

CHAPTER 25

Food

ARTICLE 1

Food Service Sanitation

Section	
25-1-1	Short title. (1989)
25-1-2	Definitions. (1997)
25-1-3	Purpose. (1977)
25-1-4	Board; powers and duties. (2011)
25-1-5	Optional powers. (2005)
25-1-5.1	Food service sanitation fund. (2005)
25-1-6	Agency; powers and duties. (1977)
25-1-7	Permits; permit required; application; revocation; suspension. (1985)
25-1-8	Inspection by agency. (1977)
25-1-9	Immediate suspension of permit by agency. (1977)
25-1-10	Proceeding under New Mexico Food Act authorized when adulterated or misbranded food found during inspection. (1977)
25-1-11	Judicial review of board and division actions. (1999)
25-1-12	Enforcement. (1977)
25-1-13	Disease control. (1977)
25-1-14	Repealed. (1989)
25-1-15	Pet dogs in outdoor dining areas; requirements. (2011)

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:

- 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 division;
 - (5) control of pests and infestation by pests;
 - (6) lavatory and toilet facility placement and sanitation;
 - (7) lavatory hygiene;
 - (8) food equipment and utensil design and construction;
 - (9) food equipment and utensil storage and handling;
 - (10) liquid and solid waste disposal;

- (11) food and drink preparation, handling, display and storage;
 - (12) food service establishment ventilation;
 - (13) water supply;
 - (14) itinerant food service establishment construction and operation; and
 - (15) any other facet of food service operations that reasonably may be considered to pose an existing or potential hazard to the health of the consuming public; provided that no regulation shall prohibit food service establishments from allowing pet dogs in designated outdoor dining areas;
- B. the issuance, suspension and revocation of permits required under the Food Service Sanitation Act, which regulations shall provide for prior notice to and a hearing for any applicant for or holder of a permit when the division-proposed action is to deny an application for or suspend or revoke a permit, except in those specified instances under the provisions of the Food Service Sanitation Act when the division is authorized to take any of the foregoing actions without prior notice and hearing; and
- C. establishing requirements for inspections of food service establishments, which shall include provisions for inspections at a frequency of at least once every twelve months.

25-1-5. Optional powers.

- A. The board may establish a system of grading food service establishments for the purpose of certifying compliance with the Food Service Sanitation Act and regulations requiring food service establishments to display in a designated manner a grade as notice of compliance to the public. Such regulations shall include provisions for the revocation and reinstatement of the permit that are consistent with due process of law.
- B. The board shall establish a schedule of fees for the issuance and renewal of permits issued by the division under the Food Service Sanitation Act. The board shall set the schedule of fees so that no fee established by such schedule shall be less than one hundred dollars (\$100) or more than two hundred dollars (\$200) annually for a food service establishment with not more than a twenty-five-dollar (\$25.00) incremental increase per fiscal year. The board shall establish a separate schedule of fees not to exceed twenty-five dollars (\$25.00) per single event or celebration per temporary food service establishment. Fees shall be waived for all temporary non-potentially hazardous food service operations, for any temporary food service establishment operating no more than two calendar days in any calendar month and for any food service establishment that provides food to the general public at no charge. Fees collected for the issuance and renewal of permits pursuant to the Food Service Sanitation Act shall be deposited in the 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.

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

- A. A food service establishment may allow pet dogs in designated outdoor dining areas of the establishment if the following requirements are met:
- (1) no pet dog shall be allowed in any area where food is prepared;
 - (2) patrons shall keep their pet dogs on a leash at all times and keep their pet dogs under reasonable control;
 - (3) pet dogs shall not be allowed on chairs, tables or other furnishings; and
 - (4) a sign or signs shall be posted to place the public on notice that the designated outdoor dining area is available for the use of patrons with pet dogs. Signs shall be at a minimum eight and one-half inches by eleven inches in size and use type that is uniform in size and no smaller than necessary to fill the sign to within two inches of the borders. The signs shall contain language reasonably designed to inform the public that dogs are permitted and may be present. Signs shall be posted prominently and be easily visible in both the area where dogs are permitted and at the entrance of the establishment. The board shall promulgate by rule the specific language to be included in the signs pursuant to Section 74-1-9 NMSA 1978.
- B. Employees shall:
- (1) wash their hands immediately after touching, petting or otherwise handling pet dogs; and
 - (2) immediately clean up accidents involving pet waste and sanitize the area.
- C. A food service establishment may in its discretion prohibit pet dogs in outdoor dining areas. If a food service establishment allows pet dogs in a designated outdoor dining area, the food service establishment shall have the right to refuse to serve the owner of a pet dog if the owner fails to exercise reasonable control over the pet dog or the pet dog is otherwise behaving in a manner that compromises or threatens to compromise the health or safety of any person present in the restaurant.