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2 **TITLE 7 HEALTH**
3 **CHAPTER 6 FOOD HANDLING**
4 **PART 2 FOOD SERVICE AND FOOD PROCESSING**
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6 **7.6.2.1 ISSUING AGENCY:** New Mexico Environmental Improvement Board.
7 [7.6.2.1 NMAC - Rp, 7 NMAC 6.1.001, 08/12/2000; Rp, x/x/2016]
8

9 **7.6.2.2 SCOPE:** All Food Service Establishments and Food Processing Establishments.
10 [7.6.2.2 NMAC - Rp, 7 NMAC 6.1.002, 08/12/2000; Rp, x/x/2016]
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12 **7.6.2.3 STATUTORY AUTHORITY:** Section 74-1-8 NMSA 1978 directs the Environmental
13 Improvement Board to promulgate regulations and standards for Food protection. Section 74-1-9
14 NMSA 1978 directs the procedures for adoption. Section 25-1-4 delineates requirements of Food
15 Service Establishments to prepare and serve Food in a manner safe for human consumption, free
16 from Adulteration, spoilage, contamination and unwholesomeness. Section 25-1-7 NMSA 1978
17 authorizes the department of environment to execute any provisions of the Food Service
18 Sanitation Act (Chapter 25, Article 1 NMSA 1978.)
19 [7.6.2.3 NMAC - Rp, 7 NMAC 6.1.003, 08/12/2000; Rp, x/x/2016]
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21 **7.6.2.4 DURATION:** Permanent.
22 [7.6.2.4 NMAC - Rp, 7 NMAC 6.1.004, 08/12/2000; Rp, x/x/2016]
23

24 **7.6.2.5 EFFECTIVE DATE:** February 1, 2016 unless a later date is cited in the History of
25 7.6.2 NMAC.
26 [7.6.2.5 NMAC - Rp, 7 NMAC 6.1.005, 08/12/2000; Rp, x/x/2016]
27

28 **7.6.2.6 OBJECTIVE:** The objective of these regulations is to protect the public health by
29 establishing standards and provisions for the safe operation of food establishments to assure that
30 consumers are not exposed to adverse environmental health conditions.
31 [7.6.2.6 NMAC - Rp, 7 NMAC 6.1.006, 08/12/2000; Rp, x/x/2016]
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33 **7.6.2.7 DEFINITIONS:**

34 **A. Adoption of Food Code definitions.** Except as otherwise provided below, Part 1-2
35 (Definitions) of the 2013 United States Food and Drug Administration Model Food Code (“Food
36 Code”) is hereby adopted and incorporated by reference.

37 **B. Modifications to Food Code Definitions.** The following terms defined in Food Code
38 Part 1-2 have the meanings set forth herein, in lieu of the meanings set forth in Food Code Part
39 1-2.

40 (1) “Adulterated” has the meaning state in the New Mexico Food Act, NMSA
41 1978, Section 25-2-10.

42 (2) “Critical Control Point” means a point, step, or procedure in a food process at
43 which a control measure can be applied and at which control is essential to prevent, reduce to an
44 acceptable level, or eliminate an identified Food Hazard.

1 **(3)** “Critical Limit” means the maximum or minimum value to which a physical,
2 biological, or chemical parameter must be controlled at a Critical Control Point to prevent,
3 eliminate, or reduce to an acceptable level the occurrence of the identified Food Hazard.

4 **(4)** “Drinking Water” means water that meets criteria as specified in 40 CFR 141
5 National Primary Drinking Water Regulations 20.7.10 NMAC. Drinking Water is traditionally
6 known as “potable water”, and includes the term “water” except where the term used connotes
7 that the water is not potable, such as “boiler water,” “mop water,” “rainwater,” “wastewater,”
8 and “non-drinking” water.

9 **(5)** “Food Code” means the 2013 United States Food and Drug Administration
10 Model Food Code.

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

19 **(a)** Food Establishment includes:

20 (i) An element of the operation such as a transportation vehicle or a
21 central preparation facility that supplies a vending location or satellite feeding location unless the
22 vending or feeding location is permitted by the Regulatory Authority; or

23 (ii) An operation that is conducted in a mobile, stationary,
24 temporary, or permanent facility or location; where consumption is on or off the Premises; and
25 regardless of whether there is a charge for the Food.

26 **(b)** Food Establishment does not include:

27 (i) An establishment that offers only prepackaged Foods that are not
28 time/temperature control for safety (TCS) Foods;

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

31 (iii) A Food Processing Plant; including those that are located on the
32 Premises of a Food Establishment;

33 (iv) A kitchen in a private home if only baked goods (e.g., cookies,
34 brownies, cakes, fruit pies) that are not time/temperature control for safety Food, are prepared for
35 sale or service at a fundraising function (e.g., a religious or charitable organization’s bake sale) if
36 the consumer is informed by a clearly visible placard at the sales or service location that the
37 Food is prepared in a kitchen that is not subject to regulation and inspection by the Regulatory
38 Authority;

39 (v) An area where Food that is prepared as specified in (b)(iv) of this
40 definition is sold or offered for human consumption;

41 (vi) A kitchen in a private home, such as a facility licensed by or
42 registered with the Department of Health, or the Department of Children, Youth and Families, or
43 a bed-and-breakfast operation that prepares and offers Food to guests if the home is owner
44 occupied, the number of available guest bedrooms does not exceed 6, breakfast is the only meal
45 offered, the number of guests served does not exceed 18, and the consumer is informed by
46 statements contained in published advertisements, mailed brochures, and placards posted at the

1 registration area that the Food is prepared in a kitchen that is not regulated and inspected by the
2 Regulatory Authority;

3 (vii) A private home that receives catered or home-delivered Food
4 that is served to non-paying guests;

5 (viii) A private home or home environment where residents take part
6 in preparing and serving their own meals;

7 (ix) A pot-luck dinner or similar event in which the Food is prepared
8 and/or contributed by the participants and for which no fee is charged;

9 (x) A custom exempt meat processing facility where animals are
10 processed for personal use by the animal owner as Food and not for sale or service in a Food
11 Establishment;

12 (xi) A dairy establishment as defined in the New Mexico Food Act;

13 (xii) An animal slaughter facility;

14 (xiii) An aquaculture facility that raises fish;

15 (xiv) A “pure honey” processing facility. “Pure honey” refers to
16 natural liquid or solid honey extracted from the combs or in the comb taken from beehives with
17 no processing or adding of additional ingredients; or

18 (xv) An operation that offers to consumers whole raw agricultural
19 products.

20 (7) “HACCP Plan” means a document prepared in accordance with the principles
21 of HACCP to ensure control of hazards which are significant for Food safety.

22 (8) “Hermetically Sealed Container” means an airtight container that is designed
23 and intended to be secure against the entry of microorganisms and to maintain the commercial
24 sterility of its contents after processing, or to maintain the controls which prevent potential
25 growth of microorganisms or the elaboration of toxins through acidity (pH) or water activity
26 (aw).

27 (9) “Home-based Food Processing Operation” means any business in which a
28 residential kitchen is permitted to process Food not classified as a time/temperature control for
29 safety foods (TCS) and is packaged and is offered directly to the consumer.

30 (10) “Public Water System” has the meaning stated in 20.7.10 NMAC.

31 (11) “Regulatory Authority” means the New Mexico Environment Department.

32 (12) “Temporary Food Establishment” (TFE) means a Food Establishment that
33 operates at a fixed location in conjunction with a single event or celebration for a period not
34 exceeding the length of the event or celebration, and does not exceed 30 days.

35 **C. Additions to Food Code Definitions.** The following terms not defined in Food Code
36 Part 1-2 have the meanings set forth herein when the terms are used in this part.

37 (1) “Acid Food” means food that has a natural pH of 4.6 or below.

38 (2) “Acidified Food” means low-acid Food to which acid(s) or Acid Food(s) are
39 added and have a water activity greater than 0.85 and have a finished equilibrium pH of 4.6 or
40 below. Carbonated beverages and Food that are stored, distributed, and retailed under
41 refrigeration are not classified as Acidified Food.

42 (3) “Control Point” means a step at which biological, chemical, or physical factors
43 can be controlled.

44 (4) “Corrective Action” means an action to be taken when the results of
45 monitoring at the Critical Control Point indicate a loss of control.

46 (5) “Deviation” means failure to meet a critical limit.

1 **(6)** “Food Handler Card” means a card issued to an individual after successful
2 completion of a Food Handler Training Program to function as a Food Employee.

3 **(7)** “Food Handler Training Program” means an ANSI/ASTM E2659-09
4 accredited Food Handler Training Certificate Program.

5 **(8)** “Good Manufacturing Practices” (GMPs) means the minimum sanitary and
6 processing requirements related to production methods, equipment, facilities, and other controls
7 that a Food Processing Plant must meet to assure that Food is safe and wholesome.

8 **(9)** “Hazard Analysis and Critical Control Point” (HACCP) means a Food safety
9 management system that focuses on the identification, evaluation, and control of Food safety
10 Hazards.

11 **(10)** “Hazard Analysis” means the process of collecting and evaluating
12 information on hazards associated with the Food under consideration to decide which are
13 significant and must be addressed in the HACCP plan.

14 **(11)** “Home-based Food Processing Operation” means any business in which a
15 residential kitchen is Permitted to process Approved Food that is not classified as a
16 Time/Temperature Control for Safety (TCS) Food and is packaged and is offered directly to the
17 consumer.

18 **(12)** “Jerky” means a dried, finished meat, poultry, fish, or game animal product
19 having a water activity (a_w) less than 0.85.

20 **(13)** “Low Acid Food” means any Food, other than alcoholic beverages, with a
21 finished equilibrium pH greater than 4.6 and a water activity (a_w) greater than 0.85. Tomatoes
22 and tomato products having a finished equilibrium pH less than 4.7 are not classified as Low
23 Acid Food.

