

SEVENTH CONGRESS OF THE FEDERATED STATES OF MICRONESIA

FIRST REGULAR SESSION, 1991

CONGRESSIONAL BILL NO. 7-46, C.D.1, C.D.2

PRESIDENTIAL COMM. NO. 7-395
FSM CONGRESS

Public Law No. 7 - 116

AN ACT

To protect the public health with regard to food, to protect against fraud, to establish minimum standards and help insure the safety and merchantability of food products for import or export which are sold in interstate and foreign commerce, and for other purposes.

BE IT ENACTED BY THE CONGRESS OF THE FEDERATED STATES OF MICRONESIA:

1 Section 1. Title. This act shall be known and cited as the
2 National Food Safety Act.

3 Section 2. Purpose and intent. It is the policy of the
4 National Government to assist in the protection of the public from
5 consuming imported food that is adulterated or mislabeled, and to
6 assist efforts by the States to accomplish this objective. It is
7 also the policy of the National Government to ensure that food
8 exported out of the Federated States of Micronesia is safe and of
9 the highest quality. The Secretary of the Department of Health
10 Services shall cooperate with the appropriate State department or
11 agency in administering a food safety program furthering the stated
12 purposes of this act. If a State has enacted and is implementing
13 food safety standards covering the areas of labeling, packaging,
14 sanitation, food inspection for purity, quality and fitness for human
15 consumption, and other areas of food safety covered by this act, the
16 State has only to meet the minimum standards set forth in this act
17 and the regulations promulgated pursuant to this act. If a State has
18 not enacted or implemented food safety standards, the National
19 Government should assist the State to meet the minimum standards set
20 forth in this act. This act shall apply to advertisements, articles,
21 food, labelings, and sales intended for interstate and foreign
22 commerce, and to food articles imported into the Federated States of



1 Micronesia and still located at the port of entry.

2 Section 3. Definitions. As used in this act, the following
3 terms shall have the meanings set forth below:

4 (1) "Advertisement" means words, whether written or
5 spoken, symbolic or pictorial representation or design, or any other
6 representation which has the effect of promoting a product for
7 sale.

8 (2) "Article" means:

9 (a) Any food, or anything used to label or advertise
10 food; or

11 (b) Any thing or machine used for the preparation,
12 preservation, packing or storing of any food.

13 (3) "Export" means to send, mail, ship or carry out of the
14 Federated States of Micronesia in any way food or any food product for
15 sale, trade, exchange, or for any consideration or in pursuance of
16 any sale, trade, exchange or consideration.

17 (4) "Food" means any article manufactured, sold or
18 represented to be for human consumption, and includes:

19 (a) All beverages except sakau and tuba;

20 (b) All chewing substances except betel nut and the
21 articles used to prepare betel nut for consumption;

22 (c) Any ingredient, food additive or other substance
23 that enters into or is capable of entering into or is used in the
24 composition or preparation of food.

25 (5) "Import" means to bring or carry into the Federated

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1 States of Micronesia any food or food product for sale, trade, exchange
2 or consideration, or in pursuance of any sale, trade, exchange or
3 consideration, by any means of transportation.

4 (6) "Label" means any tag, ticket, stamp, brand, or mark
5 containing any writing, picture, symbol or design, attached to,
6 included in, or accompanying any food or food package.

7 (7) "Package" includes anything in which any food is
8 wholly or partly placed or packed and includes any basket, pail,
9 tray, or any receptacle, whether open or closed.

10 (8) "Person" includes individuals, partnerships,
11 corporations, associations, and all other entities doing business in
12 the FSM.

13 (9) "Premises" means:

14 (a) Any building or tent or other structure,
15 permanent or temporary, the land on which it is situated, and any
16 adjoining land used in connection with it;

17 (b) Any vehicle or vessel; and

18 (c) Any place, including a street, open space, or
19 place of public resort, used in the preparation, preservation,
20 packaging or storage of any article.

21 (10) "Preparation" and "prepare" include manufacture,
22 processing, and any form of treatment.

23 (11) "Secretary" means the Secretary of the Department of
24 Health Services.

