



# Food Notice

## Recognised Agencies and Persons

Draft for Consultation

## TITLE

Food Notice: Recognised Agencies and Persons

## COMMENCEMENT

This Food Notice comes into force on ..

## ISSUING AUTHORITY

This Food Notice is issued

Dated at Wellington this ... day of ..... 2014

Name: .....

Role: .....

Ministry for Primary Industries

A copy of the instrument of delegation may be inspected at the Director General's office.

Contact for further information  
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## Introduction

This introduction is not part of the Food Notice, but is intended to indicate its general effect.

## Purpose

### Part 1 – the purpose of this part of the Notice is:

- (1) to set requirements for reporting by recognised agencies and persons; and
- (2) to set requirements for technical competencies for persons who are recognised or wish to be recognised under the Food Act 2014 (the Act) to perform evaluation and/or verification for certain classes of food operation.

### Part 2 – the purpose of this part of the Notice is:

- (1) to specify the conditions applying to approved auditors deemed to be recognised persons or conditions applying to agencies deemed to be recognised agencies; and
- (2) to specify the functions that a person deemed to be a recognised person, or agency deemed to be a recognised agency, must or must not carry out under the Food Act 2014 (the Act); and
- (3) to specify the training that the person must do for the purposes of the Act; and
- (4) to specify the competency standards that the person must meet under this Act; and
- (5) specify the period of deemed recognition for persons and agencies.

## Background

### Background for Part 1

- (1) The Act provides that recognition may be granted to agencies and persons if the applicant is considered to be a fit and proper to carry out the functions for which recognition is sought. The term 'fit and proper' may include consideration of the applicant's competencies, qualifications, experience and their character and reputation.
- (2) The Act and Food Regulations 2015 (the Regulations) also set out the duties that apply to recognised agencies and recognised persons. These duties define the high level performance expectation that will apply to the agency or person in the course of carrying out their functions.
- (3) Some additional requirements for reporting by recognised agencies and persons are specified in this Notice.
- (4) In addition to the core requirements for recognised persons set in the Act and the Regulations, additional technical competencies, knowledge and experience are required for evaluators and verifiers of specific classes of food operation. This Notice also gives the additional requirements that must be met when applying for approval to evaluate and verify businesses in the specific classes of food operation listed. Requirements for evaluators and/or verifiers of additional other classes of food operation may be added at a later date.

### Background for Part 2

- (1) Under the Food Act 2014 section 435, auditors who, immediately before 1 March 2016 were approved to audit food safety programmes (FSP) under section 8ZV of the Food Act 1981 are deemed to be recognised persons until the expiry of their current appointment under section 8ZV of the Food Act 1981 or a date nominated by the chief executive (CE) in a notice, whichever is earlier.

- (2) Under the Food Act 2014 section 436 agencies managing the auditors described above are deemed to be recognised until the date nominated by the CE in a notice.
- (3) This provision affects staff in several third party agencies, most territorial authorities and 'approved' staff members in both.

## Who should read this Food Notice?

### Part 1

- (1) The following persons should read Part 1:
  - Persons and agencies that are recognised or interested in becoming recognised under the Food Act 2014, and in particular those who wish to perform verification and/or evaluation functions and activities for certain special classes of food operation.

### Part 2

- (1) The following persons should read Part 2
  - auditors who are approved under section 8ZV of the Food Act 1981 to audit FSP (deemed food control plans), and their managing agencies.

## Why is this important?

### Part 1

- (1) It is important that persons and their agencies involved in the verification or evaluation of specialist food processes are aware of the key elements of those specialist processes and are able to confirm that the legal requirements are being complied with.
- (2) Failure by persons or agencies to meet or maintain the requirements for evaluators or verifiers may result in the suspension or termination of the person's or agency's accreditation. This in turn may affect the ability of food businesses to have their food control plans evaluated and/or verified.

### Part 2

- (1) The deeming provisions allows approved auditors and their managing agencies to continue to provide services to food businesses while the businesses make the transition from operating under FSP to food control plans under the Act.
- (2) Deemed recognition means that agencies and auditors are able to continue to audit their client food businesses until these businesses transition to meeting the requirements of the Act.