24 **(14)** “Misbranded” has the meaning stated in the New Mexico Food Act, NMSA
25 1978, Section 25-2-11.

26 **(15)** “Mobile Food Establishment” means a Food Establishment that is designed
27 to be readily movable; completely retains its mobility; and is equipped to serve Food. Mobile
28 Food Establishment includes Self-contained Mobile Units, Non Self-contained Mobile Units,
29 Pushcarts, and Mobile Support Units.

30 **(16)** “Mobile Support Unit” means an enclosed motor vehicle department-
31 licensed driven or towed wheeled vehicle used in conjunction with a New Mexico based
32 servicing area that travels to, and services, other Mobile Food Establishments as needed to
33 replenish supplies, including Food and potable water, clean the interior of the unit, or dispose
34 of liquid or solid wastes.

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

38 **(18)** “Non Self-Contained Mobile Unit” means an enclosed motor vehicle
39 department-licensed driven or towed wheeled vehicle that is required to operate from a New
40 Mexico based servicing area.

1 **(19)** “Operational Plan” means a written plan outlining the product formulation,
2 production steps, safety requirements, distribution, labeling, and recall procedures of a Food
3 product that will be implemented by a Food Establishment or Food Processing Plant when
4 processing packaged Food.

5 **(20)** “Process Authority” means an expert in the processes for controlling
6 pathogenic microorganisms in Food, and as such, is qualified by education, training and
7 experience to evaluate all of the aspects of pathogen control measures-and determine if such
8 control measures, when properly implemented, will control pathogens effectively.

9 **(21)** “Pushcart” means a human propelled unit, equipped to serve Food, that is
10 required to operate from a New Mexico based servicing area.

11 **(22)** “Recall” means a return of Food products that are either known or suspected
12 to be Adulterated, Misbranded, or otherwise unsafe for human consumption, to the manufacturer
13 or distributor, or that are disposed of by Approved methods.

14 **(23)** “Sanitation Standard Operating Procedures” (SSOPs) means written
15 procedures specific to a single Food Processing Plant to be followed routinely for the
16 performance of designated operations to ensure sanitary conditions and to prevent product
17 adulteration in a Food Processing Plant.

18 **(24)** “Self-contained Mobile Unit” means an enclosed motor vehicle department-
19 licensed driven or towed wheeled vehicle that is not required to operate from a New Mexico
20 based servicing area.

21 **(25)** “Shelf-stable Product” means a product that is hermetically sealed and, when
22 stored at room temperature, should not demonstrate any microbial growth.

23 **(26)** “Standard Operating Procedures” (SOPs) means written procedures to be
24 followed routinely for the performance of designated operations in a Food Processing Plant.

25 **(27)** “Standards of Identity” means legal standards, defined by the FDA, for
26 Foods regarding minimum quality specifications, including permitted ingredients and processing
27 requirements, to be marketed under a certain name.

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

32 **(29)** “Validation” means that element of Verification focused on collecting and
33 evaluating scientific and technical information to determine whether the HACCP system, when
34 properly implemented, will control effectively the identified Food Hazards.

35 **(30)** “Verification” means those activities, other than monitoring, that establish
36 the validity of the HACCP plan and that the system is operating according to the plan. It includes
37 Validation procedures.

38 [7.6.2.7 NMAC - Rp, 7 NMAC 6.1.006, 08/12/2000; Rp, x/x/2016]

1 **7.6.2.8 FOOD ESTABLISHMENT REQUIREMENTS:**

2 **A. Adoption of Food Code.** Except as otherwise provided, the 2013 United States Food
3 and Drug Administration Model Food Code and the Supplement to the 2013 Food Code are
4 hereby adopted and incorporated by reference.

5 **B. Modifications to Food Code.** Except as otherwise provided, the following
6 modifications are made to the incorporated Food Code.

7 **(1) 2-102.12 Certified Food Protection Manager.**

8 (A) At least one Employee that has supervisory and management responsibility and the
9 authority to direct and control Food preparation and service shall be a certified Food protection
10 manager who has shown proficiency of required information through passing a test that is part
11 of an Accredited Program. (B) This Section applies to Food Establishments, Food Processing
12 Plants, Temporary Food Establishments, and Mobile Food Establishments. (C) This section does
13 not apply to certain types of Food Establishments deemed by the Regulatory Authority to pose
14 minimal risk of causing, or contributing to, foodborne illness based on the nature of the
15 operation and extent of Food preparation. (D) The effective date of this paragraph shall be one
16 year from the effective date of this section.

17 **(2) 3-201.15 Molluscan Shellfish.**

18 (A) Molluscan Shellfish shall be obtained from sources according to law and the requirements
19 specified in the U.S. Department of Health and Human Services, Public Health Service, Food
20 and Drug Administration, National Shellfish Sanitation Program Guide for the Control of
21 Molluscan Shellfish. (B) Molluscan Shellfish shall be from sources that are listed in the
22 Interstate Certified Shellfish Shippers List.

23 **(3) 3-202.18 Shellstock Identification.**

24 (A) Shellstock shall be obtained in containers bearing legible source identification tags or labels
25 that are affixed by the harvester or dealer that depurates, ships, or reships the Shellstock, as
26 specified in the National Shellfish Sanitation Program Guide for the Control of Molluscan
27 Shellfish, and that list: (1) Except as specified under paragraph (C) of this section, on the
28 harvester's tag or label, the following information in the following order: (a) The harvester's
29 identification number that is assigned by the Shellstock Control Authority, (b) The date of
30 harvesting, (c) The most precise identification of the harvest location or aquaculture site that is
31 practicable based on the system of harvest area designations that is in use by the Shellstock
32 Control Authority and including the abbreviation of the name of the state or country in which the
33 shellfish are harvested, (d) The type and quantity of shellfish, (e) The following statement in
34 bold, capitalized type: "This tag is required to be attached until container is empty or retagged
35 and thereafter kept on file for 90 days"; (2) Except as specified in paragraph (D) of this section,
36 on each dealer's tag or label, the following information in the following order: (a) The dealer's
37 name and address, and the certification number assigned by the Shellstock Control Authority, (b)
38 The original shipper's certification number including the abbreviation of the name of the state or
39 country in which the shellfish are harvested, (c) The same information as specified for a
40 harvester's tag under Subparagraphs (A)(1)(b)-(d) of this section, (d) The following statement in
41 bold, capitalized type: "This tag is required to be attached until container is empty and thereafter
42 kept on file for 90 days." (B) A container of Shellstock that does not bear a tag or label or that
43 bears a tag or label that does not contain all the information as specified under paragraph (A) of
44 this section shall be subject to a hold order or seizure and destruction in accordance with NMSA
45 25-2-6. (C) If a place is provided on the harvester's tag or label for a dealer's name, address, and
46 certification number, the dealer's information shall be listed first. (D) If the harvester's tag or

1 label is designed to accommodate each dealer 's identification as specified under Subparagraphs
2 (A)(2)(a) and (b) of this section, individual dealer tags or labels need not be provided.

3 **(4) 3-502.11 Variance Requirement.**

4 A Food Establishment shall obtain a Variance from the Regulatory Authority as specified in § 8-
5 103.10 and under § 8-103.11 before: (A) Smoking Food as a method of Food preservation rather
6 than as a method of flavor enhancement; (B) Curing Food; (C) Using Food additives or adding
7 components such as vinegar: (1) As a method of Food preservation rather than as a method of
8 flavor enhancement, (2) To render a Food so that it is not Time/temperature Control of Safety
9 (TCS) Food; (D) Packaging Time/temperature Control for Safety Food using a reduced oxygen
10 packaging method except where the growth of and toxin formation by Clostridium botulinum
11 and the growth of Listeria monocytogenes are controlled as specified under § 3-502.12; (E)
12 Operating a Molluscan Shellfish life-support system display tank used to store or display
13 Shellfish that are offered for human consumption;(F) Preparing Food by another method that is
14 determined by the Regulatory Authority to require a Variance;(G) Sprouting seeds or beans.

15 **(5) 4-205.10 Food Equipment, Certification and Classification.**

16 (A) Food equipment, including new and replacement equipment, shall be certified or
17 classified for sanitation by an American National Standards Institute (ANSI)-accredited
18 certification program. Such accredited programs include, but are not limited to, the National
19 Sanitation Foundation (NSF), Underwriters Laboratories (UL), Intertek ETL, or the Canadian
20 Standards Administration (CSA).(B) Food equipment that is certified or classified for
21 sanitation by an American National Standards Institute (ANSI)-accredited certification
22 program is deemed to comply with Parts 4-1 and 4-2 of this chapter.

23 **(6) 4-301.11 Cooling, Heating, Holding Capacities and Use.**

24 (A) Equipment for cooling and heating Food, and holding cold and hot Food, shall be sufficient
25 in number and capacity to provide Food temperatures as specified under Chapter 3. (B) Steam
26 tables, slow cookers, and other hot holding devices shall not be used in cooking, heating or
27 reheating Food as specified under §§ 3-401 and 3-403

28 **(7) 5-102.11 Standards.**

29 Except as specified under § 5-102.12: (A) Water from a public water system shall meet the
30 construction and drinking water quality standards specified in 20.7.10 NMAC; and (B) Water
31 from a nonpublic water system shall meet: (1) The construction requirements and drinking
32 water quality standards of a non-community water system as specified in 20.7.10 NMAC; and
33 (2) The Drinking Water source setback requirements as specified in 20.7.3 NMAC.

34 **(8) 5-102.13 Sampling.**

35 Except when used as specified under § 5-102.12, water from a non-public water system shall
36 meet the sampling requirements of a non-community water system as specified in 20.7.10
37 NMAC.

