



**MINISTRY OF BUSINESS,
INNOVATION & EMPLOYMENT**
HIKINA WHAKATUTUKI



Exposure draft consultation: Consumer Information Standards (Origin of Food) Regulations 2019

Request for submissions

December 2019

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How to have your say

Submissions process

The Ministry of Business, Innovation and Employment (MBIE) seeks written submissions on the exposure draft of the Consumer Information Standards (Origin of Food) Regulations 2019 by 5pm on **10 February 2020**. Your submission may respond to any or all of the proposed changes. Where possible, please include evidence to support your views, for example references to independent research, facts and figures, or relevant examples.

Please include your contact details in the cover letter or e-mail accompanying your submission.

You can make your submission by:

- sending your submission as a Microsoft Word document to consumer@mbie.govt.nz.
- mailing your submission to:

Competition and Consumer Policy
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140

Please direct any questions that you have to consumer@mbie.govt.nz.

Use and release of information

The information provided in submissions will be used to inform MBIE's policy development process, and will inform advice to Ministers on the final Consumer Information Standards (Origin of Food) Regulations.

MBIE intends to upload PDF copies of submissions received to MBIE's website at www.mbie.govt.nz. MBIE will consider you to have consented to uploading by making a submission, unless you clearly specify otherwise in your submission. If your submission contains any information that is confidential or you otherwise wish us not to publish, please:

- indicate this on the front of the submission, with any confidential information clearly marked within the text
- provide a separate version excluding the relevant information for publication on our website.

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List of Acronyms

The Act	The Consumers' Right to Know (Country of Origin of Food) Act 2018
Consumer information standard	A consumer information standard made under section 27 of the Fair Trading Act 1986
MBIE	Ministry of Business, Innovation and Employment
Regulations	Consumer Information Standards (Origin of Food) Regulations 2019

1 Introduction

Background

1. The Consumers' Right to Know (Country of Origin of Food) Act 2018 (**the Act**) was passed in December 2018. The Act requires the making of a consumer information standard under the Fair Trading Act 1986 to prescribe requirements for the disclosure of the country or place of origin of certain foods.
2. The Act requires the Minister of Commerce and Consumer Affairs to recommend a consumer information standard (to be made via regulations) within 18 months of the Act's commencement (by June 2020).
3. This paper consults on the exposure draft of the regulations to give effect to the Act.

High-level requirements of the Act

4. The Act specifies that country or place of origin disclosure will be required on foods that:
 - a. are only one type of fruit, vegetable, meat, fish, or seafood, and
 - b. are fresh or frozen and are not, for example, dried, cured, or pickled, and
 - c. are no more than minimally processed (for example, they have only been cut, minced, filleted, or surface treated).
5. The Act also requires the origin of cured pork to be disclosed.¹
6. The meanings of terms such as "fresh" and "minimally processed" are discussed in this document.
7. The Act specifies that the requirements will:
 - a. apply to food supplied, offered for supply or advertised for supply at retail, including on an Internet site (this means they will apply where food is located in-store, as well as on television advertisements and in mail-out flyers)
 - b. apply to food that is packaged or unpackaged
 - c. not apply to food supplied at a fundraising event, or by businesses such as restaurants, cafeterias, takeaway shops, caterers or similar places where the food is for immediate consumption.

¹ Cured pork was included due to the many public submissions received by the Primary Production Committee recommending the inclusion of cured pork products. Around a third of public submissions in the Committee's second round of consultation mentioned cured pork or specific products like bacon.

