

FOOD SAFETY
State and Federal Standards and Regulations

New Mexico

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NEW MEXICO

New Mexico regulates the safety of food by the “New Mexico Food Act.”¹⁸¹⁴ “Food” is defined as articles used for food or drink for man or animals; chewing gum; and articles used for components of such for man or animals.¹⁸¹⁵

Prohibited Acts¹⁸¹⁶

New Mexico prohibits:

- ! the manufacture, sale or delivery, holding or offering for sale of any food that is adulterated or misbranded;
- ! the adulteration or misbranding of any food;
- ! the receipt in commerce of any adulterated or misbranded food and the delivery or proffered delivery of that food for pay or otherwise;
- ! the sale, delivery for sale, holding for sale or offering for sale of any article of food that has been suspended because of contamination;
- ! the dissemination of false advertising;
- ! refusing to permit entry or inspection or the authorized taking of samples;
- ! removal or disposal of detained or embargoed food;
- ! alteration, mutilation, destruction, obliteration or removal of all or a part of the label on a food product when doing so results in the food being misbranded;
- ! forging, counterfeiting, simulating or falsely representing any mark made by the

¹⁸¹⁴ N.M. STAT. ANN. § 25-2-1 *et seq.* (Michie 1993).

¹⁸¹⁵ § 25-2-2.

¹⁸¹⁶ § 25-2-3 *et seq.*

secretary of the environmental improvement board or his agent.¹⁸¹⁷

Penalties

Violators of the provisions of the New Mexico Food Act are subject to both civil and criminal penalties. Excepted from prosecution are good faith possessors and the media.¹⁸¹⁸

Adulteration

Food is considered adulterated when:

- (1) it bears or contains any poisonous or deleterious substance which may render it injurious to health except for non-added substances which are present in such a small quantity that it does not ordinarily render that food injurious to health;
- (2) it bears or contains any added poisonous or added deleterious substance which is unsafe as specified in N.M. STAT. ANN. § 25-2-13;
- (3) 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;
- (4) 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;
- (5) 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;
- (6) the container is rendered injurious to health by being composed, in whole or part,

¹⁸¹⁷ § 25-2-3.

¹⁸¹⁸ § 25-2-5.

- of any poisonous or deleterious substance;
- (7) any valuable constituent was omitted or abstracted from the food in whole or in part;
 - (8) any substance has been substituted in any amount;
 - (9) damage or inferiority was concealed in any way;
 - (10) any unauthorized alcohol or nonnutritive substance except harmless coloring was added; or
 - (11) it contains a coal-tar color that has not been approved by the federal Food, Drug and Cosmetic Act.¹⁸¹⁹

Misbranded

Food is misbranded when:

- (1) its label is false or misleading in any way;
- (2) it is offered for sale under the name of another food;
- (3) it is an imitation of another food unless it is labeled prominently as an imitation;
- (4) its container is made to be misleading; or
- (5) it does not comply with other labeling requirements found in N.M. STAT. ANN. § 25-2-1 *et seq.*¹⁸²⁰

Food Additives - Tolerances

Any poisonous or deleterious substance, food additive, pesticide chemical or color additive must be regulated in quantity use or intended use. The environmental improvement

¹⁸¹⁹ § 25-2-10.

¹⁸²⁰ § 25-2-11.

board (board) has the authority to set tolerance levels for the aforementioned substances. To set the levels, the board considers, all pertinent information regarding the composition of the substance, the probable composition of any substance formed in or on a food resulting from the use of the substance, the probable consumption of the substance, availability of any need practical methods used to determine the identity or quantity of the substance and its possible impurities, and facts supporting the suggested useful purpose of the substance.¹⁸²¹

Inspections

The State Department of Health may inspect any factory, warehouse, or establishment where food is manufactured, processed, packed, or held for introduction into commerce at all reasonable hours. The department may also enter into any vehicle being used to transport or hold such food to inspect and/or secure samples or specimens after paying or offering to pay for such samples.¹⁸²²

Publication

The board may publish reports summarizing all judgements, decrees, and court orders rendered under the Act. Furthermore, the board can disseminate other information regarding food that it deems necessary in the interest of public health to protect consumers from fraud.¹⁸²³

Imported Meat Act

The definition of “imported meat” is all fresh, frozen, cured, canned or processed meat which has originated without the continental boundaries of the United States, with the exception

¹⁸²¹ § 25-2-13.

¹⁸²² § 25-2-16.

