



KHYBER PAKHTUNKHWA

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PROVINCIAL ASSEMBLY OF KHYBER PAKHTUNKHWA

NOTIFICATION

Dated Peshawar, the 12th June, 2022.

No. PA/Khyber Pakhtunkhwa/Bills-215/2022/16102. The Khyber Pakhtunkhwa Food Fortification Bill, 2022 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 3rd June, 2022 and assented to by the Governor of the Khyber Pakhtunkhwa on 8th June, 2022 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

THE KHYBER PAKHTUNKHWA FOOD FORTIFICATION ACT, 2022. (KHYBER PAKHTUNKHWA ACT NO. XXIII OF 2022)

(First published after having received the assent of the Governor of the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa. (Extraordinary), dated the 12th June, 2022).

AN

ACT

to address and alleviate nutritional deficiencies through food fortification in the Province of Khyber Pakhtunkhwa

WHEREAS the people of the Province of Khyber Pakhtunkhwa especially women and children are suffering from severe deficiency of micronutrients and malnutrition which adversely affect their health and ability to work and study;

WHEREAS mandatory fortification of wheat flour, ghee, edible oil and other staple food items is necessary to address and alleviate nutritional deficiencies to promote the nutritional status and health of the residents of the Province and for matters connected of herewith or ancillary thereto;

It is hereby enacted by the Provincial Assembly of Khyber Pakhtunkhwa as follows:

CHAPTER I PRELIMINARY

1. **Short title, extent, application and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Food Fortification Act, 2022.

- (2) It shall extend to the whole of the Province of Khyber Pakhtunkhwa.
- (3) It shall apply to such food items as mentioned in the Schedule.
- (4) It shall come into force at once.

2. Definitions.---(1) In this Act unless there is anything repugnant in the subject or context,-

- (a) "consumer" means an end user of food items and includes a person who purchases the food items for consumption;
- (b) "commercial user" means a person who used the food items to manufacture food product for commercial purposes;
- (c) "Consumer Court" means a Consumer Court established under the Khyber Pakhtunkhwa Consumer Protection Act, 1997 (Khyber Pakhtunkhwa Act No. VI of 1997);
- (d) "Court" means a Court of the Magistrate of First Class;
- (e) "Department" means the Food Department of Government;
- (f) "Food Authority" means the Khyber Pakhtunkhwa Food Safety and Halal Food Authority established under the Khyber Pakhtunkhwa Food Safety and Halal Authority Act, 2014 (Khyber Pakhtunkhwa Act No. X of 2014);
- (g) "food items" mean the food items as provided in the Schedule;
- (h) "food safety officer" means a food safety officer appointed under the Khyber Pakhtunkhwa Food Safety and Halal Food Authority Act, 2014 (Khyber Pakhtunkhwa Act No. X of 2014) and includes an officer nominated or appointed under section 13 of this Act;
- (i) "fortify" or "fortification" means mixing of micronutrient in form of premix with food items according to the scale contained in the Schedule;
- (j) "Government" means the Government of Khyber Pakhtunkhwa;
- (k) "importer" means a person who imports food items in large-scale, into Khyber Pakhtunkhwa, for commercial purposes;
- (l) "manufacturer" means a person who is the owner or occupant of a wheat flour mill, chakki, ghee mill, edible oil mill or any other production unit of food items;
- (m) "premix" means the micronutrient premix additives as mentioned in the Schedule;
- (n) "prescribed" means prescribed by rules or regulations;
- (o) "regulations" mean the regulations made under this Act;

- (p) "rules" mean the rules made under this Act;
- (q) "Secretary" means Secretary to Government, Food Department; and
- (r) "Schedule" means the Schedule appended to this Act.

(2) An expression used in this Act but not defined in this Act, shall have the same meaning as assigned to it in the Khyber Pakhtunkhwa Food Safety and Halal Food Authority Act, 2014 (Khyber Pakhtunkhwa Act No. X of 2014).

CHAPTER II FOOD FORTIFICATION

3. Food fortification.---(1) An importer or a manufacturer shall fortify the food items at the time of import or manufacture before trading the food items.

(2) A commercial user shall use fortified food items for manufacturing of any food product.

(3) If a wholesaler or retailer of food items stores or sells unpacked food items, packed food items without label or proper purchase invoice, he shall be responsible for fortification in the same manner as provided in sub-section (1).

(4) Any addition of micronutrient in any food item under this Act shall not be considered as additive.

4. Availability of premix and equipment.--- Government shall, in coordination with the Federal Government, ensure availability of premix and related equipments for fortification of food items including rapid testing kits for immediate testing of food items.

