



agriculture, forestry & fisheries

Department:
Agriculture, Forestry and Fisheries
REPUBLIC OF SOUTH AFRICA

Directorate Food Safety and Quality Assurance, Private Bag X343, PRETORIA, 0001

TO:	A. ALL MANUFACTURERS, PACKERS, IMPORTERS AND RETAILERS OF EDIBLE ICES
	B. DIRECTORATE INSPECTION SERVICES
	C. NEJAHMOGUL TECHNOLOGIES AND AGRIC SERVICES (ASSIGNEE)

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Subject

INDUSTRY DISPENSATION: EDIBLE ICES REGULATIONS

A. Background

1. The marking requirements in the existing Edible Ices regulations (R.78 of 8 February 2013) stipulate that the class designation shall be indicated as follows in the case of the classes Frozen Fruit Sorbet and Frozen Fruit Ice:

"6(1)(a) The applicable class designation or alternative class designation as specified in columns 2 and 3 of Table 2 and Table 3: Provided that --

(i) in the case of --

(aa) the classes Frozen Fruit Sorbet and Frozen Fruit Ice, the word 'Fruit' may be substituted by the name(s) of the specific fruit(s) used;"

2. The Department's inspectors have however experienced the following practical challenges with the marking requirement mentioned in point 1 above:

(a) The fact that the word 'Fruit' may be substituted by the name(s) of the specific fruit(s) used poses a problem since consumers are in our opinion not adequately informed about the composition of the product concerned when the class designation consists of only e.g. 'Frozen Fruit Sorbet', 'Fruit Sorbet', 'Frozen Fruit Ice', 'Fruit Ice', etc.

(b) Manufacturers tend to only indicate the name(s) of the fruit(s) in the class designation that lends the predominant flavour and aroma to the Fruit Sorbet or Fruit Ice concerned, although the product usually contains various other kinds of fruit as well. This creates a misleading impression of the actual composition of the product.

Linked with the above, manufacturers also choose to only depict those fruit(s) that lend the predominant flavour and aroma to the Fruit Sorbet or Fruit Ice concerned which furthermore contributes in creating a misleading impression about the composition of the product.

(c) Naming all the fruits contained in a particular product in the class designation is sometimes impractical due to space restrictions.

3. The Department also noticed challenges with regard to the marking of the class designation on a multipack which comprises of different variants of the same class of edible ices. This is due to the fact that the existing regulations 6(1)(a) and 6(4) are not very clear on exactly how the class designation should read on a multipack in such instances.

4. Regulation 4(4)(c)(i) requires that the classes Frozen Dairy Dessert and Frozen Dessert be aerated, namely:

“4 (4) (c) Frozen Dairy Dessert and Frozen Dessert --

- (i) means aerated and frozen Frozen Dairy Dessert Mix, and aerated and frozen Frozen Dessert Mix; and*
(ii) shall not have an overrun of more than 130%: Provided that –“

This requirement has resulted in the disqualification of a number of edible ices products which composition wise would have resorted under the class Frozen Dairy Dessert or Frozen Dessert due to the fact that these products were not aerated.

5. In some instances the registered trademarks, brand names and company names used include the name of a class of edible ice defined in regulation R.78, and when marked on a container containing a different class of edible ice, it results in two different class designations appearing on the same container or outer container. This not only confuses the consumer, but also contravenes regulation 7(4) which reads as follows:

“7(4) No registered trade mark or brand name which may possibly, directly or by implication, be misleading or create a false impression of the contents of a container, multipack or outer container containing Edible Ices, shall appear on such a container, multipack or outer container.”

6. Stakeholders were consulted and proposals put forward to remedy the above-mentioned shortcomings. Based on the feedback received the Department decided to incorporate these changes to regulation R.78 in the existing industry dispensation issued on 21 January 2016 to make it easier for industry and inspectors when having to consult the regulations and dispensations issued up till now. All new additions are indicated in **blue** under **section C**.

B. Repeal of previous dispensation

The industry dispensation issued on 21 January 2016 is hereby repealed and replaced with the consolidated dispensation under **section C** below.

