New Mexico Adopts Provisions of FDA’s 2013 Food Code

Background and summary
On March 1, 2016 the New Mexico Environment Department began implementation changes to the New Mexico Food Service and Food Processing Regulations. The regulations were revised to adopt the provisions contained in the Food and Drug Administration (FDA) 2013 Model Food Code in its entirety, with some exceptions.

When do the new rules go into effect?
The new Food Service and Food Processing Regulations became effective in New Mexico on March 1, 2016.

What types of establishments are affected by the new rules?
The new regulations apply to all food service establishments and food processing establishments within the state of New Mexico.

What are the new rules?
The new regulations contain several significant changes affecting food establishment operators and food processors in the state. Below is a list of significant changes of which to be aware.

Modified Definitions
All Definitions provided in the 2013 FDA Food Code were adopted with the exception of 41 definitions which were added or modified by the state of New Mexico.

- “Adulterated” has the meaning stated in the New Mexico Food Act, Section 25-2-10 NMSA 1978.
- “Critical control point” means a point, step, or procedure in a food process at which a control measure can be applied and at which control is essential to prevent, reduce to an acceptable level, or eliminate an identified food hazard.
- “Critical limit” means the maximum or minimum value to which a physical, biological, or chemical parameter must be controlled at a critical control point to prevent, eliminate, or reduce to an acceptable level the occurrence of the identified food hazard.
- “Drinking water” means water that meets criteria as specified in 20.7.10 NMAC. Drinking water is traditionally known as “potable water,” and includes the term “water” except where the term used connotes that the water is not potable, such as “boiler water,” “mop water,” “rainwater,” “wastewater,” and “non-drinking” water.

CONTINUED ON NEXT PAGE
New Mexico Adopts Provisions of FDA’s 2013 Food Code

Modified Definitions (Continued)

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

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

- “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 (aw).

- “Public water system” has the meaning stated in 20.7.10 NMAC.

- “Regulatory authority” means the New Mexico Environment Department.

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

Added Definitions

- “Acid food” means food that has a natural pH of 4.6 or below.

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

- “Control point” means a step at which biological, chemical, or physical factors can be controlled.

- “Corrective action” means an action to be taken when the results of monitoring at the critical control point indicate a loss of control.

- “Deviation” means failure to meet a critical limit.

CONTINUED ON NEXT PAGE
New Mexico Adopts Provisions of FDA’s 2013 Food Code

Added Definitions (Continued)

- “Food handler card” means a card issued to an individual after successful completion of a food handler training program to function as a food employee.
- “Food handler training program” means an ANSI/ASTM E2659-09 accredited food handler training certificate program.
- “Good Manufacturing Practices” (GMPs) means the minimum sanitary and processing requirements related to production methods, equipment, facilities, and other controls that a food processing plant must meet to assure that food is safe and wholesome.
- “Hazard analysis and critical control point” (HACCP) means a food safety management system that focuses on the identification, evaluation, and control of food safety hazards.
- “Hazard analysis” means the process of collecting and evaluating information on hazards associated with the food under consideration to decide which are significant and must be addressed in the HACCP plan.
- “Home-based food processing operation” means any business in which a residential kitchen is permitted to process approved food that is not classified as a TCS food and is packaged and is offered directly to the consumer.
- “Jerky” means a dried, finished meat, poultry, fish, or game animal product having a water activity (aw) less than 0.85.
- “Low acid food” means any food, other than alcoholic beverages, with a finished equilibrium pH greater than 4.6 and a water activity (aw) greater than 0.85. Tomatoes and tomato products having a finished equilibrium pH less than 4.7 are not classified as low acid food.
- “Misbranded” has the meaning stated in the New Mexico Food Act, Section 25-2-11 NMSA 1978.
- “Mobile food establishment” means a food establishment that is designed to be readily movable; completely retains its mobility; and is equipped to serve food. Mobile food establishment includes self-contained mobile units, non-self-contained mobile units, pushcarts, and mobile support units.
- “Mobile support unit” means an enclosed motor vehicle department-licensed driven or towed wheeled vehicle used in conjunction with a New Mexico based servicing area that travels to, and services, other mobile food establishments as needed to replenish supplies, including food and potable water, clean the interior of the unit, or dispose of liquid or solid wastes.

