longer considered a significant health risk.

(3) Employees engaged in food processing, preparation or service who have communicable forms of skin infections 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 receipt of the request. The health authority shall notify the person requesting a hearing, by certified mail, of the date, time and place of the hearing. In the hearing, the burden of proof shall be upon the person requesting the hearing.

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

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

**K. Permit Fees:**

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

(a) twenty-five dollars (\$25.00) for a temporary food service establishment;  
(b) one hundred twenty five dollars (\$125.00) per year as of December 1, 2005 for all other food establishments except home-based food processing operations:

(i) effective December 1, 2006 \$150.00

(ii) effective December 1, 2007 \$175.00

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

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

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

(a) any temporary food establishment:

- (i) serving only non-potentially hazardous food; or
- (ii) operating no more than two (2) consecutive calendar days at an event;
- (b) any food establishment that provides food to the general public at no charge.

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

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

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

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

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

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

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

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

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

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

**7.6.2.9 FOOD PROTECTION REQUIREMENTS:**

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

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

(2) Shellstock shall be identified with an official tag giving the name and the certificate number of the original shellstock shipper and the kind and quantity of shellstock. Shellstock shippers and shellstock reshippers, other than the original shellstock shipper, shall also add their name and certification number to the original shellstock shippers tag. Fresh and frozen shucked oysters, clams and mussels shall be packaged in non-returnable containers identified with the name and address of the packer, repacker, or distributor and the certificate number of the packer or repacker preceded by the abbreviated name of the state, as required in **7.6.2.15** of this Part. Upon receiving shellstock, restaurateurs should check to see that the required information is on the shellstock tag; if not, then the delivery should be rejected as the restaurateur may be dealing with an uncertified dealer (“bootlegger”). Restaurants shall retain such tags for ninety (90) days, before discarding.

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

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

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

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

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

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

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

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

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

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

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

(a) identifies the food to be packaged;

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

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

(ii) has a pH of 4.6 or less,

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

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

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

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

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

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

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

(f) includes operational procedures that:

(i) prohibit food contact with bare hands,

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

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

(g) describes the training program that ensures that the individual responsible for the reduced oxygen 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).

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

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

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

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

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

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

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

(12) When not in use, toxic materials shall be stored in cabinets that are used for no other purpose, or in a place that is located outside the food storage, food preparation, and clean equipment and utensil storage areas. Bactericides, cleaning agents, and sanitizing agents shall not be stored in the same cabinet or area of the room in which pesticides or other toxic materials are stored. This paragraph does not apply to equipment and utensil

cleaners and sanitizers that are normally stored in warewashing areas for availability and convenience, if the materials are stored in such a manner as to prevent contamination of food, equipment, utensils, linens, and single-use articles.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(5) Effective concentrations of a suitable detergent shall be used in both manual and mechanical dishwashing.

(6) When manual dishwashing is employed, equipment and utensils shall be thoroughly washed in a detergent solution that is kept clean and then shall be completely rinsed. All eating and drinking utensils, and the food-contact surfaces of all other equipment and utensils shall then be sanitized by one of the following methods:

(a) Immersion for at least thirty (30) seconds in clean hot water at a temperature of at least 171 degrees F;

(b) Immersion in a sanitizing solution containing:

(i) 50-200 parts per million of available chlorine at a temperature not less than 75 degrees F for 10 seconds;

(ii) 100-200 parts per million of available chlorine at a temperature not less than 55 degrees F for 10 seconds;

(iii) 12.5-25.0 parts per million of available iodine in a solution having a pH not higher than 5.0 and a temperature of not less than 75 degrees F; or

(iv) quaternary ammonium compound solutions shall be at a concentration indicated by the manufacturer's label instructions.

(c) Equipment too large to be treated by the methods set forth in **7.6.2.9.D(6)(a) & (b)** may be treated:

(i) with steam free from materials or additives harmful to human health; or

(ii) by applying a chemical sanitizing solution of at least twice the minimum strength required for chlorine and iodine-based sanitizers or as specified by the manufacturer's label in the case of quaternary ammonium compounds.

(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 and use suitable test kits for testing solution strength.

(8) A three-compartment sink, the first for washing, the second for rinsing, and the third for sanitizing, shall be provided and used wherever washing and sanitization of equipment or utensils are conducted manually. The Secretary may approve a two-compartment sink for food establishments where the only utensils to be washed are limited to spatulas, tongs and similar devices, and when the only equipment to be cleaned is stationary and does not require disassembly for proper cleaning.

(9) Sinks used for manual washing and sanitizing operations shall be of adequate length, width and depth to permit the complete immersion of the utensils, and each compartment of the sink shall be supplied with hot and cold running water (under pressure) from fixtures so designed and constructed as to preclude potential back siphonage.

(10) When hot water is used as the sanitizing agent in manual operations, numerically scaled thermometers, accurate to plus or minus 3 degrees F shall be provided, convenient to the sink, to permit frequent checks of the water temperature. An integral heating device or fixture shall be installed in, on, or under the sanitizing compartment of the sink capable of maintaining the water at a temperature of at least 170 degrees F. Complete immersion of the utensils and equipment components being sanitized is required.