# Part 1: Requirements for recognised agencies and persons: reporting and technical competency

## 1.1 Application

- a) This Part of this Notice is issued under section 147 of the Food Act 2014 (the Act) and applies to agencies and persons that are recognised or persons seeking recognition under the Act to perform evaluation and/or verification functions of certain classes of food operation.

## 1.2 Definitions

- (1) In this Part:

**accreditation body** refers to independent organisations of international standing that accredit agencies and persons to certain standards and includes IANZ and JAS-ANZ

**aseptic processing and packaging** means the processing and packaging of a commercially sterile product into sterilized containers followed by sealing with a sterilized closure in a manner which prevents its re-contamination. Low acid canned foods include aseptic processing and packaging

**canned food** means food that:

- a) is processed and packaged in accordance with good manufacturing practice; and
- b) is packed in clean containers that are hermetically sealed; and
- c) is processed by heat to ensure preservation, whether before or after being sealed in a container

**custom food control plan** means a food control plan (FCP) other than based on an approved template or model

**evaluator** means a person who is recognised by the chief executive under section 139 or 140 as a person whose permissible functions and activities include carrying out evaluation

**HACCP** means Hazard Analysis and Critical Control Points; a management system in which food safety is addressed through the analysis and control of biological, chemical, and physical hazards from raw material production, procurement and handling, to manufacturing, distribution and consumption of the finished product

**hot fill** means a type of aseptic processing where by the food is pasteurised, then packaged

**low acid product** means:

- d) any product, other than an alcoholic beverage, where any component has a pH value greater than 4.6 after heat processing, and a water activity greater than 0.85; but
- e) does not include product in hermetically sealed containers that is required to be stored under refrigeration

**NZQA** means the New Zealand Qualifications Authority

**pasteurisation** means the process of heating beverages or solid foods to destroy harmful or undesirable microorganisms

**pH** means a numeric scale used to specify the acidity or alkalinity of an aqueous solution

- (2) All terms used in this Part of this Notice and that are defined in the Food Act 2014 or Regulations made under that Act, but not defined in this Part of this Notice, have the same meaning as in that Act or Regulations where it is defined.

### **1.3 Reporting requirements for recognised agencies and persons**

- (1) Recognised agencies must:
- a) report to the regulator on changes in directorship, management or control as soon as practicable after the change occurs; and
  - b) inform MPI of the name of any new recognised person that joins the agency and the date of their joining; and
  - c) advise the regulator in writing as soon as practicable:
    - i) if a recognised person ceases to be employed or engaged by the agency; and
    - ii) if a recognised person employed or engaged by the agency has been found to not meet the requirements imposed by or under the Food Act; and
  - d) advise the regulator in the event that the operator of a food business fails to undertake a corrective action within the specified period of time.
- (2) Recognised persons must:
- a) provide details of routine verification in a monthly report to the regulatory agency at the end of each calendar month. Monthly reports need to include:
    - i) the date of verification; and
    - ii) whether the verification was scheduled or not; and
    - iii) the scope of the verification; and
    - iv) any variations or deficiencies detected; and
    - v) the agreed corrective actions; and
    - vi) the agreed date of close out for the corrective actions; and
    - vii) the outcome of verification; and
    - viii) changes in verification frequency of a food business; and
    - ix) the date of close out of the verification.

### **1.4 General requirements for recognition as an evaluator or verifier of specific classes of food operation**

- (1) A person seeking recognition as an evaluator or verifier with endorsements for specific classes of food operation, must include in their application for recognition a clear statement of the endorsements being sought and evidence of:
- a) relevant qualifications, training and experience of a specific process; and
  - b) current knowledge and understanding of the infrastructure and operational norms of the relevant industry, process or operation (practice, hazards, control measures); and
  - c) current knowledge and understanding of the operational norms relevant for the endorsement being sought; and
  - d) knowledge and understanding of the relevant guidance documents and other sector specific documents.

