

Standard 4.2.7 – Primary Production and Processing Standard for Berries

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 Proposal P1052 – Primary Production and Processing requirements for Horticulture (berries, leafy vegetables and melons). The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a number of draft measures including Standard 4.2.7 – *Primary Production and Processing Standard for Berries*.

2. Standard is a legislative instrument

The approved draft Standard is a legislative instrument for the purposes of the *Legislation Act 2003* (see section 94 of the FSANZ Act) and is publicly available on the Federal Register of Legislation (www.legislation.gov.au).

This instrument is not subject to the disallowance or sunset provisions of the *Legislation Act 2003*. Subsections 44(1) and 54(1) of that Act provide that a legislative instrument is not disallowable or subject to sunset if the enabling legislation for the instrument (in this case, the FSANZ Act): (a) facilitates the establishment or operation of an intergovernmental scheme involving the Commonwealth and one or more States; and (b) authorises the instrument to be made for the purposes of the scheme. Regulation 11 of the *Legislation (Exemptions and other Matters) Regulation 2015* also exempts from sunset legislative instruments a primary purpose of which is to give effect to an international obligation of Australia.

The FSANZ Act gives effect to an intergovernmental agreement (the Food Regulation Agreement) and facilitates the establishment or operation of an intergovernmental scheme (national uniform food regulation). That Act also gives effect to Australia's obligations under an international agreement between Australia and New Zealand. For these purposes, the Act establishes the Authority to develop food standards for consideration and endorsement by the Food Ministers Meeting (FMM). The FMM is established under the Food Regulation Agreement and the international agreement between Australia and New Zealand, and consists of New Zealand, Commonwealth and State/Territory members. If endorsed by the FMM, the food standards on gazettal and registration are incorporated into and become part of Commonwealth, State and Territory and New Zealand food laws. These standards or instruments are then administered, applied and enforced by these jurisdictions' regulators as part of those food laws.

3. Purpose

The Authority approved the draft Standard to minimise food safety risks associated with the primary production and processing of fresh berries in Australia.

Berries contaminated by pathogenic microorganisms present an unacceptable health risk to consumers. In recent years, outbreaks of foodborne illness have been associated with the consumption of berries both in Australia and overseas.

The food regulatory measures in the approved draft Standard, along with existing measures in the Code, address the public health and safety problem identified with berries in the most cost-effective manner.

4. Documents incorporated by reference

The approved draft Standard does not incorporate any documents by reference.

5. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1052 included two rounds of public consultation following an assessment, targeted communication with key stakeholders, and the preparation of three draft standards and associated assessment summaries.

The first call for submissions was held between February and March 2020. Targeted consultation was undertaken in December 2020–January 2021. The second call for submissions was held between November 2021 and February 2022.

A Standards Development Advisory Group was established with representatives from the industry sector and State, Territory and federal government agencies to provide ongoing advice to FSANZ throughout the standard development process. A Horticulture Implementation Working Group comprised of State, Territory and federal government regulators was established by the Implementation Sub-committee for Food Regulation to work with FSANZ and ensure a nationally consistent approach to implementation of the standards.

A Decision Regulation Impact Statement (DRIS) was prepared by the Authority and has been approved by The Office of Best Practice Regulation (Reference - OBPR22-01822).

6. 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 *Legislation Act 2003*.

7. Approved Draft Standard

Standard 4.2.7 is a new Standard to be incorporated into the Code. The purpose of each provision in the Standard is explained below

Note 1 explains that the instrument is a standard under the FSANZ Act, and that the Standard and the other standards together make up the Code.

Note 2 explains that the Standard applies only in Australia.

Section 1: This section establishes that the name of the instrument is the *Australia New Zealand Food Standards Code – Standard 4.2.7 – Primary Production and Processing Standard for Berries*.

The note to section 1 explains that the Standard will commence on the date that is 30 months following the date of gazettal, being the date specified in accordance with section 92 of the FSANZ Act.

Section 2: This section sets out the definitions for key words and phrases used in the Standard, or signposts to where those definitions are provided in other standards in the Code.

Berries means fresh berries and includes strawberries, blueberries, and berries of the genus *Rubus*. The definition is inclusive in that the specific products listed in it are intended as examples of berries, rather than constituting an exhaustive list.

Growing site means any site used to grow berries; and includes an open, partially enclosed or enclosed planting area. The definition clarifies that the Standard applies to open fields as well as other cropping arrangements in fully or partially enclosed structures, such as hydroponic set ups.

Harvest means all activities related to the collection and removal of berries from a growing site; and includes picking, cutting, field packing (including packaging for retail sale), and transport from the growing site to the next step in the supply chain.

Premises and equipment means equipment, infrastructure, structures and vehicles that: are used by a primary horticulture producer or by a primary horticulture processor; and have direct or indirect contact with berries. Examples of 'indirect contact' include pipes used to carry irrigation water, and equipment that may be placed on a food contact surface.

Primary horticulture producer means a business, enterprise or activity that is involved in the growing and / or harvesting of berries.

Primary horticulture processor means a business, enterprise or activity that is involved in one or more of the following activities in relation to berries, that have been harvested: washing, trimming, sorting, sanitising, storing, combining products, packing, and transport between primary processing premises. Primary processing is intended to include minimal post-harvest processing activities and does not include further processing or manufacturing activities such as freezing, drying, cooking, canning or blending berries with other ingredients. Transport other than transport from primary processing facilities is not included. Chapter 3 would already apply to these further processing and transport activities.