38 **(9) 5-203.13 Service Sink.**

39 (A) Except as specified in paragraph (C) of this section, at least 1 service sink or 1 curbed
40 cleaning facility equipped with a floor drain shall be provided and conveniently located for the
41 cleaning of mops or similar wet floor cleaning tools and for the disposal of mop water and
42 similar liquid waste. (B) Toilets and urinals may not be used as a service sink for the disposal
43 of mop water and similar liquid waste. (C) When no health hazard will exist, the regulatory
44 authority may approve an alternative method.

45 **(10) 6-501.115 Prohibiting Animals.**

46 (A) Except as specified in paragraphs (B) and (C) of this section, live animals may not be

1 allowed on the premises of a Food Establishment. (B) Live animals may be allowed in the
2 following situations if the contamination of Food; clean equipment, utensils, and linens; and
3 unwrapped single-service and single-use articles cannot result: (1) Edible Fish or decorative
4 Fish in aquariums, Shellfish or crustaceans on ice or under refrigeration, and Shellfish and
5 crustaceans in display tank systems; (2) Patrol dogs accompanying police or security officers in
6 offices and dining, sales, and storage areas, and sentry dogs running loose in outside fenced
7 areas; (3) In areas that are not used for Food preparation and that are usually open for
8 customers, such as dining and sales areas, service animals that are controlled by the disabled
9 employee or person, if a health or safety hazard will not result from the presence or activities of
10 the service animal; (4) Pets in the common dining areas of institutional care facilities such as
11 nursing homes, assisted living facilities, group homes, or residential care facilities at times
12 other than during meals if: (a) Effective partitioning and self-closing doors separate the
13 common dining areas from Food storage or Food preparation areas, (b) Condiments,
14 equipment, and utensils are stored in enclosed cabinets or removed from the common dining
15 areas when pets are present, and (c) Dining areas including tables, countertops, and similar
16 surfaces are effectively cleaned before the next meal service; and (5) In areas that are not used
17 for Food preparation, storage, sales, display, or dining, in which there are caged animals or
18 animals that are similarly confined, such as in a variety store that sells pets or a tourist park that
19 displays animals. (6) Pet dogs in outdoor dining areas, if allowed by the Food Establishment,
20 and: (a) Pet dogs are not allowed in any area where Food is prepared; (b) Pet dogs are kept on a
21 leash and under reasonable control at all times; (c) Pet dogs are not allowed on chairs,
22 consumer's laps, tables, or other furnishings; (d) Consumers shall not feed pet dogs on Food
23 Establishment tableware; and (e) A sign approved by the Regulatory Authority is posted at
24 each entrance to the designated outdoor dining area stating the conditions under which pet dogs
25 are allowed and alerting patrons that pet dogs are allowed and may be present. (C) Live or dead
26 fish bait may be stored if contamination of Food; clean equipment, utensils, and linens; and
27 unwrapped single-service and single-use articles cannot result.

28 **(11) 8-103.10 Modifications and Waivers.**

29 (A) The Regulatory Authority may grant a Variance by modifying or waiving the requirements
30 of this Code if in the opinion of the Regulatory Authority a health hazard or nuisance will not
31 result from the Variance. If a Variance is granted, the Regulatory Authority shall retain the
32 information specified under § 8-103.11 in its records for the Food Establishment. (B) The
33 Regulatory Authority shall grant the Variance, grant the Variance subject to conditions, or deny
34 the Variance within 15 working days following the receipt of the Variance request.

35 **(12) 8-201.11 When Plans Are Required.**

36 Except for Temporary Food Establishments, a Permit applicant or Permit holder shall submit to
37 the Regulatory Authority properly prepared plans and specifications for review and approval at
38 least 30 calendar days before: (A) The construction of a Food Establishment; (B) The
39 conversion of an existing structure for use as a Food Establishment; (C) The remodeling of a
40 Food Establishment or a change of type of Food Establishment or Food Operation as specified
41 under ¶ 8-302.14(C) if the Regulatory Authority determines that plans and specifications are
42 necessary to ensure compliance with this Code; or (D) Opening or changing ownership of an
43 existing Food Establishment, if current plans and specifications are not on file with the
44 Regulatory Authority.

45 **(13) 8-301.11 Prerequisite for Operation.**

46 (A) A person may not operate a Food Establishment or servicing area without a valid permit to

1 operate issued by the Regulatory Authority. (B) Except as specified in paragraphs (C) and (D)
2 of this section, when more than a single Food Establishment is operated on the premises, each
3 one shall be separately permitted; (C) Bars operating in conjunction with a Food
4 Establishment do not require a separate permit; and (D) Food Establishment used as a
5 Servicing Area do not require a separate permit.

6 **(14) 8-301.12 Responsibility for Operation.**

7 (A) Except as specified in paragraphs (B) and (C) of this section, the permit holder shall be
8 responsible for all Food operations conducted on the Premises for which a permit is issued;
9 (B) permit holders shall not be responsible for Food operations on the premises when another
10 permit holder is operating with a permit; and (C) Each permit holder shall be responsible for
11 shared facilities or equipment on the premises.

12 **(15) 8-302.11 Application Submission Before Proposed Opening.**

13 (A) Except as specified in Paragraph (B) of this section, an applicant shall submit an
14 application for a Permit at least 30 calendar days before the date planned for opening a Food
15 Establishment. (B) An applicant shall submit an application for a Permit at least one business
16 day before the date planned for opening a Temporary Food Establishment.

17 **(16) 8-302.13 Qualifications and Responsibilities of Applicants.**

18 To qualify for a Permit, an applicant shall: (A) Be an owner of the Food Establishment or an
19 officer of the legal ownership; (B) Comply with the requirements of this Code; (C) As
20 specified under § 8-402.11, agree to allow access to the Food Establishment and to provide
21 required information; and (D) Pay the applicable permit fees when approval to open is granted
22 by the Regulatory Authority.

23 **(17) 8-302.14 Contents of the Application.**

24 The application shall include: (A) The name, mailing address, telephone number, and
25 signature of the person applying for the permit and the name, mailing address, and location of
26 the Food Establishment; (B) Information specifying whether the Food Establishment is owned
27 by an association, corporation, individual, partnership, or other legal entity; (C) A statement
28 specifying whether the Food Establishment: (1) Is mobile or stationary and temporary or
29 permanent, and (2) Is an operation that includes one or more of the following: (a) Prepares,
30 offers for sale, or serves time/temperature control for safety Food: (i) Only to order upon a
31 consumer's request, (ii) In advance in quantities based on projected consumer demand and
32 discards Food that is not sold or served at an approved frequency, or (iii) Using time as the
33 public health control as specified under § 3-501.19, (b) Prepares time/temperature control for
34 safety Food in advance using a Food preparation method that involves two or more steps
35 which may include combining time/temperature control for safety Food ingredients; cooking;
36 cooling; reheating; hot or cold holding; freezing; or thawing, (c) Prepares Food as specified
37 under Subparagraph (C)(2)(b) of this section for delivery to and consumption at a location off
38 the premises of the Food Establishment where it is prepared, (d) Prepares Food as specified
39 under Subparagraph (C)(2)(b) of this section for service to a highly susceptible population, (e)
40 Prepares only Food that is not Time/temperature Control for Safety Food, or (f) Does not
41 prepare, but offers for sale only prepackaged Food that is not Time/temperature Control for
42 Safety Food; (D) The name, title, address, and telephone number of the person directly
43 responsible for the Food Establishment; (E) The name, title, address, and telephone number of
44 the person who functions as the immediate supervisor of the person specified under paragraph
45 (D) of this section such as the zone, district, or regional supervisor; (F) The names, titles, and
46 addresses of: (1) The persons comprising the legal ownership as specified under paragraph (B)

1 of this section including the owners and officers, and (2) The local resident agent if one is
2 required based on the type of legal ownership;(G) A statement signed by the applicant that: (1)
3 Attests to the accuracy of the information provided in the application, and (2) Affirms that the
4 applicant will: (a) Comply with this Code, and (b) Allow the Regulatory Authority access to
5 the Food Establishment as specified under Section 8-402.11 and to the records specified under
6 Sections 3-203.12 and 5-205.13 and Subparagraph 8-201.14(D)(6); and (H) Other information
7 required by the Regulatory Authority.

8 **(18)** 8-303.20 Existing Establishments, Permit Renewal, and Change of
9 Ownership.

10 (A) The Regulatory Authority may renew a Permit for an existing Food Establishment upon
11 submission of a renewal form provided by the Regulatory Authority and the required fee(s) as
12 specified in Section 8-303.15 prior to the expiration date of the Permit. Permit renewals that
13 are not submitted before the expiration date shall be assessed a late fee as specified in
14 paragraph 8-303.15(b), regardless of whether a permit fee is required. (B) The Regulatory
15 Authority may issue a permit to a new owner of an existing Food Establishment, Mobile Food
16 Establishment, Servicing Area, or Food Processing Plant upon completion of requirements as
17 specified in Sections 8-201.11 and 8-302.11 and an inspection shows it is in compliance with
18 this Code.

19 **(19)** 8-401.10 Establishing Inspection Interval.

20 (A) Except as specified in paragraph (B) of this section, the Regulatory Authority shall inspect
21 a Food Establishment, Mobile Food Establishment, Food Processing Plant, or Home-based
22 Food Processing Operation at least annually to determine compliance with the Food Service
23 Sanitation Act, the New Mexico Food Act, and this Code. (B) The Regulatory Authority may
24 periodically inspect throughout its Permit period a Temporary Food Establishment that
25 prepares, sells, or serves unpackaged Time/temperature Control for Safety Food and that: (1)
26 Has improvised rather than permanent facilities or equipment for accomplishing functions
27 such as handwashing, Food preparation and protection, Food temperature control,
28 warewashing, providing Drinking Water, waste retention and disposal, and insect and rodent
29 control; or (2) Has inexperienced Food employees. (C) When an inspection conducted under
30 Paragraph (A) of this section reveals a violation, or repeat violation of Priority Items of this
31 Code and a re-inspection is scheduled by the Regulatory Authority, a re-inspection penalty fee
32 shall be assessed by the Regulatory Authority and paid by the Operator as specified in 8-
33 303.15.