8. The following is a non-exhaustive list of the types of foods that we expect the regulations to cover and those that will not be covered:

Foods covered by the regulations	Foods not covered by the regulations
Fresh tomatoes	Pumpkin seeds, sunflower seeds, etc.
Fresh coconut	Peanuts, almonds, hazelnuts, walnuts, etc.
Packaged fresh spinach	Milk and other dairy products (e.g. butter, yoghurt)
Fresh oranges	Honey
Frozen blueberries	Tinned fruit (e.g. tinned peaches, tinned fruit salad)
Fresh sliced mushrooms	Tea and coffee
Bagged onions	Legumes e.g. chickpeas, black beans, kidney beans, etc.
Frozen sliced green beans	Tinned vegetables (e.g. tinned tomatoes)
Frozen peas	Mixed frozen vegetables (e.g. bag of mixed peas, carrots and corn)
Chilled beef	Mixed frozen fruit (e.g. bag of mixed berries)
Chilled fish fillets	Crumbed fish
Chilled lamb chops	Marinated or flavour enhanced meats (e.g. teriyaki chicken kebabs, marinated beef steak)
Frozen raw prawns	Frozen cooked prawns
Frozen whole chicken	Ready-made burger patties (with onion, breadcrumbs, herbs)
Ham	Sausages (e.g. fresh sausages, frankfurter, saveloy, kransky, chorizo, bratwurst, salami)
Bacon	Dried fruit
Sweetcorn	Grains (e.g. rice, quinoa)
Cut herbs	Potted herbs growing in soil

Government decisions to date

9. Cabinet made high-level decisions on the coverage of the consumer information standard on 23 September 2019. The Cabinet decisions and more information on the analysis informing these proposals can be accessed here: <https://www.mbie.govt.nz/have-your-say/exposure-draft-consultation-consumer-information-standards-origin-of-food-regulations-2019>.
10. Prior to Cabinet decisions, MBIE conducted targeted consultation on the technical details required to give effect to the requirements of the Act. We consulted with key food industry stakeholders such as representatives of New Zealand food manufacturers and retailers, New Zealand pork industry representatives, the horticulture industry and consumer representatives.

Purpose of this document

11. MBIE is seeking feedback on the accompanying draft regulations. Now that Cabinet has made policy decisions, we want to consult interested parties on draft regulations to ensure that they will give effect to these decisions and are workable. The regulations are draft only and are subject to change before they are finalised.
12. This document provides a commentary on the draft regulations to assist submissions, and asks specific questions that will help MBIE to refine the policy and drafting of the regulations.

Process and timeline

13. We are seeking feedback on the issues in this paper by **10 February 2020**. We will then analyse your submissions and provide recommendations to the Minister of Commerce and Consumer Affairs about any changes to the draft regulations.
14. The next step will be for the final regulations to be approved by Cabinet. The regulations will be made by Order in Council on the advice and with the consent of the Executive Council.
15. The final regulations will be notified in the *New Zealand Gazette*. The regulations will come into force six months after notification for non-frozen regulated foods and 18 months after that for frozen regulated foods (i.e. 24 months after notification).

2 Part 1 of the regulations: Food that is regulated

Meaning of regulated food

16. Clause 5 defines the foods that are regulated by the regulations. This definition is consistent with the requirements of the Act.
17. Clause 5(2)(a) sets out that a regulated food “is only 1 type of fruit or vegetable, fish or seafood, or meat”. The intent of this is that regulated foods will include foods that are comprised of only one type and are not combined with other types of foods. For example, beef, chicken and lamb are types of meat and are only covered by the regime if they are not combined with other species of animal or other foods. As another example, a bag of peas or slices of raw beef steak are regulated foods, but not a bag of mixed peas and corn, or meatballs made of both chicken and pork. We seek your views on whether it is clear that the wording in the regulations means that only single-ingredient foods are regulated foods.
18. The requirement that the food be only one type of these categories for it to be subject to the regime means that the regulated foods exclude foods with added ingredients, such as marinated or crumbed foods.
19. Clause 5(2)(a)(ii) provides that regulated foods are either:
 - a. fresh; or
 - b. frozen (but would otherwise be fresh).
20. This caveat that frozen regulated food would otherwise be fresh clarifies that foods which have undergone processes of preservation (such as pickling or smoking) prior to being frozen are not regulated foods.
21. Clause 5(3) lists circumstances in which the regulations do not apply. These are consistent with those which the Act requires to be excluded (including at a fundraising event, or restaurants, cafes and similar places where the food is for immediate consumption).

