

# FOOD SAFETY

## State and Federal Standards and Regulations

# Guam

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## GUAM

The Department of Public Health and Social Services<sup>651</sup> and the Department of Agriculture<sup>652</sup> share jurisdiction in Guam for provisions relating to food.

### **Food**

Food, under Guam law, means: (1) anything used for food or drink for human or animal; (2) chewing gum; and (3) anything used for components of such. Anything regarding “sale of food” includes: manufacture, production, processing, packing, exposure, offer, possession, and holding of food for sale. It also includes: “the sale, dispensing, and giving of [food], and the supplying, or applying of [food] in the conduct of a [food] establishment.” “Food which is contaminated with filth” means food . . . not securely protected from dust, dirt, and as far as necessary by all reasonable means, from foreign or injurious contamination.<sup>653</sup>

### **Adulteration**

The adulteration of any food is a prohibited act, as is the receipt in commerce, manufacture, sale, delivery, holding, or offering for sale of any food that is adulterated.<sup>654</sup> A food is not adulterated if a substance is not an “added substance” and the quantity of the substance in the food does not ordinarily render it injurious to health.<sup>655</sup>

A food will be deemed adulterated if:

1. it has any poisonous or deleterious substance that may be harmful to health;

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<sup>651</sup> 10 GUAM CODE ANN. §§ 40102(b), 40104 (1993).

<sup>652</sup> 5 GUAM CODE ANN. §§ 60102(b), 60108 (1993).

<sup>653</sup> 10 GUAM CODE ANN. § 40102.

<sup>654</sup> § 40103(1) - (3).

<sup>655</sup> § 40109(1).

2. it has any added poisonous or deleterious substance, other than one which is a pesticide chemical in or on a raw agricultural commodity;
3. it is a raw agricultural commodity and bears or contains a pesticide chemical which is unsafe within the meaning of the Federal Act. The food shall not be deemed unsafe, where a pesticide chemical has been used in accordance with exceptions or tolerances under Federal Act and the agricultural product has undergone processing such as canning, cooking, freezing, dehydrating, or milling; provided the residue has been removed to the extent possible in good manufacturing practice, and the concentration of such residue in the processed food when ready-to-eat, is not greater than the tolerance prescribed for the raw agricultural commodity;
4. it contains any food additive which is unsafe within the meaning of the Federal Act;
5. it contains any color additive which is unsafe within the meaning of the Federal Act;
6. it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food;
7. it is contaminated with filth, rendered diseased, unwholesome, or unhealthy due to being produced, prepared, packed, or held under unsanitary conditions;
8. it is the product of a diseased animal, an animal that did not die by slaughter, or an animal fed uncooked offal from a slaughterhouse;
9. the container is made of any substance that might make the contents injurious to

health;

10. it was intentionally radiated. Except, where the use conforms to § 40113 of this Act (if there is a regulation in effect limiting the quantity of the substance and the use or intended use conforms to the terms of the regulation)<sup>656</sup> or § 409 of the Federal Act as amended.
11. any valuable part has been in whole or in part omitted or withdrawn;
12. any substance has been in whole or in part substituted;
13. any damage or inferiority has been concealed;
14. anything has been added, mixed, or packed so as to increase bulk, reduce quality, reduce strength, or make it appear better or more valuable than it is;
15. the pull date has expired.<sup>657</sup> The term pull date means a date printed on any packaging, by the manufacturer, showing “the date after which the manufacturer recommends that the product not be sold.”<sup>658</sup>

A confection is adulterated if:

1. any nonnutritive objects are either partially or completely embedded in the confection. However, the Director may use her or his judgement, as provided by properly promulgated rules, to not apply this clause if the nonnutritive object is of practical functional value to the confectionary product and would not render the product injurious or hazardous to health;

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<sup>656</sup> § 40113(a).

<sup>657</sup> § 40109.

<sup>658</sup> § 40102(z).