(11) Dish tables and drain boards, of adequate size shall be provided for safe handling of soiled utensils prior to washing and for cleaned utensils following rinsing and sanitization. Dish tables and drain boards shall be so located or constructed as not to interfere with the proper use of the dishwashing facilities.

(12) Sinks, dish tables and drain boards shall be constructed of non-corrodible, non-toxic material, suitably reinforced, of such thickness and design and so installed as to resist denting and buckling, and be self-draining.

(13) When spray-type dishwashing machines are used, they shall be installed, maintained and operated in accordance with the manufacturer's specifications and instructions and shall meet the following requirements:

(a) Wash water shall be kept clean. Rinse water tanks shall be supplied with fresh water from the supply line and be so protected by distance, baffles, or other effective means as to prevent the entry of wash water into the rinse water.

(b) A suitable pressure gauge and gauge cock shall be provided immediately upstream from the final rinse sprays to permit checking the flow pressure, which shall be 15-25 psi, of the final rinse water.

(c) When chemicals are relied upon for sanitization, the chemicals shall be of the same type and concentration as **7.6.2.9.D(6)(b)**, and be automatically dispensed. When hot water is relied upon for sanitization the dish or utensil shall reach a surface temperature of 160 degrees F or above. Suitable testing devices, such as a maximum-temperature-recording-thermometer, shall be maintained within the establishment to check sanitization.

(d) Conveyors in dishwashing machines shall be accurately timed to assure proper exposure times in wash and rinse cycles as specified by the manufacturer.

(e) An easily readable, numeric thermometer shall be provided which will indicate to an accuracy of plus or minus 3 degrees F, the temperature of the water or solution in each tank of the dishwashing machine. In addition, a thermometer of equal accuracy shall be provided which will indicate the temperature of the final rinse water as it enters the manifold.

(f) Jets, nozzles and all other parts of each machine shall be maintained free of chemical deposits, debris and other soil. Automatic dispensers, if used, shall be kept in proper operating condition.

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

(15) Any other procedure may be approved for cleaning or sanitizing equipment and utensils, if it can be readily established that such a procedure will routinely render effective sanitization as demonstrated to the

satisfaction of the Secretary or as recommended by the manufacturer.

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

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

(18) Warewashing sinks, use limitations:

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

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

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

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

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

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

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

(a) a public sewerage system; or

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

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

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

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

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

(a) the flooding of floors;

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

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

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

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

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

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

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

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

(10) It is the food establishment's responsibility to see that all refuse bins utilized for refuse collection (whether or 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 establishment or by a contractor hired for final preparation of food for that establishment.

**K. Miscellaneous:**

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

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

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

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

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

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

(c) moist cloths or sponges used for cleaning non-food-contact surfaces of equipment such as counter, dining 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 other purpose. These cloths and sponges shall be stored in the sanitizing solution between uses.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(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 contact with food;

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

(c) clean cloth or slash resistant gloves may be used in direct contact with food that is subsequently cooked such as frozen food or a primal cut of meat; and

(d) sponges may not be used in contact with cleaned and sanitized or in-use food contact surfaces, except as stated in 7.6.2.9.K(4).

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

### **7.6.2.10 GENERAL EQUIPMENT AND CONSTRUCTION REQUIREMENTS:**

#### **A. Equipment Design, Construction And Materials:**

(1) All utensils shall be easily cleanable and so durable as to withstand hot water, sanitization and repeated use.

(2) Surfaces of equipment and utensils shall be smooth, easily cleanable, non-absorbent, nontoxic, and in good repair.

(3) Lubricated bearings and gears of equipment shall be so constructed that lubricants cannot get into the food or onto food-contact surfaces. Where there is a possibility of a lubricant entering into a food product, the lubricant shall be nontoxic food grade.

(4) Single-service articles shall be made of safe, nontoxic materials and shall not be reused. Mollusk and crustacean shells shall be used only once as serving containers.

(5) Equipment which is placed on tables or counters, unless readily movable, shall be sealed to the table or mounted on legs or feet at least four inches high, or shall meet the National Sanitation Foundation standards, or other equivalent approving authorities and shall be so installed as to facilitate cleaning of the equipment and adjacent areas.

(6) Floor-mounted equipment, unless readily movable, shall be sealed to the floor, or shall be installed on raised platforms of concrete or other smooth masonry in such a manner as to prevent liquids or debris from seeping or settling underneath, between, or behind such equipment in spaces which are not fully open for cleaning and inspection or such equipment shall be elevated at least six inches above the floor. The space between adjoining units, and between a unit and the adjacent wall, shall be closed unless exposed to seepage, in which event it shall be sealed; or sufficient space shall be provided to facilitate easy cleaning between, behind, and beside all such equipment.

(7) Aisles or working spaces between equipment, and between equipment and walls, shall be unobstructed, and of sufficient width to permit employees to perform their duties readily.

(8) All equipment, including new and replacement equipment, shall comply with the standards of an American National Standards Institute (ANSI) - accredited certification program. Such an accredited program includes, but is not limited to, one offered by the National Sanitation Foundation, or Underwriters Laboratories.

