

Food (Safety) Regulations 2002

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 9th day of December 2002

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 42 of the Food Act 1981, Her Excellency the Governor-General, acting on the advice and with the consent of the Executive Council, makes the following regulations.

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Regulations

1 Title

These regulations are the Food (Safety) Regulations 2002.

2 Commencement

These regulations come into force on 20 December 2002.

3 Interpretation

(1) In these regulations, unless the context otherwise requires,---

Act means the Food Act 1981

alcohol means ethanol

article means an appliance, container, or vessel

canned food means food that---

(a) is processed and packaged in accordance with good manufacturing practice; and

(b) is packed in clean containers that are hermetically sealed; and

(c) is processed by heat to ensure preservation, whether before or after being sealed in a container

container, in relation to any food, means a package or other container in which the food is in, or is likely to come into direct contact with

designated officer---

(a) means an officer within the meaning of the Act who is for the time being designated by the Director-General for the purposes of these regulations; and

(b) includes the Director within the meaning of the Act

Food Standards Code means the code incorporated into New Zealand law by the New Zealand (Australia New Zealand Food Standards Code) Food Standards 2002 and issued by the Minister under section 11C of the Food Act 1981

fruit wine means the product of the alcoholic fermentation of the juice, or of the juice and other portions, of any fruit except grapes

low-acid food means---

(a) any food, other than an alcoholic beverage, where any component has a pH value greater than 4.6 after heat processing, and a water activity greater than 0.85; but

(b) does not include food in hermetically sealed containers that is

required to be stored under refrigeration

mead means the product of the alcoholic fermentation of honey mixed with water or fruit juice or both, with or without the addition of spices

muttonbird means a member of the species *Puffinus griseus* (sooty shearwater), *Puffinus tenuirostris* (short-tailed shearwater), or *Pterodroma macropiera* (grey-faced petrel)

off-licence means an off-licence in terms of Part II of the Sale of Liquor Act 1989

shellfish means, at all stages of the life history of a species,---

- (a) all species of phylum Echinodermata; and
- (b) all species of phylum Mollusca; and
- (c) all species of the class Crustacea

sparkling fruit wine means fruit wine that is surcharged with carbon dioxide

sparkling wine means wine that is surcharged with carbon dioxide

wine means the product of the partial or complete alcoholic fermentation of any or all of the following:

- (a) grape juice:
- (b) grape juice and other portions of grapes:
- (c) the reconstituted product of concentrated grape juice and water.

(2) Any term or expression that is defined in the Act and used, but not defined, in these regulations has the same meaning as in the Act.

4 Expiry

Regulations 24 to 26 expire on 30 October 2007.

5 Application

Nothing in these regulations applies in respect of any food that is a related product within the meaning of the Medicines Act 1981.

Compare: SR 1984/262 r 273

Part 1
General provisions relating to food safety

6 Misuse of food containers

No person may put, keep, or sell any disinfectant, antiseptic, or detergent, or a substance that could cause poisoning, in any container or package that---

(a) bears any brand, picture, word, mark, or statement---

(i) indicating the presence in the container of any food; or

(ii) that is likely to mislead any person into believing that the contents of the container are intended for the purposes of human consumption; or

(b) is of a distinctive type in which articles of food have been commonly or are currently being sold, whether or not it bears any brand, picture, word, mark, or statement.

Compare: SR 1984/262 r 266

7 Safety of articles

(1) No person may sell an article---

(a) that is intended for use in the storage, preparation, cooking, presentation, or consumption of food; and

(b) that is either---

(i) capable of imparting lead, antimony, arsenic, cadmium, or any other toxic substance to any food stored, prepared, or cooked in it; or

(ii) not resistant to vinegar.

(2) Despite subclause (1), no person may sell an article that is made of enamelware or ceramicware, and that is intended for use in the storage, preparation, cooking, presentation, or consumption of food, if the article fails to satisfy the test set out in Schedule 1.

(3) An article is treated as not being intended for use in the storage, preparation, cooking, presentation, or consumption of food if---

(a) it is made or rendered unsuitable for the purpose by some artifice such as holes bored through the potential food contact surfaces; or

(b) a label, incapable of obliteration, is permanently affixed to the article's surfaces, stating clearly that the article is not for food use, together with a statement of the hazard associated with the article if it is used for food purposes.

Compare: SR 1984/262 r 267

8 Identification of articles

(1) No person may sell an article that is used, or is intended to be used, for the preparation or storage of food unless there is marked on, or attached to, the article---

(a) the trading name and business address of the manufacturer, or the owner of the rights of manufacture, or the seller of the article, or of the principal or the agent of any of them; or

(b) the trade mark, duly registered in New Zealand, of any of those persons.