## 1.5 Requirements for recognition as an evaluator or verifier of aseptic/pasteurisation/hot fill heat treatment processing

### 1.5.1 Recognition as an evaluator of aseptic/pasteurisation/hot fill heat treatment processing

- (1) A person seeking recognition as an evaluator of heat treatment processing (for example aseptic processing) must have a good working knowledge of all aspects of the heat treatment system including:
  - a) design and installation; and
  - b) validation of the heat process; and
  - c) filling and closure.
- (2) They must provide evidence that they have:
  - a) at least a NZQA Level 4 qualification in public health, food engineering, food technology or other qualification or experience that will enable the CE to determine that the person is able to adequately and competently perform verification or evaluation; and
  - b) practical experience validating control measures for heat treatment critical control points; and
  - c) good knowledge and understanding of microbiology; and
  - d) good knowledge and understanding of all aspects of thermal processing, including factors influencing thermal processing, post-(heat) process contamination.
- (3) To demonstrate practical application, the applicant must be observed conducting evaluating an appropriate heat treatment equipment operation as part of the accreditation body assessment.

### 1.5.2 Recognition as a verifier of UHT/aseptic/pasteurisation/hot fill heat treatment

- (1) A person seeking recognition as a verifier of heat treatment processes must provide evidence that they have:
  - a) good knowledge and understanding of microbiology; and
  - b) good knowledge and understanding all aspects of thermal processing, including factors influencing thermal processing, post-(heat) process contamination; and
- (2) To demonstrate practical application, the applicant must be observed conducting verification of a heat treatment processing operation as part of the accreditation body and/or MPI assessment.

## 1.6 Requirements for recognition as an evaluator or verifier of low acid canned food processing

### 1.6.1 Recognition as an evaluator of low acid canned food processing

- (1) Any person involved in the evaluation of a low acid canned food (LACF) process (other than aseptic processes and packaging) must have a good knowledge of the contents of the current edition of the following Codes:
  - a) the [Code of Hygienic Practice for Low-acid and Acidified Low-acid Canned Foods](#) (CAC/RCP 23-1979), as published by the Codex Alimentarius Commission; and
  - b) the United States Food and Drug Administration Requirements for Thermally Processed Low-acid Foods Packaged in Hermetically Sealed Containers, as contained in 21 CFR Part 113, and Acidified Foods as contained in 21 CFR Part 114, as appropriate.
- (2) A person seeking recognition as an evaluator of LACF processes (other than aseptic processing and packaging) must provide evidence of successful completion of one of the following courses:
  - a) Qualified Cannery Persons (Thermal Processing) Course, University of Western Sydney (Hawkesbury) Australia; or



- b) Approved Persons Course for the Thermal Processing of Low-Acid Foods, Food Science Australia, Werribee, Australia; or
  - c) Introduction to the Fundamentals of Thermal Process Evaluation, Massey University, Palmerston North, New Zealand; or
  - d) another course accepted by MPI where appropriate.
- (3) The course must have been successfully completed within the previous 5 years. Where more than 5 years has passed since the course was completed, the applicant may still seek recognition if they are able to provide sufficient evidence to the accreditation body. The evidence must include any practical experience in canning operations, such as verification, and maintenance of knowledge in the intervening years.

### 1.6.2 Recognition as an evaluator of aseptic processing and packaging operations

- (1) Any person involved in the evaluation of aseptic processing and packaging operations must have good knowledge of the contents of the following Codes:
- a) the current edition of the:
    - i) Code of Hygienic Practice for Low and Acidified Low Acid Canned Foods, as published by the Codex Alimentarius Commission: (CAC/RCP 23-1979); and
    - ii) Code of hygiene Practice for Aseptically Processed and Packaged Low-acid Foods, as published by the Codex Alimentarius Commission: (CAC/RCP 40-1993); or
  - b) the United States Food and Drug Administration Requirements for Thermally Processed Low-acid Foods Packaged in Hermetically Sealed Containers, as contained in 21 CFR Part 113, and Acidified Foods as contained in 21 CFR Part 114, as appropriate; and
- (2) A person seeking recognition as an evaluator of aseptic processing and packaging operations must provide evidence of successful completion of one of the following courses:
- a) Approved Persons Course for the Aseptic Processing and Packaging of Low-Acid Foods, DWC FoodTech Pty. Ltd, Australia:
  - b) another course accepted by MPI where appropriate.
- (3) The course must have been successfully completed within the previous 5 years. Where more than 5 years has passed since the course was completed, the applicant may still seek recognition if they are able to provide sufficient evidence to the accreditation body. The evidence must include any practical experience in canning operations, such as verification, and maintenance of knowledge in the intervening years.