(9) Grandfathered equipment is equipment that does not meet the standards of 7.6.2.10.A(8), and is in use at the establishment on the effective date of this part and it has been accepted for use by the Health Authority. Such equipment shall be capable of meeting all requirements of this part pertaining to food temperature during preparation, storage, display and serving. Further, it shall be in good repair and capable of being maintained in a sanitary condition. All food contact surfaces shall be non-toxic. Grandfathered equipment shall not be used beyond five (5) years after the effective date of this part or if the establishment closes and is subsequently reopened under a new permittee, whichever occurs first.

(10) Commercially-rated refrigeration equipment (manufactured prior to 1997) used for potentially hazardous foods, which is in place and in use in a food establishment and is not capable of maintaining food at 41 degrees F may operate at 45 degrees F for ten (10) years from the adoption of this Part and then shall be upgraded or replaced to maintain food at 41 degrees F or less.

#### **B. Toilet Facilities:**

(1) Toilet facilities for employees shall be provided on the premises.

(2) All fixtures shall be of sanitary design and readily cleanable, and shall be kept clean and in good

repair.

(3) Toilet rooms shall be completely enclosed, and shall have tight-fitting, self-closing doors unless they do not open directly into the food storage, food preparation, utensil-washing and utensil storage areas, or dining rooms. Self-closing doors shall not be left open except during cleaning or maintenance.

(4) Floors, walls, ceiling, doors, and windows of toilet rooms shall be kept clean and in good repair, and shall comply with **7.6.2.10.C, D and E**.

(5) Toilet facilities, including the toilet room and fixtures, shall be kept free of objectionable odors.

(6) A supply of toilet tissue shall be provided at all times.

(7) Easily cleanable receptacles shall be provided for waste materials. Receptacles shall be emptied at least once a day, and more frequently when necessary to prevent excessive accumulation of waste materials.

(8) Toilet rooms and vestibules shall not be used for storage of food, single-service items, utensils, or food preparation equipment.

(9) Access to toilet facilities provided for patrons shall be directly from the dining area, from outside the building, or through an approved corridor. Passage of patrons through the food preparation area is prohibited. Such facilities shall fully meet the requirements of **7.6.2.10.B**, except that toilet facilities installed prior to the effective date of this Part which do not meet the accessibility requirements of **7.6.2.10.B**, shall be deemed acceptable in that establishment.

**C. Floors:**

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

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

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

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

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

**D. Walls And Ceilings:**

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

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

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

**E. Doors And Windows:**

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

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

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

(b) Closed, tight-fitting windows; and

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

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

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

(a) Solid and tight-fitting;

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

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

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

- (a) 16 mesh to 25.4mm (16 mesh to 1 inch) screens;
- (b) Properly designed and installed air curtains; or
- (c) Other effective means.

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

**F. Electrical And Lighting:**

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

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

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

**G. Ventilation:**

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

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

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

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

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

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

**A. Temporary Food Service Establishments:**

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

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

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

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

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

(3) All potentially hazardous foods to be served by a temporary food service establishment shall be

specified in writing on the permit application and shall be approved by the Health Authority at the time the permit is issued. Only those menu items approved by the Health Authority will be allowed for sale during operation of the establishment.

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

(5) Food service operations 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 following additional or modified requirements:

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

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

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

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

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

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

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

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

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

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

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

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

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

**E. Caterer Food Service Establishments:**

- (1) All caterers shall operate from a New Mexico permitted food establishment or commissary.
- (2) Catering operations shall be permitted and operated separately from other permitted food establishments or commissaries.
- (3) Caterers shall fully meet the requirements of this Part. For inspectional purposes, upon request by the Health Authority, caterers shall provide a quarterly schedule of events to be catered.
- (4) Hand washing facility requirements are as follow:
  - (a) when the intent to cater food includes the preparation and delivery of food to a private party or special event and does not include any service or restocking of foods, no hand washing facility is required at the service site;
  - (b) when the intent to cater foods includes the preparation, delivery, display, service, and restocking of foods, other than prepackaged foods, a hand washing facility is required and shall consist of at least a catch bucket, a pressurized or gravity fed supply of warm water, soap, and individual paper towels at the service site.
- (5) At all times, catered foods shall meet the time and temperature requirements of this Part. Time and temperature records may be required by the Health Authority to document this requirement.
- (6) All foods, display and service utensils, and other food-contact surfaces shall be protected from contamination throughout operations.

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

### **7.6.2.12 GENERAL FOOD PROCESSING REQUIREMENTS:**

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

- (1) **“Acidified Foods”** means low acid foods to which acid(s) or acid food(s) are added and which have a water activity ( $a_w$ ) greater than 0.85 and a finished equilibrium pH of 4.6 or below;
- (2) **“Code of Federal Regulations”** (CFR) means the compilation of general and permanent rules published in the federal register by the Executive departments and agencies of the federal government. It is published annually by the United States Government Printing Office. FDA rules appear in Title 21, USDA rules in Title 7 and EPA rules in Title 40;
- (3) **“EPA”** means the United States Environmental Protection Agency;
- (4) **“FDA”** means the United States Food and Drug Administration;
- (5) **“USDA”** means the United States Department of Agriculture;
- (6) **“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 ( $a_w$ );
- (7) **“jerky”** means a dried finished meat product having a water activity ( $a_w$ ) less than 0.85 and includes, but is not limited to, beef, poultry, lamb, pork, fish, ratites, organ meats, and wild game;
- (8) **“low acid foods”** means any foods, other than alcoholic beverages, with a finished equilibrium pH greater than 4.6 and a water activity ( $a_w$ ) greater than 0.85; and
- (9) **“packaged”** means bottled, canned, bagged, securely wrapped, or in a carton.

