

FOOD SAFETY AND QUALITY BILL, 2013

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OBJECTS AND REASONS



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FOOD SAFETY AND QUALITY BILL, 2013

A BILL FOR AN ACT TO REGULATE FOOD SAFETY AND QUALITY AT ALL STAGES IN THE FOOD CHAIN FROM PRODUCTION TO CONSUMPTION AND FOR OTHER MATTERS RELATED THERETO

Enacted by the Parliament of The Bahamas

PART I - PRELIMINARY

1. Short title.

This Act may be cited as the Food Safety and Quality Act, 2012.

2. Interpretation.

In this Act —

“additive” means any substance not normally consumed as food by itself and not normally used as a typical ingredient of food, whether or not it has nutritional value, the intentional addition of which to food for a technological (including organoleptic) purpose in the production, manufacture, preparation, treatment, packing, packaging, transport or storage of such food results, or may be reasonably expected to result (directly or indirectly), in it or its by-products becoming a component of or otherwise affecting the characteristics of such food, but does not include contaminants or substances added to food for the purpose of maintaining or improving nutritional qualities;

“adulterate” means to make impure in order to give a false impression or value or to hide defects, by the addition of a foreign, inferior or inert substance

to food, or by the exclusion or removal of a valuable or necessary ingredient of food;

“advertisement” includes any representation be it written, pictorial, visual or otherwise, that is made for the purpose of promoting directly or indirectly the sale or disposal of any food or any substance represented as food;

“animal feed” means a mixture of nutrients that are produced under hygienic conditions that comply with the requirements of each species, age and type of production, either as the only source of feed or as a supplement;

“appliance” means the whole or any part of any implement, machine, instrument, apparatus or other object used or capable of being used in or in connection with the production, manufacture, treatment, packing, packaging, labelling, transport, handling, serving or storage of any food;

“authorised officer” means so person designated under section 14 and qualified to perform certain specified functions of a food inspector;

“Authority” means the Food Safety and Quality Authority established under section 5 of this Act;

“Board” means the Food Safety and Quality Board of the Authority, established under section 31 of this Act;

“contaminant” means any substance not intentionally added to food, which is present in such food as a result of the production (including operations carried out in crop husbandry, animal husbandry and veterinary medicine), manufacture, preparation, treatment, packing, packaging, transport or holding of such food or as a result of environmental contamination;

“exporter” includes any person who, whether as owner, consignor, consignee, agent or broker, is in possession of or in any way entitled to the custody or control of any food exported from The Bahamas;

“food” means any substance, whether processed, semi-processed or raw, which is intended, or reasonably intended for human consumption, and includes drink, **including water**, chewing gum and any substance which has been used in the production, manufacture, preparation or treatment of food, but does not include cosmetics or tobacco or substances used only as drugs.

“food establishment” or “establishment” means any premises, place or vehicle, however small, where production, manufacture, preparation, treatment, packing, packaging, transport, handling, serving, storage or sale in relation to food is carried out, whether for profit or not, whether public or private, whether a permanent or temporary structure and whether on land or at sea;

“food establishment operator” or “operator” means a person who owns or is in charge of a food establishment, including farms, agricultural units, collection and storage facilities, importers, exporters and other person having for the

time being the possession, custody or control thereof in all stages of the food production chain;

“food handler” means any person who directly handles packaged or unpackaged food, food equipment and food utensils, or who in the performance of his duties come into contact with food contact surfaces;

“food inspector”. means a person designated under s. 12 and qualified to act as such under this Act;

“food production chain” means all stages of production from primary production of food to food handling and food sale;

“food safety” means the assurance that food will not cause harm to the consumer when it is prepared or eaten according to its intended use;

“GAP” means Good Agricultural Practices, and refers to a system which identifies, evaluates and controls hazards significant for food safety as established under this Act;

“GMP” means Good Manufacturing Practices, and refers to a system which identifies, evaluates and controls hazards significant for food safety as established under this Act;

“HACCP” means Hazard Analysis Critical Control Point, and refers to a system which identifies, evaluates and controls hazards significant for food safety as established under this Act;

“hazard” means a biological, chemical or physical agent in, or condition of, food with the potential to cause an adverse human health effect;

“importer” means any person who, whether as owner, consignor, consignee, agent or broker is in possession of or is in any way entitled to the custody or control of any food imported into The Bahamas;

“ingredient” means any substance, including a food additive, used in the manufacture or preparation of food and present in the final product although possibly in a modified form;

“label” means any tag, brand, mark, pictorial or other descriptive matter written, printed, stencilled, marked, embossed or impressed on, or attached to, a container of food or its package;

“manufacture” includes processing and preservation of food and other related activities;

“Minister” means the Minister responsible for food safety;

“official laboratory” means a laboratory designated or approved as such under this Act;

“package” includes anything in which food is wholly or partially placed or wrapped and includes any basket, container, pail, tray or receptacle of any kind whether open or closed;

“**premises**” includes any building, tent or other structure, permanent or otherwise, together with the land on which the same is situated and any adjoining land employed in connection therewith, used for the production, manufacture, packing, packaging, transport, handling, serving, storage or sale of any food;

“**production**” means the cultivation, rearing or growing of food including harvesting, milking and farmed animal production prior to slaughter;

“**quality control systems**” means a system which identifies, evaluates and controls hazards significant to food safety, which include, but are not limited to the following—

- (i) Hazard Analysis Critical Control Point (HACCP);
- (ii) Good Agricultural Practices (GAP); and
- (iii) Good Manufacturing Practices (GMP);

“**risk**” means a function of the probability of an adverse human health effect and the severity of that effect, consequential to a hazard in food;

“**risk analysis**” means a process composed of risk assessment, risk management and risk communication in accordance with internationally accepted procedures and standards;

“**risk assessment**” means a scientifically based process consisting of the following steps: (i) hazard identification, (ii) hazard characterization, (iii) exposure assessment, and (iv) risk characterization.

