



Food Amendment Regulations 2021

Cindy Kiro, Governor-General

Order in Council

At Wellington this 29th day of November 2021

Present:

Her Excellency the Governor-General in Council

These regulations are made under section 133C of the Food Act 2014—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Food Safety made after complying with section 133C(2) of that Act.

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Regulations

1 Title

These regulations are the Food Amendment Regulations 2021.

2 Commencement

- (1) These regulations, subject to subclause (2), come into force on 1 July 2022.
- (2) Regulations 6, 9, 13, and 15 come into force on 1 July 2023.

3 Principal regulations

These regulations amend the Food Regulations 2015.

4 Regulation 26 amended (Identification and tracing of food)

- (1) In the heading to regulation 26, replace “**Identification and tracing**” with “**Identification, location, and tracing**”.
- (2) In regulation 26(1)(a), after “identifying”, insert “and locating”.
- (3) In regulation 26(2), replace “identified and traced” with “identified, located, and traced”.
- (4) After regulation 26(2), insert:
 - (2A) The information required under subclause (1) must be accurate.
 - (2B) The information required under subclause (1) must also be sufficient to allow an effective recall to be carried out.

Providing information

 - (2C) When requested to do so by the chief executive or a food safety officer, the operator must provide information about the matters in subclause (1)—

- (a) in a readily accessible format; and
- (b) within 24 hours after the request, or within any reasonable shorter period specified by the chief executive or food safety officer.

5 Regulation 27 amended (Recall of food or food-related accessory)

Replace regulation 27(3) with:

- (3) If the operator makes a decision to recall food or a food-related accessory, the operator must notify the chief executive of the following as soon as practicable, but no later than 24 hours after making the decision:
 - (a) the food or food-related accessory affected by the recall; and
 - (b) the reason for the recall.

6 New regulation 27A inserted (Simulated recall of food or food-related accessory)

After regulation 27, insert:

27A Simulated recall of food or food-related accessory

- (1) The operator must conduct a simulated recall of food and food-related accessories at least every 12 months—
 - (a) after a simulated recall; or
 - (b) after a genuine recall, if the recall demonstrated the traceability and recall procedures to be effective.
- (2) A simulated recall must demonstrate the effectiveness of the operator's traceability and recall procedures.
- (3) In this regulation, **effectiveness** is measured by—
 - (a) the proportion of food or food-related accessories that was or would have been successfully traced and recalled; and
 - (b) the time taken to trace and recall affected food or food-related accessories; and
 - (c) any other matters set out in a notice under section 405 of the Act.

7 Regulation 71 amended (Identification and tracing of food)

- (1) In the heading to regulation 71, replace “**Identification and tracing**” with “**Identification, location, and tracing**”.
- (2) In regulation 71(1)(a), after “identifying”, insert “and locating”.
- (3) In regulation 71(3), replace “identified and traced” with “identified, located, and traced”.
- (4) After regulation 71(3), insert:
 - (3A) The information required under subclause (1) must be accurate.

- (3B) The information required under subclause (1) must also be sufficient to allow an effective recall to be carried out.

Providing information

- (3C) When requested to do so by the chief executive or a food safety officer, the operator must provide information about the matters in subclause (1)—
- (a) in a readily accessible format; and
 - (b) within 24 hours after the request, or within any reasonable shorter period specified by the chief executive or food safety officer.

8 Regulation 72 amended (Recall of food or food-related accessory)

Replace regulation 72(3) with:

- (3) If the operator makes a decision to recall food or a food-related accessory, the operator must notify the chief executive of the following as soon as practicable, but no later than 24 hours after making the decision:
- (a) the food or food-related accessory affected by the recall; and
 - (b) the reason for the recall.

9 New regulation 72A inserted (Simulated recall of food or food-related accessory)

After regulation 72, insert:

72A Simulated recall of food or food-related accessory

- (1) The operator must conduct a simulated recall of food and food-related accessories at least every 12 months—
- (a) after a simulated recall; or
 - (b) after a genuine recall, if the recall demonstrated the traceability and recall procedures to be effective.
- (2) A simulated recall must demonstrate the effectiveness of the operator's traceability and recall procedures.
- (3) In this regulation, **effectiveness** is measured by—
- (a) the proportion of food or food-related accessories that was or would have been successfully traced and recalled; and
 - (b) the time taken to trace and recall affected food or food-related accessories; and
 - (c) any other matters set out in a notice under section 405 of the Act.

10 Regulation 124 amended (Information that registered importer must keep or have ready access to)

- (1) In regulation 124(1)(a), after “subclause (2)”, insert “or regulation 124A”.
- (2) Revoke regulation 124(2)(f).

11 New regulation 124A inserted (Identification, location, and tracing of imported food)

After regulation 124, insert:

124A Identification, location, and tracing of imported food

- (1) A registered importer must have procedures for—
 - (a) identifying and locating imported food; and
 - (b) tracing food so that food can be traced—
 - (i) from the supplier of the food to the registered importer; and
 - (ii) while it is under the registered importer's control; and
 - (iii) from the registered importer to the next person to whom responsibility for the food has passed (other than the final consumer).
- (2) The registered importer must ensure that food is identified, located, and traced in accordance with the procedures.
- (3) The information required under subclause (1) must be accurate.
- (4) The information required under subclause (1) must also be sufficient to allow an effective recall to be carried out.

