



THE DAIRY INDUSTRY REGULATIONS 1990

PAUL REEVES, Governor-General

ORDER IN COUNCIL

At Wellington this 8th day of October 1990

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to the Dairy Industry Act 1952, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, hereby makes the following regulations.

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REGULATIONS

1. Title and commencement—(1) These regulations may be cited as the Dairy Industry Regulations 1990.

(2) These regulations shall come into force on the day after the date of their notification in the *Gazette*.

2. Interpretation—(1) In these regulations, unless the context otherwise requires,—

“The Act” means the Dairy Industry Act 1952:

“Antibiotic” means a substance given to milking animals, or added to dairy produce, for the purposes of inhibiting the life processes of micro-organisms:

“Approved” means approved by the Director-General:

“Certificate of registration” means a certificate of registration issued under regulation 18 of these regulations:

“Clean” means visibly free of objectionable matter and residues of dairy produce:

“Dairy” means—

(a) A milk house, milk shop, dairy factory, and any other place where dairy produce is collected, deposited, treated, separated, prepared, or manufactured, or is sold or offered for sale; and includes:

(b) A farm, stockyard, milking yard, paddock, shed, stable, stall, and any other place where cows from which the milk supply of a dairy is obtained are depastured or kept:

“Dairy factory” means a cheese factory, butter factory, condensed milk factory, or other factory engaged in the manufacture of dairy produce, and includes a skimming station, a buying or receiving station, or any other premises ancillary to a dairy factory:

“Dairy produce” means milk, cream, butter, or cheese, and includes any other product of milk or cream:

“Dairy product” means dairy produce intended for sale in, or export from, New Zealand for human consumption; and—

(a) Includes raw milk or cream intended for sale in New Zealand for human consumption as raw milk or cream; but

(b) Does not include raw milk or cream intended to be processed before sale in New Zealand for human consumption:

“Director-General” means the chief executive of the Ministry:

“Equipment” includes all apparatus, containers, conveyances, machinery, piping, pumps, utensils, vehicles, and other things used in the transport, reception, testing, grading, manufacture, or storage of milk:

“Facilities” includes water supply, steam supply, refrigeration, heating, ventilation, lighting, air conditioning, effluent disposal, waste disposal, and sanitary arrangements for personnel:

“Farm dairy”—

(a) Means a dairy where milking animals are milked; and

(b) Subject to paragraph (c) of this definition, includes—

(i) Any stockyard, milking yard, stable, stall, or shed associated with a farm dairy; and

(ii) Any dairy associated with a farm dairy where milk extracted in the farm dairy is collected, filtered, deposited, separated, cooled, or stored, or treated or stabilised to prepare for transport; but

(c) Does not include a place (not being a dairy where milking animals are milked) where milk is processed, or treated, otherwise than by being collected, filtered, separated, stirred, or cooled, or treated or stabilised to prepare for transport:

“Ingredient”, in relation to a dairy product, means a substance, whether or not milk or a natural component of milk, used in the manufacture or preparation of the product and present (in modified or unmodified form) in the product in its final form after manufacture or preparation.

“Inspection” means any activity carried out for the purpose of ascertaining whether or not these regulations, or any product safety programme, are or is being, or can be, complied with:

“Inspector” means a person who has been appointed an Inspector under section 4 of the Act; and includes the Director-General:

- “Label”, in relation to any dairy product, means any tag, brand, mark, or pictorial or other descriptive matter, written, printed, stencilled, marked, embossed, or impressed on, attached to, or forming part of, the product’s container:
- “Laboratory” includes any premises used for measuring, examining, testing, calibrating or otherwise determining the properties, characteristics or performance of materials or products, including dairy produce:
- “Manufacture”, in relation to a dairy product, means all activities involved in converting dairy produce into the product (with or without other substances or ingredients), and its preparation in a product factory for sale; and includes the receipt or deposit of the dairy produce from which it is manufactured:
- “Milk receiving area” means any part of a farm dairy where the machinery necessary for the mechanical operation of a milking machine is situated (whether or not all or part of that part of the farm dairy is also all or part of the milk storage area):
- “Milk station” means any plant or premises used or intended to be used for processing milk for sale for human consumption:
- “Milk storage area” means any part of a farm dairy where milk is stored before transport from the farm dairy (whether or not all or part of that part of the farm dairy is also part of the milk receiving area):
- “Milking animal” means a cow, ewe, or goat, kept for milking:
- “Milking area” means any part of a farm dairy where milking animals are milked or prepared for milking:
- “Milking plant” includes any milking machine, milk pumping equipment, milk cooling equipment, milk storage equipment, or separator, and any other plant and equipment with which milk comes into contact in a farm dairy:
- “Ministry” means the department of State for the time being responsible for the administration of the Act:
- “Occupier”,—
- (a) In relation to a farm dairy, includes every person for the time being managing or controlling it; and
 - (b) In relation to any other premises, includes every person for the time being carrying on business there:
- “Officer” means an employee of the Ministry; and includes the Director-General:
- “Owner” includes—
- (a) Any agent, manager, lessee, or bailee of an owner; and
 - (b) In the case of a farm, a farm dairy, or any part of a farm or farm dairy, a sharemilker of an owner; and
 - (c) Where an owner is a body corporate, every person who is a manager, secretary, director, or other principal officer (however described) of the body:
- “Pesticide” means any substance used to destroy, control, or repel any form of plant or animal life:
- “Potable water” means water that meets standards for the time being approved for the purposes of this definition:
- “Premises” includes all or any part of a vehicle:
- “Prescribed” means prescribed by these regulations:
- “Product factory” means any premises that are—