### 1.6.3 Recognition as a verifier of low acid canned food processing

- (1) Any person involved in the verification of a LACF process (including aseptic processes) must be familiar with the contents of the following codes:
- a) Code of Hygienic Practice for Low and Acidified Low Acid Canned Foods, as published by the Codex Alimentarius Commission: (CAC/RCP 23-1979); and
  - b) Code of hygiene Practice for Aseptically Processed and Packaged Low-acid Foods, as published by the Codex Alimentarius Commission: (CAC/RCP 40-1993); or
  - c) the United States Food and Drug Administration Requirements for Thermally Processed Low-acid Foods Packaged in Hermetically Sealed Containers, as contained in 21 CFR Part 113, and Acidified Foods as contained in 21 CFR Part 114, as appropriate; and
- (2) Persons who want to undertake verification of LACF processes (including aseptic operations) must provide evidence of successful completion of one of the following courses:
- a) Principles of Thermal Process Control, Acidification and Container Closure Evaluation, Massey University; or
  - b) Retort Supervisors Course, DWC FoodTech Pty Ltd, Australia; or

- c) NZ Retort Supervisors and Process Control School, Food Processing Specialists Pty Ltd, Australia; or
  - d) New Zealand Retort Supervisors and Process Control School, Food Processing Specialists Pty, Australia; or
  - e) another course accepted by MPI where appropriate.
- (3) The course must be successfully completed within the previous 5 years. Where more than 5 years has passed since the course was completed, the applicant may still seek approval if they are able to provide sufficient evidence to the accreditation body. The evidence must include any practical experience in canning operations and maintenance of knowledge in the intervening years.
- (4) To demonstrate practical application, the applicant must be observed conducting verification of a canning operation as part of the accreditation body assessment.
- (5) The applicant must demonstrate an understanding of the specific requirements under the Food Act 2014 for LACF operations.

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## Part 2: Requirements for deemed recognised agencies and persons

### 2.1 Application

- (1) This part of this Notice applies as follows:
  - a) Part 2.3 applies to a person who is deemed to be a recognised person under section 435 of the Food Act 2014 other than a person operating in a Territorial Authority.
  - b) Part 2.4 applies to an agency that is deemed to be a recognised agency under section 436 of the Act.
  - c) Part 2.5 applies to an auditor who is deemed to be a recognised person under section 435 of the Food Act 2014 operating in a Territorial Authority.
  - d) Part 2.6 applies to every Territorial Authority managing auditors approved under section 8ZV of the Food Act 1981 immediately prior to 1 March 2016 and deemed to be a recognised agency under section 436 of the Act.

### 2.2 Definitions

- (1) In this Notice:

**deemed food control plan** means a food control plan deemed to be so under section 430 of the Food Act 2014

**deemed recognised agency** means an agency (other than a Territorial Authority) deemed to be a recognised agency under section 436 of the Food Act 2014

**deemed recognised person** means a person deemed to be a recognised person under section 435 of the Food Act 2014.

- (2) All terms used in this Notice and that are defined in the Food Act 2014 or Regulations made under that Act, but not defined in this Notice, have the same meaning as in that Act or Regulations where it is defined.

### 2.3 Deemed recognised persons (not operating in Territorial Authorities)

#### 2.3.1 Expiry of recognition for deemed recognised persons

- (1) The recognition of a deemed recognised person, other than a deemed recognised person operating in a Territorial Authority, expires on the date of expiry of their approval under section 8ZV of the Food Act 1981.

#### 2.3.2 Functions of a deemed recognised person

- (1) Deemed recognised persons must continue to operate only in relation to the same classes of food operation that they were approved to operate in under section 8ZV of the Food Act 1981, immediately prior to 1 March 2016.
- (2) Deemed recognised persons are recognised to carry out verification functions only.

### 2.3.3 Required competencies of deemed recognised persons

- (1) Deemed recognised persons must continue to meet the conditions that applied to their approval under section 8ZV of the Food Act 1981, immediately prior to 1 March 2016, and meet all the requirements as set in Schedule 1.