2. it contains any alcohol, except alcohol not more than one-half of one percent by volume derived solely from the use of flavoring extracts;
3. it contains any nonnutritive substance. However, this clause does not apply to a safe nonnutritive product which is used for a practical functional purpose in the manufacture, packaging, or storage of such confectionery if it is not deceptive nor results in other adulteration or misbranding. The Director may issue further rules allowing or prohibiting the use of particular nonnutritive substances in order to avoid or resolve uncertainties.<sup>659</sup>

### **Additives**

It shall be deemed unsafe, with respect to any food, to add any poisonous or deleterious substance, food additive or color additive, or pesticide chemical in or on a raw agricultural commodity, unless there is a regulation in effect limiting the quantity of the substance and the use or intended use conforms to the terms of the regulation. The Director of Public Health may prescribe tolerances for any added substances, food or color additives, pesticide chemicals in or on agricultural commodities, and may establish conditions for use, and exceptions for experimentation and investigation.<sup>660</sup>

### **Color Additives**

A color additive is a dye, pigment, or anything made by synthesis or similar process, or anything that has been extracted, isolated, or derived from a vegetable, animal, mineral, or other source regardless of any change of identity. A color additive is also anything that is capable of

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<sup>659</sup> § 40109(12).

<sup>660</sup> § 40113.

imparting color when added or applied to a food, regardless of whether or not the color is through a reaction with another substance. Color includes black, white, and greys. The term “color additive” does not include anything exempted under the Federal Act. The definition does not apply to pesticides, soil or plant nutrients, or other agricultural chemicals which may affect the “natural physiological process of produce of the soil” and thereby affect its color, either before or after harvest.<sup>661</sup>

### **Food Additives**

The term food additive refers to any substance the use of which may or does result in it becoming a component of any food or affecting the characteristics of any food. This includes any substance used in “producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use.”<sup>662</sup>

A substance is not a food additive if scientific procedures have shown it to be safe under conditions of its intended use and is recognized as such by qualified scientific experts. A substance used in food prior to January 1, 1958 may be shown not to be a food additive by using “either scientific procedures or experience based on common use in food.” The following are also not food additives:

1. pesticide chemical in or on a raw agricultural commodity;
2. a pesticide chemical used in the production, storage, or transportation of any raw agricultural commodity;

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<sup>661</sup> § 40102(x).

<sup>662</sup> § 40102(w).

3. a color additive;
4. anything granted a sanction or approval prior to the enactment of the Food Additives Amendment of 1958, pursuant to the Federal Act, the Poultry Products Inspection Act or the Meat Inspection Act.<sup>663</sup>

### **Misbranding**

A food shall be deemed misbranded and prohibited as such if:

- (1) its label is false or misleading;
- (2) its label or “packaging fails to conform to the labeling requirements” of the Act (§ 40120);
- (3) it is offered for sale under the name of another food;
- (4) it is an imitation product and its label does not clearly and prominently state such, including the name of the product imitated;
- (5) it is represented as a food for which a standard of quality has been established under § 40108 (adopts definitions and standards of the Federal Act, however, where no Federal regulations exist, the Director may propagate amendments to such) and the food quality falls below this standard, unless its label states such case;
- (6) a food is represented as for special dietary uses and its label does not contain information as to its vitamin, mineral, and other dietary attributes consumers would find necessary to determine its value for such use;
- (7) its container is made, formed, or filled as to be misleading;

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<sup>663</sup> § 40102(w).

- (8) a food contains any artificial flavoring, coloring, or chemical preservative and its label does not state such fact. The Director of Public Health may propagate exemptions if compliance is impractical. Butter, cheese, and ice cream are exempted from compliance with the artificial coloring component. This paragraph does “not apply to a chemical pesticide when used in or on a raw agricultural commodity which is the produce of the soil;”
- (9) a color additive does not conform with the labeling and packaging requirements of the Federal Act;
- (10) a pesticide chemical has been applied on a raw agricultural commodity after harvest and the shipping container does not state the presence and common name of the chemical in or on the commodity. No such statement is required when the commodity has been removed from the container and is “being held or displayed for sale in retail . . . in accordance with the custom of the trade;”
- (11) a product intended for use in another food and that use will result in the final food being adulterated or misbranded when purveyor directions are followed;
- (12) locally processed or packaged food fails to display a pack date which is legible, visible, and in English.<sup>664</sup> The term pack date means the complete date (month in letters, day and year in numbers) printed by the manufacturer on the package, which represents the date the product has been produced or packaged.”<sup>665</sup>

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<sup>664</sup> § 40110.

