

Explanatory Statement

1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 2 of Part 3 of the FSANZ Act specifies that the Authority may prepare a proposal for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering a proposal for the development or variation of food regulatory measures.

The Authority prepared P1022 to amend the Code to include additional requirements for the safe production of raw milk cheese. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft variation.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation¹, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the standard or draft variation of a standard.

Section 94 of the FSANZ Act specifies that a standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but is not subject to parliamentary disallowance or sunseting under the *Legislative Instruments Act 2003*.

2. Purpose

The Authority has approved draft amendments to Standards 4.2.4 and 1.6.1 to include requirements in the Code for raw milk cheese. Amendments to Standard 4.2.4 specify additional through-chain measures to support the safe production of raw milk cheese where processing ensures no net increase of pathogen levels and the intrinsic characteristics of the raw milk product will not support pathogen growth.

Standard 4.2.4A is proposed to be repealed as requirements for raw milk cheese are now covered by the draft variations to Standard 4.2.4 and assessment advice for imports referred to the Department of Agriculture.

Standard 1.6.1 is amended to replace existing limits for “all raw milk cheese” and “raw milk unripened cheese” with limits for *Salmonella* and *Staphylococcal* enterotoxin in “raw milk cheese”. Limits for “butter made from unpasteurised milk” are deleted as this food is not intended to be covered by the amendments to Standard 4.2.4 to apply to raw milk cheese. Limits for “raw milk unripened cheeses” are also deleted as this food would not meet the requirements for a raw milk cheese under Standard 4.2.4.

3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference.

¹ convening as the Australia and New Zealand Food Regulation Ministerial Council

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1022 included two rounds of public comment following an assessment and the preparation of a draft Standard and associated reports. The 1st Call for Submissions report was released for public comment from 8 November 2013 to 10 January 2014. Submissions on the draft amendments to Standards 4.2.4 and 1.6.1 were called for on 10 July 2014 for a six-week consultation period.

A standards development committee (SDC) was established with representatives from the industry sector, the relevant State and Territory government agencies and consumer organisations to provide ongoing advice to the Authority throughout the standard development process. The SDC contributed a broad spectrum of knowledge and expertise covering industry, government, research and consumers

A Regulation Impact Statement was not required because the proposed variations to Standard 4.2.4 are likely to have only a minor impact on business and individuals.

5. Statement of compatibility with human rights

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

6. Variation

6.1 Item [1]

Item 1.1 omits existing limits for "butter made from unpasteurised milk and/or unpasteurised dairy products".

Item 1.2 omits existing limits for "all raw milk cheese (cheese made from milk not pasteurised or thermised" and "raw milk unripened cheeses (moisture content >50% with pH > 5.0)" and inserts limits for *Salmonella* and Staphylococcal enterotoxins for "raw milk cheese".

6.2 Item [2]

Item 2 amends Standard 4.2.4.

Item 2.1 includes definitions in subclause 1(2) for "diseased animal", "documented alternative", "infection", "milk for raw milk cheese", "raw milk", "raw milk herd" and "raw milk cheese". These definitions are required to apply the additional requirements under Division 5.

Item 2.2 changes the heading of Division 2 to "Division 2 – General dairy primary production requirements".

Item 2.3 changes the heading of Division 3 to "Division 3 – General dairy collection and transportation".

Item 2.4 changes the heading of Division 4 to "Division 4 – General dairy processing". The addition to the heading of the word "general" under items 1.2, 1.3 and 1.4 is to distinguish between primary production, transport and processing requirements raw milk cheese under Division 5 from those for pasteurised or otherwise heat treated cheese.

Item 2.5 includes an additional subclause under clause 12 to state that clauses 15 and 16 of the Standard do not apply to milk for raw milk cheese. This reflects that that milk must

comply with the requirements of Division 5.

Item 2.6 replaces the reference in subparagraph 16(3)(b) to Standard 4.2.4A with a reference to Division 5. This reflects the repeal of Standard 4.2.4A under item [2].

Item 2.7 inserts an additional division in the Standard, Division 5, for raw milk cheese.

Division 5 – Additional requirements for raw milk cheese includes four subdivisions:

Subdivision 1 – General

Subdivision 2 – Primary production of milk for raw milk cheese

Subdivision 3 – Transport of milk for raw milk cheese

Subdivision 4 – Processing of milk for raw milk cheese

Subdivision 1 comprises clause 17. Clause 17 applies the requirements of Divisions 1 to 4 to the production, transport and processing of raw milk cheese. This provides the baseline set of requirements to which the measures under Division 5 are additional.

Subdivision 2 comprises clauses 18 to 26.

Clause 18 specifies that a dairy primary production business that produces milk for raw milk cheese that must comply with each requirement of Subdivision 2.

Clause 19 requires that the documented food safety program required by clause 3 of the Standard must include control measures that ensure each requirement imposed by Subdivision 2 is met.

Clause 20 provides additional requirements relating to diseased animals. Subclause 20(1) requires that milk for raw milk cheese not be sourced from a diseased animal. Subclauses 20(2) and 20(3) require that diseased animals be immediately removed and kept separated from other animals from which milk for raw milk cheese is sourced.

Clause 21 requires that animals from which milk for raw milk cheese is sourced be subject to an identification system that ensures individual animals are uniquely identifiable and traceable.

Clause 22 provides additional requirements in relation to feed and water use.

Clause 23 requires the primary production of milk for raw milk cheese to comply with the requirements of Division 4 of Standard 3.2.2 in relation to health and hygiene requirements.

Clause 24 provides a teat washing and drying requirement in relation to animals to be milked.

Clause 25 provides prescriptive cooling and storage requirements for milk for raw milk cheese. Subclause 25(1) provides a requirement to cool milk to a prescribed temperature within a prescribed timeframe. Subclause 25(2) provides that this requirement does not apply if a documented alternative is used. Subclause 25(3) provides a temperature requirement for milk storage. Subclause 25(4) provides a requirement to ensure raw milk cheese is kept separate from milk for other dairy products.

Clause 26 provides a requirement that only milk produced in accordance with Division 5 can be supplied for processing of raw milk cheese.

Subdivision 3 comprises clauses 27 to 30.

Clause 27 specifies that dairy transport businesses that transport milk for raw milk cheese must comply with the requirements of Subdivision 3.

Clause 28 requires that the documented food safety program required by clause 7 of the Standard must include control measures that ensure each requirement imposed by Subdivision 3 is met.

Clause 29 provides additional temperature control requirements for the transport of milk for raw milk cheese. Subclause 29(1) specifies temperature time requirements. Subclause 29(2) provides that this requirement does not apply if a documented alternative is used.

Clause 30 requires that milk for raw milk cheese must be kept separate from other milk during transport.

Subdivision 4 comprises clauses 31 to 35.

Clause 31 specifies that dairy processing businesses that process milk for raw milk cheese must comply with the requirements of Subdivision 4.

Clause 32 requires that the documented food safety program required by clause 13 of the Standard must include control measures that ensure each requirement imposed by Subdivision 4 is met. Clause 32 also requires that the documented food safety program address each of the processing factors specified in paragraph 32(b).

Clause 33 provides additional requirements in relation to the temperature and time limits for processing of milk for raw milk cheese. Subclause 33(1) requires that milk for raw milk cheese be kept below a prescribed maximum temperature from its collection by the processor and the commencement of its processing. Subclause 33(2) provides that this requirement does not apply if a documented alternative is used. Subclause 33(3) requires that the processing of milk for raw milk cheese commence within 24 hours of that milk being milked. Subclause 33(4) provides that this requirement does not apply if a documented alternative is used. Subclause 33(5) requires that milk for raw milk cheese be kept separate from milk for other dairy products.

Clause 34 provides additional requirements in relation to microbiological monitoring and processing outcomes. Subclause 34(1) requires the dairy processing business to monitor the suitability of milk for raw milk cheese prior to the commencement of its processing. Subclauses 34(2) and 34(3) requires that the raw milk cheese produced meet prescribed outcomes in relation to pathogenic microorganisms.

Clause 35 requires that only milk produced in accordance with Division 5 can be used for processing of raw milk cheese.

Item 2.8 updates the Table of Provisions.

6.3 *Item [3]*

Item 3 repeals Standard 4.2.4A.