Ordinance of the Federal Ministry of Food and Agriculture

Ordinance adapting national legislation to provisions of Union law on flavourings and food containing flavourings[[1]](#footnote-2)

Оf [date]

The Federal Ministry of Food and Agriculture orders the following on the basis of

* § 13(1)(1)(a)(2) and 4(1)(a and b), § 35(1)(b)(aa), § 7(1)(1) also in conjunction with § 4(2)(2) of the Food and Feed Code in the version published on 3 June 2013 (Federal Law Gazette I p. 1426), of which § 13(1)(1)(a) and (4)(1)(b) were amended most recently by Article 1(13) of the Act of .. 2021 (Federal Law Gazette I p. ...), § 13(1)(2) and (4)(1)(a) were amended most recently by § 67(5) of the Ordinance of 31 August 2015 (Federal Law Gazette I p. 1474), and § 35(1)(b)(aa) was amended most recently by Article 67(6) of the Ordinance of 31 August 2015 (Federal Law Gazette I p. 1474), in agreement with the Federal Ministry of Economic Affairs and Energy,
* § 13(1)(6), § 62(1)(1) and (2)(a) and of § 75(5), also in conjunction with § 4(2), of the Food and Feed Code in the version published on 3 June 2013 (Federal Law Gazette I p. 1426), of which § 13(1)(6) was amended most recently by Article 67(5) of the Ordinance of 31 August 2015 (Federal Law Gazette I p. 1474) and § 62(1)(1) and (2)(a), last reworded by Article 1(48) of the Act of ... 2021 (Federal Law Gazette I p. ...), and § 75(5), last amended by Article 1(53) of the Act of ... 2021 (Federal Law Gazette I p. ...), and
* § 3(1), first sentence, point 1 of the Milk and Margarine Act of 25 July 1990 (Federal Law Gazette I p. 1471), as last amended by Article 2(2) of the Act of 18 January 2019 (Federal Law Gazette I p. 33), in agreement with the Federal Ministry of Economic Affairs and Energy:

Article 1

Implementing Ordinance on flavourings and food containing flavourings

(Flavourings Implementation Ordinance - AromenDV)

§ 1.

Scope of application

* + 1. This Ordinance shall apply by supplementing
       1. the rules laid down in Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC (OJ L 354, 31.12.2008, p. 34; L 105, 27.4.2010, p. 115; L 406, 3.12.2020, p. 67), as last amended by Regulation (EU) 2020/1681 (OJ L 379, 13.11.2020, p. 27), as amended, as regards the placing on the market and labelling of flavourings within the meaning of Article 3(2)(a) of Regulation (EC) No 1334/2008,
       2. the rules laid down in Regulation (EC) No 2065/2003 of the European Parliament and of the Council of 10 November 2003 on smoke flavourings used or intended for use in or on foods (OJ L 309, 26.11.2003, p. 1), as last amended by Regulation (EU) 2019/1381 (OJ L 231, 6.9.2019, p. 1), as amended, as regards placing on the market
          1. smoke flavourings within the meaning of Article 3(2)(f) of Regulation (EU) No 1334/2008 and
          2. food in or on which smoke flavouring is present.
    2. This Ordinance regulates
       1. the use of flavouring substances as defined in Article 3(2)(b) of Regulation (EC) No 1334/2008 in the production of foods intended for infants,
       2. the production and use of freshly generated smoke,
       3. the labelling of certain prepacked food within the meaning of Article 2(2)(e) of Regulation (EU) No 1169/2011 of the European Parliament and of the Council of 25 October 2011 on the provision of food information to consumers, amending Regulations (EC) No 1924/2006 and (EC) No 1925/2006 of the European Parliament and of the Council, and repealing Commission Directive 87/250/EEC, Council Directive 90/496/EEC, Commission Directive 1999/10/EC, Directive 2000/13/EC of the European Parliament and of the Council, Commission Directives 2002/67/EC and 2008/5/EC and Commission Regulation (EC) No 608/2004 (OJ L 304, 22.11.2011, p. 18; L 331, 18.11.2014, p. 41; L 50, 21.2.2015, p. 48; L 266, 30.9.2016, p. 7), as last amended by Regulation (EU) 2015/2283 (OJ L 327, 11.12.2015, p. 1), as amended, and the labelling of certain non-prepacked food intended for supply to
          1. final consumers within the meaning of Article 3(18) of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety (OJ L 31, 1.2.2002, p. 1), last amended by Regulation (EU) No 2019/1381 (OJ L 231, 6.9.2019, p. 1), as amended; or
          2. mass caterers within the meaning of Article 2(2) of Regulation (EU) No 1169/2011.

