

Guide to Food Laws and Regulations



Patricia A. Curtis

GUIDE TO FOOD LAWS AND REGULATIONS

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Patricia A. Curtis is a professor and the director of the Poultry Products Safety and Quality Peaks of Excellence Program, Department of Poultry Science, Auburn University, and approved lead instructor and accredited course provider for the International HACCP Alliance.

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Blackwell Publishing Ltd
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Contributors

Brooke Caudill
1387 Hampton Dr.
Auburn, AL 36830;
Phone: 334-887-6198
bablingb@yahoo.com
Chapter 10

Muhammad M. Chaudry,
Executive Director
Islamic Food and Nutrition
Council
5901 N. Cicero Ave.,
Suite 309
Chicago, IL 60646
Phone: 773-283-3708
Fax: 773-283-3973
mchaudry@ifanca.org
Chapter 9

Patricia Curtis
260 Lem Morrison Dr.
Poultry Science Department
Auburn University
Auburn, AL 36849
Phone: 334-844-2679
Fax: 334-844-2641
Pat_Curtis@Auburn.edu
Chapters 1, 2, 3, 4, 5, 7, 8, 10

Wendy Dunlap
430 Rolling Pines Lane
Duncan, SC 29334
Phone: 864-433-3332
Fax: 864-433-3146
wendy.j.dunlap@sealedair.com
Chapters 1, 2, 3, 4, 5

Theodore A. (Ted) Feitshans
North Carolina State University
Dept. of Agric. & Resource
Economics
Room 3340 Nelson Hall
Campus Box 8109
Raleigh, NC 27695-8109
Phone: 919-515-5195
Fax: 919-515-6268
ted_feitshans@ncsu.edu
Chapter 6

Carrie E. Regenstein
Associate Chief Information
Officer
Associate Director, Division of
Information Technology
University of Wisconsin-Madison
Madison, WI 53706
Chapter 9

Joe M. Regenstein
 Professor of Food Science
 Cornell Kosher Food Initiative
 Department of Food Science
 Stocking Hall
 Cornell University
 Ithaca, NY 14853-7201
 Phone 607-255-2109
 Fax: 607-257-2871
 jmr9@cornell.edu
 Chapter 9

Contributors

Wendy Dunlap
 130 Rolling Point Lane
 Ithaca, NY 14850
 Phone: 607-433-3332
 Fax: 607-433-3146
 wendy.dunlap@cornell.edu
 Chapters 1, 2, 3, 4, 5

 Theodore A. (Ted) Foltz
 North Carolina State University
 Dept. of Agric. & Resource
 Economics
 Room 3340 Nelson Hall
 Campus Box 8109
 Raleigh, NC 27697-8109
 Phone: 919-215-2192
 Fax: 919-215-2192
 ted.foltz@ncsu.edu
 Chapter 6

 Carrie E. Regenstein
 Academic Child Information
 Office
 Associate Director, Division of
 Information Technology
 University of Wisconsin-Madison
 Madison, WI 53706
 Chapter 9

Brooke Cassili
 1387 Hampton Dr.
 Auburn, AL 36830
 Phone: 334-887-0198
 bcassili@yahoo.com
 Chapter 10

 Mohammad M. Chaudhry
 Executive Director
 Islamic Food and Nutrition
 Council
 5901 N. Cicero Ave.
 Suite 309
 Chicago, IL 60630
 Phone: 773-283-2308
 Fax: 773-283-3978
 mchaudhry@icfn.org
 Chapter 9

 Patricia Curtis
 3601 1st Madison Dr.
 Policy Science Department
 Auburn University
 Auburn, AL 36849
 Phone: 334-844-2679
 Fax: 334-844-2641
 Pat.Curtis@auburn.edu
 Chapters 1, 2, 3, 4, 5, 6, 10

Preface

Food laws and regulations change frequently. The best place to find the most current law or regulation on a specific subject is from the government website relevant to the topic. Therefore, the content of this book is composed primarily from excerpts of government websites. The focus of the book is not to provide you with the most current law or regulation, but to provide you with the knowledge of where to find the most current information on the subject you seek.

