



Amendments to the dairy official assurances framework

**Proposed changes to the Animal Products Notice:
Official Assurances Specifications – Dairy Material and
Dairy Products**

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Prepared for the Dairy Industry
by the Food Assurance Team, Ministry for Primary Industries

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1 Submission

The Ministry for Primary Industries (MPI) proposes to strengthen the official assurances framework for dairy material and dairy products by making a number of changes to the Animal Products Notice: Official Assurances Specifications – Dairy Material and Dairy Products, as discussed in this document.

You are invited to have your say on the proposed changes, which are as explained in this paper and specified in the draft notice.

Consultation closes on Friday 18 March 2016 at 5:00 pm.

1.1 HOW TO HAVE YOUR SAY

You may have your say by answering the questions in boxes throughout this discussion document or comment on any part of the proposals.

You may also comment on the attached draft notice. Consequential amendments are highlighted in yellow and inconsequential amendments are highlighted in blue.

MPI prefers to get submissions electronically. Email your submission to: food.assurance@mpi.govt.nz.

While we prefer email, you can send your submission by post to:

Dairy OAS Amendments

MPI Food Assurance Team (Level 12, Pastoral House, 25 The Terrace,
Wellington)

PO Box 2526

Wellington.

Make sure you include in your submission:

- the title of the discussion document;
- your name and title (if applicable);
- your organisation's name (if applicable); and
- your address.

The following points may be of assistance in preparing comments:

- where possible, comment should be specific to a particular section in the document. All major sections are numbered and these numbers should be used to link comments to the document;
- where possible, reasons and data to support comments may be provided;
- the use of examples to illustrate particular points is encouraged; and
- as a number of copies may be made of your comments, please use good quality type, or make sure the comments are clearly hand-written in black or blue ink.

1.2 THE OFFICIAL INFORMATION ACT 1982 (THE OIA)

Everyone has the right to request information held by government organisations, known as “official information”. Under the OIA, information is to be made available to requesters unless there are good or conclusive grounds under the Act for withholding it.

If you are submitting on this discussion document, you may wish to indicate any grounds for withholding information contained in your submission. Reasons for withholding information could include that information is commercially sensitive or that the submitters wish personal information such as names or contact details to be withheld. MPI will consider such grounds when deciding whether or not to release information.

Any decision to withhold information requested under the OIA may be reviewed by the Ombudsman.

For more information please visit <http://www.ombudsman.parliament.nz/resources-and-publications/guides/official-information-legislation-guides>

1.3 WHAT HAPPENS NEXT

A panel of MPI officials will consider all submissions at the expiry of the consultation period and make a recommendation to the relevant decision maker about the final amendments to be adopted and specified in the notice. A paper outlining the analysis of all submissions received will be made available to all submitters.

The new notice is expected to be in place in early April 2016.

Key dates	Action
Friday 19 February 2016	Consultation starts
Friday 18 March 2016	Consultation closes (4 weeks consultation)
21 – 25 March 2016	Consideration of submissions (1 week)
28 – 31 March 2016	Final review of notice (4 days)
Early April 2016	Notice is issued and industry is notified

2 Introduction

2.1 OFFICIAL ASSURANCES

MPI proposes to strengthen the official assurances specifications for dairy material and dairy products by amending the Animal Products Notice: Official Assurances Specifications - Dairy Material and Dairy Products (the dairy OAS), which was issued on 27 August 2014. The dairy OAS specifies the requirements for the issue and control of official assurances.

Official assurances in general

The Animal Products Act 1999 (the Act) empowers the Director-General of MPI, or a person authorised by the Director-General, to issue an official assurance in respect of animal material or animal products.

Where official assurances are required by importing countries, every consignment of New Zealand dairy material and dairy products exported to those countries must be accompanied by an official assurance issued by MPI in order to gain entry.

An official assurance is a general statement to a foreign government attesting that the animal material or animal products to which the assurance relates are fit for purpose, meet New Zealand domestic requirements and any additional overseas market access requirements negotiated between the New Zealand Government and that foreign government. MPI issues official assurances on behalf of the New Zealand Government in the form of export certificates.

Official assurances for dairy material and dairy products

The dairy OAS specifies the requirements and procedures for the issue and control of official assurances for dairy material and dairy products. It specifies, among other things, the general responsibilities of RMP operators and exporters in ensuring product eligibility, the form and manner of application for official assurances, traceability and verification requirements, and requirements about the issue and re-issue of official assurances.

You can view the existing dairy OAS on MPI's food safety website: <http://www.foodsafety.govt.nz/elibrary/industry/ap-notice-official-assurances-specifications-dairy-material-dairy-products.pdf>

Official assurances and the Animal Products Electronic Certification System (AP E-cert)

Official assurances certification is done through AP E-cert. AP E-cert serves a number of important functions, which include being:

- a medium for exporters to apply for official assurances;
- a medium for MPI to issue official assurances;
- a medium for RMP operators to record information demonstrating compliance with eligibility and traceability requirements for animal product exports; and

- a medium for MPI to exchange export data with certain importing countries.

AP E-cert is a fundamental part of the official assurances framework and any changes to the dairy official assurances framework would generally affect it. The changes proposed in this document will affect how dairy RMP operators and exporters use AP-cert.

3 Background

The changes proposed in this document relate primarily to traceability, with the objective of mandating full traceability for all dairy material and dairy products regardless of intended market. Currently, full traceability is specified under Part 4 of the dairy OAS and it only applies to dairy material and dairy products intended for export to a handful of countries as described later in this document.

Full traceability means that the movement of every consignment of dairy material and dairy products between all RMP premises within New Zealand is recorded in AP E-cert. This is achieved by requiring the operator of premises sending the products (the consignor) to raise a transfer document in AP E-cert to the operator of the receiving premises (the consignee) for every consignment of dairy material and dairy products they transfer. The transfer document contains, among other information, the product description, consignor and consignee details, product eligibility status and intended markets.

There are a number of other amendments being proposed, which are intended to either provide some flexibility to dairy RMP operators or to provide clarification and simplicity in a number of areas. The table in section 4 below provides a summary of the proposed changes.

4 Proposals

4.1 SUMMARY OF PROPOSED CHANGES

Summary of MPI's proposals			
	Proposal	Amended parts of the dairy OAS	Affected parties
1	Mandating full traceability for all dairy material and dairy products intended for export with an official assurance, regardless of intended market. Consequential change - Changing the terminology from 'eligibility documentation' to 'transfer documents'.	Parts 3 and 4.	All exporters of dairy material and dairy products requiring official assurances and RMP operators who process (include storage) such material and products.
2	Allowing some flexibility on further processing and dispatched of dairy	Clause 3.8	All RMP operators who process (include storage) dairy material and dairy

	material and dairy products before the associated transfer document is available		products for export to countries for which official assurances are required.
3	Removing the 48 hour rule	Clause 3.8	All RMP operators who process (include storage) dairy material and dairy products for export to countries for which official assurances are required.
4	Incorporating the Help File by reference	Clause 1.2	All exporters who export and RMP operators who process (include storage) dairy material and dairy products for export to countries for which official assurances are required.
5	Clarifying the rule around transfers of dairy material and dairy products to airline holding facilities	Clause 3.7.2	NA - inconsequential
6	Clarifying the rule around transfer of dairy material and dairy products to freight forwarding coldstores or drystores	Clause 3.6(3)	NA – inconsequential
7	Restructuring the requirements relating to the duties of operators and exporters for clarity and simplicity purposes	Part 2	NA - inconsequential
8	Restructuring the requirements relating to business continuity plan for clarity and simplicity purposes	Part 12	NA - inconsequential
9	Restructuring the requirements relating to the process of obtaining an official assurance for clarity and simplicity purposes	Part 6	NA - inconsequential

4.2 PROPOSED CHANGES

4.2.1 Full traceability

Problem definition

Currently, full traceability is only required for products intended for export to countries requiring premises listing and where the Director-General considers that sensitivity surrounding those countries warrants full traceability. These countries are China, member States of the European Union and members States of the Eurasian Economic Union (formerly Customs Union). Products intended for export to all other countries for which official assurances are required do not require full traceability, even though RMP operators may voluntarily choose to impose full traceability for all their products regardless of export destination.

Inadequate traceability is one of the significant factors contributing to a history of unsatisfactory audits by overseas authorities of the New Zealand dairy export assurance system. MPI has, on many occasions in the past, communicated to dairy stakeholders the need to improve traceability.

There is also an inconsistency in the standard of traceability that MPI imposes on different animal product sectors. Full traceability is mandated for the meat and seafood sectors and that system has passed past audits by overseas authorities. This strengthens the case for imposing a similar system for the dairy sector given its audit history.

Additionally, following the whey protein concentrate incident, the *Government Inquiry Report on New Zealand's Dairy Food Safety Regulatory System* recommended improved traceability to protect New Zealand's reputation and to ensure that the ministry is aware of specific exports in the event of a recall. The Government has indicated that it intended to implement all the recommendations from the Inquiry Report.

Proposal (refer to Parts 3 and 4 of the draft notice)

MPI proposes to mandate full traceability for all dairy material and dairy products intended for export with an official assurance, regardless of intended market. This means that the distinction between partial and full traceability under the Dairy OAS would be removed and replaced with new provisions mandating full traceability as the default position. As a result, Parts 3 and 4 of the current dairy OAS have been removed and replaced with Parts 3 and 4 of the draft notice.

The draft notice looks different as the terminology, wording and structure have been changed. In terms of terminology, the word 'transfer document' has replaced 'eligibility documentation'. This is to ensure that the same terminology is used across all animal product sectors.

There are two forms of transfer documents recognised under the Notice, which are eligibility declarations (EDecs), eligibility documents (EDs) in electronic form. Provisions relating to EDecs and EDs in paper form have been separated into a standalone part (Part 5). Also, it is now clarified (under clause 3.4(3) of the draft notice) that paper transfer documents cannot be used unless required as part of an operator's business continuity plan when E-cert is not available, or by a country-specific OMAR.

Full traceability better positions the dairy sector to pass future audits and meet future market demands.

MPI recognises the need for a transition period to allow the industry, as well as certain teams within MPI, to update their systems and processes to enable effective implementation. Accordingly, a 'transitional and savings' provision (clause 1.3 of the draft notice) has been added. MPI proposes a transitional period of **4 months**. MPI considers this to be appropriate because:

- given the size of the markets that are already subject to full traceability (China, EU and EEU), exporters and RMP operators should already be familiar with the traceability system, and most products would already be subject to full traceability;
- operating a single traceability system simplifies the process for exporters, RMP operators and verifiers alike; and
- MPI understands, from previous MPI-industry meetings, that a number of major companies are already defaulting to full traceability.

Question for submitters:

1. Do you support this proposal for mandating full traceability? (Please provide a sentence or two explaining your support, objection or any comments or suggestions you wish to make).

4.2.2 Flexibility on further dispatched of dairy material and dairy products before the associated transfer document is available

Problem definition

A number of dairy businesses' representatives have, in the past, requested MPI to consider relaxing the existing rule, which prohibits operators receiving dairy material and dairy products from further dispatching such material and products before the associated transfer documents become available to them in E-cert. They may further process the products but not further dispatch them. MPI has reconsidered its position and agreed to allow some flexibility as proposed below. Allowing this flexibility is primarily influenced by the understanding that products that are further processed would, in most cases, require transfer to another premises for storage. The prohibition of further product dispatch before the associated transfer document is available will remain as the general rule whereas the flexibility being proposed will be an exception.

Proposal (refer to clause 3.8 of the draft notice)

MPI proposes to allow RMP operators receiving dairy material and dairy products (Operator B) to further dispatch such material and products to another premises (Operator C) before the associated incoming transfer documents from the original consignor (Operator A) are available in E-cert to Operator B. However, any such further transfer must strictly be for storage purposes only i.e. Operator C **cannot** undertake any form of processing on such material and products except storage.

Operator B would still be required to generate a new transfer document in E-cert for the further transfer to Operator C. The new transfer document would be generated without the source document (i.e. transfer document from Operator A) and it must be approved before the transfer can commence. It is worth noting that the flexibility being allowed is for the further transfer of products without the incoming transfer document as opposed to a further transfer without any transfer document altogether.

This proposal gives operators the flexibility to move products to another premises for storage during weekends when the availability of their authorised E-cert users may be limited. Where RMP operators wish to further transfer multiple incoming consignments, this proposal allows them to create a new transfer document consolidating those consignments and transfer them without waiting for the incoming source transfer documents.

Question for submitters:

2. Do you support this proposal to allow flexibility on further dispatched of dairy material and dairy products before the associated transfer document is available? (Please provide a sentence or two explaining your support, objection or any comments or suggestions you wish to make).

4.2.3 Removing the '48 hour rule'

A number of dairy businesses' representatives have, in the past, requested MPI to consider removing the existing "48 hour rule" as stipulated under clause 4.3 of the current Dairy OAS. The rule requires all RMP operators who transfer dairy material and dairy products to raise the associated transfer documents in E-cert to consignee operators within 48 hours of the material's or products' departure. MPI has reconsidered its position and agreed to remove this rule. MPI believes that this will not weaken our export assurance system, especially given that there are other checks and balances currently in place; for example, subject to the proposal in sub section 4.2.2 above, it is still a general requirement that consignees cannot further dispatch any consignments they receive without the associated incoming transfer documents being raised in E-cert.

Removing the 48 hour rule will give RMP operators the flexibility to work out between them and their business partners, as part of their business arrangements, when the transfer documents will be raised in E-cert. In making their arrangements, operators will have to be aware that products received by the consignee cannot be transferred any further, unless further transfer is carried out in accordance with the procedure proposed under sub section 4.2.2 above.

Question for submitters:

3. Do you support this proposal to remove the '48 hour rule'? (Please provide a sentence or two explaining your support, objection or any comments or suggestions you wish to make).

4.2.4 Incorporating the Help File by reference

Problem definition

The Help File contains instructions on how to raise and submit transfer documents and export certificate requests correctly in E-cert. Additionally, the Help File also prescribes information content for certain fields within a transfer document and export certificate request form. The Help File is fundamental in ensuring that the correct information is provided in the prescribed manner for traceability and certification purposes. Currently, the document is not legally enforceable although any failure to comply with it carries certain operational consequences. In the last round of amendment to the Dairy OAS, MPI had proposed to incorporate the Help File by reference to give it legal effect but the proposal was later withdrawn as the document was still being amended and was yet to be finalised. The document has since been finalised and it is up to date.

Proposal (refer to clause 1.2 of the draft notice)

MPI proposes to incorporate the Help File into the Dairy OAS by reference to give it legal effect. It is important to give the document legal effect given its fundamental role in ensuring that correct and accurate information is supplied for traceability and

certification purposes. Incorporating the Help File by reference should not have any operational consequence on operators and exporters as they are already using it as a condition for using E-cert. Additionally, the Help File is a part of the official assurances specifications notice for non-dairy animal material and animal products so incorporating it into the Notice by reference will ensure consistency. A new incorporation by reference clause has been inserted. For rules about incorporating material by reference into animal product notices, please refer to section 168 of the Act.

Question for submitters:

4. Do you support this proposal to incorporate the Help File into the Notice by reference? (Please provide a sentence or two explaining your support, objection or any comments or suggestions you wish to make).

4.2.5 Other minor changes

Transfer of dairy material and dairy products to airline holding facilities (refer to clause 3.7.2 of the draft notice).

MPI proposes to include a new provision to clarify that transfer of consignments to airline holding facilities are not required to be associated with transfer documents. Under the Animal Products (Exemptions and Inclusions) Order 2000, operators of airline holding facilities are exempt from operating under an RMP. That exemption is specifically for facilities within the confines of the airport and adjacent to the tarmac, which temporary hold goods for export by air during aircraft holding and unloading procedures.

Traceability within our export assurance system is RMP-based. This proposal will ensure that traceability requirements are not inadvertently imposed on premises which have been exempt by regulations issued under the Act from the requirement to operate under an RMP.

Transfer of dairy material and dairy products to freight forwarding coldstores or drystores (refer to clause 3.6(3) of the draft notice).

MPI proposes to include a new provision to account for situations where products are packed for export at the final processing premises, and sent directly to a freight forwarding coldstore or drystore for dispatch on a flight within 12 hours of arrival at that coldstore or drystore. The new provision will allow the operator of the final processing premises to raise the associated transfer documents straight to the exporter instead of the freight forwarder. However, the freight forwarder will be given third party access. This proposal is also currently mandated for other animal product sectors and is currently allowed by MPI as an accepted business practice for the dairy sector. Therefore, mandating the requirements will provide consistency with other sectors, provide certainty and clarity, without imposing any additional burden on operators.

Simplifying the requirements relating to the process of obtaining an official assurance (refer to Part 6 of the draft notice)

Requirements relating to obtaining an official assurance have been separated into 3 clauses to provide clarity. This change is inconsequential.

Simplifying the requirements relating to business continuity plan (refer to Part 12 of the draft notice)

Currently, provisions relating to business continuity plan are contained in two separate parts (Parts 12 and 13 of the current Dairy OAS) and are mixed with requirements relating to paper transfer documents.

MPI has now separate requirements relating to paper transfer documents under a separate part to provide clarity. Requirements relating to business continuity plan are incorporated into a single part for simplicity and clarity.

These changes are structural only and are inconsequential.

Question for submitters:

5. Do you have any comments or suggestions about the minor changes explained above).

4.3 COMMENTING ON THE DRAFT NOTICE

If you wish to comment on a particular provision or provisions in the draft notice, please clearly identify the exact clause(s) in your comments.