New Zealand Food Safety
Haumaru Kai Aotearoa

Proposals to strengthen food recalls and risk-based plans and programmes: regulations enabled by the Food Safety Law Reform Act 2018

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Contents

1 Submissions

The Ministry for Primary Industries (MPI) is seeking submissions from interested parties, both individuals and organisations, on proposed regulations for strengthening food recalls and improving risk-based plans and programmes.

This document sets out proposals for potential regulations in a number of areas. Your submissions will help us assess whether we need to amend these proposals in any way, to ensure they are as practical as possible before the final proposals are put to Government for approval.

1.1 How to have your say

The deadline for receipt of all submissions is 5:00 pm on 7 December 2018.

We have included questions throughout this document. If you would like to respond directly to some or all of these, you can download a document that contains these questions from https://www.mpi.govt.nz/news-and-resources/consultations/proposals-to-strengthen-food-recalls-and-risk-based-plans-and-programmes.

MPI will consider all relevant material made in submissions, so you are welcome to provide information supporting your comments. Please provide the following information in your submission:

- the title of this consultation document;
- your name and title;
- your organisation's name (if you are submitting on behalf of an organisation), and whether your submission represents the whole organisation or a section of it; and
- your contact details (that is, phone number, address, and email).

Please also:

- make sure your comments can be clearly read; and
- state the number of the question you are answering; or if you are making a general comment, state the number of the section your comments are referring to.

You can **send your submission** to us in any of the ways below:

Email: food.policy@mpi.govt.nz

By post: **Consultation: Proposals to strengthen food recalls and risk-based plans and programmes**
Ministry for Primary Industries
PO Box 2526
Wellington 6104

For answers to any **questions you have** about this consultation, please email info@mpi.govt.nz or telephone: 0800 00 83 33

1.2 Official Information Act requirements

Under the Official Information Act 1982 (OIA) information held by MPI is to be made available to requestors unless there are grounds for withholding it. The grounds for withholding information are outlined in the OIA.

If you are making a submission you may wish to indicate any grounds for withholding some information contained in your submission. Reasons for withholding information could include that the information is commercially sensitive or that you wish personal information, such as names or contact details, to be withheld. An automatic confidentiality disclaimer from your IT system will not be considered as grounds for withholding information.

We will take your indications into account when determining whether or not to release requested information. Any decision to withhold information requested under the OIA may be reviewed by the Ombudsman.

1.3 Scope

The purpose of this consultation is to strengthen food recalls and to improve risk-based plans and programmes, by giving effect to the recommendations made by the Government Inquiry into the Whey Protein Concentrate Contamination Incident. The proposals relate to food and wine produced for human consumption under the Food Act 2014, the Animal Products Act 1999, and the Wine Act 2003.

The food recall proposals and associated traceability requirements relate to traceability of products after harvest, until retail or export. This includes all food through the supply chain from harvest, the farm gate, or arrival in the country, through to the point of retail or export. This does not include the traceability of animals or other on-farm inputs. The proposals relate to food safety and suitability, which is distinct from consumer-driven supply chain transparency, or the export requirements for traceability systems that support any official assurances that MPI provides for exported products.

1.4 What happens next?

Once the consultation period has closed, we will analyse submissions and make recommendations to the Minister for Food Safety, and to Cabinet. A summary of submissions and analysis will be posted on the MPI website.

Subject to Cabinet approval of the final proposals, Parliamentary Counsel Office (the Government's legal drafters) will prepare a set of draft regulations.

2 Executive summary

MPI is consulting on proposals for new food recall and risk-based plans and programmes requirements for food businesses under the Food Act 2014, the Animal Products Act 1999 and the Wine Act 2003 (the food safety Acts).

These proposals have their origins in the independent Government Inquiry into the Whey Protein Concentrate (WPC) Contamination Incident (WPC Inquiry). In August 2013, MPI was notified that batches of WPC might be contaminated with *Clostridium botulinum*. Although the batches were found to not contain the harmful *Clostridium botulinum*, the incident negatively impacted on New Zealand's reputation as a supplier of safe food.

The WPC Inquiry examined the causes and responses to the incident, and New Zealand's dairy food regulatory system. It found that New Zealand has a world-class regulatory system, but that some improvements can be made. The WPC Inquiry recommended both regulatory and non-regulatory improvements, many of which have been made.

One of the areas identified for regulatory improvement is food recalls, which concerns a business's ability to quickly trace and recall their products. It entails food businesses maintaining readily accessible records of their food inputs and outputs. Another area identified for improvement is risk-based plans and programmes, the key tools food businesses use to manage their food safety and suitability risks.

The proposed food recall requirements aim to make a clear link between records that are already kept by most food businesses, and their ability to quickly provide information during a recall. The proposed risk-based plans and programmes requirements aim to make it easier for food businesses, regulators, and verifiers to identify all relevant food matters and related regulatory requirements.

The Food Safety Law Reform Act 2018 (FSLR Act) has amended the Animal Products Act 1999, the Food Act 2014 and the Wine Act 2003 to implement the WPC Inquiry recommendations that require statute change. The FSLR Act also enables regulations to be made to strengthen food recalls and improve risk-based plans and programmes to be made.

2.1 Why this consultation is important

Our food safety system is important to all New Zealanders. It works to protect domestic and foreign consumers from foodborne illnesses, and to ensure food is safe and suitable, and spans across approximately 98,000 food premises (June 2017). It is also key to supporting our economy, which for the year ended 30 June 2018 had manufacturing, and retail and service turnover of $49.7 billion and $34.5 billion respectively. Our food exports, totalling $32.7 billion over the same period, have been built on our quality food products and strong food safety reputation.[1] Therefore, it is important that we address the issues identified from the WPC Incident.

We are consulting to find the most effective way to improve food recalls and risk-based plans and programmes through implementing the lessons learned from the WPC Incident. We also want to avoid placing unnecessary compliance burdens on businesses, and we are consulting to understand what the impacts of these proposals would be on businesses.

2.2 Who these proposals apply to

The proposed food recall requirements will apply to all food businesses that either operate under a risk-based plan or programme, or that import or export food for the purposes of trade. This means they apply to any food or wine produced under the food safety Acts, unless exemptions apply.

The proposed changes to risk-based plans and programmes apply to businesses that operate under a custom risk-based plan or programme. This includes a risk management programme under the Animal Products Act, a food control plan under the Food Act, and a wine standards management plan under the Wine Act.

[1] Figures have been sourced from Statistics New Zealand.

2.3 What we are consulting on

The food recall proposals would require food businesses to have procedures to effectively manage food recalls, and to appropriately record and share information. We acknowledge that many food businesses already maintain such systems.

The food recall proposals cover:

- who must maintain food recall procedures;
- what traceability information must achieve;
- what records must be kept, and for how long;
- how quickly traceability information must be provided to MPI during a food incident;
- requirements for mock recalls to test that traceability and recall procedures are working; and
- the format of traceability information provided to MPI during a recall.

The proposals for risk-based plans and programmes cover:

- what type of information must be provided to MPI (when an operator submits an outline of their custom risk management programme for registration);
- how food safety matters and related regulatory requirements are to be clearly differentiated from other matters; and
- how best to identify the key requirements for risk management programmes, to allow greater regulatory oversight.

2.4 Stakeholder engagement

These proposals have been refined through feedback received from submissions on the Food Safety Law Reform Act, and pre-engagement with a small but diverse sample of food businesses across the food sector. MPI is keen to see that any costs to business from these proposals are minimised, while ensuring that the benefits are achieved. We are seeking feedback to understand the impacts of these proposals, and to inform development of the regulatory proposals.

2.5 What to expect in this document

This discussion document is divided into two parts:

- Part A – Overview of the proposed regulatory package; and
- Part B – Specific regulatory proposals.

Part A provides an overview of the proposed regulatory package, including the context in which the proposals have been developed, the impact of food safety incidents, the objectives that the proposals seek to achieve, and a summary of proposals.

Part B is split into two sections. The first section contains the food recall proposals, and the second section contains risk-based plans and programmes proposals.

Part A: Overview of the proposed regulatory package

3 Introduction

This document outlines proposals for regulations under the Food Safety Law Reform Act 2018 (FSLR Act) that set requirements for food recalls and risk-based plans and programmes for food businesses under the Food Act 2014, the Animal Products Act 1999 and the Wine Act 2003.

The purpose of the package of food recall proposals is to set clear expectations for food businesses in preparation for and during a recall, and ensure that risks to public health and trade are managed effectively. Achieving this purpose will improve the food safety system in New Zealand, and give effect to the recommendations made by the Whey Protein Concentrate Contamination Inquiry (explained below).

The purpose of the proposed changes to risk-based plans and programmes is to provide more certainty by making the food safety requirements clearer and more accessible to all parties involved in the food system, ensuring that businesses know what is expected of them, and public health is thereby protected. The proposed changes will also implement the WPC recommendations.

3.1 Context for the proposals in this paper

In August 2013, MPI was notified that three batches of whey protein concentrate (WPC) might be contaminated with *Clostridium botulinum*. Although this later turned out to be a false alarm, this "botulism scare" made global headlines and had significant consequences for New Zealand's international reputation as a supplier of safe food.

