

LABELLING OF PREPACKAGED FOODS REGULATIONS

(under section 13(1))

(11th April, 2003)

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S.I. 83, 2002,

S.I. 15, 2003.

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