Relevant activity means, in relation to a primary horticulture producer, the growing and/or harvesting of berries. In relation to a primary horticulture processor, relevant activities mean the following activities with harvested berries: washing, trimming, sorting, sanitising, storing, combining products, packing, and transport between primary processing premises. The definition is provided to clarify which activities relate to certain requirements in the Standard. Primary processing relevant activities are intended to include minimal post-harvest processing activities and not to include further processing or manufacturing activities such as freezing, drying, cooking, canning or blending berries with other ingredients. Chapter 3 would already apply to these further processing activities. Transport other than transport from primary processing facilities is

not included in the definition. Chapter 3 would already apply to these transport activities.

The Notes to section 4.2.7—2 signpost relevant definitions contained in other parts of the Code. Note 1 refers readers to the definition of *relevant authority* in section 1.1.2—2(3). Note 2 refers readers to the definition of *inputs* in clause 1 of Standard 4.1.1. Note 3 refers readers to clause 3 of Standard 4.1.1, which sets out when a food will be unacceptable for the purposes of the Standard.

Section 3: This provision deals with the application of the Standard.

Subsection (1) provides that the Standard applies only to primary horticulture producers and primary horticulture processors in Australia. The Standard does not apply to activities that are not captured by the definition of ‘primary horticulture producer’ and of ‘primary horticulture processor’.

Subsection (2) provides that the Standard does not apply to the retail sale of berries. Chapter 3 of the Code already applies to retail activities.

Subsection (3) provides that the Standard does not apply to manufacturing activities of harvested berries, which include but are not limited to cooking, freezing, drying, preserving, blending or juicing of harvested berries or the addition of other foods to harvested berries. Chapter 3 of the Code already applies to manufacturing activities.

Section 4: This provision sets out notification requirements for primary horticulture producers and primary horticulture processors of berries.

Subsection 4.2.7—4(1) requires a primary horticulture producer and a primary horticulture processor to provide **specified information** to the relevant authority of business activities related to berries, before engaging in a relevant activity. The term ‘relevant activity’ is defined by section 4.2.7—2.

Subsection 4.2.7—4(2) sets out what ‘specified information’ means for the purposes of the section. It means:

- the contact details of the primary horticulture producer or primary horticulture processor including the name of their business and the name and business address of the proprietor of their business; and
- a description of activities that the primary horticulture producer or primary horticulture processor will undertake in relation to berries; and
- the location or locations of each of the above-mentioned activities that are within the jurisdiction of the relevant authority.

Subsection 4.2.7—4(3) requires a primary horticulture producer or a primary horticulture processor to update their notified specified information. If a primary horticulture producer or a primary horticulture processor changes their notified contact details, activities relating to berries and/or the location of such activities as described, they must notify the relevant authority before that change occurs.

Section 5: This provision requires a primary horticulture producer and a primary horticulture processor to have a system in place that identifies the growing site of berries which they grew or received, and from whom berries were received, and to whom they were supplied (with retail sale excluded). The intent is that the system would enable the business to trace the produce one step back and one step forward, as a minimum. The requirement includes identification of the growing site to provide traceability to a specific site if berries are grown by or received from a business that has multiple growing sites. The required information will

enable a rapid response and removal of unsafe produce if a food safety issue arises and/or a product recall is required.

Section 6: This provision requires a primary producer and a primary processor of berries to take all reasonable measures to ensure inputs do not make berries unacceptable. The specified inputs are soil, soil amendments (including manure, human biosolids, compost, and plant bio-waste), fertilisers and water. 'Water' is intended to include recycled water, but is not intended to include falling rain.

Section 7: These provisions deal with premises and equipment. Subsection (1) requires a primary horticulture producer and a primary horticulture processor to take all reasonable measures to ensure that premises and equipment are designed, constructed, maintained and operated in a way that allows for effective cleaning and sanitisation of the premises and equipment; and does not make berries unacceptable. Subsection (2) of each provision requires a primary horticulture producer and a primary horticulture processor to ensure that premises and equipment are maintained, cleaned and if necessary sanitised; each to the extent needed to ensure that berries are not made unacceptable. The intent of these provisions is that premises and equipment, including transport vehicles, do not present a source of product contamination, damage or other adverse outcome.

Section 8: These provisions require a primary horticulture producer and a primary horticulture processor to ensure that persons engaged in; or supervising a person engaged in, relevant activities listed for berries have skills and knowledge in both food safety and food hygiene commensurate with their work. The purpose of this provision is to ensure those people do not make the product unacceptable through contamination or other adverse outcomes.

Section 9: These provisions require a primary horticulture producer and a primary horticulture processor to take all reasonable measures to ensure that personnel and visitors exercise personal hygiene and health practices that do not make berries unacceptable. The intent is that personnel and visitors do not present a source of product contamination or other adverse product outcome from illness or poor hygiene practices.

Section 10: These provisions prohibit a primary horticulture producer or a primary horticulture processor from selling or supplying berries for human consumption if they ought reasonably know, or ought reasonably suspect, that the relevant food is unacceptable. This requirement is intended to prevent the introduction or transfer of unacceptable berries through the fresh food supply chain.