25 (12) "Sell" means to offer, advertise, keep, deliver, or

1 prepare for sale or exchange, to dispose of for consideration, or to
2 deliver in pursuance of a sale or exchange.

3 (13) "Unsanitary conditions" means such conditions as
4 could cause contamination of a food with dirt or filth, or could
5 render the food injurious or dangerous to health, whether such
6 contamination or injury or danger actually occurs or not.

7 (14) "Vehicle" means any device, whether operational or
8 not, that is usually a means of conveyance by land, water or air.

9 Section 4. Unfit food. No person may import, export, prepare,
10 package or store any food that has been imported or will be
11 exported that is unfit for human consumption, adulterated, damaged,
12 deteriorated, or perished.

13 Section 5. Adulteration of food. Food is adulterated if:

14 (1) It contains, or is mixed with, any substance which
15 diminishes in any manner its nutritive or other beneficial properties
16 as compared with such food in a pure, normal or undeteriorated state;

17 (2) Any substance has been removed from it so that its
18 properties are diminished, as compared with those of a food in a pure
19 state and in an undeteriorated condition;

20 (3) It contains a substance which is not permitted;

21 (4) It contains a greater proportion of a substance than
22 is permitted;

23 (5) It is prepared so that damage, deterioration, or
24 inferiority is or may be concealed;

25 (6) It is the product of an animal which died:

- 1 (a) Naturally;
- 2 (b) Of disease; or
- 3 (c) In the case of a warm-blooded animal, any way
- 4 other than by slaughter.
- 5 (7) It is injurious to health or dangerous;
- 6 (8) A package or a thing included in a package, or any
- 7 thing or matter with which the food comes into contact contains a
- 8 substance which may render the food unfit for human consumption;
- 9 (9) It contains a foreign substance;
- 10 (10) It is in a sealed package which is damaged and can no
- 11 longer protect the contents from contamination or deterioration; or
- 12 (11) It is in a package, and any contents of the package
- 13 are different from what the label states the package contains.
- 14 Section 6. Deceptive representation. No person shall label,
- 15 package, prepare, sell or advertise any food that has been imported
- 16 or is being prepared for export in a manner that is false,
- 17 misleading or deceptive about its character, nature, value,
- 18 substance, quality, composition, merit or safety, or in
- 19 contravention of any regulations promulgated under this act.
- 20 Section 7. Food standards. Where a standard has been
- 21 prescribed by regulation for any food that has been imported or is
- 22 being prepared for export no person may label, package, prepare,
- 23 sell, or advertise that food when it does not comply with that
- 24 standard, in such a way that the food could be mistaken for food
- 25 which meets the standard.

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1 Section 8. Unsanitary conditions. No person may sell,
2 prepare, package, or store any food that has been imported
3 or is being prepared for export under unsanitary conditions, and may
4 not sell any food which has been shipped under unsanitary conditions.

5 Section 9. Compliance.

6 (1) Except as provided in section 10, no person may import
7 any article which does not comply with the provisions of this act.

8 (2) No person may import any article into the FSM which
9 is restricted in its sales in the country of origin.

10 (3) No person may import any food or package containing
11 food which is marked with an expiration date which has passed.

12 Section 10. Reconditioning.

13 (1) An article may be imported into the FSM to relabel or
14 recondition it so that it complies with the provisions of this act.

15 (2) If relabelling or reconditioning is not completed
16 within 3 months of the date of importation, the article shall be
17 exported at the expense of the importer within one month, unless the
18 Secretary grants an enlargement of the time. If the article is not
19 exported, it may be seized and disposed of by the Secretary.

20 Section 11. Food Working Group. The Secretary shall establish
21 a Food Working Group to advise the Secretary and to carry out such
22 functions as the Secretary may assign to them. The Food Working Group
23 members shall be persons experienced in food science, food production,
24 nutrition, administration, and any other areas of expertise which the
25 Secretary deems useful. The Secretary may publish the reports of the Food

1 Working Group.

2 Section 12. Food inspectors and analysts.

3 (1) The Secretary may appoint suitably qualified persons
4 to be National Government Food Inspectors to administer and enforce
5 the provisions of this act. While on duty, food inspectors shall
6 wear a badge or other visible emblem which identifies them as
7 National Government food inspectors.