Providing information

- (5) When requested to do so by the chief executive or a food safety officer, the registered importer must provide information about the matters in subclause (1)—
 - (a) in a readily accessible format; and
 - (b) within 24 hours after the request, or within any reasonable shorter period specified by the chief executive or food safety officer.

12 Regulation 126 amended (Recalls)

Replace regulation 126(2) with:

- (2) If the registered importer makes a decision to recall food, the registered importer must notify the chief executive of the following as soon as practicable, but no later than 24 hours after making the decision:
 - (a) the food affected by the recall; and
 - (b) the reason for the recall.

13 New regulation 126A inserted (Simulated recalls)

After regulation 126, insert:

126A Simulated recalls

- (1) A registered importer must conduct a simulated recall of food at least every 12 months—

- (a) after a simulated recall; or
 - (b) after a genuine recall, if the recall demonstrated the traceability and recall procedures to be effective.
- (2) A simulated recall must demonstrate the effectiveness of the operator's traceability and recall procedures.
- (3) In this regulation, **effectiveness** is measured by—
- (a) the proportion of food or food-related accessories that was or would have been successfully traced and recalled; and
 - (b) the time taken to trace and recall affected food or food-related accessories; and
 - (c) any other matters set out in a notice under section 405 of the Act.

14 New Part 5A inserted

After section 137, insert:

Part 5A Exported food

137A Application of this Part

This Part applies to any person or food business that—

- (a) exports food for the purposes of trade; and
- (b) is not subject to a risk-based measure under the Act.

137B Identification, location, and tracing of exported food

- (1) An exporter to whom this Part applies must have procedures for—
- (a) identifying and locating food; and
 - (b) tracing food so that food can be traced—
 - (i) from the supplier of the food to the exporter; and
 - (ii) while it is under the exporter's control; and
 - (iii) from the exporter to the next person to whom responsibility for the food has passed (other than the final consumer).
- (2) The exporter must ensure that food is identified, located, and traced in accordance with the procedures.
- (3) The information required under subclause (1) must be accurate.
- (4) The information required under subclause (1) must also be sufficient to allow an effective recall to be carried out.
- (5) The exporter must retain the information required under subclause (1) for at least 4 years after the date of export of the food.

Providing information

- (6) When requested to do so by the chief executive or a food safety officer, the exporter must provide information about the matters in subclause (1)—
- (a) in a readily accessible format; and
 - (b) within 24 hours after the request, or within any reasonable shorter period specified by the chief executive or food safety officer.

137C Recall of exported food

- (1) An exporter to whom this Part applies must—
- (a) have procedures for recalling food sold by the exporter that the exporter considers to be not safe or suitable or whose safety or suitability is in doubt; and
 - (b) recall, in accordance with those procedures, food sold by the exporter that the exporter considers to be not safe or suitable or whose safety or suitability is in doubt.
- (2) If the exporter makes a decision to recall food, the exporter must notify the chief executive of the following as soon as practicable, but no later than 24 hours after making the decision:
- (a) the food affected by the recall; and
 - (b) the reason for the recall.

15 New regulation 137D inserted (Simulated recall of exported food)

After regulation 137C, insert:

137D Simulated recall of exported food

- (1) An exporter to whom this Part applies must conduct a simulated recall of food at least every 12 months—
- (a) after a simulated recall; or
 - (b) after a genuine recall, if the recall demonstrated the traceability and recall procedures to be effective.
- (2) A simulated recall must demonstrate the effectiveness of the operator's traceability and recall procedures.
- (3) In this regulation, **effectiveness** is measured by—
- (a) the proportion of food or food-related accessories that was or would have been successfully traced and recalled; and
 - (b) the time taken to trace and recall affected food or food-related accessories; and
 - (c) any other matters set out in a notice under section 405 of the Act.

Michael Webster,
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 amend the Food Regulations 2015 (the **principal regulations**) in relation to the tracing and recall of food and food-related accessories. Most of the amendments come into force on 1 July 2022. However, some come into force on 1 July 2023.

The following amendments come into force on 1 July 2022:

- regulations 26 and 71 are amended to specify additional requirements for the identification, location, and tracing of food:
- regulations 27, 72, and 126 are amended to specify in more detail the information that operators and registered importers must report if they decide to recall food (or food-related accessories, in the case of operators):
- *new regulation 124A* is inserted to require registered importers to have and comply with procedures for the identification, location, and tracing of imported food (and consequential amendments are made to regulation 124):
- *new Part 5A* (other than *new regulation 137D*) is inserted to set out tracing and recall requirements for exporters of food.

New regulations 27A, 72A, 126A, and 137D come into force on 1 July 2023. These regulations set out requirements for simulated recalls that operators, registered importers, and exporters must conduct every 12 months.

Regulatory impact assessment

The Ministry for Primary Industries produced a regulatory impact assessment on 23 August 2019 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact assessment can be found at—

- <https://www.mpi.govt.nz/dmsdocument/48532-Impact-Summary-strengthening-food-recalls-and-risk-management-programmes>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 2 December 2021.

These regulations are administered by the Ministry for Primary Industries.