

**CHAPTER 10**  
**National Food Safety Act**

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### **§ 1001. Title.**

This chapter shall be known and cited as the “National Food Safety Act”.

**Source:** PL 7-116 § 1, modified.

**Cross-reference:** This National Food Safety Act was signed into law by the President on December 22, 1992.

### **§ 1002. Purpose and intent.**

It is the policy of the National Government to assist in the protection of the public from consuming imported food that is adulterated or mislabeled, and to assist efforts by the States to accomplish this objective. It is also the policy of the National Government to ensure that food exported out of the Federated States of Micronesia is safe and of the highest quality. The Secretary of the Department of Health Services shall cooperate with the appropriate State department or agency in administering a food safety program furthering the stated purposes of this chapter. If a State has enacted and is implementing food safety standards covering the areas of labeling, packaging, sanitation, food inspection for purity, quality and fitness for human consumption, and other areas of food safety covered by this chapter, the State has only to meet the minimum standards set forth in this chapter and the regulations promulgated pursuant to this chapter. If a State has not enacted or implemented food safety standards, the National Government should assist the State to meet the minimum standards set forth in this chapter. This chapter shall apply to advertisements, articles, food, labelings, and sales intended for interstate and foreign commerce, and to food articles imported into the Federated States of Micronesia and still located at the port of entry.

**Source:** PL 7-116 § 2.

**Cross-reference:** FSM Const., art. IX, § 2(r), as amended, states as follows:

Section 2. The following powers are expressly delegated to Congress:

...

(r) to promote education and health by setting minimum standards, coordinating state activities relating to foreign assistance, providing training and assistance to the states and providing support for post-secondary educational programs and projects.

...

FSM Const., art. XIII, § 1 states as follows:

Section 1. The national government of the Federated States of Micronesia recognizes the right of the people to education, health care, and legal services and shall take every step reasonable and necessary to provide these services.

The provisions of the Constitution are found in Part I of this code.

### **§ 1003. Definitions.**

As used in this chapter, the following terms shall have the meanings set forth below:

- (1) “Advertisement” means words, whether written or spoken, symbolic or pictorial representation or design, or any other representation which has the effect of promoting a product for sale.
- (2) “Article” means:
  - (a) Any food, or anything used to label or advertise food; or
  - (b) Any thing or machine used for the preparation, preservation, packing or storing of any food.
- (3) “Export” means to send, mail, ship or carry out of the Federated States of Micronesia in any way food or any food product for sale, trade, exchange, or for any consideration or in pursuance of any sale, trade, exchange, or consideration.
- (4) “Food” means any article manufactured, sold or represented to be for human consumption, and includes:
  - (a) All beverages except sakau and tuba;
  - (b) All chewing substances except betel nut and the articles used to prepare betel nut for consumption;
  - (c) Any ingredient, food additive or other substance that enters into or is capable of entering into or is used in the composition or preparation of food.
- (5) “Import” means to bring or carry into the Federated States of Micronesia any food or food product for sale, trade, exchange or consideration, or in pursuance of any sale, trade, exchange or consideration, by any means of transportation.
- (6) “Label” means any tag, ticket, stamp, brand, or mark containing any writing, picture, symbol or design, attached to, included in, or accompanying any food or food package.

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

(8) “Person” includes individuals, partnerships, corporations, associations, and all other entities doing business in the FSM.

(9) “Premises” means;

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

(b) Any vehicle or vessel; and

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

(10) “Preparation” and “prepare” include manufacture, processing, and any form of treatment.

(11) “Secretary” means the Secretary of the Department of Health Services.

(12) “Sell” means to offer, advertise, keep, deliver, or prepare for sale or exchange, to dispose of for consideration, or to deliver in pursuance of a sale or exchange.

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

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

**Source:** PL 7-116 § 3.

#### **§ 1004. Unfit food.**

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

**Source:** PL 7-116 § 4.

#### **§ 1005. Adulteration of food.**

Food is adulterated if:

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

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

- (3) It contains a substance which is not permitted;
- (4) It contains a greater proportion of a substance than is permitted;
- (5) It is prepared so that damage, deterioration, or inferiority is or may be concealed;
- (6) It is the product of an animal which died:
  - (a) Naturally;
  - (b) Of disease; or
  - (c) In the case of a warm-blooded animal, any way other than by slaughter.
- (7) It is injurious to health or dangerous;
- (8) A package or a thing included in a package, or any thing or matter with which the food comes into contact contains a substance which may render the food unfit for human consumption;
- (9) It contains a foreign substance;
- (10) It is in a sealed package which is damaged and can no longer protect the contents from contamination or deterioration; or
- (11) It is in a package, and any contents of the package are different from what the label states the package contains.