Interpretation section of the regulations

22. Clause 4 of the draft regulations sets out the meaning of certain terms used.
23. We would like to draw your attention to the meaning of fruit and vegetables in particular. A definition for fruit and vegetables is necessary because suppliers will be required to disclose the origin of fruit and vegetables by reference to where they are grown. Without a definition, there is a risk of uncertainty about whether certain foods are included or excluded, as there may be different views on what foods are considered to be fruit or vegetables (for example, nuts and seeds). Our approach has been to define fruit and vegetables with a general description and then to provide a list of inclusions and exclusions from the general description. This approach avoids the need for an exhaustive list of the fruit and vegetables that are included and is less likely to need to be updated in future as new varieties are developed or imported into New Zealand.

- 24. Fruit and vegetables are intended to mean a plant, or part of a plant, that can be eaten as food. For clarity, this definition is intended to include some types of legumes that are commonly thought of as vegetables, such as peas and green beans, as well as edible fungi such as mushrooms, coconuts and sweetcorn. It is not intended to include nuts, seeds, other types of legumes that aren't specifically included, or grains or herbs that are growing in soil.
- 25. We are interested in whether there are any other foods that consumers would expect to be treated as fruit and vegetables that would not be included in the definition contained in the draft regulations.

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- the definitions of terms used in the draft regulations
- whether the intent of the current wording that a regulated food includes food that is “only 1 type” is clear
- any suggestions for refinement

Meaning of “fresh” and “minimally processed”

- 26. The Act specifies that the country or place of origin will be required to be disclosed in relation to foods that are fresh or frozen and that are no more than minimally processed.
- 27. Clauses 6 and 7 set out examples of processes that do not prevent a food from being fresh and processes that are considered minimal. These are replicated in the table below.

Processes that do not prevent a food from being fresh	Processes that make a food no longer fresh	Processes that are considered to be minimal processing
Refrigeration or chilling	Drying, freeze-drying or dehydration	Cutting, chopping, slicing, dicing, mincing, grating, mashing
Surface treatment e.g. water; wax, gum or other edible coating; anti-microbial or anti-browning agents; other chemical or gaseous treatments	Curing	Juicing, blending, pureeing
Vacuum sealing	Fermentation	Filleting, deboning, shucking
Blanching (e.g. vegetables that are blanched prior to freezing)	Pickling	Peeling, shelling
Freezing followed by thawing	Preserving in salt, sugar or oil	Washing, sanitising
	Canning	Irradiation
	Cooking, baking, roasting or grilling (other than blanching prior to freezing)	
	Smoking	
	Reconstitution	

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- the proposed definitions of fresh and minimally processed
- any suggestions for refinement

Meaning of cured pork

28. The Act includes cured pork as a “regulated food” and requires the disclosure of its country or place of origin.
29. Clause 8 sets out that “cured pork” means either:
 - a. a processed pork product that contains at least 30 per cent pork flesh and is represented as bacon or ham, or;
 - b. a processed pork product that contains or is made of whole muscle cuts or pieces of pork flesh, contains at least 66 per cent pork flesh, and contains, for the primary purpose of preservation, either added salt and nitrite and/or nitrate, or added salt (such as for dry-cured products).
30. The first category (a) will capture products that are sold as bacon and ham. The second category (b) is consistent with common industry practice of what a curing process involves and aligns with other technical definitions used overseas. It will capture any other products that have been cured and contain a sufficiently high percentage of pork flesh that it avoids capturing products that are more likely to be made of a mixture of meats.
31. All other processed pork products, such as products that only contain added salt for flavouring and not for the purpose of curing, are not included within this definition. Including these products would widen the discrepancy between the requirements for disclosing the origin of other processed pork products and products made of other types of meat.

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- whether the draft wording meets the policy intent described above

3 Part 2 of the regulations: Information to be disclosed

Disclosure of the origin of food by reference to where it was grown (or something similar)

- 32. The Act requires a regulated food’s country or place of origin to be disclosed by reference to where the food was grown or something similar (for example, where it was harvested, caught or raised, but not where it was merely packaged, manufactured or processed).
- 33. Clause 9 of the draft regulations requires the following to be disclosed:

Food	Reference point for disclosure of country or place of origin	What is required to be disclosed?
Fruit, vegetable	Where the food was grown	Country
Meat or cured pork	Where the animal was raised	Country
Fish or seafood	Where the finfish was caught or shellfish harvested	Country of national fisheries jurisdiction (a country’s internal waters, territorial sea and exclusive economic zone) OR ocean of the high seas.

