

**CHAPTER 65:05 - FOOD CONTROL: SUBSIDIARY LEGISLATION
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Labelling of Food Additives Regulations

Labelling of Prepackaged Foods Regulations

Marketing of Foods for Infants and Young Children Regulations

LABELLING OF PREPACKAGED FOODS REGULATIONS

(under section 13(1))

(11th April, 2003)

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S.I. 83, 2002,

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PART I

Preliminary (regs 1-4)

1. Citation

These Regulations may be cited as the Labelling of Prepackaged Foods Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires-

"Act" means the Food Control Act;

"address" means a business address in Botswana and includes the number of the plot, name of street or road and the name of the city, town or village, and in the case of imported food, address means the address of the manufacturer or supplier or importer thereof;

"best before date" means the date which signifies the end of the period under any stated storage conditions during which the product will remain fully marketable and will retain any specific qualities for which tacit or express claims have been made;

"claim" means any representation which states, suggests or implies that a food has particular qualities relating to its origin, nutritional properties, nature, processing, composition or any other quality;

"compound ingredient" means an ingredient which is itself composed of two or more ingredients;

"container" means-

- (a) any package of food for delivery as a single item, which completely or partially encloses the food, and includes wrappers; or
- (b) several units or types of packages of food when such units or packages are offered to the consumer;

"expiry date" (use-by date) means the date which signifies the end of the estimated period under any stated storage conditions, after which the product is unlikely to have quality attributes normally expected by the consumers, and after which date, the food should not be regarded as marketable;

"food additive" means any substance not normally consumed as a food by itself and not normally used as a typical ingredient of the food, whether or not it has nutritive value, the intentional addition of which to food for a technological (including organoleptic) purpose in the manufacture, processing, preparation, treatment, packing and packaging, transport or holding 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 foods, but the term does not include contaminants or substances added to food for maintaining or improving nutritional qualities;

"food for catering purposes" means those foods for use in restaurants, canteens, schools, hospitals and similar institutions where food is offered for immediate consumption;

"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 or included in, belonging to, or accompanying any food, or any package containing food;

"lot" means the definitive quality of a commodity produced essentially under the same conditions;

"prepackaged" means packaged or made up in advance in a container ready for offer to the consumer or for catering purposes;

"processing aid" means a substance or material not including apparatus or utensils and not consumed as a food ingredient by itself, intentionally used in the processing of raw materials, foods or its ingredients to fulfil a certain technological purpose during treatment or processing and which may result in the non-intentional but unavoidable presence of residues or derivatives in the final product; and

"sell-by date" means the last date of offer for sale to the consumer after which there remains a reasonable storage period in the home.

3. Application

These Regulations apply to prepackaged food imported into, sold, distributed or manufactured in Botswana.

4. General principles

- (1) No person shall-
- (a) import, distribute, sell or offer for sale prepackaged food unless it is labelled in accordance with the provisions of these Regulations;
 - (b) import, distribute, sell or offer for sale, any food-
 - (i) whose expiry date has lapsed,
 - (ii) whose expiry date, best before date, or sell by date has been obliterated or forged, or
 - (iii) whose label has been altered, obliterated or removed;
 - (c) describe or present prepackaged food on any label or in a labelling manner which is false, misleading, deceptive or is likely to create an erroneous impression regarding its character in any respect; or
 - (d) describe or present prepackaged food on any label or in any labelling by words, pictorial or other devices which refer to or are suggestive either directly or indirectly, of any other product which such food might be confused with, or in such a manner as to lead the purchaser or consumer to suppose that the food is connected with such other product.

(2) Where a claim is made that a food is suitable or has been specially made for fulfilling a particular nutritional requirement, that claim shall comply with nutritional labelling regulations.

PART II

Mandatory labelling requirements (regs 5-18)

5. Information on label of prepackaged goods

Except to the extent otherwise provided in other regulations published under the Act, the following information shall appear on the label of prepackaged food as applicable to the food being labelled-

- (a) the name of the food;
- (b) the list of ingredients in it;
- (c) the net contents and drained mass;
- (d) the name and address of the manufacturer, packer, distributor, importer, exporter or supplier;
- (e) the country of origin of the food;
- (f) lot identification;
- (g) date marking and storage instructions;
- (h) the instructions for use;
- (i) quantitative labelling of ingredients in accordance with regulation 14; and
- (j) where the Government has established grades for a particular food product, the grade designation.

6. Name of the food

(1) The name of prepackaged food shall be declared on the label, shall indicate the true nature of the food and shall be specific and not generic in accordance with these Regulations.

(2) Where a name has been established for a food in regulations published under the Act, that name shall be used.

(3) In the absence of a specific name for the food, a common or usual name, existing by common usage as an appropriate descriptive term which shall not be misleading or confusing to the consumer shall be used.

(4) There shall appear on the label, either in conjunction with or in close proximity to, the name of the food, such additional words or phrases as are necessary to avoid misleading or confusing the consumer in regard to the true nature and physical condition of the food including, but not limited to the type of packaging medium, style and the condition or type of treatment it has undergone, for example whether it is dried, concentrated, reconstituted or smoked.

(5) A coined, fanciful, brand name, or trade mark may be used on the label of any food provided that it accompanies one of the names provided in subregulations (1), (2) and (3).

7. List of ingredients

(1) Except for single ingredient foods, a list of ingredients shall be declared on a label placed on any food.