The impact of the incident led the then Government to establish an independent Government Inquiry into the Whey Protein Concentrate Contamination Incident (WPC Inquiry). In its two reports, the WPC Inquiry found the incident was not the result of any failure in the regulatory system, and that New Zealand's food safety regulatory model is consistent with international principles. However, it recommended some improvements to support confidence in New Zealand's food safety regime both internationally and domestically, and to ensure that our regulatory system continues to be among the best in the world.[2]

The Government of the day accepted all of the WPC Inquiry's recommendations, which included establishing a Dairy Traceability Working Group (the Working Group). A large number of the WPC Inquiry recommendations have already been implemented, including:

- the Ministry for Primary Industries has increased its audit capability and programmes, including unannounced visits;
- the Food Safety Science and Research Centre has been established (https://www.nzfssrc.org.nz/);
- traceability requirements for exporters of infant formula have been strengthened; and
- the Ministry for Primary Industries has increased its ground presence in key overseas markets, including China.

The responses to the WPC Inquiry recommendations can be found here: https://www.mpi.govt.nz/news-and-resources/resources/official-information-act-responses/whey-protein-concentrate-contamination-incident/.

The Working Group made recommendations to the Director-General of MPI in December 2014. They concluded that strengthened traceability requirements were needed for the dairy sector, and recognised that traceability is essential to all food sectors, and so the recommendations are relevant to all food sectors.[3]

[2] The Inquiry's reports can be found here: http://www.dia.govt.nz/Government-Inquiry-into-Whey-Protein-Concentrate-Contamination-Incident

[3] http://foodsafety.govt.nz/elibrary/industry/dairy-traceability-working-group-report/index.htm

MPI received early feedback on the recommendations made from the WPC Inquiry and Working Group, through the process of progressing the FSLR Act and through discussions held in 2016 with 26 targeted industry groups (food businesses and stakeholder organisations). The information received has helped MPI refine the proposals contained in this document. These proposals are intended to achieve the outcomes of the recommendations, and to be implemented across a wide range of businesses.

3.2 Impact of food safety incidents

Incidents such as the WPC incident have demonstrated the potential for significant economic harm and reputational damage, even when they are a false alarm. The consequences of an incident that involves confirmed unsafe food could be even worse.

Foodborne illness impacts on New Zealand every year in healthcare costs and other impacts. For example, the estimated economic cost of foodborne illness in 2009 was $161.9m.[4] An action or incident involving a single firm can have widespread impact across the whole of our food system.

One way to minimise the impact of food safety incidents is to ensure they are quickly resolved. Effective food recall and risk management processes speed up the recall of products that are unsafe or not fit for purpose, and the provision of assurances that the remaining food is safe.

The following figures provide an indication of the size and scope of the food sector in New Zealand (approximately 98,000 food premises).

3.3 The regulatory model

The Animal Products Act, the Food Act and the Wine Act all apply a similar regulatory model under which:

- food businesses are responsible for managing food safety risks and meeting the standards set by government;
- the compliance of food businesses with their risk management plans is audited by recognised verifiers; and
- MPI is responsible for setting the standards that food businesses must meet, and for recognising the verifiers (in addition to other roles as the lead agency for food safety).

[4] Applied Economics (2010) *The Economic Cost of Foodborne Illness in New Zealand.* http://www.foodsafety.govt.nz/elibrary/industry/economic-cost-foodborne-disease/foodborne-disease.pdf

A central principle of the regulatory model is that food businesses are required to operate under a risk management tool. These tools are either risk management programmes (or regulated control schemes in some instances) under the Animal Products Act, a food control plan or national programme under the Food Act, or wine standards management plans under the Wine Act. We refer to these collectively as risk-based plans and programmes. In some cases, businesses can choose which risk-based tool they wish to operate under.

3.4 Objectives of strengthening food recalls and improving risk-based plans and programmes proposals

The objectives of the proposals in this consultation, set out in Part B of this discussion document, are focused on strengthening requirements to ensure New Zealand's food safety system remains one of the best in the world. They include the following four elements against which each separate proposal is analysed:

- harmonising food recall and risk-based plans and programmes requirements across all food sectors where appropriate (consistency);
- making requirements more visible, explicit and consolidating them into regulations under each food safety Act (clarity);
- promoting effective and efficient food recalls (efficiency and effectiveness); and
- minimising compliance costs imposed on the food sector, and reducing the potential future costs of recalls, while being consistent with the need for food to be safe and suitable (cost minimisation).

The overarching objective of these proposals is to make improvements to the food safety regulatory system, thus helping to protect New Zealand's reputation as a supplier of safe and suitable food that is fit for its intended purpose. A related objective for this work is to implement regulatory requirements (empowered by the FSLR Act) that give effect to the policy intent of the recommendations of the WPC Inquiry and Working Group.

MPI is seeking feedback from the food industry and the public on the proposals, to ensure the regulations are as practical as possible.

1. Do you agree with the objectives for strengthening food recalls and improving risk-based plans and programmes? Why/why not?

3.5 Summary of proposals

Proposal
Proposal A: businesses with risk-based plans or programmes, and importers or exporters of food, must maintain food recall procedures.
Proposal B: no preferred option specified. We would like to hear your thoughts on the following: Option 1: explicit requirement for food businesses to maintain accurate traceability systems that trace ingredients and food products externally and internally, and allow for effective tracing and recall. Tracing food internally would require a business to trace the batches of ingredients coming in, and the batches of food product containing those ingredients going out. Option 2: same as option 1 with different internal traceability requirements. Businesses, at a minimum, will need to be able to identify and locate ingredients within their operations. However, if a business is currently required to maintain more detailed internal tracing procedures, these would be maintained.

Proposal
Option 3: same as option 1, with the addition of tracing food packaging.
Proposal C: traceability records must be kept for the time specified under each food safety Act or one year past the shelf life of the product, whichever is longer.
Proposal D: information is to be provided to MPI within the time specified by a food safety officer, or within 24 hours, whichever is shorter.
Proposal E: mock recalls would be required to be performed every 12 months unless a successfully managed, genuine recall has occurred in the previous 12 months.
Proposal F: in the event of a recall, traceability information must be supplied to MPI in a readily accessible format.
Proposal G: if an operator submits an outline of their RMP for registration, the hazard identification and management information (e.g. the HACCP plan) must be supplied in addition to the current requirements set out in the *Animal Products (Requirements for RMP Outlines) Notice 2008*.
Proposal H: operators of new and existing custom risk-based plans and programmes would be required to differentiate food safety matters and related regulatory requirements from non-food safety content in all text documents submitted to MPI.
Proposal I: move the current requirements for the contents of RMPs into regulations.

Part B: Specific regulatory proposals

4 Food recalls

4.1 What are food recalls and why are they important?

A food recall is made up of two procedures:

- traceability – this is the identification and tracking of food in a food supply chain (spanning from harvest, farm gate, or arrival in the country, through to the point of retail or export) through recording where ingredients have come from, what food they go into, and where this food goes, and using this information to track unsafe or unsuitable food when required; and
- recall – this is the act of removing unsafe or unsuitable food from the food supply chain (consumers may or may not be informed of recalls, as this depends on how far the unsafe or unsuitable food has gone through the supply chain, and whether it has reached consumers).

Food businesses need to maintain records that allow them to trace and, if necessary, recall the food effectively when it has been found to be unsafe or unsuitable for human consumption.

From a regulatory perspective, the purpose of traceability is to rapidly identify the quantity and location of a product in the supply chain, and to facilitate an effective recall of that product if it is unsafe or unsuitable. Traceability is crucial in protecting consumers from unsafe food or ensuring that the food they purchase is 'fit for purpose'.

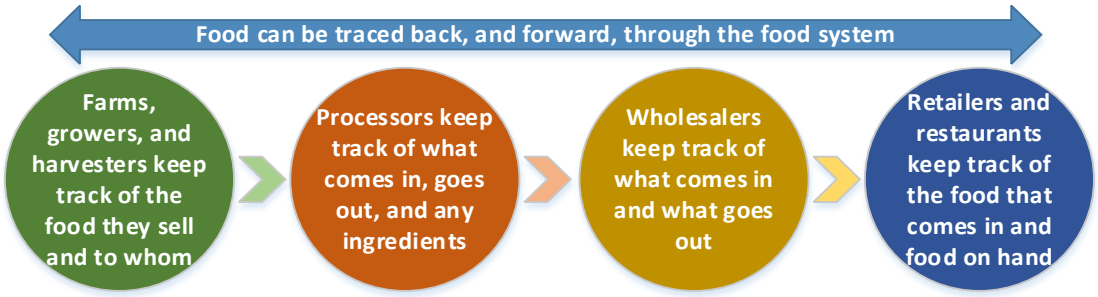
Good food recall procedures also benefit food businesses because quick and confident action can help minimise trade disruption in the event of an incident. This is achieved by enabling unsafe or unsuitable food to be identified, isolated, and recalled quickly before it even reaches consumers, giving assurance that the remaining food is safe and suitable, and providing accurate and timely information to retailers and New Zealand's trading partners. Food recalls can involve communication with consumers if the affected food has travelled that far through the supply chain.