CONTINUED ON NEXT PAGE
New Mexico Adopts Provisions of FDA’s 2013 Food Code

Added Definitions (Continued)

- “Monitoring” means to conduct a planned sequence of observations or measurements to assess whether a process, point, or procedure is under control and to produce an accurate record for future use in verification.
- “Non self-contained mobile unit” means an enclosed motor vehicle department-licensed driven or towed wheeled vehicle that is required to operate from a New Mexico based servicing area.
- “Operational plan” means a written plan outlining the product formulation, production steps, safety requirements, distribution, labeling, and recall procedures of a food product that will be implemented by a food establishment or food processing plant when processing packaged food.
- “Process authority” means an expert in the processes for controlling pathogenic microorganisms in food, and as such, is qualified by education, training and experience to evaluate all of the aspects of pathogen control measures and determine if such control measures, when properly implemented, will control pathogens effectively.
- “Pushcart” means a human propelled unit, equipped to serve food, that is required to operate from a New Mexico based servicing area.
- “Recall” means a return of food products that are either known or suspected to be adulterated, misbranded, or otherwise unsafe for human consumption, to the manufacturer or distributor, or that are disposed of by approved methods.
- “Sanitation standard operating procedures” (SSOPs) means written procedures specific to a single food processing plant to be followed routinely for the performance of designated operations to ensure sanitary conditions and to prevent product adulteration in a food processing plant.
- “Self-contained mobile unit” means an enclosed motor vehicle department-licensed driven or towed wheeled vehicle that is not required to operate from a New Mexico based servicing area.
- “Shelf-stable product” means a product that is hermetically sealed and, when stored at room temperature, should not demonstrate any microbial growth.
- “Standard operating procedures” (SOPs) means written procedures to be followed routinely for the performance of designated operations in a food processing plant.
- “Standards of identity” means legal standards, defined by FDA, for foods regarding minimum quality specifications, including permitted ingredients and processing requirements, to be marketed under a certain name.

CONTINUED ON NEXT PAGE
New Mexico Adopts Provisions of FDA’s 2013 Food Code

Added Definitions (Continued)

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

• “Validation” means that element of verification focused on collecting and evaluating scientific and technical information to determine whether the HACCP system, when properly implemented, will control effectively the identified food hazards.

• “Verification” means those activities, other than monitoring, that establish the validity of the HACCP plan and that the system is operating according to the plan. It includes validation procedures. [7.6.2.7 NMAC - Rp, 7.6.2.7 NMAC, 3/1/2016]

Other Key Changes

• A Person in Charge (PIC) is required during all hours of operation.
• The PIC shall demonstrate food safety knowledge and perform required duties.
• A permit holder must correct priority item or priority foundation item violations at the time of inspection. If the complexity of the corrective action requires further time, a maximum time of 72 hours for priority items and 10 days for priority foundation items may be allowed.
• Permit holders must require food employees to report to the PIC any information about their health related to diseases that are transmissible through food.
• The PIC shall exclude or restrict a food employee (if necessary) based upon the parameters outlined.
• Procedures are required for cleaning up of vomiting and diarrheal events to minimize the spread of contamination and exposure.
• Consumer Advisory (disclosure and reminder) is required when raw or undercooked foods are served. Certain restrictions exist for facilities serving highly susceptible populations.
• Bare hand contact with ready-to-eat foods is prohibited. Suitable utensils are deli tissue, spatulas, tongs, single-use glove or dispensing equipment.
• Food employees may not handle animals. See exemptions.
• Single-use gloves may only be used for one task and discarded when damaged or soiled, or an interruption in use occurs. See (B)-(D) for info concerning slash-resistant and cloth gloves.

CONTINUED ON NEXT PAGE
Other Key Changes

- Time/temperature control for safety foods (TCS) must be received at 41°F or less and not show evidence of temperature abuse. Exceptions: eggs and molluscan shellfish 45°F or less, hot food 135°F or above, food labeled frozen must be frozen.
- Hot holding 135°F or above
- Cold holding 41°F or less
- Time without temperature control may be used for time/temperature control for safety foods (TCS) if certain requirements are met.
- Raw animal foods cooking times/temps are new. See below for changes that apply to common foods. See 3-401.11 (C) for further information concerning cooking and service of steak that is labeled “whole muscle, intact beef.”