5. Warranty.---(1) In addition to warranty on the label of a packed or unpacked food items, an importer, a manufacturer, commercial user, wholesaler or retailer of food items shall ensure the purchaser or consumer that the food items conforms to the requirements of fortification as specified in the Schedule.

(2) Nothing in this section shall make a wholesaler or retailer of food items liable, if the wholesaler or retailer purchased and sold the packed food items in the same pack as received from the importer or manufacturer with proper invoice and exercised due care in storage and transportation of the food items.

6. Registration.---(1) No person shall manufacture or import food items for trade, unless registered with the Food Authority in the manner as may be prescribed by rules.

(2) The manufacturer or importer shall undertake to fortify food items and provide access to information, from time to time, required by the Food Authority or the food safety officer, as the case may be.

7. Quality assurance.---(1) A manufacturer, commercial user or an importer shall conduct routine internal checks, rapid tests and analysis to ensure that the food items are manufactured, packaged, labeled, stored, transported and maintained in accordance with the requirements contained in the Schedule.

(2) The Food Authority shall, where deemed necessary, specify from time to time, the quality assurance requirements, procedures, maintenance of record and provision of periodic information to the Food Authority in such manner, as may be prescribed by regulations.

8. Packaging.---(1) The Food Authority shall specify packaging requirement for a food item to preserve the composition, quality and purity of food fortification and to minimize dissipation of its nutritive properties from climatic and other conditions.

(2) The Food Authority may, with previous approval of the Department, prohibit storage or sale of an unpacked food items and shall also specify the manner for its packaging.

(3) An importer, a manufacturer, a commercial user, wholesaler or retailer of food trade or food items shall comply with the specifications and direction of the Food Authority issued under this section.

9. Labeling.---(1) An importer or a manufacturer shall, label the packaged food items, which shall provide for minimum essential information about food item.

(2) An importer or a manufacturer shall display a fortification logo on the pack of food item, as specified by the Food Authority.

10. Advertising.---(1) An importer, a manufacturer, wholesaler or retailer of food items may, while advertising the food items, provide true and accurate essential information and protect the consumer from false or misleading claims.

(2) The Food Authority may issue detailed instructions for advertisement of food items.

11. Transport, storage and display.---(1) An importer, a manufacturer, commercial user, wholesaler or retailer of food items shall transport, store or display food items in the manner that preserves the composition, quality, hygiene and safety of such food items, minimizes dissipation of its micronutrient properties from climatic and other conditions and protects beneficial effects of fortification.

(2) The Food Authority may specify other specific measures for proper transportation, storage and display of food items.

12. Duty of a commercial user.---(1) A commercial user of food items shall use fortified food for making any food product.

(2) A commercial user shall conduct rapid testing of the food items for ascertaining fortification and maintain record of the results of the tests in accordance with the directions of the Food Authority.

(3) If a commercial user of food items has a reason to believe that the food items are not fortified in accordance with the Schedule, he shall immediately inform the Food Authority.

CHAPTER III
INSPECTION AND INVESTIGATION

13. Inspections and investigations.---(1) The Food Authority may, with the approval of Government, nominate or appoint food safety officers from amongst the officers of Government to the extent of inspection and investigation of a particular food items.

(2) A food safety officer may inspect and investigate any place or site where food items are manufactured, stored, sold, transported, distributed or located.

(3) A food safety officer may observe production process of food items, examine and copy records of an importer, manufacturer, commercial user, wholesaler or retailer of food items and may take samples of food items, analyze them on spot or have them analysed from the recognized laboratories.

14. Power to stop, search and seize.---(1) A food safety officer may stop and search any vehicle used for transportation of food items.

(2) If the food items are not fortified or being transported in contravention of this Act, rules or regulations, the food safety officer may seize the food items and the vehicle on which the food items are being transported.

(3) If the food items manufactured, stored or displayed are not fortified, the food safety officer may seize the food items and seal the premises till the orders of the Food Authority or the Court, as the case may be.

15. Duty to assist.--- An importer, a manufacturer, commercial user, wholesaler or retailer of food items or any person acting on their behalf shall cooperate with a food safety officer to conduct search, inspection or investigation and shall provide true, accurate and complete information required by a food safety officer.

16. Transparency in exercise of powers.---(1) The Food Authority shall ensure that a food safety officer shall not misuse the powers conferred under this Act, rules or regulations.