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

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

#### **C. 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) The term “adulterated” includes products that are defective, unsafe, filthy, or produced under unsanitary conditions (Section 25-2-10 NMSA 1978).
- (3) “Misbranding” includes statements, designs, or pictures in labeling that are false or misleading, and/or failure to provide required information outlined in **7.6.2.12.D(2)**.
- (4) Adulterated or misbranded food products shall be reconditioned, condemned or destroyed in accordance with Section 25-2-6 NMSA 1978.

#### **D. 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.

**E. Standards Of 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, 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 Code of Federal Regulations, Title 21, Part 101.

**F. 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 Code of Federal Regulations, 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 establishments and file processing information for all products with the FDA using appropriate forms. Registration and processing information forms are obtainable on request from: Food and Drug Administration, LACF Registration Coordinator (HFF-233), 200-C Street, SW, Washington, D. C. 20204.

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

**G. Operational Plans:**

(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 for a permit for review and acceptance by the Health Authority:

- (a) provide the following information for the product(s) to be manufactured and/or distributed:
  - (i) names of the ingredient(s);
  - (ii) the final product pH if appropriate;
  - (iii) the final product water activity ( $a_w$ ) if appropriate;
  - (iv) names of preservative(s);
  - (v) 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
  - (vi) the complete operational procedure for product formulation, using a flow chart to show at what stage(s) each ingredient is added;
- (b) provide the following information about product distribution:
  - (i) the intended distribution and use condition of the product;
  - (ii) if the product is to be distributed at ambient, refrigerated or frozen temperature;
  - (iii) the expected shelflife during distribution, retail storage, and in the hands of the ultimate consumer;
  - (iv) how the product should be prepared for consumption; and
  - (v) what mishandling of the product might occur in the merchandising channels or in the hands of the consumer;
- (c) state the intended process (cooking time and temperatures). This information may be included in the flow chart required in **7.6.2.12.G(1)(a)(vi)**. 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;

(d) submit product labels that comply with all requirements of **7.6.2.12.D** of this Part.

(2) 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 Health Authority:

(a) for each new product, the same information specified for the initial application in **7.6.2.12.G(1)**; 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 **7.6.2.12.G(1)**.

(3) All food processors 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.

(4) The Health Authority may require that the food manufacturer's process(es) be reviewed by a competent process authority to approve all critical factors of public health significance as defined in the Code of Federal Regulations, Title 21, Sections 114.83 and 114.89.

(5) In lieu of a process authority, the Health Authority may accept those processes which comply with **7.6.2.12.E(1) and (2)** of this Part.

(6) Recall procedures shall be prepared and must be on file at the food processing establishment. 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 Health Authorities, FDA, and USDA of any recalls; and for implementing recall programs.

(7) Whenever the Secretary finds or has probable cause to believe that any food processor'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 processing establishment, if not yet distributed to consumers or retail outlets, until a determination of ultimate disposition is made.

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

(9) If a food processor refuses to conduct a voluntary recall, the Secretary may order a mandatory recall of the suspected product lot at the processor's expense.

(10) When any food product is found, by examination or laboratory analysis, to be in violation of the standards of **7.6.2.12.C, E or F**, the Secretary may order condemnation and disposal of the product lot at the processor's expense.

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

(1) A copy of the accepted process and procedures shall be on file at the food processing establishment. It shall be available for review by the Health Authority at all times. A food processor shall not deviate from the accepted process and operational procedures without written consent of the Health 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 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 Part. In addition, Hazard Analysis Critical Control Point (HACCP) evaluations will be conducted by the Health Authority and/or the food processor as needed to identify hazards, critical control points, and daily monitoring requirements.

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

#### **7.6.2.13 JERKY PROCESSING REQUIREMENTS:**

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

(1) **"curing"** means to prepare by a chemical or physical process for keeping;

(2) **"marinade"** means to soak meat in a sauce to enrich its flavor or to tenderize it;

(3) **"jerky"** means a finished product as defined by the Meat Inspection Division Regulations of the New Mexico Livestock Board and **7.6.2.12.A(7)** of this Part; and

(4) **"jerky processing establishment"** means a meat market which prepares jerky for retail sale or

any establishment where jerky is manufactured, prepared, processed, packaged, or repackaged for ultimate sale.

**B. Jerky Processing Methods:**

(1) If the same rooms and equipment are used for preparation and packaging, then after the completion of the slicing of the meat and placing the product in the drying rooms or dehydrators, all process ware and food-contact surfaces of equipment used in the preparation shall be cleaned and sanitized before any finished product is packaged using that same process ware or equipment.

(2) The establishment shall facilitate the inspection and monitoring of the treatment process by providing appropriate time and temperature recording equipment approved by the Health Authority.