¹⁸²³ § 25-2-17.

of Alaska, Hawaii, Puerto Rico and the Virgin Islands, but does not mean fish or poultry. This act covers the aforementioned meat that is sold or offered for sale including advertising for sale or display.¹⁸²⁴

Under the act, no one may knowingly sell or offer for sale in New Mexico, any imported meat without first extensively labeling that meat as imported.¹⁸²⁵ Failure to so label will cause the meat to be considered misbranded in violation of the Imported Meat Act.¹⁸²⁶ A violation of the Imported Meat Act is a misdemeanor with exceptions made for good faith violators possessing a guaranty.¹⁸²⁷

Meat Inspection Act

Under the Meat Inspection Act, a meat is considered adulterated if:

- (1) it bears or contains any poisonous or deleterious substance which may render it injurious to health unless the quantity of that substance is insufficient to ordinarily render it injurious to health;
- (2) it bears or contains any added poisonous or added deleterious substance except a pesticide used in agriculture, a food additive, or a safe color additive;
- (3) it is a raw agricultural commodity containing or bearing an unsafe pesticide chemical;
- (4) it is a food additive that is unsafe according to the Federal Food, Drug and

¹⁸²⁴ § 25-3-2.

¹⁸²⁵ § 25-3-3.

¹⁸²⁶ § 25-3-4.

¹⁸²⁷ § 25-3-5.

Cosmetic Act;

- (5) it consists in whole or part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome or otherwise unfit for human food;
- (6) it has been prepared, packed, or held under unsanitary conditions that made it become contaminated with filth or rendered injurious to health;
- (7) it comes from an animal or an animal, including poultry, that died by some other way than slaughter;
- (8) its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the food injurious to health;
- (9) it has been intentionally subjected to radiation which was not in conformity with a regulation or federal law;
- (10) any valuable constituent of the food has been omitted or abstracted from the food in whole or in part;
- (11) any part of the food has been substituted in whole or part;
- (12) any damage to the food or inferiority has been concealed in any manner; or
- (13) it is margarine containing animal fat and any of the raw material used therein consisted in whole or in part of any filthy, putrid or decomposed substance.¹⁸²⁸

Under the Meat Inspection Act, a meat is considered misbranded if:

- (1) its label is false or misleading in any particular;
- (2) it is offered for sale under the name of another food;

¹⁸²⁸ § 25-3-7(I).

- (3) it is an imitation of another food unless labeled as such;
- (4) its container is so made, formed, or filled as to be misleading;
- (5) in package form it is not labeled according to specific guidelines;
- (6) it is labeled in such a way as to be misunderstood by the ordinary individual under customary conditions of purchase and use;
- (7) it purports to be a food that has been designated with a standard of identity unless it conforms to that standard;
- (8) it does not conform to set standards of quality or of fill of container but is labeled as such designated foods;
- (9) the food is not designated with a standard of identity, then it is misbranded unless labeled with the common or usual name of the food with the common or usual name of the ingredients; or
- (10) it does not bear the official inspection legend and establishment number of the place it was prepared and any other information required by the New Mexico livestock board.¹⁸²⁹

Meat must be labeled with inspection stamps and establishment numbers containing the phrase either "New Mexico Inspected and Passed" or "New Mexico Inspected and Condemned."¹⁸³⁰ Slaughtering establishments must notify inspectors of their hours of slaughter so that inspectors may be present during all periods of slaughter. In fact, no establishment may

¹⁸²⁹ § 25-3-7(J).

¹⁸³⁰ § 25-3-9.

slaughter any poultry, cattle, sheep, swine or goats unless an inspector is present.¹⁸³¹ All animals must be inspected before slaughter and then again after slaughter.¹⁸³² Inspectors must condemn all diseased or unfit carcasses which will be removed from the slaughtering department and then destroyed for food purposes. Appeals of condemnation can be made to the chief veterinary meat inspector or any designated veterinarian.¹⁸³³

Prohibited Acts under the Meat Inspection Act

The Meat Inspection Act makes it a misdemeanor to:

- (1) slaughter any livestock, poultry or prepare any livestock products or poultry products for human consumption except in compliance with the Meat Inspection Act;
- (2) sell or transport any adulterated, misbranded, condemned or uninspected meats, livestock products or poultry products;
- (3) falsely represent that any article has been inspected and passed or is exempted under the Meat Inspection Act or knowingly make any false statement in any certificate provided for by board regulation;
- (4) sell or transport any slaughtered poultry from which the blood, feathers, feet, head or viscera have not been removed;
- (5) fail to keep any records required by the Meat Inspection Act;
- (6) forge, change, detach or use without authorization or fail to use any official

¹⁸³¹ § 25-3-10.