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GUIDE TO FOOD LAWS AND REGULATIONS

CHAPTER 1

An Introduction to Laws and Regulations

Patricia Curtis, Auburn University
Wendy Dunlap

Introduction

The American democracy is based on the following six essential principles.

1. The majority rules
2. Protection of political rights of minorities
3. Citizens agree to be ruled by a system of law
4. Free exchange of ideas and opinions
5. Equality of all citizens
6. Government exists to serve the people

In the United States, the combination of federal, state, and local laws, bodies, and agencies are responsible for carrying out operations. This combined group ensures that the people are the source of the government's authority by electing representatives to serve in the government in all levels and provides for checks and balances by sharing power between different levels of government.

The president and vice president are the only public officials elected by all the citizens of the United States. Each serve a four-year term and are eligible for an additional four-year term.

Each president adds personal touches to the Oval Office during the term of occupancy. A brief biography of each of the previous presidents can be found at <http://www.whitehouse.gov/kids/presidents/index.html>.

Sources of American Law

There are four sources of American law: the Constitution, statutory law, common law, and equity.

I. Constitution. The Constitution is the supreme law of the United States. It describes what powers the government has, as well as what rights U.S. citizens have. All other laws must comply with the Constitution. It has six basic principles.

1. Popular sovereignty. The people have the power to govern. Likewise, the people must entrust this power to their government. People elect their congressmen, who make the laws that govern them.
2. Separation of powers. The U.S. government is divided into three branches:
 - The legislative branch, which is responsible for law making.
 - The judicial branch, which is responsible for law interpreting.
 - The executive branch, which is responsible for law enforcement.

Each of these branches has its own responsibilities, constituencies, and organization.

3. Checks and balances. No branch of the government can act completely on its own. Each branch has some control over the other two branches. To make a law, Congress (legislative branch) must get an okay from the president (executive branch), except in special cases.
4. Federalism. Under the federalist form of government, federal, state, and local governments exist and have their own powers. This separation of government power helps prevent abuse of that power. In general, state laws deal with matters that are contained within the state's borders. The state laws must be as stringent as the federal laws and must comply with the Constitution. For example, the North Carolina Department of Agriculture is allowed to regulate food that is produced and sold within the state boundaries.
5. Supremacy of national laws. When a federal and state law contradict, the federal law will be upheld.
6. Civilian control of government. Limits are placed on military power by putting control of the military into civilian hands. The president (a civilian) is the commander in chief, and only Congress can approve war and defense spending.

II. Statutory law. Statutory law is written law that is passed by legislatures. Congress, state legislatures, and local governments all enact

statutes. While Constitutional law is broad and leaves room for interpretation, statutory law is generally more detailed and precise. Regulations passed by agencies are even more specific than statutes.

- III. Common law. The laws based on previous court ruling are called common, or case, law. This system dates back to eleventh century England where judges contemplating a case would refer to previous case rulings. After seeing what was common, he would then make his decision. When common law is in conflict with statutory law, the statutory law is upheld.
- IV. Equity. Equity cases deal with the fairness or justice of a situation. Judges decide the issues, and a jury is not present. The judge often orders injunctions to prevent the unfair act from happening again.

Public and Private Law

There are two branches of law in America (not to be confused with the three branches of government): private law and public law.

Private laws deal mainly with disputes between individuals, businesses, or other organizations. The outcome of these disputes is usually a fine or award of money as opposed to a jail sentence. Private law encompasses property, contracts, family relations, and torts.

Public laws deal with the relationship between the government and its citizens. The four categories of public law are constitutional law, international law, criminal law, and administrative law. Administrative law encompasses the rules and regulations that governmental agencies make. The bulk of rules and regulations that control food quality and safety fall into this category.

The Legislative Branch

The legislative branch is a bicameral system, which means that it is composed of two houses, the Senate and the House of Representatives, as outlined in the United States Constitution.

The U.S. Senate is made up of 100 members, two elected from each state. The U.S. House of Representatives is composed of 435 members elected every two years from among the 50 states, apportioned to their total populations.

These two houses together form the U.S. Congress and are mainly responsible for passing statutory, also known as legislative, laws.