#### Guidance

- Schedule 1 extracted from: *Criteria for approval of food safety programme auditors*, July 2015, MPI

- (2) The CE may monitor the performance of a recognised person against these requirements.

## 2.4 Deemed recognised agencies

### 2.4.1 Expiry of recognition for deemed recognised agencies

- (1) The recognition of deemed recognised agencies expires on 30 June 2016. Agencies wishing to be recognised agencies under the Food Act 2014 must apply for recognition under section 135 of the Food Act 2014 at least 20 working days before expiry of their deemed recognition.

### 2.4.2 Functions of deemed recognised agencies

- (1) Deemed recognised agencies must continue to operate only in the same classes of operation that they were approved to operate in under section 8ZV of the Food Act 1981 immediately prior to 1 March 2016.

### 2.4.3 Requirements of deemed recognised agencies

- (1) Deemed recognised agencies must employ at least one recognised person who meets the requirements in part 2.3.3 of this Notice.

## 2.5 Deemed recognised persons operating in Territorial Authorities

### 2.5.1 Expiry of recognition for deemed recognised persons operating in Territorial Authorities

- (1) Recognition of deemed recognised persons operating in Territorial Authorities expires on the date of expiry of their approval under section 8ZV of the Food Act 1981.

### 2.5.2 Functions of deemed recognised persons in Territorial Authorities

- (1) Deemed recognised persons in Territorial Authorities may operate only in the same class of operation that they were approved to operate in under section 8ZV of the Food Act 1981 immediately prior to 1 March 2016.

### 2.5.3 Required competencies of deemed recognised persons in Territorial Authorities

- (1) Deemed recognised persons in Territorial Authorities must maintain the same conditions that applied to their approval under section 8ZV of the Food Act 1981 immediately prior to 1 March 2016, and meet all the requirements as set in Schedule 1.
- (2) The CE may monitor the performance of a recognised person against the requirements.

## 2.6 Territorial Authorities

### 2.6.1 Expiry of recognition for a deemed recognised agency that is a Territorial Authority

- (1) The recognition of an agency that is a Territorial Authority deemed to be a recognised agency under section 436 of the Act will expire on the last day of the introductory period of the Act.

### **2.6.2 Functions of Territorial Authorities as deemed recognised agencies**

- (1) As deemed recognised agencies, Territorial Authorities may operate in the same class of operation that they were operating in under section 8ZV of the Food Act 1981 immediately prior to 1 March 2016 in relation to deemed food control plans based on a template set out in **Approved Template Food Control Plan for Schedule 1 Food Businesses: Food Service and Food Retail**.

### **2.6.3 Required competencies of Territorial Authorities as deemed recognised agencies**

- (1) A deemed recognised agency that is a Territorial Authority must:
- a) operate approved systems for record keeping, training, supervision, conflicts of interest policy, and reporting; and
  - b) manage at least one deemed recognised person who maintains the same conditions that applied to their approval under section 8ZV of the Food Act 1981, or a recognised person under the Food Act 2014, who has a nominated responsibility for the agency's verification functions and activities; and
  - c) agree to comply with current deemed food control processes.

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## Schedule 1 – Requirements that apply to all deemed recognised persons

(from *Criteria for approval of food safety programme auditors*, July 2015, MPI)

### Independence, impartiality and integrity

A deemed recognised person must not engage in any activities that conflicts with their independence of judgement and integrity in relation to audit activities. In particular, a deemed recognised person shall not have been involved in the design or implementation of any deemed food control plan/food control plan that they audit, other than in an advisory capacity which may arise during the normal course of the audit.

A deemed recognised person must be free from any commercial, financial, regulatory and other pressures that might affect their judgement. Procedures shall ensure that persons or organisations, external to the auditor, do not influence the results of audits carried out.

### Organisation and management

A deemed recognised person must maintain the capability to audit satisfactorily.

A deemed recognised person is responsible for ensuring that audit activities are carried out in accordance with these criteria.

A deemed recognised person must operate an effective quality management system appropriate to the work performed. A deemed recognised person who does not wish to establish their own quality management system, must be employed by, or have a contract with any, recognised agency already approved to audit food control plans.

A deemed recognised person must maintain a system for control of all documentation relating to their activities.

