CHAPTER 25
Food

ARTICLE 1
Food Service Sanitation

25-1-1. Short title.

Chapter 25, Article 1 NMSA 1978 may be cited as the "Food Service Sanitation Act".

History: 1953 Comp., § 54-3A-1, enacted by Laws 1977, ch. 309, § 1; 1989, ch. 197, § 1.

ANNOTATIONS

The 1989 amendment, effective June 16, 1989, substituted "Chapter 25, Article 1 NMSA 1978" for "This act".

25-1-2. Definitions.

As used in the Food Service Sanitation Act:

A. "agency" or "division" means the department of environment;

B. "board" means the environmental improvement board;

C. "employee" means any individual employed in a food service establishment who transports food or food containers, who handles food during storage, preparation or serving, who comes in contact with any utensils or who is employed in a room in which food is stored, prepared or served;

D. "food" means any solid or liquid substance intended for human consumption by eating or drinking;

E. "general public" includes beneficiaries of governmental feeding programs and private charitable feeding programs and residents and employees of institutions that provide meals to their residents and employees either with or without direct payment to the institution by the residents or employees;

F. "temporary food service establishment" means a food service establishment that operates at a fixed location in conjunction with a single event or celebration for a short period of time not exceeding the event or celebration or not exceeding thirty days;

G. "person" means an individual or any other legal entity;

H. "food service establishment" means:

(1) any fixed or mobile place where food is served and sold for consumption on the premises;

(2) any fixed or mobile place where food is prepared for sale to or consumption by the general public either on or off the premises, including any place where food is manufactured for ultimate sale in a sealed original package, but "prepared" as used in this paragraph does not include the preparation of raw fruits, vegetables or pure honey for display and sale in a grocery store or similar operation. For purposes of this paragraph, "pure honey" means natural liquid or solid honey, extracted from the combs or in the comb, taken from beehives, with no processing or additional ingredients. "Food service establishment" does not mean a dairy establishment; and

(3) meat markets, whether or not operated in conjunction with a grocery store;

I. "utensil" means any implement used in the storage, preparation, transportation or service of food; and

J. "dairy establishment" means a milk processing or milk producing facility.

History: 1953 Comp., § 54-3A-2, enacted by Laws 1977, ch. 309, § 2; 1989, ch. 197, § 2; 1993, ch. 188, § 31; 1997, ch. 49, § 1.

ANNOTATIONS

The 1997 amendment, effective June 20, 1997, in Paragraph H(2), substituted "vegetables or pure honey" for "and vegetables" in the first sentence, and added the second sentence.

The 1993 amendments, effective June 18, 1993, substituted "department of environment" for "environmental improvement division of the health and environment department" in Subsection A; deleted "by the food service establishment" following "food is prepared" near the beginning and added "'Food service establishment' does not mean a dairy establishment" at the end of Subsection H(2); added Subsection J; and made a minor stylistic change.

The 1989 amendment, effective June 16, 1989, added the present catchline; rewrote Subsection A, which formerly read: " 'agency' means the environmental improvement agency"; rewrote Subsection F, which formerly read: " 'itinerant food service establishment' means a food service establishment operating for a temporary period of time"; and in Subsection H(2) inserted "by the food service establishment", and substituted "including any place where food is manufactured" for "but 'prepared' as used in this paragraph does not include food processing in which food is processed" and "but 'prepared' as used in this paragraph does not" for "nor does it".

Kitchen of state hospital deemed excluded. — Former statute (Section 54-3-1, 1953 Comp.) did not encompass state agencies under the circumstances where a hospital operated a kitchen, primarily to prepare food for patients, and kitchen personnel and other employees were allowed to eat meals prepared at the kitchen, and reimbursement was effected by the hospital, either through payroll deductions or meal tickets sold to the employees at approximate food cost; i.e., a "restaurant," as defined in the statute, was not involved. 1958 Op. Att'y Gen. No. 58-161 (opinion rendered under former law).

25-1-3. Purpose.

The purpose of the Food Service Sanitation Act is to protect the public health by establishing standards and provisions for the regulation of food service establishments and by appropriate delegations of authority to the board and agency to adopt and enforce regulations covering the environmental health aspects of food service establishments to assure that consumers are not exposed to adverse environmental health conditions arising out of the operations of food service establishments.

History: 1953 Comp., § 54-3A-3, enacted by Laws 1977, ch. 309, § 3.

ANNOTATIONS

Cross references. — For provisions relating to adulterated or misbranded food, *see* 25-2-1 NMSA 1978 et seq.

25-1-4. Board; powers and duties.

The board shall promulgate procedural and substantive regulations consistent with the provisions of Section 74-1-9 NMSA 1978 and shall include provisions for:

A. requiring food service establishments to prepare and serve food in a manner safe for human consumption, free from adulteration, spoilage, contamination and unwholesomeness, and, to accomplish this standard, the following areas of food service establishment operations shall be covered by the regulations:

(1) disease control;

(2) employee hygiene and sanitation;

(3) food service establishment premises sanitation;

(4) all aspects of food service establishment construction relating to food service sanitation, including requirements for food service establishment construction plans and specifications review and approval by the division;

(5) control of pests and infestation by pests;

(6) lavatory and toilet facility placement and sanitation;

(7) lavatory hygiene;

(8) food equipment and utensil design and construction;

(9) food equipment and utensil storage and handling;

(10) liquid and solid waste disposal;

(11) food and drink preparation, handling, display and storage;

(12) food service establishment ventilation;

(13) water supply;

(14) itinerant food service establishment construction and operation; and

(15) any other facet of food service operations that reasonably may be considered to pose an existing or potential hazard to the health of the consuming public; provided that no regulation shall prohibit food service establishments from allowing pet dogs in designated outdoor dining areas;

B. the issuance, suspension and revocation of permits required under the Food Service Sanitation Act, which regulations shall provide for prior notice to and a hearing for any applicant for or holder of a permit when the division-proposed action is to deny an application for or suspend or revoke a permit, except in those specified instances under the provisions of the Food Service Sanitation Act when the division is authorized to take any of the foregoing actions without prior notice and hearing; and

C. establishing requirements for inspections of food service establishments, which shall include provisions for inspections at a frequency of at least once every twelve months.

History: 1953 Comp., § 54-3A-4, enacted by Laws 1977, ch. 309, § 4; 2011, ch. 151, § 2.

ANNOTATIONS

Cross references. — For provisions of the Environmental Improvement Act, *see* Chapter 74, Article 1 NMSA 1978.

The 2011 amendment, effective July 1, 2011, in Subsection A, prohibited the board from adopting regulations that prohibit food service establishments from allowing pet dogs in designated outdoor dining areas.

Religious groups are excluded from the definition of "food service establishments". — The environmental improvement board (board) is charged with executing the provisions of the Food Service Sanitation Act (act), 25-1-1 to 25-1-15 NMSA 1978, the purpose of which is to protect the public health by establishing standards and provisions for the regulation of food service establishments and by appropriate delegations of authority to the board and the New Mexico environment department to adopt and enforce regulations covering the environmental health aspects of food service establishments to assure that consumers are not exposed to adverse environmental health conditions arising out of the operations of food service establishments; in accordance with the act, the board adopted and incorporated, with certain limited modifications, the Food Code, a model code and reference document for state, city, county and tribal agencies that regulates food service operations and establishes practical, science-based guidance for mitigating risk factors that are known to cause or contribute to foodborne illness outbreaks associated with retail and foodservice establishments. Among the modifications to the Food Code, the board excluded from the definition of "food service establishment", religious groups and other charitable organizations, and therefore the environment department does not have jurisdiction to enforce the Food Code against churches conducting temporary events such as a rummage sale or a bake sale, provided the goods do not require time or temperature control for safety and are prepared in a private home kitchen for sale or service at a fundraising function. *Application of the 2013 Food Code to Church Bake Sales* (1/17/18), Att'y Gen. Adv. Ltr. 2018-02.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Liability for injury or death allegedly caused by spoilage, contamination, or other deleterious condition of food or food product, 2 A.L.R.5th 1.

25-1-5. Optional powers.

A. The board may establish a system of grading food service establishments for the purpose of certifying compliance with the Food Service Sanitation Act and regulations requiring food service establishments to display in a designated manner a grade as notice of compliance to the public. Such regulations shall include provisions for the revocation and reinstatement of the permit that are consistent with due process of law.

B. The board shall establish a schedule of fees for the issuance and renewal of permits issued by the division under the Food Service Sanitation Act. The board shall set the schedule of fees so that no fee established by such schedule shall be less than one hundred dollars ($100) or more than two hundred dollars ($200) annually for a food service establishment with not more than a twenty-five-dollar ($25.00) incremental increase per fiscal year. The board shall establish a separate schedule of fees not to exceed twenty-five dollars ($25.00) per single event or celebration per temporary food service establishment. Fees shall be waived for all temporary non-potentially hazardous food service operations, for any temporary food service establishment operating no more than two calendar days in any calendar month and for any food service establishment that provides food to the general public at no charge. Fees

collected for the issuance and renewal of permits pursuant to the Food Service Sanitation Act shall be deposited in the environmental health fund.

History: 1953 Comp., § 54-3A-5, enacted by Laws 1977, ch. 309, § 5; 1989, ch. 197, § 3; 1991, ch. 94, § 1; 1993, ch. 100, § 1; 2005, ch. 218, § 1; 2020, ch. 32, § 2.

ANNOTATIONS

The 2020 amendment, effective May 20, 2020, provided that fees collected for the issuance and renewal of permits pursuant to the Food Service Sanitation Act shall be deposited in the environmental health fund; and in Subsection B, after "deposited in the", deleted "food service sanitation" and added "environmental health fund".

The 2005 amendment, effective June 17, 2005, increases limitation on permit fees in Subsection B from not less than $75 or more than $100 annually to not less than $100 or more than $200 annually with not more than a $25 incremental increase per fiscal year.

The 1993 amendment, effective March 31, 1993, in Subsection B, substituted "establishment" for "facility" in the fourth sentence and substituted the present fifth sentence, for the former fifth sentence, which read "Effective July 1, 1992, all fees collected for the issuance and renewal of permits under the Food Service Sanitation Act shall be deposited in the general fund."

The 1991 amendment, effective April 2, 1991, made minor stylistic changes in Subsection A, and, in Subsection B, added "and for any food service establishment that provides food to the general public at no charge" at the end of the fourth sentence and made a related stylistic change.

The 1989 amendment, effective June 16, 1989, designated the formerly undesignated provisions as Subsection A, and added Subsection B.

25-1-5.1. Repealed.

History: Laws 1993, ch. 100, § 5; 2005, ch. 218, § 2; repealed by Laws 2020, ch. 32, § 8.

ANNOTATIONS

Repeals. — Laws 2020, ch. 32, § 8 repealed 25-1-5.1 NMSA 1978, as enacted by Laws 1993, ch. 100, § 5, relating to food service sanitation fund, effective May 20, 2020. For provisions of former section, *see* the 2019 NMSA 1978 on *NMOneSource.com*.

25-1-6. Agency; powers and duties.

A. The agency is authorized and has the duty to execute any provisions of the Food Service Sanitation Act delegated to it under that act or by the board under authority of that act and specifically is directed to administer and enforce the provisions of regulations adopted under it.

B. The director of the agency may appoint an advisory council composed of food service technicians to assist in carrying out the objectives of the Food Service Sanitation Act.

History: 1953 Comp., § 54-3A-6, enacted by Laws 1977, ch. 309, § 6.

25-1-7. Permits; permit required; application; revocation; suspension.

A. No person may operate a food service establishment unless he possesses a valid and unsuspended permit issued by the agency in accordance with the Food Service Sanitation Act and the regulations adopted under it. The permit shall be posted in a conspicuous place within the food service establishment. No person may display a permit unless it has been issued to him by the agency and has not been revoked and is not under suspension.

B. Any person desiring to operate a food service establishment shall apply to the agency for the issuance of a permit. Applications shall be made in a form and in accordance with procedures established by regulations of the board. The agency shall issue a permit to any applicant that complies with the regulations of the board covering the issuance of permits and who demonstrates to the satisfaction of the agency his ability to comply with all the provisions of the Food Service Sanitation Act and all regulations of the board applicable to his proposed food service establishment operation.

C. The board shall promulgate regulations for the revocation or suspension of permits for those food service establishments which fail to come into compliance with a provision of the Food Service Sanitation Act or regulation promulgated under it. No permit shall be suspended or revoked under the provisions of this subsection unless there have been repeated violations of the same standard and without first providing the operator of a food service establishment an opportunity for an agency hearing. The hearing officer shall not be any person previously involved in the suspension or revocation action. No inspection made more than twenty-four months prior to the most recent such inspection shall be used as a basis for suspension or revocation.

History: 1953 Comp., § 54-3A-7, enacted by Laws 1977, ch. 309, § 7; 1985, ch. 38, § 1.

ANNOTATIONS

Operator ordinarily entitled to opportunity to cure violation. — In the absence of an emergency, an operator of a food service establishment is entitled to an opportunity to cure a violation prior to revocation of his permit to operate. *Chalamidas v. Environmental Improvement Div.*, 1984-NMCA-109, 102 N.M. 63, 691 P.2d 64.

Concessions operated by blind deemed excluded. — Those concessions in public buildings operated by the blind were not required to obtain permits from the department of public health (now department of health) if no food or drink was prepared at the concession. 1958 Op. Att'y Gen. No. 58-182 (opinion rendered under former law).

25-1-8. Inspection by agency.

A. The agency shall inspect food service establishments to determine compliance or lack of compliance with the Food Service Sanitation Act and regulations of the board. The procedures for inspection shall be in accordance with regulations of the board. Upon request by the agency to a food service establishment operator or to his employee or agent in charge of the food service establishment premises, he shall permit the agency official, upon proper identification, to enter the premises, inspect all parts of the premises and inspect and copy any records of food purchases by the food service establishment. The operator or his employee, or agent in charge of the food service establishment premises shall be given an opportunity to accompany the agency official on his inspection and as soon as possible after the inspection, a report of the inspection shall be furnished to him. Refusal to allow an inspection is grounds for revocation of the permit of the operator, provided that the agency official has tendered proper identification prior to the refusal.

B. During an inspection the agency may take samples of food and other substances found on the premises for the purpose of determining compliance with provisions of the Food Service Sanitation Act and regulations of the board.

History: 1953 Comp., § 54-3A-8, enacted by Laws 1977, ch. 309, § 8.

25-1-9. Immediate suspension of permit by agency.

The agency may suspend a permit immediately without prior notice to the holder of the permit if it determines, after inspection, that conditions within a food service establishment present a substantial danger of illness, serious physical harm or death to consumers who might patronize the food service establishment. A suspension action taken under this section is effective when communicated to the food service establishment operator or any employee or agent of the operator who is in charge of the premises involved. If there is no designated employee or agent in charge of the premises, communication to any employee physically present on the premises is sufficient communication to make the suspension effective. No suspension action taken under this section shall continue beyond the time that the conditions causing the suspension cease to exist, as determined by an inspection by the agency at the request of the food service operator.

History: 1953 Comp., § 54-3A-9, enacted by Laws 1977, ch. 309, § 9.

ANNOTATIONS

Operator ordinarily afforded opportunity to cure violation. — In the absence of an emergency, an operator of a food service establishment is entitled to an opportunity to cure a violation prior to revocation of his permit to operate. *Chalamidas v. Environmental Improvement Div.*, 1984-NMCA-109, 102 N.M. 63, 691 P.2d 64.