4.2 Current food recall requirements

Domestic market

Currently, specific requirements for traceability and recall of food in New Zealand are located throughout regulations and notices that have developed over time under the food safety Acts. There are few specific references to traceability in the primary legislation, with most references being to 'record-keeping'. An overview of existing legislation and a table of current traceability requirements across the food safety Acts is provided in **Appendix Two**.

In general, New Zealand's current traceability requirements stipulate a 'one up, one down' system. This is where businesses maintain records of the foods and products they have bought or sold, and from whom or to whom they have bought or sold them. This system is illustrated in the diagram below.



Most food businesses will already maintain records of the food products that come into and leave their business. Extra requirements have been applied in some cases to different food sectors based on the level of risk associated with specific foods. This has resulted in a lack of consistency of requirements across the system, and uncertainty for those who operate across multiple sectors.

Export market

New Zealand businesses that export some food products may already be subject to additional obligations, including traceability, based on the requirements of the destination market.

4.3 The problem/opportunity

Issues with the current food recall requirements have been highlighted since the WPC Incident. These requirements vary between the food safety Acts and can be spread out across legislation, regulations, and notices. This can make it difficult for businesses to identify and comply with their precise requirements.

There are currently no legislative requirements for a business to test its recall systems. However, MPI does promote testing recall systems before they are needed, enabling delays and inaccuracies to be minimised should a real recall be required. Delays and inaccuracies can increase the food safety risk to the public, tarnish reputations, and increase the business costs of a recall. Businesses should be able to quickly trace food items, and initiate procedures to notify interested parties and recall the product.

The ability to trace items through the entire supply chain is limited by the weakest (or absent) links in the chain. Currently, some food exporters do not have traceability requirements, meaning there are gaps in this chain. New powers enabled through the FSLR Act present an opportunity to strengthen New Zealand's food recall requirements and procedures. The proposals contained in this document are intended to help food businesses more rapidly and confidently identify and recall potentially impacted food in supply chains during a food safety incident.

These proposals to strengthen food recalls are intended to:

- promote consistent food recall requirements across all food sectors;
- make food recall requirements explicit, and consolidate them in regulations under each food safety Act;
- promote effective and efficient food recalls; and
- minimise compliance costs imposed on the food sector, while ensuring that food safety benefits are achieved.

Even within a perfectly functioning food system where risks are well-managed, some food safety or suitability incidents are inevitable. Improved food recalls will help to protect consumer health, and limit trade disruption from incidents, due to quicker and more targeted recalls. Strengthening food recall requirements will put New Zealand in a sound position to maintain its reputation as a trusted producer of safe food, and ensure it is well-placed to meet future challenges and opportunities.

2. Do you agree that food recall requirements need to be strengthened, consolidated, and be made more consistent amongst the food safety Acts? Why/why not?

4.4 Food recall proposals

This section contains details on the package of proposals for requirements to strengthen food recalls, by creating regulations under the three food safety Acts. These proposals are intended to be implemented as a suite of improvements, and new sets of consistent regulations are to be issued under the three food safety Acts. However, many businesses will already be compliant with the proposals presented below. The proposals cover:

- who must maintain food recall procedures;
- what traceability information should achieve;
- how long traceability information must be kept;
- how quickly information must be provided during a recall;
- requirements for mock recalls to test that traceability and recall procedures are working; and
- the format of traceability information provided to MPI during a recall.

How each business establishes and implements its traceability procedures is for that business to determine. MPI will issue guidance to assist businesses if required, particularly those businesses new to food traceability and recall. MPI believes that the cost of compliance would likely be in proportion to the size and complexity of the business, the complexity of the food product, and the risks posed.

Issue A: Who must maintain food recall procedures

Status quo

Generally, businesses subject to risk-based plans and programmes, and importers, are already required to have food recall procedures in place. These businesses include those with food control plans, national programmes, risk management programmes, and wine standards management plans, as well as food importers.

However, there are small gaps in the current requirements, where some businesses are not required to, and may not maintain, food recall procedures (for example, some exporters who do not produce food), as they are not required to have risk-based plans and programmes. These gaps can be problematic in a food recall because they make it more difficult to trace unsafe or unsuitable food through the supply chain.

Retaining the status quo would mean no improvement to the consistency or clarity of traceability and recall requirements. They would remain dispersed, and the potential gaps that would remain in food supply chains could impact on the efficiency and effectiveness of recalls. There would be no new compliance costs for food businesses, but the potential costs (health, business, and reputational) could be large if the identified gaps go unaddressed and hinder future recalls.

Proposal A: businesses with risk-based plans or programmes, and importers or exporters of food, must maintain food recall procedures[5]

This option would extend the requirement for food recall procedures to explicitly include all exporters of food, and would ensure adequate traceability and recall requirements are in place, no matter what food sector a business is in or where it is in the supply chain. MPI considers that there would be a small number of additional food businesses (for example, some exporters of shelf-stable food) required to have food recall capabilities as a result of this proposal. As these businesses are not processing food, we expect that tracing food would not be difficult or costly. We would like to understand from these businesses what the cost impacts would be.

Food businesses that do not fall within the categories proposed would not have to follow food recall requirements, and would not be affected by this option.

This is MPI's preferred option because it would make the new requirements consistent across all food sectors. It would also add clarity by consolidating and making explicit the requirements currently spread across regulations and notices. The improvements made by some businesses to meet the requirement to maintain recall procedures would likely make any recall they were involved in more efficient and effective. More targeted recalls means less product needs to be recalled, minimising costs of lost inventory and reputation. It is likely new costs would be created for businesses that have not previously been required to maintain recall procedures.

No alternative options are presented for this issue. This is because the proposal embeds the status quo and brings in a small number of important businesses in the food supply chain that do not currently have legislative food safety recall requirements.

Option analysis summary

Objectives	*Consistency*	*Clarity*	*Effective and efficient recalls*	*Cost minimisation*
Status quo	✗	✓	✓	✓
Proposal A	✓✓	✓✓	✓✓	✓

[5] Risk-based plans and programmes include: risk management programmes and regulated control schemes under the Animal Products Act; food control plans and national programmes 1-3 under the Food Act, and wine standards management plans under the Wine Act.

Key

×	does not meet objective
✓	somewhat meets objective
✓✓	meets objective
N/A	not applicable to objective

3. Do you agree or disagree with Proposal A? Please elaborate on your response and identify any improvements that could be made.
4. What positive and negative impacts would Proposal A have?
5. Would Proposal A require you to maintain food recall procedures for the first time?

Issue B: What traceability information should achieve

MPI has not indicated a preferred option for this proposal, as more understanding of the impact that the proposal would have on businesses is needed before a preference can be determined.

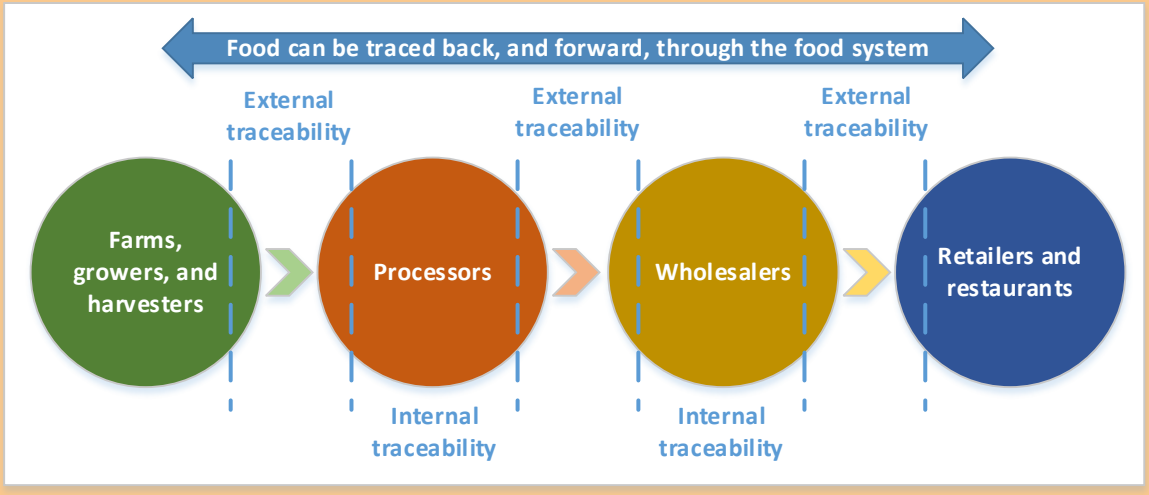
Status quo

Requirements for traceability record-keeping are not consistent across the food system, and there are no clear or explicit requirements regarding the effectiveness or accuracy of traceability information.

Businesses generally do keep records of products coming into, and leaving, their business (external traceability). Some requirements extend to requiring the tracing of products within the operations of a business (internal traceability), but this obligation is not consistent across the food system (see the box below on internal traceability). See **Appendix Two** for more details on current requirements.

Internal traceability

As the name suggests, internal traceability is the tracing of ingredients and products within the operations of a specific food business. This is in contrast to one-up, one down (external traceability), which is the tracing of food and ingredients between businesses in the food supply chain.