**Source:** PL 7-116 § 5.

#### **§ 1006. Deceptive representation.**

No person shall label, package, prepare, sell or advertise any food that has been imported or is being prepared for export in a manner that is false, misleading or deceptive about its character, nature, value, substance, quality, composition, merit or safety, or in contravention of any regulations promulgated under this chapter.

**Source:** PL 7-116 § 6.

#### **§ 1006A. Food labeling.**

No person shall import for sale any food that is not labeled in English with:

- (1) the name of the food;
- (2) the name and address of the manufacturer and distributor;
- (3) a complete list of ingredients;
- (4) the country of origin;

(5) the lot identification code; and

(6) the expiration date.

Provided that, nothing in this section is intended to prevent the importation of fresh fruit and vegetables.

**Source:** PL 14-59 § 1, modified.

**Editor's note:** Subsections added to comport with standard code formatting.

### **§ 1007. Food standards.**

Where a standard has been prescribed by regulation for any food that has been imported or is being prepared for export no person may label, package, prepare, sell, or advertise that food when it does not comply with that standard, in such a way that the food could be mistaken for food which meets the standard.

**Source:** PL 7-116 § 7.

### **§ 1008. Unsanitary conditions.**

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

**Source:** PL 7-116 § 8.

### **§ 1009. Compliance.**

(1) Except as provided in section 1010 of this chapter, no person may import any article which does not comply with the provisions of this chapter.

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

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

**Source:** PL 7-116 § 9, modified.

### **§ 1010. Reconditioning.**

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

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

**Source:** PL 7-116 § 10.

### **§ 1011. Food Working Group.**

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

**Source:** PL 7-116 § 11.

### **§ 1012. Food inspectors and analysts.**

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

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

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

(4) The Secretary may hire suitably qualified individuals in the States to be food inspectors. Food inspectors and food analysts shall be employees of the National Government for the purposes of section 702 of title 6 of this code.

**Source:** PL 7-116 § 12.

**Cross-reference:** Section 702 of title 6 (Criminal Procedures) of this code is on limited waiver of sovereign immunity.

### **§ 1013. Powers of food inspectors.**

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

(a) Enter any port of entry where articles subject to this chapter are being received, shipped or

prepared for export, and examine and take samples of articles, and examine anything which appears capable of being used for such preparation, packaging, storage, sale or conveyance;

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

(c) Open and inspect any package which contains any article subject to this chapter;

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

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

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

(g) Question any person to determine compliance with this chapter.

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

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

**Source:** PL 7-116 § 13.

#### **§ 1014. Assistance.**

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

(2) Any person who obstructs the administration of this law shall be prosecuted by the Office of the Attorney General under section 501 of title 11 of this code.

(3) Any person who makes any false statement to a National Government food inspector who is executing his duties shall be prosecuted by the Office of the Attorney General pursuant to section 542 or 543 of title 11 of this code.

**Source:** PL 7-116 § 14, modified.

**Cross-reference:** Section 501 of title 11 (Crimes) of this code is on obstructing administration of law or other governmental function. Section 542 of title 11 (Crimes) of this code is on false swearing in official matters. Section 543 of title 11 (Crimes) of this code is on unsworn falsification to authorities.



**§ 1015. Liability.**

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

**Source:** PL 7-116 § 15.

**§ 1016. Storage.**

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

**Source:** PL 7-116 § 16.

**§ 1017. Disposal.**

(1) Subject to the requirements below, any food which is unfit under section 1004 of this chapter may be seized by the food inspector. A written receipt must be given to the owner or person in charge of all seized foods.

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

(3) Within 72 hours of the notice required under subsection (2) of this section, the owner of a seized article or his agent may apply to the Trial Division of the FSM Supreme Court to prevent the destruction or disposal of the article. If the Court finds that the article is unfit under section 1004 of this chapter, it shall be disposed of or destroyed, and the owner shall pay the cost of disposal or destruction.

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

(5) An action in rem may be filed in order to condemn any food which is unfit under section 1004 of this chapter, if the food inspector cannot within 72 hours reasonably determine who owns the food. This action shall be filed in the Trial Division of the FSM Supreme Court in the State where the article is found. Any person who intervenes as claimant shall, if the goods are condemned, pay all costs, storage fees, and expenses of destruction or disposal.

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

**Source:** PL 7-116 § 17, modified.

**Cross-reference:** The statutory provisions on the FSM Supreme Court are found in title 4 of this code.

### **§ 1018. Release.**

A seized article shall be released when it complies with this chapter and any regulations promulgated under it.

**Source:** PL 7-116 § 18.

### **§ 1019. Interfering with seized article.**

No person shall remove, alter or interfere with any seized article without the express permission of a food inspector.