25-1-10. Proceeding under New Mexico Food Act authorized when adulterated or misbranded food found during inspection.

Whenever, during an inspection authorized under the Food Service Sanitation Act, the agency finds or has probable cause to believe that any food on the food service establishment premises is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of the New Mexico Food Act [25-2-1 to 25-2-20 NMSA 1978], it may proceed immediately to have the food detained, embargoed, destroyed or condemned under the provisions of Section 25-2-6 NMSA 1978.

History: 1953 Comp., § 54-3A-10, enacted by Laws 1977, ch. 309, § 10.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — Federal Food, Drug and Cosmetic Act: construction and application of § 402(a)(3) [21 U.S.C. § 342(a)(3)] as to food deemed "adulterated," if it is filthy or the like, or unfit for food, 45 A.L.R.2d 861.

Coloring matter as forbidden adulteration of food, 56 A.L.R.2d 1129.

25-1-11. Judicial review of board and division actions.

A. Rules adopted by the board are subject to judicial review under the provisions of Section 74-1-9 NMSA 1978.

B. Any person to whom the division denies a permit or whose permit is suspended or revoked by the division may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: 1953 Comp., § 54-3A-11, enacted by Laws 1977, ch. 309, § 11; 1998, ch. 55, § 33; 1999, ch. 265, § 35.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1" in Subsection B.

The 1998 amendment, effective September 1, 1998, in the section heading, substituted "division" for "agency"; in Subsection A, substituted "Rules" for "Regulations", and substituted "12-12-13 NMSA 1953" for "74-1-9 NMSA 1978"; and rewrote Subsection B.

25-1-12. Enforcement.

A. The agency may seek relief in district court to enjoin the operation of any food service establishment not complying with the Food Service Sanitation Act or any regulation adopted under that act.

B. In addition to granting injunctive relief, the district court may impose a civil penalty not exceeding five hundred dollars ($500) on any person who violates any provision of the Food Service Sanitation Act. Each and every violation of the provisions of that act shall constitute a separate offense.

History: 1953 Comp., § 54-3A-12, enacted by Laws 1977, ch. 309, § 12.

25-1-13. Disease control.

The board shall promulgate regulations to insure that a person with a disease which can reasonably be expected to be transmitted to other persons shall not work in a food service establishment.

History: 1953 Comp., § 54-3A-13, enacted by Laws 1977, ch. 309, § 13.

25-1-14. Repealed.

ANNOTATIONS

Repeals. — Laws 1989, ch. 197, § 5 repealed 25-1-14 NMSA 1978, as enacted by Laws 1989, ch. 197, § 4, relating to food service sanitation fund, effective July 1, 1992.

25-1-15. Pet dogs in outdoor dining areas; requirements.

A. A food service establishment may allow pet dogs in designated outdoor dining areas of the establishment if the following requirements are met:

(1) no pet dog shall be allowed in any area where food is prepared;

(2) patrons shall keep their pet dogs on a leash at all times and keep their pet dogs under reasonable control;

(3) pet dogs shall not be allowed on chairs, tables or other furnishings; and

(4) a sign or signs shall be posted to place the public on notice that the designated outdoor dining area is available for the use of patrons with pet dogs. Signs shall be at a minimum eight and one-half inches by eleven inches in size and use type that is uniform in size and no smaller than necessary to fill the sign to within two inches of the borders. The signs shall contain language reasonably designed to inform the public that dogs are permitted and may be present. Signs shall be posted prominently and be easily visible in both the area where dogs are permitted and at the entrance of the establishment. The board shall promulgate by rule the specific language to be included in the signs pursuant to Section 74-1-9 NMSA 1978.

B. Employees shall:

(1) wash their hands immediately after touching, petting or otherwise handling pet dogs; and

(2) immediately clean up accidents involving pet waste and sanitize the area.

C. A food service establishment may in its discretion prohibit pet dogs in outdoor dining areas. If a food service establishment allows pet dogs in a designated outdoor dining area, the food service establishment shall have the right to refuse to serve the owner of a pet dog if the owner fails to exercise reasonable control over the pet dog or the pet dog is otherwise behaving in a manner that compromises or threatens to compromise the health or safety of any person present in the restaurant.

History: Laws 2011, ch. 151, § 1.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 151, § 3 made Laws 2011, ch. 151, § 1 effective July 1, 2011.

25-1-16. Homemade food items; exemption.

Other than enforcement actions pursuant to Section 25-1-10 NMSA 1978, the provisions of the Food Service Sanitation Act shall not apply to homemade food items produced or sold pursuant to the Homemade Food Act [25-12-1 to 25-12-5 NMSA 1978].

History: Laws 2021, ch. 98, § 6.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 98, § 9 made Laws 2021, ch. 98, § 6 effective July 1, 2021.

ARTICLE 2
Adulterated or Misbranded Food

25-2-1. [Title of act.]

This act [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978] may be cited as the New Mexico Food Act.

History: 1941 Comp., § 71-664, enacted by Laws 1951, ch. 169, § 1; 1953 Comp., § 54-1-1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Compiler's notes. — The term "this act" means Laws 1951, ch. 169 which appeared as 25-2-1 to 25-2-19 NMSA 1978. Laws 1993, ch. 188, § 32 enacted a new section of the New Mexico Food Act which was compiled as 25-2-20 NMSA 1978.

Laws 1951, ch. 169, which enacted the New Mexico Food Act, contained a preliminary paragraph which read: "Legislative intent. - The legislative intent is hereby declared to be the enactment of a law which, in its essential provisions, shall be uniform with the food control provisions of the federal food, drug, and cosmetic act and the laws of those states which make similar enactments, and which, through the adoption of regulations conforming to those from time to time promulgated under the said federal act, will maintain uniformity therewith and insure co-ordination of the enforcement hereof with that of the said federal act."

Cross references. — For provisions relating to the New Mexico Drug and Cosmetic Act, *see* 26-1-1 NMSA 1978 et seq.

For provisions of the Environmental Improvement Act, *see* Chapter 74, Article 1 NMSA 1978.

For the Organic Commodity Act, *see* Chapter 76, Article 22 NMSA 1978.

Purpose. — The New Mexico Food Act and similar statutes of like import have for their objective the protection of public health. *State v. 44 Gunny Sacks of Grain*, 1972-NMSC-033, 83 N.M. 755, 497 P.2d 966.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 Am. Jur. 2d Food §§ 1 to 62.

Products liability: sufficiency of evidence to support product misuse defense in actions concerning food, drugs, and other products intended for ingestion, 58 A.L.R.4th 7.

Products liability of endorser, trade association, certifier, or similar party who expresses approval of product, 1 A.L.R.5th 431.

36A C.J.S. Food §§ 1 to 20.

25-2-2. Definitions.

For the purpose of the New Mexico Food Act:

A. "board" means the environmental improvement board;

B. "dairy establishment" means a milk processing or milk producing facility;

C. "division" means the department of environment;

D. "director" means the secretary of environment or his authorized representative;

E. "person" includes individual, partnership, corporation and association;

F. "food" means:

(1) articles used for food or drink for man or animals;

(2) chewing gum; and

(3) articles used for components of food or drink or chewing gum for man or animals;

G. "label" means a display of written, printed or graphic matter upon the immediate container of any article. A requirement made by or under authority of the New Mexico Food Act that any word, statement or other information appear on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of such article or is easily legible through the outside container or wrapper;

H. "immediate container" does not include package liners;

I. "labeling" means all labels and other written, printed or graphic matter:

(1) upon an article or any of its containers or wrappers; or

(2) accompanying such article;

J. if an article is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account,

among other things, not only representations made or suggested by statement, word, design, device, sound or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual;

K. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food;

L. "contaminated with filth" applies to any food not securely protected from dust, dirt and, so far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or any food found to contain any dust, dirt, foreign or injurious contamination or infestation;

M. the provisions shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article and the supplying or applying of any such articles in the conduct of any food establishment; and

N. "federal act" means the Federal Food, Drug and Cosmetic Act, 21 USC § 301 et seq., the Federal Meat Inspection Act, 21 USC § 601 et seq. and the Federal Poultry Products Inspection Act, 21 USC § 451 et seq.

History: 1941 Comp., § 71-665, enacted by Laws 1951, ch. 169, § 2; 1953 Comp., § 54-1-2; Laws 1959, ch. 15, § 1; 1971, ch. 277, § 35; 1982, ch. 73, § 1; 1993, ch. 188, § 33.

ANNOTATIONS

Cross references. — For exemption of environmental improvement board from authority of secretary of environment, *see* 9-7A-12 NMSA 1978.

The 1993 amendment, effective June 18, 1993, added current Subsection B; redesignated former Subsections B through M as present Subsections C through N; substituted "department of environment" for "environmental improvement division of the health and environment department" in Subsection C; substituted "secretary of environment" for "director of the division" in Subsection D; and made a minor stylistic change in Subsection G.

Meat is food as defined in the New Mexico Food Act, and, therefore, the state health department (now department of health) has the power to protect the public from violations of the law. Nothing in the New Mexico Livestock Act grants the livestock

board the powers granted to the health department in the New Mexico Food Act. 1967 Op. Att'y Gen. No. 67-115.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction, and effect of laws or regulations requiring merchants to affix sale price to each item of consumer goods, 7 A.L.R.4th 792.

25-2-3. [Prohibited acts.]

The following acts and the causing thereof within the state of New Mexico are hereby prohibited:

A. the manufacture, sale or delivery, holding or offering for sale of any food that is adulterated or misbranded.

B. the adulteration or misbranding of any food.

C. the receipt in commerce of any food that is adulterated or misbranded and the delivery or proffered delivery thereof for pay or otherwise.

D. the sale, delivery for sale, holding for sale or offering for sale of any article in violation of Section 12 [25-2-12 NMSA 1978].

E. the dissemination of any false advertisement.

F. the refusal to permit entry or inspection, or to permit the taking of a sample, as authorized by Section 16 [25-2-16 NMSA 1978].

G. the giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the state of New Mexico from whom he received the food in good faith.

H. the removal or disposal of a detained or embargoed article in violation of Section 6 [25-2-6 NMSA 1978].

I. the alteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, if such act is done while such article is held for sale and results in such article being misbranded.

J. forging, counterfeiting, simulating or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this act [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978].

History: 1941 Comp., § 71-666, enacted by Laws 1951, ch. 169, § 3; 1953 Comp., § 54-1-3.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Cross references. — For meat and meat products, *see* 25-3-1 NMSA 1978 et seq.

For flour and bread, *see* 25-5-1 NMSA 1978 et seq.

For egg grading, *see* 25-6-1 NMSA 1978 et seq.

Unwholesome meat. — The fact that the livestock board may be inspecting meats to determine if they are unwholesome in no way limits the powers of the health department (now department of health) to independently determine whether the meat is unwholesome. 1967 Op. Att'y Gen. No. 67-115.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 Am. Jur. 2d Food §§ 2 to 13.

Ignorance or mistake of fact, lack of criminal intent or presence of good faith, as affecting penal offense predicated upon violation of food law, 152 A.L.R. 755.

Liability of seller of food for personal injuries due to its condition, 168 A.L.R. 1054.

Validity of municipal ordinance imposing requirements on outside producers of milk to be sold in city, 14 A.L.R.2d 103.

Seller's or manufacturer's liability for injuries as affected by buyer's or user's allergy or unusual susceptibility to injury from article, 26 A.L.R.2d 963.

Coloring matter as forbidden adulteration of food, 56 A.L.R.2d 1129.

Liability of packer, foodstore, or restaurant for causing trichinosis, 96 A.L.R.3d 451.

Liability for injury or death allegedly caused by foreign object in food or food product, 1 A.L.R.5th 1.

Liability for injury or death allegedly caused by spoilage, contamination, or other deleterious condition of food or food product, 2 A.L.R.5th 1.

Liability for injury or death allegedly caused by food product containing object related to, but not intended to be present in, product, 2 A.L.R.5th 189.

Duty of retail establishment, or its employees, to assist patron choking on food, 2 A.L.R.5th 966.

36A C.J.S. Food §§ 3 to 20.

25-2-4. Power to enjoin violations.

In addition to the remedies hereinafter provided, the division is hereby authorized to apply to the district court for, and such court shall have jurisdiction upon hearing and for such cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of Section 25-2-3 NMSA 1978, irrespective of whether or not there exists an adequate remedy at law.

History: 1941 Comp., § 71-667, enacted by Laws 1951, ch. 169, § 4; 1953 Comp., § 54-1-4; Laws 1982, ch. 73, § 2.

ANNOTATIONS

Cross references. — For injunctions, *see* Rule 1-065 NMRA.

25-2-5. Penalties; exceptions.

A. Any person who violates any of the provisions of Section 25-2-3 NMSA 1978 shall be guilty of a misdemeanor and shall on conviction thereof be subject to imprisonment for not more than ninety days or a fine of not more than one hundred dollars ($100) or both such imprisonment and fine; but if the violation is committed after a conviction of such person under this section has become final, such person shall be subject to imprisonment for not more than one hundred eighty days or a fine of not more than two hundred dollars ($200) or both such imprisonment and fine.

B. No person shall be subject to the penalties of Subsection A of this section for having violated Subsection A or C of Section 25-2-3 NMSA 1978 if he establishes a guaranty or undertaking signed by and containing the name and address of the person residing in the state of New Mexico from whom he received in good faith the article to the effect that such article is not adulterated or misbranded within the meaning of the New Mexico Food Act, designating that act.

C. No publisher, radio-broadcast licensee or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement unless he has refused, on the request of the director, to furnish to the director the name and post-office address of the manufacturer, packer, distributor, seller or advertising agency residing in the state of New Mexico who causes him to disseminate such advertisement.

History: 1941 Comp., § 71-668, enacted by Laws 1951, ch. 169, § 5; 1953 Comp., § 54-1-5; Laws 1982, ch. 73, § 3.

25-2-6. Detention of food believed adulterated or misbranded; condemnation; destruction or correction of defect.

A. Whenever the director finds or has probable cause to believe that any food is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of the New Mexico Food Act, he shall affix to such article a tag or other appropriate marking, giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by the director or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

B. When an article detained or embargoed under Subsection A of this section has been found by the director to be adulterated or misbranded, he shall petition the judge of the district court in whose jurisdiction the article is detained or embargoed for a libel for condemnation of such article. When the director has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

C. If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof under the supervision of the director, and all court costs and fees and storage and other proper expenses shall be taxed against the claimant of such article or his agent; provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of the director. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the director that the article is no longer in violation of the New Mexico Food Act and that the expenses of such supervision have been paid.

D. Whenever the director shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, he shall forthwith condemn or destroy the same or in any other manner render the same unsaleable as human food.

History: 1941 Comp., § 71-669, enacted by Laws 1951, ch. 169, § 6; 1953 Comp., § 54-1-6; Laws 1982, ch. 73, § 4.

ANNOTATIONS

Action contemplated by Subsection C is in rem. It is against the thing wherever found in whatever ownership. *State v. 44 Gunny Sacks of Grain*, 1972-NMSC-033, 83 N.M. 755, 497 P.2d 966.

Action is predicated upon police power, not eminent domain. — The right to seize and destroy unfit or impure foods is a reasonable exercise of the right and duty of the state to protect the public health and is predicated upon the police power, and does not fall within N.M. Const., art. II, § 20, which deals with takings "for public use" - which is to say - by eminent domain. *State v. 44 Gunny Sacks of Grain*, 1972-NMSC-033, 83 N.M. 755, 497 P.2d 966.