<sup>665</sup> § 40102(aa).

## **Mislabeling or Labeling**

A label means a display in English which is written, printed, or graphic matter on a container.<sup>666</sup> Any food sold or offered for sale must be clearly labeled and marked in English or Chamorro and failure to do so is a misdemeanor. Any dented or damaged package or can must be clearly marked as damaged. It is unlawful to sell any goods with rust anywhere on the container unless rubbing with cotton will remove the rust.<sup>667</sup>

Any fresh or frozen meat or poultry product having water added shall be clearly labeled “water added.” Any meat products for which a USDA grade or category has been given shall have the grade or category clearly marked, whether or not later repackaged.<sup>668</sup>

Manufacturer recommended pull dates shall be clearly marked with a best used by date. Any food outdated by more than two days and still fit for human consumption may be sold if clearly marked with as outdated. All fresh or frozen meat, fresh eggs, bread, fresh milk, ice cream, fresh daily products, and any other such food the Director designates shall be clearly marked with an expiration date.<sup>669</sup>

## **Inspection**

Inspectors have authority to enter, inspect, and take samples, during reasonable hours, at any place in which food is manufactured, processed, packed, or held for commerce and to enter any vehicle being used to transport or hold such food, in order to

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<sup>666</sup> § 40102(k).

<sup>667</sup> §§ 40120(g), (i), (j).

<sup>668</sup> § 40120(h).

<sup>669</sup> § 40120(f).

determine if the requirements of the Act are being violated. All applicable equipment, finished and unfinished materials, containers, and labeling are also subject to inspection. Before leaving, the inspector shall give the owner or person in charge a receipt describing all samples obtained. The inspector shall also give a written report to the owner or person in charge “setting forth any conditions or practices . . . which in his judgement indicate that any food . . . (1) consists in whole or in part of any filthy, putrid, or decomposed substance, or (2) has been prepared, packed or held under insanitary conditions whereby it may become contaminated with filth or whereby it may have been rendered injurious to health. A copy of the report shall then promptly be sent to the Director. The owner or person in charge shall promptly be sent a copy of the results from testing of samples taken.<sup>670</sup>

Inspectors may have access to and copy all carrier records. Carriers are not subject to other provisions of the law by reason of their receipt, carriage, holding or delivery of food in the usual course of business as carriers. Moreover, the Director may exempt certain classes of persons from inspection requirements of the Act after a finding that such is not necessary for the protection of the public health.<sup>671</sup>

### **Condemnation or Detention**

If there is probable cause that a food is adulterated, or so misbranded as to be dangerous, the Director shall embargo or detain it, giving warning and notice of such by attaching a tag or mark. The notice shall warn all persons not to remove, dispose, or sell the food until permission is given by the Director of Public Health or the court. It is unlawful for detained or embargoed

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<sup>670</sup> § 40123.

<sup>671</sup> § 40123(a).

items to be removed, disposed, or sold without permission. When an item is adulterated, misbranded or in violation of the Guam Food, Drug, and Cosmetic Act, it may be condemned. An authorized agent will remove tags or markings when the agent finds embargoed or detained items are not adulterated or misbranded.<sup>672</sup>

If a class of food contaminated with microorganisms during manufacture, procession, or packing has entered commerce and the injurious nature of the food can not be determined, in that case only, an emergency permit may be issued to manufacturers, processors, or packers of that class of food. The permit shall contain conditions governing the manufacture, processing, or packing of that class of food. These permits shall be for whatever temporary period of time is necessary to protect the public health. During this time, no one shall introduce into commerce such food unless the manufacturer, processor, or packer of the food holds a permit issued by the Director. The emergency permit may be suspended if the conditions are violated. However, a person holding a suspended permit may apply for permit reinstatement. After a prompt hearing, suspended permits shall immediately be reinstated if it is found that the original or amended conditions are being followed. Access to any factory or establishment is authorized for determination of compliance with conditions of the permit. Denial of access is grounds for permit suspension until access is freely given by the operator.<sup>673</sup>

### **Destruction**

If the court finds an item is adulterated or misbranded, it shall order the item destroyed at the expense of the owner and under the supervision of an authorized agent. The owner of the

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<sup>672</sup> §§ 40106(a)-(b).