(2) The list of ingredients shall be headed or preceded by an appropriate title which consists of or includes the term ingredient.

(3) All ingredients in any food shall be listed in descending order of ongoing proportion by mass at the time of manufacture of the food.

(4) Where an ingredient is itself the product of two or more ingredients, the compound ingredient shall be declared as such in the list of ingredients in the food and shall be accompanied by a list in brackets of its ingredients in descending order of proportion by mass.

(5) Water added to any food shall be declared in the list of ingredients except where the water forms part of an ingredient, such as brine, syrup or broth, used in any compound food and declared as such in the list of ingredients.

(6) Water or other volatile ingredients evaporated in the course of the manufacture of food need not be declared.

(7) In the case of dehydrated or condensed foods which are intended to be reconstituted by the addition of water only, the ingredients may be listed in order of proportion by mass in the reconstituted product when prepared in accordance with the directions on the label.

(8) A specific name shall be used for ingredients in the list of ingredients in accordance with the provisions set out in regulation 6 except that-

(a) the class names used for ingredients shown in the First Schedule, may be used for the ingredient falling within the classes therein;

(b) notwithstanding paragraph (a), pork fat, lard and beef shall always be declared by their specific names;

(c) in the case of food additives falling in the respective classes and appearing in lists of food additives permitted for use in foods generally, the following class titles shall be used together with the specific name or recognised numerical identification-

- (i) acidity regulator,
- (ii) acids,
- (iii) anti-caking agent,
- (iv) anti-foaming agent,
- (v) antioxidant,
- (vi) bulking agent,
- (vii) colour,
- (viii) colour retention agent,
- (ix) emulsifier,
- (x) emulsifying salt,
- (xi) firming agent,
- (xii) flour treatment agent,
- (xiii) flavour enhancer,
- (xiv) foaming agent,
- (xv) gelling agent,
- (xvi) glazing agent,
- (xvii) humectants,
- (xviii) preservative,
- (xix) propellant,
- (xx) raising agent,
- (xxi) stabiliser,
- (xxii) sweetener, and
- (xxiii) thickener;

(d) the following class titles of food additives may be used for food additives following in

the representative classes of food additives and appearing in lists of food additives permitted generally for use in foods-

- (i) flavours and flavourings, and
 - (ii) modified starches; and
- (e) the expression "flavours" may be qualified by "natural", "nature identical", or "artificial".

(9) A food additive that is carried over from raw materials into food in a quantity sufficient to perform a technological function in that food when it is used, shall be included in the listed ingredients.

(10) A food additive or a processing aid that is carried over from raw materials into food in a quantity not sufficient to perform a technological function in that food when it is used is exempt from declaration in the list of ingredients.

(11) The following foods and ingredients which are known to cause hypersensitivity to certain individuals, shall always be declared-

- (a) cereals containing gluten i.e. wheat, rye, barley, oats, or their hybridised strains and products;
- (b) crustacea and crustacea products;
- (c) eggs and egg products;
- (d) fish and fish products;
- (e) peanuts and peanut products, soy beans and soy bean products;
- (f) milk and milk products including lactose;
- (g) tree nuts and nut products; and
- (h) sulphite in concentrations of 10mg/kg or more.

8. Net contents and drained mass

(1) The net contents of food shall be declared in the metric system or International System of units (hereinafter referred to as S.I. units) and in the following manner-

- (a) for liquid food, by volume or mass;
- (b) for solid food, by mass; and
- (c) for semi-solid or viscous food, either by mass or volume.

(2) Food packed in a liquid medium shall carry a declaration in the metric system or SI units of the drained mass of the food.

(3) For the purposes of this regulation, liquid medium means water, aqueous solutions of sugar or salt, fruit or vegetable juices in canned fruit or canned vegetables only, or vinegar.

9. Name and address of manufacturer, etc.

The name and address of the manufacturer, packer distributor, importer, exporter or supplier of any food shall be declared on the label.

10. Country of origin

(1) The country of origin of prepackaged food shall be declared on the label.

(2) Where a food undergoes processing which changes it in nature, in a country where the initial stages of its manufacture or production did not take place, the country in which such processing is performed shall be regarded as the country of origin for the purposes of labelling:

Provided that-

- (a) at least 25% of the production costs of the food is represented by materials and labour performed in that country; and
- (b) the last process in the production or manufacture of the food has taken place in that country.

11. Lot identification

Each container shall be embossed or otherwise permanently marked in code or in clear print to identify the producing factory and the lot of the prepackaged food.

12. Date marking and storage instructions

(1) Where it is not otherwise provided for in other regulations published under the Act, any of the following date markings shall apply-

- (a) "best before";
- (b) "sell by"; or
- (c) "use by", "expiry", or "exp".

(2) The words referred to in subregulation (1)(a), (b) and (c) shall be accompanied by either the-

- (a) best before date, sell by date or expiry date, as the case may be; or
- (b) a reference to where the date is given on the label of the prepackaged food.

(3) The best before date, sell by date or expiry date, as the case may be, shall consist of at least the following information-

- (a) for food with a shelf life of not more than three months, the day, month and year; and
- (b) for food with a shelf life of more than three months, the month and year; and where the applicable month is December, it shall be sufficient to indicate the year.

(4) The best before date, sell by date or expiry date, as the case may be, shall be declared in encoded numerical sequence except that the month may be shown after the day in words by the first 3 letters of the month.