State is not required to make compensation when it seizes and destroys food found to be contaminated within the provisions of the New Mexico Food Act. *State v. 44 Gunny Sacks of Grain*, 1972-NMSC-033, 83 N.M. 755, 497 P.2d 966.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 Am. Jur. 2d Food §§ 63 to 73.

36A C.J.S. Food §§ 50 to 56.

25-2-7. Attorney general or district attorney to institute prosecution; right to hearing before director prior to criminal prosecutions.

It shall be the duty of the attorney general or the various district attorneys of this state to whom the director reports any violation of the New Mexico Food Act to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of the New Mexico Food Act is reported to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the director either orally or in writing, in person or by attorney with regard to such contemplated proceeding.

History: 1941 Comp., § 71-670, enacted by Laws 1951, ch. 169, § 7; 1953 Comp., § 54-1-7; Laws 1982, ch. 73, § 5.

ANNOTATIONS

Cross references. — For duties generally of attorney general, *see* 8-5-2 NMSA 1978.

25-2-8. Minor violations of act; warning authorized.

Nothing in the New Mexico Food Act shall be construed as requiring the director to report, for the institution of proceedings under the New Mexico Food Act, minor violations of that act whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History: 1941 Comp., § 71-671, enacted by Laws 1951, ch. 169, § 8; 1953 Comp., § 54-1-8; Laws 1982, ch. 73, § 6.

25-2-9. Promulgation of definitions and standards by the board.

A. Whenever in the judgment of the board such action will promote honesty and fair dealing in the interest of consumers, the board shall promulgate regulations fixing and establishing for any food or class of food a reasonable definition and standard of identity or reasonable standard of quality or fill of container or any combination of such requirements. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. The definitions and standards so promulgated shall conform so far as practicable to the definitions and standards promulgated under the authority of the federal act.

B. In promulgating regulations pursuant to this section, the board shall follow the procedures set forth in Section 74-1-9 NMSA 1978.

History: 1941 Comp., § 71-672, enacted by Laws 1951, ch. 169, § 9; 1953 Comp., § 54-1-9; Laws 1982, ch. 73, § 7.

ANNOTATIONS

Cross references. — For revision of requirements for enriched flour and bread, *see* 25-5-5 NMSA 1978.

For provisions of the Environmental Improvement Act, *see* Chapter 74, Article 1 NMSA 1978.

For meaning of "federal act", *see* 25-2-2N NMSA 1978.

25-2-10. When food deemed adulterated.

A food shall be deemed to be adulterated:

A. (1) if it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such good [food] does not ordinarily render it injurious to health; or

(2) if it bears or contains any added poisonous or added deleterious substance which is unsafe within the meaning of Section 13 [25-2-13 NMSA 1978]; or

(3) if it consists in whole or in part of a diseased, contaminated, filthy, impure or infested ingredient, putrid or decomposed substance, or if it is otherwise unfit for food; or

(4) if it has been produced, prepared, packed or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered diseased, unwholesome or injurious to health; or

(5) if it is the product of a diseased animal or an animal which has died otherwise than by slaughter, or that has been fed upon the uncooked offal from a slaughterhouse; or

(6) if its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health.

B. (1) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or

(2) if any substance has been substituted wholly or in part therefor; or

(3) if damage or inferiority has been concealed in any manner; or

(4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength or make it appear better or of greater value than it is.

C. if it is confectionery and it bears or contains any alcohol or nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per centum (4/10%), harmless natural gum and pectin; provided, that this paragraph shall not apply to any confectionery by reason of its containing less than two and one quarter per centum by weight of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

D. if it bears or contains a coal-tar color other than one from a batch which has been certified under authority of the federal act.

History: 1941 Comp., § 71-673, enacted by Laws 1951, ch. 169, § 10; 1953 Comp., § 54-1-10; Laws 1965, ch. 195, § 1.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 Am. Jur. 2d Food §§ 21 to 24.

Coloring matter as forbidden adulteration of food, 56 A.L.R.2d 1129.

36A C.J.S. Food §§ 3 to 6.

25-2-11. [When food deemed misbranded.]

A food shall be deemed to be misbranded:

A. if its labeling is false or misleading in any particular;

B. if it is offered for sale under the name of another food;

C. if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word, imitation and, immediately thereafter, the name of the food imitated;

D. if its container is so made, formed or filled as to be misleading;

E. if in package form, unless it bears a label containing:

(1) the name and place of business of the manufacturer, packer or distributor;

(2) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided, that under clause (2) of this paragraph reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the board;

F. if any word, statement or other information required by or under authority of this act [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978] to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

G. if it purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by Section 9 [25-2-9 NMSA 1978], unless:

(1) it conforms to such definition and standard; and

(2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring and coloring) present in such food;

H. if it purports to be or is represented as:

(1) a food for which a standard of quality has been prescribed by regulations as provided by Section 9 and its quality falls below such standard unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard; or

(2) a food for which a standard or standards of fill of container have been prescribed by regulation as provided by Section 9, and it falls below the standard of fill of container applicable thereto, unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard;

I. if it is not subject to the provisions of Paragraph G of this section, unless it bears labeling clearly giving:

(1) the common or usual name of the food, if any there be; and

(2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings and colorings, other than those sold as such, may be designated as spices, flavorings and colorings, without naming each; provided, that, to the extent that compliance with the requirements of clause (2) of this paragraph is impractical or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the board; provided, further, that the requirements of clause (2) of this paragraph shall not apply to any carbonated beverage, the ingredients of which have been fully and correctly disclosed in an affidavit filed with the board;

J. if it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the board determines to be, and by regulations prescribed, as, necessary in order to fully inform purchasers as to its value for such uses;

K. if it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact; provided, that to the extent that compliance with the requirements of this paragraph is impracticable, exemptions shall be established by regulations promulgated by the board.

History: 1941 Comp., § 71-674, enacted by Laws 1951, ch. 169, § 11; 1953 Comp., § 54-1-11.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 Am. Jur. 2d Food §§ 25 to 31.

Validity, construction, and effect of laws or regulations requiring merchants to affix sale price to each item of consumer goods, 7 A.L.R.4th 792.

36A C.J.S. Food § 12(8).

25-2-12. Manufacturing, packing and processing permits for certain classes of food; suspension; inspections.

A. Whenever the board finds after investigation that the distribution in New Mexico of any class of food may, by reason of contamination with microorganisms during manufacture, processing or packing thereof in any locality, be injurious to health and that such injurious nature cannot be adequately determined after such articles have entered commerce, it then and in such case only shall promulgate regulations providing for the issuance by the director to manufacturers, processors or packers of such class of food in such locality of permits to which shall be attached such conditions governing the manufacture, processing or packing of such class of food for such temporary period of time as may be necessary to protect the public health, and after the effective date of such regulations and during such temporary period, no person shall introduce or deliver for introduction into commerce any such food manufactured, processed or packed by any such manufacturer, processor or packer unless such manufacturer, processor or packer holds a permit issued by the director as provided by such regulations. In promulgating regulations pursuant to this section, the board shall follow the procedures set forth in Section 74-1-9 NMSA 1978.

B. The director is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the director shall, immediately after prompt hearing and an inspection of the establishment, reinstate such permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

C. The director shall have access to any factory or establishment, the operator of which holds a permit from the director for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator.

History: 1941 Comp., § 71-675, enacted by Laws 1951, ch. 169, § 12; 1953 Comp., § 54-1-12; Laws 1982, ch. 73, § 8.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 Am. Jur. 2d Food §§ 11 to 13.

36A C.J.S. Food §§ 11 to 20.

25-2-13. Promulgating regulations governing the addition of any poisonous or deleterious substances in food.

A. Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of Paragraph (2) of Subsection A of Section 25-2-10 NMSA 1978; but when such substance is so required or cannot be so avoided, the board shall promulgate regulations limiting the quantity therein or thereon to such extent as the board finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purpose of the application of Paragraph (2) of Subsection A of Section 25-2-10 NMSA 1978. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of Paragraph (1) of Subsection A of Section 25-2-10 NMSA 1978. In determining the quantity of such added substance to be tolerated in or on different articles of food, the board shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

B. In promulgating regulations pursuant to this section, the board shall follow the procedure set forth in Section 74-1-9 NMSA 1978.

History: 1941 Comp., § 71-676, enacted by Laws 1951, ch. 169, § 13; 1953 Comp., § 54-1-13; Laws 1982, ch. 73, § 9.

25-2-14. [When advertising deemed false.]

An advertisement of a food shall be deemed to be false if it is false or misleading in any particular.

History: 1941 Comp., § 71-677, enacted by Laws 1951, ch. 169, § 14; 1953 Comp., § 54-1-14.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

Am. Jur. 2d, A.L.R. and C.J.S. references. — Validity, construction, and effect of laws or regulations requiring merchants to affix sale price to each item of consumer goods, 7 A.L.R.4th 792.

25-2-15. Promulgating regulations; procedure.

A. The authority to promulgate regulations for the efficient enforcement of the New Mexico Food Act is hereby vested in the board. The board is hereby authorized to make the regulations promulgated under the federal act.

B. In promulgating regulations pursuant to this section, the board shall follow the procedures set forth in Section 74-1-9 NMSA 1978.

History: 1941 Comp., § 71-678, enacted by Laws 1951, ch. 169, § 15; 1953 Comp., § 54-1-15; Laws 1982, ch. 73, § 10.

ANNOTATIONS

Cross references. — For meaning of "federal act", *see* 25-2-2N NMSA 1978.

25-2-16. Power to make inspections and secure samples.

The director shall have free access at all reasonable hours to any factory, warehouse or establishment in which foods are manufactured, processed, packed or held for introduction into commerce or to enter any vehicle being used to transport or hold such foods in commerce for the purpose:

A. of inspecting such factory, warehouse, establishment or vehicle to determine if any of the provisions of the New Mexico Food Act are being violated; and

B. to secure samples or specimens of any food after paying or offering to pay for such sample. It shall be the duty of the director to make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provision of the New Mexico Food Act is being violated.

History: 1941 Comp., § 71-679, enacted by Laws 1951, ch. 169, § 16; 1953 Comp., § 54-1-16; Laws 1982, ch. 73, § 11.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 Am. Jur. 2d Food § 13.

36A C.J.S. Food § 12(7).

25-2-17. Power of director to publish reports and disseminate information.

A. The director may cause to be published from time to time reports summarizing all judgments, decrees and court orders which have been rendered under the New Mexico Food Act, including the nature of the charge and the disposition thereof.

B. The director may also cause to be disseminated such information regarding food as he deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the director from collecting, reporting and illustrating the results of his investigations.

History: 1941 Comp., § 71-680, enacted by Laws 1951, ch. 169, § 17; 1953 Comp., § 54-1-17; Laws 1982, ch. 73, § 12.

25-2-18. Personnel.

The division shall employ such personnel for the administration and enforcement of the provisions of the New Mexico Food Act, in the same manner that other public health personnel are now employed, as may be necessary and required.

History: 1941 Comp., § 71-681, enacted by Laws 1951, ch. 169, § 19; 1953 Comp., § 54-1-18; Laws 1982, ch. 73, § 13.

25-2-19. [New Mexico public health laboratory to serve as testing laboratory.]

The New Mexico public health laboratory shall serve as the testing laboratory for samples collected for examination pursuant to the provisions of this act [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978].

History: 1941 Comp., § 71-682, enacted by Laws 1951, ch. 169, § 20; 1953 Comp., § 54-1-19.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law.

25-2-20. Dairy establishments exempt.

The purposes and provisions of the New Mexico Food Act shall not apply to dairy establishments.

History: Laws 1993, ch. 188, § 32.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective on June 18, 1993, 90 days after adjournment of the legislature.

Compiler's notes. — Laws 1993, ch. 188, § 32, was enacted as a new section of the New Mexico Food Act and was compiled as 25-2-20 NMSA 1978.

25-2-21. Homemade food items; exemption.

Other than actions pursuant to Section 25-2-6 NMSA 1978, the provisions of the New Mexico Food Act shall not apply to homemade food items produced or sold pursuant to the Homemade Food Act [25-12-1 to 25-12-5 NMSA 1978].

History: Laws 2021, ch. 98, § 7.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 98, § 9 made Laws 2021, ch. 98, § 7 effective July 1, 2021.

25-2-22. State meat inspection program; rules; penalties; cooperation with federal government.

A. The New Mexico livestock board shall adopt rules necessary to establish a comprehensive state meat inspection program for the inspection, processing and sale of meat and poultry products that meets or exceeds the standards and requirements for a state meat inspection program under the Federal Meat Inspection Act, the federal Poultry Products Inspection Act and the federal Humane Methods of Slaughter Act of 1978, including rules to:

(1) license facilities engaged in the processing or manufacturing of meat and poultry products;

(2) deem horse meat slaughtered for human consumption as adulterated;

(3) establish license requirements and reasonable fees; and

(4) provide inspection services.

B. The New Mexico livestock board shall only administer and enforce the program established pursuant to Subsection A of this section if the board receives approval from the federal government for a state meat inspection program.

C. A person violating a rule adopted by the New Mexico livestock board pursuant to this section is guilty of a misdemeanor and upon conviction may be sentenced to imprisonment in the county jail for a term not to exceed one year and payment of a fine not to exceed one thousand dollars ($1,000), unless that person acted in good faith.

D. The New Mexico livestock board shall actively seek and maintain coordination with federal authorities to ensure alignment with and approval of the state meat inspection program.

History: Laws 2024, ch. 60, § 1.

ANNOTATIONS

Effective dates. — Laws 2024, ch. 60, § 2 made Laws 2024, ch. 60, § 1 effective July 1, 2024.

Cross references. — For Federal Meat Inspection Act, *see* 21 USC § 601 et seq.

For Federal Poultry Products Inspection Act, *see* 21 USC § 451 et seq.

For the federal Humane Methods of Slaughter Act of 1978, *see* Pub. L. 95-445, Oct. 10, 1978, 92 Stat. 1069.

ARTICLE 3
Meat and Meat Products (Repealed.)

25-3-1. Repealed.

History: 1953 Comp., § 54-8-1, enacted by Laws 1965, ch. 10, § 1; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-1 NMSA 1978, as enacted by Laws 1965, ch. 10, § 1, relating to the short title for the Imported Meat Act, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-2. Repealed.

History: 1953 Comp., § 54-8-2, enacted by Laws 1965, ch. 10, § 2; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-2 NMSA 1978, as enacted by Laws 1965, ch. 10, § 2, relating to definitions, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-3. Repealed.

History: 1953 Comp., § 54-8-3, enacted by Laws 1965, ch. 10, § 3; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-3 NMSA 1978, as enacted by Laws 1965, ch. 10, § 3, relating to prohibited sales, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-4. Repealed.

History: 1953 Comp., § 54-8-4, enacted by Laws 1965, ch. 10, § 4; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-4 NMSA 1978, as enacted by Laws 1965, ch. 10, § 4, relating to enforcement, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-5. Repealed.

History: 1953 Comp., § 54-8-5, enacted by Laws 1965, ch. 10, § 5; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-5 NMSA 1978, as enacted by Laws 1965, ch. 10, § 5, relating to penalties, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-6. Repealed.