(a) A dairy factory used or intended to be used for the manufacture of any dairy product; or

(b) A milk station,—

but does not include a farm dairy:

“Product safety programme” means a programme of conditions, processes, procedures, measures, and standards to be complied with, performed, undertaken, taken, or met in relation to—

(a) Any process or activity related to dairy produce, ingredients used in the manufacture of dairy products, or both; and

(b) Sampling, examination, inspection, and testing, or any of those actions, relating to any such process or activity; and

(c) The recording and inspection (by persons with qualifications and experience approved by the Director-General for the purpose) of information relating to any such action;—
and (without limiting the generality of the foregoing) may include conditions, processes, procedures, measures, or standards relating to the production, manufacture, storage, or transport of dairy produce:

“Raw milk or cream” means milk or cream that has not been given approved pasteurisation treatment, approved ultra-heat treatment, or some other treatment approved as an alternative to those treatments:

“Relevant safety programme”, in relation to any dairy product, means a product safety programme for the time being approved in respect of the product, or products of a class or description to which the product belongs:

“Required” means required by the Director-General:

“Safe”, in relation to any dairy product, means satisfactory, fit for human consumption, and not having in it or on it any pathogenic organisms—

(a) That are present in an amount that makes the product harmful or injurious to the health of people who may eat or drink it; or

(b) That—

(i) Are not present in an amount that makes the product harmful or injurious to the health of people who may eat or drink it; but

(ii) By virtue of their ability to reproduce, to produce toxins, or both, make the product potentially harmful or injurious to the health of people who may eat or drink it:

“Safe”, in relation to any dairy produce that is not a dairy product, means satisfactory, and fit for the manufacture of dairy products:

“Satisfactory”, in relation to any dairy produce, means—

(a) Not having in it or on it any substance in an amount that makes it harmful or injurious to the health of people who may eat or drink it or dairy products made from it; and

(b) Not being, or containing anything that is, decomposed, dirty, rotten, spoiled or diseased; and

(c) Not affected by disease; and

(d) Not affected by any objectionable taint or smell; and

(e) Not containing any foreign matter; and

(f) Not condemned under section 9 of the Act:

“Store” means premises (not being a milk station, dairy factory, or farm dairy, or a retail shop or store ancillary to a milk station, dairy factory, or farm dairy) used for storing any dairy product manufactured in any registered premises, before it comes into the possession of a buyer, or a person who is a party to a delivery arrangement (within the meaning of the Milk Act 1988) with the registered owner of the registered premises:

“Vehicle” means any mode of transport used or intended to be used for the carriage of any dairy produce.

(2) For the purposes of these regulations, premises are registered for the manufacture or storage of dairy products of a particular class or description if, and only if, there is for the time being recorded by the Director-General information—

- (a) Identifying the premises and their extent; and
- (b) Specifying that class or description of dairy product as a class or description of dairy product whose manufacture or (as the case may be) storage in the premises is approved; and
- (c) Specifying the conditions (if any) subject to which that manufacture or (as the case may be) storage is approved.

Product Safety

3. Dairy produce to be safe—(1) Every person who—

(a) Produces any milk or cream; or
 (b) Transports or stores any dairy produce that is not a dairy product,—
 shall take all reasonably practicable steps to ensure that it is safe and stays safe.

(2) Every person who manufactures, transports, or stores, any dairy product, shall take all reasonably practicable steps to ensure that it is safe and stays safe.

(3) Nothing in these regulations limits, or affects the generality of, subclauses (1) and (2) of this regulation.

4. Compliance with product safety programmes—(1) On or after the day 3 months after the date of the notification of these regulations in the *Gazette*, no person shall—

- (a) Produce any milk or cream; or
- (b) Transport or store any dairy produce that is not a dairy product; or
- (c) Manufacture, transport, or store any dairy product,—
 except in accordance with a relevant safety programme.

5. Applications for approval of product safety programmes—Any person may apply in writing to the Director-General for the approval of a product safety programme.

6. Approvals generally—(1) The Director-General shall not approve a product safety programme in respect of the production or transport of milk or cream unless satisfied that—

- (a) Milk or cream produced, sampled, examined, tested, stored, and transported in accordance with the programme will be safe; and
- (b) The programme provides for—
 - (i) The keeping of such records; and
 - (ii) The availability for inspection of those records in such a manner and to such an extent; and

- (iii) Such inspection of those records,—
as to enable it to be readily ascertained whether or not the programme has been and is being complied with.
- (2) The Director-General shall not approve a product safety programme in respect of the manufacture of dairy products unless satisfied that—
 - (a) Dairy products manufactured, sampled, examined, tested, stored, and transported in accordance with the programme will be safe; and
 - (b) The programme provides for—
 - (i) The keeping of such records; and
 - (ii) The availability for inspection of those records in such a manner and to such an extent; and
 - (iii) Such inspection of those records,—
as to enable it to be readily ascertained whether or not the programme has been and is being complied with.
 - (3) The Director-General shall not approve a product safety programme in respect of the storage or transport of dairy products unless satisfied that—
 - (a) Dairy products stored or transported in accordance with the programme will be safe; and
 - (b) The programme provides for—
 - (i) The keeping of such records; and
 - (ii) The availability for inspection of those records in such a manner and to such an extent; and
 - (iii) Such inspection of those records,—
as to enable it to be readily ascertained whether or not the programme has been and is being complied with.