(5) The expiry date shall be treated as the date after which food shall not be regarded as marketable or fit for human consumption.

(6) Notwithstanding the provisions of this regulation, date marking shall not be required for-

- (a) fresh fruit and vegetables, including potatoes, which have not been peeled or similarly treated;
- (b) wines;
- (c) beverages containing 10% or more by volume, of alcohol;
- (d) bakers or pastry-cooks wares which, given the nature of their content, are normally consumed within 24 hours of their manufacture;
- (e) vinegar;
- (f) food grade salt;
- (g) solid sugars;
- (h) confectionary products consisting of flavours or coloured sugars; or
- (i) chewing gum.

(7) In addition to the date marking, any special conditions for the storage of food shall be declared on the label if the validity of the date depends thereon.

13. Instructions for use

Instructions for use, including reconstitution, where applicable, shall be included on the label to ensure correct utilization of food.

14. Quantitative labelling of ingredients

(1) Where the labelling of a food places special emphasis on the presence of one or more valuable or characterising ingredients, the percentage of the ingredient by mass in the final product shall be declared.

(2) Where the labelling of food places special emphasis on the low content of one or more ingredients, the percentage of the ingredient by mass in the final product shall be declared.

(3) A reference in the name of a food to a particular ingredient shall not of itself constitute the placing of special emphasis.

(4) A reference in the labelling of food to an ingredient used in a small quantity and only as a flavouring shall not of itself constitute the placing of special emphasis.

15. Bulk stock

(1) Where food is sold from bulk stock, the bulk stock container shall be labelled in accordance with the requirements for individually labelled food, and the lettering shall be legible and placed conspicuously on the container.

(2) Subregulation (1) shall not apply where the contents of the bulk container are

individually packed and labelled in accordance with the requirements for individually labelled food.

16. Exemption from mandatory labelling requirements

With the exception of spices and herbs, small packaged units where the largest surface area is less than 10 cm² shall be exempt from the requirements of regulations 7, 11 and 13.

17. Optional labelling

Any information, pictorial device or written, printed or graphic matter, may be displayed on the labelling provided that it is not in conflict with the requirements stated under regulation 4.

18. Grade designations

Where grade designations are used, they shall be readily understandable and shall not be misleading or deceptive in any way.

PART III

Presentation of Mandatory Information (regs 19-23)

19. Presentation of information

(1) Labels on prepackaged foods shall be applied so as not to allow them to become easily separated from the container.

(2) Statements required to appear on the label by virtue of these Regulations or any other regulations shall be-

- (a) conspicuous;
- (b) indelible; and
- (c) legible.

(3) Where the container is covered by a wrapper, the wrapper shall carry the necessary information of the label on the container which shall be readily legible through the outer wrapper.

(4) The name and net contents of the food shall appear in a prominent position on the label and shall be conspicuously printed on the label and in the same field of vision.

20. Language

(1) The information required to appear on a label shall be in English or Setswana.

(2) Where the language on the original label on prepackaged food does not include English or Setswana, a supplementary label containing the mandatory information in English or Setswana shall be used instead of relabelling the food.

(3) In the case of either re-labelling or supplementary labelling of prepackaged food, the mandatory information provided shall fully and accurately reflect that of the original label.

21. Size of lettering

(1) The name of the prepackaged food shall appear on the main panel of the label in letters not less than 4mm in height, but in the case of soft drinks in returnable bottles with embossed labels the name may be on the cap in letters not less than 1.5mm in height.

(2) Special storage conditions where applicable shall be printed in letters not less than 3mm in height.

(3) The information required to appear on a label in terms of the Act shall be in letters not less than 1mm in height;

(4) The size of lettering prescribed in subregulation (1) shall apply to packages of which the main panel of the package exceeds an area of 12000mm².

(5) Where the area of the main panel of the label on prepackaged food does not exceed an area indicated under column I of the Second Schedule but exceeds the next smaller area listed under the column, the information on the package may be reflected in letters with a height of not less than the proportion indicated in the corresponding line of column II of the Second Schedule, but the minimum height to which the letters may be reduced shall be 0.75mm.

(6) Words which qualify the name of any food or are an essential part of the description of the food shall be reflected in immediate proximity to the name and in prominent letters not less than one third of the size of the name of that food.

(7) Prescribed listing of ingredients and proportions of ingredients in any food shall be printed in uniform size and prominently displayed on the package but the initial letter of a word may be larger than the rest of the letters of the word.

22. Exemptions

Notwithstanding anything contained in these Regulations, the Minister may, by notice in writing, exempt any person from compliance with any provision of these Regulations.

23. Offences and penalties

(1) A person who imports, distributes, sells, offers for sale or otherwise supplies food contrary to the provisions of these Regulations commits an offence and is liable-

- (a) for a first offence, to a fine of P1 000 and to imprisonment for 3 months, and where the offence is a continuing offence, to an additional fine of P500 and imprisonment for one month for each day that the offence continues; and
- (b) for a second or subsequent offence, to a fine of, P5000 and to imprisonment for 6 months, and where the offence is a continuing offence, to an additional fine of P2 000 and imprisonment for two months for each day on which the offence continues.

(2) Upon the conviction of any person for an offence under these Regulations, the court may, in addition to any other penalty which it may lawfully impose, cancel or suspend any licence issued to such person which is relevant to the offence committed.