History: 1953 Comp., § 54-8-6, enacted by Laws 1969, ch. 89, § 1; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-6 NMSA 1978, as enacted by Laws 1969, ch. 89, § 1, relating to the short title of the Meat Inspection Act, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-7. Repealed.

History: 1953 Comp., § 54-8-7, enacted by Laws 1969, ch. 89, § 2; 1977, ch. 253, § 62; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-7 NMSA 1978, as enacted by Laws 1969, ch. 89, § 2, relating to definitions, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-8. Repealed.

History: 1953 Comp., § 54-8-8, enacted by Laws 1969, ch. 89, § 3; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-8 NMSA 1978, as enacted by Laws 1969, ch. 89, § 3, relating to office created, deputies, qualifications and compensation, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-9. Repealed.

History: 1953 Comp., § 54-8-9, enacted by Laws 1969, ch. 89, § 4; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-9 NMSA 1978, as enacted by Laws 1969, ch. 89, § 4, relating to immediate inspection stamps and establishment numbers, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-10. Repealed.

History: 1953 Comp., § 54-8-10, enacted by Laws 1969, ch. 89, § 5; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-10 NMSA 1978, as enacted by Laws 1969, ch. 89, § 5, relating to assignment of inspectors, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-11. Repealed.

History: 1953 Comp., § 54-8-11, enacted by Laws 1969, ch. 89, § 6; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-11 NMSA 1978, as enacted by Laws 1969, ch. 89, § 6, relating to ante-mortem and post-mortem inspection required, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-12. Repealed.

History: 1953 Comp., § 54-8-12, enacted by Laws 1969, ch. 89, § 7; 1998, ch. 55, § 34; 1999, ch. 265, § 36; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-12 NMSA 1978, as enacted by Laws 1969, ch. 89, § 7, relating to condemnation and appeal, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-13. Repealed.

History: 1953 Comp., § 54-8-13, enacted by Laws 1969, ch. 89, § 8; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-13 NMSA 1978, as enacted by Laws 1969, ch. 89, § 8, relating to rules and regulations, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-14. Repealed.

History: 1953 Comp., § 54-8-14, enacted by Laws 1969, ch. 89, § 9; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-14 NMSA 1978, as enacted by Laws 1969, ch. 89, § 9, relating to application for state meat inspection, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-15. Repealed.

History: 1953 Comp., § 54-8-15, enacted by Laws 1969, ch. 89, § 10; 1995, ch. 120, § 1; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-15 NMSA 1978, as enacted by Laws 1969, ch. 89, § 10, relating to prohibited acts and penalties, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-16. Repealed.

History: 1953 Comp., § 54-8-16, enacted by Laws 1969, ch. 89, § 11; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-16 NMSA 1978, as enacted by Laws 1969, ch. 89, § 11, relating to exemptions, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-17. Repealed.

History: 1953 Comp., § 54-8-17, enacted by Laws 1969, ch. 89, § 12; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-17 NMSA 1978, as enacted by Laws 1969, ch. 89, § 12, relating to interference with board officials and personnel, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-18. Repealed.

History: 1953 Comp., § 54-8-18, enacted by Laws 1969, ch. 89, § 13; 1977, ch. 253, § 63; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-18 NMSA 1978, as enacted by Laws 1969, ch. 89, § 13, relating to cooperation with the department of health and other public health authorities, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-19. Repealed.

History: 1953 Comp., § 54-8-19, enacted by Laws 1969, ch. 89, § 14; 1998, ch. 55, § 35; 1999, ch. 265, § 37; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-19 NMSA 1978, as enacted by Laws 1969, ch. 89, § 14, relating to suspension or revocation of inspection service or establishment number, hearings and appeals, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-20. Repealed.

History: 1953 Comp., § 54-8-20, enacted by Laws 1969, ch. 89, § 15; 1970, ch. 62, § 1; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-20 NMSA 1978, as enacted by Laws 1969, ch. 89, § 15, relating to power to enjoin violations of the Meat Inspection Act, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-3-21. Repealed.

History: 1953 Comp., § 54-8-21, enacted by Laws 1969, ch. 89, § 16; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-3-21 NMSA 1978, as enacted by Laws 1969, ch. 89, § 16, relating to application of federal laws, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

ARTICLE 4
Peddlers and Itinerant Vendors (Repealed.)

25-4-1. Repealed.

History: Laws 1901, ch. 45, § 1; Code 1915, § 558; C.S. 1929, § 19-114; Laws 1933, ch. 53, § 20; 1941, ch. 39, § 1; 1941 Comp., § 62-223; 1953 Comp., § 60-2-23; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-4-1 NMSA 1978, as enacted by Laws 1901, ch. 45, § 1, relating to peddling fresh meats, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

25-4-2. Repealed.

History: Laws 1901, ch. 45, § 2; Code 1915, § 559; C.S. 1929, § 19-115; 1941 Comp., § 62-224; 1953 Comp., § 60-2-24; repealed by Laws 2013, ch. 84, § 2.

ANNOTATIONS

Repeals. — Laws 2013, ch. 84, § 2 repealed 25-4-2 NMSA 1978, as enacted by Laws 1901, ch. 45, § 2, relating to peddling beef without a license, penalties, effective June 14, 2013. For provisions of former section, *see* the 2012 NMSA 1978 on *NMOneSource.com*.

ARTICLE 5
Flour and Bread

25-5-1. Definitions.

As used in the Flour and Bread Act [25-5-1 to 25-5-9 NMSA 1978], unless the context otherwise requires:

A. "flour" means foods commonly known in the milling and baking industries as:

(1) white flour, also known as wheat flour or plain flour;

(2) bromated flour;

(3) self-rising flour, also known as self-rising white flour or self-rising wheat flour; and

(4) phosphated flour, also known as phosphated white flour or phosphated wheat flour, but excludes whole wheat flour and also excludes special flours not used for bread, roll, bun or biscuit baking, such as specialty cake, pancake and pastry flours;

B. "white bread" means any bread made with flour as defined in Subsection A of this section, whether baked in a pan or on a hearth or screen, which is commonly known or usually represented and sold as white bread, including Vienna bread, French bread and Italian bread;

C. "rolls" includes plain white rolls and buns of the semi-bread dough type, namely: soft rolls such as hamburger rolls, hot dog rolls and Parker House rolls and hard rolls such as Vienna rolls and Kaiser rolls, but shall not include yeast-raised sweet rolls or

sweet buns made with fillings or coatings such as cinnamon rolls or buns and butterfly rolls;

D. "board" means the environmental improvement board;

E. "director" means the director of the division or his authorized representative;

F. "division" means the environmental improvement division of the health and environment department [department of environment]; and

G. "person" means an individual, corporation, partnership, association, joint stock company, trust or any group of persons whether incorporated or not engaged in the commercial manufacture or sale of flour, white bread or rolls.

History: 1953 Comp., § 54-1-20, enacted by Laws 1955, ch. 244, § 1; 1971, ch. 277, § 36; 1977, ch. 253, § 59; 1982, ch. 73, § 14.

ANNOTATIONS

Bracketed material. — The bracketed material was inserted by the compiler and is not part of the law. Laws 1991, ch. 25, § 4 established the department of environment and provided that all references to the environmental improvement division of the health and environment department shall be construed to mean the department of environment.

25-5-1.1. Short title.

Sections 25-5-1 through 25-5-9 NMSA 1978 may be cited as the "Flour and Bread Act".

History: 1978 Comp., § 25-5-1.1, enacted by Laws 1982, ch. 73, § 15.

25-5-2. Manufacture or sale of unenriched flour unlawful.

It shall be unlawful for any person to manufacture, mix, compound, sell or offer for sale, for human consumption in this state, flour (as defined in Section 1 [25-5-1 NMSA 1978]) unless the following vitamins and minerals are contained in each pound of such flour: not less than two milligrams and not more than two and one-half milligrams of thiamine; not less than one and two-tenths milligrams and not more than one and one-half milligrams of riboflavin; not less than sixteen milligrams and not more than twenty milligrams of niacin or niacin-amide; not less than thirteen milligrams and not more than sixteen and one-half milligrams of iron (Fe); except in the case of self-rising flour which in addition to the above ingredients shall contain not less than five hundred milligrams and not more than fifteen hundred milligrams of calcium (Ca); provided, however, that the terms of this section shall not apply to flour sold to distributors, bakers or other processors, if the purchaser furnishes to the seller a certificate in such form as the board shall by regulation prescribe, certifying that such flour will be (1) resold to a

distributor, baker or other processor, or (2) used in the manufacture, mixing or compounding of flour, white bread or rolls enriched to meet the requirements of this act [25-5-1 to 25-5-9 NMSA 1978] or (3) used in the manufacture of products other than flour, white bread or rolls. It shall be unlawful for any such purchaser so furnishing any such certificate to use or resell the flour so purchased in any manner other than as prescribed in this section.

History: 1953 Comp., § 54-1-21, enacted by Laws 1955, ch. 244, § 2.

25-5-3. Manufacture or sale of bread and rolls from unenriched flour unlawful.

It shall be unlawful for any person to manufacture, bake, sell or offer for sale, for human consumption in this state, any white bread or rolls (as defined in Section 1 [25-5-1 NMSA 1978]) unless the following vitamins and minerals are contained in each pound of such bread or rolls: not less than one and one-tenth milligrams and not more than one and eight-tenths milligrams of thiamine; not less than seven-tenths milligrams and not more than one and six-tenths milligrams of riboflavin; not less than ten milligrams and not more than fifteen milligrams of niacin; not less than eight milligrams and not more than twelve and one-half milligrams of iron (Fe).

History: 1953 Comp., § 54-1-22, enacted by Laws 1955, ch. 244, § 3.

25-5-4. Division; duty to enforce.

The division is hereby charged with the duty of enforcing the provisions of the Flour and Bread Act and rules, regulations and orders of the board promulgated pursuant to the Flour and Bread Act.

History: 1953 Comp., § 54-1-23, enacted by Laws 1955, ch. 244, § 4; 1982, ch. 73, § 16.

ANNOTATIONS

Cross references. — For provisions of the Environmental Improvement Act, *see* Chapter 74, Article 1 NMSA 1978.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 Am. Jur. 2d Food § 33, 34.

36A C.J.S. Food §§ 6(2), 9(2).

25-5-5. Board; revision of requirements.

A. Whenever the vitamin and mineral requirements set forth in Sections 25-5-2 and 25-5-3 NMSA 1978 are no longer in conformity with the legally established standards

governing the interstate shipment of enriched flour and enriched white bread or enriched rolls, the board, in order to maintain uniformity between intrastate and interstate vitamin and mineral requirements for the foods within the provisions of the Flour and Bread Act, is authorized and directed to modify or revise such requirements to conform with amended standards governing interstate shipments.

B. In promulgating regulations pursuant to this section, the board shall follow the procedures set forth in Section 74-1-9 NMSA 1978.

History: 1953 Comp., § 54-1-24, enacted by Laws 1955, ch. 244, § 5; 1982, ch. 73, § 17.

25-5-6. Board; power to adjust in case of shortage.

A. In the event of findings by the board that there is an existing or imminent shortage of any ingredient required by Section 25-5-2 or 25-5-3 NMSA 1978 and that because of such shortage the sale and distribution of flour or white bread or rolls may be impeded by the enforcement of the Flour and Bread Act, the board shall issue an order, to be effective immediately upon issuance, permitting the omission of such ingredient from flour or white bread or rolls and, if it finds it necessary or appropriate, excepting such foods from labeling requirements until the further order of the board. Any such findings may be made without hearings on the basis of an order or of factual information supplied by the appropriate federal agency or officer. In the absence of any such order of the appropriate federal agency or factual information supplied by it, the board on its own motion may, and upon receiving the sworn statements of ten or more persons subject to the Flour and Bread Act that they believe such a shortage exists or is imminent shall, within twenty days thereafter hold a public hearing with respect thereto at which any interested person may present evidence and shall make findings based upon the evidence presented. The board shall publish notice of any such hearing at least ten days prior thereto.

B. Whenever the board has reason to believe that such shortage no longer exists, it shall hold a public hearing, after at least ten days' notice shall have been given, at which any interested person may present evidence, and it shall make findings based upon the evidence so presented. If its findings be that such shortage no longer exists, it shall issue an order to become effective not less than thirty days after publication thereof revoking such previous order; provided, however, that undisposed floor stocks of flour on hand at the effective date of such revocation order or flour manufactured prior to such effective date for sale in this state may thereafter be lawfully sold or disposed of.

C. In conducting hearings pursuant to this section, the board shall follow the procedures set forth in Section 74-1-9 NMSA 1978, except for the number of days' notice required for such hearing.

History: 1953 Comp., § 54-1-25, enacted by Laws 1955, ch. 244, § 6; 1982, ch. 73, § 18.

25-5-7. Publication of regulations.

All orders, rules and regulations adopted by the board pursuant to this act [25-5-1 to 25-5-9 NMSA 1978] shall be published at least twice in at least one daily newspaper of general circulation printed and published in this state, and shall become effective upon such date after publication as the board shall fix.

History: 1953 Comp., § 54-1-26, enacted by Laws 1955, ch. 244, § 7.

25-5-8. Inspection by director.

For the purpose of the Flour and Bread Act, the director is authorized to take samples for analysis and to conduct examination and investigations and to enter, at reasonable times, any factory, mill, bakery, warehouse, shop or establishment where flour, white bread or rolls are manufactured, processed, packed, sold or held or any vehicle being used for the transportation thereof and to inspect any such place or vehicle and any flour, white bread or rolls therein and all pertinent equipment, materials, containers and labeling.

History: 1953 Comp., § 54-1-27, enacted by Laws 1955, ch. 244, § 8; 1982, ch. 73, § 19.

25-5-9. Penalty.

Any person who violates any of the provisions of this act [25-5-1 to 25-5-9 NMSA 1978] or the orders, rules or regulations promulgated by the board under authority thereof, shall upon conviction thereof be subjected to fine for each and every offense, in a sum not exceeding five hundred dollars ($500.00) or to imprisonment, not to exceed ninety days.

History: 1953 Comp., § 54-1-28, enacted by Laws 1955, ch. 244, § 9.

ARTICLE 6
Egg Grading

25-6-1. Short title.

This act [25-6-1 to 25-6-16 NMSA 1978] may be cited as the "Egg Grading Act."

History: 1953 Comp., § 54-2-10, enacted by Laws 1963, ch. 138, § 1.

25-6-2. Definitions.

As used in the Egg Grading Act:

A. "egg dealer" includes any person, firm, partnership or corporation that buys eggs directly from the farmers or from any other sources for the purpose of reselling them at wholesale;

B. "cold storage eggs" means eggs which have been in cold storage for thirty days or more and which meet the grades and standards of qualification set by the board of regents of New Mexico state university;

C. "processor" includes any person, firm, partnership or corporation engaged in the process of breaking eggs for drying, freezing or for other purposes;

D. "consumer" means any person, business establishment or institution which changes the condition of the egg in preparation for human consumption;

E. "board" means the board of regents of New Mexico state university, the board controlling the department;

F. "department" means the New Mexico department of agriculture;

G. "candling" means the holding of an egg, large end up, before a light shining through an opaque shield, with an opening of about one-quarter inch in diameter. Candling is best done in a darkened room, but one may obtain candling devices that may be used in average daylight;

H. "ungraded eggs" means eggs that have not been graded according to quality or weight;

I. "addled" or "white rot" means putrid or rotten;

J. "moldy" means that mold or bacteria has developed in isolated areas within the shell;

K. "black rot" means that the egg has deteriorated to an extent that the whole interior represents a blackened appearance;

L. "blood ring" means that germs have developed to an extent that blood is formed;

M. "stuck yolk" means that the yolk has settled to one side and becomes fastened to the shell; and

N. "incubator reject eggs" means any eggs which have been subjected to heat for the purpose of hatching or for any other purposes whatsoever.