“**risk communication**” means the interactive exchange of information and opinions concerning risks among risk assessors, risk managers, consumers and other interested parties;

“**risk management**” means the process of weighing policy alternatives in the light of results of risk assessment, and, if required, selecting and implementing appropriate control options, including regulatory measures;

“**sell**” includes to offer, advertise, keep, store, display, transmit, consign, convey or deliver for sale, or to exchange or to dispose of to any person in any manner whether for a consideration or otherwise, and “sold”, “selling” and “sale” shall have corresponding meanings;

“**slaughter**” means any procedure which intentionally causes the death of an animal by bleeding;

“**street food**” means ready-to-eat food prepared or sold in streets and other public places;

“**street food vending**” means operating a food establishment from—

- (a) a vehicle, watercraft or similar means of conveyance; or

- (b) a tray, container or other article used to move food from one place to another;

“**substance**” includes any solid, liquid or gaseous material;

“**traceability**” means the ability to follow the movement of a food through specified stage(s) of production, processing and distribution;

“**treated**” means coloured, stained, powdered, polished, coated, stained, mixed, preserved, flavoured, diluted or thickened with any substance, and treat and treatment shall have corresponding meanings;

“**unsanitary conditions**” means such conditions or circumstances as might cause contamination of food or render the same injurious or dangerous to health;

“**vehicle**” means any thing in or by which food is transported and includes an animal;

“**wholesome**”, in relation to food, means to be natural, clean, safe and not adulterated.

3. Objectives of Act.

- (1) The objectives of this Act are—
- (a) to regulate food safety and quality in all stages of the food chain, from production or manufacturing to consumption;
 - (b) to regulate all food, fisheries, aquaculture, meat or other food products; and
 - (c) generally, to protect human life and health, and consumer interests, including fair practices in trade.
- (2) In order to achieve the objectives specified in paragraph (1), food safety and quality shall be based on risk assessment, which is based on the available scientific evidence, undertaken in an independent, objective and transparent manner.
- (3) Where relevant scientific evidence is insufficient, sanitary or phytosanitary measures may be adopted on the basis of available pertinent information, including information from relevant international organizations.

PART II – FOOD SAFETY AND QUALITY AUTHORITY

4. Functions of Minister.

The Minister shall:—

- (a) upon the advice of the Food Safety and Quality Board, approve the regulations under this Act;
- (b) collaborate with other relevant Ministers regarding the approval and implementation of a food safety policy;
- (c) designate any laboratory as an official laboratory for purposes of this Act;
- (d) propose the implementation of fees and cost recovery mechanisms under this Act; and
- (e) carry out any other functions, as prescribed under this Act.

5. Establishment of Food Safety and Quality Authority.

- (1) There shall be a body called the Food Safety and Quality Authority (hereinafter referred to as “the Authority”) which shall be the governmental agency charged with responsibility for implementing and enforcing the provisions of this Act..
- (2) The Governor General shall on the advice of the Public Service Commission appoint a person with the relevant qualifications and experience in food safety and quality management to be the Director of the Food Safety and Quality Authority.

6. Functions of the Authority.

- (1) The functions of the Authority shall be—
 - (a) to establish a coordinated and integrated risk based food safety and quality system to protect, enhance and ensure food safety and to protect consumers against food frauds
 - (b) to formulate a food safety and quality policy and strategy in consultation with the Food Safety and Quality Board established under this Act and to monitor their implementation;
 - (c) to approve risk-based sanitary measures, and take sanitary action in case of emergency or risk of food safety outbreak;
 - (d) to use risk management to ensure that all food produced, distributed or marketed in The Bahamas, whether for domestic consumption or export, and whatever its origin, meets the highest standards of food safety;
 - (e) to certify food establishments and to put in place quality control systems for all food establishments and take steps to ensure the progressive implementation of quality control systems;
 - (f) to issue licenses to food establishments;
 - (g) to provide advice, information or assistance to any public authority in relation to food control, food safety and food trade;

- (d) to serve as the National Codex Committee;
 - (h) to distribute information received from the Codex Alimentarius Commission and other international or regional entities and coordinate the circulation of draft standards within The Bahamas and the collection of comments thereon from interested governmental and non-governmental actors;
 - (i) to act as the coordinating authority for the audit of HACCP , GAP, GMP and other quality control systems in The Bahamas;
 - (j) to advise the Board on the preparation of draft food safety and quality standards harmonized to the international standards;
 - (k) to collaborate with the Board in formulating regulations governing this Act;
 - (l) to promote and carry out consumer education regarding food safety and quality as well as other aspects of risk communication;
 - (m) to ensure that all measures taken under this Act are done so on the basis of risk assessment;
 - (n) to do all such acts as appear to it to be requisite, advantageous or convenient for or in connection with the carrying out of the Authority's functions or to be incidental to their proper discharge and may carry on any such activities in that behalf either alone or in association with any other person or body whether public or private.
- (2) The Authority shall have power for the purpose of carrying out its functions to do all such acts as appear to it to be requisite, advantageous or convenient for or in connection with the carrying out of its functions or to be incidental to their proper discharge and may carry on any activities in that behalf either alone or in association with any other person or body.
- (3) The Authority shall develop training programmes required to carry out the purposes of this Act, including, but not limited to—
- (a) food safety and quality systems;
 - (b) analytical methods and laboratory quality assurance;
 - (c) risk based food safety for food establishments; and
 - (d) risk based inspection and quality control systems for food establishments.

7. Powers of Authority.

- (1) The Authority may—
 - (a) regulate or ban the limits on the presence of additives or contaminants in food or animal feed, particularly where there is no relevant international standard;

- (b) regulate through food safety and quality standards approved as prescribed, the presence of additives, biological and chemical contaminants and other residues in food or animal feed;
 - (c) prohibit the import, cultivation, taking, harvesting or obtaining of any food, where the Authority determines that the food or any specified class or description of that food is dangerous or injurious to persons consuming the food.
- (2) In the interest of public safety, the Minister may on the recommendation of the Authority—
- (a) issue an order to prohibit the production, manufacture, preparation or sale of any specified food;
 - (b) stipulate conditions for the production, manufacture, preparation or sale of any specified food;
 - (c) cause any food to be tested or examined as prescribed;
 - (d) cause any food to be held or isolated in any place, and prohibit the removal of food from that place for such time as shall be prescribed; or
 - (e) require the disposal or destruction of any food.
- (3) An order made under subsection (2) shall specify the duration of the prohibition.

PART III – REGISTRATION AND LICENSING REQUIREMENTS

8. Prohibition on sale of food without a licence.

- (1) No person shall operate a food establishment unless—
- (a) he is in possession of a valid certificate of registration issued by the Authority;
 - (b) the food establishment has in place quality control systems; and food safety standards; and
 - (c) the food establishment meets all requirements under this Act.
- (2) Any person who operates a food establishment without a licence commits an offence and shall be liable to a fixed penalty as prescribed by regulations.