(2) Subclause (1) does not apply to an article that is used, or is intended to be used, only once.

Compare: SR 1984/262 r 268

9 Labels on bottles containing food

(1) No person may sell a food in a bottle that bears a label on its surface unless the label is of a size and is placed so that cleaning and inspection of the interior of the bottle are not hindered.

(2) Subclause (1) does not apply to a bottle that is used, or is intended to be used, only once.

Compare: SR 1984/262 r 269

Infected persons and food

10 Infected persons

(1) No person referred to in subclause (2) may be engaged, or employed, in the manufacture, preparation, storage, packing, carriage, or delivery, for sale, of---

(a) a food; or

(b) an article used or likely to be used as a food; or

(c) any material or article that is used, or is likely to be used, as a wrapper, package, or container for a food.

(2) The persons are---

- (a) a person who is suffering from a communicable disease:
- (b) a person who is a carrier as defined in the Health Act 1956:
- (c) a person who is suffering from a condition causing a discharge of pus or serum from any part of the head, neck, hands, or arms.

Compare: SR 1984/262 r 259

11 Persons in contact with infected person

(1) A Medical Officer of Health or designated officer may, by serving notice in writing on any person who has been in recent contact with a person to whom regulation 10 applies, prohibit the person from engaging in, or being employed in, the manufacture, preparation, storage, packing, carriage, or delivery, for sale, of a food.

(2) If, in the opinion of the Medical Officer of Health or the designated officer, there is no longer any risk of any food becoming infected by a person on whom the notice has been served, the Medical Officer of Health or designated officer must---

- (a) revoke the notice; and
- (b) notify the person in writing of the revocation.

(3) No person may be engaged, or be employed, in a business in contravention of a notice served under subclause (1).

(4) No person may knowingly employ any other person in contravention of a notice served on that other person under subclause (1).

Compare: SR 1984/262 r 260

12 Powers of Medical Officer of Health and designated officer in respect of infected food

(1) If a Medical Officer of Health or designated officer suspects on reasonable grounds that any food is infected with an organism capable of causing food poisoning or a communicable disease within the meaning of the Health Act 1956, he or she may, by notice in writing served on any person,---

- (a) describe, by postal address or otherwise, the source from which the Medical Officer of Health or designated officer believes the food to have been supplied; and

(b) prohibit the person on whom the notice is served from selling any food that the person knows or has reason to believe has been obtained at, or from, the source specified.

(2) Unless sooner revoked by a Medical Officer of Health or designated officer, a notice served under subclause (1) remains in force for the period, not exceeding 1 month, specified in the notice.

(3) However, a Medical Officer of Health or designated officer may, before the notice expires or is revoked, extend the effect of the notice for a further period not exceeding 1 month by serving notice in writing in the same manner as the original notice.

(4) If, in the opinion of the Medical Officer of Health or designated officer, the food in respect of which the notice has been served is no longer infected, he or she must---

(a) revoke the notice; and

(b) notify the person on whom the notice was served in writing of the revocation.

(5) While a notice served under subclause (1) or extended under subclause (3) remains in force, no person on whom it has been served, or who knows of its contents, may sell any food that the person knows, or has reason to believe, has been obtained from a source specified in the notice.

Compare: SR 1984/262 r 262

Low-acid canned food

13 Manufacture of low-acid canned food must be supervised

(1) This regulation applies to the facilities, methods, practices, and controls used by a commercial processor in the manufacture, processing, or packing of low-acid canned food.

(2) The following persons involved in the manufacture of low-acid canned food must be supervised:

(a) an operator of a processing system, retort, aseptic processing and packaging system, and product formulating system; and

(b) a container closure inspector.

(3) The supervisor of a person under subclause (2) must---

(a) have attended a school approved by a designated officer for giving instruction appropriate to the preservation technology used in the manufacture of low-acid food; and

(b) have been identified by that school as having satisfactorily

completed the prescribed course of instruction.

(4) The supervisor must only supervise a person in respect of those activities for which the school referred to in subclause (3) recognises the supervisor as having satisfactorily completed training.

Compare: SR 1984/262 r 272(1), (3), (4)

14 Manufacture of low-acid canned food must comply with code

Commercial processors who manufacture, process, or pack low-acid canned food must do so in accordance with the principles detailed in one of the following codes:

(a) the Recommended International Code of Hygiene Practice for Low-acid and Acidified Low-acid Canned Foods, as published by the Codex Alimentarius Commission:

(b) the United States Food and Drug Administration Requirements for Thermally Processed Low-acid Foods Packaged in Hermetically Sealed Containers, as contained in 21 CFR Part 113, and Acidified Foods as contained in 21 CFR Part 114, as appropriate:

(c) the Code of Practice for the Thermal Processing of Low-acid Canned Food, as published by the Australian National Health and Medical Research Council.