¹⁸³² § 25-3-11.

¹⁸³³ § 25-3-12.

certificate, mark or device required by the Meat Inspection Act or knowingly possess any counterfeit certificate, mark or device or carcass bearing such counterfeit certification;

- (7) sell or transport any equine carcass or parts thereof unless they are conspicuously marked or otherwise identified to show the kind of animal from which they were derived;
- (8) buy, sell or transport any livestock products or poultry products not intended for human food unless they are naturally inedible by humans or are denatured or identified as required by board regulation; or
- (9) engage in the business of buying, selling or transporting dead, dying, disabled or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter or products thereof unless in accordance with board regulations to prevent the carcasses or products from being used for human food purposes.¹⁸³⁴

Exemptions

Persons who slaughter, prepares or processes livestock or poultry for their own personal household uses are exempted from criminal prosecution. Further, persons transporting dead, dying, disabled or diseased animals or poultry to treatment or disposal in a way that prevents the animals or poultry from being used as human food are also exempt.¹⁸³⁵ Cooperation with the inspection process is required.¹⁸³⁶ Interference with inspection is punishable as a

¹⁸³⁴ § 25-3-15 (Supp. 1997).

¹⁸³⁵ § 25-3-16 (1993).

¹⁸³⁶ § 25-3-18.

misdemeanor.¹⁸³⁷ An appeals process for individuals whose licenses have been revoked is set forth in detail in the statutes.¹⁸³⁸

Flour and Bread Act

All flour, bread and rolls must be enriched with proscribed vitamins and minerals.¹⁸³⁹ Failure to comply subjects the violator to up to a \$500.00 fine or imprisonment of up to 90 days.¹⁸⁴⁰

Egg Grading Act

The Egg Grading Act is designed to protect consumers from unsafe eggs by regulating persons, firms and corporations from possessing with intent to sell or selling eggs unfit for human food, unless those eggs are broken and then denatured. Eggs are unsafe if they are: addled or white rot; moldy; black rot; blood ring; stuck yolk; sour; green whites; musty; or incubator reject eggs.¹⁸⁴¹ Eggs must be graded and labeled according to named specifications based on standards set by the board of regents of the New Mexico Department of Agriculture using standards close to those set by the U.S.D.A.¹⁸⁴² Small producers are exempted from grading if their eggs are sold as ungraded.¹⁸⁴³ Eggs that fail inspection may be seized by the

¹⁸³⁷ § 25-3-17.

¹⁸³⁸ § 25-3-19.

¹⁸³⁹ §§ 25-5-2, 25-5-3.

¹⁸⁴⁰ § 25-5-9.

¹⁸⁴¹ § 25-6-3.

¹⁸⁴² § 25-6-5.

¹⁸⁴³ § 25-6-6.

department.¹⁸⁴⁴ Civil and criminal penalties may ensue.¹⁸⁴⁵

Dairy Act

The New Mexico Dairy Act is administered and enforced by the board of regents of New Mexico State University.¹⁸⁴⁶ That board determines the standards of equipment and the methods of testing for milk and dairy products to determine quality.¹⁸⁴⁷ The Dairy Act makes it illegal to sell or offer for sale any adulterated or mislabeled milk or dairy product. Milk or dairy products are considered adulterated if they contain any unwholesome substance or fail to conform in physical or chemical composition to established definitions or standards. Mislabeled product are also considered adulterated. The New Mexico department of agriculture may issue stop-sale orders for any adulterated or mislabeled milk or dairy product.¹⁸⁴⁸ Violation of the Dairy Act subjects the violator to criminal monetary penalties.¹⁸⁴⁹

New Mexico Dairy Product Act

Dairy establishments are prohibited from:

- (1) the manufacture, sale or delivery or holding or offering for sale of any dairy product that is adulterated or misbranded;
- (2) the adulteration or misbranding of any dairy product;
- (3) the receipt in commerce of any dairy product that is adulterated or misbranded and

¹⁸⁴⁴ § 25-6-15.

¹⁸⁴⁵ § 25-6-16.

¹⁸⁴⁶ § 25-7-3.

¹⁸⁴⁷ § 25-7-4.