7. Approvals in respect of farm dairies—The Director-General shall not approve a product safety programme in respect of matters that take place, or are likely from time to time to take place, at or in farm dairies, unless satisfied that the programme provides adequately for—

- (a) Locating farm dairies so as to minimise the risk of flooding, objectionable smells, smoke, dust, and other contaminants; and
- (b) Keeping the surroundings of farm dairies clean and tidy, and free from harbourage for birds, rodents, and insects; and
- (c) Using in farm dairies milking animals free of diseases capable of contaminating milk with pathogenic micro-organisms; and
- (d) Excluding from sale milk that may be contaminated with extraneous substances, toxic substances, or pesticides, capable of rendering raw milk unsafe; and
- (e) So locating, designing, and constructing milking areas that—
 - (i) Walls and floors are easily cleaned; and
 - (ii) Drainage is effective; and
 - (iii) Lighting is adequate for proper milking; and
 - (iv) Working space is sufficient to minimise the risk of contamination of milk during milking; and
- (f) Using in farm dairies milking plant so designed and maintained as to ensure that materials and substances coming into contact with milk do not contaminate the milk or cause it to deteriorate; and
- (g) Ensuring that milking areas are not used for any purpose other than milking, breeding, veterinary treatment, and animal husbandry; and

- (h) Ensuring that milk receiving areas and milk storage areas—
 - (i) Protect milk against manure, dust and other contamination, objectionable smells, birds, rodents, insects, and other vermin; and
 - (ii) Are easy to wash and clean; and
 - (iii) Have proper and adequate facilities for filtering and cooling milk; and
- (i) Ensuring that farm dairies have enough water, of suitable quality, to clean the premises, animals, and plant, and, if necessary, cool the milk; and
- (j) Ensuring that milking plant in farm dairies is—
 - (i) Used solely for the handling of milk; and
 - (ii) So designed and constructed as to be easily and properly cleaned; and
 - (iii) So cleaned as to minimise the risk that milk may deteriorate or be contaminated; and
 - (iv) Cleaned with approved detergents and sanitisers; and
 - (v) Not cleaned with any detergent or sanitiser that is not approved; and
 - (vi) So cleaned as to minimise the risk that the detergents and sanitisers used may contaminate milk; and
- (k) For the purpose of minimising the risk of the contamination of milk by pesticides,—
 - (i) Preventing of the storage in farm dairies of pesticides and similar substances; and
 - (ii) Controlling the use of pesticides and similar substances in or near farm dairies; and
- (l) Milking in farm dairies only animals with clean udders and teats; and
- (m) Filtering milk in farm dairies; and
- (n) After filtering milk in farm dairies,—
 - (i) Cooling it immediately; and
 - (ii) Cooling it to at least 7° celsius within 3 hours of finishing milking; and
 - (iii) Keeping it at or below 7° celsius until it is collected; and
- (o) The steps to be taken if any dairy produce is found or suspected to be unsafe.

8. Approvals in respect of transport and storage—The Director-General shall not approve a product safety programme in respect of the transport or storage of dairy products unless satisfied that the programme provides adequately for—

- (a) Products to be kept clean, and in a manner that minimises—
 - (i) The risks of contamination and spoilage; and
 - (ii) The proliferation of pathogenic micro-organisms; and
 - (iii) The development of toxins; and
- (b) The recording and keeping of information specifying, in relation to dairy produce manufactured or stored,—
 - (i) Where it (or the ingredients it was manufactured from) came from, and when it or they came; and
 - (ii) Where it went to, and when it went.

9. Approvals in respect of manufacture—The Director-General shall not approve a product safety programme in respect of the manufacture of

dairy products, unless satisfied that the programme provides adequately for—

- (a) Compliance with section 15A of the Act; and
- (b) Only safe dairy produce to be used; and
- (c) The labelling and recording of use of all ingredients so as to ensure traceability to the product to which they are added; and
- (d) The protection of milk, cream, and other ingredients from contamination, infestation, and spoilage; and
- (e) The separate storing of non-edible and edible materials, and the distinctive labelling and handling of each so as to avoid contamination of edible materials with inedible materials; and
- (f) The monitoring of the safety of all milk received or sold for manufacture; and
- (g) The maintenance and cleaning of manufacturing and storage areas, and of equipment and product contact surfaces; and
- (h) The use of clean, non-toxic, non-contaminating materials for packaging; and
- (i) The protection of the manufacturing process from the entry of, or contamination from, foreign matter; and
- (j) The microbiological surveillance of equipment, manufacturing processes, and manufacturing environment; and
- (k) Sampling and testing; and
- (l) The control of potentially pathogenic organisms; and
- (m) The steps to be taken if any dairy produce is found or suspected to be unsafe.

10. Health and hygiene—The Director-General shall not approve any product safety programme unless satisfied that it provides adequately for the people involved in the matters to which the programme relates who may come into direct or indirect contact with dairy products manufactured in compliance with the programme to—

- (a) Be unlikely to contaminate dairy produce with pathogenic organisms; and
- (b) Keep themselves and their clothing clean.

11. Variations of approved programmes—(1) Any person may apply to the Director-General for the approval and variation of an approved product safety programme; and, subject to subclause (2) of this regulation, regulations 6 to 10 of these regulations shall apply to such an application as if it is an application for the approval of the approved programme as varied by the proposed variation.

(2) When approving a variation of an approved product safety programme, the Director-General shall indicate whether—

- (a) The approved programme before variation is to cease to be approved, with the varied programme replacing it; or
- (b) The approved programme before variation and the varied programme are each to continue to exist as approved product safety programmes.

12. Withdrawal of approval—(1) Subject to subclause (2) of this regulation, the Director-General may at any time, by—

- (a) Notice in the *Gazette*; or

(b) Written notice to the person who originally applied for approval of the programme concerned,—
withdraw approval of an approved product safety programme.