34 **(20)** 8-401.20 Performance- and Risk-Based.

35 The Regulatory Authority shall prioritize, and conduct more frequent inspections based upon
36 its assessment of a Food Establishment's history of compliance with this Code and the
37 Establishment's potential as a vector of foodborne illness by evaluating: (A) Past
38 performance, for nonconformance with Code or HACCP Plan requirements that are Priority
39 Items or Priority Foundation Items; (B) Past performance, for numerous or repeat violations
40 of Code or HACCP Plan requirements that are Core Items; (C) Past performance, for
41 complaints investigated and found to be valid; (D) The hazards associated with the particular
42 Foods that are prepared, stored, or served; (E) The type of operation including the methods
43 and extent of Food storage, preparation, and service; (F) The number of people served; and
44 (G) Whether the population served is a highly susceptible population.

45 **(21)** 8-402.11 Allowed at Reasonable Times after Due Notice. (A) After the
46 Regulatory Authority presents official credentials and provides notice of the purpose of, and

1 an intent to conduct, an inspection, the Person in Charge shall allow the Regulatory Authority
2 to determine if the Food Establishment, Mobile Food Establishment, Food Processing Plant,
3 or Home-based Food Processing Operation is in compliance with this Code by allowing
4 access to the establishment, allowing inspection, and providing information and records
5 specified in this Code and to which the Regulatory Authority is entitled according to Law,
6 during the Food Establishment's hours of operation and other reasonable times. (B) The
7 Regulatory Authority shall be allowed to copy any records pertaining to the manufacture,
8 processing, packing, distribution, receipt, holding, or importation of Food maintained by or
9 on behalf of a Food Establishment, Mobile Food Establishment, Food Processing Plant, or
10 Home-based Food Processing Operation in any format, including paper and electronic
11 formats, and at any location. Proprietary documents shall be protected by the Regulatory
12 Authority as specified in Section 8-202.10 of the Food Code.

13 **(22)** 8-402.20 Refusal, Notification of Right to Access, and Final Request for
14 Access.

15 If a person denies access to the Regulatory Authority, the Regulatory Authority shall: (A)
16 Inform the person that: (1) The Permit holder is required to allow access to the Regulatory
17 Authority as specified under section 8-402.11 of this Code, (2) Access is a condition of the
18 acceptance and retention of a Food Establishment Permit to operate as specified under
19 paragraph 8-304.11(F), and (3) If access is denied, an order issued by the appropriate authority
20 allowing access, hereinafter referred to as an Inspection Order, may be obtained according to
21 Law, and (4) Refusal to allow access is grounds for immediate Permit suspension or
22 revocation; and (B) Make a final request for access.

23 **(23)** 8-403.30 Refusal to Sign Acknowledgment.

24 At the conclusion of the inspection and according to Law, the Regulatory Authority shall
25 provide a copy of the completed inspection report and the notice to correct violations to the
26 Permit holder or to the Person in Charge, and request a signed acknowledgment of receipt.

27 **(24)** 8-801.10 Proper Methods.

28 A notice issued in accordance with this Code shall be considered to be properly served if it is
29 served by one of the following methods: (A) The notice is personally served by the Regulatory
30 Authority, a Law enforcement officer, or a Person authorized to serve a civil process to the
31 Permit Holder, the Person in Charge, or Person operating a Food Establishment without a Permit;
32 (B) The notice is sent by the Regulatory Authority to the last known address of the Permit
33 Holder or the Person operating a Food Establishment without a Permit, by registered or certified
34 mail or by other public means so that a written acknowledgment of receipt may be acquired.

35 **(25)** 8-801.20 Restriction or Exclusion Order, Hold Order or Immediate
36 Suspension.

37 An Employee Restriction or Exclusion order, an order to hold and not distribute Food, such as a
38 hold, detention, embargo, or seizure order which is hereinafter referred to as a hold order, or an
39 immediate suspension order shall be: (A) Served as specified in ¶ 8-801.10(A); or (B) Clearly
40 posted by the Regulatory Authority at a public entrance to the Food Establishment and a copy of
41 the notice sent by first class mail to the Permit Holder or to the owner or custodian of the Food,
42 as appropriate.

43 **(26)** 8-901.10 Conditions Warranting Remedy.

44 The Regulatory Authority may seek an administrative or judicial remedy to achieve compliance
45 with the provisions of this Code if a Person operating a Food Establishment or Employee: (A)
46 Fails to have a valid Permit to operate a Food Establishment as specified under Section 8-301.11;

1 (B) Violates any term of condition of a permit as specified under Section 8-304.11; (C) Allows
2 repeated violations of the Food Service Sanitation Act, Chapter 25, Article 1 NMSA 1978; the
3 New Mexico Food Act, Chapter 25, Article 2 NMSA 1978; or serious or repeated Code
4 violations to reoccur or remain uncorrected beyond time frames for correction Approved,
5 directed, or ordered by the Regulatory Authority under Paragraphs 8-405.11(A) and (B), and
6 Paragraphs 8-406.11 (A) and (B); (D) Fails to comply with a Regulatory Authority order issued
7 as specified in Section 8-501.20 concerning an Employee or Conditional Employee suspected of
8 having a disease transmissible through Food by infected Persons; (E) Fails to comply with a hold
9 order as specified in Section 8-903.10; (F) Fails to comply with an order issued as a result of a
10 hearing for an administrative remedy as specified in Section 8-906.40; or (G) Fails to comply
11 with an immediate suspension order issued by the Regulatory Authority as specified in Sections
12 8-801.20 and 8-904.10.

13 **(27) 8-903.10 Hold Order, Justifying Conditions and Removal of Food.**

14 (A) The Regulatory Authority may place a hold order on a Food that: (1) Originated from an un-
15 Approved source; (2) May be unsafe, Adulterated, or not honestly presented; (3) Is not labeled
16 according to Law, or, if raw Molluscan Shellfish, is not tagged or labeled according to Law; or
17 (4) Is otherwise not in compliance with this Code. (B) IF the Regulatory Authority has
18 reasonable cause to believe that the hold order will be violated, or finds that the order is violated,
19 the Regulatory Authority may remove the Food that is subject to the order to a place of
20 safekeeping.

21 **(28) 8-903.20 Hold Order, Warning or Hearing Not Required.**

22 (A) The Regulatory Authority may issue a hold order to a Permit Holder or to a Person who
23 owns or controls the Food, as specified in Section 8-903.10, without prior warning, notice of a
24 hearing, or a hearing on the hold order. (B) If the suspected Food has been distributed, the Permit
25 Holder shall be given the opportunity to recall the Food voluntarily at the Permit Holder's
26 expense. (C) If the Permit Holder refuses to recall the suspected Food, the Regulatory Authority
27 may order a mandatory recall of the suspected Food at the Permit Holder's expense.

28 **(29) 8-903.60 Examining, Sampling, and Testing Food.**

29 The Regulatory Authority may examine, sample, and test Food in order to determine its
30 compliance with the Food Service Sanitation Act, Chapter 25, Article 1 NMSA 1978; the New
31 Mexico Food Act, Chapter 25, Article 2 NMSA 1978; and this Code.

32 **(30) 8-903.80 Destroying or Denaturing Food.**

33 When any Food is found, by examination or laboratory analysis, to be in violation of safe
34 health standards, the Regulatory Authority may order condemnation and disposal of the
35 product lot, at the expense of the Permit Holder.

36 **(31) 8-904.10 Conditions Warranting Action.**

37 The Regulatory Authority may immediately suspend a Permit if it determines through
38 inspection, or examination of Employees, Food records, or other means as specified in this
39 Code, that an Imminent Health Hazard exists.

40 **(32) 8-904.20 Immediate Suspension, Warning or Hearing Not Required.**

41 The Regulatory Authority may immediately suspend a Person's Permit as specified in Section
42 8-904.10 by providing written notice as specified in Section 8-801.20 of the immediate
43 suspension to the Permit Holder or Person in Charge, without prior warning, notice of a
44 hearing, or a hearing.

45 **(33) 8-904.30 Contents of the Notice.**

46 An immediate suspension notice shall state: (A) That the Food Establishment Permit is

1 immediately suspended and that all Food operations shall immediately cease; (B) The reasons
2 for the immediate suspension with reference to the provisions of this Code that are in
3 violation; (C) The name and address of the Regulatory Authority representative to whom a
4 written request for re-inspection may be made and who may certify that reasons for the
5 suspension are eliminated; and (D) That the Permit Holder may request an appeal hearing by
6 submitting a timely request as specified in Sections 8-905.10 and 8-905.20.

7 **(34)** 8-904.50 Term of Suspension, Reinstatement of Permit.

8 (A) An immediate Suspension shall remain in effect until the conditions cited in the notice of
9 suspension no longer exist and their elimination has been confirmed by the Regulatory
10 Authority through re-inspection and other means as appropriate. (B) The suspended Permit
11 shall be reinstated immediately if the Regulatory Authority determines that the public health
12 Hazard or nuisance no longer exists. A notice of the reinstatement shall be provided to the
13 Permit Holder or Person in Charge.

14 **(35)** 8-905.10 Response to Notice of Hearing or Request for Hearing, Basis
15 and Time Frame.

16 (A) A Permit applicant may request a hearing regarding the disposition of an application for a
17 new or revised Permit if the Regulatory Authority does not issue or deny the Permit within the
18 time frame specified in this Code. (B) A Permit Holder may request a hearing to address
19 concerns about the Regulatory Authority's denial of application for a Permit or request for a
20 Variance, or compliance actions, except that a hearing request does not stay the Regulatory
21 Authority's restriction or exclusion of Employees specified in Section 8-904.10. (C) A Peron
22 desiring a hearing in response to a denial of an application for Permit or an adverse
23 administrative determination shall submit a hearing request to the Regulatory Authority within
24 10 calendar days of the date of the denial, inspection, or compliance action.