(2) The Food Authority may,-

- (a) issue guidelines for inspection of premises or vehicle used for manufacturing, storage or transportation of food items;
- (b) constitute teams of food safety officers for exercise of powers under this Act, rules or regulations; and
- (c) issue directions for making mandatory electronic recording of an inspection, search, taking of samples, seizure of food items or vehicle and sealing of a premises.

CHAPTER IV
SAMPLING AND LABORATORIES

17. Samples of food items.---(1) A food safety officer may, in the prescribed manner, obtain samples of food items from the premises of an importer, a manufacturer, commercial user, wholesaler or retailer of food items or from a transportation vehicle used by any one of them.

(2) A Consumer Court or the Court may direct a food safety officer to obtain samples of any food items from a premises or vehicle under sub-section (1), conduct rapid testing and send the samples to a laboratory for analysis.

18. Laboratories.---(1) For the purpose of carrying out analysis of samples of any food items or fortification related equipments, Government may establish or recognize an existing food laboratory to carry out function under this Act.

(2) The Food Authority may make procedures for the laboratory's operation, including sample analysis, preservation of evidence, and quality assurance.

(3) A laboratory shall conduct analysis of a sample of food items received from a food safety officer, a Consumer Court or Court from any other person as may be specified by the Food Authority and convey the report in the prescribed manner.

(4) If integrity or sanctity of a sample of food items is compromised due to any cause including afflux of time, a laboratory may refuse to conduct analysis of the sample by specifying reasons in writing.

(5) The Food Authority shall issue a schedule of fee for analysis and report of a sample of food items or fortification related equipment in a laboratory.

19. Mobile and reference laboratories.---(1) Government may establish mobile laboratories for immediate analysis and reporting on food samples.

(2) The Consumer Court or the Court, Secretary or Food Authority, as the case may be, may send a food sample already analyzed to a laboratory, notified by the Government as a reference laboratory, for further analysis.

20. Report of a laboratory.---(1) The Consumer Court, the Court, the Secretary or the Food Authority, as the case may be, shall consider report of a laboratory, as an expert opinion, based on the analysis of a food sample or any fortification related equipment.

(2) In case of difference of opinion between a laboratory and a reference laboratory, the Consumer Court, the Court, the Secretary or the Food Authority, as the case may be, shall accept the expert opinion of the reference laboratory.

CHAPTER V
PENALTIES AND PROCEDURES

21. Improvement or recall order.---(1) If analysis of a food sample proves that the food items are not sufficiently fortified, a food safety officer shall serve an improvement notice on the person responsible for fortification and direct him to immediately remove the deficiency otherwise penal action under this Act shall be initiated against him.

(2) If the food items of a manufacturer or importer are not fortified, the Food Authority may direct the manufacturer or importer to immediately withdraw or recall the food items from the market.

22. Offences.---(1) If a person, required to be registered under section 6 of this Act, fails to apply for registration within the time specified by the Food Authority, such person shall be liable to imprisonment which may extend to ninety days or fine which may extend to one million rupees or both.

(2) The Court may, on application of the food safety officer, punish the violator who willfully or negligently fails to fortify food or obstructs a food safety officer or fails to comply contradictory with the decision of the Food Authority, with imprisonment which may extend to one hundred and eighty days or fine which may extend to two million rupees or both.

(3) If a person is found guilty of an offence under this Act, the Court may also, in lieu of sentence provided in this section, direct the convict to,-

- (a) remedy or avoid the hazard caused by the commission of the offence; or
- (b) pay a person an amount of money as compensation, in whole or in part, for the cost of a remedial or preventive action taken by or on behalf of the convict as a result of the commission of the offence; or
- (c) perform community service for a period of up to two years; or
- (d) refrain from any act or engage in any activity that may, in the opinion of the Court, result in the continuation or repetition of the offence or the commission of a similar offence under this Act; or
- (e) comply with any conditions that the Court considers appropriate for preventing the offence, from continuing or repeating the offence or committing a similar offence under this Act; or
- (f) submit to information with respect his activities or activities of any person acting on his behalf that the Court considers appropriate in the circumstances to the Authority or authorized officer of the Authority for a period of up to two years.

(4) For the purposes of sub-section (3), the Court may require the convict to submit:

- (a) a bond for an amount the Court considers appropriate for the purpose of ensuring compliance with a prohibition, direction or requirement under this section; and
- (b) samples or analysis, or do any other thing necessary to assist to monitor compliance, for a period of up to two years, with an order made under this section.

(5) The measures contained in sub-sections (3) and (4) shall be in addition to the requirements, under other provisions of this Act.