9. Licensing of food establishments.

- (1) A person who operates or intends to operate a food establishment shall make an application for the grant of a license to the Authority for a license to operate the food establishment, subject to such conditions as the Authority deems fit.
- (2) The Authority may, upon application and payment of the prescribed fee, issue a licence using Form ____ of the *Schedule*, subject to such conditions as the Authority deems fit.
- (3) A license issued under this section shall be a pre-condition to the issuance of a business license under the Business Licence Act, Ch.329.
- (4) Licenses issued under this section shall be valid for a year and subject to renewal upon payment of a fee.
- (5) Where an application is denied, the Authority shall inform the applicant of the reasons in writing.

10. Suspension or revocation of license.

Where the licensee fails to observe the terms and conditions of the license, the Authority may suspend or revoke license, depending on the gravity of the offence and shall inform the licensee in writing providing the grounds for such suspension or revocation.

11. Permit to engage in street food vending.

- (1) A person who engages or intends to engage in street food vending, whether permanently or temporarily, shall apply using Form ____ of the *Schedule*, to the Authority for a license to operate the food establishment. that person is the holder of a licence issued by the Authority and—
 - (a) is registered with the Authority;
 - (b) is in possession of a food handler's certificate;
 - (c) displays on his uniform at all times a valid registration badge issued by the Authority;
 - (d) a permit issued under this section shall be a pre-condition to the issuance of a business licence under the Business Licence Act Ch. 329.
- (2) A person who contravenes the provision of this section commits an offence.
- (3) The Minister may make regulations to prescribe the locations from which street food vending can be conducted and to prescribe the .specifications for vehicles and other articles used for street food vending.
- (4) An application for a permit under this section shall—

- (a) be made to the Authority in the Form ____ set out in *Schedule*;
- (b) be accompanied by—
 - (i) two recent photographs of the applicant;
 - (ii) the application fee set out in Form ____ of the *Schedule*;
 - (iii) a health certificate; and
 - (iv) any other particulars the Authority may require.
- (5) Where an application for renewal is made before the expiration of the permit, the expired permit shall continue in force until the effective date of the grant or refusal of a permit.

12. Food Handler's Certificate.

- (1) No person shall employ another person as a food handler, whether permanently or temporarily, unless that person is the holder of a food handler's certificate.
- (2) A person who employs a person who does not hold a Food Handler's Certificate to work as a food handler commits an offence.
- (3) A person who works as a food handler without being the holder of a Food Handler's Certificate commits an offence.
- (4) A person will be deemed to be a food handler where he carries out or assists in carrying out any process or operation in the sale of food or in the preparation, transport, storage, packing, wrapping, exposure for sale, service or delivery of food.
- (5) A Food Handler's Certificate may be cancelled or suspended where—
 - (a) the holder of the certificate is found to be suffering from a communicable disease;
 - (b) information given by the food handler in relation to his application is false;
 - (c) there has been a contravention of the Act or Regulations made thereunder; or
 - (d) the holder requests its cancellation.

PART IV - DESIGNATION, POWERS AND DUTIES OF FOOD INSPECTORS

13. Designation of food inspectors.

For the purposes of the enforcement of this Act, the Minister and the Ministers responsible for public health and environmental health may in writing designate as food inspectors, public officers or other persons with the necessary training

and experience, to carry out the functions assigned to food inspectors under this Act.

14. Designation of authorised officers.

- (1) The Minister may in writing , and for a prescribed period , designate any duly qualified person as an authorised officer to perform certain specified functions of a food inspector as shall be stipulated in writing.
- (2) The Authority shall not delegate to an authorized officer any of the following functions—
 - (a) issuing any official documentation;
 - (b) acting as an official liaison with other Ministries or foreign authorities or any notification responsibilities; and
 - (c) approving standards, requirements, rules or sanitary measures;
 - (d) other functions as may be prescribed by regulations.
- (2) The Authority shall issue to every food inspector and authorized officer an identification badge showing his designation and in the case of an authorised officer, the length of his service shall also be stipulated on his identification badge.
- (3) No physical or legal person that has any actual or reasonably perceived interest in a matter or other action to be taken by the Authority, whether such interest is direct or indirect shall act as an authorized officer.
- (4) Where a person under subsection (3) becomes aware of such interest, he must notify the Authority in writing within three days of becoming aware of such interest.
- (5) Upon receipt of the notice in subsection (4), the Authority shall immediately reassign the authorized officer. No physical or legal person that has any actual or reasonably perceived interest in a matter or other action to be taken by the NPPO, whether such interest is direct shall act as an authorized officer.
- (5) No person who has any actual or reasonably perceived interest in a matter or other action to be taken by the Authority , whether such interest is direct or indirect interest, shall act as a food inspector.
- (6) Where a person designated under subsection (1) becomes aware of such interest, he must notify the Authority in writing within three days
- (7) Upon receipt of a notice referred to subsection (6), the Authority shall immediately reassign the authorized officer.

15. Designation of laboratories.

- (1) The Minister may, from time to time, designate any laboratory as an “official laboratory” for the purposes of this Act.

- (2) No person who has any actual or reasonably perceived interest in a matter or other action to be taken by the Authority, whether such interest is direct or indirect interest, shall act as an official laboratory.
- (3) Where a person designated under subsection (1) becomes aware of such interest, he must notify the Authority in writing within three days
- (4) Upon receipt of a notice referred to subsection (3), the Authority shall immediately reassign the laboratory.

16. Duties of food inspectors.

- (1) Where a food inspector has reasonable grounds for believing that a food establishment operator has failed to comply with any of the provisions of this Act, he may serve a notice to that operator—
 - (a) stating the grounds for believing that the Act is not being complied with;
 - (b) specifying the measures which that operator shall take to remedy the failures referred to in paragraph (a);
 - (c) requiring the operator to implement those measures, or measures which are at least equivalent to them, within the time period specified in the notice.
- (2) A food inspector shall not disclose any information to a third party acquired in the performance of his duties unless otherwise ordered to do so in writing by the Director or by a court.
- (3) Where a food inspector takes any action or applies any measure to implement this Act, he shall prepare a written notice and provide a copy to the owner of the establishment and all sanitary measures and actions shall be conducted on a risk-based approach.
- (4) Where no person is in actual occupation of any establishment, or where the operator cannot be located, service of any notice under this Act shall be made by affixing the notice to a conspicuous place in the establishment, and such affixing shall be considered as good service of the notice.
- (5) It shall be an offence to remove or tamper with a notice issued under subsection (4).