<sup>673</sup> § 40125.

item will be charged court fees, storage fees, and other proper expenses. The court may order the item returned to the owner for correction of adulteration or misbranding under supervision of an authorized agent, provided all costs, fees, and expenses are paid, and a bond executed. The expense of supervision shall be paid by the owner.<sup>674</sup>

Perishable items such as meat, seafood, poultry, vegetable, or fruit found in any room, structure, or vehicle which is unsound, or contains a filthy, decomposed, or putrid substance, or items that may be poisonous or deleterious or otherwise unsafe are a nuisance. The Director of Public Health or an authorized agent shall immediately condemn, destroy, or render such items unsalable as human food.<sup>675</sup>

### **Meat and Meat Products**

Meat and meat products are regulated under both the Guam Food, Drug, and Cosmetic Act and the Guam Agricultural Code which regulates livestock and poultry. The Department of Agriculture regulates all matters concerning sanitation, slaughtering, and inspections of livestock, carcasses, and meat.<sup>676</sup> However, the Department of Public Health and Social Services regulates the sanitary conditions of animal housing structures and the disposal of dead animals.<sup>677</sup>

Livestock means cattle, carabao, swine, sheep, goats, equine and poultry raised for labor, food, or other purposes.<sup>678</sup>

Slaughterhouse means any commercial facility where livestock are killed in order to

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<sup>674</sup> § 40106.

<sup>675</sup> § 40106(d).

<sup>676</sup> 5 GUAM CODE ANN. § 61302.

<sup>677</sup> 10 GUAM CODE ANN. §§ 35103, 35105.

<sup>678</sup> 5 GUAM CODE ANN. § 61101(e).

obtain meat for human consumption.<sup>679</sup> Every slaughterhouse must comply with sanitation, building, maintenance, water, and ventilation requirements.<sup>680</sup> It is unlawful for anyone to operate or open any slaughterhouse without a permit from the Director. Any person employed in the operation of a slaughterhouse must have a valid health certificate issued by the Department of Health and Social Services. The owner or any other person in charge, as well as and the employee, are responsible for the employee having a health permit.<sup>681</sup>

Any livestock intended for commercial use, except poultry, must be slaughtered in a slaughterhouse and in a manner approved by the Department.<sup>682</sup> A veterinarian of the Department of Agriculture must approve and inspect as fit for human consumption the following: (1) before slaughter, any animals whose intended use is for sale for human consumption as meat, meat product, or by-product; (2) after slaughter, its carcass; and (3) any meat, meat product, or by-product processed or manufactured in Guam, for sale for human consumption. All meat, meat products, or by-products found to be unfit for human consumption shall be condemned as shall incurably diseased animals. When the veterinarian approves meat as fit for human consumption, each primal part of the meat or carcass shall be stamped by the veterinarian with a stamp approved by the Director. The veterinarian shall direct and supervise the disposal of all condemned animals, carcasses, or meat.<sup>683</sup> All meat sold or offered for sale must bear a valid approval stamp. All meat in the possession of or on the business premises of wholesalers or

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<sup>679</sup> § 61301.

<sup>680</sup> § 61304.

<sup>681</sup> § 61303.

<sup>682</sup> § 61305.

<sup>683</sup> § 61307.

retailers must bear a valid approval stamp.<sup>684</sup>

Written permits for the killing or slaughtering of any cattle for food purposes must be acquired within 24 hours of such slaughtering from the Mayor or Vice Mayor of the district where the slaughter or killing is to occur. Any person slaughtering or killing cattle to prevent waste must notify the Mayor or Vice Mayor within 24 hours of such slaughtering or killing.<sup>685</sup>

All cattle must be tuberculin tested by Department veterinarians. Veterinarians will use their own judgment as to how often testing is required. Department agents and veterinarians may enter any property where such cattle are kept or found. If bovine tuberculosis is detected, the Director shall recommend control and eradication procedures, provisions for indemnification, and penalties, to be promulgated as regulations.<sup>686</sup>

### **Dairies and Dairy Products**

There are no sections relating to only dairy or dairy products.