§ 2

Definitions

For the purposes of this Ordinance, non-prepacked food is food which is

* + - 1. offered for sale without packaging,
      2. packed on the sale’s premises at the request of the final consumer or mass caterer, or
      3. prepacked with a view to direct sale.

§ 3

Food intended for infants

The use of flavouring substances is prohibited in the production of

* + - 1. infant formulae and
      2. food intended for infants less than sixteen weeks old.

§ 4

Use of freshly generated smoke

* + 1. It shall be prohibited to produce food using freshly generated smoke if the requirements of paragraphs 2, 4 or 5 are not complied with.
    2. Only natural woods and twigs, heather and coniferous seed heads may be used in the production of freshly generated smoke, in each case also with the addition of spices.
    3. By way of derogation from paragraph 2, peat may also be used for the production of freshly generated smoke for the treatment of malt for the production
       1. of whisky or whiskey within the meaning of point 2 of Annex I to Regulation (EU) 2019/787 of the European Parliament and of the Council of 17 April 2019 on the definition, description, presentation and labelling of spirit drinks, the use of the names of spirit drinks in the presentation and labelling of other foodstuffs, the protection of geographical indications for spirit drinks, the use of ethyl alcohol and distillates of agricultural origin in alcoholic beverages, and repealing Regulation (EC) No 110/2008 (OJ L 130, 17.5.2019, p. 1; L 316I, 6.12.2019, p. 3; L 178, 20.5.2021, p. 4) and
       2. of beer.
    4. Freshly generated smoke must not be used to treat water, aqueous solutions, edible oils and other liquids, or nitrite curing salt.
    5. The average content of benzo(a)pyrene in smoked cheese or smoked products made from cheese shall not exceed one microgram per kilogram (1.0 µg/kg).

§ 5

Labelling

* + 1. Non-prepacked beverages containing up to 1.2 % by volume of alcohol and non-prepacked flavourings, each of which containing quinine or its salts, may be supplied to final consumers and mass caterers only if they are labelled with the particular ‘contains quinine’ in the manner specified in paragraphs 3 to 5. The particular under sentence 1 may be waived in the case of the products mentioned above with a list of ingredients complying with the requirements for the particulars referred to in Article 9(1)(b) in conjunction with Article 18 of Regulation (EU) No 1169/2011.
    2. Prepacked and non-prepacked liquorice products may be supplied to the final consumer and to mass caterers only with the following particulars, which shall be provided in the manner specified in paragraphs 3 to 5:
       1. if the ammonium chloride content exceeds 20 grams per kilogram but does not exceed 44.9 grams per kilogram, with the particular ‘Adult liquorice - not children’s liquorice’,
       2. if the ammonium chloride content exceeds 44.9 grams per kilogram but is less than 79.9 grams per kilogram, with the particular ‘Extra strong, adult liquorice - not children’s liquorice’, and
       3. if the ammonium chloride content exceeds 79.9 grams per kilogram, in addition to the particular provided for in point 2, the particular ‘Excessive consumption may be harmful to health, in particular for persons suffering from kidney disease’.
    3. The particulars referred to in paragraph 1, first sentence and in paragraph 2 shall be provided as follows in the case of foods within the meaning of § 2(3), insofar as they are not offered for self-service, and in the case of foods within the meaning of § 2(1) and (2):
       1. in accordance with Article 12(2) of Regulation (EU) No 1169/2011 or § 4(3) and (4) of the Food Information Implementing Ordinance of 5 July 2017 (Federal Law Gazette I p. 2272), last amended by Article 4 of the Ordinance of 18 November 2020 (Federal Law Gazette I p. 2504) and
       2. insofar as particulars pursuant to § 4(2) of the Food Information Implementation Ordinance are mandatory, in the same manner and through the identical medium as the particulars in accordance with § 4(2) of the Food Information Implementation Ordinance are to be provided.
    4. The particulars referred to in paragraph 1, first sentence and in paragraph 2 shall be provided in the case of foods within the meaning of § 2(3) if they are offered for self-service and in the case of prepacked liquorice products, in accordance with Article 12(2) of Regulation (EU) No 1169/2011.
    5. In the case of foods offered for sale by means of distance communication, the particulars referred to in paragraph 1, first sentence and in paragraph 2 shall be provided in accordance with Article 14(1) of Regulation (EU) No 1169/2011, without prejudice to paragraphs 3 and 4.
    6. Flavourings intended for sale to the final consumer which use the term ‘natural’ in their description may be placed on the market only if the use of that term complies with the requirements of Article 17(2) in conjunction with Article 16 of Regulation (EC) No 1334/2008.

