

# Dairy Establishment Sanitation Act

## Chapter 25-7B

### 25-7B-1. Short title.

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

### 25-7B-2. Purpose.

The purpose of the Dairy Establishment Sanitation Act [25-7B-1 to 25-7B-11 NMSA 1978] is to protect the public health by establishing standards and provisions for the regulation of dairy establishments and by appropriate delegations of authority to the department to adopt and enforce regulations covering the environmental health aspects of dairy establishments to assure that consumers are not exposed to adverse environmental health conditions arising out of the operations of dairy establishments.

### 25-7B-3. Definitions.

As used in the Dairy Establishment Sanitation Act [25-7B-1 to 25-7B-11 NMSA 1978]:

- A. "board" means the board of regents of New Mexico state university;
- B. "dairy establishment" means a milk producing or milk processing facility;
- C. "dairy product" means milk, whether fluid, dried, evaporated, stabilized, condensed or otherwise processed, cream, milk products, ice cream, frozen custard, French custard, ice milk, frozen dessert or any other food product derived principally from milk;

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

E. "director" means the director of agriculture;

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

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

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

The board shall promulgate procedural and substantive regulations to provide:

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

(1) disease control;

(2) employee hygiene and sanitation at dairy establishments;

(3) dairy establishment premises sanitation;

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

- (5) control of pests and infestation by pests at dairy establishments;
- (6) lavatory and toilet facility placement and sanitation at dairy establishments;
- (7) lavatory hygiene at dairy establishments;
- (8) dairy equipment and utensil design and construction at dairy establishments;
- (9) dairy equipment and utensil storage and handling at dairy establishments;
- (10) dairy establishment ventilation; and
- (11) any other facet of dairy establishment operations that reasonably may be considered to pose an existing or potential hazard to the health of the consuming public;

B. the issuance, suspension and revocation of permits required under the Dairy Establishment Sanitation Act [25-7B-1 to 25-7B-11 NMSA 1978], which regulations shall provide for prior notice to and a hearing for any applicant for or holder of a permit when the department-proposed action is to deny an application for or suspend or revoke a permit, except in those specified instances under the provisions of the Dairy Establishment Sanitation Act when the department is authorized to take any of the foregoing actions without prior notice and hearing;

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

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

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

A. The department is authorized and has the duty to execute any provisions of the Dairy Establishment Sanitation Act [25-7B-1 to 25-7B-11 NMSA 1978] delegated to it under that act and specifically is directed to administer and enforce the provisions of regulations adopted pursuant to that act.

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

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

A. No person may operate a dairy establishment unless he possesses a valid and unsuspended permit issued by the department in accordance with the Dairy Establishment Sanitation Act [25-7B-1 to 25-7B-11 NMSA 1978] and the regulations adopted pursuant to that act. The permit shall be posted in a conspicuous place within the dairy establishment. No person may display a permit unless it has been issued to him by the department and has not been revoked and is not under suspension.

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

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

basis for suspension or revocation.

#### 25-7B-7. Inspection by department.

A. The department shall inspect dairy establishments to determine compliance or lack of compliance with the Dairy Establishment Sanitation Act [25-7B-1 to 25-7B-11 NMSA 1978] and regulations of the department. The procedures for inspection shall be in accordance with regulations of the department. Upon request by the department to a dairy establishment operator or to his employee or agent, he shall permit the department official, upon proper identification, to enter the premises, inspect all parts of the premises and inspect and copy any records of purchases by the dairy establishment. The operator or his employee or agent shall be given an opportunity to accompany the department official on his inspection and, as soon as possible after the inspection, a report of the inspection shall be furnished to him. Refusal to allow an inspection of a dairy establishment is grounds for revocation of the permit of the operator, provided that the department official has tendered proper identification prior to the refusal.

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

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

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

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

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

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

A. The department may seek relief in district court to enjoin the operation of any dairy establishment not complying with the Dairy Establishment Sanitation Act [25-7B-1 to 25-7B-11 NMSA 1978] or any regulation adopted under that act.

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

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

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

25-7B-11. Disease control.

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