¹⁸⁴⁸ § 25-7-6.

¹⁸⁴⁹ § 25-7-8.

delivery or proffered delivery of the adulterated or misbranded dairy product for pay or otherwise;

- (4) the sale, delivery for sale, holding for sale or offering for sale of any product from a facility that is not legally permitted or product that has been condemned;
- (5) the dissemination of any false advertisement related to a dairy product;
- (6) the refusal to permit entry or inspection or to permit the taking of a sample of a dairy product;
- (7) the giving of a guarantee or undertaking, which is false, except by a good faith receiver;
- (8) the removal or disposal of a detained or embargoed dairy product without permission of the department;
- (9) the alteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of, or the doing of any other act the 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; or
- (10) forging, counterfeiting, simulating or falsely representing or without proper authority using any mark, stamp, tag, label or other identification devise authorized or required by regulations.¹⁸⁵⁰

The New Mexico department of agriculture may attain temporary or permanent injunctions restraining individuals from violating the Dairy Act.¹⁸⁵¹ The board of regents may

¹⁸⁵⁰ § 25-7A-3.

¹⁸⁵¹ § 25-7A-4.

establish administrative penalties for violations within certain guidelines. Excepted from the prohibitions are the media so long as they share information regarding the wrongdoers.¹⁸⁵²

When the Director of Agriculture has probable cause to believe that any dairy product in a dairy establishment is adulterated or misbranded, the product will be marked as suspect and then detained or embargoed. An appeals process is set forth in the statute. Failing to or failure to appeal, the adulterated or misbranded product must be destroyed at the expense of the violator and under the supervision of the director.¹⁸⁵³ For minor violations, the director may authorize written notices or warnings instead.¹⁸⁵⁴

Dairy products are considered adulterated if:

- (1) it bears or contains any poisonous or deleterious substance which may render it injurious to health unless the quantity of that substance is insufficient to ordinarily render it injurious to health;
- (2) it bears or contains any added poisonous or added deleterious substance, except a pesticide used in agriculture, a food additive, or a safe color additive;
- (3) it consists in whole or part of a diseased, contaminated, filthy, impure or infested ingredient, putrid or decomposed substance or is otherwise unfit for human food;
- (4) it has been produced, prepared, packed, or held under unsanitary conditions that made it become contaminated with filth or rendered diseased, unwholesome or injurious to health;

¹⁸⁵² § 25-7A-5.

¹⁸⁵³ § 25-7A-6.

¹⁸⁵⁴ § 25-7A-8.

- (5) it comes from an animal or an animal that died by some other way than slaughter or has fed on the uncooked offal from a slaughterhouse;
- (6) its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the food injurious to health;
- (7) any valuable constituent of the food has been omitted or abstracted from the food in whole or in part;
- (8) any part of the food has been substituted in whole or part; or
- (9) any damage to the food or inferiority has been concealed in any manner.¹⁸⁵⁵

A dairy product is considered misbranded if:

- (1) its label is false or misleading in any particular manner;
- (2) it is offered for sale under the name of another dairy product;
- (3) it is an imitation of another dairy product unless labeled as such;
- (4) its container is so made, formed, or filled as to be misleading;
- (5) in package form and it is not labeled according to specific guidelines;
- (6) it is labeled in such a way as to be misunderstood by the ordinary individual under customary conditions of purchase and use;
- (7) it purports to be or is a dairy product that has been designated with a definition and a standard of identity, unless it conforms to that definition and standard;
- (8) it does not conform to set standards of quality or of fill of container but is labeled as such designated dairy products; or
- (9) the food is not designated with a standard of identity, unless labeled with the

¹⁸⁵⁵ § 25-7A-10.

common or usual name of the dairy product with the common or usual name of the ingredients.¹⁸⁵⁶

The board can limit the introduction of poisonous or deleterious substances in a dairy product as it sees fit when the substance cannot be avoided by good manufacturing practice.¹⁸⁵⁷

The Director of Agriculture shall have free access to enter any dairy establishment or vehicle used to transport dairy product during all reasonable hours for the purpose of inspection. The director may also secure samples of the products for testing.¹⁸⁵⁸ The director further may publish reports summarizing judgements and decrees.¹⁸⁵⁹

¹⁸⁵⁶ § 25-7A-11.

¹⁸⁵⁷ § 25-7A-12.

¹⁸⁵⁸ § 25-7A-16.

¹⁸⁵⁹ § 25-7A-17.