17. Seizure of food.

- (1) Where it appears to a food inspector that food at an establishment is unfit for human consumption, is harmful or is likely to cause harm to human health, and the operator fails to withdraw such food from the market, the food inspector shall—

- (a) seize and seal such food, and issue a notice to the food establishment operator that the food or any portion thereof is for a specified period of time not to be sold, removed, manipulated, tampered with or otherwise altered without the inspector's authorization; or
- (b) issue a written notice—
 - (i) temporarily ordering the food to be removed to a specified place; or
 - (ii) ordering the immediate destruction of the food.
- (2) The food inspector shall immediately notify the Authority where action is taken under subsection (1) in instances where it appears that any food is likely to harm or cause harm to human health.
- (3) The Authority shall notify the relevant governmental and non-governmental entities so that all measures necessary to ensure the protection of consumers, including public warnings, recall orders, marketing restrictions, marketing bans or other appropriate measures, are carried out.
- (4) Within fourteen days of the action taken by the food inspector under subsection (1), the food inspector shall review the circumstances to determine whether the circumstances that gave rise to the notice still exist.
- (5) Where the food inspector—
 - (a) determines that the circumstances no longer exists, he shall withdraw the notice, and where appropriate, allow the release of any food from the place where it is stored;
 - (b) determines that the circumstances still exists, he may order that any such food be destroyed or disposed of so as to prevent its use for human consumption, and shall supervise the destruction or disposal.
- (6) The costs of any action taken by the food inspector under this section shall be borne by the operator of the establishment.

18. Powers of entry.

- (1) A food inspector may, at any reasonable time, upon presentation of his identification badge enter and inspect any food establishment or premises where he believes on reasonable grounds that—
 - (a) the establishment contains something, or is in a condition that poses or may pose a food safety risk ;or
 - (b) the premises are being used for the following activities as a food establishment—

- (i) the production, processing, manufacturing or other preparation of food for human consumption;
 - (ii) the handling or sale of food including street food;
 - (iii) the import or export of food;
 - (iv) the growing, harvesting or other preparation of plants and micro-organisms for use as food; or
 - (v) any other activity related to the activities described in subparagraphs (i) to (iv).
- (2) In the performance of his functions, a food inspector may—
- (a) inspect any food, substance, appliance or other thing which is being, or is suspected of being used on any premises and forfeit the same, where it appears that any of the provisions of this Act has been contravened;
 - (b) take any photographs or demand from the owner or person in charge, the production of any records or any explanation with respect thereto, regarding the establishment and the operation thereof, and where necessary, make copies or take extracts therefrom;
 - (c) in the prescribed manner, examine, take samples, test or analyse any food, substance or other thing;
 - (d) seal off access to the establishment, where he has reasonable grounds to believe that the continued operation thereof can be injurious to public health;
 - (e) read any measuring instruments installed on the premises or use any other means necessary to record data generated in that establishment;
 - (f) determine whether any of the provisions of this Act are being violated;
 - (g) ensure that proper sanitary measures are being carried out;
 - (h) examine and inspect food handlers and other personnel employed therein;
 - (i) stop and search any vehicle in which food is being or is reasonably suspected of being handled or stored or in which any other activity in connection with food is being, or is suspected of being carried out;
 - (j) by notice in writing, prohibit the distribution or sale of food for the period specified in the notice, where he has reasonable grounds to believe that such food is contaminated or unwholesome;

- (k) issue an order suspending the operation of an establishment for non-compliance with any provisions of this Act and reasons for such actions;
 - (l) inspect any operation or process carried out on such premises.
- (3) A food inspector may request the assistance of a peace officer in the execution of his duties and powers.

19. Disclosure of information.

“Information” for the purposes of this section includes any item or thing relevant to the information.

- (1) Where a food inspector receives information in response to an inquiry or a demand he shall not disclose or produce such information except in accordance with this section.
- (2) A food inspector who receives information in response to an inquiry or a demand referred to in subsection (1) or a food inspector who receives information in the exercise of his duties under this Act shall disclose it in accordance with the limitations, if any, specified in regulations made for that purpose to any of the persons or bodies specified in subsection (3) if the food inspector or person who received the information is of the opinion that—
 - (a) it relates to a food safety risk; and
 - (b) the disclosure to any of those persons or bodies under subsection (3) is necessary to protect the health or safety of the public or any person.
- (3) Disclosure under subsection (2) shall be made to—
 - (a) a Minister for the purpose of the administration of this or any other Act dealing with public health or safety;
 - (b) the medical officer or the Chief Medical Officer where a food safety risk occurs; or
 - (c) any person who the Authority or the person authorized in writing by the Authority considers affected or may be affected by the risk or who may contribute to the prevention, decrease or elimination of the risk..
- (4) Subject to subsection (2), in any instance where a food inspector obtains information from a person under this section, and the person asserts a claim that the information provided to the food inspector should be treated as a trade secret or confidential business information, the Authority or any person or entity to whom or to which the information is disclosed shall treat that information as a trade secret or confidential.

PART V – DUTIES OF FOOD ESTABLISHMENT OPERATORS

20. General duties of food establishments operators.

(1) Every operator of a food establishment shall ensure that the food preparation, processing, manufacturing, packaging and storing, transportation, distribution, handling and offering for sale or supply of food are carried out in a safe manner in accordance with this Act.

(2) An operator shall in relation to his establishment—

- (a) prominently display in a conspicuous place, the license for the establishment;
- (b) ensure that where applicable, the premises used for the preparation, sale, exposure or storage of food is constructed as prescribed by the Building Code of The Bahamas;
- (c) keep detailed and accurate records of the operations of the establishment;
- (d) ensure that appropriate food safety procedures are identified, implemented, maintained and reviewed;
- (e) establish and maintain quality control systems and make such systems available for audit by the Authority when required to do so;
- (f) ensure that all food handlers employed therein receive training in food safety and hygienic practices and are monitored to ensure that they implement such practices;
- (g) inform consumers and the Authority in accordance with prescribed procedures regarding actual or potential food safety risks.