FIRST SCHEDULE CLASS NAMES TO BE USED FOR INGREDIENTS

(regulation 1(8)(a))

Name of classes

Class Names Used

Refined oils other than olive	"Oil" together with either the term "vegetable" or "animal", qualified by the term "hydrogenated" or "partially hydrogenated", as appropriate
Refined fats	"Fat" together with either the term "vegetable" or "animal", as appropriate
Starches, other than chemically modified starches	"Starch"
All species of fish where the fish constitutes an ingredient of another food and provided that the labelling and presentation of such food does not refer to a species of fish	"Fish"
All types of poultry meat where such meat constitutes an ingredient of another food and provided that the labelling and presentation of such a food does not refer to a specific type of poultry meat	"Poultry meat"
All types of cheese where the cheese or mixture of cheeses constitutes an ingredient of another food and provided that the labelling and presentation of such a food does not refer to a specific type of cheese	"Cheese"
All spices and spice extract not exceeding 2% by mass either singly or in combination in the food	"Spice" or "mixed spices", as appropriate
All herbs or part of herbs not exceeding 2% by weight either singly or in combination in the food	"Herbs" or "mixed herbs", as appropriate
All types of gum preparations used in the manufacture of gum base for chewing gum	"Gum base"
All types of sucrose	"Sugar"
Anhydrous dextrose and dextrose monohydrate	"Dextrose" or "glucose"

All types of caseinate "Caseinates"
 Press, expeller, or refined cocoa butter "Cocoa butter"
 All crystallized fruit not exceeding 10% mass of the food "Crystallized fruit"

SECOND SCHEDULE
SIZE OF LETTERING APPEARING ON THE LABEL OF PREPACKAGED FOOD
(regulation 21(5))

I	II
Area of main panel of package in mm ²	Prescribed percentage (%) height in relation to the area of the main panel
12 000	85
8 000	70
5 000	50
3 000	25

LABELLING OF FOOD ADDITIVES REGULATIONS

(under section 13(1))

(11th April, 2003)

ARRANGEMENT OF REGULATIONS

REGULATION

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Preliminary

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PART III

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S.I. 84, 2002,
S.I. 16, 2003.

PART I

Preliminary (regs 1-4)

1. Citation

These Regulations may be cited as the Labelling of Food Additives Regulations and

shall come into effect on 11th April, 2003.

2. Interpretation

In these Regulations, unless the context otherwise requires-

"Act" means the Food Control Act;

"container" means any form of packaging of food additives for sale as a single item, whether by completely or partially enclosing the food additives, and includes wrappers;

"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 the crop husbandry, animal husbandry and veterinary medicine), manufacture, processing, preparation, treatment, packing, packaging, transportation or holding of such food or as a result of environmental contamination;

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

"ingredient" means any substance, excluding a food additive, used in the manufacture or preparation of a food and present in the final product;

"label" includes any tag, brand, mark, pictorial or other descriptive matter, written, painted, stencilled, marked, embossed or impressed on, or attached to, or included in, or belonging to, or accompanying any food, or any package containing food;

"lot" means the definitive quality of a commodity produced essentially under the same conditions;

"processing aid" means a substance or material not including apparatus or utensils and not consumed as a food ingredient by itself, intentionally used in the processing of raw materials, foods or its ingredients to fulfill a certain technological purpose during treatment or processing and which may result in the non-intentional but inevitable presence of residues or derivatives in the final product; and

"sale by retail" means any sale to a person buying otherwise than for the purpose of resale but does not include a sale to caterers for the purpose of their catering business or a sale to manufacturers for the purpose of their manufacturing business.

3. Application

(1) These Regulations apply to the labelling of food additives sold as such whether by retail or other than by retail, including sales to caterers and food manufacturers for the purposes of their business.

(2) These Regulations shall also apply to food processing aids and any reference to food additives shall include food processing aids.

4. General principles

(1) Food additives shall not be described or presented on any label or in a labelling manner which is false, misleading or is likely to create an erroneous impression regarding their character in any respect.

(2) Food additives shall not be described or presented on a label or in any labelling by words, pictorial or other devices which refer to or are suggestive, either directly or indirectly, of any product with which such food additives might be confused, or in such a manner as to lead the consumer to suppose that the food additive is connected with or derived from such other product, but the term "x flavour" may be used to describe a flavour which is not derived from, but reproduces the flavour "x".

PART II

Information on label of prepackaged food additives (regs 5-13)

5. Information on label

Except to the extent otherwise provided in other regulations published under the Act, the following shall appear on the label of prepackaged food additives as applicable to the food additive being labelled-

- (a) the name of the food additive;
- (b) the list of ingredients in the food additive;
- (c) the net contents;
- (d) the name and address of the manufacturer, packer, distributor, importer, exporter or supplier thereof;
- (e) the country of origin of the food additive;
- (f) the lot identification;
- (g) date marking and storage instructions; and
- (h) instructions for the use thereof.

6. Name of food additive

(1) The name of each food additive present in any food shall be provided indicating the true nature of the food additive, and shall be specific and not generic in accordance with these Regulations.

(2) Where a name has been established for a food additive in regulations published under the Act, that name shall be used in relation to the food additive.

(3) In the absence of a specific name for the food additive, either a common or usual name, existing by common usage as an appropriate descriptive term which is not misleading to the consumer, shall be used in relation to the food additive.