23. Violations and penalties.---(1) Any person who violates any of the provision of this Act, the Food Authority may,-

- (a) impose fine which may extend to five hundred thousand rupees; or
- (b) suspend or cancel registration under this Act; or
- (c) direct sealing of a premises for a period specified under this Act; or
- (d) direct publicity of the violation for information of general public or a section of public or members of an association specifically naming the violator; or
- (e) direct the person to cease production, processing or import of food items without registration under this Act; or
- (f) direct reprocessing, reconditioning, or the seizure and destruction of food items not being in conformity with this Act.

(2) The Food Authority, may not impose any penalty upon a person whose only violation is deficiency of fortification unless an improvement notice was issued to the person from the date of taking cognizance of the matter by the Food Authority.

(3) The Food Authority, shall make regulations to ensure fair procedure based on the principles of natural justice for a decision under this section.

24. Grievance against food safety officer.---(1) If a person is aggrieved from any action of a food safety officer under this Act, he may, within thirty days of the action or communication of the action, file an application before the Food Authority.

(2) The Food Authority may, on an application or on its own accord, set aside, modify or confirm the action of a food safety officer.

25. Cognizance, trial and appeal.---(1) The Court may take cognizance of an offence under this Act and conduct summary trial in accordance with the provisions of Chapter-XXII of Code of Criminal Procedure, 1998 (V of 1998).

(2) A person aggrieved or the Food Authority may, within thirty days of the judgment of the Court under this Act, file an appeal before the Court of Sessions.

26. Defenses.---(1) A person shall not be liable for any penalty under this Act who,-

- (a) purchased the food items in packed form, from another under a written warranty for sale in the same form and has complied with the law relating to transportation, storage or display of food items;
- (b) handled the food items in compliance with all the legal requirements;
- (c) sold, traded or distributed the food items in the same condition or packing it was in at the time of its purchase or reconditioned it to meet the requirements;

- (d) could not have discovered, through the exercise of reasonable diligence, that the food items did not conform to the requirements; and
- (e) is charged with act of non-fortification proves non-availability of the premix in the market at the time of commission of the act.

(2) If an action is initiated against a person under this Act, that person shall allege and prove the defense under this section.

27. Complaint before the Consumer Court.---(1) A purchaser or consumer, as the case may be, where fined that the food items does not meet the required scale of fortification as per Schedule, file a complaint in the Consumer Court irrespective of any other enforcement or penal action under this Act against the importer, manufacturer, wholesaler or retailer of food items.

(2) The Consumer Court may direct a food safety officer to take samples of the food items from any premises, get them analysed and submit report before the Consumer Court.

(3) If it is proved that the food item is not fortified or not fortified in accordance with standard provided in the Schedule, the Consumer Court shall direct the responsible importer, manufacturer, wholesaler or retailer to pay damages to the complainant which shall not be less than fifty thousand rupees.

(4) Subject to the provisions of this Act, the Consumer Court shall follow the procedure under the Khyber Pakhtunkhwa Consumer Protection Act, 1997 (Khyber Pakhtunkhwa Act No.VI of 1997), in trial of a complaint under this Act.

(5) A person aggrieved from the final order of the Consumer Court may, within thirty days of the order, file an appeal before the Peshawar High Court.

28. Liability in case of body corporate.---(1) Where an offence under this Act has been committed by a Company, or a body corporate, a person who at the time of commission of offence was in charge of, and was responsible to the company or body corporate for the conduct of its activities, shall be deemed to be guilty of the offence committed under this Act and shall be liable to be proceeded against.

(2) The Food Authority may impose the penalties as provided in sub-section (3) of section 24 of this Act, on a Company or body corporate.

(3) A purchaser or consumer may file complaint under sub-section (1) of section 27 in the Consumer Court against a Company or body corporate.

(4) A person shall not be liable to any punishment provided in this Act, if it is proved that, the offence was committed without the person's knowledge, or such person exercised all due care to prevent the commission of such offence.

CHAPTER VI MISCELLANEOUS

29. Special incentives for fortification.---(1) For the promotion of fortification, Government may, for the reward of the importer, manufacture or wholesaler, who are registered under this Act, grant or recommend to Federal Government to grant tax rebate, tariff treatment, or take other measures as deem necessary to the Government or Federal Government, as the case may be.

(2) The Food Authority, where found that, a person, importer, manufacturer, or wholesaler, dealer or retailer is availing tax rebate under sub-section (1), but his food items does not meet the required standards of fortification as per Schedule, shall move a case for withdrawal of tax rebate or tariff treatment through the Department.