History: 1953 Comp., § 54-2-11, enacted by Laws 1963, ch. 138, § 2; 1973, ch. 116, § 1.

25-6-3. Purpose of the act.

The purpose of the Egg Grading Act is to assure that no person, firm or corporation shall sell or have in his possession with the intent to sell, offer or expose for sale, or traffic in, any egg unfit for human food, unless the same is broken in shell and then denatured so that it cannot be used for human food, if it is or has:

A. addled or white rot;

B. moldy;

C. black rot;

D. blood ring;

E. stuck yolk;

F. sour;

G. green whites;

H. musty; or

I. incubator reject eggs.

History: 1953 Comp., § 54-2-12, enacted by Laws 1963, ch. 138, § 3; 1973, ch. 116, § 2.

ANNOTATIONS

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 Am. Jur. 2d Food § 38.

25-6-4. Labeling, marking and advertising eggs.

It is unlawful:

A. to offer eggs for sale in any newspaper advertisement, circular, radio or other form of advertising without plainly designating in the advertisement the classification as to grade and size to which the eggs being offered for sale properly belong, when price is a factor in the advertisement. The terms "fresh eggs," "strictly fresh eggs," "hennery eggs," "new-laid eggs" or descriptions of similar import shall not be used in connection with the sale or offering for sale or advertising for sale of eggs in New Mexico that do not meet the minimum requirements for the New Mexico grade A eggs or better;

B. to sell eggs by the case without an invoice stating both the correct size and correct grade description accompanying each case of eggs delivered to a retailer or

consumer. The invoice shall also include the name and address of both buyer and seller, date of sale and shall otherwise conform to the regulations set forth in the Egg Grading Act. The invoice shall be kept by the receiving dealer for a period of thirty days in case the inspector calls for it;

C. to offer for sale eggs in cartons that do not have the name of the packer or distributor stamped or printed on them; or

D. to sell uncartoned eggs at retail.

History: 1953 Comp., § 54-2-13, enacted by Laws 1963, ch. 138, § 4; 1973, ch. 116, § 3.

25-6-5. Standards for eggs.

The New Mexico consumer grades for eggs shall be as uniform as possible to those standards established by the United States department of agriculture for consumer grades of eggs. The board shall set all standards for shell eggs for New Mexico.

History: 1953 Comp., § 54-2-14, enacted by Laws 1963, ch. 138, § 5.

25-6-6. Exemptions.

The Egg Grading Act shall not apply to any person selling eggs from his own production when produced from a flock of less than three thousand birds, provided they are sold as ungraded.

History: 1953 Comp., § 54-2-15, enacted by Laws 1963, ch. 138, § 6; 1973, ch. 116, § 4.

25-6-7. Sale of ungraded eggs.

A. Retailers may sell the eggs specified in Section 25-6-6 NMSA 1978 to consumers only when such eggs on hand, offered or placed on sale are clearly marked "ungraded." Ungraded eggs shall be cartoned when sold at retail.

B. Any person proposing to sell ungraded eggs shall, prior to any such sale, notify the department in writing of his intent to sell ungraded eggs, specifying his location, the number of laying hens owned or in his possession, the place of production and the general area of the state in which the eggs are to be sold.

C. It is unlawful for any person selling any portion of his daily production as graded eggs to sell any portion thereof as ungraded eggs, except that any person may change his sales from graded to ungraded if he notifies the department in writing prior to such change.

D. It is unlawful for any person selling any portion of his daily production as ungraded eggs to sell any portion thereof as graded eggs, except that any person may change his sales from ungraded to graded eggs if he notifies the department in writing within five days from the date of change.

History: 1953 Comp., § 54-2-16, enacted by Laws 1963, ch. 138, § 7; 1973, ch. 116, § 5.

25-6-8. Enforcement; administration.

The department under the guidance and control of the board shall be responsible for administering and enforcing the provisions of the Egg Grading Act.

History: 1953 Comp., § 54-2-17, enacted by Laws 1973, ch. 116, § 6.

ANNOTATIONS

Repeals and reenactments. — Laws 1973, ch. 116, § 6, repealed 54-2-17, 1953 Comp., relating to enforcement and administration of the Egg Grading Act, and enacted a new section.

25-6-9. Egg inspection fee.

The Egg Grading Act shall be financed in part by the collection of a fee on all eggs sold to the retailer or consumer. The fee on eggs being sold to the retailer or consumer shall be one-half cent ($.005) per dozen; provided that the board may index the amount of the fee for inflation until July 1, 2031 using the consumer price index for all urban consumers: all items published by the United States department of labor. The fee shall be paid by the egg dealer or producer who packages the eggs for sale to the retailer or consumer. All money collected under the provisions of the Egg Grading Act shall be deposited with New Mexico state university for the purposes of administering the provisions of that act and promoting the poultry industry and its products and shall be expended upon the order of the board in the same manner as other funds of New Mexico state university.

History: 1953 Comp., § 54-2-18, enacted by Laws 1963, ch. 138, § 9; 1973, ch. 116, § 7; 2026, ch. 13, § 1.

ANNOTATIONS

The 2026 amendment, effective July 1, 2026, set the egg inspection fee at one-half cent per dozen, and authorized the board of regents of New Mexico state university to impose increases to the egg inspection fee up to the rate of inflation measured in the consumer price index for all urban consumers through the end of fiscal year 2031; after "retailer or consumer", deleted "The board shall have authority to establish the fee at their discretion, but in no case shall the fee exceed one-half cent per dozen" and added

"The fee on eggs being sold to the retailer or consumer shall be one-half cent ($.005) per dozen; provided that the board may index the amount of the fee for inflation until July 1, 2031 using the consumer price index for all urban consumers: all items published by the United States department of labor.".

25-6-10. Payment of the inspection fee.

Each egg dealer or producer shall make quarterly reports to the department not later than thirty days after the end of March, June, September and December for the previous quarter showing the number of dozen eggs sold and remitting the fee as established by the board. The department is empowered to audit the required sales record of any person, firm or corporation coming under the provisions of the Egg Grading Act. These records shall be retained for a period of one year. Failure to submit the sales record on request of the department or its authorized agents is a violation of the Egg Grading Act.

Prior to selling eggs in New Mexico the egg producer or egg dealer shall file his intent to sell eggs with the department.

History: 1953 Comp., § 54-2-19, enacted by Laws 1963, ch. 138, § 10; 1973, ch. 116, § 8.

25-6-11. Powers of the board and department.

A. The board is empowered to adopt standards and to prescribe rules and regulations relating to the sale of eggs as it may deem necessary to carry into effect the lawful intent and meaning of the Egg Grading Act. The definitions and rules and regulations when adopted and published by the board shall have the same force as law. Violations of the rules and regulations are subject to the same penalties as violations of the Egg Grading Act; provided, that the board shall before adopting rules or regulations first give notice of the general subject thereof by publication of a notice setting forth the substance of proposed rules or regulations and the date upon which the board will hold a hearing on the proposed rules or regulations. Notification of all proposed rules and regulations shall be mailed directly to all egg producers and dealers registered with the department. Publication shall be made once in a newspaper of general circulation in this state. Persons affected by any proposed regulation shall have the right to present to the board their objections to any proposed regulation or rule prior to its adoption.

B. The department through its authorized inspectors or agents is authorized:

(1) to enter, on any business day, during the usual hours of business, any store, market or any other business or place where eggs are sold or offered for sale under the provisions of the Egg Grading Act in this state; and

(2) to issue and enforce a stop-sale notice or order to the owner or custodian of any lot of eggs which the board or their inspectors or agents find are in violation of

the Egg Grading Act or any regulation issued thereunder, which shall prohibit any sale, barter, exchange or distribution of eggs until the inspectors are satisfied that the law has been complied with and have written a release or notice to the owners or custodian of the eggs.

History: 1953 Comp., § 54-2-20, enacted by Laws 1963, ch. 138, § 11; 1973, ch. 116, § 9.

25-6-12. Certification of dealers.

A. A small dealer's license is required of any person that buys, sells or traffics in more than five cases and less than two hundred cases of eggs in any one week.

B. A medium dealer's license is required of any person that buys, sells or traffics in more than two hundred cases and fewer than four hundred cases of eggs in any one week.

C. A large dealer's license is required of any person that buys, sells or traffics in more than four hundred cases of eggs in any one week.

D. The annual license fee for each type of dealer is:

(1)	small dealer	$10.00
(2)	medium dealer	$25.00
(3)	large dealer	$50.00;

provided that the board may index the amount of a fee for inflation until July 1, 2031 using the consumer price index for all urban consumers: all items published by the United States department of labor.

E. For the purpose of this section, a "case" consists of thirty dozen eggs.

F. All licenses shall be conspicuously posted in the place of business to which they apply. The license is subject to revocation by the inspectors for cause. All licenses are renewable annually on July 1 and shall expire on June 30 of the succeeding year.

History: 1953 Comp., § 54-2-21, enacted by Laws 1963, ch. 138, § 12; 1973, ch. 116, § 10; 2026, ch. 13, § 2.

ANNOTATIONS

The 2026 amendment, effective July 1, 2026, authorized the board of regents of New Mexico state university to impose increases to the license fees up to the rate of inflation measured in the consumer price index for all urban consumers through the end of fiscal year 2031, and made certain technical amendments; in Subsection A, after "person" deleted "firm or corporation who" and added "that"; in Subsection B, after "A" deleted

"medium-sized" and added "medium", after "person" deleted "firm or corporation who" and added "that", after "traffics in" deleted "over" and added "more than", and after "cases and" deleted "less" and added "fewer"; in Subsection C, after "person" deleted "firm or corporation who" and added "that", after "sells or traffics in" deleted "over" and added "more than" and after "four hundred cases" added "of eggs"; in Subsection D, in the introductory clause, deleted "fees" and added "license fee", in Paragraph D(1) added "dealer" after "small", in Paragraph D(2), added "dealer" after "medium", in Paragraph D(3), added "dealer" after "large", and after the semicolon, added the remainder of the paragraph; and in Subsection F, after "inspectors for cause", deleted "All licenses issued prior to the effective date of the Egg Grading Act shall expire when the act becomes effective and thereafter".

25-6-13. Additional violations.

It is unlawful:

A. for any person, with the exception of New Mexico egg producers, to sell eggs as a dealer unless such a person has obtained from the department a license to be issued at a price, varying according to the type of dealer;

B. for a person to refuse to submit any eggs, containers, lot, load or display of eggs to the inspection of any enforcement officer or to refuse to stop, at the request of any enforcement officer, any vehicle transporting eggs; or

C. for a person having eggs marked in accordance with the delivery invoice to keep the eggs for such time or under such conditions after they are purchased so as to cause them to deteriorate to a lower grade or standard and then offer and expose them for sale under the mark of the original invoice grade or standard.

History: 1953 Comp., § 54-2-22, enacted by Laws 1963, ch. 138, § 13; 1973, ch. 116, § 11.

25-6-14. Injunction.

In addition to the remedies provided in the Egg Grading Act, the department may apply to a district court for an injunction restraining any person from violating or continuing to violate any of the provisions of the Egg Grading Act or from failing or refusing to comply with any rule or regulation promulgated under that act.

History: 1953 Comp., § 54-2-23, enacted by Laws 1963, ch. 138, § 14; 1973, ch. 116, § 12.

ANNOTATIONS

Cross references. — For injunctions, *see* Rule 1-066 NMRA.

25-6-15. Seizure and holding of eggs.

The department may seize or hold as evidence any container of eggs or all or any part of any pack, load, lot consignment or shipment of eggs packed, stored, delivered for shipment, loaded, transported or sold in violation of any provisions of the Egg Grading Act.

History: 1953 Comp., § 54-2-24, enacted by Laws 1963, ch. 138, § 15; 1973, ch. 116, § 13.

25-6-16. Penalties.

A. Any person violating any provisions of the Egg Grading Act or any rule or regulation promulgated by the board or their authorized inspectors is guilty of a misdemeanor and upon conviction thereof shall be imprisoned in the county jail for not more than ninety days, or shall be fined not more than one hundred dollars ($100), or both such fine and imprisonment in the discretion of the court.

B. The licenses of third and subsequent violators may be revoked by the board.

C. In addition to all other fees prescribed by the Egg Grading Act, a penalty fee of ten percent shall be added for delinquent filing of any report or the delinquent paying of any inspection fee, and if the report and payment are not made within ten days of notification of delinquency, penalty shall be twenty-five percent of the inspection fee. Persons filing a false report shall be penalized fifty percent of the amount due for inspection fees.

History: 1953 Comp., § 54-2-25, enacted by Laws 1963, ch. 138, § 16.

ARTICLE 7
Dairy Products

25-7-1. Short title.

This act [25-7-1 to 25-7-8 NMSA 1978] may be cited as the "Dairy Act."

History: 1953 Comp., § 52-1-30, enacted by Laws 1977, ch. 375, § 1.

ANNOTATIONS

Cross references. — For provisions relating to raw milk, *see* 25-8-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 Am. Jur. 2d Food §§ 47 to 62.

36A C.J.S. Food §§ 6(4), 9(3).

25-7-2. Definitions.

As used in the Dairy Act:

A. "board" means the board of regents of New Mexico state university;

B. "department" means the New Mexico department of agriculture;

C. "person" means any individual, firm, partnership, corporation, society, association, trustee or company;

D. "dairy product" means milk, whether fluid, dried, evaporated, stabilized, condensed or otherwise processed, cream, milk products, ice cream, frozen custard, French custard, ice milk, frozen dessert or any other food product principally derived from milk;

E. "milk" means the whole, clean, lacteal secretion obtained by the complete milking of one or more healthy cows or goats, properly fed and kept, delivered from the dairy farm to any receiving or distributing establishment or factory within a reasonable time, excluding that obtained within fifteen days before and five days after calving or such longer period as may be necessary to render the milk practically colostrum free;

F. "handler" or "processor" means a person other than a retailer who receives or buys for resale or processes or manufactures milk or dairy products to be sold to others for consumption or resale, but does not include those persons engaged in the manufacture of soft-serve frozen desserts for sale directly to consumers; and

G. "retailer" means any person who buys milk or dairy products and who resells the same to consumers without further processing or manufacturing thereof.

History: 1953 Comp., § 52-1-31, enacted by Laws 1977, ch. 375, § 2.

25-7-3. Administration and enforcement of act.

The Dairy Act shall be administered and enforced by the board through the department.

History: 1953 Comp., § 52-1-32, enacted by Laws 1977, ch. 375, § 3.

25-7-4. Standards for testing.

The board shall determine and prescribe the acceptable standards of equipment and methods to be employed in the testing or measuring of milk and dairy products to determine value, quantity or quality.

History: 1953 Comp., § 52-1-33, enacted by Laws 1977, ch. 375, § 4.

25-7-5. Standards of milk and other dairy products.

The board shall determine and prescribe the standards of physical and chemical composition or content for milk and dairy products as defined in the Dairy Act. The board may also determine what other food products, principally derived from milk, shall be classified as dairy products and establish standards for those products.