(4) Where two or more food additives are present, their names shall be listed in order of the proportion by mass which each food additive bears to the total contents of the container, with the food additive present in the greatest proportion by mass being at the top of the list.

(5) In the case of mixtures of flavouring, the name of each flavouring present in the mixture need not be given, but the generic expression flavour or flavouring may be used together with a true indication of the nature of the flavour.

(6) Except in relation to flavour modifiers, but inclusive of herbs and spices, the generic expression flavour or flavouring may be qualified by the words natural, nature identical or artificial.

7. List of ingredients

Ingredients of food additives shall be declared in the list of ingredients in descending order of their proportion by weight to the total contents of the container, with the ingredients contained in the greatest proportion appearing at the top of the list.

8. Net contents of food additives

The net contents of food additives shall be declared in the metric system or SI units and shall be in the following manner-

- (a) for liquid additives, by volume or mass;
- (b) for solid food additives, other than those sold in tablet form, by mass;
- (c) for semi-solid or viscous food additives, either by mass or volume; and
- (d) for food additives sold in tablet form, by mass together with the number of tablets in the package.

9. Name and address of manufacturer, etc.

The name and address of the manufacturer, packer, distributor, importer, exporter or supplier of the food additive shall be declared on the label.

10. Country of origin

(1) The country of origin of a food additive shall be declared on the label.

(2) Where a food additive undergoes processing in a second country which changes its nature, the country in which the processing is performed shall be regarded as the country of

origin for the purposes of labelling, provided that-

- (a) at least 25% of the production costs of the food additive is represented by materials and labour performed in that country; and
- (b) the last process in the production or manufacture of the food additive is represented by materials and labour performed in that country.

11. Lot identification

Each container of food additives shall be embossed or otherwise permanently marked in code or in clear print to identify the producing factory and the lot of the food additives.

12. Date marking of food additives The labels of prepackaged food additives shall have a best before, sell by or expiry date marked on them in accordance with regulation 12 of the Labelling of Prepackaged Foods Regulations.

13. Instructions on keeping and using

(1) The words for food use or a statement substantially similar thereto shall appear in a prominent position on the label.

(2) Adequate information shall be given about the manner in which a food additive is to be kept and is to be used in food.

PART III

Presentation of mandatory information (regs 14-18)

14. Presentation of information

(1) Statements required to appear on the label of prepackaged food additives by virtue of these Regulations or any other regulations, shall appear so in a clear and prominent manner such that they are readily legible to the consumer.

(2) Information which is required to appear on the label of prepackaged food additives shall not be obscured by designs or by other written, printed or graphic matter and shall be on contrasting ground to that of the background.

(3) The letters in the name of the food additive shall be in a size reasonably related to the most prominent printed matter on the label.

(4) Where a container of food additives is covered with a wrapper, the wrapper shall carry the necessary information of the label on the container which shall be legible through the outer wrapper.

(5) The name and net contents of a food additive shall appear on that portion of the label normally intended to be presented to the customer at the time of sale.

15. Language

(1) The information required to appear on any label shall be in either English or Setswana.

(2) Where the language on the original label does not include English or Setswana, a supplementary label containing the mandatory information in English or Setswana shall be used instead of re-labelling.

(3) In the case of either re-labelling or a supplementary label the mandatory information provided shall fully and accurately reflect that of the original label.

16. Optional labelling

Any information or pictorial device may be displayed on labelling provided that it is not in conflict with the requirements stated under regulation 5 and would not mislead or deceive the consumer in any way in respect of the food additive.

17. Exemptions

Notwithstanding anything contained in these Regulations, the Minister may, by notice in writing, exempt any person from compliance with any provisions thereof.

18. Offences and penalties

(1) A person who contravenes the provisions of these Regulations commits an offence under the Act and is liable-

- (a) for a first offence, to a fine of P1,000 and to imprisonment for 3 months, and where the

offence is a continuing offence, to an additional fine of P500 and imprisonment for one month for each day on which the offence continues; and

- (b) for a second offence or subsequent offence, to a fine of P5,000 and to imprisonment for 6 months, and where the offence is a continuing offence, to an additional fine of P2,000 and imprisonment for two months for each day on which the offence continues.

(2) On the conviction of any person for any offence under these Regulations, the court may, in addition to any other penalty which it may lawfully impose, cancel or suspend any licence issued to such person which is relevant to the offence committed.

MARKETING OF FOODS FOR INFANTS AND YOUNG CHILDREN REGULATIONS

(under section 13(1))

(17th June, 2005)

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S.I. 37, 2005,
S.I. 55, 2006.

PART I

Preliminary (regs 1-3)

1. Citation and commencement

These Regulations may be cited as the Marketing of Foods for Infants and Young Children Regulations, and shall come into operation on publication, with the exception of the parts of regulations 11, 12, and 15 relating to labelling in Setswana, which shall come into operation on the 1st July, 2007.

2. Interpretation

In these regulations, unless the context otherwise requires—

"Codex Alimentarius Commission" means the Joint Food Standards Programme of the Food and Agriculture Organisation of the United Nations and the World Health Organisation;

"Codex Standard" means the latest version of the relevant Codex Standard as issued by the Codex Alimentarius Commission;

"complementary food" means any food suitable for use to complement breast milk or infant formula or follow-up formula;

"container" means any packaging of foods for infants and young children and other designated products for delivery as a single unit and includes wrappers;

"designated products" includes—

- (a) infant formula;
- (b) formulas for special medical purposes intended for infants;
- (c) follow-up formula;
- (d) complementary foods;
- (e) beverages for infants and young children;
- (f) any product marketed or otherwise presented as suitable for feeding infants and young children;
- (g) feeding bottles;
- (h) teats;
- (i) pacifiers or dummies;
- (j) breast pumps;
- (k) cups with spouts or similar receptacles for feeding infants and young children; and
- (l) such other products as the Minister may, by notice published in the *Gazette*, designate.

