

# CHAPTER 25

## Food

### ARTICLE 1

#### Food Service Sanitation

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#### 25-1-1. Short title.

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

#### 25-1-2. Definitions.

As used in the Food Service Sanitation Act [this article]:

- 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.

### **25-1-3. Purpose.**

The purpose of the Food Service Sanitation Act [this article] 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.

### **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 agency;
- (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;

B. the issuance, suspension and revocation of permits required under the Food Service Sanitation Act [this article], which regulations shall provide for prior notice to and a hearing for any applicant for or holder of a permit when the agency-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 agency 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.

### **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 sched-

ule 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 food service sanitation fund.

### **25-1-5.1. Food service sanitation fund.**

The "food service sanitation fund" is created in the state treasury, and money in the fund is subject to appropriation by the legislature to the department of environment for the purpose of paying the costs of administering regulations promulgated by the board to carry out the provisions of the Food Service Sanitation Act.

### **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 [this article] 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.

### **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 [this article] 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.

**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 [this article] 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.

**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.

**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 [this article], 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.

**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.

**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 [this article] 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.

**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.

**25-1-14. Repealed.**

## ARTICLE 2

### Adulterated or Misbranded Food

<p>Sec. 25-2-1. Title of act. 25-2-2. Definitions. 25-2-3. Prohibited acts. 25-2-4. Power to enjoin violations. 25-2-5. Penalties; exceptions. 25-2-6. Detention of food believed adulterated or misbranded; condemnation; destruction or correction of defect. 25-2-7. Attorney general or district attorney to institute prosecution; right to hearing before director prior to criminal prosecutions. 25-2-8. Minor violations of act; warning authorized. 25-2-9. Promulgation of definitions and standards by the board. 25-2-10. When food deemed adulterated. 25-2-11. When food deemed misbranded.</p>	<p>Sec. 25-2-12. Manufacturing, packing and processing permits for certain classes of food; suspension; inspections. 25-2-13. Promulgating regulations governing the addition of any poisonous or deleterious substances in food. 25-2-14. When advertising deemed false. 25-2-15. Promulgating regulations; procedure. 25-2-16. Power to make inspections and secure samples. 25-2-17. Power of director to publish reports and disseminate information. 25-2-18. Personnel. 25-2-19. New Mexico public health laboratory to serve as testing laboratory. 25-2-20. Dairy establishments exempt.</p>
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#### 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.

#### 25-2-2. Definitions.

For the purpose of the New Mexico Food Act [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978]:

- 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.

### **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].

### **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.

**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 [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978], 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.

**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 [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978], 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.

**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 [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978] 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.

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

Nothing in the New Mexico Food Act [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978] 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.

**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.

**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.

## **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 [25-2-9 NMSA 1978], 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.

### **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.

### **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.

### **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.

### **25-2-15. Promulgating regulations; procedure.**

A. The authority to promulgate regulations for the efficient enforcement of the New Mexico Food Act [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978] 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.

### **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 [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978] 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.

### **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 [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978], 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.

### **25-2-18. Personnel.**

The division shall employ such personnel for the administration and enforcement of the provisions of the New Mexico Food Act [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978], in the same manner that other public health personnel are now employed, as may be necessary and required.

### **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 NMSA 1978].

### **25-2-20. Dairy establishments exempt.**

The purposes and provisions of the New Mexico Food Act [25-2-1 to 25-2-19 and 25-2-20 NMSA 1978] shall not apply to dairy establishments.

## ARTICLE 5

### Flour and Bread

Sec.

25-5-1. Definitions.

25-5-1.1. Short title.

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

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

Sec.

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

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

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

25-5-7. Publication of regulations.

25-5-8. Inspection by director.

25-5-9. Penalty.

#### 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 semibread 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 manufacturer or sale of flour, white bread or rolls.

#### 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."

#### 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 certificates to use or resell the flour so purchased in any manner other than as prescribed in this section.

### **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).

### **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 [25-5-1 to 25-5-9 NMSA 1978] and rules, regulations and orders of the board promulgated pursuant to the Flour and Bread Act.

### **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 [25-5-1 to 25-5-9 NMSA 1978], 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.

### **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 [25-5-1 to 25-5-9 NMSA 1978], 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.

### **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.

### **25-5-8. Inspection by director.**

For the purpose of the Flour and Bread Act [25-5-1 to 25-5-9 NMSA 1978], 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.

### **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.