C. Dispensation

Permission is hereby granted by the Executive Officer: Agricultural Product Standards in terms of section 3(1)(c) of the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990), to all manufacturers, packers, importers and retailers of Edible Ices to apply the following changes to regulation R.78 of 8 February 2013:

“(a) Regulation 4(4)(c)(i) & (ii) – Frozen Dairy Dessert and Frozen Dessert

Shall read as follows:

‘(c) Frozen Dairy Dessert and Frozen Dessert—

- (i) means frozen Frozen Dairy Dessert Mix and frozen Frozen Dessert Mix, which may be aerated or not; and**
- (ii) shall, if aerated, not have an overrun of more than 130%: Provided that—**
- (aa) a maximum deviation of 3% is permissible; and**
- (bb) inclusions shall not be taken into account when determining the overrun.’**

(b) Regulation 6(1)(a) – Class designation

Shall read as follows:

(a) The applicable class designation or alternative class designation as specified in columns 2 and 3 of Table 2 and Table 3: Provided that --

(i) in the case of --

(aa) the classes Frozen Fruit Sorbet and Frozen Fruit Ice –

(aaa) the word 'Fruit' shall be substituted by the name(s) of the specific fruit(s) used in the case where one or two kinds of fruit have been used; or

(bbb) the word 'Mixed' only may precede the word 'Fruit' in the case where three or more kinds of fruit have been used.

Examples:

'Frozen Strawberry & Lime Sorbet' or 'Strawberry & Lime Sorbet' or 'Frozen Mixed Fruit Sorbet', etc.

Provided that when using the second option [i.e. '(bbb)'] above in the class designation or alternative class designation indication, the names of –

(i) all the fruit species used shall be indicated in descending order of appearance in close proximity to the class designation concerned in letters of the same size and at least 2mm in height; **or**

Example:

'Mixed Fruit Ice - apple, orange & mango'

(ii) only the first two main fruit species shall be indicated in descending order of appearance, followed by the expression "and other fruit", in close proximity to the class designation concerned in letters of the same size and at least 2mm in height; **or**

Example:

'Mixed Fruit Sorbet – pear, peach & other fruit'

(iii) only the first two (or more) fruit species lending the predominant flavour and aroma to the product concerned, followed by the expression "and other fruit", shall be indicated in close proximity to the class designation concerned in letters of the same size and at least 2mm in height: Provided that –

(aa) a complete ingredients list shall appear on the container; and

(bb) the emphasised, predominant fruit species shall be subject to the requirements on Quantitative Ingredient Declarations (QUID), as specified in the regulations published under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972).

Example:

'Frozen Mixed Fruit Ice – coconut, mango & other fruit'

(bb) the class Flavoured Ice, the word "Flavoured" shall be preceded by the name(s) of the specific fruit(s) and/or flavouring(s) used;

- (cc) instant mix products (powder) which are intended to be prepared either at home, or on the premises (e.g. at ice-cream parlours/outlets/emporiums) for the purpose of dispensing it from a soft serve dispensing machine, by the addition of e.g. full cream milk, full cream yoghurt, butter milk, water, etc., the classification of the product concerned shall be based on --
- (aaa) the *fat content* of the final product when prepared in accordance with the mixing instructions provided on the packaging [i.e. the combined fat content of the dry/powdered milk and/or vegetable oil (e.g. palm kernel, coconut kernel, etc.) ingredients in the instant mix and the full cream milk, full cream yoghurt, butter milk, etc. it is intended to be mixed with.]; and
 - (bbb) the *total solids content* and *milk solids non-fat content (where applicable)* of the final product when prepared in accordance with the mixing instructions provided on the packaging: Provided that --
 - inclusions shall not be taken into account when determining the fat content and the total solids; and
 - the manufacturer, packer or importer shall, on request of the inspector, provide the Department with the necessary information/composition (e.g. analysis report, etc.) of the instant mix when prepared in accordance with the mixing instructions;
- (ii) an altered word sequence of the class designation or alternative class designation is permissible on condition that the altered word sequence does not constitute a misrepresentation, or not directly or by implication create or may create a misleading impression regarding the quality, nature, origin or composition of the product concerned; and
- (iii) no word or expression may be bigger than the class designation or alternative class designation unless it is a registered trade mark, brand name or product variant name (e.g. 'Neapolitan'; 'Classic'; 'Orange Maid'; 'Almond'; etc.): Provided that the use of variant names which include any reference to a foodstuff, either directly or by implication, and which have been in use --
- (aa) or allowed for on Edible Ices prior to the publication of regulation R.78 on 8 February 2013 are permissible, even though the reference to such foodstuff may in some instances consist of a flavouring only: Provided further that the manufacturer, owner, importer or retailer shall upon request provide the Executive Officer or inspector with the necessary evidence of such prior use within the Republic of South Africa; or
 - (bb) on Edible Ices from 8 February 2013 only shall be -
 - (aaa) subject to the requirements on Quantitative Ingredient Declarations (QUID), as specified in the regulations published under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972), if the actual foodstuff is present in the Edible Ices product concerned; and
 - (bbb) subject to the requirements in paragraph (b) of this dispensation (regulation 6(1)(b)(iv)) if cocoa powder or vanilla has been added; or
 - (bbb) followed by the word 'flavoured' in letters of the same size and font (type) if the reference to such foodstuff consists of a flavouring only."