"distributor" means a person engaged in the business, whether wholesale or retail, of marketing or distribution or sale of foods for infants and young children or any designated products, and includes any person engaged in the business of providing information, or public relations services in relation to foods for infants and young children or designated products;

"foods for infants and young children" means a group of food products distributed, marketed or otherwise represented as suitable for infants and young children including—

- (a) infant formula;
- (b) formulas for special medical purposes intended for infants;
- (c) follow-up formula;
- (d) complementary foods;
- (e) any other product marketed or otherwise represented as suitable for feeding infants and young children;

"follow-up formula" sometimes referred to as "follow-on formula", means milk or a milk-like product of animal or vegetable origin industrially formulated in accordance with such regulations as the Minister may make and, in the absence of such regulations, in accordance with the Codex Standard for follow-up formula, distributed, marketed or otherwise represented as suitable for infants older than six months of age and young children;

"formula for special medical purposes intended for infants" means infant formula which is specially manufactured to satisfy the nutritional requirements of infants during the first months of life up to the introduction of complementary feeding when medically indicated;

"gift" includes designated product, meals and refreshments, diaries, stationery,

calendars, cot tags, stickers, growth charts, prescription pads, tongue depressors or any free item of whatever value;

"health care facility" means any governmental, non-governmental or private institution or organisation engaged, directly or indirectly, in health care for mothers, infants, young children, pregnant women, and includes private practice, nurseries or childcare institutions; but does not include social welfare institutions;

"health worker" means any person working or training to work in a health care facility, whether or not that person is a professional or non-professional and includes voluntary or unpaid workers;

"infant" means a person from birth up to the age of 12 months;

"infant formula" means milk or a milk like product of animal or vegetable origin formulated industrially in accordance with such regulations as the Minister may make and, in the absence of such regulations, in accordance with the Codex Standard for infant formula intended to satisfy the nutritional requirements of infants from birth, and includes formula for special medical purposes ;

"manufacturer" means any person, corporation or other entity engaged, directly or indirectly, in the business of manufacturing food for infants and young children and other designated products;

"marketing" means promoting, distributing, selling, or advertising a designated product and includes product public relations and information services, including the use of professional service representatives such as mother craft nurses, or any person acting on behalf of a manufacturer or distributor;

"monitor" means a person appointed by the Permanent Secretary to carry out any exercise necessary to reveal contravention of these Regulations;

"promote" has the meaning assigned to it under regulation 8(1);

"sample" means a single or a small quantity of a food for infants and young children or a designated product provided without cost;

"social welfare institution" means any governmental or non-governmental organisation engaged, directly or indirectly, in providing for the social welfare of infants and young children, but does not include health care facilities;

"tie-in sales" means the sale of any designated product that is linked to a purchase of any other product including a designated product; and

"young child" means a person aged between 12 months and three years.

3. Application

These Regulations apply to the marketing, and practices related thereto, of foods for infants and young children and other designated products, when imported into, marketed, distributed, sold or manufactured in Botswana.

PART II

Monitoring, Inspection, Stocking, etc. (regs 4-7)

4. Designation of monitors

(1) The Permanent Secretary may designate, as monitors, such number of persons he or she considers appropriate, who have undergone training on monitoring of violations of the International Code of the Marketing of Breastmilk Substitutes and these Regulations.

(2) The Permanent Secretary shall issue to any person designated as a monitor, a letter of appointment and the monitor shall have such letter in his or her possession when performing any function in terms of these Regulations.

5. Duties of monitors

(1) A monitor in exercise of his or her duties shall investigate, observe and record information regarding the marketing practices of manufacturers and distributors at any points of sale, health care facilities, border posts and offices, through media, institutions and elsewhere.

(2) A monitor may for the purpose of monitoring violations of these Regulations enter, at

any time, any premises which are used for dealing in foods for infants and young children or other designated products and may—

- (a) require any person in the premises to furnish any information including documents in his or her possession as the monitor may require;
- (b) caution the person on the premises regarding any violations of these Regulations;
- (c) seize any goods, or promotional materials or documents where the goods or promotional material or documents in question contravene these Regulations.

(3) A monitor shall, after monitoring under subregulation (1), submit a report in writing, in relation to his or her findings to the Board.

(4) In any proceedings under these Regulations, a report signed by a monitor shall be accepted as *prima facie* evidence of the facts stated therein.

(5) No monitor shall have any direct or indirect commercial interest in infant and young child feeding.

(6) A monitor, acting in accordance with these Regulations, shall if required by any person, provide proof of his or her authority.

(7) An owner, occupier or person in charge of any premises entered by a monitor shall give to the monitor all reasonable assistance and shall furnish him or her with such information as the monitor may reasonably require.

(8) No person may obstruct or impede a monitor in the course of performance of his or her duties.

(9) No person may knowingly make any false or misleading statement, either verbally or in writing, to any monitor engaged in carrying out his or her duties.