21. Food Register.

The owner of every food handling establishment shall keep a food register containing the following information—

- (a) the daily quantities of food produced, purchased, transported, distributed or sold in the food-handling establishment;
- (b) the name and address of each person—
 - (i) from whom food is bought;
 - (ii) in the case of food distributed or sold in bulk, to whom it is distributed or sold; and
 - (iii) keep a register of employees detailing their full names and addresses and such other particulars as may be required by the Authority;

- (c) the type, make and licence number of each vehicle which transports food to, from or on behalf of the food handling establishment;
- (d) the source of ingredients used in food production or preparation; and
- (e) the type and quantity of packaging material used in the packaging of food.

22. Duties and rights of operator during inspection.

During an inspection, the operator or any person in charge or employee of an establishment shall—

- (a) provide assistance or carry out instructions as may be reasonably necessary to facilitate the exercise of the food inspector's functions or to implement the provisions of this Act;
- (b) provide all information as may be reasonably necessary in connection with the furtherance of the enforcement of this Act.
- (c) have the right to—
 - (i) accompany the food inspector;
 - (ii) request the food inspector to provide signed written reasons for the exercise of any power exercised under section 18(2)(k).

23. Operator suspects certain medical conditions.

- (1) Where a food establishment operator suspects that a person who—
 - (a) is an employee of the establishment ,
 - (b) frequents the establishment; or
 - (c) where applicable, lives within the building housing the food establishment;

is suffering from an infectious or communicable disease likely to contaminate food, the operator shall immediately notify the Authority of the name and address of the employee or person; and the circumstances which gave rise to the suspicion.

- (2) On receipt of notification under subsection (1), the Authority shall require the person to whom the notification relates to submit to a medical examination by a medical practitioner to certify whether or not the person is suffering from an infectious or communicable disease likely to contaminate food.

- (3) Where the medical practitioner certifies that the person is suffering from a disease likely to contaminate food, the Authority may, for the purpose of safeguarding the public health, by notice in writing—
 - (a) cancel or suspend that person's Food Handler's Certificate; or
 - (b) prohibit the person from working in a food establishment.
- (4) A person who, after a notification pursuant to subsection (3), continues to work as a food handler, commits an offence and is liable on summary conviction to a fine not exceeding \$10,000.00.

24. Traceability of food.

- (1) The operator of every food establishment shall put in place a system to trace the origin and movement of its food items.
- (2) Every operator must be able to identify any person and business from whom they have been supplied with a food or food ingredient, animal feed, a food-producing animal, or any substance intended to be, or expected to be, incorporated into a food or animal feed.
- (3) Every operator must also be able to identify the other businesses to which their products have been supplied.
- (4) The information referred to in subsection (2) should be maintained in a form that enables it to be made available to the competent authorities on demand.
- (5) Every operator must ensure that food or animal feed placed on the market is adequately labelled with a batch identity to facilitate its traceability by linking it with relevant documented records.
- (6) Upon request of the Authority, establishment operators shall make available all information collected under the traceability system established under subsection (1).

25. Recalling of hazardous food products.

- (1) Operators having possession, custody or control of food shall be held responsible for the food product found to not be in compliance with food standards, notwithstanding his action against food establishment operators responsible in previous stages of the food chain.
- (2) Where a food product which is produced, processed, manufactured, delivered for export, or imported by a person, registered under this Act, is found to be a hazard, it shall be lawful for the Authority—
 - (a) to recall the food product for analysis or destruction if the food product has not yet been exported or has been imported;

- (b) to liaise with the competent authorities of any country which imports the food product from The Bahamas and to ensure that the food product—
 - (i) is not released for sale upon arrival in that country, or
 - (ii) where it has already arrived in that country and released for sale, recalled for analysis or destruction by the competent authority of that country.
- (3) An operator shall be responsible to take action for the recall of any hazardous food product which is in his possession, custody or control and to—
 - (a) recall the food product for disposal;
 - (b) liaise with the competent authorities of any country from which any such food was imported.
- (4) Where the operator fails to act under subsection (4), the Authority will carry out the actions, the expenses for which will be borne by the operator.

26. Labelling and advertising.

- (1) Every package of food intended for sale in The Bahamas shall bear a label which—
 - (a) is in English;
 - (b) permits its traceability; and
 - (c) sets out such particulars as may be prescribed in Regulations.
- (2) Where food other than packaged food is displayed for sale, it shall be labelled as prescribed.
- (3) The Authority shall prescribe requirements for food advertising in accordance with applicable legislation.
- (4) Any foods not in compliance with the requirements under this section shall be confiscated by the Authority.
- (5) Any person selling food in contravention of this section commits an offence and shall be liable to a fixed penalty.

27. Responsibilities of medical practitioners, etc.

It shall be the duty of medical practitioners and official laboratories to report every incidence of a food-related illness to the Authority and the Chief Medical Officer.

PART VI.-IMPORT AND EXPORT OF FOOD

28. Requirements for imported and exported foods.

- (1) No person shall import into The Bahamas any food unless it is—
 - (a) accompanied by—
 - (i) the prescribed documents;
 - (ii) traceability and labeling information; and
 - (iii) any other requirements under this Act;
 - (b) submitted for inspection by the Authority at the port of entry or exit, as the case may be.
- (2) In addition to the requirements under subsection (1), an official analyst certificate issued by an official laboratory; shall be required for such food as shall be prescribed.
- (3) No person shall export food from The Bahamas unless it meets the requirements of the country to which it is being exported.
- (4) Food products shall meet the requirements set out in national standards, or Codex standards as prescribed in Regulations;
- (5) Where no standards exists the Authority in collaboration with the Board may prescribe import requirements based on risk assessment.
- (6) A customs officer shall —
 - (a) promptly notify the Authority of the arrival of any food in The Bahamas; and
 - (b) not release or dispose of imported food unless so authorised by the Authority.
- (7) All operators who import or export food shall, not later than 90 days after the end of the operating year, submit to the Authority, in the prescribed form a report relating to the activities carried out in the previous calendar year including—
 - (a) types and quantities of food imported or exported;
 - (b) data concerning shipments of food;
 - (c) food found by the Authority not to be in compliance with the statutory requirements of The Bahamas;
 - (d) a summary of any incidents or accidents that may have occurred and any action taken regarding food found not to be safe for export;
 - (e) any other matter the Authority may require.