- 34. In situations where the country is required to be disclosed, disclosure of any other place such as a subnational region (e.g. Hawkes Bay, Marlborough) will be a voluntary addition if suppliers choose to do so.
- 35. Clauses 9(2) and 9(3) of the regulations set out how to determine whether a fruit or vegetable was grown in a particular country, or whether an animal was raised in a particular country.
- 36. It is possible that an animal might be raised or a fruit or vegetable might be grown in more than one country (i.e. it materially increased in size in two countries). In response, clause 9(1) makes provision for more than one country to be disclosed if necessary. This means that if a food was grown or raised in more than one country, all the countries in which the food was grown or raised must be disclosed. We do not expect this to be a widespread issue in practice, but invite your views on this point. An alternative would be to require suppliers to state the country in which the animal was predominantly raised or food was predominantly grown. However, we think this would add unnecessary complexities and costs (for example, working out where an animal was predominantly raised might require a supplier to determine whether the animal had spent more time in one country than the other, or whether the animal increased more in size in one country).
- 37. Where fish or seafood was caught or harvested outside of a country’s national fisheries jurisdiction, clause 9 proposes that suppliers reference one of the Pacific Ocean, Atlantic Ocean, Indian Ocean, Southern (Antarctic) Ocean, and Arctic Ocean. We seek your views on how feasible such a requirement would be to comply with, and any alternatives that would be preferable.
- 38. An alternative we have considered would be to require suppliers to reference the region according to one of the major fishing areas listed by the Food and Agriculture Organization of

the United Nations (available here: <http://www.fao.org/fishery/area/search/en>). This would require statements such as “Caught in the Southwest Pacific” or “Northeast Atlantic salmon”. However, we understand that a very small volume of fish and seafood is caught or harvested on the high seas, outside of a country’s national jurisdiction, and therefore more complex requirements are likely to be disproportionately burdensome for suppliers to comply with.

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- the proposed requirements for disclosing the origin of a food by reference to where it was grown (fruits and vegetables), raised (meat and cured pork), or caught or harvested (fish and seafood)
- the requirement to reference the ocean if the fish or seafood was caught or harvested on the high seas
- the issue of a fruit, vegetable or animal being grown or raised in more than one country, and whether the proposals appropriately address this
- any suggestions for refinement of various definitions and requirements

How information must be disclosed

39. Clause 10(2)(a) of the regulations provides that origin information must be disclosed to consumers in either English or Te Reo Māori and be clear and legible.
40. Clause 10(2)(b) provides that disclosure must be made in a way that means that consumers are able to be informed of the relevant country, countries or ocean. This is intended to provide flexibility as there are a number of different statements that might be made to disclose origin to consumers. The regulations do not specify the statements that must be used to disclose origin, meaning that the supplier can decide how they meet the obligation. For example, in relation to apples, “New Zealand”, “New Zealand apples”, “Grown in New Zealand” and “Product of New Zealand” would all meet the disclosure requirement. A picture of a flag or animal would not comply because it would not meet the requirement for it to be in a legible text format.
41. Clause 11 sets out how disclosure must be made depending on the form of the supply, or offer or advertisement to supply. Clauses 11(1) and 11(2) provide that when a food is supplied, or offered or advertised for supply where the food is physically present, the information must be disclosed clearly in connection with the food (for example, by labelling the actual food or its packaging such as a sticker on an apple, or displaying signage next to the food, such as a sign above a bin of kumara).
42. Clauses 11(3) and 11(4) provide that when a food is offered or advertised for supply somewhere other than where the food is physically located, the information must be disclosed on the offer or advertisement for supply (for example, on a web page offering or advertising bananas for sale, the origin of the bananas must be disclosed on that page).

