



COVERSHEET

Minister	Hon Dr David Clark	Portfolio	Commerce and Consumer Affairs
Title of Cabinet paper	Consumer Information Standards (Origin of Food) Regulations 2021	Date to be published	12 May 2021

List of documents that have been proactively released		
Date	Title	Author
6 May 2021	Consumer Information Standards (Origin of Food) Regulations 2021	Office of the Minister of Commerce and Consumer Affairs
6 May 2021	LEG-21-MIN-0048	Cabinet Office – Cabinet Economic Development Committee

Information redacted

YES

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Some information has been withheld to maintain legal professional privilege.

In Confidence

Office of the Minister of Commerce and Consumer Affairs

Chair, Cabinet Legislation Committee

CONSUMER INFORMATION STANDARDS (ORIGIN OF FOOD) REGULATIONS 2021

Proposal

- 1 This paper seeks authorisation for submission to the Executive Council of the Consumer Information Standards (Origin of Food) Regulations 2021 under section 27 of the Fair Trading Act 1986.

Background

- 2 The Consumers' Right to Know (Country of Origin of Food) Act 2018 (**the Act**) was passed in 2018. The purpose of the Act is to provide for a simple mandatory system in New Zealand that provides consumers with accurate information about the country or place of origin of certain foods to enable informed purchasing decisions.
- 3 The Act requires that I, as Minister of Commerce and Consumer Affairs, recommend the making of regulations under the Fair Trading Act 1986 prescribing a consumer information standard for the disclosure of the country or place of origin of certain foods.
- 4 On 18 September 2019, Cabinet agreed to the content of the regulations and authorised the release of an exposure draft of the Consumer Information Standards (Origin of Food) Regulations 2019 (**the Regulations**) for public consultation [DEV-19-MIN-0252 refers].
- 5 Consultation on the exposure draft ran from 9 December 2019 to 10 February 2020 and 53 submissions were received. The submissions were largely technical in nature and some minor amendments have been made to the Regulations to improve the workability and clarity in response. Some submissions sought to extend the scope of the Regulations, as summarised further in paragraph 24.
- 6 In May 2020, the Act was amended through the COVID-19 Response (Further Management Measures) Legislation Act 2020 to delay the requirement to recommend the making of regulations to 4 June 2021. This was due to the uncertainty and significant disruption to food retailers and other businesses caused by COVID-19.

Policy

- 7 The Regulations give effect to Cabinet's decision to implement the Act by introducing a simple, mandatory country of origin labelling regime for single-ingredient, minimally processed fruit, vegetables, meat, seafood, and cured pork. [DEV-19-MIN-0252 refers].
- 8 The Regulations are intended to help consumers make more informed purchasing decisions by providing them with information about the country or place of origin of certain foods. They do this by requiring the disclosure of the:
 - 8.1. one or more countries where the fruit or vegetable was grown; or
 - 8.2. one or more countries where the animal that became the meat or cured pork was raised (except in some situations where a supplier may name the country where the animal was slaughtered as described in paragraph 13); or
 - 8.3. one or more countries in whose national fisheries jurisdiction, or the oceans in whose high seas, the seafood was caught or harvested.
- 9 Disclosures must be clear and legible and either on the food item or its packaging, or on signs located next to the food. These may be made in either English or Te Reo Māori. Where food is supplied or offered for supply where the food is not physically present (e.g. on a supermarket's website), the information must be provided in such a way that its connection with the food is clear.
- 10 The Regulations also include some exclusions from the consumer information standard where requiring these foods to comply would be unduly onerous, as previously agreed by Cabinet [DEV-19-MIN-0252]. This is in accordance with section 5(4) of the Act, which allows the consumer information standard to exclude any food where compliance would be unduly onerous or not helpful to consumers. In these circumstances, the Regulations require alternative disclosures under section 27 of the Fair Trading Act 1986.
- 11 One such exclusion permits the disclosure of multiple countries if the origin changes often enough that it would be unreasonable to change the labelling (e.g. a package of peas imported from multiple countries).

Some changes have been made in response to feedback

- 12 To ensure that the Regulations are fit for purpose, I was authorised by Cabinet to release an exposure draft for consultation and to make decisions on minor issues during the drafting process. In response to the feedback from the exposure draft consultation, or to clarify the policy intent, some minor changes to the Regulations have been made including:
 - 12.1. amending the definition of 'fruit or vegetable' to include sprouted legumes and broad beans;

- 12.2. clarifying that food covered by the Regulations that is sold 'thawed' is not categorised as 'fresh';
- 12.3. amending the definition of 'cured pork' to ensure that it applies to cured pork products akin to bacon or ham (e.g. prosciutto); and
- 12.4. clarifying the circumstances in which the exclusion described in paragraph 11 is intended to apply.

13 Legal professional privilege

exclusion for items with multiple places of origin has been amended in respect of meat or cured pork products. This change will permit the disclosure of where an animal was slaughtered, rather than where it was raised, when the meat or cured pork product has been sourced from multiple countries.

- 14 These minor changes to the Regulations are consistent with previous Cabinet decisions. They are necessary to improve the clarity and workability of the Regulations and to avoid imposing unnecessary compliance costs on suppliers.