6. Duties of authorized officers

(1) An authorised officer shall implement these Regulations under the powers vested on him or her by the provisions of section 6 of the Food Control Act.

(2) No authorised officer shall have any direct or indirect commercial interest in infant and young child feeding.

7. Conditions for stocking, etc., foods for infants and young children or other designated products

(1) No person shall stock, distribute, sell or exhibit any foods for infants and young children which have expired or are beyond their shelf life.

(2) No person shall stock, distribute, sell or exhibit any foods for infants and young children or other designated products which are not in their original containers.

(3) A container of foods for infants and young children, for sale or distribution, shall be free from dents or any other form of damage and shall be kept—

- (a) in a cool and dry place;
- (b) at least 50 cm from the floor; and
- (c) in a hygienic manner.

PART III

Prohibition against Promotion, Advertising, etc. (regs 8-9)

8. Promotion, advertisement, etc., prohibited

(1) For the purposes of this regulation, "promote" includes—

- (a) any direct or indirect method of introducing a designated product or encouraging the buying or use of a designated product;
- (b) sale devices such as rebates, special displays to promote sales, tie-in sales, loss leaders, grant of rewards, discount coupons, premiums, special sales, prizes, gifts and giving of samples to mothers;
- (c) direct or indirect contact between marketing personnel and members of the public in furtherance of or for the purpose of promoting the business of designated products and indirect contact includes television and radio, telephone or internet help lines, mother and baby clubs and baby competitions;

- (d) electronic communication including website, internet and electronic mail;
- (e) promotional items such as clothing, stationery or items that refer to a designated product or to a brand name of a designated product;
- (f) outdoor advertisements such as billboards;
- (g) placard and newspaper or magazine inserts;
- (h) practices that create an association between a manufacturer or distributor and breastfeeding.

(2) No person shall—

- (a) promote or cause to be promoted, foods for infants and young children or other designated products;
- (b) engage in promotional activities of any designated product;
- (c) publish or cause to be published any advertisement for any designated product;
- (d) advertise or cause to be advertised any designated product.

(3) No manufacturer or distributor shall—

- (a) distribute or cause to be distributed any information or educational material relating to infant or young children nutrition or feeding, except in accordance with these regulations.
- (b) offer or give or cause to be offered or given, any benefit to a health worker, including, fellowships, study grants, funding for attendance of meetings, seminars, continuing education or conferences;
- (c) fund any research, clinical or otherwise, carried out by any health worker on any designated product, except in accordance with a protocol approved by the relevant authority in writing;
- (d) directly or indirectly, provide any support, financial or otherwise, to any health worker;
- (e) employ any person to provide to health workers in health care facilities, pregnant women or mothers of infants and young children or any person with education or instructions regarding the use of a designated product;
- (f) sell, donate or distribute or cause to be sold, donated or distributed in a health care facility, any—
 - (i) equipment, materials or any other services with any reference to any designated products or contain the name or logo of any manufacturer or distributor of any designated product,
 - (ii) foods for infants and young children or other designated products at a price lower than the published wholesale price or in the absence of such price, lower than 80 per cent of the retail price.
- (g) calculate a bonus payment based on the volume of sales of any designated product; or
- (h) set a quota for the sale of any designated product as a sales incentive.

(4) Notwithstanding the provisions of subregulation (3)(a), manufacturers and distributors may give information about designated products to health professionals if such information is restricted to scientific and factual matters regarding the technical aspects and methods of use of designated products, and in accordance with regulations 15 and 16.

(5) Subregulation 3(f)(ii) shall not apply where a donation or low price sale is made to an orphanage or other social welfare institution for infants who have to be fed on designated products and shall not prevent the Government from procuring foods for infants and young children, for its feeding programme or for social welfare purposes, at the lowest possible price through bidding procedures.

(6) Donations or low price sales made to orphanages or other social welfare institutions, whether for use in the institutions or for distribution outside them, as provided for under subregulation (5) should be sustained once started and should continue as long the beneficiaries need them.

(7) Manufacturers shall not make donations as referred to in subregulation (5) or set low

price sales as sales inducements.

(8) Marketing personnel in their business capacity shall not seek direct or indirect contact of any kind with pregnant women, or with caregivers, or mothers of infants and young children intended to further commercial interests.

9. Health workers prohibited from promoting, etc., foods for infants and young children

(1) Health workers shall—

- (a) promote and support breast-feeding, unless medically indicated;
- (b) keep a records register of contraventions of the provisions of these Regulations by manufacturers or distributors in their respective health care facilities; and
- (c) provide the records under subregulation (1)(b) to monitors and authorized officers.

(2) Health workers shall not—

- (a) accept from manufacturers or distributors any of the following offers:
 - (i) gift,
 - (ii) financial assistance,
 - (iii) fellowships, study tours, research grants, funding for attendance of conferences,
 - (iv) samples of foods for infants and young children or other designated products, or
 - (v) quantities of foods for infants and young children or other designated products at a price lower than the published wholesale price, or in the absence of such price, lower than 80% of the retail price; or
- (b) display foods for infants and young children or other designated products.

(3) Subregulation (2) shall not apply to—

- (a) research activities approved by the health research authority in writing; or
- (b) quantities of foods for infants and young children or other designated products for social welfare purposes provided under the Government feeding programmes and in terms of such guidelines as the Board may from time to time approve.