29. Import inspection.

- (1) A food inspector may inspect any food imported into or exported from The Bahamas and, for the purposes of inspection or analysis thereof, take samples of any such food.
- (2) Where samples are taken under subsection (1), the food inspector shall—
 - (a) in the presence of the importer, seal and mark the samples as prescribed; and
 - (b) according to the prescribed regulations and procedures—
 - (i) release the imported food for distribution and sale;
 - (ii) detain the imported food and, where he deems necessary, issue a written notice temporarily ordering its removal to a specified place; or
 - (iii) issue a written notice ordering the immediate destruction of the imported food.
- (3) Any imported food detained or removed under subsection (2)(b) shall not be released to the owner except upon production of an official analyst certificate indicating that the food complies with the requirements of this Act.
- (4) The costs of any inspection, transport, analysis, storage or destruction under this section shall be borne by the importer. Where the imported food lies unclaimed for a prescribed period after its entry into or transit through The Bahamas, or after any treatment thereof, the Authority may take action to destroy or dispose of it.
- (5) The Government shall bear no liability for actions taken in good faith for the destruction or disposal of food imported in contravention of this Act.

30. Relabelling and reconditioning.

- (1) Subject to the provisions of subsection (2), the importation of any food which does not comply with the provisions of this Act is prohibited.
- (2) Where any food sought to be imported into The Bahamas would, if sold in The Bahamas, constitute a contravention of this Act, the Authority may nonetheless permit its importation solely for the purpose of relabelling or reconditioning as prescribed.
- (3) In the event that any relabelling or reconditioning authorised under subsection (2) is not carried out within the prescribed time period, the importer shall export or destroy such food at his expense.
- (4) Where an importer fails to export or destroy imported food as required under subsection(3), the Authority may order the destruction of or destroy the imported food.

- (5) The costs incurred under subsection (4) shall be borne by the importer.

PART VII – FOOD SAFETY AND QUALITY BOARD

31. Establishment of the Board.

- (1) There is hereby established a Food Safety and Quality Board (hereafter referred to as “the Board”).
- (2) The Board shall be comprised of representatives from the Ministries and public authorities with a role on the food production chain, as well as representatives from the private sector.
- (3) The public authorities represented on the Board shall designate members with a qualification or function related to food safety and quality as members of the Board.
- (4) The membership of the Board, rules to be admitted as member and internal procedures shall be prescribed by regulation.

32. Functions and powers of the Board.

- (1) The functions of the Board are—
 - (a) to advise the Authority on food safety and quality matters, including the production, manufacture, import, export, labelling and sale of food, on food-consumers protection and on emerging food safety and quality issues, including street food;
 - (b) to provide assistance and advice to the Authority on the formulation, review and implementation of a food safety and quality policy, including procedures for emergency response;
 - (c) to propose and assist in the formulation and amendment of regulations, orders, standards, codes of practice and notices under this Act;
 - (f) to advise The Bahamas participation in the work of the Codex Alimentarius Commission and other international and regional entities, including representation at meetings;
 - g) to encourage consumer education regarding food safety and quality as well as other aspects of risk communication;
 - (h) to, on its own initiative, discuss any matter connected with food in The Bahamas, and report to the Authority on its discussions; and
 - (i) to perform all other functions assigned to it by this Act
- (2) The Board may establish ad-hoc or permanent sub-committees to perform advisory functions as it considers necessary.

33. Appointment of Scientific Committee.

- (1) The Minister shall, on the advice of the Board, appoint an independent scientific committee (to be known as “the Scientific Committee”) to assist the Authority in conducting food safety risk assessments.
- (2) The composition and functions of the Scientific Committee shall be as specified in _____ *Schedule*.

34. Functions of Scientific Committee.

- (1) The Scientific Committee shall be responsible for—
 - (a) evaluating, in response to official requests or on its own initiative, physical, chemical or biological risks to health arising throughout the food production chain;
 - (b) advising the Minister or the Authority on the appropriate measures to be taken to protect consumer safety; and
 - (c) providing inputs into or developing proposed regulations or rules on subject matters within its mandate.
- (2) In carrying out its functions, the Scientific Committee shall take into account—
 - (a) the latest scientific research;
 - (b) information on risk analysis from recognized international and national institutions and other information regarding procedures, methods and means of production;
 - (c) the results of sampling and analysis; and
 - (d) any other relevant data.
- (3) The Scientific Committee shall cooperate with the Authority, the Board and all other authorities regarding risks, risk factors and risk perception, and shall scientifically justify its risk assessments and the basis of its decisions.

PART VIII - OFFENCES AND PENALTIES

35. Offences and penalties.

- (1) Any person who sells any food that—
 - (a) contains any poisonous or harmful substance;
 - (b) unwholesome, or is otherwise unfit for human consumption;
 - (c) is adulterated; or
 - (d) is injurious to human health;

shall be guilty of an offence under this Act, and shall be liable on summary conviction to a fine not exceeding \$ 100,000.00 and based on the severity of the hazard shall be subject to having his licence suspended or revoked.

- (2) In determining whether any food is injurious to human health in subsection (1), due regard shall be given not only to the probable effect of such food on the health of a person consuming it, but also to the probable cumulative effect of food of substantially similar composition on the health of a person consuming such food in ordinary quantities.
- (3) Any person who—
 - (a) prepares, stores, handles or sells food under unsanitary conditions;
 - (b) fails to establish and implement a traceability system in accordance with this Act;
 - (c) imports, exports, produces, manufactures, prepares, stores or sells food contrary to the provisions of this Act;
 - (d) fails to follow the applicable hygiene rules established under this Act;
 - (e) fails to ensure that all personnel of a food establishment follow prescribed procedures;
 - (f) for the purpose of effecting or promoting the sale of any food, publishes or causes to be published an advertisement which is false or misleading,

shall be guilty of an offence under this Act, and shall be liable on summary conviction to a fine not exceeding \$100,000.00 and may be subject to having his licence suspended or revoked.