<table>
<thead>
<tr>
<th>INTERNAL COOKING TEMPERATURES</th>
<th>RAW ANIMAL FOODS</th>
</tr>
</thead>
<tbody>
<tr>
<td>145°F for 15 seconds</td>
<td>• Raw eggs cooked for immediate service</td>
</tr>
<tr>
<td></td>
<td>• Fish, except as listed below</td>
</tr>
<tr>
<td></td>
<td>• Meat, except as listed in the next 2 rows</td>
</tr>
<tr>
<td></td>
<td>• Commercially raised game animals, rabbits</td>
</tr>
<tr>
<td>155°F for 15 seconds (See 3-401.11(A)(2) for further info)</td>
<td>• Ratites (Ostrich, Rhea and Emu)</td>
</tr>
<tr>
<td></td>
<td>• Injected meats</td>
</tr>
<tr>
<td></td>
<td>• Mechanically tenderized meats</td>
</tr>
<tr>
<td></td>
<td>• Raw eggs not for immediate service</td>
</tr>
<tr>
<td></td>
<td>• Comminuted meat, fish, or commercially raised game animals</td>
</tr>
<tr>
<td>165°F for 15 seconds</td>
<td>• Wild game animals</td>
</tr>
<tr>
<td></td>
<td>• Poultry</td>
</tr>
<tr>
<td></td>
<td>• Stuffed fish, meat, pork, pasta, ratites and poultry</td>
</tr>
<tr>
<td></td>
<td>• Stuffing containing fish, meat, ratites and poultry</td>
</tr>
</tbody>
</table>

- Cooked time/temperature control for safety foods (TCS) must be cooled within 2 hours from 135°F to 70°F and within a total of 6 hours from 135°F to 41°F or less utilizing one or more methods described in section 3-501.15. Ambient TCS foods (such as canned tuna) must be cooled to 41°F within 4 hours or less after preparation.
- Water temperature at handwashing sink must be a minimum of 100°F.
- Handwashing signs must be posted at all handwashing sinks.
- Food Employees w/ service animals may handle the animal, if hands are properly washed in accordance with 2-301.12 and 2-301.14(C).

CONTINUED ON NEXT PAGE
New Mexico Adopts Provisions of FDA’s 2013 Food Code

Other Key Changes (continued)

- Food packaged in a food establishment must be properly labeled.
- Self-dispensing bulk food that is available for consumers shall be labeled with manufacturer label or card with information.
- The frequency for cleaning equipment and utensils is described in detail. Examples include: changing between raw to ready to eat foods, TCS Equipment contact surfaces every 4 hours, microwaves every 24 hours etc.
- Cloths in-use for wiping surfaces in contact with raw animal foods must be kept separate from cloths used for other purposes. All sanitizer buckets must be stored off of the floor.
- At least one service sink or curbed cleaning facility equipped with floor drain shall be proved for the cleaning of mops or similar cleaning tools. Toilets and urinal may not be used for the disposal of mop water and similar waste.
- Food Establishments may not operate without water, or approval from NMED.
- Permit holders shall notify customers that a copy of the most recent inspection form is available upon request.
- A re-inspection penalty fee of $100 will be assessed for priority item violations or repeat priority item violations that require an NMED follow-up inspection.

Additional Changes that May Not Affect all Food Service Operators in the State:

- Provisions related to Temporary Food Establishments
- Provisions related to Mobile Food Establishments

What significant provisions in the New Mexico Food regulation will be DELAYED in implementation?

Implementation of some provisions will be delayed.

- One certified food protection manager with the authority to direct and control food preparation and service is required. (Effective date 3/1/17)
- Food employees are required to have food handler cards. (Effective date 3/1/17)

Where can I find a complete update of the New Mexico Food Service and Food Processing Regulation?

To download a complete copy of New Mexico Food Service and Food Processing Regulations go to: