Delegated legislation is produced in South Africa today by:

* The State President;
* The Ministers of State;
* Local authorities, including regulations made by the provincial administrators;
* Rule making authorities - e.g. rules of court made by judges;
* Public utility corporations;
* Government departments, who may issue announcements stating the official point of view on doubtful points in statutes, or announcing concessions that will be made in the publication of statutes to individual cases - e.g. statements issued by the Income Tax authorities.

This practice is known as administrative quasi-legislation.

Delegated legislation is necessary because of the limited time available to parliament to embark on extensive and detailed discussion of the technicalities involved, amongst other reasons.

"The subject matter of modern legislation is very often of a technical nature. Apart from the broad principals involved, technical matters are difficult to include in a Bill, since they cannot be effectively discussed in parliament"
Another reason is the need for flexibility. "The method of delegated legislation permits the rapid utilization of experience, and enables the results of consultation with interests affected by the operation of new Acts to be translated into practice." * As far as we are concerned, this is one of the most important reasons for regulations. We represent affected interests which must be consulted.

Other reasons mentioned by Cockram are emergency conditions and the importance of secrecy.

It is obvious that delegated legislation, such as regulations, must not alter the law beyond the immediate scope and object of the statute that enabled its proclamation in the first place.

3.3 THE SOCIAL RESPONSIBILITY OF THE LAW lies therein that it should objectively set the rules through the process of representation, by which all subordinates can live, taking all interests into account - not just some.

"It is the duty of the courts to hold this scale evenly between the different classes of the community and to declare invalid any practice which, in the absence of the authority of an Act of Parliament, results in partial and equal treatment to a substantial degree between different sections of the community." *

3.4 DYNAMIC FACTORS OF THE LAW. The law is as alive as the people who live by it, and must adopt continuously to provide for the changing society, attitudes and technology. It must also always be enforcable.
It has been said that adultery was once punishable by law, but today it is a national sport. Similarly it seems as if rugby was a national sport and today the playing of it, is nearly punishable by law. If you don’t believe me, watch your TV or ask Burger Geldenhuys.

3.5 To find the law’s RELEVANCE TO THE FOOD INDUSTRY, is not difficult:

* THE PURPOSE of food legislation can be seen in the island community and in the title of the Food Stuffs, Cosmetics and Disinfectants Act which reads “to control the sale, manufacture and importation of Food Stuffs, Cosmetics and Disinfectants; and to provide for incidental matters”.

You may agree with me that the prime purpose of this legislation is to protect the consumer and to ensure that the consumer is not misled. It also provides for a set of rules by which all food and other manufacturers must play.

* The food legislation also makes use of all the usual SOURCES. We find a certain amount of common law, case law and also legislation.

* It has a SOCIAL RESPONSIBILITY – it must cater for the whole population including all races, ethnic groups, cultural groups, income groups and people of a different physical or mental make-up such as vegetarians.
The smallest of interest groups cannot be accommodated. If I and my neighbours on our street decide to form a special interest group with the purpose of having Soya products banned from all food products, the legislative process will not be able to accommodate us.

* Food legislation is DYNAMIC - It must keep with the momentous advances in technology. As an example, the invention of plastic packaging necessitated an adaption in food legislation. Similarly new additives and foodstuffs such as Kiwi fruit demand consideration in legislation.

The changing society on its own with moving emphasis from good eating to healthy living must also be reflected in legislation. Finally, it has been said that the law must always be enforcable. New elements in food, advances in technology and science and sucessful loophole seekers necessitate the adaption of the law.
4. Evaluation of existing legislation according to the above factors

Let us now briefly measure existing legislation against the foregoing:

* PURPOSE: our food legislation has an identifiable purpose, being to protect the consumer and ensure that the consumer is not misled.

* SOURCES: we make use of all three sources mentioned above. Our common law dictates the composition or content of a variety of products, e.g. 'lewer in netvet': the legislature has not designed or devised the recipe for 'lewer in netvet'.

However, should a butcher sell this traditional dish without the ingredients that have through the years and through tradition become a part and parcel of it, the consumer would have a legitimate complaint against the butcher. Yet, we all know that 'lewer in netvet' is not a dish of which the ingredients are prescribed by regulation.

* CASE LAW has also had its influence. I am not quoting a specific example but suffice it to say that had non-meat protein in the form of soya been continued to be treated as an "illegal" ingredient, higher courts than the magistrate's court would have had to dismiss charges brought forward as a result hereof.

* SOCIAL RESPONSIBILITY: here we have a problem. Our legislation does not seem to cater for all
groups. I have not found the same protection for the consumers of German sausages, Kosher, Halaal foods or vegetarians as I have found for the eaters of boerewors. Furthermore, it does not seem to make any provision for the requirements of the lower income groups or illiterates. Other sections of the community may be mentioned in a similar way.

* DYNAMIC: No. The present process of revising the regulations proves that the existing regulations do not make provision for a host of new products, additives or tendencies. There is also a problem with the existing legislation being enforcable. I have been led to believe, by my more knowledgable food science colleagues that the basic histological test to establish meat content is not as successful as it should be, since the introduction of non-meat proteins.

4.2 A CLOSER LOOK

Let us take a closer at the legislation in the specific context of non-meat protein - this is the most contentious basic ingredient of meat products. Other ingredients such as milk have, through the years, been more closely defined and agreed upon.

* The existing legislation does not make any reference to non-meat protein. There is therefore a vacuum in the legislation which leads to uncertainty. Non-meat protein is not prohibited, nor is it controlled.

* It is interesting to note that Cockram* mentions that an administrative authority cannot exercise its discretion if it binds itself in advance by a fixed rule. In a Transvaal Supreme Court case quoted by Cockram*, the court observed that "a person who has a statutory duty to exercise
his discretion in matters affecting the interests of others, may use as a guide, principles of policy which assist him in attaining uniformity where uniformity is desirable .... he must not fetter his discretion with inflexible, preconceived ideas"*

* As has already been set out, there is a problem with the enforcability of this specific section of our legislation.

* Another problem is that our present legislation has not kept up to date. Non-meat protein has been used extensively for some 20 years, yet legislation has not been adapted to make provision for this.

* Technology has caused the necessity to adapt our regulations to make provision for new additives and the use of known ingredients in new applications. A good example hereof is the use of soya flour in baking.

We all know that the mass production of food products necessitates the use of ingredients that are not in the traditional recipes for reasons of a longer shelf life or the handling of the product in the production process. This is a de facto situation of which the legislature should take cognisance.

5 WHAT IS THE ROLE OF THE INDUSTRY IN THE LEGISLATIVE PROCESS?

5.1 Food legislation is a highly technical field, and today firstly the domain of food scientists (I assume that that is the reason why nobody can understand or agree with it - it is an exact science!)

5.2 I would submit that we should, as an industry, prepare ourselves
with a basic knowledge of the process and purpose of the legislation when we sit down as food scientists to define and record the latest set of rules to live by.

5.3 We must not hesitate to use the skill available by other experts, specifically lawyers, when making law.

5.4 Don't forget that we must be honest and responsible for our own eventual benefit - we must make sure it is socially justifiable and enforceable.

5.5 If armed with the knowledge, the social conscience and expertise of the subject matter, I cannot see how the industry can be ignored by an objective legislature.

6. A SHOT IN THE DARK

When taking a general view of the requirements of our legislation and giving special consideration to the wide spectrum it must cover in the society, I would venture the following possible solution:

6.1 A set of general standards prescribing health, nutrition and hygiene applicable to all food (or meat) products to assure the consumer that he can safely eat any food product which he can legally buy.

6.2 Thereafter provide specific rules of composition applicable to products which make extraordinary claims such as boerewors, salami, vegetarian dishes, Halal and others. These are traditional or special products requiring special treatment. They are also directed at a specific target group in the society. These can and should be enumerated and defined.
7. **THE KISS PRINCIPLE**

Make it easy on ourselves, the authorities and the consumer: Do not over-regulate. Keep the regulations concise and provide for the alternatives by labelling.

Let the consumer decide at the point of purchase according to the price and the label what he wishes to consume.

I believe that life could be easier for us all and all else who may be concerned if we can work together on things that effect us together.

I thank you for your time and attention.

CORRIE NEL.
21 05 86.

*All references to Administrative Law, G M Cockram, Jutas 1976.*
EVALUATION FORM FOR "LECTURE-DEMONSTRATIONS" ON:

THE BASIC BEHAVIOUR OF
MEAT AND NON-PROTEINS
IN MEAT PRODUCT SYSTEMS

BY:
1 MR ROBIN LARMUTH, PURINA PROTEIN EUROPE-COLUMBIT
2 MR RODNEY BAXTER, S A OIL MILLS
3 MR MIKE JENKIN, KANHYM
4 MR CORRIE NEL, FEDFOOD

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INCLUDING:
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