The way a business traces the ingredients it uses can influence the size and scale of a recall. If batches of ingredients coming in from suppliers are traced to the batches of food going out, a recall can be very precise, since only the batches containing ingredients that are unsafe or unsuitable are recalled. If a business does not trace batches in this way, it will have to recall and dispose of greater amounts of its finished product to ensure that all potentially unsafe or unsuitable food is removed from the supply chain. Both approaches allow for food risks to be addressed through a food recall, although with differing efficiency.

Currently there are differences between the food safety Acts as to how ingredients and products are tracked within a business. Under the Food Act, the minimum requirement is to be able to trace food while it is under control of the business. This means that food businesses will need to be able to identify and locate where all of the ingredients and products are within their operations, so that in a recall situation these items can be found and quickly removed from the supply chain.

Under the Wine Act and Animal Products Act, some food businesses can be required to trace food and ingredients *through* their operations. This means that they need to have the ability to trace individual batches of ingredients coming in from suppliers, into the batches of ingredients going out, and identify and locate ingredients at all places in between.

The efficiency and effectiveness of recalls varies between businesses. Maintaining the current requirements would not introduce new business compliance costs. Imprecise internal traceability procedures can have a large impact on the cost of a food recall in a food incident, e.g. a greater number of products need to be recalled and disposed of than necessary, and negative reputational impacts can occur (which may extend to other New Zealand businesses).

Option 1: explicit requirement for food businesses to maintain accurate traceability systems that trace ingredients and food products externally and internally, and allow for effective tracing and recall

This option would create an explicit requirement for food businesses to accurately record sufficient traceability information to effectively identify where their food ingredients or products have come from, and where their finished products go (external traceability). It also would require businesses to effectively trace all incoming ingredients into the batches of outgoing product (internal traceability).

Under this option, the requirement would not prescriptively state the exact data to be recorded, rather it would specify the outcome to be achieved. To minimise compliance costs and maintain flexibility with current business systems, the specific data elements (information to be recorded under the system) would not be specified.

Businesses would be able to maintain systems that reflect the size and complexity of their operations. Smaller businesses might be able to run simpler systems, whereas larger businesses may need more complex systems to manage this information.

This option would improve the consistency of traceability requirements across the food safety Acts, as well as add clarity to what is expected from traceability information. Many businesses under the Animal Products Act and Wine Act would not be impacted by this proposal, as they are already required to meet these proposed requirements. Many businesses under the Food Act would need to implement new systems to cover the internal traceability aspect of this proposal, increasing their compliance costs. However, the potential cost savings from achieving greater precision should a recall be needed could exceed the costs of improving their systems under this option.

As with current requirements, traceability information would not be required for the final step in the food supply chain, where food is being provided to the final consumer (for example, diners at a restaurant and supermarket shoppers).

Guidance could be developed to support businesses if required, particularly those new to traceability procedures.

Option 2: same as option 1, but less change surrounding internal traceability. Internal traceability procedures would need to, at a minimum, allow businesses to identify and locate ingredients within their operations. If a business is currently required to maintain more detailed internal tracing procedures, these would be maintained

Businesses would have the same external traceability requirements as option 1, however the internal traceability requirements would not change.

This retains the differences between the food safety Acts in terms of internal traceability, and means the benefits of tracing individual batches of ingredients would not be achieved by all businesses under the Food Act. This allows most businesses the flexibility to make their own business decisions. They may choose to avoid upfront costs by not investing in procedures that support the tracing of incoming batches of ingredients, into batches of products going out. However, they could be faced with higher than necessary costs (recall costs, reputation costs, and food waste) if a food safety recall is required. Conversely, they may choose to make an upfront investment that would minimise the costs of a food recall.

Consistency of external traceability requirements would be achieved under this option, however the differences would remain for internal traceability. Greater clarity would be achieved by making the requirements more explicit. Recalls would retain their effectiveness, but the more precise recalls possible through option 1 would not be achieved, leading to comparatively inefficient food recalls.

MPI would still encourage food businesses to trace individual batches, as this makes recalls more efficient and effective, delivering better food safety outcomes. This would be a business decision, rather than a legislative requirement.

Option 3: same as option 1, with the addition of tracing food packaging

This option extends option 1 to include food packaging. This would mean many businesses would be required to implement additional systems and recording. Only packaging that comes into contact with food would need to be traced.

The Working Group proposed that food packaging should be covered by traceability procedures. Adjusting and creating traceability systems to capture food packaging is likely to bring additional costs for most businesses, as this is not currently required. Early engagement with 26 stakeholders indicated some concern with these costs. Research from MPI[6] and Food Standards Australia New Zealand[7] identified that there is low risk of chemical contamination from packaging. Food safety recalls in New Zealand related to contamination from the packaging material are infrequent. MPI considers that the risk presented by food packaging does not justify the costs of requiring all food businesses to specifically trace packaging. Existing procedures used to recall food can be used to remove food that may be unsafe or unsuitable due to a packaging fault.

Option analysis summary

Objectives	*Consistency*	*Clarity*	*Effective and efficient recalls*	*Cost minimisation*
Status quo	✗	✗	✓	✓
Option 1	✓✓	✓✓	✓✓	✗
Option 2	✓	✓✓	✓	✓
Option 3	✓✓	✓✓	✓✓	✗

6. Which option do you prefer? Please elaborate on your response and identify any improvements that could be made.

7. What positive and negative impacts would each option have?

[6] http://www.mpi.govt.nz/dmsdocument/21871-occurence-and-risk-characterisation-of-migration-of-packaging-chemicals-in-new-zealand-foods
[7] http://www.foodstandards.gov.au/code/proposals/Pages/P1034ChemicalMigrationfromPackagingintoFood.aspx

8. Would you prefer?
   - ☐ A specified list of traceability information that must be recorded
   - ☐ Having the flexibility to record the traceability information you need, so long as it enables you to accurately and effectively identify and locate food and ingredients
   - ☐ No preference
   - ☐ Other (please explain)

9. Please provide rationale for your preference.

Issue C: How long traceability information must be kept

Status quo

Notices and regulations under the food safety Acts require records to be kept for different lengths of time. Under the Animal Products Act and Wine Act, requirements are set in notices, and under the Food Act they are set in regulation:

- Animal Products – four years or the shelf life, whichever is greater.
- Wine Act – seven years.
- Food – four years.

Note that these are general requirements, and do not specifically relate to traceability information. The shelf life of some products or ingredients, like some wines, other alcohols, and honeys, can extend beyond the length of time records are required to be kept. Food safety recall outcomes are compromised if products are being consumed after businesses are lawfully required to retain any records pertaining to them. In these cases, it may be difficult to recall those products or recalls may be broad to capture all possible products.

The period of time that records are to be kept differ between food Acts, and are not consistent in how they apply to products with long shelf lives. There are no new costs from maintaining the status quo, however if a long-life product needed to be recalled, the efficiency, effectiveness and cost of a recall would be negatively impacted if the records are not held by businesses.

Proposal C: traceability records would need to be kept for the time specified under each food safety Act, or one year past the shelf life of the product, whichever is longer

Food businesses producing products or ingredients with a shelf life longer than the time period identified above would need to store traceability records for these items for one year past this shelf life. The shelf life is the same as identified on packaging as 'best-before' or as determined by the processor of the product. As food can be legally sold after the best-before date, provided it is still fit for human consumption, (but not after the use-by date), the additional year will cover food that has passed its best-before date, but not its use-by date.[8] This means that sufficient information would be available to track long-life products being recalled.

The Working Group proposed that traceability data for dairy products should be kept for the greater of four years or one year past the shelf life. In extending the proposal to all food sectors, the requirement has been adjusted to reflect the standard record-keeping times of the individual food safety Acts.

[8] Food should not be eaten after the use-by date, and it is illegal to sell food past this date. Food can still be safe to eat after the best-before date, but it may have lost some of its quality. It can still be sold so long as it is still fit for human consumption.

Food businesses with products that have a shorter shelf life (less than the time period identified in the relevant food safety Act) would not be impacted by this proposal, as there would be no change to their record-keeping requirements. However, businesses with products that have shelf lives longer than current record-keeping requirements will have to keep records for these products for a longer time than all other records.

This proposal would make clear the length of time traceability records are to be held, and result in records being available should a long-life food item need to be recalled. Some businesses would face extra costs from storing records for longer. MPI expects any additional record storage costs (in general) to be low.

This proposal would create more consistency than the status quo, as records for all products, no matter what food safety Act they were produced under, would need to be kept for the length of the shelf life of the product. However, the legislated timeframes for record-keeping requirements would remain different for the different Acts.

Option analysis summary

Objectives	*Consistency*	*Clarity*	*Effective and efficient recalls*	*Cost minimisation*
Status quo	✗	✗	✓	✓✓
Proposal C	✓	✓✓	✓✓	✓

10. Do you agree with Proposal C? Please elaborate on your response and identify any improvements that could be made.
11. What positive and negative impacts would Proposal C have?
12. How many of your products have a shelf life that is longer than the time you are currently required to maintain records for?

Issue D: How quickly information must be shared

Status quo

In a food safety incident, the timeliness of the response is critical to protecting consumers and minimising the economic and reputational impacts of any associated recall.