History: 1953 Comp., § 52-1-34, enacted by Laws 1977, ch. 375, § 5.

25-7-6. Adulterated or mislabeled products and stop-sale orders.

It is unlawful for any person to sell or offer for sale adulterated or mislabeled milk or dairy products. Milk or dairy products that contain any unwholesome substance or fail to conform in physical or chemical composition to the definitions or standards prescribed by the Dairy Act or by regulation of the board shall be deemed adulterated. Milk or dairy products as defined by the Dairy Act or by regulation of the board that are labeled with an identifying name other than those so defined, or bear a name that has been defined but contains a food product that does not conform in physical or chemical composition with the definition provided by the Dairy Act or regulation of the board, shall be deemed adulterated. Any milk or dairy product which contains a product differing in content from the product described on its label, or bears an identifying name other than those defined by the Dairy Act or by regulation of the board shall be deemed mislabeled. The department may issue and enforce a stop-sale order on any adulterated or mislabeled product.

History: 1953 Comp., § 52-1-35, enacted by Laws 1977, ch. 375, § 6.

ANNOTATIONS

Cross references. — For provisions relating to adulterated or misbranded food generally, *see* 25-2-1 NMSA 1978 et seq.

25-7-7. Regulations.

In order to enforce the Dairy Act, the board may prescribe and, after public hearing following due public notice, adopt regulations to carry out the provisions of the Dairy Act.

History: 1953 Comp., § 52-1-36, enacted by Laws 1977, ch. 375, § 7.

25-7-8. Penalty.

Any person who violates any of the provisions of the Dairy Act or regulations promulgated by the board is guilty of a misdemeanor and may be fined not less than one hundred dollars ($100) nor more than five hundred dollars ($500).

History: 1953 Comp., § 52-1-37, enacted by Laws 1977, ch. 375, § 8.

ARTICLE 7A
Dairy Products

25-7A-1. Short title.

Sections 1 through 19 [25-7A-1 to 25-7A-19 NMSA 1978] of this act may be cited as the "New Mexico Dairy Product Act".

History: Laws 1993, ch. 188, § 1.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-2. Definitions.

As used in the New Mexico Dairy Product Act:

A. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of food;

B. "board" means the board of regents of New Mexico state university;

C. "contaminated with filth" applies to any dairy product not securely protected from dust, dirt and, so far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or any dairy product found to contain any dust, dirt, foreign or injurious contamination or infestation; the provisions shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such dairy product and the supplying or applying of any such dairy product in the conduct of any dairy establishment;

D. "dairy establishment" means a milk producing or milk processing facility;

E. "dairy product" means milk, whether fluid, dried, evaporated, stabilized, condensed or otherwise processed, cream, milk products, ice cream, frozen custard,

French custard, ice milk, frozen dessert or any other food product derived principally from milk;

F. "department" means the New Mexico department of agriculture;

G. "director" means the director of agriculture;

H. "federal act" means the Federal Food, Drug and Cosmetic Act;

I. "immediate container" does not include package liners;

J. "label" means a display of written, printed or graphic matter upon the immediate container of any dairy product. A requirement made by or under authority of the New Mexico Dairy Product Act that any word, statement or other information appears on the label shall not be considered to be complied with unless such word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of such dairy product or is easily legible through the outside container or wrapper;

K. "labeling" means all labels and other written, printed or graphic matter:

(1) upon a dairy product or any of its containers or wrappers; or

(2) accompanying such dairy product;

L. "milk" means the whole, clean, lacteal secretion obtained by the complete milking of one or more healthy cows or goats, properly fed and kept, delivered from the dairy farm to any receiving or distributing establishment or factory within a reasonable time, excluding that obtained within fifteen days before or five days after calving or such longer period as may be necessary to render milk practically colostrum-free; and

M. "person" includes individual, partnership, corporation and association.

History: Laws 1993, ch. 188, § 2.

ANNOTATIONS

Cross references. — For the federal Food, Drug, and Cosmetic Act, *see* 42 U.S.C. § 301 et seq.

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-3. Prohibited acts.

The following acts and the causing of these acts within the state by any dairy establishment are prohibited:

A. the manufacture, sale or delivery or holding or offering for sale of any dairy product that is adulterated or misbranded;

B. the adulteration or misbranding of any dairy product;

C. the receipt in commerce of any dairy product that is adulterated or misbranded and the delivery or proffered delivery of the adulterated or misbranded dairy product for pay or otherwise;

D. the sale, delivery for sale, holding for sale or offering for sale of any article in violation of Section 12 [25-7A-12 NMSA 1978] of the New Mexico Dairy Product Act;

E. the dissemination of any false advertisement related to a dairy product;

F. the refusal to permit entry or inspection or to permit the taking of a sample as authorized by Section 16 [25-7A-16 NMSA 1978] of the New Mexico Dairy Product Act;

G. the giving of a guarantee or undertaking, which guarantee or undertaking is false, except by a person who relied on a guarantee or undertaking to the same effect signed by and containing the name and address of the person residing in the state from whom he received the dairy product in good faith;

H. the removal or disposal of a detained or embargoed dairy product in violation of Section 6 [25-7A-6 NMSA 1978] of the New Mexico Dairy Product Act;

I. the alteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a dairy product if such act is done while the dairy product is held for sale and results in the dairy product being misbranded; and

J. forging, counterfeiting, simulating or falsely representing or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of the New Mexico Dairy Product Act.

History: Laws 1993, ch. 188, § 3.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-4. Power to enjoin violations.

In addition to the other remedies provided in the New Mexico Dairy Product Act, the department is authorized to apply to the district court for, and such court shall have jurisdiction upon hearing and for such cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of Section 3 [25-7A-3 NMSA 1978] of the New Mexico Dairy Product Act, irrespective of whether there exists an adequate remedy at law.

History: Laws 1993, ch. 188, § 4.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-5. Penalties; exceptions.

A. The board shall establish a system of administrative penalties for violations of the New Mexico Dairy Product Act. The administrative penalties may be assessed by the director in lieu of or in addition to other penalties provided by statute. In establishing the system of administrative penalties, the board, after public notice and public hearing, shall adopt regulations that meet the following minimum requirements:

(1) the maximum amount of any administrative penalty shall not exceed one thousand dollars ($1,000) for any one violation of the New Mexico Dairy Product Act by any person; and

(2) violations for which administrative penalties may be assessed shall be clearly defined, along with a scale of administrative penalties relating the amount of the administrative penalty to the severity and frequency of the violation.

B. No person shall be subject to the penalties of Subsection A of this section for having violated Subsection A or C of Section 3 [25-7A-3 NMSA 1978] of the New Mexico Dairy Product Act if he establishes a guarantee or undertaking, signed by and containing the name and address of the person residing in the state from whom he received in good faith the dairy product, to the effect that such dairy product is not adulterated or misbranded within the meaning of the New Mexico Dairy Product Act, designating that act.

C. No publisher, radio-broadcast licensee or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor or seller of the dairy product to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement unless he has refused, on the request of the director, to furnish to the director the name and post

office address of the manufacturer, packer, distributor, seller or advertising agency residing in the state who causes him to disseminate such advertisement.

History: Laws 1993, ch. 188, § 5.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-6. Detention of dairy products at a dairy establishment believed adulterated or misbranded; condemnation; destruction or correction of defect.

A. Whenever the director finds or has probable cause to believe that any dairy product within a dairy establishment is adulterated or so misbranded as to be dangerous or fraudulent within the meaning of the New Mexico Dairy Product Act, he shall affix to such dairy product a tag or other appropriate marking giving notice that the dairy product is or is suspected of being adulterated or misbranded and has been detained or embargoed and warning all persons not to remove or dispose of the dairy product by sale or otherwise until permission for removal or disposal is given by the director or the court. It is unlawful for any person to remove or dispose of the detained or embargoed dairy product by sale or otherwise without such permission.

B. When a dairy product detained or embargoed under Subsection A of this section has been found by the director to be adulterated or misbranded, he shall petition the judge of the district court in whose jurisdiction the dairy product is detained or embargoed for a libel for condemnation of the dairy product. When the director has found that a dairy product so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

C. If the court finds that a detained or embargoed dairy product is adulterated or misbranded, the dairy product shall, after entry of the decree, be destroyed at the expense of the claimant of the dairy product under the supervision of the director, and all court costs and fees and storage and other proper expenses shall be taxed against the claimant of the dairy product or his agent; provided that when the adulteration or misbranding can be corrected by proper labeling or processing of the dairy product, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond, conditioned that the dairy product shall be so labeled or processed, has been executed, may by order direct that the dairy product be delivered to the claimant for such labeling or processing under the supervision of the director. The expense of such supervision shall be paid by the claimant. The bond shall be returned to the claimant of the dairy product on representation to the court by the director that the dairy product is no longer in violation of the New Mexico Dairy Product Act and that the expenses of supervision have been paid.

D. Whenever the director finds in any room, building or vehicle of transportation at a dairy establishment any dairy product that is unsound or contains any filthy, decomposed or putrid substance or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, he shall condemn or destroy the dairy product or in any other manner render it unsaleable as human food.

History: Laws 1993, ch. 188, § 6.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-7. Attorney general or district attorney to institute prosecution; right to hearing before director prior to criminal prosecutions.

It is the duty of the attorney general or the various district attorneys of this state to whom the director reports any violation of the New Mexico Dairy Product Act to cause appropriate proceedings to be instituted in the proper courts without delay and to be prosecuted in the manner required by law. Before any violation of the New Mexico Dairy Product Act is reported to any such district attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views before the director, either orally or in writing, in person or by attorney with regard to the contemplated proceeding.

History: Laws 1993, ch. 188, § 7.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-8. Minor violations; warning authorized.

Nothing in the New Mexico Dairy Product Act shall be construed as requiring the director to report, for the institution of proceedings under the New Mexico Dairy Product Act, minor violations of that act whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

History: Laws 1993, ch. 188, § 8.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-9. Promulgation of definitions and standards by the board.

Whenever in the judgment of the board such action will promote honesty and fair dealing in the interest of consumers, the board shall after public hearing promulgate regulations fixing and establishing for any dairy product or class of dairy products a reasonable definition and standard of identity or reasonable standard of quality or fill of container or any combination of such requirements. In prescribing a definition and standard of identity for a dairy product or class of dairy products in which optional ingredients are permitted, the board shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients that shall be named on the label. The definitions and standards promulgated shall conform so far as practicable to the definitions and standards promulgated under the authority of the federal act.

History: Laws 1993, ch. 188, § 9.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-10. Dairy products; adulterated.

A dairy product shall be deemed to be adulterated if:

A. it bears or contains any poisonous or deleterious substance that may render it injurious to health, but, in case the substance is not an added substance, the dairy product shall not be considered adulterated under this subsection if the quantity of the substance in the dairy product does not ordinarily render it injurious to health;

B. it bears or contains any added poisonous or added deleterious substance that is unsafe within the meaning of Section 13 [25-7A-13 NMSA 1978] of the New Mexico Dairy Product Act;

C. it consists in whole or in part of a diseased, contaminated, filthy, impure or infested ingredient, putrid or decomposed substance or is otherwise unfit for food;

D. it has been produced, prepared, packed or held under unsanitary conditions whereby it may have been contaminated with filth or whereby it may have been rendered diseased, unwholesome or injurious to health;

E. it is the product of a diseased animal or an animal that has died otherwise than by slaughter or that has been fed upon the uncooked offal from a slaughterhouse;

F. its container is composed in whole or in part of any poisonous or deleterious substance that may render the contents injurious to health;

G. any valuable constituent has been, in whole or in part, omitted or abstracted therefrom;

H. any substance has been substituted wholly or in part therefor;

I. damage or inferiority has been concealed in any manner;

J. any substance has been added or mixed or packed therewith so as to increase its bulk or weight or reduce its quality or strength or make it appear better or of greater value than it is; or

K. it bears or contains a coal-tar color other than one from a batch that has been certified under authority of the federal act.

History: Laws 1993, ch. 188, § 10.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-11. Misbranded dairy product.

A dairy product within a dairy establishment shall be deemed to be misbranded if:

A. its labeling is false or misleading in any particular manner;

B. it is offered for sale under the name of another dairy product;

C. it is an imitation of another dairy product, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the dairy product imitated;

D. its container is so made, formed or filled as to be misleading;

E. in package form, unless it bears a label containing:

(1) the name and place of business of the manufacturer, packer or distributor; or

(2) an accurate statement of the quantity of the contents in terms of weight, measure or numerical count; provided that under this paragraph reasonable variations shall be permitted and exemptions as to small packages shall be established by regulations prescribed by the board;

F. any word, statement or other information required by or under authority of the New Mexico Dairy Product Act to appear on the label or labeling is not prominently placed with such conspicuousness, as compared with other words, statements, designs or devices in the labeling, and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use;

G. it purports to be or is represented as a dairy product for which a definition and standard of identity has been prescribed by regulations as provided by Section 9 [25-7A-9 NMSA 1978] of the New Mexico Dairy Product Act unless:

(1) it conforms to such definition and standard; and

(2) its label bears the name of the dairy product specified in the definition and standard and, insofar as may be required by such regulations, the common names of optional ingredients, other than spices, flavoring and coloring, present in such dairy product;

H. it purports to be or is represented as:

(1) a dairy product for which a standard of quality has been prescribed by regulations as provided by Section 9 of the New Mexico Dairy Product Act and its quality falls below that standard unless its label bears in such manner and form as the regulations specify a statement that it falls below the standard; or

(2) a food for which a standard of fill of container has been prescribed by regulation as provided by Section 9 of the New Mexico Dairy Product Act and it falls below the standard of fill of container applicable to it, unless its label bears in such manner and form as the regulations specify a statement that it falls below the standard;

I. it is not subject to the provisions of Subsection G of this section, unless it bears labeling clearly giving:

(1) the common or usual name of the dairy product, if any; and

(2) in case it is fabricated from two or more ingredients, the common or usual name of each ingredient, except that spices, flavorings and colorings, other than those sold as such, may be designated as spices, flavorings and colorings without naming each; provided that to the extent that compliance with the requirements of this paragraph is impracticable or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the board;

J. it purports to be or is represented for special dietary uses, unless its label bears such information concerning its vitamin, mineral and other dietary properties as the board determines to be, and by regulations prescribes as, necessary in order to fully inform purchasers as to its value for such uses; and

K. it bears or contains any artificial flavoring, artificial coloring or chemical preservative, unless it bears labeling stating that fact; provided that to the extent that compliance with the requirements of this subsection is impracticable, exemptions shall be established by regulations promulgated by the board.

History: Laws 1993, ch. 188, § 11.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-12. Manufacturing, packing and processing permits for certain classes of dairy products; suspension; inspections.

A. Whenever the board finds after investigation that the distribution in New Mexico of any class of dairy product may, by reason of contamination with microorganisms during manufacture, processing or packing in any locality, be injurious to health and that such injurious nature cannot be adequately determined after the dairy product has entered commerce, it then and in such case only shall promulgate regulations providing for the issuance, by the director to manufacturers, processors or packers of such class of dairy product in such locality, of permits to which shall be attached such conditions governing the manufacture, processing or packing of such class of dairy product for such temporary period of time as may be necessary to protect the public health, and after the effective date of the regulations and during the temporary period, no dairy establishment shall introduce or deliver for introduction into commerce any such dairy product manufactured, processed or packed by any such manufacturer, processor or packer unless the manufacturer, processor or packer holds a permit issued by the director as provided by such regulations.