Compare: SR 1984/262 r 272(5)

15 Powers of designated officer in respect of low-acid canned food

(1) A designated officer may serve notice in writing on the owner or occupier of any premises prohibiting the use of the premises for, or in connection with, the manufacture, processing, or packing of low-acid canned food, if---

(a) the processor does not have the person required by regulation 13 supervising the required operations whenever the processor is manufacturing, processing, or packing low-acid canned food; or

(b) the facilities, methods, practices, and controls used by the processor are not in accordance with 1 of the codes specified in regulation 14.

(2) A notice served under subclause (1) must---

(a) state the premises to which it relates; and

(b) state the reason for the prohibition; and

(c) state the date on which the prohibition commences.

(3) If, in the opinion of the designated officer, the reason for which the notice was served has ceased to exist, the designated officer must---

(a) revoke the notice; and

(b) notify the owner or occupier of the premises, and every other person on whom a copy of the notice has been served, in writing of the revocation.

(4) While a notice remains in force,---

(a) No person on whom it has been served may use, or permit the premises specified in the notice to be used, for the manufacture, processing, or packing of low-acid canned food; and

(b) No person on whom a copy of the notice has been served, or who knows of its contents, may use the premises for the manufacture, processing, or packing of low-acid canned food.

Compare: SR 1984/262 r 263(2), (3)

Provisions relating to certain foods and articles

16 Sale of muttonbird

(1) Any muttonbird that is sold under a description associated with a particular process of preparation for sale must have been prepared in the manner normally associated with that process.

(2) No person may sell any muttonbird (except muttonbird described as titi puku) unless it has a dressed weight of not less than 250 g.

Compare: SR 1984/262 r 63

17 Brands for packages of muttonbird

(1) It is sufficient compliance with standard 1.2.2(3) of the Food Standards Code in respect of any package of muttonbird if, instead of the name and address of the packer, the label bears the packer's brand approved under this regulation.

(2) A designated officer in Invercargill may keep a register containing the names and addresses of persons who will be engaged in the preparation and packing of muttonbirds for sale during the next year.

(3) Any such person may submit a brand to the designated officer for approval.

(4) The designated officer may decline approval of a brand if he or she

considers that the brand is so similar to another brand already approved under this regulation so as to be likely to mislead.

(5) An approval is effective only for the year in respect of which it is given.

(6) In this regulation, year means a period of 12 months commencing on 1 April.

Compare: SR 1984/262 r 64

18 Sale of shellfish

(1) Unless the circumstances in subclause (2) apply, no person may sell the following New Zealand-grown shellfish:

- (a) clams (including cockles, pipi, and tuatua):
- (b) mussels:
- (c) oysters:
- (d) scallops.

(2) The circumstances are that---

(a) the shellfish have been grown in an area for which a current marine farming licence or lease is in force under the Marine Farming Act 1971, or a current permit, authority, or approval is in force under the Fisheries Act 1983 or the Fisheries Act 1996 to take the shellfish; and

(b) the shellfish have been grown and harvested in accordance with the principles in the United States Food and Drug Administration, National Shellfish Sanitation Program Manual of Operations, or in accordance with conditions prescribed in writing by a designated officer; and

(c) each package of shellfish in the shell, not intended for retail sale, contains a label clearly identifying---

- (i) the harvester; and
- (ii) the licence or lease or permit number; and
- (iii) the date of harvest.

Compare: SR 1984/262 r 78(3)

19 Contaminated shellfish

(1) Despite regulation 18, no person may sell New Zealand-grown shellfish unless they have been procured from a location that, in the opinion of a designated officer, is not contaminated.

(2) If a designated officer suspects on reasonable grounds that shellfish have been procured from a contaminated area or harvested in breach of subclause (1), the designated officer may serve notice in writing on the leaseholder, licence holder, permit holder, owner or occupier of any premises, distributor, or harvester, or any other person involved in the harvesting, distribution, processing, packing, storage, or sale of shellfish, prohibiting the sale of the shellfish.

(3) A notice served under subclause (2) must specify---

- (a) the reason for the prohibition; and
- (b) the type of shellfish to which it relates; and
- (c) the growing area to which it relates (if known); and
- (d) the quantity of shellfish to which the notice applies (if known).

(4) A notice served under subclause (2) may be revoked at any time by a designated officer; and the person on whom the notice was served and every other person on whom a copy was served must be notified in writing of the revocation.