8 (2) The Secretary may appoint suitably qualified persons
9 to be National Government food analysts to perform laboratory and
10 field tests upon food and other articles.

11 (3) No food inspector or food analyst may be assigned to
12 duties involving any business or operation or articles in which he
13 or she, or his or her parents, children or siblings, has any
14 pecuniary interest whatsoever.

15 (4) The Secretary may hire suitably qualified individuals
16 in the States to be food inspectors. Food inspectors and
17 food analysts shall be employees of the National Government for the
18 purposes of section 702 of title 6 of the Code of the Federated States
19 of Micronesia.

20 Section 13. Powers of food inspectors.

21 (1) A food inspector may, upon reasonable belief and at
22 any reasonable hour:

23 (a) Enter any port of entry where articles
24 subject to this act are being received, shipped or prepared for export,
25 and examine and take samples of articles, and examine anything which

1 appears capable of being used for such preparation, packaging, storage,
2 sale or conveyance;

3 (b) Detain and search any vehicle at any port of entry
4 which is conveying any article subject to this act, and examine and take
5 samples of any such article;

6 (c) Open and inspect any package which contains any
7 article subject to this act;

8 (d) Examine any books, accounts, documents, or other
9 records that could contain any relevant information about articles
10 subject to this act and make copies of them;

11 (e) Destroy or dispose of food for export or food which
12 has been imported which is decayed or putrefied or otherwise a danger
13 to the public health, with prior notice to the owner;

14 (f) Call a member of the local or national police
15 force for necessary assistance. Any member of the national police
16 force shall aid the food inspector as required;

17 (g) Question any person to determine compliance with
18 this act.

19 (2) After any inspection, the food inspector shall give
20 to the owner or person in charge a written report noting any
21 violation of this act or the regulations. A copy of this report
22 shall be given to the Secretary.

23 (3) Any person aggrieved by any of these actions has a
24 right to a hearing before the Food Working Group, which shall
25 be conducted according to regulations promulgated by the Secretary.

1 Section 14. Assistance.

2 (1) All owners, occupiers, persons in charge, or their
3 employees or agents found on premises or in vehicles containing
4 articles subject to this act shall give the food inspector all
5 reasonable assistance in carrying out his duties.

6 (2) Any person who obstructs the administration of this
7 law shall be prosecuted by the Office of the Attorney General under
8 section 501 of title 11 of the Code of the Federated States of
9 Micronesia.

10 (3) Any person who makes any false statement to a
11 National Government food inspector who is executing his duties shall
12 be prosecuted by the Office of the Attorney General pursuant to
13 section 542 or 543 of title 11 of the Code of the Federated States
14 of Micronesia.

15 Section 15. Liability. No food inspector or analyst shall be
16 liable for any actions taken while executing his or her duties
17 under this act, unless he or she has acted in bad faith or without
18 reasonable care.

19 Section 16. Storage. Any article seized by a food inspector
20 may be stored on the premises where it was seized, or may be removed
21 to any other proper place. If removal is reasonable under the facts
22 known to the food inspector at the time of removal, the costs of
23 removal and storage shall be paid by the owner of the article(s),
24 even if it is later shown that no offense was committed.

25 Section 17. Disposal.

1 (1) Subject to the requirements below, any food which is
2 unfit under section 4 may be seized by the food inspector. A
3 written receipt must be given to the owner or person in charge of
4 all seized foods.

5 (2) The food inspector shall give to the owner of
6 seized articles or the agent of the owner written notice concerning
7 when the articles will be disposed of or destroyed. Notice shall be
8 sufficient if it is given to the person in charge of the premises
9 where the food was found.

10 (3) Within 72 hours of the notice required under
11 subsection (2), the owner of a seized article or his agent may apply
12 to the Trial Division of the FSM Supreme Court to prevent the
13 destruction or disposal of the article. If the Court finds that the
14 article is unfit under section 4, it shall be disposed of or
15 destroyed, and the owner shall pay the cost of disposal or
16 destruction.

17 (4) An article may be destroyed or disposed of as the
18 food inspector determines, if the owner or his agent consents to its
19 destruction, or if the owner or his agent does not apply to the
20 Court within 72 hours of the notice required by this section.

21 (5) An action in rem may be filed in order to condemn any
22 food which is unfit under section 4, if the food inspector cannot
23 within 72 hours reasonably determine who owns the food. This action
24 shall be filed in the Trial Division of the FSM Supreme Court in the
25 State where the article is found. Any person who intervenes as

1 claimant shall, if the goods are condemned, pay all costs, storage
2 fees, and expenses of destruction or disposal.

3 (6) Any amount realized in a disposal, after payment of
4 any costs, shall be deposited in the General Fund.

5 Section 18. Release. A seized article shall be released when
6 it complies with this act and any regulations promulgated under it.

7 Section 19. Interfering with seized article. No person shall
8 remove, alter or interfere with any seized article without the
9 express permission of a food inspector.

10 Section 20. Dangerous foods.

11 (1) If the Secretary determines that a food that has been
12 imported or is to be exported is or could be dangerous or injurious to
13 health, the Secretary may so declare, and no such food may be sold in the
14 FSM or exported until the Secretary determines that it is no longer
15 dangerous or injurious to health.

16 (2) If the Secretary determines that food obtained from a
17 certain area is or could be dangerous or injurious to health, the
18 Secretary may so declare, and no food cultivated, taken, harvested,
19 or otherwise obtained from that area may be sold in the FSM or exported
20 until the Secretary determines that the danger has passed.

21 (3) An owner of foods banned under this section may
22 appeal to the Food Working Group, which shall conduct a hearing
23 according to regulations promulgated by the Secretary.

24 Section 21. Requests for information. If any person has or
25 obtains any information concerning investigations of, or the

1 composition, formula or use of, any substance to which this act
2 applies, the Secretary may direct that person to promptly furnish
3 such information to the Secretary. If the person refuses to supply
4 the requested information, the Secretary may determine that whatever
5 food or substance the information concerns may not be sold or used
6 for any food-related purposes in the FSM or exported.

7 Section 22. Trade secrets.

8 (1) Information furnished to the Secretary under section
9 21 shall remain confidential. The Secretary, the Food Working Group,
10 their employees and agents shall not reveal to any person any information
11 furnished under section 21, except as is necessary to perform his or
12 her duties under the act.

13 (2) Any person who willfully violates this section shall
14 be guilty of a National crime.

15 (3) A person convicted under section 22(2) shall be
16 punished by a fine of not more than \$100,000, or imprisonment for
17 not more than 5 years, or both.

18 (4) In addition to the above, any person aggrieved by a
19 violation of this section may recover damages, including punitive
20 damages, in a civil suit filed against the offending individual or
21 individuals.

22 Section 23. Samples. If the Secretary determines that it is
23 necessary for the public interest, he may direct a food inspector to
24 take samples for analysis of any food or article subject to this
25 act, whether it appears to conform to the requirements of this act

1 or not. A receipt shall be given for all samples taken.

2 Section 24. Licenses.

3 (1) The Secretary may license persons to import, export,
4 prepare, pack, store food that has been imported or is being
5 prepared for export, or transport food that has been imported or
6 is being transported for export, according to regulations promulgated
7 by him under this act. All license fees shall be paid into the
8 General Fund.

9 (2) A person commits a National crime if he knowingly
10 imports, exports, prepares, packs, or stores food that has been
11 imported or is being prepared for export without a valid license.

12 (3) A person convicted under section 24(2) shall be
13 punished by a fine of not more than \$1,000 or imprisonment for not
14 more than 6 months, or both.

15 Section 25. Regulations.

16 (1) Before any program authorized by this act may go into
17 effect, the Secretary shall promulgate regulations providing for the
18 training of food inspectors and setting forth the procedures to be
19 followed by food inspectors in administering and enforcing this act,
20 in order to insure that the food inspectors exercise their powers
21 with due regard to the safety of the public, and in such a way as to
22 avoid unnecessary disruptions of business operations.