B. The director is authorized to suspend immediately upon notice any permit issued under authority of this section if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of the permit, and the director shall, immediately after prompt hearing and an inspection of the establishment, reinstate the permit if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit as originally issued or as amended.

C. The director shall have access to any factory or establishment, the operator of which holds a permit from the director, for the purpose of ascertaining whether or not

the conditions of the permit are being complied with, and denial of access for inspection shall be ground for suspension of the permit until access is freely given by the operator.

History: Laws 1993, ch. 188, § 12.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-13. Promulgating regulations governing the addition of any poisonous or deleterious substances in dairy products.

Any poisonous or deleterious substance added to any dairy product, except where the substance is required in production or cannot be avoided by good manufacturing practice, shall be deemed to be unsafe for purposes of the application of Subsection B of Section 10 [25-7A-10 NMSA 1978] of the New Mexico Dairy Product Act; but when the substance is required or cannot be avoided, the board shall promulgate regulations limiting the quantity therein or thereon to such extent as the board finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed to be unsafe for purposes of the application of Subsection B of Section 10 of the New Mexico Dairy Product Act. While such a regulation is in effect limiting the quantity of any such substance in the case of any dairy product, the dairy product shall not, by reason of bearing or containing any added amount of the substance, be considered to be adulterated within the meaning of Subsection A of Section 10 of the New Mexico Dairy Product Act. In determining the quantity of the added substance to be tolerated in or on different dairy products, the board shall take into account the extent to which the use of the substance is required or cannot be avoided in the production of each diary product and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances.

History: Laws 1993, ch. 188, § 13.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-14. False advertising.

A. An advertisement of a dairy product is deemed to be false if it is false or misleading in any particular manner.

B. If a dairy product is alleged to be misbranded because the labeling is misleading or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the dairy product to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

History: Laws 1993, ch. 188, § 14.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-15. Promulgating regulations; procedure.

The authority to promulgate regulations after public hearing for the efficient enforcement of the New Mexico Dairy Product Act is vested in the board. The board is authorized to make the regulations promulgated under the federal act.

History: Laws 1993, ch. 188, § 15.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-16. Power to make inspections and secure samples within dairy establishments.

The director shall have free access at all reasonable hours to any dairy establishment in which dairy products are manufactured, processed, packed or held for introduction into commerce or to enter any vehicle being used to transport or hold such dairy products in commerce for the purpose:

A. of inspecting the dairy establishment or vehicle to determine if any provision of the New Mexico Dairy Product Act is being violated; and

B. to secure samples or specimens of any dairy product after paying or offering to pay for the sample. The director may make or cause to be made examinations of

samples secured under the provisions of this section to determine whether any provision of the New Mexico Dairy Product Act is being violated.

History: Laws 1993, ch. 188, § 16.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-17. Power of director to publish reports and disseminate information.

A. The director may cause to be published from time to time reports summarizing all judgments, decrees and court orders that have been rendered under the New Mexico Dairy Product Act, including the nature of the charge and the disposition of the charge.

B. The director may also cause to be disseminated such information regarding dairy products as he deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the director from collecting, reporting and illustrating the results of his investigations.

History: Laws 1993, ch. 188, § 17.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-18. Cooperation.

The department may cooperate, receive grants-in-aid and enter into cooperative agreements with any agency of the federal government, of this state or its subdivisions, or with any agency of another state.

History: Laws 1993, ch. 188, § 18.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7A-19. Scientific laboratory to serve as testing laboratory.

The scientific laboratory division of the department of health shall serve as the testing laboratory for samples collected for examination pursuant to the provisions of the New Mexico Dairy Product Act.

History: Laws 1993, ch. 188, § 19.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

ARTICLE 7B
Dairy Establishment Sanitation

25-7B-1. Short title.

Sections 20 through 30 [25-7B-1 to 25-7B-11 NMSA 1978] of this act may be cited as the "Dairy Establishment Sanitation Act".

History: Laws 1993, ch. 188, § 20.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7B-2. Purpose.

The purpose of the Dairy Establishment Sanitation Act is to protect the public health by establishing standards and provisions for the regulation of dairy establishments and by appropriate delegations of authority to the department to adopt and enforce regulations covering the environmental health aspects of dairy establishments to assure that consumers are not exposed to adverse environmental health conditions arising out of the operations of dairy establishments.

History: Laws 1993, ch. 188, § 21.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7B-3. Definitions.

As used in the Dairy Establishment Sanitation Act:

A. "board" means the board of regents of New Mexico state university;

B. "dairy establishment" means a milk producing or milk processing facility;

C. "dairy product" means milk, whether fluid, dried, evaporated, stabilized, condensed or otherwise processed, cream, milk products, ice cream, frozen custard, French custard, ice milk, frozen dessert or any other food product derived principally from milk;

D. "department" means the New Mexico department of agriculture;

E. "director" means the director of agriculture;

F. "milk" means the whole, clean, lacteal secretion obtained by the complete milking of one or more healthy cows or goats, properly fed and kept, delivered from the dairy farm to any receiving or distributing establishment or factory within a reasonable time, excluding that obtained within fifteen days before or five days after calving or such longer period as may be necessary to render milk practically colostrum-free; and

G. "person" includes an individual, partnership, corporation and association.

History: Laws 1993, ch. 188, § 22.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7B-4. Board; regulations; department; powers and duties.

The board shall promulgate procedural and substantive regulations to provide:

A. for the preparation of dairy products at dairy establishments in a manner safe for human consumption, free from adulteration, spoilage, contamination and unwholesomeness. The regulations shall provide for:

(1) disease control;

(2) employee hygiene and sanitation at dairy establishments;

(3) dairy establishment premises sanitation;

(4) all aspects of dairy establishment construction relating to sanitation;

(5) control of pests and infestation by pests at dairy establishments;

(6) lavatory and toilet facility placement and sanitation at dairy establishments;

(7) lavatory hygiene at dairy establishments;

(8) dairy equipment and utensil design and construction at dairy establishments;

(9) dairy equipment and utensil storage and handling at dairy establishments;

(10) dairy establishment ventilation; and

(11) any other facet of dairy establishment operations that reasonably may be considered to pose an existing or potential hazard to the health of the consuming public;

B. the issuance, suspension and revocation of permits required under the Dairy Establishment Sanitation Act, which regulations shall provide for prior notice to and a hearing for any applicant for or holder of a permit when the department-proposed action is to deny an application for or suspend or revoke a permit, except in those specified instances under the provisions of the Dairy Establishment Sanitation Act when the department is authorized to take any of the foregoing actions without prior notice and hearing;

C. establishing requirements for inspections of dairy establishments, which shall include provisions for inspections at a frequency of at least once every twelve months; and

D. for permitting fees for permits issued pursuant to the Dairy Establishment Sanitation Act.

History: Laws 1993, ch. 188, § 23.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7B-5. Department; powers and duties.

A. The department is authorized and has the duty to execute any provisions of the Dairy Establishment Sanitation Act delegated to it under that act and specifically is directed to administer and enforce the provisions of regulations adopted pursuant to that act.

B. The director may appoint an advisory council composed of dairy experts to assist in carrying out the objectives of the Dairy Establishment Sanitation Act.

History: Laws 1993, ch. 188, § 24.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7B-6. Permits; permit required; application; revocation; suspension.

A. No person may operate a dairy establishment unless he possesses a valid and unsuspended permit issued by the department in accordance with the Dairy Establishment Sanitation Act and the regulations adopted pursuant to that act. The permit shall be posted in a conspicuous place within the dairy establishment. No person may display a permit unless it has been issued to him by the department and has not been revoked and is not under suspension.

B. Any person desiring to operate a dairy establishment shall apply to the department for the issuance of a permit. Applications shall be made in a form and in accordance with procedures established by regulations of the department. The department shall issue a permit to any applicant that complies with the regulations of the department covering the issuance of permits and who demonstrates to the satisfaction of the department his ability to comply with all the provisions of the Dairy Establishment Sanitation Act and all regulations of the department.

C. The department shall promulgate regulations for the revocation or suspension of permits for those dairy establishments that fail to come into compliance with a provision of the Dairy Establishment Sanitation Act or regulation promulgated pursuant to that act. The hearing officer shall not be any person previously involved in the suspension or revocation action. No inspection made more than twenty-four months prior to the most recent such inspection shall be used as a basis for suspension or revocation.

History: Laws 1993, ch. 188, § 25.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7B-7. Inspection by department.

A. The department shall inspect dairy establishments to determine compliance or lack of compliance with the Dairy Establishment Sanitation Act and regulations of the department. The procedures for inspection shall be in accordance with regulations of the department. Upon request by the department to a dairy establishment operator or to his employee or agent, he shall permit the department official, upon proper identification, to enter the premises, inspect all parts of the premises and inspect and copy any records of purchases by the dairy establishment. The operator or his employee or agent shall be given an opportunity to accompany the department official on his inspection and, as soon as possible after the inspection, a report of the inspection shall be furnished to him. Refusal to allow an inspection of a dairy establishment is grounds for revocation of the permit of the operator, provided that the department official has tendered proper identification prior to the refusal.

B. During an inspection, the department may take samples of dairy products and other substances found on the premises of a dairy establishment for the purpose of determining compliance with provisions of the Dairy Establishment Sanitation Act and regulations of the department.

History: Laws 1993, ch. 188, § 26.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7B-8. Immediate suspension of permit by department.

The department may suspend a permit immediately without prior notice to the holder of the permit if it determines, after inspection, that conditions within a dairy establishment present a substantial danger of illness, serious physical harm or death to consumers who might use the products of the dairy establishment. A suspension action taken under this section is effective when communicated to the dairy establishment operator or any employee or agent of the operator who is in charge of the premises involved. If there is no designated employee or agent in charge of the premises, communication to any employee physically present on the premises is sufficient communication to make the suspension effective.

History: Laws 1993, ch. 188, § 27.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7B-9. Judicial review of department actions.

Any person to whom the department denies a permit or whose permit is suspended or revoked by the department may appeal to the district court pursuant to the provisions of Section 39-3-1.1 NMSA 1978.

History: Laws 1993, ch. 188, § 28; 1998, ch. 55, § 36; 1999, ch. 265, § 38.

ANNOTATIONS

The 1999 amendment, effective July 1, 1999, substituted "Section 39-3-1.1" for "Section 12-8A-1".

The 1998 amendment, effective September 1, 1998, rewrote this section to the extent that a detailed comparison is impracticable.

25-7B-10. Enforcement; administrative penalties.

A. The department may seek relief in district court to enjoin the operation of any dairy establishment not complying with the Dairy Establishment Sanitation Act or any regulation adopted under that act.

B. The board shall establish a system of administrative penalties for violations of the Dairy Establishment Sanitation Act. The administrative penalties may be assessed by the director in lieu of or in addition to other penalties provided by statute. In establishing the system of administrative penalties, the board, after public notice and public hearing, shall adopt regulations that meet the following minimum requirements:

(1) the maximum amount of any administrative penalty shall not exceed one thousand dollars ($1,000) for any one violation of the Dairy Establishment Sanitation Act by any person; and

(2) violations for which administrative penalties may be assessed shall be clearly defined, along with a scale of administrative penalties relating the amount of the administrative penalty to the severity and frequency of the violation.

History: Laws 1993, ch. 188, § 29.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

25-7B-11. Disease control.

The department shall promulgate regulations to ensure that a person with a disease that can reasonably be expected to be transmitted to other persons shall not work in a dairy establishment.

History: Laws 1993, ch. 188, § 30.

ANNOTATIONS

Effective dates. — Laws 1993, ch. 188 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 18, 1993, 90 days after adjournment of the legislature.

ARTICLE 8
Raw Milk

25-8-1. Raw milk sold at retail; standards.

Raw milk sold by a retailer must meet all standards established by the board of regents of New Mexico state university and the environmental improvement agency for the retail sale of grade A raw milk and in addition shall:

A. contain no more than twenty thousand bacteria per milliliter;

B. contain no more than fifty coliform bacteria per milliliter; and

C. within two hours after completion of milking, be cooled to a temperature of forty-five degrees fahrenheit or less and maintained at that temperature until sold to the consumer.

History: 1953 Comp., § 52-2-18, enacted by Laws 1977, ch. 270, § 1.

ANNOTATIONS

Cross references. — For provisions relating to dairy products, *see* 25-7-1 NMSA 1978 et seq.

Am. Jur. 2d, A.L.R. and C.J.S. references. — 35 Am. Jur. 2d Food §§ 47 to 53.

36A C.J.S. Food §§ 12(8), 13, 14(1), 14(2), 15.

25-8-2. Enforcement.

If, as a result of investigation, the environmental improvement agency finds that any person is violating any provision of Section 1 [25-8-1 NMSA 1978] of this act [25-8-1 to 25-8-3 NMSA 1978], or any regulation issued thereunder, the agency may bring an action for injunctive or other appropriate relief in the district court for the county in which the violation is occurring, or in the district court for Santa Fe county.

History: 1953 Comp., § 52-2-19, enacted by Laws 1977, ch. 270, § 2.

25-8-3. Penalty; civil.

Any person who violates any provision of Section 1 [25-8-1 NMSA 1978] of this act [25-8-1 to 25-8-3 NMSA 1978] or any regulation issued thereunder is liable to a civil penalty not to exceed one hundred dollars ($100) for each violation.

History: 1953 Comp., § 52-2-20, enacted by Laws 1977, ch. 270, § 3.

ARTICLE 9
Imitation Honey (Repealed.)

25-9-1. Repealed.

History: 1953 Comp., § 49-16-1, enacted by Laws 1977, ch. 243, § 1; repealed by Laws 2005, ch. 145, § 1.

ANNOTATIONS

Repeals. — Laws 2005, ch. 145 repealed 25-9-1 NMSA 1978, as enacted by Laws 1977, ch. 243, § 1, relating to the short title of the Imitation Honey Act, effective June 17, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

25-9-2. Repealed.

History: 1953 Comp., § 49-16-2, enacted by Laws 1977, ch. 243, § 2; repealed by Laws 2005, ch. 145, § 2.

ANNOTATIONS

Repeals. — Laws 2005, ch. 145 repealed 25-9-2 NMSA 1978, as enacted by Laws 1977, ch. 243, § 2, relating to definitions, effective June 17, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

25-9-3. Repealed.

History: 1953 Comp., § 49-16-3, enacted by Laws 1977, ch. 243, § 3; repealed by Laws 2005, ch. 145, § 3.

ANNOTATIONS

Repeals. — Laws 2005, ch. 145 repealed 25-9-3 NMSA 1978, as enacted by Laws 1977, ch. 243, § 3, relating to unlawful labeling, advertising or selling of products as honey, effective June 17, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

25-9-4. Repealed.

History: 1953 Comp., § 49-16-4, enacted by Laws 1977, ch. 243, § 4; repealed by Laws 2005, ch. 145, § 4.

ANNOTATIONS

Repeals. — Laws 2005, ch. 145 repealed 25-9-4 NMSA 1978, as enacted by Laws 1977, ch. 243, § 4, relating to enforcement, effective June 17, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

25-9-5. Repealed.

History: 1953 Comp., § 49-16-5, enacted by Laws 1977, ch. 243, § 5; repealed by Laws 2005, ch. 145, § 5.