Notices under the Wine Act and Animal Products Act contain a general requirement for businesses to provide information (not related specifically to traceability information for recall) to MPI up to two days after it has been requested. For a food recall this is generally too slow, as potentially unsafe or unsuitable food could be distributed further or consumed. Typically during a food recall, food safety officers will use their powers under the Food Act to require documents "within a reasonable time that the officer specifies." The power of food safety officers under the Food Act applies to products produced under any of the food safety Acts.

The Food Act regulations are quite different. Businesses are required to inform MPI as soon as practicable, but within 24 hours of making the decision to recall. Food safety officers can then require documents within a reasonable time. Under these regulations, MPI may not be aware that an issue has occurred until up to 24 hours after a decision has been made to recall.

Maintaining the status quo would not address the inconsistent and unclear information-sharing requirements, but it would not place any additional costs on businesses. If businesses incorrectly believe they have up to 48 hours to supply traceability information once requested, they may be unprepared when the information is needed faster, if requested by a food safety officer. With recall information being supplied up to two days after it has been requested, unsafe and unsuitable food could be exposed to the public for longer periods. This impacts on the efficiency and effectiveness of recalls. The potential public health costs and reputational damage could be minimised by faster recalls, which could be assisted by more prompt information sharing.

Proposal D: information is to be provided to MPI within the time specified by a food safety officer, or within 24 hours, whichever is shorter

The existing powers of food safety officers allow them to require the provision of traceability information within a reasonable time they have determined. Factors that could impact how a food safety officer determines a reasonable amount of time could include (but are not limited to) the potential food safety risk presented, scale of recall, nature of product, impact on vulnerable populations, and capacity or size of the business. As with current practices, the food safety officer could still direct a business to initiate a recall if necessary. A provision would be made so that a longer time period could be specified to meet individual circumstances, and be granted at the discretion of MPI.

This proposal would result in consistent and clear traceability information provision requirements across the food safety Acts. It would also bring information-provision requirements in line with how food safety officers can currently use their powers to require information.

Under this proposal, food recalls could be improved through faster information sharing, leading to more effective and efficient food recalls. There may be some cost to businesses if they were not already aware that the reasonable timeframe for providing information is set by the food safety officer, and therefore information might need to be provided quickly. Businesses that were not aware of this existing power might need to update their systems and/or processes, to be able to respond within the timeframes set in a food recall.

Option analysis summary

Objectives	*Consistency*	*Clarity*	*Effective and efficient recalls*	*Cost minimisation*
Status quo	×	×	✓	✓
Proposal D	✓✓	✓✓	✓✓	✓

13. Do you agree with Proposal D? Please elaborate on your response and identify any improvements that could be made.

14. What positive and negative impacts would Proposal D have?

Issue E: Requirement for mock recall exercises

Status quo

Food businesses currently required to maintain traceability procedures and records will typically perform a traceability exercise (that is, tracing a product or ingredient to a customer, or by tracing raw materials back to a supplier) to illustrate compliance when they are verified.

Currently there are no requirements for businesses to regularly test their recall procedures. This means that some recall procedures are only ‘tested’ during a genuine product recall. Faults and inaccuracies can lead to longer public exposure to unsafe and unsuitable food, and more products may be recalled than is necessary. This increases the risk of harm to consumers and can have a negative impact on New Zealand’s strong international food safety reputation.

Mock recalls are already included in third-party food safety standards, so they are already performed by many businesses.

Efficient and effective recalls occur under current requirements. However, not all businesses are prepared for recalls, and improvements could be made. Failed recalls that occur as a result of untested recall procedures can have significant health, business, and reputation costs.

Proposal E: mock recalls would be required to be performed every 12 months unless a successfully managed, genuine recall has occurred in the previous 12 months

This proposal would require businesses to test the effectiveness of their traceability and recall procedures through undertaking a mock recall exercise every year. This mock recall is to be set up and run by the food business, and records are to be checked by the verifier (at the next verification).

The WPC Inquiry recommended that mock recalls be audited and the Working Group recommended that mock recalls be performed and verified every 12 months when a product recall had not taken place. These recommendations were for the dairy sector, which is typically verified more than once a year. Lower-risk food businesses under the Food Act and Wine Act are typically verified less often. As verification represents a significant cost for many businesses, adding additional verifications to some businesses would have a large impact. Therefore we propose that mock recalls be verified when the business is undergoing its usual verification, if the business is verified at least annually. If a business is verified at intervals longer than a year, an annual mock recall would still need to be performed. This should minimise the verification costs some businesses would have faced from strictly following the WPC Inquiry and Working Group's recommendations.

A mock recall could include (but is not limited to):

- developing a recall scenario where a product you sell or make has been found to be unsafe or unsuitable;
- identifying the quantities of affected or potentially affected food;
- contacting MPI, stating you are doing a mock recall;
- following your recall plan (or if you don't have one, following MPI guidance to develop one);
- determining who has received the affected product (and having supporting evidence);
- drafting communications and contacting customers or suppliers; and
- debriefing and developing any corrective actions (if required).

Evidence that these activities have been performed would need to be supplied to verifiers at the next verification.

Businesses would only be required to perform mock recalls if their traceability and recall procedures have not been tested through a successfully managed, genuine recall in the previous 12 months. As MPI is notified of, is involved in, and audits food recalls, it is in the appropriate position to assess whether a product recall was successful, and therefore exempt the business from a mock recall for the next 12 months. Based on any corrective actions identified, MPI would determine whether a mock recall would still be required. Factors that could indicate the success of a recall may include such things as the business's ability to identify all affected product, the proportion of product returned, and the time taken.

For those businesses required to maintain recall procedures that are not subject to a risk-based plan or programme, mock recalls would be required to be performed but not verified. If this requirement was implemented, MPI would review compliance five years after implementation to assess whether further verification requirements were needed.

MPI would provide guidance on mock recalls prior to implementation.

Annual testing of recall procedures is expected to increase the efficiency and effectiveness of recalls as businesses continually improve their procedures. These improvements minimise the costs of performing recalls when they occur, and potentially minimise the product that needs to be recalled and disposed of. There would be new costs for those businesses that do not already perform mock recalls. However, most already perform traceability exercises as part of their verification, and the additional activities needed to simulate a recall are unlikely to cause a significant impact on businesses. By linking verification of mock recalls to current verification frequencies, the impact on and cost to businesses would be minimised.

Alternative option: mock recalls are required to be performed and verified every 12 months

Under this option, mock recalls would be required to be undertaken and verified annually to ensure they are being performed as required. This would have comparatively greater cost impact on those businesses with lower risk profiles that are verified less frequently than every 12 months, because they could require more frequent verification. While the efficiency and effectiveness of recalls would be improved, the additional verification costs could be prohibitive for many businesses (particularly small businesses). This is why the below option analysis summary marks this options twice for not meeting the objective of cost minimisation.

Option analysis summary

Objectives	*Consistency*	*Clarity*	*Effective and efficient recalls*	*Cost minimisation*
Status quo	N/A	N/A	✓	✓
Proposal E	**N/A**	**N/A**	✓✓	✘
Alternative option	N/A	N/A	✓✓	✘✘

15. Which option do you prefer? Please elaborate on your response and identify any improvements that could be made.
16. What positive and negative impacts would each option have?
17. Do you currently undertake a simulated/mock recall as part of your usual food safety procedures? If so, how frequently, what activities are involved, and who audits them?

Issue F: Format of traceability information supplied during recall

Status quo

During a recall, it is most important for MPI to access information quickly, and for this information to be clear and easy to interpret. There are no specific requirements under the three food safety Acts on the format of information to be supplied during a recall. Data can be supplied either electronically or in a hard copy. The format of data presented on a page does not need to be consistent from page to page, which can make it difficult for MPI to analyse during a time-sensitive recall. Efficient and effective recalls do occur under current settings, but improvements could be made. The potential time taken to format traceability data so it can be rendered useful could delay recalls, leading to additional health, business, and reputation costs.

Proposal F: in the event of a recall, traceability information must be supplied to MPI in a readily accessible format

Food businesses would have to provide information to MPI or a registered verifier during a recall in a format that is easily accessible. To future-proof the proposal and enable flexibility for businesses, no prescriptive format is proposed, and the information could be supplied in a hard or soft copy, as long as the format is in a readily accessible form that allows key information to be extracted easily.

The Working Group proposed that traceability information in the dairy industry be submitted electronically and in a standard data format. However, there is a trade-off between setting required file formats and the timeliness of providing information to MPI. Requiring a specific file format can add additional administrative, financial, and time burdens on businesses. In the event of a product recall, MPI expects traceability information to be submitted as quickly as possible or within a timeframe specified by a food safety officer. Submitting information in a prescribed form may be difficult and costly for complex businesses, because they may have lots of relevant information, and for smaller businesses that have possible staff or technology constraints. If their information is readily accessible, MPI can extract the required data more efficiently in response to product recalls. This proposal would maintain maximum flexibility for businesses, and avoid over-burdening them with costs.

Having information supplied in a manner that allows it to be manipulated easily and quickly will assist efficient and effective recalls.

Guidance would be provided to make it clear to businesses what kinds of formats are readily accessible for MPI during a recall, e.g. Excel spreadsheets. Templates would also be provided which businesses may use if it is practical for them to do so.

Alternative option: information must be supplied to MPI or a registered verifier electronically and in a specified format

Traceability information would need to be supplied electronically and in a format that is consistent for all businesses. This would make data extraction a lot easier for MPI. However, food businesses may need to modify their traceability systems to match the prescribed format, or spend more time formatting information if a recall is necessary. Some businesses that have electronic traceability systems would face additional costs adjusting their software, and businesses with more basic systems may need to spend more time formatting traceability data in the event of a recall. Businesses that do not currently have electronic systems would face substantial costs.

Option analysis summary

Objectives	*Consistency*	*Clarity*	*Effective and efficient recalls*	*Cost minimisation*
Status quo	N/A	N/A	✓	✓
Proposal F	**N/A**	**N/A**	✓✓	✓
Alternative option	N/A	N/A	✓✓	✗

18. Which option do you prefer? Please elaborate on your response and identify any improvements that could be made.

19. What positive and negative impacts would each option have?

5 Risk-based plans and programmes

5.1 Purpose of a risk-based plan or programme

Each of the three food safety Acts (Animal Products Act 1999, the Food Act 2014, and the Wine Act 2003) requires certain business operators to register a risk-based plan or programme to manage its food safety and suitability risks. These programmes and plans aim to ensure food is safe, and suitable for human consumption or its intended purpose. These programmes and plans are legally binding documents specific to an individual operator's business.

Animal Products Act 1999

The Animal Products Act states that a risk management programme (RMP) is designed to identify, control, manage, and eliminate or minimise hazards and other risk factors in the production and processing of animal products, so that the resulting product is fit for its intended purpose. Operators set out in their RMPs how they will do this. The RMP must also set out the actions necessary when products do not conform to legal requirements, including the method of notification of animal product safety issues and product recall. RMPs can be based on MPI-approved templates. Many operators develop a RMP that is customised for their individual business (called a custom RMP) using MPI Codes of Practice or models to assist. At present there are around 600 custom RMPs across the animal product sector.

Food Act 2014

Food control plans under the Food Act 2014 are similar to RMPs. Food control plans are designed for a particular food business to identify, control, manage, and eliminate or minimise hazards or other relevant factors, for the purpose of achieving safe and suitable food. The Food Act prescribes the coverage, content, and registration requirements for food control plans, and sanctions that apply for breaches. A food control plan may be based on a template provided by MPI, or a custom food control plan developed by the operator. Lower and medium-risk businesses follow a national programme. This means they don't need to use written food control plans, and are not captured by these proposals.

Wine Act 2003

The equivalent tool in the Wine Act is a wine standards management plan. These plans are designed to identify, control, manage, and eliminate or minimise hazards and other risk factors related to making wine, to ensure the wine is fit for its intended purpose.

5.2 The problem/opportunity

The WPC Inquiry found that many custom RMPs under the Animal Products Act contain material that is not related to food safety and other regulatory obligations. Businesses are using them to fulfil both the statutory requirements of the food legislation, and as a quality management tool for the wider operation of the business.

Using an RMP for these dual purposes can help businesses create a document that fits better with their business processes. However, MPI guidance does say that if other material is to be included in a custom RMP then the food safety elements should be clearly identifiable. Without the food safety matters and related regulatory requirements being clear and free from extraneous content, it is harder to determine whether and how the food safety legal requirements can be or have been met.

A separate concern is that businesses have been able to provide an outline of their RMP to MPI (rather than the whole document) when seeking registration. This has resulted in MPI having limited oversight of the details of the specific processes operators have agreed to follow to address identified risks. Consequently, where outlines have been submitted, MPI will not have enough information to identify an operator's food safety risk management strategies and practices quickly and efficiently.

A final concern is that the key requirements for RMPs are found in a number of notices, making it difficult for businesses to be clear about where and what their legal obligations are.

The objectives of the proposed changes are to:

- ensure sufficient detail is provided to the regulator to help manage significant food safety hazards, and identify any weaknesses consistent across the system;
- make key food safety information clearer to the operator, verifier, and regulator, while also allowing operators to continue to have an integrated programme that suits their needs;
- ensure requirements for risk management programmes are in one place and are easier for operators to access; and
- minimise costs to businesses, while ensuring that food safety is not compromised.

The Food Safety Law Reform Act 2018 harmonises requirements across the food safety Acts, so that, where applicable, the proposed changes will apply to risk-based plans and programmes under the Animal Products Act, the Food Act and the Wine Act.

20. Do you agree with the problem/opportunity? If not, why not?

Issue G: Content that must be provided for registration

Status quo

Currently, under the Animal Products Act an operator can choose to send in an outline, or the full risk management programme to MPI at the time of registration.

The outline that operators send in does not include the hazard identification and management information used to identify and manage significant food safety hazards. The full RMP has to contain this information. Without the detailed hazard identification and management information, MPI does not have enough information to quickly and efficiently identify an operator's food safety risk management strategies and practices.

Operators with a food control plan under the Food Act are already required to provide this information, as are operators with a wine standards management plan under the Wine Act. This creates inconsistency between the three food safety Acts.

Proposal G: if an operator submits an outline of their RMP for registration, the hazard identification and management information (e.g. the HACCP plan) must be supplied in addition to the current requirements.[9]

The FSLR Act provides that regulations will set out the content to be supplied for registration if a full RMP is not sent in. The current requirements for what needs to be in a RMP outline do not provide MPI with enough information about the detailed processes that operators intend to use to meet their food safety requirements and manage risks. Having the hazard identification and management information would allow MPI to know how operators are proposing to manage significant food safety hazards, and identify any systemic weaknesses across the system.

Some businesses have already provided the additional information to MPI because MPI has asked for it. If the proposal is accepted, then operators of a RMP who have not already sent in this information to MPI would need to do it when they register their next significant amendment, or by their next verification audit – whatever is earlier. As this information is already in the full RMP that businesses have on site, operators would not be required to produce new information, only to supply it to MPI.

[9] As set out in the Animal Products (Requirements for Risk Management Programme Outlines) Notice 2008

Option analysis summary

Objectives	*Consistency*	*Clarity*	*Cost minimisation*
Status Quo	×	N/A	✓
Proposal G	✓✓	**N/A**	✓

Key

×	does not meet objective
✓	somewhat meets objective
✓✓	meets objective
N/A	not applicable to objective
[Bold]	**preferred option**

21. Do you agree with proposal G? Please elaborate on your response and identify any improvements that could be made.

22. What positive and negative impacts would proposal G have?

23. Have you already provided your HACCP information to MPI after sending in an outline of your RMP to MPI?

The WPC Inquiry recommendation on providing full plans and programmes to regulators and verifiers

The WPC Inquiry recommended that MPI should receive full risk-based plans and programmes. Under this option, the ability to provide an outline of a risk-based plan or programme for registration would have been removed. This option was consulted on during consultation on the Food Safety Law Reform Bill process. However, removing the ability to provide only an outline would have cost implications, as businesses would have to send MPI their whole document and MPI would need to hold more information. While this option would mean MPI always has a complete picture of an operators RMP, there is already a legal requirement that a business's full RMP must be provided to MPI within two working days of any request. We do not propose to change this requirement.

Issue H: Differentiating food safety matters from other content

Status quo

Many custom RMPs have become unwieldly and very complex. The WPC Inquiry noted that "some have grown to thousands of pages, made up of dozens of individual documents."[10] Some contain extensive material that is not related to food safety regulatory obligations, such as commercial specifications and matters related to staff safety. While this has been allowed by MPI, the food safety material has not always been as clearly identified as the guidance material provided by MPI suggests it should be.

[10] *Report on New Zealand's Dairy Food Safety Regulatory System* Government Inquiry into the Whey Protein Concentrate Contamination Incident, December 2013, p.33.

The increased complexity has come about partly because some businesses are using them to fulfil both the statutory purpose of an RMP (as above) for compliance purposes, and as a food business risk management tool that is used constantly by the operator. The RMP requirements are often scattered throughout a business's operating manual. This makes it difficult for the operator and regulator to maintain awareness of which parts of the document are the legal RMP requirements and which are not. It is not always clear how the regulatory requirements will be met, making it harder to evaluate and verify them.

Maintaining the status quo would not solve the issue of unwieldly and complex RMPs. Food safety matters and related regulatory requirements would continue to be mixed in with non-food safety content. This would make it difficult for the operator, verifier and MPI to know where and what the food safety and related regulatory requirements are, and how they are being fulfilled by the business. It is important that the structure and format of these documents allow relevant content (food safety matters and related regulatory requirements) to be identified quickly and accurately.

The Food Safety Law Reform Act enables regulations to be made to set the format of the documents submitted to support applications for registration of risk-based plans and programmes.

Proposal H: Operators of new and existing custom risk-based plans and programmes would be required to differentiate food safety matters and related regulatory requirements from non-food safety content in all risk-based plans and programmes submitted to MPI.

MPI is seeking feedback about the best way to differentiate food safety matters and related regulatory requirements from non-food safety content, to allow operators to continue to use their custom risk management programme, food control plan, or wine standards management plan for wider business purposes.