(c) Regulation 6(1)(b) – Additions to the class designation

The following subparagraph is hereby inserted after subparagraph 6(1)(b)(iii):

- “(iv) (aa) If at least 2% (m/m) cocoa powder has been added to an Edible Ice product as a foodstuff in order to render a distinctive chocolate flavour and taste thereto, the applicable class designation or alternative class designation may either be preceded by the word “chocolate”, or be followed by the wording “with chocolate”: Provided that the requirements on Quantitative Ingredient Declarations (QUID), as specified in the regulations published under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972), have been complied with.”
- (bb) If vanilla in the form of vanilla bean, vanilla pod, vanilla seed or pure vanilla extract has been added to an Edible Ice product in order to render a distinctive vanilla flavour thereto, the applicable class designation or alternative class designation may either be preceded by the word “vanilla”, or be followed by the wording “with vanilla”.

(d) Regulation 6(1)(c) – The expression “pasteurised”

Shall read as follows:

- “(c) The expression “Pasteurised” in the case where –
- (i) Frozen Yoghurt has been pasteurised after fermentation; and
- (ii) blends of yoghurt and either dairy ice-cream mix or ice-cream mix has been pasteurised:
- Provided that this expression may be omitted if so preferred.”

(e) Regulation 6(2)

The following paragraph is hereby inserted after paragraph 6(2)(c):

“Mixing instructions

- (d) Mixing instructions in the case of all instant mix (powder) Edible Ices products intended for mixing either at home, or on the premises where it will be dispensed from a soft serve dispensing machine, in a letter size of at least 1 mm in height.”

(f) Regulation 6(3) – Individual units packed in multipacks

Shall read as follows:

- “(3) In the case where individual units are packed in a multipack, the expression “NOT FOR INDIVIDUAL SALE”, or any other wording having a similar meaning, shall at least be indicated on the containers containing the individual units: Provided that such individual units may not be sold loose.”

(g) Regulation 6(8) – Mixing instructions

Clear mixing instructions shall be indicated on all instant mix (powder) products.

(h) Regulation 6(4) – Multipacks

Shall read as follows:

- “(4) (a) In the case of a multipack, at least the following marking requirements shall be indicated on the multipack:

- (i) The particulars prescribed in subregulations (1), (2) and (8); and
 - (ii) The number of containers (individual units) contained therein as required in terms of the Trade Metrology Act, 1973 (Act No. 77 of 1973).”
- (b) In the case of a multipack which comprises of different variants of the same class of edible ice, the word “assorted” or any other word having a similar meaning may precede the class designation: Provided that the names of the various kinds and/or flavours shall appear in close proximity to the multipack’s class designation in a letter size not less than 50% of the size of the class designation.

Examples:

- *Assorted Low Fat Frozen Dessert*

- *Vanilla*
- *Chocolate*
- *Choc Chip Cookies*

- *Assorted Flavoured Ice*

- *Strawberry flavoured*
- *Orange flavoured*
- *Mango flavoured*

(i) Regulation 6(6) – Soft Serve dispensing machines

Shall read as follows:

“(6) The following class designation shall be indicated conspicuously on each soft serve dispensing machine where semi-frozen Edible Ices products are sold in single serve portions:

- (a) “Soft Serve” in the case of the class Soft Serve.
- (b) “Semi-frozen X”, where “X” indicates the name of the applicable class (e.g. ‘semi-frozen low fat dairy dessert’, ‘semi-frozen fat free yoghurt’, etc.).”