(3) The establishment shall record the time, internal temperature, and other critical factors for each lot of product produced. This information shall be available at the establishment for inspection at all times.

(4) The establishment shall have on file in the establishment, a copy of the current accepted processing method for each product produced. The processing method description shall include a description of:

(a) handling procedures for meat ingredients including maximum time and temperature exposures during thawing, trimming, curing, slicing, marinating, other preparation steps, and other applicable product factors the establishment and the Health Authority identify as critical;

(b) a procedure for identifying a product lot during processing, its lot identification codes, and how the finished product package codes can be identified with a specific production lot. The establishment shall divide production lots into one day's production or less;

(c) procedures used to comply with the treatment process;

(d) the drying procedures and methods used to prevent recontamination of the treated product;

and

(e) the equipment and procedures for measuring and recording time and temperature required by the treatment used by the establishment. The measuring devices shall be both readable and accurate within plus or minus 2 degrees F or 1 minute.

(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 applicable, within three (3) hours or less.

(a) Beef, lamb and fish products shall be heated to at least 145 degrees F.

(b) Poultry, pork products, and all other meats shall be heated to at least 165 degrees F.

(6) In lieu of **7.6.2.13.B(5)**, upon petition by the processing establishment, the Health Authority shall consider alternative methods for treating product and may accept any whose safety is adequately documented by data developed according to an experimental protocol previously reviewed and accepted by the Health Authority. [7.6.2.13 NMAC - Rp, 7 NMAC 6.1.60. to 602, 08/12/2000]

**7.6.2.14 BOTTLED WATER PROCESSING REQUIREMENTS:**

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

(1) **“adulteration”** means the contamination of a bottled water product with any poisonous or deleterious material, substance, or agent that would render the bottled water injurious to health; or if the bottled water consists in part of a contaminated, filthy, impure additive or ingredient; or if the bottled water has been produced, prepared, bottled, or held under unsanitary conditions whereby it may have been rendered unwholesome or injurious to health; or if the container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(2) **“bottled water”** means water that is from an approved source and is placed in a sealed container or package and is offered for sale for human consumption or other consumer uses;

(3) **“bottled water plant”** means any place or establishment in which bottled water is prepared for sale; and

(4) **“water source”** means water for processing bottled water which shall be from a source approved as a “ public water system” as defined and monitored under the New Mexico Drinking Water Regulations.

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

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

(2) Plants that bottle products through lines or equipment used for food or milk products shall demonstrate (assure) that the cleaning process prevents adulteration of the bottled water. Bottled 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.

(3) At the time of application for a permit from the Health Authority, the following information shall

be provided, in addition to that required in **7.6.2.8.B, 7.6.2.12.B,C,D,G and H:**

- (a) a statement describing the proposed water source(s) with a site plan where applicable;
- (b) a floor plan layout of the plant with a description of major equipment items;
- (c) a description of the cleaning and sanitization process for all containers and equipment and a frequency schedule; and
- (d) an example of each product label and a description of the batch code system to be used as required in **7.6.2.14.C.**

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

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

- (1) All bottled water product labels shall conform to **7.6.2.12.D.**
- (2) The label shall not state or imply any component or health benefit which cannot be substantiated in fact. Substantiation shall be at the expense of the water bottler.
- (3) For any statement on the label implying a specific type of water source, the product shall be from such a source. Terms used to describe the type of finished bottled water product shall conform to 21 CFR Section 165.110 or recognized bottled water industry standards such as the International Bottled Water Association Model Bottled Water Regulations.
- (4) A statement of any treatment or type of process used for the finished product shall be included on the label.
- (5) There shall be a code system to identify each batch of product, (or continuous run) as to at least date and place of bottling.
- (6) Such code may appear on the container or the label but not on the closure (lid, cap).

**D. Analytical Requirements:** Unless otherwise provided in this Part, samples shall be collected, prepared, and examined using the most current methods for the examination of drinking water listed in the Code of Federal Regulations (40 C.F.R. 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 a laboratory:

- (1) approved by the Health Authority;
- (2) certified by the United States Environmental Protection Agency (EPA);
- (3) certified by the primary enforcement agency in any state that has been granted primacy by EPA; or
- (4) certified or accredited by a third-party organization acceptable to a primacy state.

**E. Monitoring Requirements:**

(1) All water bottling 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 ten (10) working days of analysis to the Health Authority.

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

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

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

- (a) Maximum contaminant levels for inorganic compounds.
- (b) Maximum contaminant levels for water properties.
- (c) Maximum contaminant levels for radionuclides.
- (d) Maximum contaminant levels for volatile organic compounds.
- (e) Maximum contaminant levels for semi-volatile organic compounds.

(3) More frequent sampling of the finished product(s) or water source shall be conducted when ordered by the Secretary in the event of possible contamination or when changes in the distribution system or treatment processing occurs which may increase the concentration of a contaminant whether listed in the regulations or not. All expenses incurred for sampling, transportation of samples, and sample analysis shall be borne by the

water bottler.

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

**F. Record Maintenance:**

- (1) The following records shall be retained for the period of no less than five (5) years:
  - (a) bacteriological and chemical analyses made pursuant to this Part;
  - (b) copies of any written reports, correspondence, or communications relating to inspections; and
  - (c) records concerning any waivers granted to the facility.
- (2) The following records shall be retained on the premises at all times:
  - (a) plans and specifications of the facility and any modification thereof; and
  - (b) plans and flow charts indicative of the current water bottling processing.

**G. Waivers From Source Water Sampling And Testing:** A water bottling plant operator is granted a waiver from sampling a water source, if the water source is a public water supply system for which all sampling requirements outlined in the New Mexico Water Supply Regulations are being met. A water bottling plant operator may not receive a waiver from sampling finished products as required in **7.6.2.14.E(1) and (3)** of this Part. [7.6.2.14 NMAC - Rp, 7 NMAC 6.1. 701 to 708, 08/12/2000]

**7.6.2.15 SHELLFISH PROCESSING AND CERTIFICATION REQUIREMENTS:**

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

- (1) **“certification”** means a State program whereby the State of New Mexico assures receiving jurisdictions that a shellfish processor meets criteria of the National Shellfish Sanitation Program (NSSP) and is eligible for interstate shipment and listing in the Interstate Certified Shellfish Shippers list;
- (2) **“certification number”** means the number assigned by the Health Authority to each certified shellfish dealer, consisting of a three digit number preceded by two letter state abbreviation (NM) and followed by the two letter symbol designating the type of operation certified (RP, RS, SS or SP);
- (3) **“commingling”** means the act of combining different species of shellfish or lots of shellfish or shucked shellfish;
- (4) **“controlled purification”** means the process of using a controlled aquatic environment to reduce the level of bacteria and viruses in live shellfish;
- (5) **“dealer”** means a commercial shellfish shipper, reshipper, shucker-packer, repacker, or depuration processor or operation;
- (6) **“depuration”** means a process to reduce the number of pathogenic organisms that may be present in shellfish harvested from moderately polluted (restricted) waters to such levels that the shellfish will be rendered safe for human consumption without further processing;
- (7) **“dry storage”** means the storage of shellstock out of water;
- (8) **“Interstate Certified Shellfish Shippers List”** means the listing, published by FDA, of dealers certified by the states to pack and ship shellfish;
- (9) **“ICSSL”** means the Interstate Certified Shellfish Shippers List;
- (10) **“label”** means any written, printed, or graphic matter affixed to or appearing upon any package containing shellfish;
- (11) **“lot of shellstock”** means a collection of bulk shellstock or containers of shellstock of no more than one day's harvest from a single defined growing area harvested by one or more harvesters;
- (12) **“lot of shucked shellfish”** means a collection of containers of no more than one day's shucked shellfish product produced under conditions as nearly uniform as possible, and designated by a common container code or marking;
- (13) **“National Shellfish Sanitation Program”** means the Cooperative State - FDA – Industry Program for the sanitary control of harvesting, shipping and processing of shellfish and the certification of interstate shellfish shippers;
- (14) **“NSSP”** means the National Shellfish Sanitation Program;
- (15) **“processor”** means a person who depurates, shucks, packs, or repacks shellfish;
- (16) **“Repacker” or “RP”** means a person other than the original certified shucker-packer who repacks shucked shellfish into other containers. A repacker may also repack and ship shellstock. A repacker shall

not shuck shellfish;

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

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

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

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

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

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

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

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

**B. General Shellfish Processing Requirements:**

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

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

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

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

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

**C. Permits And Certification:**

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

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

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

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

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

**D. Shellfish Certificate:**

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

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

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

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

(d) an expiration date.

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

**E. Shellstock Shippers:**

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

(2) All shellstock shall originate from an approved source and be packaged, protected and identified as specified in **7.6.2.15**. **E.** All shellstock received from other certified shellfish dealers shall have a durable, waterproof tag (at least 2-5/8 inches by 5-1/4 inches) on each container with the following information:

(a) the dealer's name and address;

(b) the dealer's certification number;

(c) the original shellstock shipper's certification number;

(d) the date of harvest; and

(e) the most precise identification of the harvest location as is practicable.

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

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

(a) only clean and wholesome shellfish shall be repacked. Repacking facilities and equipment shall meet all applicable sanitation requirements of these regulations to assure that microbiological deterioration does not occur;

(b) shellstock from different lots shall not be commingled; and

(c) each container of repacked or relabeled shellstock shall be identified as to harvest area, date of harvest, type and quantity of shellfish, and the certifications number of the shellstock shippers.