§ 6

Criminal offences

* + 1. Under § 58(1)(18), paragraphs 4 to 6 of the Food and Feed Code, penalties shall be imposed on any party which wilfully or negligently
       1. uses a flavouring substance contrary to § 3; or
       2. produces food contrary to § 4(1).
    2. Under § 59(1)(21)(a) of the Food and Feed Code, penalties shall be imposed on any party who, contrary to § 5(1), first sentence or to § 5(2), supplies a product or flavouring referred to therein.
    3. Under § 58(3)(2), paragraphs 4 to 6 of the Food and Feed Code, penalties shall be imposed on any party who wilfully or negligently places a smoke flavouring or a food on the market contrary to Article 4(2) of Regulation (EC) No 2065/2003 of the European Parliament and of the Council of 10 November 2003 on smoke flavourings or intended for use in or on foods (OJ L 309, 26.11.2003, p. 1), as last amended by Regulation (EU) 2019/1381 (OJ L 231, 6.9.2019, p. 1).

§ 7

Administrative offences

* + 1. Any party who negligently commits an act referred to in § 6(1) shall be deemed to have committed an administrative offence under § 60(1)(2) of the Food and Feed Code.
    2. An administrative offence within the meaning of § 60(2)(26)(a) of the Food and Feed Code is committed by any party who, contrary to § 5(6), wilfully or negligently places a flavouring specified therein on the market.
    3. An administrative offence within the meaning of § 60(4)(2)(a) of the Food and Feed Code is committed by any party who violates Regulation (EC) No 1334/2008 of the European Parliament and of the Council of 16 December 2008 on flavourings and certain food ingredients with flavouring properties for use in and on foods and amending Council Regulation (EEC) No 1601/91, Regulations (EC) No 2232/96 and (EC) No 110/2008 and Directive 2000/13/EC (OJ L 354, 31.12.2008, p. 34; L 105, 27.4.2010, p. 115), as last amended by Regulation (EU) 2020/1681 (OJ L 379, 13.11.2020, p. 27), by wilfully or negligently placing a flavouring on the market contrary to Article 14(1), first sentence in conjunction with Articles 15 or 16 or contrary to Article 17(1).

§ 8

Transitional provisions

Liquorice goods which do not comply with the requirements of § 5(2) may, until stocks are exhausted, continue to be placed on the market even after... [insert: *date of entry into force referred to in the first sentence of Article 3 of this Regulation]*.

Article 2

Amendment to the Cheese Ordinance

The Cheese Ordinance, in the version published on 14 April 1986 (Federal Law Gazette I p. 412), as last amended by Article 18 of the Ordinance of 5 July 2017 (Federal Law Gazette I p. 2272), is amended as follows:

* + - 1. § 3 is amended as follows:
         1. Paragraph 1 is amended as follows:

n the clause before point 1, the words ‘and subject to § 23’ are deleted.

In point 1(e), the semicolon at the end is replaced by a comma.

Point 2 is amended as follows:

In point (e), the semicolon at the end is replaced by a comma.

The following letter f is added:

* + - * 1. ‘ freshly generated smoke within the meaning of § 4(2) of the Flavourings Implementation Ordinance;’.
        2. In paragraph 2 and paragraph 2a, first sentence, respectively the words ‘and subject to § 23’ are deleted.
      1. In § 4(1), the words ‘and subject to § 23’ are deleted.
      2. The sixth section is repealed.
      3. § 30 is amended as follows:
         1. Paragraph 3 is repealed.
         2. In Paragraph 5, the word ‘until’ replaced by the word ‘or’.

Article 3

Entry into force, abrogation

This Ordinance shall enter into force on the day following its promulgation. At the same time, the Flavourings Ordinance, in the version published on 2 May 2006 (Federal Law Gazette I p. 1127), as last amended by Article 3 of the Ordinance of 5 July 2017 (Federal Law Gazette I p. 2272) shall expire.

The Bundesrat has granted its approval.

Bonn, [date]

The Federal Minister for Nutrition and Agriculture

Julia Klöckner

1. The obligations arising from Directive (EU) 2015/1535 of the European Parliament and of the Council of 9 September 2015 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services (OJ L 241, 17.9.2015, p. 1) have been met. [↑](#footnote-ref-2)