(5) While the notice remains in force, no person on whom it has been served, or who knows the contents of the notice, or who has reasonable cause to believe that a notice has been served and remains in force may sell the shellfish to which it relates.

(6) In this regulation, designated officer includes an animal product officer within the meaning of the Animal Products Act 1999.

Compare: SR 1984/262 r 78(2A), (4)-(8)

20 Wine

(1) The name or description of the wine shown on the label of wine must not include any reference to---

(a) a single variety of grape unless the wine has been manufactured from not less than 75% by volume juice derived from that variety of grape; or

(b) 2 or more varieties of grape unless---

(i) the wine has been manufactured from not less than 75% by volume of juice derived from those varieties of grape; and

(ii) the names of the varieties of grape are listed on the label in descending order of proportion.

(2) Wine, sparkling wine, fruit wine, sparkling fruit wine, and mead that is sold in an off-licence must not contain more than 15% alcohol by volume at 20oC.

Compare: SR 1984/262 rr 219(5), 225(3), (4)

21 Importation of enamelware and ceramicware

(1) This regulation applies to enamelware or ceramicware that is used, or is intended to be used, in the preparation, sale, or consumption of food.

(2) No person may import into New Zealand any enamelware or ceramicware without first satisfying a designated officer, by the production of the evidence that may reasonably be required, that the enamelware or ceramicware complies in all respects with the Act and these regulations.

Compare: SR 1984/262 r 258(h)

Enforcement

22 Appeals

(1) A person may appeal to a District Court Judge if the person objects---

(a) to a notice served---

(i) by a Medical Officer of Health or designated officer under regulation 11 or regulation 12; or

(ii) by a designated officer under regulation 15 or regulation 19;
or

(b) to a refusal---

(i) by a Medical Officer of Health or designated officer to revoke a notice served under regulation 11 or regulation 12; or

(ii) by a designated officer to revoke a notice served under regulation 15 or regulation 19.

(2) An appeal must be made,---

(a) in the case of an appeal under subclause (1)(a)(i) or (b)(i), within 21 days after the notice has been served or the refusal was made:

(b) in the case of an appeal under subclause (1)(a)(ii) or (b)(ii), within 3 days after the notice has been served or the refusal was made.

(3) On hearing the appeal, the Judge may---

- (a) confirm the notice or the refusal; or
- (b) revoke the notice.

Compare: SR 1984/262 r 275

23 Offences and penalties

(1) Every person commits an offence who contravenes or fails to comply with any of the following regulations:

- (a) regulation 6 (which relates to misuse of food containers):
- (b) regulation 7(1) or (2) (which relates to safety of articles):
- (c) regulation 8(1) (which relates to identification of articles):
- (d) regulation 9(1) (which relates to labels on bottles containing food):
- (e) regulation 10 (which relates to infected persons):
- (f) regulation 11(3) or (4) (which relates to persons in contact with infected person):
- (g) regulation 12(5) (which relates to powers of a Medical Officer of Health and designated officer in respect of infected food):
- (h) regulations 13(2) or (3) (which relates to the supervision of persons involved in the manufacture of low-acid canned food):
- (i) regulation 14 (which relates to manufacture of low-acid canned food):
- (j) regulation 15(4)(a) or (b) (which relates to powers of a designated officer in respect of low-acid canned food):
- (k) regulation 16 (which relates to sale of muttonbird):
- (l) regulation 18 (which relates to sale of shellfish):
- (m) regulation 19(1) or (5) (which relates to sale of contaminated shellfish):
- (n) regulation 21(2) (which relates to importation of enamelware and ceramicware).

(2) Every person who commits an offence against subclause (1) is liable to a fine not exceeding \$500.

Compare: SR 1984/262 r 276

Part 2
Specific permissions

24 Fluoridated water

(1) If water may be added to food, the water---

(a) must be of potable quality; and

(b) may include the addition of fluoride to generally accepted levels by municipal authorities, or by contractors to municipal authorities managing municipal water supplies.

(2) In this regulation, generally accepted levels means levels that are permitted under the Health Act 1956, the Local Government Act 1974, or in any other enactment regulating water quality or reticulation.

25 Sale of artificial drinks

(1) Despite standard 1.3.1 of the Food Standards Code, artificial drinks with a caffeine level of up to 200 parts per million may be sold in New Zealand.

(2) In this regulation, artificial drink means a non-alcoholic beverage that is an unfermented mixture of drinking water that may contain other foods.

26 Sale of hemp seed oil as food

(1) Despite standard 1.4.4 of the Food Standards Code, oil extracted from hemp seed may be sold as food in New Zealand if it complies with the requirements set out in subclause (2).