30. Recovery of dues.--- (1) The Food Authority may recover the fine, fee or any other amount, imposed or levied under this Act, the rules or regulations, as an arrears of land revenue in accordance with the provisions of the Khyber Pakhtunkhwa Land Revenue Act, 1967 (Khyber Pakhtunkhwa Act No. XVII of 1967).

(2) The fee charged under this Act, the rules or regulations shall be deposited in the Food Authority Funds, established under section 40 of the Khyber Pakhtunkhwa Food Safety and Halal Food Authority Act, 2014.

31. Appellate Authority.---(1) A person aggrieved from a final order or directions of the Food Authority may, within fifteen days from the date of communication of the order or directions, file an appeal before the Secretary as the Appellate Authority whose decision on such appeal shall be final.

(2) The Appellate Authority shall decide the appeal within ninety days from the date of filing of such appeal and shall provide an opportunity of hearing to the appellant and the Food Authority before deciding the appeal.

32. Provincial nutrition survey.---(1) Government may conduct a provincial nutrition survey on status of specific micronutrients amongst residents of Province of Khyber Pakhtunkhwa after every five years. Government may conduct the first provincial nutrition survey within three years from the commencement of this Act.

(2) The provincial nutrition survey shall be based on proper sampling system in the entire Province, geographical units and urban rural divides within geographical unit.

(3) Government shall analyse the report of the provincial nutrition survey and identify causes of micronutrient deficiency in any area or geographical units of the Province.

(4) The Department may obtain views of the Food Authority on the report of provincial nutrition survey before identifying causes of micronutrient deficiency in any area or section of public.

33. Annual report.--- The Food Authority shall, in every month of January, prepare an annual report of a calendar year, on implementation of each aspect of fortification including registration, status compliance, instances of violations, enforcement actions, number of samples obtained at manufacturing and sale point level, laboratory reports of food samples, penalties and convictions, and reasons for non-compliance. The report shall be submitted to Government, for onward submission to the Provincial Assembly of Khyber Pakhtunkhwa.

34. Immunity.--- No suit, prosecution or any other legal proceedings shall lie against Government, Food Authority, food safety officer or any other person acting or purporting to act under this Act, in respect of anything done or intended to be done in good faith under this Act.

35. **Bar of jurisdiction.**---Subject to this Act, a court shall not entertain a suit or an application for anything done, about to be done or purported to have been done under this Act.

36. **Amendment of the Schedule.**--- Government may, by notification in the official Gazette, amend the Schedule through addition, deletion or substitution of an entry therein.

37. **Powers to make rules.**--- Government may, by notification in the official Gazette with prior publication inviting and deciding objections and suggestions on the draft rules, make rules to carry out the purpose of this Act.

38. **Powers to make regulations.**---(1) The Food Authority may, by notification in the official Gazette and publication on its website, frame regulations to give effect to this Act.

(2) Without prejudice to the generality of the aforesaid section, the regulations may be made on the following subjects:

- (a) methods of manufacturing, packaging, storing, transporting, and distributing food;
- (b) labeling and advertising of food;
- (c) quality assurance including record-keeping requirements for food;
- (d) procedures for inspections, investigation, sampling and testing of food;
- (e) enforcement including legal proceedings under this Act; and
- (f) any other matter necessary for the efficient and effective administration and implementation of this Act.

39. **Act to override other laws.**--- In case of any inconsistency or conflict with any other law, the provisions of this Act shall prevail to the extent of the inconsistency or conflict.

SCHEDULE**Food Fortification, Quantity of Micronutrient Premix and Large-Scale Quantity**

[see sections 2, 3, 4, 6, 7, 8 and 39]

S. No	Food	Micronutrient to be added	Quantity of the Micronutrient		Source of Micronutrient and Activity	Large-Scale (Minimum quantity)
			Minimum	Maximum		
1.	Wheat Flour, Atta, Maida, Suji, Fine Atta	Iron	15 mg/kg	45 mg/kg	NaFeEDTA minimum activity 12.5% with free iron less than 0.05%.	1000 Kg
		Folic Acid	1 mg/kg	3 mg/kg	minimum activity 90.5%	
		Zinc	30 mg/kg	90 mg/kg	Zinc Oxide minimum activity 80%	
		Vitamin B ₁₂	0.008 mg/kg	0.024 mg/kg	Cyanocobalamin	
2.	Vanaspati Ghee or Edible Oil	Vitamin A	33,000 iu/kg	45,000 iu/kg	Retinol	1000 Kg
		Vitamin D ₃	3,000 iu/kg	4,500 iu/kg	Cholecalciferol	

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(KIFAYAT ULLAH KHAN AFRIDI)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa