



Procedure for Principally Dairy Determinations

Purpose

This guideline is intended to assist with determining whether a multi-ingredient food is considered to be a dairy product under New Zealand Standards. This includes products such as tablets, supplements and fortified foods that contain dairy ingredients.

This is important as there are specific requirements that apply to dairy products, dairy processors and exporters of dairy products. For example, a Risk Management Programme (RMP) is required for all dairy products to be exported, other than to Australia.

A principally dairy determination under New Zealand Standards is not about certification of dairy products or whether a particular overseas market considers the products to be dairy products. For example, it is possible a product may need to meet New Zealand dairy processing standards even if it is not considered to be a dairy product in the intended market. It is also possible to get certification for dairy components in an export product where the product is not considered a dairy product (but contains some dairy ingredients). In this case, an RMP would be required.

Background

Multi-ingredient foods can complicate the boundary between a food that is considered a dairy product and a food that is not. Consider the following list of fat spreads – where on the list is the cut off between a dairy product, and a non-dairy product?

1. Traditional Butter 80% milkfat
2. Butter spread 60% milkfat, 20% canola oil
3. Butter spread 40% milkfat, 40% canola oil
4. Butter spread 30% milkfat, 50% canola oil
5. Margarine spread 30% milkfat, 50% canola oil
6. Margarine spread 10% milkfat, 70% canola oil
7. Margarine spread 80% canola oil

At first glance, you may consider only 1 and 2 as principally dairy. However, 3 and 4 may also be considered principally dairy in certain situations. Representation and composition both need to be considered.

This means the determination of principally dairy is not on composition alone. Therefore, a number of parameters need to be known to complete the determination:

- Complete formulation including ingredients and amounts
- Intended name of product
- Other relevant information on the label eg picture of dairy, claims



Reasons to carry out principally dairy determinations

Dairy determinations are carried out when it is unclear which regulatory regime best applies to a multi-ingredient product, especially for export. This is not to be confused with whether the importing country determines the product to be a dairy product, or whether the importing country requires an official assurance for that product or an ingredient of that product. Dairy product or dairy material for export with an official assurance must remain within the RMP chain from milk harvest to the point of export. The dairy determination can affect where ingredients are sourced from, where products are stored, and how they are transported throughout the supply chain to be eligible for export if an RMP is required.

This can mean if you have typically produced and exported plant based products under the Food Act 2014, there may be additional requirements to produce and export a similar product that contains dairy material. For example, a fruit juice bottling plant expanding their product line to include a fruit and yoghurt beverage, or a ready to drink whey protein fortified juice.

There can also be situations where an operator prefers to manufacture a product under an RMP when it is not considered principally dairy. This could occur when they already produce a number of other similar products that are principally dairy are under an RMP, or they require official certification for the dairy component of the mixed ingredient food.

A dairy determination can also assist to clarify whether certain Overseas Market Access Requirements (OMARs) apply.

Considerations for determination of principally dairy

A product is considered to be a dairy product when it:

- (i) consists of at least 50% dairy components on either a wet or dry basis; or
- (ii) includes characterising ingredients that are dairy; or
- (iii) is labelled as a dairy product; or
- (iv) is represented as a product reasonably expected to be a dairy product.

In considering the above, please note that dairy products include:

- a) foods for human consumption; or
- b) feeds for animals; or
- c) products for non-edible uses; or
- d) products in their ready to consume form; or
- e) ingredients intended to be added to any of the above



A **characterising ingredient or characterising component** (as per the Australia New Zealand Food Standards Code) is an ingredient or component that is:

- Mentioned in the name of a food
- Usually associated with the name of a food by the consumer
- Emphasised on the label of a food in words, pictures or graphics.

In the example above, calling the product Butter Spread, even though the amount of dairy product is less than the amount of other ingredients, can be the deciding point between whether the product is seen as principally dairy.

Certain **ingredients may be derived from milk but are not always considered to be dairy products by MPI**. These include:

- (i) certain multi-ingredient foods, formulated caffeinated beverages and alcoholic beverages as outlined under Clause 7B of the Animal Products (Inclusions and Exclusions) Order 2000
- (ii) lactic acid (except as noted below)
- (iii) galacto-oligosaccharides (GOS)
- (iv) lactose when used as a carrier or binding agent e.g. in tableted products

The above list does not mean these ingredients are always treated as non-dairy. They may be considered to be dairy if they are derived from milk in certain situations. An example is the use of lactic acid when used for the manufacture of lactic butter in accordance with CODEX definitions. Another example is GOS where MPI do certify this as a dairy product if this is a requirement of specific overseas markets.

Products must be truthfully labelled and accurately represented. An important part of the principally dairy determination includes making sure the composition of the product matches the description of the product on the label. A product can be labelled or represented as a dairy product if you have considered the points above and have a sound justification for doing so. This may be the case where a significant portion of the product is dairy but it doesn't meet the 50% threshold. It may also be the case when the importing country deems the product to be a dairy product.

Determining a product to be a dairy product is important, as it can affect how you make it and which markets you can export it to. For example, you may need to register an RMP under the Animal Products Act 1999 for exporting in addition to the risk based measure you currently have under the Food Act 2014. You may want to reformulate or rename your product so you don't require an RMP to export it.



Request a principally dairy determination

If clarification is required, MPI can be contacted for a principally dairy determination.

Complete the attached form and submit it to MPI by emailing Animal.Products@mpi.govt.nz, making sure you have included the formulation, product name, list of ingredients and label. Mock up or proposed artwork is accepted if the product is still in the development phase. Any additional proposed marketing material is also helpful, or links to websites with information about the product.

Other considerations

Once you have received the dairy determination for your product, you will find information on the MPI website about choosing the right risk management measure to produce this product for your intended markets. You will also need to check any additional overseas market access requirements that may apply. There may be additional requirements to apply for listing of your company and/or product to supply specific markets eg China.

MPI also have the “My food rules” tool available on the MPI website to help you decide which risk management measure is best for you:

[My food rules](#)

For further information, check the MPI website or talk to your verifier.



Appendix 1: Background

The Animal Products Act 1999 defines all dairy processing as primary processing. Under the Act, all primary processors of animal product require a RMP, unless they are exempt.

The Animal Products (Exemptions and Inclusions) Order 2000 outlines a number of exemptions, including the ability to operate under a risk based measure under the Food Act 2014 for multi-ingredient products (other than ice cream) that do not consist principally of dairy material or dairy products (clause 7B):

Clause 7B: Processing of certain dairy products that are food

- (1) Parts 2 to 4 of the Act do not apply to the processing of the following dairy material or products (being material or products that consist of or contain dairy material or products) if the processing is carried out under a risk based measure under the Food Act 2014:
 - (a) multi-ingredient foods and other prepared foods that, despite containing 1 or more ingredients that are dairy material or products, do not consist principally of dairy material or products (for example, biscuits, cakes, bread, soups, sauces, snack goods, pastries, confectionery, and also prepared meals that do not consist principally of dairy product):
 - (b) formulated caffeinated beverages and alcoholic beverages.
- (2) The exemption in this clause does not apply to the processing of ice cream.
- (3) The exemption in this clause does not obviate the need for compliance with any applicable provisions of Parts 2 to 4 of the Act if the product or material to which this clause applies is intended for export in circumstances that would require an official assurance to be issued, and the official assurance may be issued only on the basis of compliance with those provisions.

The guidance for determination of principally dairy is in Appendix H of the RMP Manual, and is as follows:

Appendix H: Determination of principally dairy

MPI considers the following points when determining whether a product is considered principally dairy under the APA and processing must be covered by an RMP.



- (1) MPI requires receipt of any relevant specification/recipe, with a list of ingredients with the percentage of each by weight or volume, to make a determination as to whether the product consists 'principally of dairy'.
- (2) Generally, if the total percentage of all dairy in the product is greater than or equal to the percentage of all other ingredients combined, the product will consist principally of dairy.
- (3) However other factors are also taken into consideration such as:
 - a) The characterising ingredient of the food and nature of the food, for example lactose as an inert carrier in tableted products;
 - b) Dilution and concentration through processing; and
 - c) Any other relevant factor.
- (4) Please note this determination does not take into account any applicable export requirements

Contact for enquiries

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