(2) The requirements are,---

(a) in the case of hemp seed oil that is produced in New Zealand, the hemp seed oil is derived from cannabis seed from plants that are grown in New Zealand under and in accordance with any conditions attached to a licence to cultivate industrial hemp issued by the Director-General of the Ministry of Health:

(b) in the case of hemp seed oil that is imported into New Zealand, the hemp seed oil has been tested by an analyst working in a laboratory approved under the Misuse of Drugs Act 1975 and has been authorised for sale and use.

Part 3
Miscellaneous

27 Analyst's certificate and fees

(1) The certificate of the analyst referred to in section 22 of the Act must be in the form set out in Schedule 2.

(2) A person who, in accordance with section 22(4) of the Act, wishes to obtain a copy of the analyst's certificate or report must pay a fee of \$2.

(3) A person who, in accordance with section 36(1) of the Act, requires an officer to procure a sample of any food and submit it for analysis must pay a fee of \$200.

Compare: SR 1984/262 r 274

28 Revocation

The Food Regulations 1984 (SR 1984/262) are revoked.

Schedule 1

r 21

Tests for enamelware and ceramicware articles

Part 1

Test for enamelware and ceramicware articles not used for cooking

1 Preparation

(1) The surface of the ware to be tested must be washed in water containing detergent and rinsed with clean water. The surface to be tested must not be handled after being rinsed.

(2) All remnants of water must be removed from the washed ware by rinsing it with leaching solution that comprises 4% acetic acid in water v/v.

2 Test

(1) The ware must then be filled with the leaching solution at room temperature to the maximum capacity of the ware.

(2) The ware must be covered to minimise contamination and must be left at room temperature for 24 hours.

(3) After 24 hours, the leaching solution must be thoroughly stirred and a portion must be removed for analysis.

(4) The leaching solution must not contain antimony, arsenic, cadmium, or lead above the following limits, expressed as ppm:

Sb As Cd Pb

(a)	vessels with h/d ratio less than 1/2	2	2	2	20
(b)	vessels with h/d ratio of 1/2 or greater:				
(i)	if of 1 litre or less of usable volume	0.7	0.7	0.7	7
(ii)	if of greater than 1 litre of usable volume	0.2	0.2	0.2	2

where---

h is the height measured vertically from the lowest internal point in the vessel to the maximum level of which it can be filled:

d is the largest internal diameter.

Part 2

Test for enamelware and ceramicware articles used for cooking

1 Preparation

The same as in Part 1.

2 Test

(1) The ware must be heated to 120°C and filled to two-thirds of its effective volume with boiling leaching solution (4% acetic acid in water v/v). The vessel must be covered, by its own lid if any, and the leaching solution must be kept boiling gently for 2 hours. Leaching solution must be added periodically to ensure that the area of contact is not diminished. The vessel must then be left at room temperature for 22 hours.

(2) After 22 hours, the volume of the leaching solution must be restored to two-thirds of the effective volume of the vessel. After thorough stirring, a portion of the leaching solution must be removed for analysis. The leaching solution must not contain antimony, arsenic, or cadmium in any proportion greater than 0.7 ppm, nor lead in any proportion greater than 7 ppm.

Schedule 2

r 27

Analyst's certificate under Food Act 1981

I, [full name], an analyst under the Food Act 1981, certify that on [date] there was submitted to me by [full name and address of the officer from whom the sample was received], a designated officer within the meaning of that Act, a sample of [name of the sample] for analysis or examination in a [state the nature of the package in which the sample was enclosed, how it was labelled and marked, and how it was sealed], and that the sample has been analysed or examined (and in that analysis the method prescribed for the analysis of [name of sample] has been followed)* and that the result of that analysis or

examination is as follows: [state analysis and observations].

The fee for the analysis is [fee]

.....

Signature of analyst

.....

Date

* Delete if inapplicable

Marie Shroff,
Clerk of the Executive Council.

Explanatory Note

This note is not part of the regulations, but is intended to indicate their general effect.

These regulations, which come into force on 20 December 2002,---

- o prescribe certain food safety standards; and
- o contain specific permissions relating to fluoridated water, and the sale of artificial drinks and hemp seed oil in New Zealand.

The regulations revoke and replace the Food Regulations 1984. The remainder of the Food Regulations 1984 that are not specifically dealt with in these regulations are provided for in the Food Standards Code issued by the Minister of Health under section 11C of the Food Act 1981.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in Gazette: 12 December 2002.

These regulations are administered in the Ministry of Agriculture and Forestry.