Impact Analysis

- 15 A Regulatory Impact Assessment was prepared in accordance with the necessary requirements and was submitted at the time that Cabinet approval of the policy relating to the Regulations was sought [DEV-19-MIN-0252].

Compliance

- 16 The proposed Regulations comply with:
 - 16.1. the principles of the Treaty of Waitangi;
 - 16.2. the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 or the Human Rights Act 1993;
 - 16.3. the principles and guidelines set out in the Privacy Act 2020;
 - 16.4. relevant international standards and obligations; and
 - 16.5. the Legislation Guidelines (2018 edition), which are maintained by the Legislation Design and Advisory Committee.

Statutory prerequisites


- 17 Section 5(2) of the Act specifies that the Minister of Commerce and Consumer Affairs must be satisfied that the consumer information standard meets the

purpose of the Act, defines and applies to “regulated foods”, and requires the disclosure of the food’s country or place of origin by reference to where the food was grown or something similar.

- 18 “Regulated foods” must include food that is a single type of fresh or frozen fruit, vegetable, meat, fish or seafood that is no more than “minimally processed”, or is cured pork.
- 19 The Act also specifies that the Minister must be satisfied that the consumer information standard commences six months after the date of its notification in the Gazette, and does not apply to frozen foods until 18 months after commencement.
- 20 Section 27(3) of the Fair Trading Act 1986 specifies that the Minister must not recommend that regulations be made to prescribe consumer information standards unless persons or representatives of persons the Minister considers will be substantially affected have had the opportunity to comment.
- 21 I am satisfied that the proposed Regulations meet these requirements.

Consultation

- 22 The Ministry of Foreign Affairs and Trade and the Ministry for Primary Industries were consulted on this paper and the Regulations. The Department of the Prime Minister and Cabinet was also informed. The Commerce Commission were also consulted on the Regulations.
- 23 An exposure draft of the Regulations was released in December 2019 for public feedback, and 53 submissions were received. Submissions were largely technical in nature and some changes have been made to the Regulations in response, as summarised above.
- 24 A number of submissions were received from consumers, small goods producers and members of the New Zealand pork industry submitting that the scope of the Regulations should be broadened to apply to all pork products such as sausages. The Act and Regulations already provide different treatment to pork than other types of meat by applying the labelling requirements to cured pork but not to other cured meats. To extend this further would increase this disparity, and increase the cost and complexity of what is intended to be a simple mandatory labelling regime. On this basis, no changes to the scope of the Regulations were made.

- 25 Legal professional privilege
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Commencement and the 28-day rule

- 26 The Regulations will commence on 12 November 2021, which will be six months after its notification in the *New Zealand Gazette*. They will not apply to frozen foods until 18 months after the commencement.

Proactive release

- 27 This paper will be proactively released within 30 business days on the Ministry of Business, Innovation and Employment's website, subject to redactions as appropriate.

Regulations Review Committee

- 28 I do not consider there are any grounds for the Regulations Review Committee to draw the Regulations to the attention of the House of Representatives under Standing Order 327.

Certification by Parliamentary Counsel Office

- 29 The Regulations have been certified by Parliamentary Counsel Office as being in order for submission to Cabinet as long as they are notified in the *New Zealand Gazette* on Wednesday 12 May 2021.

Publicity

- 30 The Ministry of Business, Innovation and Employment will notify interested stakeholders of the making of these Regulations.

Recommendations

I recommend that the Cabinet Legislation Committee:

- 1 **note** that the Consumers' Right to Know (Country of Origin of Food) Act 2018 requires the Minister of Commerce and Consumer Affairs to recommend the making of regulations under the Fair Trading Act 1986 prescribing a consumer information standard for the disclosure of country or place of origin of certain foods;
- 2 **note** that in September 2019, Cabinet agreed to the policy content of the regulations and authorised the release of an exposure draft of the Consumer Information Standards (Origin of Food) Regulations 2019 (the Regulations) for public consultation [DEV-19-MIN-0252];
- 3 **note** that the Consumer Information Standards (Origin of Food) Regulations 2021 will give effect to the decisions referred to in recommendation 2 above;
- 4 **note** that section 5(2) of the Consumers' Right to Know (Country of Origin of Food) Act 2018 requires the Minister to be satisfied that the consumer information standard meets the purpose of the Act, defines and applies to regulated foods, requires a regulated food's country or place of origin to be disclosed by reference to where it was grown or something similar,

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commences six months after notification in the Gazette, and does not apply to frozen food for 18 months after commencement;

- 5 **note** that the advice of the Minister of Commerce and Consumer Affairs is that these requirements have been met;
- 6 **note** that, consistent with previous Cabinet decisions, some minor changes were made to improve the workability of the Consumer Information Standards (Origin of Food) Regulations 2021 and in response to feedback received on the exposure draft;
- 7 **authorise** the submission to the Executive Council of the Consumer Information Standards (Origin of Food) Regulations 2021;
- 8 **note** that the Consumer Information Standard (Origin of Food) Regulations 2021 will come into force on 12 November 2021 which is six months after the date of notification in the *New Zealand Gazette*.

Authorised for lodgement

Hon Dr David Clark

Minister of Commerce and Consumer Affairs