25 **(36)** 8-905.20 Request for Hearing, Required Form and Contents.

26 A request for hearing as specified in Section 8-905.10 shall be in written form and contain the
27 following: (A) If a request for hearing. (1) A statement of the issue of fact specified in
28 Paragraph 8-905.30 (B) for which the hearing is requested; and (2) A statement of defense,
29 mitigation, denial, or explanation concerning each allegation of fact. (B) If either a response to
30 notice of hearing or a request for a hearing. (1) A statement indicating whether the presence of
31 witnesses for the Regulatory Authority is required; and (2) The name and address of the
32 respondent's or requestor's legal counsel, if any.

33 **(37)** 8-905.60 Notice, Contents.

34 A notice of hearing shall contain the following information: (A) Time, date and place of the
35 hearing; (B) Purpose of the hearing; (C) The rights of the respondent, including the right to be
36 represented by counsel and to present witnesses and evidence on the respondent's behalf as
37 specified in Section 8-907.10; and (D) The consequences of failing to appear at the hearing.

38 **(38)** 8-905.100 Record of Proceeding.

39 A complete digital recording of a hearing shall be made and maintained as part of the
40 Regulatory Authority's records.

41 **(39)** 8-907.10 Rights of Parties.

42 (A) The Rules of Civil Procedure and the Rules of Evidence shall not apply, but a hearing
43 shall be conducted so that all relevant views, arguments, and testimony are amply and fairly
44 presented. (B) Parties to a hearing may be represented by counsel, examine and cross examine
45 witnesses, and present evidence in support of their position.

46 **(40)** 8-907.30 Evidence to be Excluded.

1 Evidence shall be Excluded that is irrelevant, immaterial, unduly repetitious, or excludable on
2 constitutional or statutory grounds, or on the basis of evidentiary privilege.

3 **(41)** 8-909.10 Gaining Access to Premises and Records.

4 The Regulatory Authority may seek access for one or more of the following purposes,
5 according to Law for gaining access: (A) If admission to the Premises of a Food
6 Establishment, Mobile Food Establishment, Temporary Food Establishment, Food Processing
7 Plant, or Home-based Food Processing Operation is denied or other circumstances exist that
8 would justify an inspection order under Law, to make an inspection including taking
9 photographs; (B) To examine and sample the Food or other substances found on the premises;
10 and (C) To examine and copy the records on the Premises relating to Food as specified under
11 Paragraph 8-402.11 (B).

12 **C. Omissions.** The following provisions of the Food Code are omitted in 7.6.2 NMAC:

13 **(1)** 8 - 7 Authority

14 **(2)** 8-902.20 Content of Inspection Order

15 **(3)** 8-905.30 Provided Upon Request

16 **(4)** 8-905.40 Provided in Accordance with Law

17 **(5)** 8-905.50 Timeliness, Appeal Proceeding Within 5 Business Days, Other
18 Proceeding Within 30 Calendar Days

19 **(6)** 8-905.70 Proceeding Commences Upon Notification

20 **(7)** 8-905.80 Procedure, Expeditious and Impartial

21 **(8)** 8-905.90 Confidential

22 **(9)** 8-906.10 Appointment by Regulatory Authority and Purpose

23 **(10)** 8-906.20 Qualifications

24 **(11)** 8-906.30 Powers, Administration of Hearings

25 **(12)** 8-906.40 Powers, Administrative Remedies

26 **(13)** 8-909.20 Contents of Court Petition

27 **(14)** 8-909.30 Sworn Statement of Denied Access

28 **(15)** 8-909-.40 Contents of an Order

29 **(16)** 8-909.50 Optional Contents of an Order

30 **(17)** 8-910.10 Institution of Proceedings

31 **(18)** 8-911.10 Authorities, Methods, Fines, and Sentences

32 **(19)** 8-912.10 Petitions of Injunction

33 **(20)** 8-913.10 Petitions, Penalties, and Continuing Violations

34 **C. Additional Requirements.** Except as otherwise provided, the following
35 additions are made to the incorporated Food Code Part:

36 **(1)** 2-104.11 Food Handler Cards.

37 **(a)** Except as specified in subparagraphs (b) and (g) of this paragraph,
38 Food employees shall demonstrate their knowledge of safe food handling practices through
39 passing a test from a Food Handler Training Program and possess a valid Food Handler Card.

40 **(b)** Except as specified in subparagraph (g) of this paragraph, individuals
41 who do not possess a valid food Handler Card prior to employment as a Food employee shall
42 obtain such card within 30 calendar days from the beginning of employment.

43 **(c)** Food Handler Cards shall be kept by the Food employee on his or her

1 person while working at a Food Establishment or a copy kept on file by the current employer
2 and be made available for inspection by the Regulatory Authority.

3 (d) The Regulatory Authority may approve an entity's training program
4 to be used in lieu of requiring a Food Handler Card of its Food Employees. A Food Employee
5 must complete the company's approved training program at least every three years. This
6 exemption is only valid during the Food Employees' time of employment with the entity that
7 administered the training.

8 (e) An employee or Person in charge at any Food Establishment, Food
9 Processing Plant, Temporary Food Establishment, or Mobile Food Establishment must
10 provide information or training regarding pertinent safe food handling practices to Food
11 employees prior to beginning food handling duties, if the Food Employee does not hold a
12 valid Food Handler Card.

13 (f) Food Handler Cards shall be valid for three years from the date of
14 issuance.

15 (g) This paragraph does not apply to:

16 (i) Employees who comply with Sections 2-102.12 and 2-102.20;
17 (ii) Food Employees who comply with Paragraph B of this section;
18 (iii) Food Employees of Temporary Food Establishments or
19 volunteers working as Food Employees for charitable organizations serving the needy,
20 provided that at a minimum the Person in Charge each shift or during hours of operation
21 complies with Sections 2-102.12 and 2-102.20 or has a valid Food Handler Card obtained
22 prior to issuance of a Temporary Food Establishment Permit; or

23 (iv) Employees who do not function as Food Employees.

24 (h) The effective date of this paragraph is one year from the effective
25 date of this section.

26 (2) 8-303.15 Permit fees, late fees, penalty fees, and Expiration dates.

27 (a) Except as specified in iv of this sub-paragraph, permit fees shall be:
28 (i) Two hundred dollars (\$200.00) for Food Establishments,
29 Mobile Food Establishments, Servicing Areas, and Food Processing Plants.

30 (ii) One hundred dollars (\$100.00) for Home-based Food
31 Processing Operations.

32 (iii) Twenty five dollars (\$25.00) for Temporary Food
33 Establishments for each single event or celebration.

34 (iv) Permit fees shall be waived for Food Establishments, Mobile
35 Food Establishments, and Temporary Food Establishments that provide food to consumers at
36 no charge, as well as Temporary Food Establishments that serve only non-TCS Food or
37 operate no more than 2 days in a calendar month.

38 (b) In addition to the permit fees specified in Sub-paragraphs (a)(i)-(ii) of
39 this paragraph, a \$25 late fee shall be added to the Permit fee if the Permit is not renewed on
40 or before the expiration date of the Permit.

41 (c) A re-inspection penalty fee of \$100 shall be assessed by the
42 Regulatory Authority and paid by the Operator when a re-inspection is scheduled by the
43 Regulatory Authority as specified in 8-401.10(C).

44 (d) If a Permit is not renewed as specified in Section 8-303.20, and
45 applicable fees specified in Subparagraph (c) are not paid within 30 days after the expiration
46 of the Permit, a new permit shall not be issued except upon completion of requirements

1 specified in section 8-303.10.

2 (e) Permits issued by the Regulatory Authority shall include an
3 expiration date, which shall be:

4 (i) The last day of the anniversary month of the date of original
5 issue for Food Establishments, Mobile Food Establishments, Servicing Areas, and Food
6 Processing Plants.

7 (ii) The last day of the single event or celebration for Temporary
8 Food Establishments.

9 (f) No discount or refund shall be made for partial years or for Permit
10 suspension or revocation.

11 (3) 8-407.11 Posting of Compliance Emblems.

12 (a) Except as specified in Paragraph (e) of this subparagraph, an emblem
13 indicating the compliance status of a Food Establishment shall be posted in a conspicuous
14 place at each entrance to the Food Establishment where it can be easily seen by consumers
15 and shall be posted or removed only by the Food Establishment.

16 (b) An “Approved” emblem shall be posted at a Food Establishment that
17 is operated in compliance with this Code.

18 (c) An “Unsatisfactory” emblem may be posted at a Food Establishment
19 when any priority items are out of compliance during an inspection; or any priority item,
20 priority foundation item, or core item is out of compliance on a repeated basis within the last
21 25 months.

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

24 (e) Food Processing Plants and Temporary Food Establishments are
25 exempt from the posting of compliance emblems.

26 (4) 8-901.201 Permit Suspension and Revocation.

27 (A) The Regulatory Authority may suspend or revoke a Permit for reasons specified in Section
28 8-901.10. (B) The Regulatory Authority shall conduct a hearing as specified in Section 8-905
29 prior to suspending or revoking a Permit. (C) The Permit Holder shall be notified of the hearing
30 at least seven days prior to the hearing as specified in Section 8-905.60. (D) Failure by the
31 Permit Holder to appear shall result in immediate suspension or revocation of the Permit. (E) The
32 suspension of a Permit shall remain in effect until the conditions leading to the suspension no
33 longer exist and their elimination has been confirmed by the Regulatory Authority through re-
34 inspection and other means as appropriate. (F) A Permit shall only be revoked if a Permit has
35 previously been suspended. (G) A Permit that has been revoked shall not be considered for
36 reapplication until the Permit Holder has demonstrated to the satisfaction of the Regulatory
37 Authority that the Food Establishment will comply with this Code.

38 [7.6.2.8 NMAC - Rp, 7 NMAC 6.1.006, 08/12/2000; Rp, x/x/2016]

39
40 **7.6.2.9 MOBILE FOOD ESTABLISHMENT REQUIREMENTS:**

41 **A.** In addition to meeting the applicable requirements of Chapters 1-8 of the Food
42 Code, with the exception of Section 5-203.12 of the Food Code, Mobile Food Establishments
43 shall comply with the requirements specified in this section.

44 **B.** The Regulatory Authority may impose additional requirements for Mobile Food
45 Establishments as specified in Section 8-102.10 of the Food Code. Additional requirements
46 may include, but are not limited to:

1 (1) Limiting or restricting the number and type of Food items to be prepared and
2 served.

3 (2) Limiting or restricting preparation steps.

4 (3) Limiting or restricting hours of operation, or hours of operation before
5 returning to a Servicing Area.

6 (4) Require a Servicing Area or Mobile Support Unit.

7 **C.** The Regulatory Authority may modify or waive requirements for Mobile Food
8 Establishments as specified in Sections 8-103.10 and 8-103.11 of the Food Code.

9 **D.** Mobile Food Establishments shall provide the following required information as
10 specified in ¶ 8-201.12(F):

11 (1) The location of the potable water source;

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

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

14 **E.** Mobile Food Establishments shall have adequate electrical and/or fuel capacity,
15 as determined by the Regulatory Authority, to allow proper operation of equipment. The
16 electrical and/or fuel source shall be adequately supplied at all times when Food temperature
17 control is required.

18 **F.** Mobile Food Establishments shall be operated within 200 feet of toilet facilities
19 as specified in Sections 5-203.12 and 5-203.11 of the Food Code whenever the unit is stopped
20 to operate for more than a two (2) hour period.

21 **G.** The operation of Mobile Food Establishments shall be conducted within the
22 enclosure of the permitted unit. During a single event or celebration, certain operations (e.g.,
23 additional covered storage, additional food preparation area, outdoor serving counter) may be
24 conducted outside of the enclosure, when Approved. If Approved, an additional Temporary
25 Food Establishment Permit shall be required.

26 **H.** Mobile Food Establishments shall provide only single-service articles for use by
27 consumers.

28 **I.** Self-contained Mobile Food Establishment Requirements. Self-contained
29 Mobile Food Establishments shall:

30 (1) Meet all of the equipment requirements of this Code;

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

33 (3) Be capable of accomplishing all steps of the operation, including required
34 Food preparation and warewashing, within the enclosure of the unit;

35 (4) Provide, as specified in Paragraph 8-201.12(F) of the Food Code, how and
36 where the unit will be cleaned and serviced and where it will be stored during non-operating
37 hours; and

38 (5) Notify the Regulatory Authority office of jurisdiction at least 24 hours in
39 advance before operating in a jurisdictional area outside of the Permitting office.

40 **J.** Non Self-contained Mobile Unit and Pushcart Requirements.

1 **(1)** Non Self-contained Mobile Units and Pushcarts shall:

2 **(a)** Provide, as specified in Paragraph 8-201.12(F) of the Food Code, an
3 agreement between the operator and the Servicing Area that includes:

4 **(i)** The days and hours the Servicing Area will be used,

5 **(ii)** The extent of support services to be provided, and

6 **(iii)** A copy of the current Servicing Area Permit.

7 **(2)** Prior to discontinuing use of a Servicing Area, the operator shall provide a
8 revised agreement as specified in Paragraph (1) above for a new Servicing Area. Mobile Food
9 Establishments shall not operate prior to the approval of a new Servicing Area.

10 **(3)** Operate within a reasonable distance, and report at least daily, to the
11 Servicing Area for support services.

12 **(4)** Notify the Regulatory Authority in writing and receive prior approval to
13 operate outside of a reasonable distance of the Servicing Area.

14 **K.** Additional Pushcart Requirements:

15 **(1)** Pushcarts are limited to:

16 **(a)** Serving non-TCS Foods or drinks

17 **(b)** Serving individually commercially packaged TCS foods in the
18 original packaging and maintained at proper temperatures, and

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

21 **(2)** Pre-preparation, such as washing, slicing, peeling, cutting of food intended
22 for use on a Pushcart, shall occur at the Servicing Area.

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

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

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

27 **(a)** Food, utensils, single service items, and cleaning supplies;

28 **(b)** Handwashing sink as specified in Section 5-202.12 of the Food Code
29 with a minimum of 5 gallons of potable water; and

30 **(c)** Wastewater holding tank meeting the requirements of Section 5-
31 401.11 of the Food Code.

32 **(6)** TCS Food served on Pushcarts shall not be subsequently cooled and
33 reheated.

34 **(7)** Ice chests may be utilized for packaged food provided that they are
35 continuously drained in an Approved manner and the food is maintained at temperatures as
36 specified in Section 3-202.11 of the Food Code.

37 [7.6.2.9 NMAC - Rp, 7 NMAC 6.1.006, 08/12/2000; Rp, x/x/2016]

1 **7.6.2.10 TEMPORARY FOOD ESTABLISHMENT REQUIREMENTS:**

2 **A.** In addition to meeting the applicable requirements of Chapters 1-8 of the Food
3 Code, with the exception of Section 5-203.12, Temporary Food Establishments shall comply
4 with the requirements specified in this Section.

5 **B.** The Regulatory Authority may impose additional requirements for Temporary
6 Food Establishments as specified in Section 8-102.10 of the Food Code. Requirements may
7 include, but are not limited to:

- 8 (1) Require Food safety training for employees prior to issuing a Permit;
- 9 (2) Restrict the number and type of Food items to be prepared and served;
- 10 (3) Restrict preparation steps;
- 11 (4) Restrict hours of operation;
- 12 (5) Require a Servicing Area for advanced preparation of Food.

13 **C.** The Regulatory Authority may modify or waive requirements for Temporary
14 Food Establishments as specified in Sections 8-103.10 and 8-103.11 of the Food Code.

15 **D.** Temporary Food Establishments shall:

16 (1) Serve only Food that has been Approved.

17 (2) Conduct all Food operations within the Approved enclosure. Temporary
18 Food Establishments may, after approval, store and/or prepare Food at an offsite Food
19 Establishment prior to operation when:

20 (a) The Food Establishment has adequate equipment for the type and
21 volume of Food and preparation steps required; and

22 (b) The Temporary Food Establishment operator provides to the
23 Regulatory Authority a letter of agreement between the operator and the Food Establishment
24 that includes:

25 (i) The days and hours the Food Establishments will be used,

26 (ii) A list of tasks that will be performed at the Food

27 Establishments; and

28 (iii) A copy of the current Food Establishment Permit.

29 (3) Provide, in writing, to the Regulatory Authority for approval the:

30 (a) Location of the Approved potable water source,

31 (b) Location and method of solid waste disposal; and

32 (c) Location and method of liquid waste disposal.

33 (4) Supply a handwashing sink, located as specified in Section 5-204.11 of the
34 Food Code, for employee hand washing. At a minimum, a handwashing sink shall consist of a
35 container with a faucet-type spigot filled with warm water and a catch bucket for the
36 wastewater. The water shall be maintained at a minimum of 100°F as specified in Section 5-
37 202.12 of the Food Code.

38 (5) Maintain an adequate supply of liquid soap and single use paper towels at
39 the handwashing sink at all times.

1 **(6)** Provide a warewashing station as specified in Section 4-301.12 of the Food
2 Code. Extra utensils may be Approved in lieu of a warewashing station as specified in Chart
3 10-1.

4 **(7)** Maintain an adequate supply of potable water at all times during operation
5 for tasks such as: handwashing; Food preparation; and washing, rinsing, and sanitizing of
6 surfaces, utensils, and equipment. Except as specified in Chart 10-1, auxiliary heating units
7 capable of producing an adequate supply of hot water for such purposes shall be provided.

8 **(8)** Provide an adequate supply of ice, as necessary, to maintain
9 time/temperature control for safety Food at temperatures as specified in Sub-paragraph 3-
10 501.16(A)(2) of the Food Code.

11 **(9)** Not store packaged Food in undrained ice or iced water, except for
12 pressurized containers of non- time/temperature control for safety beverages. The water or ice
13 shall contain at least 10 ppm of available chlorine and shall be changed as necessary to keep the
14 water and container clean. Ice used to store Food shall not be used as Food.

15 **(10)** Not store raw meat, poultry, fish, or eggs in the same ice chests as ready-
16 to-eat Food when ice chests are approved for use to store Food as specified in Chart 10-1.

17 **(11)** Transport Food at temperatures as specified in Section 3-501.16 of the
18 Food Code and protect Food from contamination as specified in Part 3-3.

19 **(12)** Not carry over previously heated or cooked Food from one day to the next.
20 This requirement may be waived for Type 3 Temporary Food Establishments (as identified in
21 Chart 10-1) or for Food prepared in advance at an offsite Food Establishment.

22 **(13)** Operate on a surface that is smooth, easily cleanable, and nonabsorbent
23 (e.g., concrete, machine laid asphalt). Grass may be approved as specified in Chart 10-1;

24 **(14)** Operate under a weather-resistant covering that is smooth, easily cleanable
25 and nonabsorbent to protect the operation from overhead contamination;

26 **(15)** Be constructed in a manner that prevents the entrance of insects or other
27 vermin and adequately protects Food from consumers and environmental contamination;

28 **(16)** Provide separation (e.g. table) to keep consumers from entering the Food
29 operation;

30 **(17)** Provide walls that are smooth, easily cleanable, and nonabsorbent. This
31 requirement may be waived when flying insects and other pests are absent due to location,
32 weather, or other limiting conditions. Except as specified in Chart 10-1, walls shall meet the
33 following requirements:

34 **(a)** Cover tightly from ceiling to floor,

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

37 **(c)** When Approved for use, screening shall be 16 mesh to 1 inch.