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- the proposed regulations for how information must generally be disclosed
- any suggestions for refinement of the requirements for how information must be disclosed

Alternative disclosure in certain circumstances

43. The Act provides that the consumer information standard may exclude any food from being a regulated food if the Minister considers that requiring the food to comply with the standard:
 - a. would be unduly onerous; or
 - b. would not help consumers to make informed decisions about purchasing the food.
44. Clauses 12 to 14 of the regulations exclude certain foods and provide alternative disclosure requirements in the circumstances below.

Clause 12: Disclosure for change in origin by time of supply

45. Clause 12 relates to food that is offered or advertised for supply where the food is not physically located (such as on a website or in advertisements such as weekly mail-outs or on television), and where the supplier has reason to believe that the origin may change by the time the food is actually supplied to the consumer. Stakeholders told us that where the country or place of origin of some foods is subject to change between the time of offer/advertisement and supply, there would be significant impracticalities in requiring these foods to be labelled with an individual source country at the time of offer or advertisement.
46. As a result, clause 12 states that, if the supplier believes that the country of origin may change by the time of supply, they must state the country or place of origin of its stock, and indicate that the country or place of origin for supply is subject to change.

Clause 13: Disclosure if origin differs between stores

47. Clause 13 relates to food that is offered or advertised for supply where the food is not physically located (such as on a website or in advertisements such as weekly mail-outs or on television), and where the country or place of origin varies between individual stores. An example might be where a national retailer has a single online sales platform, but one store sources bananas from Ecuador and another sources bananas from the Philippines.
48. Clause 13 provides that, if the items in stock are sourced from multiple countries, all of these countries must be disclosed. The supplier does not have to specify which store carries food from which origin.

Clause 14: Disclosure if origin differs between or within items of food

49. Clause 14 relates to food that is supplied, or offered or advertised for supply, where the food has multiple source countries. In practice we expect this exception to largely apply to frozen foods and cured pork, because it is more of an issue where a food is packaged and the origin is labelled on the package.
50. Without these alternative requirements, labelling a food that has multiple sources of origin (for example a packet of peas where the peas are sourced from three different countries) might require suppliers to develop new processes to separate ingredients from different countries, and develop multiple labels or multiple packages to disclose each source country. Another example is a packet of bacon made by a processor which sources pork from four different countries. It would be unreasonable to require the processor to separate out the pork from each individual country to put into packages labelled with that individual country.
51. Given this, clause 14 provides that, where foods are sourced from multiple countries, or the countries are subject to frequent variation, all of these countries must be listed as alternatives

(for example, on a packet of bacon with mixed sources: “Pork raised in Australia, Canada or New Zealand”).

52. Clause 11(5) provides that in the event that any of these exceptional circumstances in clauses 12 to 14 overlap (for example, the origin of a food offered online differs between individual retail stores, and the retailer believes those source countries are likely to change by the time of supply), the requirements are cumulative. This means that in the example given, on the website the retailer would need to list the source countries in stock in all retail stores and state that the origin of its stock is subject to change.

When information need not be disclosed

53. Clauses 15 and 16 set out circumstances in which origin information is not required to be provided.
54. The intention of clause 15 is that where the origin information is disclosed on an offer or advertisement for supply where the food is not physically located, the origin information does not need to be provided again at the time of supply if the consumer has already made a purchasing decision based on this. The intention is that this exception will be limited to where a consumer has legally accepted an offer of supply. An example is where a consumer purchases bananas online and goes to collect the bananas in store. We do not think it would be reasonable to expect the supplier to disclose the origin information of the bananas separately at the time of supply.
55. Clause 16 provides an exception for food advertised or offered for supply over an audio-only medium such as radio. This is because compliance with the regulations would incur additional costs of paying for the extra airtime needed to state the country or place of origin. It would be even more onerous in cases where advertisements advertise multiple foods and could result in, for example, half the airtime being taken up with origin declarations. This could reduce the advertisement’s effectiveness.

KEY AREAS WE WOULD LIKE YOUR FEEDBACK ON:

- any suggestions for refinement to improve consumer information and/or minimise cost for suppliers with regard to alternative disclosure requirements in certain circumstances