- (4) Any person who prepares or sells any food for which there is a prescribed standard issued by the Authority responsible for issuing standards, and such food does not comply with the prescribed standard, shall be liable on summary conviction to a fine not exceeding \$ 5,000.00.
- (5) Any person who—
 - (a) operates an establishment without any license or permit under this Act or by any other legislation in force in The Bahamas, constructs a food establishment except as prescribed by the Building Code of The Bahamas, or fails to submit a report under this Act;
 - (b) attempts to improperly influence an inspector or authorized officer in the exercise of his official functions under this Act;
 - (c) poses as an inspector or authorized officer;
 - (d) fails to provide access, samples or information to an inspector or authorized officer upon request, gives false information to an

authorized officer, or otherwise fails to comply with an order or improvement notice lawfully made under this Act;

- (e) tampers with any samples taken under this Act or breaks any seal or alters any markings made by an authorized officer without permission; or
- (f) alters, forges, defaces, or destroys any document issued under this Act or knowingly or recklessly provides information which is false, for the purpose of obtaining any document under this Act,
- (g) packs or labels any food in a manner which is false or misleading, or does not follow the prescribed rules for labelling shall be guilty of an offence,

shall be guilty of an offence under this Act, and shall be liable on summary conviction to a fine of not exceeding \$10,000.00.

36. Offences by inspectors.

- (1) An inspector or authorized officer who:
 - (a) seizes food for any reason other than those prescribed in this Act;
 - (b) discloses any information acquired in the course of exercising his official functions under this Act except where required to do so by his supervisor or by any court;
 - (c) any monetary or other benefit from a person affected by the exercise of official powers under this Act; or
 - (d) otherwise acts outside the scope of his duties,shall be guilty of an offence.
- (2) Upon conviction for an offence under subsection (1) an inspector shall be liable to dismissal by the competent authority or in the case of an authorized officer he shall cease to function as such and may be ineligible for reappointment, having regard to the severity of the offence.

37. Fixed penalty offences.

- (1) Notwithstanding anything to the contrary in this Act or any other applicable law, where a food inspector has reasonable grounds to believe that a person is committing or has committed certain minor offences as prescribed by regulation, the food inspector may then and there serve notice in writing upon the alleged offender charging him or her with the commission of the offence.
- (2) The food inspector shall at the time of the service of notice referred to in subsection (1) of this section, inform the alleged offender that he shall—
 - (a) appear before the magistrate on the date specified; or

- (b) in accordance with procedures set out in subsections (3) and (4) of this section, pay the fixed penalty, in lieu of appearance before the magistrate.
- (3) An alleged offender who chooses to pay the fixed penalty referred to in subsection (2)(b) shall —
 - (a) within seven days of the date of the notice, sign the notice in acknowledgement of guilt and return it, together with the sum cited therein, to the Magistrate's Court;
 - (b) be treated for all purposes in law as a person who has not committed, been charged with, prosecuted for, convicted of or sentenced for the offence in respect of which payment was made.
- (4) The admission of guilt and the fixed penalty paid under this section shall be dealt with by the magistrate in the same manner as adjudication in court of an offence punishable on summary conviction and for which no conviction is recorded.

38. Forfeiture.

Upon the conviction of any person for any offence under this Act, the court may, in addition to any other sentence imposed, suspend or cancel any license to operate a food establishment issued to the convicted person, or declare any food, appliance, product, material, substance or other object in respect of which the offence has been committed or which was used in connection with the commission of the offence forfeited to the Government and disposed of as the court may direct.

39. General penalty.

- (1) Any person who fails to carry out or contravenes any of the provisions of this Act or any regulations made thereunder is guilty of an offence and where there is no specific penalty provided, is liable on summary conviction to a fine not exceeding \$500.00 dollars, and in the case of a second or subsequent offence, to a fine not exceeding \$700.00 dollars.
- (2) In the case of a continuing offence, the offender is liable to a further fine not exceeding \$1,000.00 for each day that such offence continues after the day of conviction thereof, and in default of payment to imprisonment for a period not exceeding **six months**.

40. Procedure for offences.

Where a food inspector or authorised officer reasonably believes that a person has contravened the provisions of this Act, he may provide such information to

the Police who may issue a summons to the person accused of contravening the Act ordering such person to appear before a Magistrate.

PART IX- MISCELLANEOUS

41. Duty to assist and cooperate.

Customs, port, airport, airline, postal, shipping, police, consumer protection, and local authorities shall assist authorized officers in the performance of their functions under this Act by providing such facilities and assistance as the Authority may request from time to time.

42. Review of Inspections, Testing and Other Procedures by Trading Partners

The competent authority of all trading partners may conduct a periodic review of measures carried out by the Authority; including but not limited to inspections and testing.

43. Right of appeal.

- (1) Any person aggrieved by an action or decision of an authorized officer or an official analyst under this Act may within the forty-eight (48) hours of the action or decision, in writing, appeal to the Director
- (2) An appeal shall lie to the Appeals Tribunal from a decision under subsection (1) within forty eight hours of that decision.
- (3) An appeal shall lie within seven days to the Supreme Court on a question of law from a decision of the Appeals Tribunal which otherwise shall be final on technical issues.
- (4) Pending an appeal no decision will take effect.

44. Good faith defence by public authorities.

No member of the Board, Committee, authorized officer, food inspector or any representative of the Authority shall be liable to suit or to prosecution in respect of anything done in good faith in the performance of official functions under this Act.

45. General defences.

- (1) In any proceedings for an offence under this Act it shall be a defence for the accused to establish that he could not, with reasonable diligence, have ascertained that the sale of the food would contravene this Act.
- (2) It shall be a defence that—

- (a) someone could not reasonably have ascertained that packaging or labelling was false or misleading.
- (b) a person whose business it is to publish or broadcast, or arrange for the publication of advertisements, received the offending material in the ordinary course of business and did not make any material alterations to it.

46. Presumptions.

- (1) In any proceedings under this Act, a certificate of analysis purporting to be signed by the director of the Authority or head of an official laboratory shall be accepted as *prima facie* evidence of the facts stated therein, provided that:
 - (a) the party against whom it is produced may require the attendance of the head of the official laboratory or the analyst who performed the analysis, for purpose of cross examination;
 - (b) no such certificate shall be admissible in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced reasonable notice of such intention together with a copy of the certificate.
- (2) Evidence that a package containing any food to which this Act applies bore a name, address or registered trademark of the food establishment operator or food establishment, by which it was produced, manufactured or packed, shall be *prima facie* evidence that such food was produced, manufactured or packed, as the case may be, by that establishment or operator.
- (3) Any substance commonly used for human consumption, if sold or offered, exposed or kept for sale, shall be presumed, until the contrary is proved, to have been sold or, as the case may be, to have been or to be intended for sale for human consumption.
- (4) Any substance commonly used for human consumption which is found on premises used for the preparation, storage or sale of that substance, and any substance commonly used in the production or manufacture of food for human consumption which is found on premises used for the preparation, storage or sale of that food, shall be presumed, until the contrary is proved, to be intended for human consumption.
- (4) Where any person demands any food by a name prescribed for a food for which there is a prescribed standard, the person shall be deemed to have demanded food which complies with that prescribed standard.

