ARTICLE 7A
Dairy Products

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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.

As used in the New Mexico Dairy Product Act [25-7A-1 to 25-7A-19 NMSA 1978]:

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.

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 [25-7A-1 to 25-7A-19 NMSA 1978].

History: Laws 1993, ch. 188, § 3.

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

In addition to the other remedies provided in the New Mexico Dairy Product Act [25-7A-1 to 25-7A-19 NMSA 1978], 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.


25-7A-5. Penalties; exceptions.

A. The board shall establish a system of administrative penalties for violations of the New Mexico Dairy Product Act [25-7A-1 to 25-7A-19 NMSA 1978]. 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.

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 [25-7A-1 to 25-7A-19 NMSA 1978], 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.

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 [25-7A-1 to 25-7A-19 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 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.

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

Nothing in the New Mexico Dairy Product Act [25-7A-1 to 25-7A-19 NMSA 1978] 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.

**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.

**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;

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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.

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
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.

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.

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
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.


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.
The authority to promulgate regulations after public hearing for the efficient enforcement of the New Mexico Dairy Product Act [25-7A-1 to 25-7A-19 NMSA 1978] is vested in the board. The board is authorized to make the regulations promulgated under the federal act.

History: Laws 1993, ch. 188, § 15.

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 [25-7A-1 to 25-7A-19 NMSA 1978] 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.

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 [25-7A-1 to 25-7A-19 NMSA 1978], 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.

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.

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 [25-7A-1 to 25-7A-19 NMSA 1978].

History: Laws 1993, ch. 188, § 19.