(j) Regulation 6(9) – Letter types and sizes

Shall read as follows:

“(9) The particulars referred to in subregulations (1) to (8) shall be indicated in detached letters and figures --

- (a) that are clearly legible;
- (b) that are of the same type;
- (c) that appear on a contrasting background; and
- (d) of which the minimum vertical height of the smallest letter or figure in the indication is as follows:

Particular	Subregulation	Minimum size
<ul style="list-style-type: none"> • Class designation 	(1)(a)	3mm: Provided that it may be reduced to 2mm in the case of units with a volume of 200mL or a weight of 200g and less
<ul style="list-style-type: none"> • Additions to the class designation • The expression "pasteurised" • The expression "contains no live cultures", etc. 	(1)(b) (1)(c) (1)(d)	2mm: Provided that, subject to the provisions of regulation 6(1)(a)(iii), the difference in letter size between the smallest letter in the class designation indication and smallest letter in the additions to the class designation indication shall not exceed 3mm
<ul style="list-style-type: none"> • Name and address • Country of origin • Mixing instructions • Ingredients list 	(2)(a) (2)(b) (2)(d) (9)	1mm
<ul style="list-style-type: none"> • The expression "NOT FOR INDIVIDUAL SALE" 	(3)	2mm
<ul style="list-style-type: none"> • Designation "Soft Serve" or "Semi-frozen X" on soft serve dispensing machines. 	(6)	50mm
<ul style="list-style-type: none"> • Applicable class name on display freezer unit or immediate container in which product is displayed – All single serve portions, excluding Soft Serve and other semi-frozen Edible Ices products intended to be dispensed from a soft serve dispensing machine. 	(7)	50mm

(k) Regulation 7(3) – Restricted particulars on containers, multipacks & outer containers

Shall read as follows:

- (3) No word, mark, illustration, depiction or any other method of expression that constitutes a misrepresentation or directly or by implication creates or may create a misleading impression regarding the quality, nature, class, origin or composition of Edible Ices shall be marked on a container, multipack or outer container: Provided that in the case of the classes Frozen Fruit Sorbet and Frozen Fruit Ice consisting of two or more kinds of fruit, a depiction or pictorial representation of only those fruit species imparting the predominant flavour and aroma to the product concerned, shall, subject to the provisions of regulation 6(1)(a)(i)(aa), not be regarded as constituting any misrepresentation: Provided further that the requirements on Quantitative Ingredient Declarations (QUID), as specified in the regulations published under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972), have been complied with."

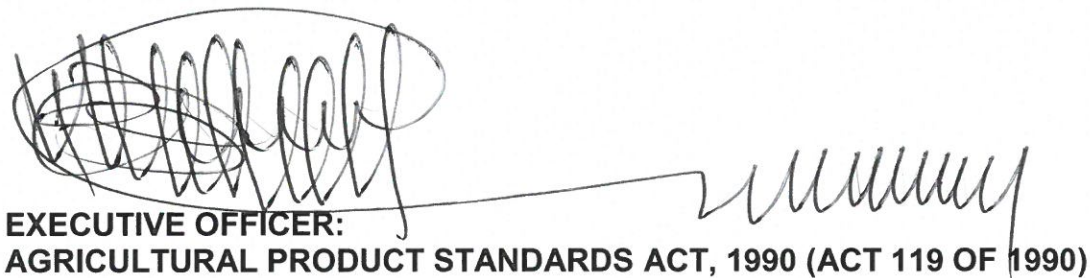
(I) Regulation 7(4) – Restricted particulars on containers, multipacks & outer containers

Shall read as follows:

- (4) No registered trade mark or brand name which may possibly, directly or by implication, be misleading or create a false impression of the contents of a container, multipack or outer container containing Edible Ices, shall appear on such a container, multipack or outer container: Provided that this restriction shall not apply to registered trade marks or brand names which include the name of a class designation that differs from the applicable class designation marked on a container, multipack or outer container and which have been in use on Edible Ices in the Republic of South Africa prior to the publication of regulation R.78 on 8 February 2013: Provided further that the manufacturer, owner or retailer shall upon request provide the Executive Officer or inspector with the necessary evidence of such prior use within the Republic of South Africa.”

This permission is subject to the following conditions:

- (a) All other conditions of the Edible Ices regulations (R.78 of 8 February 2013) shall be complied with.
- (b) It may be withdrawn at any time should a valid complaint be received.
- (c) All manufacturers, packers, importers and retailers of Edible Ices indemnify this Directorate and the Department from any detrimental effect, financially or otherwise, which may emanate as a result of this permission.
- (d) All manufacturers, packers, importers and retailers shall within 18 months from the date of issuing this dispensation ensure that the new/ additional requirements highlighted in blue in paragraphs (a), (b) and (h) of **section C** have been introduced on their affected packaging.
- (d) Termination date: When an amendment to the Edible Ices regulations is published in the Government Gazette.



EXECUTIVE OFFICER:
AGRICULTURAL PRODUCT STANDARDS ACT, 1990 (ACT 119 OF 1990)