A deemed recognised person must have available suitable and adequate facilities and equipment to permit all activities associated with the audit services to be effectively carried out. A deemed recognised person must have a management plan that states how their own equipment will be maintained and how they will access other equipment required for their audit activities. The plan must verify that all equipment is accurate, reliable and obtained from a reputable source. This documentation must be made available for inspection by an officer of the Ministry for Primary Industries (MPI) if required.

Where a deemed recognised agency employs individual deemed recognised persons, it must verify:

- that all deemed recognised persons are suitably qualified; and
- that all deemed recognised persons are independent of the business(es) being audited; and
- that deemed recognised persons do not audit outside of the scope for which approval has been granted.

### Audit methods and procedures

A deemed recognised person must have and use adequately documented procedures for all stages of the audit process.

All documentation and data relevant to the work of auditors must be maintained up to date and be readily available for inspection by an officer of MPI if required.

All audit findings must be recorded in a timely manner to prevent loss of relevant information and must be available to an officer of MPI if required.

A deemed recognised person must ensure that:

- audits to be undertaken are within their expertise and that they have adequate resources to meet the requirements; and
- the requirements of those seeking the auditing services are defined and that special conditions are understood; and
- the audit process is regularly reviewed and appropriate corrective action applied; and
- each audit is reviewed with the owner of the deemed food control plan/food control plan.

## Handling samples

A deemed recognised person must ensure that all samples taken for verification are uniquely identified, are handled to maintain their integrity, and are representative of the process being audited.

## Audit records

A deemed recognised person must maintain an appropriate record system sufficient to permit satisfactory evaluation of the audits undertaken.

All records must be safely stored, held secure and in confidence to the client, unless otherwise required by law.

## Audit report contents

The audit report to the client must include all results of the examination of the process, and the determination of conformity to the deemed food control plan/food control plan. The report must be accompanied by any information needed to facilitate its understanding and interpretation.

The audit report must review the deemed food control plan/food control plan to demonstrate that it remains valid and must verify that the deemed food control plan/food control plan is effectively in place.

The audit report must contain details of any deficiencies in the deemed food control plan/food control plan together with details of the agreed corrective actions and the timeframe for these actions to be carried out.

Audit reports must be signed by the deemed recognised person.

Corrections or additions to an audit report after issue must be recorded and reported in accordance with the other requirements of these criteria.

## Audit reports for new applications

A deemed recognised person must supply a copy of the initial audit report once it is closed out for all new applications to MPI.

## Monthly reporting requirements

Details of routine audits must be included in a monthly report and provided to the regulatory agency at the end of each calendar month. Monthly reports need to include details of compliance with the deemed food control plan/food control plan, any detected variations or deficiencies, and the agreed corrective actions and the date of close out for these actions taken.

## **Critical issues identified during an audit**

Any critical non-compliance identified during a routine audit must be reported to MPI (contact MPI Food Compliance at [food.compliance@mpi.govt.nz](mailto:food.compliance@mpi.govt.nz) or 0800 693 721).

## **Ongoing issues relating to operators not addressing corrective actions**

If there are ongoing non-conformance issues with deemed food control plan/food control plan operators the deemed recognised person can notify the regulatory authority in writing outlining their concerns, providing a time frame of when concerns were raised and any response received from the deemed food control plan/food control plan operator. Audits should include any information relating to requests to increase audit frequency for businesses who are failing to address the identified corrective actions in the mutually agreed time frames.

Notifications regarding these matters should be sent to [approvals@mpi.govt.nz](mailto:approvals@mpi.govt.nz).

## **Subcontracting**

When a deemed recognised person subcontracts any part of the audit, they must demonstrate that the subcontractor is an approved recognised person who is competent to perform the service in question.

A deemed recognised person may be assisted by persons who have specialist knowledge or technical skills but who are not a recognised person. In such cases the deemed recognised person shall remain accountable for the overall integrity of the audit process.

A deemed recognised person must advise their clients of the intention to subcontract or use a specialist assistant(s) for any part of the audit.

## **Complaints and appeals**

A deemed recognised person must reasonably attempt to resolve any matter under dispute.

Details of unresolved disputes or complaints shall be reported by auditors to the regulatory agency granting the exemption.