(2) The Director-General shall not withdraw approval of an approved product safety programme unless, after having taken all reasonable steps to get all the relevant information, the Director-General is no longer satisfied of one or more of the matters required by regulations 6 to 10 of these regulations.

Registration of Premises

13. Dairy products to be manufactured and stored in registered premises only—(1) No person shall manufacture or store any dairy product in any premises—

(a) Unless the premises are registered for the manufacture or (as the case may be) storage of dairy products of a class or description to which the product belongs:

(b) Otherwise than in accordance with any condition subject to which the Director-General approved the manufacture or (as the case may be) storage in those premises of dairy products of that class or description.

(2) Subject to subclause (3) of this regulation, it is a condition subject to which the Director-General approves the manufacture of dairy products in any premises that the occupier of the premises is to refuse milk and cream from a farm dairy specified (by written notice to the occupier) as a farm dairy whose produce is suspect.

(3) The Director-General shall not give a notice for the purposes of subclause (2) of this regulation, unless—

(a) Satisfied, on reasonable grounds, that milk or cream produced in the farm dairy concerned is not produced in accordance with an approved product safety programme; or

(b) Having made all reasonable efforts to obtain the necessary information, is unable, on the basis of all information available to the Director-General, to be satisfied that milk or cream produced in the farm dairy concerned is produced in accordance with any approved product safety programme.

14. Applications for approval—(1) Any person may apply to the Director-General for approval of the manufacture or storage of dairy products in any premises.

(2) Every application—

(a) Shall be in writing; and

(b) Shall specify the class or description of dairy product for whose manufacture or storage the applicant wants approval.

15. Registration of premises—(1) Subject to these regulations, if satisfied that the premises to which an application for registration of premises under these regulations relates and the equipment and facilities in the premises are in all respects suitable for, and are capable of, the manufacture or storage, of safe dairy products of the class or description specified in the application, the Director-General shall approve the premises for the manufacture or storage of dairy products of that class or description, and shall register the premises accordingly.

(2) The Director-General may approve and register premises subject to any conditions, and for any period, the Director-General thinks necessary and desirable to ensure that dairy products manufactured or stored in the premises are safe.

(3) The registration of any premises shall, unless sooner cancelled under regulation 20 of these regulations, expire after the expiration of the period (if any) specified by the Director-General under subclause (2) of this regulation.

16. Registration of premises as store—The Director-General shall not approve and register any premises for the storage of dairy products of any class or description unless satisfied that—

- (a) The premises are located so as to minimise the risk of flooding, objectionable smells, smoke, dust, and other contaminants:
- (b) The premises and their surroundings are clean and tidy, and (so far as is practicable) free from harbourage for birds, rodents, insects, and animals:
- (c) The premises are so designed and built that they are hygienic, and easy to keep clean:
- (d) The equipment and facilities in the premises are adequate to ensure the safety of dairy products of the class or description concerned stored there and to maintain the personal hygiene of staff and visitors to the premises:
- (e) Provision is made in the premises for the handling and storage of dairy products so as to prevent their contamination and deterioration:
- (f) The premises and the equipment and facilities in the premises are in all other respects suitable for the storage of dairy products of that class or description.

17. Registration of premises as product factory—The Director-General shall not approve and register any premises for the manufacture of dairy products of any class or description unless satisfied that—

- (a) The premises are located so as to minimise the risk of flooding, objectionable smells, smoke, dust, and other contaminants:
- (b) The premises and their surroundings are clean and tidy, and (so far as is practicable) free from harbourage for birds, rodents, insects, and animals:
- (c) The areas in where vehicles pass or park are so designed and constructed as to prevent contamination of process areas:
- (d) The premises are so designed and built that they are hygienic, and easy to keep clean:
- (e) Every line to or in the premises used or to be used for water that is not potable water—
 - (i) Is clearly identified as carrying water that is not potable water; and
 - (ii) Is not connected, and not designed to be connected, to any line or tank to, connected to, or in, the premises that is used or intended to be used for potable water only:
- (f) Equipment, facilities, and the manufacturing environment in the premises are designed, constructed, and maintained so as to avoid hygiene hazards, and to permit easy and thorough cleaning, disinfection, and visual inspection:

- (g) No equipment in the premises will permit the inadvertant intermixing of raw milk or cream, or any unsafe dairy product, with any safe dairy product:
- (h) Facilities in the premises are adequate for the manufacture of safe dairy products of the class or description concerned, and to maintain the personal hygiene of staff and visitors to the premises:
- (i) The premises and plant are clean and hygienic.

18. Registration number and certificate of registration—On registering premises, the Director-General shall—

- (a) Give them a registration number; and
- (b) Give the applicant for registration a certificate of registration specifying—
 - (i) The registration number; and
 - (ii) The name of the owner and the location of the premises; and
 - (iii) The activity or activities for which the premises are registered; and
 - (iv) In respect of each activity, the class or description of dairy product concerned; and
 - (v) Any conditions subject to which the premises are approved and registered; and
 - (vi) Where the approval and registration are for a specified period only, the day on which the period ends.

19. Certificate to be displayed—The occupier of any registered premises shall ensure that at all times there is prominently displayed in the premises their certificate of registration.