The Constitution gives specific powers to Congress. These are

- to levy and collect taxes;
- to borrow money for the public treasury;
- to make rules and regulations governing commerce among the states and with foreign countries;
- to make uniform rules for the naturalization of foreign citizens;
- to coin money, state its value, and provide for the punishment of counterfeiters;
- to set the standards for weights and measures;
- to establish bankruptcy laws for the country as a whole;
- to establish post offices and post roads;
- to issue patents and copyrights;
- to set up a system of federal courts;
- to punish piracy;
- to declare war;
- to raise and support armies;
- to provide for a navy;
- to call out the militia to enforce federal laws, suppress lawlessness or repel invasions by foreign powers;
- to make all laws for the District of Columbia; and
- to make all laws necessary to enforce the Constitution.

The vice president is the president of the Senate. He or she has a vote only in the case of a tie. A president *pro tempore* is chosen by the Senate to preside when the vice president is absent. The House of Representatives chooses its Speaker of the House.

Congress also has the power to investigate. This includes investigating the need for new legislation and the effectiveness of existing legislation and evaluating the qualifications and performance of members of the executive and judicial branches. The House of Representatives is responsible for conducting impeachment proceedings, and the Senate is responsible for impeachment trials.

Judicial Branch

The judicial branch consists of the federal court system, with the Supreme Court being the top entity. It is the judicial branch's responsibility to interpret the intent of laws and to settle disputes.

Its jurisdiction includes cases involving the Constitution, controversies when the U.S. government is a party, and controversies between states or their citizens. In food law, this often includes disputes between an enforcing agency and a food company.

The U.S. Congress has the power to create and abolish federal courts. It cannot abolish the Supreme Court, however. The president appoints U.S. judges, who must then be confirmed by the Senate.

Federal Court System

The Supreme Court

The Supreme Court is the highest court in the federal court system and was created by the Constitution. Its decisions cannot be overturned. About 10 percent of its cases get to the Supreme Court by appeals. The rest of the cases get there through writs of certiorari (sir-shee-uh-RARE-ee). This is an order telling a lower court to send its records of a case to the Supreme Court for review. Writs of certiorari are issued for cases involving a serious constitutional issue or an error in the lower court. The Supreme Court consists of one chief justice and eight associates.

Courts of Appeals

If there is a question regarding the fairness of a trial, a case can be appealed to the court of appeals. Here, the case is reviewed by a panel of judges who determine if the district court decision was correct. If they need clarification on a point, they can ask to hear oral statements.

These courts are also known as circuit courts, and they are arranged according to geography, with 12 circuits in all.

U.S. District Courts

There are 94 federal district courts. These courts have original jurisdiction over both criminal and civil federal laws. In criminal cases, a grand jury decides if there is enough evidence to try the case. A trial jury then determines if the person is guilty. In civil cases, a trial jury can be used or can be waived if both parties agree. In these cases, a federal judge makes the final decision.

Special Courts

Congress has set up special courts to deal with specific problems. One of these courts is the Court of Customs and Patent Appeals. This court handles issues involving the U.S. Patent Office.

Executive Branch

The executive branch includes the president, his cabinet, the cabinet departments, and independent agencies. The president has many powers. These include the power to

- introduce legislation to Congress,
- veto legislation,
- appoint federal judges,
- grant full and conditional pardons,
- call the National Guard into service,
- appoint ambassadors, ministers, and consuls to aid in foreign relations, and
- appoint heads of the executive departments and independent agencies.

The heads of the executive departments make up the president's cabinet. These cabinet departments, along with independent agencies also in the executive branch, are responsible for enforcing laws passed by the legislative branch. The responsibility of food safety and quality is spread out among four cabinet-level departments and two independent agencies.

Sources of Legislation

For the purpose of this discussion, the word *law* refers to statutory law or laws passed by Congress. As mentioned earlier, the U.S. Congress is responsible for passing laws. The ideas for these laws can come from a variety of places:

- A member of Congress
- Constituents
- Citizen's groups
- A member of the president's cabinet
- The president
- The executive agencies