The choice of differentiation will provide operators with the flexibility to choose a way that works for them, and enables the focus to be on food safety obligations, as sought by the WPC Inquiry, without requiring full separation. Differentiation will allow operators, verifiers, and MPI to accurately and clearly find all the relevant content.

Food safety matter and related regulatory requirements are anything that directly addresses the requirements specified in the food safety Acts, regulations and notices, including product traceability (and market access-related if applicable) obligations.

In outlining these options, MPI proposes that all text documents to support custom risk-based plans and programmes should be provided to MPI in an **electronic format**.[11] This is because electronic text documents enable efficient review and use of the content for MPI and verifiers (for example hyperlinks for navigation and search capability for key words or phrases).

Almost all custom risk-based documentation is received electronically. Ninety percent of current applications for all risk-based plans and programmes are received electronically, ten percent are received as paper documents, and these are template plans and programmes.

Below are some examples that operators could use to differentiate their food safety matters and related regulatory requirements from non-food safety content. We are seeking your views on the option or options you prefer, and which option works best for your business.

Differentiation method 1: Visual differentiation

Food safety matters and related regulatory requirements are identified by **visual means** (e.g. colour, symbols, images, sections or key text). The reader must visually inspect each page of the document to find all relevant text related to food safety matters and related regulatory requirements.

[11] E.g. Microsoft Word documents, Microsoft Excel documents or Adobe Acrobat documents created electronically from Microsoft Word documents. Note that scanned text documents (created by scanning a text document through a photocopier) do not satisfy this requirement.

Examples of visual means include:

- Use of a specific symbol or image (e.g. logo) at the start and end of relevant text.
  - e.g. ➡Food safety text food safety text food safety text.⬅
- Use of an obvious font colour or highlight colour for relevant text.
  - e.g. Food safety text food safety text food safety text food safety text
- Borders around relevant text.
  - e.g. Food safety text food safety text food safety text food safety text food safety text
- Use of a specific word or phrase (in bold) at the start and end of relevant text, for example "food safety text" or "food safety material".
  - e.g. **Food safety material.** Food safety text food safety text. **Food safety material.**

Differentiation method 2: Electronic differentiation *(preferred option)*

Food safety matters and related regulatory requirements are identified by **electronic means**.[12] Using search tools, the reader is automatically taken to each page containing relevant text related to food safety matters and related regulatory requirements. This allows for efficient evaluation, assessment and on-going verification.

Examples of electronic means in a Microsoft Word or Microsoft Excel document include:

- Use of a specific Microsoft symbol at the start and end of relevant text.
  - e.g. ☑ Food safety text food safety text food safety text. ☑
- Use of an obvious font colour or highlight colour for relevant text (or coloured cells for Microsoft Excel documents).
  - e.g. Food safety text food safety text food safety text food safety text
- Use of a specific word or phrase (in bold) at the start and end of relevant text, for example "food safety text" or "food safety material".
  - e.g. **Food safety material.** Food safety text food safety text. **Food safety material.**

Examples of electronic means in an Adobe Acrobat document created from a Microsoft Word document include:

- Use of a specific Microsoft symbol at the start and end of relevant text.
  - e.g. ☑ Food safety text food safety text food safety text. ☑
- Use of a specific word or phrase (in bold) at the start and end of relevant text, for example "food safety text" or "food safety material".
  - e.g. **Food safety material.** Food safety text food safety text. **Food safety material.**

As part of on-going verification processes, existing custom risk-based plans or programmes will be checked to ensure that the differentiation of relevant content is clear. Where there is a lack of clarity, operators will be asked to amend their plan or programme to adequately differentiate relevant content.

Option analysis summary

Objectives	*Consistency*	*Clarity*	*Cost minimisation*
Status Quo	N/A	✗	✓
Proposal H	**N/A**	✓✓	✓

24. Do you agree with Proposal H? Please elaborate on your response and identify any improvements that could be made.

[12] Common computer software can be used to search and find defined symbols or text to readily identify relevant content, utilising the "Find" command of Microsoft or Adobe Acrobat.

25. Do you integrate food safety matters and related regulatory requirements with non-food safety matters in your risk-based plan or programme?
26. If integrated, are the food safety matters and related regulatory requirements differentiated from non-food safety matters in your risk-based plan or programme? If so, how is it done?
27. Which, if any, of the ways above would be your preferred way of differentiating? Please say why?
28. What positive and negative impacts would Proposal H have?
29. Do you think the regulations should have a limited number of acceptable ways to differentiate, or allow operators to choose a way that works for them?

The WPC Inquiry recommendation on better identifying the food safety content of risk-based plans and programmes.

The WPC Inquiry recommended that the content of RMPs should be limited to food safety matters and related regulatory requirements. Operators whose risk-based plan or programme currently have non-food safety material would have to remove such content. This would allow businesses and their staff to easily see and access all food safety regulatory requirements, and the processes by which they will manage their risks. RMPs would also be able to be more readily evaluated, verified, and enforced. However, subsequent analysis showed that it is not practical for many complex businesses to remove or keep food safety material entirely separate from non-food safety material in their business systems. Feedback received from industry during consultation on the FSLR Bill indicated that such an approach would be onerous and costly for many businesses.

Operators would still have the option of separating out their food safety material from their non-food safety material if they choose to.

Issue I: Moving RMP requirements from notices into regulations.

Currently, the requirements for what needs to be in a RMP are spread across two notices and a policy statement. This makes it difficult for operators to find out where and what their legal obligations are. To help with this issue, the following Animal Products requirements will be moved into regulations:

- Animal Products (Risk Management Programme Specifications) Notice 2008;[13]
- Animal Products (Requirements for Risk Management Programme Outlines) Notice 2008;[14]
- Animal Products Act 1999 Statement of Policy: Operator Responsibilities during Registration of a Risk Management Programme (Version 1).[15]

Legal obligations for operators do not change, regardless of whether requirements are set in a notice or a regulation. However, having all the requirements for the contents of RMPs in fewer places will make it easier for operators to know what their legal obligations are. This will help remove duplication and streamline requirements. Technical matters that are subject to frequent change will still need to remain in a notice.

[13] https://www.mpi.govt.nz/dmsdocument/10889-animal-products-risk-management-programme-specifications-notice-2008
[14] https://www.mpi.govt.nz/dmsdocument/10886-animal-products-requirements-for-risk-management-programme-outlines-notice-2008
[15] https://www.mpi.govt.nz/dmsdocument/1356-animal-products-act-1999-statement-of-policy-operator-responsibilities-during-registration-of-a-risk-management-programme-version-1

30. Do you have any views on the proposal to move the current RMP requirements to regulations and leave the technical detail in a notice?

5.3 Future work

The WPC inquiry also recommended streamlining the requirements in regulations and notices in order to make the legal framework clearer and more accessible for operators who have to comply with it. MPI is underway with a wider review of these requirements, which is likely to result in fewer requirement documents in general, particularly fewer notices. We expect to continue to engage with stakeholders on these changes in 2019.

5.4 Minor and technical proposed changes to the current Notices

A few minor or technical changes are also proposed to simplify, clarify and improve the requirements for the contents of RMPs. Details of the proposed changes can be found in **Appendix Three**.

31. Do you agree with the proposed minor and technical changes for RMPs? Why/why not?

6 Transitional provisions

We propose the following times for businesses to transition to the proposed food recall and risk-based plans and programmes requirements, based on risk. Compliance would be checked at the businesses' next verification, after the transition period timeframes listed in the table below have elapsed from when the regulations came into force.

Business	**Transition period**
Risk management programme operators	6 months
Food control plan operators	9 months
National programme and wine standards management plan operators	12 months
All other food businesses	12 months

32. Do you agree with these transitional provisions? Why/why not? Please elaborate on your response and identify any improvements that could be made to the proposal?

7 Appendices

Appendix One: Summary of questions

What do you think?

1. Do you agree with the objectives for strengthening food recalls and improving risk-based plans and programmes? Why/why not?
2. Do you agree that food recall requirements need to be strengthened, consolidated, and be made more consistent amongst the food safety Acts? Why/why not?

Proposal A: businesses with risk-based plans or programmes, and importers or exporters of food, must maintain food recall procedures

3. Do you agree or disagree with Proposal A? Please elaborate on your response and identify any improvements that could be made.
4. What positive and negative impacts would Proposal A have?
5. Would Proposal A require you to maintain food recall procedures for the first time?

Proposal B: food businesses required to maintain traceability processes must ensure information is accurate and allows businesses to effectively trace and recall, if required to do so, relevant products and ingredients received and dispatched to and from suppliers and customers. Options are presented around the tracing of incoming batches of ingredients into the outgoing batches of finished products, as well as the tracing of packaging.

6. Which option do you prefer? Please elaborate on your response and identify any improvements that could be made.
7. What positive and negative impacts would each option have?
8. Would you prefer?
   - ☐ A specified list of traceability information that must be recorded
   - ☐ Having the flexibility to record the traceability information you need, so long as it enables you to accurately and effectively identify and locate food and ingredients
   - ☐ No preference
   - ☐ Other (please explain)
9. Please provide rationale for your preference.