38 **(18)** In conjunction with the requirements specified in this section, a Temporary
39 Food Establishment shall, based upon risk, be classified as a Type 1, 2 or 3 Temporary Food
40 Establishment and meet the corresponding requirements specified in Chart 10-1.

Chart 10-1

	Type 1	Type 2	Type 3
Menu	<ul style="list-style-type: none"> Unpackaged non-TCS Commercially processed packaged TCS in original package (receive-store-hold) 	<ul style="list-style-type: none"> No Cook (receive-store-minimum prep*-hold-serve) Same Day Prep (receive-store-minimum prep*-cook-hold-serve) Reheat Commercially Processed (receive-store-reheat-hold-serve) 	<ul style="list-style-type: none"> Complex Food Prep (receive-store-prep-cook-cool-reheat-hot hold-serve) Serving Highly Susceptible Population
Handwashing	Gravity Fed <ul style="list-style-type: none"> <= 4 hrs – insulated container or auxiliary heating source > 4 hrs – auxiliary heating source 	Same as Type 1	Hot & cold running water under pressure
3-Compartment Sink	Unpackaged non-TCS <ul style="list-style-type: none"> <= 4 hrs – 3-comp or extra utensils > 4 hrs – 3-comp required Packaged TCS: not required	Same as Type 1 unpackaged non-TCS	3-comp required w/ hot & cold running water under pressure
Refrigeration	Unpackaged non-TCS: not required Packaged TCS: <ul style="list-style-type: none"> <= 1 day – insulated ice chest w/drained ice 2-3 days – mechanical equipment > 3 days – mechanical ANSI equipment only 	Same as Type 1 packaged TCS	Mechanical ANSI equipment only
Cold Holding (e.g., prep table, display case)	Unpackaged non-TCS: not required Packaged TCS: <ul style="list-style-type: none"> Ice bath 2-3 days – mechanical equipment recommended > 3 days – mechanical ANSI equipment recommended 	Same as Type 1 packaged TCS	Same as Type 1 packaged TCS
Hot Holding	Not allowed	Covered non-ANSI equipment allowed**	Covered ANSI equipment only

Cooking/ Reheating	Not allowed	Covered non-ANSI equipment allowed**	Covered ANSI equipment only
Flooring	Grass; smooth, durable, easily cleanable such as: concrete, machine-laid asphalt, sealed wood, tile, impermeable tarp	<ul style="list-style-type: none"> • ≤ 2 days – same as Type 1 • > 2 days – same as Type 1, no grass 	<ul style="list-style-type: none"> • ≤ 3 days – same as Type 1, no grass • > 3 days – constructed flooring
Walls	Unpackaged non-TCS <ul style="list-style-type: none"> • ≤ 3 days – no sides, ability to cover solid • > 3 days – 3.5 side screening, ability to cover solid Packaged TCS: not required	<ul style="list-style-type: none"> • ≤ 1 day – no sides, ability to cover solid • 1 to 3 days – 3.5 side screening, ability to cover solid • > 3 days – complete enclosure w/approved opening 	Complete enclosure w/approved opening
Training	As required by REGULATORY AUTHORITY	As required by REGULATORY AUTHORITY	Certified FOOD protection manager required

1 *Minimum preparation includes activities such as: slicing/cutting fruits and vegetables, opening
 2 commercially packaged TCS Foods, and seasoning TCS Foods. Minimum preparation does not
 3 include activities such as: cutting, slicing, or forming raw meat, poultry, or fish; assembly of
 4 complex menu items.
 5 **Chafing dishes may be allowed for events of 4 hours or less. Insulated ice chests and slow
 6 cookers are not allowed for hot holding. Slow cookers are not allowed for heating, cooking, or
 7 reheating.
 8 [7.6.2.10 NMAC - Rp, 7 NMAC 6.1.006, 08/12/2000; Rp, x/x/2016]
 9

10 **7.6.2.11 GENERAL FOOD PROCESSING REQUIREMENTS:**

11 **A. Food Processing Plant Permit Requirements:**

12 (1) All Food Processing Plants shall comply with all applicable provisions of
 13 Chapters 1–8 of the Food Code.

14 (2) No person shall operate a Food Processing Plant without a permit issued by
 15 the Regulatory Authority.

16 (3) When a Food Establishment has an adjunct/additional Food Processing Plant,
 17 each such business may be permitted separately.

18 **B. Sale Of Adulterated Or Misbranded Food:**

19 (1) No person shall sell or offer, or expose for sale, or have in possession with
 20 intent to sell, any processed and packaged Food product that is Adulterated or Misbranded.

21 (2) The term “Adulterated” includes products that are defective, unsafe, filthy, or
 22 produced under unsanitary conditions (Section 25-2-10 NMSA 1978).

23 (3) “Misbranding” includes statements, designs, or pictures in labeling that are
 24 false or misleading, and/or failure to provide required information outlined in 7.6.2.11.D(2).

25 (4) Adulterated or Misbranded Food products shall be reconditioned, condemned
 26 or destroyed in accordance with Section 25-2-6 NMSA 1978.

27 **C. Labeling Requirements:**

28 (1) All packaged Food shall be labeled in accordance with the applicable
 29 requirements of the Federal Food, Drug and Cosmetic Act as amended, the Fair Packaging and

1 Labeling Act, regulations developed thereunder, and the New Mexico Food Act. Details
2 concerning type, size and location of required labels are contained in FDA regulations covering
3 the requirements of the Federal Acts (Code of Federal Regulation, Title 21, Part 101.)

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

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

8 (b) An accurate statement of the net amount of food in the package, in
9 terms of weight measure, volume measure (listed in both “English” and metric units) or
10 numerical count;

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

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

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

17 (4) Any Food product that does not comply with all applicable labeling
18 requirements shall be deemed to be Misbranded.

19 **D. Standards Of Identity:**

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

25 (2) Any Food product that is represented as, or purports to be, a Food for which a
26 standard of identity has been promulgated, must comply with the specifications of the standard in
27 every respect. A Food product that does not comply fully with the applicable standard is
28 misbranded, unless its label bears the word “Imitation” or meets the descriptive label
29 requirements in the Code of Federal Regulations, Title 21, Part 101.

30 **E. Low-Acid Canned Foods And Acidified Foods:**

31 (1) All processors of low-acid canned Foods or Foods that have been acidified
32 must comply with specific federal regulations contained in the Code of Federal Regulations,
33 Title 21, Parts 108, 113, and 114.

34 (2) All processors of low-acid canned Foods and acidified foods are required by
35 federal regulation to register their Food Processing Plants and file processing information for all
36 products with the FDA using appropriate forms. Registration and processing information forms
37 are obtainable on request from: Food and Drug Administration, LACF Registration Coordinator
38 (HFF-233), 200-C Street, SW, Washington, D.C. 20204.

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

41 **F. Operational Plans:**

42 (1) Food Processing Plants shall, at the time of application for a Permit for review
43 and acceptance by the Regulatory Authority:

44 (a) provide the following information for the product(s) to be manufactured
45 and/or distributed:

46 (i) names of the ingredient(s);

1 (ii) the final product pH if appropriate;
2 (iii) the final product water activity (a_w) if appropriate;
3 (iv) names of preservative(s);
4 (v) the type of packaging to be used and whether the packaging is
5 integral to product stability (e.g. the vacuum packing of fresh meat); and
6 (vi) the complete operational procedure for product formulation,
7 using a flow chart to show at what stage(s) each ingredient is added;
8 (b) provide the following information about product distribution:
9 (i) the intended distribution and use condition of the product;
10 (ii) if the product is to be distributed at ambient, refrigerated or
11 frozen temperature;
12 (iii) the expected shelf life during distribution, retail storage, and in
13 the hands of the ultimate consumer;
14 (iv) how the product should be prepared for consumption; and
15 (v) what mishandling of the product might occur in the
16 merchandising channels or in the hands of the consumer;
17 (c) state the intended process (cooking time and temperatures). This
18 information may be included in the flow chart required in 7.6.2.11.G(1)(a)(vi). Consideration
19 must be given to those steps that lead to the destruction or inhibition of disease causing or
20 spoilage organisms if done properly, or the growth of such organisms if done improperly;
21 (d) submit product labels that comply with all requirements of 7.6.2.11.D of
22 this Part.

23 (2) Prior to adding any new product to the product line, or changing the
24 manufacturing process or product distribution for any existing product in the product line, the
25 food processor shall provide to the Regulatory Authority:

26 (a) For each new product, the same information specified for the initial
27 application in 7.6.2.11.G(1); and

28 (b) For each existing product for which a change will be made in the
29 manufacturing process or product distribution, the applicable changes to the information
30 previously submitted pursuant to 7.6.2.11.G(1).

31 (3) All Food Processing Plants shall design, maintain and use a coding system that
32 will identify the date and place of manufacture of each product on the product label, or securely
33 affixed to the body of the container. A description of the proposed coding system shall be
34 included in the application.

35 (4) The Regulatory Authority may require that the Food Processing Plants
36 processes be reviewed by a competent process authority to approve all critical factors of public
37 health significance as defined in the Code of Federal Regulations, Title 21, Sections 114.83 and
38 114.89.

39 (5) In lieu of a process authority, the Regulatory Authority may accept those
40 processes which comply with 7.6.2.11.E(1) and (2) of this Part.

41 (6) Recall procedures shall be prepared and must be on file at the Food Processing
42 Plant. Procedures shall include plans for recalling products which may be injurious to human
43 health; for identifying products which may be injurious to human health; for identifying,
44 collecting, warehousing, and controlling products; for determining the effectiveness of recalls;
45 for notifying the Regulatory Authority, FDA, and USDA of any recalls; and for implementing
46 recall programs.