**Source:** PL 7-116 § 19.

### **§ 1020. Dangerous foods.**

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

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

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

**Source:** PL 7-116 § 20.

### **§ 1021. Requests for information.**

If any person has or obtains any information concerning investigations of, or the composition, formula or use of, any substance to which this chapter applies, the Secretary may direct that person to promptly furnish such information to the Secretary. If the person refuses to supply the requested information, the Secretary may determine that whatever food or substance the information concerns may not be sold or used for any food-related purposes in the FSM or exported.

**Source:** PL 7-116 § 21.

**§ 1022. Trade secrets.**

(1) Information furnished to the Secretary under section 1021 of this chapter shall remain confidential. The Secretary, the Food Working Group, their employees and agents shall not reveal to any person any information furnished under section 1021 of this chapter, except as is necessary to perform his or her duties under this chapter.

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

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

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

**Source:** PL 7-116 § 22, modified.

**§ 1023. Samples.**

If the Secretary determines that it is necessary for the public interest, he may direct a food inspector to take samples for analysis of any food or article subject to this chapter, whether it appears to conform to the requirements of this chapter or not. A receipt shall be given for all samples taken.

**Source:** PL7-116 § 23.

**§ 1024. Licenses.**

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

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

(3) A person convicted under subsection (2) of this section shall be punished by a fine of not more than \$1,000 or imprisonment for not more than six months, or both.

**Source:** PL 7-116 § 24, modified.

**Cross-reference:** FSM Const., art. IX, § 2(r), as amended, states as follows:

Section 2. The following powers are expressly delegated to Congress:

...

(r) to promote education and health by setting minimum standards, coordinating state activities relating to foreign assistance, providing training and assistance to the states and providing support for post-secondary educational programs and projects.

...

FSM Const., art. XIII, § 1 states as follows:

Section 1. The national government of the Federated States of Micronesia recognizes the right of the people to education, health care, and legal services and shall take every step reasonable and necessary to provide these services.

The provisions of the Constitution are found in Part I of this code.

### **§ 1025. Regulations.**

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

(2) The Secretary may also promulgate regulations regarding:

(a) food standards;

(b) import, export, processing, packaging, labeling, storage, sale, export, conveying, testing, advertising, bookkeeping, and licensing standards;

(c) licensing fees;

(d) methods of sampling and analysis;

(e) food-handlers; and

(f) the procedures to be followed in the exercise of his duties and those of the Food Group, its employees, and food analysts.

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

**Source:** PL 7-116 § 25, modified.

**Editor's note:** Subsections added to comport with standard code formatting.

**Cross-reference:** Title 17 of this code is on Administrative Procedure.

### **§ 1026. Hearing.**

Except for cases arising under section 1013(1)(e) and section 1017 of this chapter, where immediate seizure or destruction is appropriate, when a food inspector observes a violation of this chapter, or reasonably believes that a violation of this chapter has occurred, he or she shall file a violation report with the Secretary. The Secretary may investigate, and then may order a hearing, which shall be conducted according to established regulations.

**Source:** PL 7-116 § 26, modified.

### **§ 1027. Sanctions.**

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

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

**Source:** PL 7-116 § 27.

### **§ 1028. Inspection.**

Upon the application of any commercial packer of seafood whose business is located within the FSM, the Secretary may designate a food inspector to examine and inspect the seafood for export and its production, packing, canning and labeling. All fees paid for certification shall be paid into the General Fund.

**Source:** PL 7-116 § 28.

### **§ 1029. Certification.**

If the food inspector finds that the inspected seafood for export complies with the requirements of this chapter and the applicable regulations, the food inspector shall imprint or attach a certification mark on the food or its packaging.

**Source:** PL 7-116 § 29.

### **§ 1030. Regulations.**

After consultation with the Secretary of the Department of Resources and Development, the Secretary of Health Services shall promulgate regulations under chapter 1 of title 17 of this code governing the certification program, including the sanitary and other conditions which seafood packers must meet.

**Source:** PL 7-116 § 30, modified.

**Cross-reference:** Chapter 1 of title 17 of this code is on FSM Administrative Procedures.

### **§ 1031. False certification.**

(1) Any person who uses an FSM certification mark without authorization, or who uses a false certification mark, shall be guilty of a National crime.

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

**Source:** PL 7-116 § 31, modified.

### **§ 1032. Penalties.**

If any person or persons violate the provisions of this chapter, other than or in addition to section 1031 of this chapter penalties for false certification, either in person or through another, they shall be guilty of a National crime and shall be punished by any or all of the following:

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

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

(3) Imprisonment for not longer than one year. Nothing in this section prohibits any of the States of the Federated States of Micronesia from enacting or adopting State food safety laws or higher food safety standards and making the violation of those laws an additional civil or criminal offense under State law.

**Source:** PL 7-116 § 32.