20. Cancellation and amendment of registration—(1) Subject to subclause (2) of this regulation, the Director-General may at any time, by written notice (specifying the Director-General's reasons) served on the occupier of the premises concerned—

- (a) Cancel the registration of any premises; and
 - (b) Vary any conditions subject to which any premises are registered; and
 - (c) Impose new or additional conditions subject to which any premises are registered.
- (2) The Director-General shall not act under subclause (1) of this regulation unless—
- (a) The occupier of the premises concerned asks the Director-General to do so; or
 - (b) The premises are not being used for the purpose for which they are registered, and have not been used for the purpose for the previous 6 months; or
 - (c) The occupier of the premises has, during the previous 12 months, been convicted of an offence against the Act or these regulations; or
 - (d) The Director-General is satisfied the premises, or the equipment or facilities in the premises, are not in all respects suitable for, and capable of, the manufacture or storage (as the case may be) of

safe dairy products of the class or description for which premises are registered; or

- (e) The Director-General is satisfied during the previous 6 months there has been a breach of any condition subject to which the premises were registered; or
- (f) The Director-General is satisfied that the occupier has failed to comply with any order under section 6 or section 7 of the Act, or has failed to comply with a notice under regulation 39, regulation 56 (2), or regulation 58 of these regulations.

(3) Except as provided in subclause (4) of this regulation every notice under subclause (1) of this regulation shall take effect according to its tenor 14 days after the day of service.

(4) Every notice under subclause (1) of this regulation (that specifies that it is given for the reasons set out in subclause (2) (d) of these regulations) shall take effect according to its tenor on the day of service.

(5) Where conditions are varied or imposed under subclause (1) of this regulation the Director-General shall amend the register accordingly, and issue a new certificate of registration for the premises concerned.

(6) Where the registration of premises is cancelled under subclause (1) the Director-General shall on the day the cancellation takes effect amend the register accordingly, and give notice of that fact to the occupier of the premises.

Alteration of Registered Premises and Changes to Equipment

21. Alteration or changes to registered premises, equipment or facilities—The occupier of any registered premises shall ensure that no changes are made to the premises, or to equipment or facilities in the premises, unless—

- (a) The change has been approved by the Director-General; and
- (b) The change is carried out in a manner that, in the opinion of the Director-General, will not result in or create a threat to the safety of dairy product manufactured or stored in the premises; and
- (c) Work on the change is started not more than 12 months after the Director-General's approval of the change.

22. Applications for approval of change—Every application for approval of a change to registered premises or to equipment or facilities in registered premises shall be made to the Director-General in writing.

23. Approval of proposed change—The Director-General shall not approve a proposed change to registered premises or to equipment or facilities in registered premises unless satisfied that it will not result in or cause a threat to the safety of dairy products manufactured or stored in the premises.

Use of Registration Numbers

24. Use of registration numbers—(1) Every occupier of registered premises shall cause the packaging of all dairy products manufactured in the premises to be clearly marked, in a manner approved by the Director-General, with the registration number assigned to those premises under these regulations.

(2) Without the consent of the Director-General, no person shall mark any packages of dairy product manufactured in registered premises with a

number other than the registration number assigned to those premises under these regulations.

(3) No person shall remove, deface, or obliterate, a registration number marked on any package of dairy product in compliance with subclause (1) of this registration.

Laboratories to be Registered

25. Laboratories to be registered—Where the Act, regulations made under the Act, an approved product safety programme, the Director-General, or an Inspector exercising powers under the Act or regulations made under the Act, requires tests (other than tests carried out under regulation 44 of these regulations) to be carried out, the tests shall be carried out in a laboratory registered under these regulations.

26. Applications for approval of laboratories—Any person may apply in writing to the Director-General for the approval and registration of a laboratory.

27. Registration of laboratories—(1) Subject to these regulations, if satisfied that a laboratory to which an application under regulation 26 of these regulations relates has the premises, equipment, procedures, and staff necessary to ensure that all testing carried out there for the purposes of these regulations will be carried out properly and competently, the Director-General shall approve the laboratory for testing for the purposes of these regulations, and shall register the laboratory accordingly.

(2) The Director-General may register a laboratory subject to any conditions, including registration for specified tests only or for a specified period only, as the Director-General thinks necessary to ensure that tests carried out there will be carried out properly and competently.

(3) The registration of a laboratory shall, unless sooner cancelled under regulation 34 of these regulations, expire with the expiration of the period (if any) specified under subclause (2) of this regulation.

28. Registration number and certificate of registration—On registering a laboratory, the Director-General shall—

- (a) Give it a registration number; and
- (b) Give to the applicant for registration a certificate of registration specifying—
 - (i) The name of the owner, and the name and location of the laboratory; and
 - (ii) Any conditions subject to which the laboratory is approved and registered; and
 - (iii) Where the approval and registration of the laboratory are for a specified period only, the day on which the period ends.

29. Certificate to be displayed—The occupier of any registered laboratory shall ensure that all times there is prominently displayed in the laboratory its certificate of registration.

30. Alteration or changes to registered laboratories—The occupier of any registered laboratory shall ensure that no changes are made to the premises, or to equipment or facilities in the premises, unless—

- (a) The change has been approved by the Director-General; and
- (b) The change is carried out in a manner that, in the opinion of the Director-General, will ensure that tests carried out in the premises will be carried out properly and competently; and
- (c) Work on the change is started not more than 12 months after the Director-General's approval of the change.

31. Applications for approval of change—Every application for approval of a change to a registered laboratory or to equipment or facilities in a registered laboratory shall be made to the Director-General in writing.

32. Approval of proposed change—The Director-General shall not approve a proposed change to a registered laboratory or to equipment or facilities in a registered laboratory unless satisfied that tests carried out in the premises after the change is made will be carried out properly and competently.

33. Records, etc.—It is a condition subject to which every registered laboratory is registered that its occupier must keep such records, and make them available for examination by (persons with qualifications and experience approved by the Director-General for the purpose), as to enable it to be readily ascertained whether or not testing carried out there is carried out properly and competently.