ANNOTATIONS

Repeals. — Laws 2005, ch. 145 repealed 25-9-5 NMSA 1978, as enacted by Laws 1977, ch. 243, § 5, relating to penalties, effective June 17, 2005. For provisions of former section, *see* the 2004 NMSA 1978 on *NMOneSource.com.*

ARTICLE 10
Pinon Nuts

25-10-1. Short title.

This act [25-10-1 to 25-10-5 NMSA 1978] may be cited as the "Pinon Nut Act".

History: Laws 1987, ch. 43, § 1.

25-10-2. Unlawful labeling, advertising or selling of products as pinon nuts.

A. It is unlawful for any person to package any product and label the product as pinon nuts or as containing pinon nuts or to use the words pinon nuts in any prominent location on the label of such product or to advertise, sell or offer for sale any product which is labeled pinon nuts or as containing pinon nuts unless the product consists of pinon nuts or uses pinon nuts as an ingredient in the product.

B. As used in this section, "pinon nuts" means the edible nut which is the product of the pinon tree, scientifically known as genus "pinus", subgenus "strobus", section "parrya", subsection "cembroides".

History: Laws 1987, ch. 43, § 2; 1993, ch. 299, § 1.

ANNOTATIONS

The 1993 amendment, effective April 7, 1993, substituted the language beginning "genus 'pinus'" for "the pinus edulis and pinus monophylla" at the end of Subsection B and made minor stylistic changes.

25-10-3. Enforcement.

A. The board of regents of New Mexico state university shall enforce and administer the Pinon Nut Act through the New Mexico department of agriculture. The board shall have the authority to promulgate regulations necessary for the enforcement of the Pinon Nut Act.

B. The department through its authorized inspectors or agents is authorized to:

(1) audit the purchase and sales records of any person, firm or corporation dealing with pinon nut sales; and

(2) enter, on any business day during the usual hours of business, any store, market or any other business or place where pinon nuts are sold or offered for sale under the provisions of the Pinon Nut Act in this state.

History: Laws 1987, ch. 43, § 3; 1993, ch. 299, § 2.

ANNOTATIONS

The 1993 amendment, effective April 7, 1993, designated the formerly undesignated provision as Subsection A and added Subsection B.

25-10-4. Genetic research program initiated.

New Mexico state university shall:

A. devote an appropriate portion of its funding for the purpose of initiating a program of genetic research and procedures for developing a seed source for faster growing pinon trees suitable to New Mexico's climate;

B. study methods to prevent and control diseases that threaten the pinon trees in this state;

C. conduct and publish a nutritional analysis of pinon nuts;

D. research and recommend storage methods for both shelled and unshelled nuts for periods of up to three years;

E. recommend packaging methods for shelled nuts to preserve freshness;

F. conduct a marketing study to define the potential of exploiting the state's present wild-growing pinon nut crop resource both for in-state consumption and for out-of-state export;

G. conduct research in the development of mechanical means for harvesting pinon nuts from wild trees that will not cause damage to the trees or their surroundings and mechanical means for shelling the pinon nuts; and

H. report annually to the legislature regarding the amount of funding it is devoting and expending for the research, development and marketing programs called for in this section, the funding being devoted to and expended for other agricultural, range, forestry and land stewardship programs and the progress being made towards fulfilling the research, development and marketing programs called for in this section.

History: Laws 1987, ch. 43, § 4; 1993, ch. 299, § 3.

ANNOTATIONS

The 1993 amendment, effective April 7, 1993, rewrote this section to the extent that a detailed comparison is impracticable.

25-10-5. Penalty.

Any person who violates the provisions of the Pinon Nut Act or any regulation promulgated pursuant to that act is guilty of a misdemeanor and each violation shall constitute a separate offense.

History: Laws 1987, ch. 43, § 5.

ANNOTATIONS

Cross references. — For sentencing for misdemeanors, *see* 31-19-1 NMSA 1978.

ARTICLE 11
New Mexico Chile Advertising

25-11-1. Short title.

Chapter 25, Article 11 NMSA 1978 may be cited as the "New Mexico Chile Advertising Act".

History: Laws 2011, ch. 57, § 1; 2013, ch. 85, § 1; 2013, ch. 211, § 1.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, added the NMSA chapter and article for the New Mexico Chile Advertising Act; and at the beginning of the sentence, deleted "This act" and added "Chapter 25, Article 11 NMSA 1978".

Laws 2013, ch. 85, § 1 and Laws 2013, ch. 211, § 1, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 211, § 1. *See* 12-1-8 NMSA 1978.

25-11-2. Definitions.

As used in the New Mexico Chile Advertising Act:

A. "board" means the board of regents of New Mexico state university; and

B. "chile pepper" means the fruit from Capsicum annuum.

History: Laws 2011, ch. 57, § 2.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 57 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

25-11-3. Unlawful advertising, labeling or selling of non-New Mexico chile.

A. It is unlawful for a person to:

(1) knowingly advertise, describe, label or offer for sale chile peppers as New Mexico chile, or to advertise, describe, label or offer for sale a product as containing New Mexico chile, unless the chile peppers or chile peppers in the product were grown in New Mexico; or

(2) knowingly advertise, describe, label or offer for sale chile peppers, or a product containing chile peppers, using the name of any city, town, county, village, pueblo, mountain, river or other geographic feature or features located in New Mexico in a misleading or deceptive manner that states or reasonably implies that the chile peppers are, or the product contains, New Mexico chile, unless the chile peppers or chile peppers in the product were grown in New Mexico.

B. The prohibitions in this section do not apply to a person whose business name, brand name or trademark was used in advertising, product descriptions, labels or offers for sale and was established prior to the effective date of the New Mexico Chile Advertising Act; provided that, on and after July 1, 2013, the person, in all advertising, descriptions and labels containing that business name, brand name or trademark, shall include in a prominent location and in a prominent typeface a disclaimer stating "NOT GROWN IN NEW MEXICO" if the product contains chile peppers that were not grown in New Mexico.

C. The prohibitions in this section do not apply to a restaurant that describes a menu item using a geographic name provided for in Paragraph (2) of Subsection A of this section; provided that the origin of any chile in the menu item is not misrepresented.

History: Laws 2011, ch. 57, § 3; 2013, ch. 85, § 2; 2013, ch. 211, § 2.

ANNOTATIONS

The 2013 amendment, effective July 1, 2013, expanded violations of the act; provided exceptions to the application of the act; and added Paragraph (2) of Subsection A and Subsections B and C.

Laws 2013, ch. 85, § 2 and Laws 2013, ch. 211, § 2, both effective July 1, 2013, enacted identical amendments to this section. The section was set out as amended by Laws 2013, ch. 211, § 2. *See* 12-1-8 NMSA 1978.

25-11-4. Administration; audit; inspection.

A. The board may:

(1) enforce and administer the New Mexico Chile Advertising Act through the New Mexico department of agriculture; and

(2) promulgate rules, in consultation with the New Mexico chile industry, necessary for the administration of the New Mexico Chile Advertising Act.

B. Sales of twenty thousand pounds or less of chile peppers per calendar year by the person that grew the chile peppers are exempt from any recordkeeping requirement that the board may establish by rule. For the purposes of this subsection, "farmers' market" means a physical retail market open to the public at which farmers sell produce.

C. The New Mexico department of agriculture through its authorized inspectors or agents is authorized to:

(1) audit the purchase and sales records of a person dealing with the sale of chile peppers or products containing chile peppers that are advertised, described, labeled or offered for sale as New Mexico chile;

(2) enter, on a business day during the usual hours of business, a store, market or other business or place for the limited purpose of inspecting the establishment's records related to chile peppers or products containing chile peppers being advertised, described, labeled or offered for sale as New Mexico chile or as containing New Mexico chile; and

(3) issue stop-sale, use or removal orders with respect to any violation of the New Mexico Chile Advertising Act.

History: Laws 2011, ch. 57, § 4; 2013, ch. 85, § 3; 2013, ch. 211, § 3.

ANNOTATIONS

2013 Multiple Amendments. — Laws 2013, ch. 85, § 3 and Laws 2013, ch. 211, § 3 enacted different amendments to this section that can be reconciled. Pursuant to 12-1-8 NMSA 1978, Laws 2013, ch. 211, § 3, which was last signed by the governor, is set out above and incorporates both amendments. The amendments enacted by Laws 2013, ch. 85, § 3 and Laws 2013, ch. 211, § 3 are described below. To view the session laws in their entirety, *see* the 2013 session laws on *NMOneSource.com*.

The nature of the difference between the amendments is that Laws 2013, ch. 211, § 3 defined "farmers' market" in Subsection B and Laws 2013, ch. 85, § 5 did not.

Laws 2013, ch. 211, § 3, effective July 1, 2013, eliminated the authority of the board to issue cease and desist orders; authorized the department of agriculture to issue stop-sale, use or removal orders; provided exemptions from record keeping requirements; deleted former Paragraph (3) of Subsection A, which authorized the board to issue cease and desist orders; added Subsection B; and added Paragraph (3) of Subsection C.

Laws 2013, ch. 85, § 3, effective July 1, 2013, eliminated the authority of the board to issue cease and desist orders; authorized the department of agriculture to issue stop-sale, use or removal orders; provided exemptions from record keeping requirements; deleted former Paragraph (3) of Subsection A, which authorized the board to issue

cease and desist orders; added Subsection B; and added Paragraph (3) of Subsection C.

25-11-5. Injunction.

In addition to any other remedy under law, the board may apply to the district court for an injunction, and the district court may issue a temporary or permanent injunction, or both, restraining any person from violating or continuing to violate any of the provisions of the New Mexico Chile Advertising Act or any rule promulgated pursuant to that act by the board. In issuing an injunction on the application of the board, the court shall not require a bond.

History: Laws 2011, ch. 57, § 5.

ANNOTATIONS

Effective dates. — Laws 2011, ch. 57 contained no effective date provision, but, pursuant to N.M. Const., art. IV, § 23, was effective June 17, 2011, 90 days after the adjournment of the legislature.

ARTICLE 12
Homemade Food

25-12-1. Short title.

Sections 1 through 5 [25-12-1 to 25-12-5 NMSA 1978] of this act may be cited as the "Homemade Food Act".

History: Laws 2021, ch. 98, § 1.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 98, § 9 made Laws 2021, ch. 98, § 1 effective July 1, 2021.

25-12-2. Definitions.

As used in the Homemade Food Act:

A. "department" means the department of environment; provided that when a class A county and a home rule municipality that have established a combined local health department pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] for the purpose of local health regulation, "department" means the combined local health department;

B. "homemade food item" means a food item or non-alcoholic beverage that is produced at the private farm, ranch or residence of a processor, including homemade food items that are packaged at the processor's private farm, ranch or residence;

C. "label" means a display of written, printed or graphic matter upon the immediate container of any article;

D. "not time and temperature control" refers to food items that do not require time and temperature control to ensure safety;

E. "person" includes an individual, partnership, corporation and association;

F. "processor" means a person who produces a homemade food item;

G. "seller" means a person who sells a not-time-and-temperature-control homemade food item to a consumer;

H. "time and temperature control" means a control requirement for certain foods to ensure safety and limit pathogenic microorganism growth; and

I. "to produce" means to prepare a homemade food item by baking, cooking, cutting, dehydrating, drying, fermenting, growing, mixing, preserving, raising or other process designated by the environmental improvement board by rule.

History: Laws 2021, ch. 98, § 2.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 98, § 9 made Laws 2021, ch. 98, § 2 effective July 1, 2021.

25-12-3. Homemade food items; licensing, permitting, inspection and labeling exemptions; requirements; investigations.

A. The production and sale of homemade food items shall be regulated pursuant to the provisions of the Homemade Food Act and are exempt from other requirements pursuant to the Food Service Sanitation Act [Chapter 25, Article 1 NMSA 1978] and the New Mexico Food Act [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978]; provided that:

(1) the food items are not-time-and-temperature-control food items;

(2) the seller sells directly to consumers within the state, including at farmers' markets, at festivals, on the internet, at roadside stands, at the seller's home for pick-up or delivery or through mail delivery;

(3) the seller completes a food handler certification course approved by the department;

(4) the seller maintains a sanitary kitchen, practices good hygiene, protects the kitchen from rodents and pests and keeps pets and children out of the kitchen while producing food;

(5) if the seller transports food items pursuant to the Homemade Food Act, the seller ensures that the food is transported in a sanitary manner and is protected from pets, children and other hazards; and

(6) the seller labels or otherwise provides to the consumer the information required by Subsection C of this section.

B. A seller shall provide to the consumer the information required by Subsection C of this section in the following manner:

(1) on a label affixed to a package of a homemade food item when the package is the unit of sale;

(2) on a label affixed to a container when the homemade food item is offered for sale from a bulk container;

(3) on a placard displayed at the point of sale when the homemade food item is neither packaged nor offered for sale from a bulk container;

(4) on a webpage on which the homemade food item is offered for sale; and

(5) when a homemade food item is sold by telephone or custom order, a label is not required for the homemade food item; however, the seller shall disclose to the consumer that the homemade food item is produced at a private residence that is exempt from state licensing and inspection and may contain allergens.

C. A seller shall provide the following information about the seller's homemade food items to the consumer:

(1) the name, home address, telephone number and email address of the processor of the food item;

(2) the common or usual name of the food item;

(3) the ingredients of the food item in descending order of predominance; and

(4) the following statement: "This product is home produced and is exempt from state licensing and inspection. This product may contain allergens.".

D. A seller shall have the information required by Subsection C of this section readily available and shall provide it to a consumer upon request.

E. The department may operate a voluntary permit system for the sale of homemade food items. A seller may apply for such a permit from the department.

F. A class A county and a home rule municipality that have established a combined local health department pursuant to the Joint Powers Agreements Act [11-1-1 to 11-1-7 NMSA 1978] for the purpose of local health regulation may operate a mandatory or a voluntary permit system for the sale of homemade food items within the jurisdictions of the respective county and municipality; provided that such permit system allows the sale of all food items at all locations authorized by the Homemade Food Act.

G. The department shall enforce the Homemade Food Act and may investigate any suspected food-borne illness or stop the sale of any suspected contaminated foods; provided that the department shall first issue a written warning regarding any violation before imposing a fine. Failure to comply with a written warning shall be a misdemeanor, and upon conviction the violator shall be subject to a fine not to exceed one hundred dollars ($100) per violation.

History: Laws 2021, ch. 98, § 3.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 98, § 9 made Laws 2021, ch. 98, § 3 effective July 1, 2021.

25-12-4. Interpretation of act; consultations.

No provision of the Homemade Food Act shall be construed so as to:

A. preclude the department from providing assistance, consultation or inspection at the request of the processor of a homemade food item;

B. preclude the production or sale of homemade food items otherwise allowed by law;

C. change the regulation of other goods and services where homemade food items are also produced or sold;

D. exempt sellers from applicable business registration or tax law;

E. require private farmers' markets or other private venues to allow the sale of homemade foods; or

F. conflict with federal law.

History: Laws 2021, ch. 98, § 4.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 98, § 9 made Laws 2021, ch. 98, § 4 effective July 1, 2021.

25-12-5. State preemption.

Except as otherwise provided in the Homemade Food Act, a political subdivision of the state, including a home rule municipality, or an institution of the state shall not adopt a law, policy or resolution that regulates or attempts to regulate the production or sale of homemade food items.

History: Laws 2021, ch. 98, § 5.

ANNOTATIONS

Effective dates. — Laws 2021, ch. 98, § 9 made Laws 2021, ch. 98, § 5 effective July 1, 2021.