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

**F. Shellfish Reshippers:**

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

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

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

**G. Shellfish Repackers:**

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

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

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

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

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

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

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

**H. Shellfish Quality Control:**

- (1) When shucked shellfish are handled, the following requirements shall apply:
    - (a) The certified dealer receiving shellfish shall assure that incoming shellfish are:
      - (i) obtained from a certified dealer;
      - (ii) properly tagged or otherwise identified to show their source;
      - (iii) accompanied by all required transaction records; and
      - (iv) clean and wholesome.
    - (b) Shucked shellfish shall be held and transported at 41 degrees F or less. Storage and shipping of sealed containers of shucked shellfish in wet ice is highly recommended.
    - (c) Packaged shellfish to be frozen shall be arranged to insure rapid freezing, and shall be frozen at a temperature of 0 degrees F or less, with packages frozen solid within twelve (12) hours after the start of freezing. Frozen shellfish shall be handled in such a manner as to remain frozen solid, and held at 0 degrees F or less.
    - (d) All containers holding shucked shellfish shall be kept covered during refrigeration.
    - (e) Ice shall be manufactured at the establishment from potable water in a commercial machine which has been properly installed without cross connections, or in another establishment approved by the Health Authority.
    - (f) Complete and accurate legible transaction records shall be maintained by each certified dealer that provide all information necessary to trace all purchases and sales of shellfish back to their source.
    - (g) The general equipment and construction requirements outlined in **7.6.2.10.A through G** shall apply to all buildings, structures, and equipment.
  - (2) When shellstock is handled, the following requirements shall apply:
    - (a) Shellstock shall be obtained from a certified dealer which are properly tagged or identified to show their source, and which are accompanied by all required transaction records. Reshippers shall not obtain shellstock directly from harvesters.
    - (b) Complete, accurate and legible transaction records shall be maintained by each certified dealer which provide all information necessary to trace all purchases and sales of shellstock back to their source.
    - (c) Shellstock in dry storage shall be protected from contamination and maintained in ambient air temperatures of 41 degrees F or below. Shellstock from different sources shall be separated as necessary to avoid commingling and aid in maintaining source identity.
    - (d) Wet storage shall be in accordance with **7.6.2.15.I**.
    - (e) All trucks used for hauling bulk, bagged or otherwise packaged shellstock shall be constructed, operated, and maintained so as to prevent contamination, deterioration, or decomposition of the shellfish, and shall be kept clean.
    - (f) Adequately refrigerated trucks shall be used to transport shellstock when the ambient air temperature is such that unacceptable bacterial growth or deterioration may occur.
    - (g) The general equipment and construction requirements outlined in **7.6.2.10.A through G** shall apply to all buildings, structures and equipment.
  - (3) If a shellfish reshipper business consists only of a truck, a permanent business address where vehicles and records are available for inspection shall be maintained. The following requirements shall apply:
    - (a) Such vehicles shall comply with the requirements of **7.6.2.15.H(2)(e)**.
    - (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)**.
    - (c) Refrigeration and shipping of shucked shellfish shall comply with provisions of **7.6.2.15.H(1)(b) and (c)**.
    - (d) Records shall be maintained as specified in **7.6.2.15.H(2)(b)**.
- I. Wet Storage Of Shellfish:**
- (1) Shellfish for wet storage shall originate only from a certified dealer and shall be identified and shipped in accordance with this Part. Wet storage may be used for temporary storage of approved shellfish, for desanding and for improving palatability.
  - (2) Each wet storage site or facility shall be inspected and approved annually by the Health Authority. Factors to be reviewed include, but are not limited to:
    - (a) a plan giving the design of the storage facility;
    - (b) the source of water to be used for wet storage and details of any water treatment system;
    - (c) the purpose of the wet storage operation such as holding, conditioning, or salinization, and any species specific physiologic factors that may affect design criteria;
    - (d) the design, construction and operation of the facility and equipment; and

(e) the effectiveness of cleaning and sanitization.

(3) Wet storage operations shall be conducted in structures that comply with the general equipment and construction requirements outlined in **7.6.2.10.A through G**.  
[7.6.2.15 NMAC - Rp, 7 NMAC 6.1.801 to 809, 08/12/2000]

#### **7.6.2.16 HOME-BASED FOOD PROCESSING:**

##### **A. Plan Review, Permitting, Inspection, and Training Requirements:**

(1) No person shall operate a home-based food processing operation without a permit issued by the health authority under **7.6.2.8 NMAC** and **Subsection G of 7.6.2.12 NMAC**, except as specified in **7.6.2.16 NMAC**.

(2) During the initial plan review, proof of attendance of a health authority-approved food safety course within the last five (5) years must be provided.

(3) Changes made to a home-based food processing operation from the initial plan review must be submitted to the health authority for review and approval.

(4) The health authority may renew an annual permit for a home-based food processing operation if the applicant adheres to **7.6.2.8 NMAC** and submits proof of attendance of a health authority-approved food safety course within the last five (5) years.

(5) The permit issued shall be displayed at the home-based food processing operation. A copy of the permit shall be displayed at places at which the operator sells food at times when the operator is selling the home-based processed food.

##### **B. Food Protection Requirements:**

(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 NMAC**, except as specified in **7.6.2.16 NMAC**.

(2) Products processed by home-based food processing operations shall be packaged in food grade material.

(3) Home-based processed food products and components shall be stored separate and apart from residential foods and protected from contamination, insects, rodents, pests, water leaks, dust, dirt and other contaminants.

(4) Home-based food processing operations must keep a sample of each processed food batch for fourteen (14) days. The samples shall be labeled with the production date and time.

(5) Vehicles used in transporting home-based processed food products shall be maintained in a safe and sanitary manner. Vehicle compartments used to transport animals shall not be used for transporting home-based processed foods.