23 (2) The Secretary may also promulgate regulations
24 regarding food standards; import, export, processing, packaging,
25 labeling, storage, sale, export, conveying, testing, advertising,

1 bookkeeping, and licensing standards; licensing fees; methods of
2 sampling and analysis; food-handlers; and the procedures to be
3 followed in the exercise of his duties and those of the Food
4 Working Group, its employees, and food analysts.

5 (3) When regulations proposed under this act will affect
6 an industry, the members of the Food Working Group shall supply the
7 Secretary with a list of the names of all members of that industry
8 of which they are aware. In addition to the requirements of chapter
9 1 of title 17 of the Code of the Federated States of Micronesia, the
10 Secretary shall give notice of the proposed regulations to those members of
11 the affected industry, and shall conduct at least one public hearing no
12 sooner than 10 days after the public and the industry have been notified.

13 Section 26. Hearing. Except for cases arising under section
14 13(1)(e) and section 17, where immediate seizure or destruction is
15 appropriate, when a food inspector observes a violation of this act,
16 or reasonably believes that a violation of this act has occurred, he
17 or she shall file a violation report with the Secretary. The
18 Secretary may investigate, and then may order a hearing, which shall
19 be conducted according to established regulations.

20 Section 27. Sanctions.

21 (1) If the Food Working Group finds after a hearing that
22 a violation of the act or regulations has occurred, the Food
23 Working Group may suspend or revoke the license of any person who has
24 violated, or whose employees or agents have violated, any provisions
25 of this act or the regulations promulgated under it.

1 (2) In addition to suspension or revocation of a license,
2 the Food Working Group may order that any article, vehicle, or premises
3 involved in the violation be forfeited. The Food Working Group may
4 dispose of such articles, vehicles, or premises as it sees fit. The costs
5 of disposal shall be paid from the proceeds; all remaining amounts
6 shall be paid into the General Fund.

7 Section 28. Inspection. Upon the application of any
8 commercial packer of seafood whose business is located within the
9 FSM, the Secretary may designate a food inspector to examine and
10 inspect the seafood for export and its production, packing, canning and
11 labelling. All fees paid for certification shall be paid into the
12 General Fund.

13 Section 29. Certification. If the food inspector finds that
14 the inspected seafood for export complies with the requirements of this
15 act and the applicable regulations, the food inspector shall imprint or
16 attach a certification mark on the food or its packaging.

17 Section 30. Regulations. After consultation with the
18 Secretary of the Department of Resources and Development, the
19 Secretary of Health Services shall promulgate regulations
20 under chapter 1 of title 17 of the Code of the Federated States of
21 Micronesia governing the certification program, including the
22 sanitary and other conditions which seafood packers must meet.

23 Section 31. False certification.

24 (1) Any person who uses an FSM certification mark without
25 authorization, or who uses a false certification mark, shall be

1 guilty of a National crime.

2 (2) A person convicted under section 31(1) shall be
3 punished by a fine of not more than \$100,000 or imprisonment for
4 not more than 5 years, or both.

5 Section 32. Penalties. If any person or persons violate the
6 provisions of this act, other than or in addition to section 31 penalties
7 for false certification, either in person or through another, they
8 shall be guilty of a National crime and shall be punished by any or all
9 of the following:

10 (1) A fine of up to \$100,000 for each offense;

11 (2) The loss of their license to import, export, sell, resell,
12 ship, advertise, label, or put into interstate commerce food or food
13 products; and

14 (3) Imprisonment for not longer than one year.

15 Nothing in this section prohibits any of the States of the Federated
16 States of Micronesia from enacting or adopting State food safety laws
17 or higher food safety standards and making the violation of those laws
18 an additional civil or criminal offense under State law.

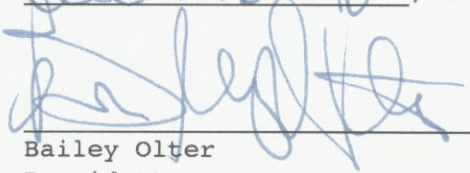
19 Section 33. Effective date. This act shall become law upon
20 approval by the President of the Federated States of Micronesia or
21 upon its becoming law without such approval.

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December 10, 1992

Bailey Olter
President
Federated States of Micronesia