47. Regulations.

- (1) The Minister may, on the advice of the Authority, make regulations for the purpose of carrying out the provisions of this Act.

- (2) Without prejudice to the generality of subsection (1), the Minister may by make regulations providing for —
- (a) the control of the cultivation, production, manufacture, storage, transport, packing, packaging, labelling and sale of all types of food, including food that is organically produced, genetically modified, dietetic or intended for infants or other population groups;
 - (b) the preparation, handling and serving of food;
 - (c) the construction, inspection and maintenance of food establishments, including hotels, boarding houses, markets, grocery stores and other food businesses, and where applicable the specifications for vehicles and other items used in street food vending; such specifications to be fully enforced within ___-years of the coming into force of this Act ;
 - (d) the places at which, and the conditions under which, animals are slaughtered for human consumption;
 - (e) the places at which, and the conditions under which, poultry, fish products, dairy products and other foods of animal origin are produced, processed or packaged for sale;
 - (f) the places at which, and the conditions under which, crops are produced for food;
 - (g) the importation and exportation of foods, including any documentation, procedures and inspections required;
 - (h) the procedures applicable for the issuance, suspension and cancellation of licences to operate a food business;
 - (i) the acceptable levels of food additives, under which the seizure, forfeiture and destruction of food that presents a food safety risk may take place;
 - (j) the qualifications, education, training and certification that a food inspector or authorised officer is required to have in order to exercise powers or carry out duties under this Act;
 - (k) the location, design, construction, alteration, operation, including hours of operation and maintenance, of premises, facilities, equipment and conveyances used in any food business;
 - (l) the issuance of licences, certificates or permits, including their expiry, renewal, suspension and revocation and conditions attached to them and appeals from decisions made by authorised persons with respect to licences, certificates and permits;
 - (m) prescribing fees for the purposes of this Act;
 - (n) requirements of the attire to be worn by persons at food processing premises;

- (o) the treatment and disposal of any food unfit for human consumption;
- (p) the establishment of systems to ascertain all places of origin or destination of food or any thing used in or related to a food business including requiring persons who come into contact with the food, to identify themselves and to maintain records and other documents with respect to themselves in the prescribed manner and at the prescribed times; and
- (q) the procedures to be followed by authorized officers, and official laboratories in the exercise of their functions under this Act;
- (r) the disposal or destruction of unsafe food;
- (s) environmental contaminants, residues of veterinary drugs, pesticides and other residues; or chemical and microbiological contaminants in foods;
- (t) the offences that will be subject to a fixed penalty as set out in section 36 as well as the applicable procedures;
- (u) implementing fees and cost recovery mechanisms under this Act.
- (v) any other matter required or permitted by this Act to be prescribed, or necessary or convenient for carrying out or giving effect to this Act.

48. Savings.

Any statutory rules, orders or regulations under the Food Act (*Ch. 236*) shall remain in force unless and until specifically repealed.

49. Repeal.

The Food Act (*Ch. 236*) and section 493 of the Penal Code (*Ch. 84*) are hereby repealed.

50. Conflicts.

In the event of any conflict or inconsistency between the provisions of this Act and any other enactment in force in The Bahamas, the provisions of this Act shall prevail.

SCHEDULE (Section 32)
THE SCIENTIFIC COMMITTEE

- (1) The Scientific Committee shall consist of six independent scientific experts.
- (2) The Committee shall chose a Chairperson from its members.
- (3) Any additional persons shall be co-opted as needed.
- (4) The Committee shall act by a quorum of four and the views of the Committee shall be recorded.
- (5) The Committee can establish sub-committees and also include external experts.
- (6) The Committee can invite relevant industry and consumer representatives in its deliberations.
- (7) Committee members should serve for 2 years and can be reappointed after two years.

OBJECTS AND REASONS

The Food Safety and Quality Bill repeals and replaces Food Act (Ch. 236) in order to make The Bahamas' food legislation compliant with its obligations under Chapter 5 of the Economic Partnership Agreement. Additionally, the Bill seeks to achieve legislative compliance with the Agreement on Sanitary and Phytosanitary (SPS Agreement) of the World Trade Organization (WTO) in order to meet The Bahamas' international trade obligations.

The objectives of this Food Safety and Quality Bill is to regulate food safety and quality at all stages of the food chain, i.e. from the production of food to manufacturing to the consumption of food. Additionally to regulate all food, including all fish, meat and other food products. The Bill also has as an objective, the protection of human life and health, and consumer interests, including fair practices in trade.

In order to achieve these objectives, food safety and quality measures shall be based on risk assessment, which is based on the available scientific evidence, undertaken in an independent, objective and transparent manner. Where relevant scientific evidence is insufficient, food safety and quality measures may be adopted on the basis of available pertinent information, including information from the Codex Alimentarius Commission.

In Part I, clause 5 of the the Bill provides for the establishment of a Food Safety and Quality Authority which shall be the governmental agency charged with responsibility for implementing and enforcing the provisions of this Act.

The functions and powers of the Authority are outlined in clauses 6 and 7 respectively.

Part I includes the short title and definitions.

Part II of the Bill deals with the registration and licenscing of food establishments, which are defined as “any premises, place or vehicle, however small, where production, manufacture, preparation, treatment, packing, packaging, transport, handling, serving, storage or sale in relation to food is carried out, whether for profit or not, whether public or private, whether a permanent or temporary structure and whether on land or at sea”. Food establishments also include persons who sell what the Bill refers to as “street food”, which is defined as “ready-to-eat food prepared or sold in streets and other public places”.

The designation, duties and powers of food inspectors are outlined in Part III of the Bill.

Part IV covers the duties of food establishment operators. The import and export requirements for food, along with import inspection requirements are contained in Part V.

The establishment of the Food Safety and Quality Board is provided for under Part VI , along with their powers and functions.

Parts VII and VIII covers offences and penalties and Miscellaneous provisions respectively.