##### **C. Exceptions and Limitations:**

(1) The following provisions shall not apply to home-based food processing operations:

(a) **Subsection G of 7.6.2.8 NMAC;**

(b) **Paragraph (8) of Subsection D of 7.6.2.9 NMAC;**

(c) **Paragraph (11) of Subsection F of 7.6.2.9 NMAC;**

(d) **Paragraphs (2), (3), (8) and (9) of Subsection K of 7.6.2.9 NMAC;**

(e) **Paragraphs (5), (6), (7), (8), (9) and (10) of Subsection A of 7.6.2.10 NMAC;**

(f) **Paragraph (3) of Subsection B of 7.6.2.10 NMAC** (self-closing door requirement only);

(g) **Paragraph (9) of Subsection B of 7.6.2.10 NMAC;**

(h) **Paragraphs (3) and (5) of Subsection C of 7.6.2.10 NMAC;**

(i) **Subparagraph (c) of Paragraph (2) of Subsection E of 7.6.2.10 NMAC.**

(2) Food products processed by a home-based food processing operation shall not be potentially hazardous foods. The health authority shall review the home-based food products to determine the hazard category and may approve the products for home-based processing.

(3) A home-based food processing operation shall only sell its products at farmer's markets, roadside stands, festivals, or other venues in which the producer sells directly to the consumer.

(4) Products processed by a home-based food processing operation shall not be sold, used, or offered for consumption in retail food establishments including, but not limited to, grocery stores and convenience stores, by internet sales, or sold in interstate commerce.

(5) Pets shall not be permitted in the kitchen and shall be kept out of food preparation areas during home-based food processing related activities.

(6) Non-employees shall not be allowed entry into the kitchen during home-based food processing related activities.

(7) A home-based food processing operation shall not wash out or clean pet cages, pans or similar items in the kitchen.

(8) Household cooking may not occur in the kitchen during home-based food processing related activities.

(9) The following provisions are applicable to home-based food processing operations only during home-based food processing related activities:

(a) Paragraphs (1) and (18) of Subsection D of 7.6.2.9 NMAC;

(b) Paragraph (1) of Subsection G of 7.6.2.9 NMAC (handwashing usage only);

(c) Paragraph (4) of Subsection G of 7.6.2.9 NMAC;

(d) Paragraph (2) of Subsection H of 7.6.2.9 NMAC;

(e) Paragraph (5) of Subsection K of 7.6.2.9 NMAC;

(f) Paragraph (7) of Subsection B of 7.6.2.10 NMAC (emptying requirements only).

(10) A home-based food processing operation shall submit in its operational plan required by Subsection G of 7.6.2.12 NMAC a detailed procedure to be used to clean and sanitize the kitchen sink before and during home-based food processing related activities.

(11) A home-based food processing operation shall comply with Paragraph (4) of Subsection F of 7.6.2.9 NMAC unless an alternative method is approved by the health authority. Submittal of an alternative method shall comply with the variance procedures found in Subsection J of 7.6.2.8 NMAC.

(12) A home-based food processing operation shall comply with Subsection G of 7.6.2.9 NMAC unless an alternative method is approved by the health authority. Submittal of an alternative method shall comply with the variance procedures found in Subsection J of 7.6.2.8 NMAC.

**D. Home-Based Food Labeling:**

(1) A home-based food processing operation shall properly label all foods in accordance with state and federal law, including Subsection D of 7.6.2.12 NMAC.

(2) Label information shall also include the words "Home Produced" in bold conspicuous 12 point type on the principal display panel.

[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]

**7.6.2.17 MISCELLANEOUS:**

**A. Severability:** If any portion or application of this part (7.6.2 NMAC) is held invalid for any reason, the remainder of this part or application to other persons or situations shall not be affected.

**B. Amendment And Supersession Of Prior Regulations; References In Other Regulations:** This part shall be construed as amending and superseding the Food Service and Food Processing Regulations, EIB FQM 2, filed October 27, 1995, as amended. Any reference to the Food Service and Food Processing Regulations or to any prior version of the Food Service Regulations in any other rule shall be construed as a reference to this part.

**C. Savings Clause:** Supersession of the Food Service and Food Processor Regulations shall not affect any permit issued pursuant to, nor any administrative or judicial action for the enforcement of, those regulations.

**D. Collateral Requirements:** Compliance with this part does not relieve any person from the responsibility of meeting more stringent municipal regulations or ordinances or other requirements of state or federal laws governing food service establishments or food processing establishments.

**E. Limitation Of Defense:** The existence of a valid permit for operation of a food establishment shall not constitute a defense to any action for violation of this part except for the requirement to obtain a permit.

[7.6.2.17 NMAC - Rn, 7.6.2.16 NMAC, 01/01/2010]

**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, 6/25/73

EIB Rule FQM 2, Food Service Regulations; 10/15/80

EIB Rule FQM 2, Food Service Regulations; 11/14/85

EIB Rule FQM 2, Food Service and Processor Regulations; 5/22/90

EIB Rule FQM 2, Food Service And Processor Regulations; 12/02/92

**History of Repealed Material:**

7 NMAC 6.1 Food Service And Food Processing Regulations - Repealed, 08/12/2000