34. Cancellation or amendment of registration—(1) Subject to subclause (2) of this regulation, the Director-General may at any time, by written notice (specifying the Director-General's reasons) given to the occupier of the laboratory concerned—

- (a) Cancel the registration of a laboratory; or
- (b) Vary any conditions subject to which a laboratory is registered; or
- (c) Impose any new or additional conditions subject to which a laboratory is registered.

(2) The Director-General shall not act under subclause (1) of this regulation unless—

- (a) The occupier of the laboratory concerned asks the Director-General to do so; or
- (b) The Director-General is satisfied that the laboratory no longer has the premises, equipment, procedures, and staff necessary to ensure that the testing carried out there for the purposes of these regulations will be carried out properly and competently; or
- (c) The Director-General is satisfied during the previous 6 months there has been a breach of any condition subject to which the laboratory was registered; or
- (d) The Director-General is satisfied that the occupier has failed to comply with any order under section 6 or section 7 of the Act.

(3) Every notice under subclause (1) of this regulation shall take effect according to its tenor 14 days after the day of service.

(4) Where conditions are varied or imposed under subclause (1) of this regulation, the Director-General shall amend the register accordingly, and shall issue a new certificate of registration for the laboratory.

Occupiers to Give Notice of Changes

35. Occupier of registered premises or registered laboratory to give notice of changes—(1) The occupier of any registered premises or registered laboratory who—

- (a) Stops using the premises as a dairy factory or store (or, as the case may be, stops operating the laboratory); or
- (b) Parts with all or a part of the ownership or right of possession of the premises or laboratory,—

shall forthwith give the Director-General written notice of doing so.

(2) Every person who acquires any interest in the ownership or possession of any registered premises or registered laboratory shall forthwith give the Director-General written notice of doing so.

(3) Subclause (2) of this regulation does not limit the generality of subclause (1) of this regulation.

Registers

36. Registers—(1) For the purposes of these regulations, the Director-General shall keep a register of premises and a register of laboratories, in a form the Director-General thinks fit.

(2) The Director-General shall enter in the appropriate register all matters required by these regulations to be registered, and variations and changes to premises consented to, and changes of ownership or possession notified under these regulations.

Labels

37. Labels—The Director-General shall from time to time approve—

- (a) Standards relating to labels for dairy products; and
- (b) Standards relating to the manner in which labels are to be attached to dairy products;—

and different standards may be approved in respect of dairy products of different classes or descriptions.

Supply and Acceptance of Dairy Produce

38. Collection of unsafe milk—Any person engaged to collect and transport milk from a farm dairy to a product factory who has reasonable cause to suspect that milk is not safe shall, notwithstanding any obligation to collect and transport the milk that person may have (whether under contract or by reason of the articles of association of a company that is the owner of the factory)—

- (a) Refuse to accept and transport that milk; and
- (b) Forthwith advise the owner of the factory or an Inspector of the refusal.

39. Inspector may prohibit removal of dairy produce—(1) An Inspector who is satisfied in the interests of public health that any dairy produce should not be removed from the premises in which it is produced, stored, or manufactured shall give the occupier of the premises a written direction that the dairy produce must not be removed, or another reasonable written direction the Inspector thinks necessary in the interests of public health.

(2) Every direction given under this regulation shall remain in force until revoked in writing by an Inspector.

40. Sale of adulterated milk—No person shall deliver, sell, offer or expose for sale, or export or attempt to export, milk—

- (a) To which any substance (whether or not a natural constituent of milk) has been added; or
- (b) From which any natural constituent has been removed; or
- (c) Given by, or containing milk given by, a milking animal within 4 days of giving birth; or
- (d) Containing more immunoglobulin than is normally found in milk given by a healthy milking animal 4 or more days after giving birth,—

unless the addition, removal, period of time since giving birth, or level of immunoglobulin is clearly stated in writing at the time.

Condemnation of Dairy Produce

41. Condemnation of dairy produce—(1) Where an Inspector condemns any dairy product under section 9 of the Act—

- (a) The Inspector shall as soon as is practicable notify the owner of the product that it has been condemned; and
- (b) The owner shall dispose of the product in a manner approved by the Inspector.

(2) All costs of disposing of condemned dairy products shall be met by the owner.

Measurement, Transfer, Sampling, and Testing of Milk and Cream

42. Transfer of supply during season—(1) In this regulation “season” means,—

- (a) In the North Island, a period commencing on the 1st day of August in any year, and ending with the 31st day of May in the next year; and
- (b) Elsewhere in New Zealand, a period commencing on the 1st day of September in any year, and ending with the 30th day of June in the next year.

(2) Where a product factory has received a supply of milk, cream, or other milk derivative in liquid form from a supplier during a season, no other product factory shall accept any milk from the supplier during the season unless—

- (a) The supplier has the written consent of the occupier of the first factory; or
- (b) The first factory has stopped manufacturing, or its occupier has refused the supplier’s supplies; or
- (c) A Court has under subclause (3) of this regulation given the supplier permission to do so.

(3) The procedure on appeal, pursuant to the right of appeal conferred by subsections (2) and (3) of section 32 of the Act, by any person who is aggrieved by the refusal of the occupier of a product factory to consent for the purpose of subclause (2)(a) of this regulation, shall be by way of information against the occupier under the Summary Proceedings Act 1957.

(4) Upon the hearing of the complaint, an order may be made giving or refusing the complainant permission to transfer the supply of milk or cream.

(5) Subject to the provisions of subsections (2) and (3) of section 32 and subsections (4) and (5) of section 33 of the Act, all the provisions of the

Summary Proceedings Act 1957 relating to informations shall apply to an information laid under subclause (3) of this regulation.