### **Poultry and Poultry Products**

There are no sections relating to only poultry or poultry products.

### **Eggs**

Eggs are regulated under the Guam Food, Drug, and Cosmetics Act and is administered by the Department of Agriculture.<sup>687</sup> “Eggs” means eggs in the shell that are the product of domesticated chickens. Market means sell, offer for sale, give in channels of commerce, barter,

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<sup>684</sup> § 61308.

<sup>685</sup> § 61310.

<sup>686</sup> § 61204.

<sup>687</sup> § 66101 *et seq.*

exchange, or distribute in any manner.<sup>688</sup> Producers marketing directly to a consumer or to other premises where produced only are excepted from the coverage of this Chapter. Any shipper marketing eggs to a first receiver within the territory who will grade them into the proper grade and size-weight class before reselling are excepted from the coverage of this Chapter.<sup>689</sup>

Inedible or incubated eggs, as defined under federal laws, shall not be marketed in Guam. Inedible or incubated eggs may be sold for other than human consumption so long as they are broken and denatured where produced and in a manner approved by the Department.<sup>690</sup>

There are a number of labeling requirements for eggs that are not related to food safety; therefore, these are not discussed here. Eggs stored more than 30 days after date of grading shall not be marketed unless they are: (1) sold to a retailer or institution and the invoice notes the cold storage; or (2) sold to a consumer and a prominently displayed sign adequately notifies consumers of the cold storage. The term “fresh eggs” shall not be applied to eggs held in cold storage more than 30 days.<sup>691</sup>

Sanitation requirements for eggs include the following:

- (a) eggs shall be kept at a temperature between 35 degrees and 45 degrees Fahrenheit. This requirement applies to assembly, transportation, marketing, processing, storing, or displaying of eggs;
- (b) storage or display facilities shall have a thermometer “accurate to plus or minus

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<sup>688</sup> §§ 66101(e), (h).

<sup>689</sup> § 66110.

<sup>690</sup> § 66102.

<sup>691</sup> §§ 66105(c), (g).

two degrees Fahrenheit, located in the warmest part of the facility in which eggs are stored or displayed,” and the thermometer must be easily seen; and

- (c) all containers and packaging material “shall be clean, unbroken, and free from foreign odor.”<sup>692</sup>

The Department or its agents may enter any premises or vehicles where eggs are bought, stored, sold, offered for sale, processed, transported, or wherever the Department has reason to believe such activity is carried on, in order to inspect and examine eggs, egg containers and any equipment, facilities, or records.<sup>693</sup> If violations are found, the Director may issue a Stop Sale Order. The order shall state the reason for its issue and describe the nature of the violation. Eggs shall not be marketed until the order has been withdrawn. An order shall not be withdrawn until conditions are corrected. The Department may take possession, custody, or proceed for seizure against eggs for which an order has been issued. The eggs shall be disposed of after seizure and proof of violation. The owner shall not be entitled to compensation or damages.<sup>694</sup> Orders and custody of eggs pursuant to above measures have the status of emergency actions for the protection of the public health and shall not be subject to injunction or stay.<sup>695</sup>

## **Seafood**

There are no sections relating to only seafood.

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<sup>692</sup> §§ 66107(a), (b).

<sup>693</sup> § 66108.

<sup>694</sup> § 66109.

<sup>695</sup> § 66117.

## **Federal and State Cooperation**

The Guam Food, Drug, and Cosmetic Act provides authority to the Director of the Department of Public Health and Social Services to conform regulations with those of the Federal Act. The following regulations and amendments adopted under authority of the Federal Food, Drug, and Cosmetic Act are also the regulations in Guam:

- (d) all pesticide chemical regulations;
- (e) all food and color additive regulations;
- (f) all dietary use regulations;

Automatically adopted Federal regulations take effect in Guam on the same date they become effective as a Federal regulation.<sup>696</sup>

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<sup>696</sup> 10 GUAM CODE ANN. § 40122.