1 (7) Whenever the Regulatory Authority finds or has probable cause to believe that
2 any Food processing Plant's product fails to meet standards or is Adulterated with any substance
3 that may be injurious to human health, the suspected lot of product shall be embargoed or
4 detained at the Food Processing Plant, if not yet distributed to consumers or retail outlets, until a
5 determination of ultimate disposition is made.

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

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

10 (10) When any Food product is found, by examination or laboratory analysis, to
11 be in violation of the standards of 7.6.2.11.C, E or F, the Secretary may order condemnation and
12 disposal of the product lot at the Food Processing Plant's expense.

13 **G. Compliance With Accepted Operational Procedures:**

14 (1) A copy of the accepted process and procedures shall be on file at the Food
15 Processing Plant. It shall be available for review by the Regulatory Authority at all times. A
16 Food Processing Plant shall not deviate from the accepted process and operational procedures
17 without written consent of the Regulatory Authority.

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

24 (3) Routine inspections of facilities, equipment and operations will be conducted
25 as specified in this Part. In addition, Hazard Analysis Critical Control Point (HACCP)
26 evaluations will be conducted by the Regulatory Authority and/or the Food Processing Plant as
27 needed to identify hazards, critical control points, and daily monitoring requirements.
28 [7.6.2.12 NMAC - Rp, 7 NMAC 6.1.501 to 508, 08/12/2000]
29

30 **7.6.2.12 JERKY MANUFACTURED FOOD REQUIREMENTS:**

31 **A.** In addition to complying with the requirements specified in Section 11 of this
32 part, Food Processing Plants that produce Jerky shall comply with the requirements specified in
33 this Section.

34 **B.** Food Processing Plants that produce Jerky shall have the appropriate Approved
35 equipment to measure and monitor food safety factors related to the production of Jerky.

36 **C.** Cooking. The following parameters shall be achieved in a sealed oven, for a
37 minimum of one hour, and no less than 50% of the cooking time, during the Jerky cooking
38 process:

39 (1) Minimum internal temperature of 145⁰F for 4 minutes for Meat and 165⁰F
40 instantaneous for Poultry.

41 (2) Maintain a steady or increasing relative humidity level throughout the
42 cooking process.

43 **D.** In lieu of complying with the cooking parameters specified in Sub-section C of
44 this section the Regulatory Authority may Approve alternative methods for treating product

1 provided that the proposed method is scientifically-based and adequately documented by data
2 developed according to an experimental protocol.

3 **E.** Food Establishments that produce Jerky shall:

4 (1) Meet the requirements of Sub-sections B and C this section.

5 (2) Have an approved Operational Plan for each product produced.

6 (3) Keep the Operational Plan on file at the Food Establishment.

7 (4) Follow the approved Operational Plan and not deviate from it without
8 approval from the Regulatory Authority.

9 (5) Monitor and record Food safety factors, including but not limited to, time,
10 temperature, and humidity and make the records available to the Regulatory Authority.

11 [7.6.2.12 NMAC - Rp, 7 NMAC 6.1.006, 08/12/2000; Rp, x/x/2016]

12
13 **7.6.2.13 BOTTLED DRINKING WATER MANUFACTURED FOOD**
14 **REQUIREMENTS:**

15 **A.** In addition to meeting the requirements specified in Section 11 of this part, Food
16 Processing Plants that produce Bottled Drinking Water shall comply with the requirements
17 specified in this Section.

18 **B.** Bottled Drinking Water processing operational requirements and standards.

19 (1) The Bottled Drinking Water plant shall follow generally accepted Good
20 Manufacturing Practice such as contained in 21 CFR Part 129 or the International Bottled
21 Water Association Bottled Water Code of Practice.

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

27 **C. Bottled Drinking Water labeling requirements.** All Bottled Drinking Water
28 labels shall meet the requirements specified in Sub-section W of Section 11 of this part.

29 **D. Analytical requirements.** Unless otherwise provided in this part, samples shall
30 be collected, prepared, and examined using the most current methods for the examination of
31 drinking water listed in 40 CFR Part 14) or by other methods for the examination of drinking
32 water approved by the United States Environmental Protection Agency. Examination of
33 samples shall be performed by an Approved laboratory.

34 **E. Monitoring requirements.**

35 (1) Bottled Drinking Water plants shall be required to submit one
36 microbiological sample per finished product per week. A copy of the microbiological analysis
37 report shall be submitted within ten working days of analysis to the Regulatory Authority.
38 Any coliform or fecal coliform positive result shall require the plant owner or operator to notify
39 the Regulatory Authority within twenty-four (24) hours and to submit to resampling guidelines
40 specified in 20.7.10 NMAC.

1 (2) Bottled Drinking Water Plants that know that a Maximum Contaminant
2 Level, as specified in 20.7.10 NMAC, has been exceeded or who have reason to believe
3 circumstances exist that may adversely affect the safety of Bottled Drinking Water, including
4 but not limited to source contamination, spills, accidents, natural disasters, or breakdowns in
5 treatment, shall notify the Regulatory Authority within twenty-four (24) hours.

6 [7.6.2.13 NMAC - Rp, 7 NMAC 6.1.006, 08/12/2000; Rp, x/x/2016]
7

8 **7.6.2.14 SHELLFISH REQUIREMENTS: Adoption of National Shellfish Sanitation**
9 **Program (NSSP) Guide for Control of Molluscan Shellfish.** Except as otherwise provided, the
10 2013 NSSP Guide for Control of Molluscan Shellfish is hereby incorporated by reference.

11 [7.6.2.14 NMAC - Rp, 7 NMAC 6.1.006, 08/12/2000; Rp, x/x/2016]
12

13 **7.6.2.15 HOME-BASED FOOD PROCESSING:**

14 **A. Plan Review, Permitting, Inspection, and Training Requirements.**

15 (1) No person shall operate a Home-based Food Processing Operation without a
16 Permit.

17 (2) In addition to meeting the applicable requirements of Chapters 1-8 of the Food
18 Code and Section 11 of this part, Home-based Food Processing Operations shall comply with the
19 requirements specified in this Section.

20 (3) Home-Based Food Processing Operations shall meet the specifications of Part
21 2-1 of the Food Code.

22 (4) The Permit issued shall be displayed at the Home-based Food Processing
23 Operation. A copy of the Permit shall be displayed at places at which the operator sells Food at
24 times when the operator is selling the home-based processed Foods.

25 **B. Food Protection Requirements.**

26 (1) Home-based processed Food products and components shall be stored separate
27 and apart from residential Foods and protected from contamination, insects, rodents, pests, water
28 leaks, dust, dirt and other contaminants.

29 (2) Home-Based Food Processing Operations must keep a sample of each
30 processed Food batch for fourteen days. The samples shall be labeled with the production date
31 and time.

32 (3) Vehicles used in transporting home-based processed Food products shall be
33 maintained in a safe and sanitary manner. Vehicle compartments used to transport animals shall
34 not be used for transporting home-based processed Foods.

35 **C. Exceptions and Limitations.**

36 (1) The following provisions from the Food Code shall not apply to Home-based
37 Food Processing Operations:

- 38 (a) 8-407.11;
- 39 (b) 4-301.12(A);
- 40 (c) 5-501.11;
- 41 (d) 4-903.11;
- 42 (e) 4-803.11;

- 1 (f) 6-202.112;
- 2 (g) 4-803.13(A);
- 3 (h) 4-402.11;
- 4 (i) 4-402.12;
- 5 (j) 4-205.10
- 6 (k) 8-101.10(B)
- 7 (l) 6-202.14
- 8 (m) 6-201.14
- 9 (n) 6-201.13
- 10 (o) 4-701.10
- 11 (p) 5-204.11
- 12 (q) 6-301.12(A)
- 13 (r) 2-401.11
- 14 (s) 6-501.115
- 15 (t) 5-501.10

16 (2) Food products processed by Home-based Food Processing Operations shall
17 not be Potentially Hazardous Foods and shall be Approved by the Regulatory Authority.

18 (3) Home-based Food Processing Operations shall only sell their products at
19 farmer’s markets, roadside stands, festivals, or other venues in which the producer sells directly
20 to the consumer.

21 (4) Products processed by a Home-based Food Processing Operation shall not be
22 sold, used, or offered for consumption in Food Establishments including, but not limited to,
23 restaurants, grocery stores and convenience stores, by internet sales, or sold in interstate
24 commerce.

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

27 (6) Non-employees shall not be allowed entry into the kitchen during home-based
28 food processing related activities. Home-based Food Processing Operations shall not wash out or
29 clean pet cages, pans or similar items in the kitchen.

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

32 (8) The following provisions from the Food Code are applicable to Home-based
33 Food Processing Operations only during Home-based Food Processing related activities:

- 34 (a) 3-304.11;
- 35 (b) 5-205.11;
- 36 (c) 6-301.12;
- 37 (d) 2-401.11;
- 38 (e) 6-501.115;
- 39 (f) 5-501.13.

40 (9) Home-based Food Processing Operations shall submit a detailed procedure to
41 be used to clean and sanitize the kitchen sink before and during Home-based Food Processing
42 related activities

43 (10) Home-Based Food Processing Operations shall comply with Sub-section 5-
44 402.11 of the Food Code unless an alternative method is Approved.

1 **D. Home-Based Food Labeling.** A Home-based Food Processing Operation shall
2 properly label all Foods in accordance with Sub-section W of Section 11 of this part and include
3 the words “Home Produced” in bold conspicuous 12 point type on the principal display panel.
4 [7.6.2.15 NMAC - Rp, 7 NMAC 6.1.103, 08/12/2000, 01/01/2010; Rp, x/x/2016]
5

6 **HISTORY OF 7.6.2 NMAC:**

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

10 EIB Rule 73-1, Regulations Governing Food Protection In Food-Service Establishments, 6/25/73

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

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

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

14 EIB Rule FQM 2, Food Service And Processor Regulations; 12/02/92
15

16 **History of Repealed Material:**

17 7 NMAC 6.1 Food Service And Food Processing Regulations - Repealed, 08/12/2000