(6) The procedure on appeal by any person aggrieved as aforesaid in any other case shall be by way of *ex parte* application to a District Court for relief, and the Court shall direct notice of the application to be served on any person the Court thinks concerned, and may thereafter make any order it thinks fit.

(7) Subclauses (1) to (6) of this regulation shall be read subject to section 8 of the Finance Act (No. 3) 1990.

43. Sampling—(1) The occupier of a product factory shall, for the purposes of testing, obtain a representative sample of each delivery of milk or cream made to the factory.

(2) The sample shall—

(a) Be labelled so as to identify the supplier; and

(b) Until tested, be—

- (i) Held under secure conditions; and
- (ii) Protected from deterioration.

44. Testing—(1) The testing of samples of milk and cream for the purposes of section 21 of the Act is the responsibility of the occupier of the product factory to which it is delivered.

(2) Equipment used for such testing shall—

(a) Be capable of performing the test correctly; and

(b) Be properly calibrated against reference tests; and

(c) Be properly operated and maintained.

(3) Such testing shall be done frequently enough to provide an accurate estimate of amounts of the component or components upon which payment is to be based.

(4) Such testing shall be done—

(a) By properly trained and technically competent people; and

(b) In an environment, and premises, suitable for the carrying out of such testing.

(5) After completing the testing of a supplier's samples, the occupier of a dairy factory shall prepare, date, and sign a complete and accurate record of the results of all tests, and keep a copy for inspection by the supplier for a period of 12 months after the close of the financial year of the factory in which the samples were taken.

(6) As soon as is practicable after completing each test, the occupier of a dairy factory shall give the supplier of the milk or cream concerned written notice of the results of the test, and the amount of milk or cream supplied to which the tests relate.

45. Returns, statements, and records relating to dairy produce—
Either before or at the time of each payment or the rendering of any account in respect of any milk or cream, the occupier of a product factory shall give the supplier—

(a) The result of tests carried out on the milk or cream, and the amount of milk or cream to which the test results relate; and

(b) The weight of the component or components upon which payment is to be based computed for the period to which the payment relates.

Offences and Penalties

46. Failure or refusal to comply with public health direction—Every person commits an offence against these regulations who, without reasonable excuse, fails or refuses to comply with a direction under regulation 39 of these regulations.

47. Providing inaccurate information—Every person commits an offence against these regulations who, for the purposes of these regulations, without reasonable excuse,—

- (a) Over-reads or under-reads any milk or cream measurement or test; or
- (b) Fails to comply with any provision of these regulations relating to the sampling or testing of milk or cream; or
- (c) Except for the purpose of testing, opens or tampers in any manner with any sample taken in accordance with these regulations; or
- (d) In any other way makes any incorrect determination of any constituent of milk or cream.

48. Sale or export of unsafe dairy product—Every person who, without reasonable excuse, sells, offers or exposes for sale, or exports or attempts to export, any dairy product that is not safe commits an offence against these regulations.

49. Non-compliance with approved product safety programme—Every person who, on or after the day 3 months after the date of the notification of these regulations in the *Gazette*, without the consent in writing of the Director-General sells, offers or exposes for sale, or exports or attempts to export, any dairy product that has been processed, manufactured, transported, or stored otherwise than in compliance with an approved product safety programme commits an offence against these regulations.

50. Sale or export of dairy product manufactured or stored in unregistered premises—Every person, who, without the consent in writing of the Director-General, sells, offers or exposes for sale, exports or attempts to export, any dairy product that has been manufactured in premises not registered for the manufacture of dairy products of the class or description to which the product belongs, or that has been stored in premises not registered for the storage of dairy products of a class or description to which the product belongs, or in breach of a condition of registration of those premises, commits an offence against these regulations.

51. Export of improperly labelled dairy produce—Every person commits an offence against these regulations who exports or attempts to export from New Zealand any dairy product that is not labelled in accordance with standards for the time being approved (in respect of dairy products of a class or description to which it belongs) under regulation 37 of these regulations.

52. Other offences—Every person commits an offence against these regulations who—

- (a) Not being an Inspector acting under the Act or these regulations, without reasonable excuse alters or obliterates, or causes to be altered or obliterated, any mark or label, or any record or

- document made or used in pursuance or for the purposes of these regulations; or
- (b) Counterfeits any mark or label or any record or document made or used in pursuance or for the purposes of these regulations; or
 - (c) Without reasonable excuse, empties, partly empties, or otherwise interferes with, the contents of any package or thing marked in pursuance or for the purposes of these regulations; or
 - (d) Uses any previously marked package or thing in a manner that represents or is likely to represent that the marks or labels put on it in accordance with these regulations are valid in relation to contents for which they are not valid; or
 - (e) Places or causes to be placed on any dairy product, or on any package containing or intended to contain any dairy product, or on any docket, return, schedule, record, or document relating to any dairy product, any brand, mark, label, indication, or statement that is false, or is reasonably capable, by reason of anything contained in it or omitted from it, of bearing a false implication; or
 - (f) Being the occupier of a farm dairy, product factory, store, or registered laboratory, or the purchaser, seller, or collector of any dairy produce, refuses admission to, or hinders any Inspector (or a person authorised by the Director-General for any purpose) in the exercise of the Inspector's (or person's) duty, or refuses or neglects to give an Inspector (or any such person) any reasonable assistance the Inspector (or person) requires; or
 - (g) Makes any false or misleading statement, or any material omission, in any communication with or application or return made to, the Director-General or any duly authorised officer (whether in writing or otherwise) for the purposes of these regulations; or
 - (h) Without reasonable excuse, fails to give any return or information or particulars required by the Director-General or any duly authorised officer for the purposes of these regulations; or
 - (i) Being a person required by these regulations or by an approved product safety programme to—
 - (i) Make accurate entries in a record; or
 - (ii) Keep an accurate record; or
 - (iii) Produce to the Director-General or a person duly authorised by the Director-General for the purpose an accurate record,—
 without reasonable excuse fails to do so; or
 - (j) Fails or refuses to comply forthwith with a direction of an Inspector under regulation 56 or regulation 58 of these regulations.

53. Penalties—Every person who commits an offence against these regulations shall be liable on summary conviction to a fine not exceeding \$100.

Miscellaneous

54. Notices, etc.—Subject to these regulations, any notice, requirement, direction, approval, consent, permission, authority, or prohibition authorised to be given or made pursuant to these regulations by the Director-General shall be given in writing to the owner or person for the time being in charge of the premises to which the notice, requirement,

direction, approval, consent, permission, authority, or prohibition relates, and shall be given either personally or by sending it by post addressed to that owner or person at his or her usual or last known place of business or residence.

55. Performance of obligations, etc.—Except where these regulations otherwise provide, where by or under these regulations or any approved product safety programme any requirement, obligation, or provision is prescribed or imposed, or is required to be observed with respect to any premises, equipment, facilities, vehicle, or dairy product, or otherwise howsoever, the occupier and the person for the time being in charge of the premises, equipment, facilities, vehicle or dairy product to which the requirement, obligation, or provision relates shall each be responsible to ensure that it is complied with or observed, and if it is not, without reasonable excuse, complied with or observed, both commit an offence against these regulations.

56. Inspection of premises—(1) Every occupier of any farm dairy, dairy factory, milk station, store, or registered laboratory shall permit an Inspector, or any other person authorised by the Director-General for that purpose, at all reasonable times, to do all or any of the following things for the purposes of these regulations:

- (a) To enter the premises and inspect any part of the premises, and any equipment, process, procedure, or dairy produce on the premises:
- (b) To carry out any examination or test, or to require any demonstration of any processing, testing, or inspection procedure:
- (c) To peruse all charts and other records kept for the purposes of these regulations, and to make copies of any entries in any such chart or record.

(2) Any Inspector who finds that any farm dairy or registered premises, or any plant or equipment in the dairy or premises, or any procedure carried out in the dairy or premises, fails in any material way to comply with the requirements of a relevant approved product safety programme or these regulations shall give the occupier a written notice specifying—

- (a) The nature of the failure; and
- (b) The remedial action or actions required; and
- (c) In respect of each such action,—
 - (i) The time within which it must be taken; and
 - (ii) Any interim measure or measures that must be undertaken until the action has been completed; and
 - (iii) In respect of each such measure, the circumstances in which it may be discontinued.

(3) The occupier shall take all reasonably practicable steps to comply with the terms of the notice.

57. Product factories to maintain record of suppliers—(1) Every owner of a product factory shall maintain a current record that identifies—

- (a) By name (if any), and location or address, every farm dairy from which the factory is supplied with milk or cream; and
- (b) The name, and location or address of—
 - (i) The operator; and

(ii) If the operator is not the owner, the owner,—
of every such farm dairy.

(2) Every record shall record for each farm dairy the days on which milk or cream from it was received at the factory concerned, the amounts of milk and cream received on each day and sufficient other detail to allow the identification of dairy products containing or made from milk or cream from that dairy.

58. Production of records and test results—Where an approved product safety programme, or these regulations, require the keeping of particular records or the making of particular tests an Inspector, or any person authorised by the Director-General for the purpose, may direct the person in control of the records or the results of the tests to produce them for inspection.

59. Promulgation of circulars—For the purposes of section 32 (5) of the Act, the Director-General may promulgate from time to time circulars setting out general criteria for the drawing up, accomplishment, demonstration, carrying on, or provision for any act, plan, proposal, matter, system, process or thing.

60. Sale of dairy products—Nothing in these regulations authorises the sale, offer or exposure for sale, or export of any dairy product otherwise than in accordance with the Dairy Industry Act 1952, the Health Act 1956, the Milk Act 1967, the Food Act 1981, or any regulations made under any of those Acts.

61. Other regulations not affected—Nothing in these regulations limits or affects the application of the Food Hygiene Regulations 1974 or the Food Regulations 1984.

Transitional Provisions

62. Premises deemed to be registered—All premises registered under—

(a) The Milk Stations Regulations 1979; or

(b) The Dairy Industry Regulations 1977,—

on the commencement of this regulation shall be deemed to be registered premises for the purposes of these regulations for the period of 3 months after that commencement.

63. Laboratories deemed to be registered—Every laboratory approved under—

(a) The Milk Stations Regulations 1979; or

(b) The Dairy Industry Regulations 1977,—

on the commencement of this regulation shall be deemed to be a registered laboratory for the period of 3 months after that commencement.

C. J. HILL,
for 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, which come into force on the day after their notification in the *Gazette*, regulate the production, manufacture, transport, storage, and testing, of dairy produce.

Of particular importance is regulation 59, which provides for the issue of circulars by the Director-General of Agriculture and Fisheries. Many provisions of the regulations require matters to be approved by, or done to the satisfaction of, the Director-General. By virtue of section 32 (5) of the Dairy Industry Act 1952 (the Act under which these regulations are made) circulars issued by the Director-General have the effect of setting out specific criteria that will satisfy, or meet with the approval of, the Director-General.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 11 October 1990.

These regulations are administered in the Ministry of Agriculture and Fisheries.