PART IV

Labelling, Warning, Preparation, etc. (regs 10-14)

10-12. ...13. Labelling of other products sometimes used as foods for infants and young children

The label on any container of the following types of milk—

- (a) sweetened;
- (b) condensed;
- (c) evaporated;
- (d) dried;
- (e) skimmed;
- (f) low fat;
- (g) imitation milk-like dairy products; or
- (h) standardised milk

shall contain the following words in bold and conspicuous characters not less than 2mm in height—

"THIS PRODUCT IS NOT SUITABLE FOR FEEDING BABIES".

14. Labelling requirements for feeding bottles, etc.

(1) A label, package or container of a feeding bottle or teat shall include, in simple written English and Setswana—

- (a) a statement of the superiority of breast-milk for feeding infants;
- (b) a statement that feeding with a cup is safer than bottle feeding;
- (c) instruction for proper cleaning and sterilisation of feeding bottle and teat;
- (d) a warning of potential health hazards of using feeding bottle especially if it is not properly sterilised;
- (e) the need to follow preparation instructions carefully;

- (f) the name and address of manufacturer or distributor.
- (2) A label, package or container of a feeding bottle or teat shall not contain pictures of infants, women or infant toys nor any other picture or text or any symbol depicting a health advantage which idealises artificial feeding.
- (3) A label of a dummy shall include, in simple written English and Setswana—
 - (a) a notice that the use of such dummy can interfere with breast-feeding;
 - (b) instructions for proper cleaning and sterilisation of the dummy;
 - (c) a warning on potential health hazards of using a dummy especially if it is not properly sterilised;
- (4) A label of a dummy shall not contain pictures of infants, women, animals or toys nor any other picture or text or any symbol depicting a health advantage which idealises artificial feeding over breast-feeding.
- (5) A label of a breast pump shall have written instructions in simple English and Setswana, for proper use, cleaning and sterilisation of the breast pump.

PART V

Information and Educational Materials (regs 15-16)

15. Information and educational materials on infants and young children feeding

(1) Notwithstanding any other provision of these Regulations, no person shall, directly or indirectly, distribute any educational material or any information relating to infant or young child feeding in Botswana without the approval of the Board.

(2) Any educational material or information, written, audio or visual, electronic or otherwise, relating to infant feeding shall explain—

- (a) the importance, benefits and superiority of breast-feeding during the first two years of the life of a child;
- (b) the value of exclusive breast-feeding for the first six months of life followed by sustained breast-feeding for at least the first two years of the life of a child;
- (c) the preparation for and the continuance of breast-feeding;
- (d) factual and current information and shall not use any pictures or text discouraging breast-feeding;
- (e) how bottle-feeding interferes with breast-feeding;
- (f) the difficulty in reverting to breast-feeding after a period of formula feeding; and
- (g) how the early introduction of complementary foods interferes with breast-feeding.

(3) The educational material or information referred to in subregulation (2) shall not make any reference to the brand name of food for infants and young children or any designated product or the name or logo of any manufacturer or distributor.

16. Information and educational materials on foods for infants and young children

(1) Where the educational material or information referred to in regulation 15 includes the topic of the feeding of infants with infant formula or follow-up formula, it shall include:—

- (a) instructions for the proper preparation and use of the product in question including the cleaning and sterilisation of feeding utensils;
- (b) the health hazard of bottle-feeding and improper preparation of the product;
- (c) the importance and proper instructions on cup feeding; and
- (d) the approximate financial costs of the product in question if used in recommended quantities for a period of six months.

(2) Where the material referred to in regulation 15 includes the topic of infant feeding with complementary food, it shall explain—

- (a) the health hazards of introducing complementary foods too soon or too late; and
- (b) that complementary foods can easily be prepared at home using indigenous ingredients.

(3) Feeding with infant formula, follow-up formula or complementary foods whether manufactured or home prepared, shall be demonstrated only by health workers or other

community workers if necessary, and only to the mothers or family members who need to use it and the information given shall include a clear explanation of the hazards of improper use.

PART VI

Offences and Penalties (regs 17-18)

17. Offences and penalties

(1) A person who contravenes a provision of these Regulations commits an offence and is liable—

- (a) for a first offence, to a fine not exceeding P1,000 or to imprisonment for a term not exceeding three months, and where the offence is a continuing offence, to an additional fine not exceeding P500 or imprisonment for a term not exceeding one month for each day on which the offence continues; and
- (b) for a second or subsequent offence, to a fine not exceeding P5,000 or to imprisonment for a term not exceeding six months, and where the offence is a continuing offence, to an additional fine not exceeding P2,000 or imprisonment for a term not exceeding two months for each day on which the offence continues.

(2) Notwithstanding the provisions of subregulation (1), the Board may recommend to the Minister, any other action to be taken against any manufacturer, distributor, health worker or other person who contravenes the provisions of these Regulations.

(3) On the conviction of any person for an offence under these Regulations, the Minister may cancel, or suspend any licence issued to that person which is relevant to the offence committed.

(4) Where a person has been convicted of an offence under these Regulations, the Minister may order that any article relevant to the offence be forfeited and that it be destroyed or otherwise disposed of, as the Minister considers appropriate.

18. Body corporate liability

Where an offence under these regulations which has been committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, a director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in such capacity, he or she as well as the body corporate, shall be guilty of an offence and liable to a fine not exceeding P1,000 or to imprisonment for a term not exceeding three months, or to both.