Proposal C: traceability records would need to be kept for the time specified under each food safety Act, or one year past the shelf life of the product, whichever is longer

10. Do you agree with Proposal C? Please elaborate on your response and identify any improvements that could be made.
11. What positive and negative impacts would Proposal C have?
12. How many of your products have a shelf life that is longer than the time you are currently required to maintain records for?

Proposal D: information is to be provided to MPI within the time specified by a food safety officer, or within 24 hours, whichever is shorter

13. Do you agree with Proposal D? Please elaborate on your response and identify any improvements that could be made.
14. What positive and negative impacts would Proposal D have?

Proposal E: mock recalls would be required to be performed every 12 months unless a successfully managed, genuine recall has occurred in the previous 12 months

15. Which option do you prefer? Please elaborate on your response and identify any improvements that could be made.
16. What positive and negative impacts would each option have?
17. Do you currently undertake a simulated/mock recall as part of your usual food safety procedures? If so, how frequently, what activities are involved, and who audits them?

Proposal F: in the event of a recall, traceability information must be supplied to MPI in a readily accessible format

18. Which option do you prefer? Please elaborate on your response and identify any improvements that could be made.
19. What positive and negative impacts would each option have?

Proposal G: if an operator submits an outline of their RMP for registration, the hazard identification and management information (e.g. the HACCP plan) must be supplied in addition to the current requirements

20. Do you agree with the problem/opportunity that the proposed regulations are aiming to address? If not, why not?
21. Do you agree with Proposal G? Please elaborate on your response and identify any improvements that could be made.
22. What positive and negative impacts would Proposal G have?
23. Have you already provided your HACCP information to MPI after sending in an outline of your RMP to MPI?

Proposal H: Operators of new and existing custom risk-based plans and programmes would be required to differentiate food safety matters and related regulatory requirements from non-food safety content in all text documents submitted to MPI

24. Do you agree with Proposal H? Please elaborate on your response and identify any improvements that could be made.
25. Do you integrate food safety matters and related regulatory requirements with non-food safety matters in your risk-based plan or programme?
26. If integrated, are the food safety matters and related regulatory requirements differentiated from non-food safety matters in your risk-based plan or programme? If so, how do you do it?
27. Which, if any, of the ways above would be your preferred way of differentiating? Please say why.
28. What positive and negative impacts would Proposal H have?
29. Do you think the regulations should have a limited number of acceptable ways to differentiate, or allow operators to choose a way that works for them?

Issue I: minor technical changes to notices, and transitional provisions

30. Do you have any views on the proposal to move the current RMP requirements to regulations and leave the technical detail in a notice?
31. Do you agree with the minor and technical changes? Why/why not?
32. Do you agree with these transitional provisions? Why/why not? Please elaborate on your response and identify any improvements that could be made to the proposal.

Business Demography

Having basic information about your business will help us understand your feedback and make better regulatory decisions with the information you provide. Answering these questions is optional.

Business information

What risk-based plan(s) or programme(s) do you operate under? (please select all that apply):

- ☐ Risk management programme
- ☐ Food control plan
- ☐ National programme 3
- ☐ National programme 2
- ☐ National programme 1
- ☐ Regulated control scheme
- ☐ Wine standards management plan
- ☐ None / Exempt
- ☐ Other: Please specify

What sector(s) do you operate in? (please select all that apply):

- ☐ Dairy
- ☐ Food service
- ☐ Honey and bee products
- ☐ Food and beverage manufacturer
- ☐ Meat, ostrich, emu, and game
- ☐ Organics
- ☐ Pet food and inedibles
- ☐ Plant products
- ☐ Poultry and eggs
- ☐ Retail and wholesale
- ☐ Seafood
- ☐ Stores (dry and cold)
- ☐ Transport and wharves
- ☐ Wine
- ☐ Animal feeds
- ☐ Importers
- ☐ Verifier
- ☐ Other: Please specify

Do you operate under a template or custom risk based plan or programme? (please select all that apply):

- ☐ Template
- ☐ Custom
- ☐ Not applicable

How big is your business (average annual turnover / or turnover in 2017)?

- ☐ Up to $500,000
- ☐ $500,001 to $1,000,000
- ☐ $1,000,001 to $2,000,000
- ☐ $2,000,001 to $5,000,000
- ☐ $5,000,001 to $10,000,000
- ☐ $10,000,001 to $20,000,000
- ☐ $20,000,001 to $50,000,000
- ☐ More than $50,000,000

How big is your business (full-time equivalent employees)?

- ☐ Up to 5
- ☐ 6 to 10
- ☐ 11 to 20
- ☐ 21+

Do you import of export food? (please select all that apply)

- ☐ Import
- ☐ Export
- ☐ Not applicable

What is the main region of your operations?

- ☐ Northland
- ☐ Auckland
- ☐ Waikato
- ☐ Bay of Plenty
- ☐ Gisborne
- ☐ Hawke's Bay
- ☐ Taranaki
- ☐ Manawatu-Wanganui
- ☐ Wellington
- ☐ Tasman-Nelson
- ☐ Marlborough
- ☐ West Coast
- ☐ Canterbury
- ☐ Otago
- ☐ Southland

Appendix Two: current traceability requirements

The following is a general summary of the requirements, but may not be an exhaustive list. Interested parties should check the relevant sections of the legislation for details.

New Zealand businesses that export certain food products may also be subject to additional traceability obligations, based on export certification requirements and the requirements of the destination market.

Legislation and sectors covered	Current traceability requirements
Animal Products Act 1999	
• All animal products and materials	• All RMP compliance records must be: o Kept for four years (or, if longer, the shelf life of the product) o Supplied two working days after request
• All animal products and materials (excluding dairy products, material and processing)	• One up, one down • Internal traceability • Records must be: o Complete o Accurate o Of sufficient quality o Appropriately stored and readily accessible o Promptly supplied
• Bivalve molluscan shellfish (extra requirements)	• Each lot traceable to source growing area • Must provide harvest declaration • Maintain procedures and processes to demonstrate compliance with record-keeping requirements
• Honey (extra requirements)	• Harvest statements must be completed whenever bee products are provided to an RMP operator • Harvest statements and copies must be held for four years
• Pet food (extra requirements)	• Must provide supplier statement
• Farmed mammals and birds meat (extra requirements)	• Must provide supplier statement – although there are some exceptions, e.g. whole health flock schemes
• Wild mammals and other killed mammals (extra requirements)	• Must provide supplier statement
• Dairy products, material and processing	• One up, one down (products, processing aids, and ingredients) • Internal traceability • Records of raw-milk suppliers (location and quantity) • Exported product will be labelled with premises, lot, and date identification • Each RMP-specified location must have a unique identifier
• Limited processing fishing vessels (separate requirements)	• Records must be kept for four years • Records must be supplied within two working days of request
Wine Act 2003	
• Wine	• One up, one down (wine inputs) • One down (wine) • Records must be: o Kept for seven years o Supplied immediately upon request, or within two working days
• Grape wine (extra requirements)	• Grapes traceable forward from vineyard to sale of wine • Wine traceable backwards from particular package to vineyard
Food Act 2014	
• All food and food products	• Identification labelling
• Food control plans and national programmes	• One up, one down: must have procedures to identify and trace food • Must have recall procedures for food and food related accessories • Records must be kept for four years
• Imports	• One up, one down • Records must be kept for four years

• Honey	• Suppliers of honey must: o Maintain records to show compliance o Provide a written statement on request • Records must be kept for four years
• Other food	• Uncooked Comminuted Fermented Meat (UCFM) production records must be kept for four years • Specified records must be kept at facilities where food is irradiated

Appendix Three: Proposals for minor and technical changes to the current RMP notice

Animal Products (Risk Management Programme Specifications) Notice 2008	
Clause and background information	Proposed changes and why
7 Limits Limits set the point where the level of risk moves from acceptable to unacceptable, in relation to the critical control point, which is the point where controls can be applied to prevent, eliminate or reduce hazard. Some limits are set through regulation. When there is no limit set through regulation, operators are required to set their own.	Proposal: Include a requirement that operators set out a reason for each operator-defined limit. Purpose: To confirm that the operator: • thought about why they are setting a particular limit, and the level it has been set at; • has good justification for the limits selected; and • has reviewed available information and is aligned with best practice.
9 Description of the process or operation A RMP must describe every process or operation carried out under the programme. While carrying out these processes, rework might be required. Rework occurs in situations where: • something goes wrong during processing; or • there are leftovers. It is an important part of processing as it prevents product wastage, but it can be a risky step if not well controlled.	Proposal: Include a requirement that "rework" be included as part of the description of the process or operation, if applicable. Rework generally refers to interim materials or products that have been partially or fully processed and are being reintroduced to the process at an earlier step. Purpose: Rework often occurs during processing, and should be planned. By adding rework as a requirement into the process description it becomes clear when an operator intends to do this and that any hazards or other risk factors that may be introduced as a result of rework have been systematically assessed.
12 Document list This requires the operator to keep a list of all documents that comprise the programme with the date and version at the time of registration.	Proposal: Include a requirement that the RMP must have a list of all documents that comprise the programme with the **current** date or version. Purpose: This change is to ensure that if an amendment is made to a document, a record of the amendment is made, and the date and/or version in the document list is updated. Having the latest version clearly identified in the document list will ensure there is no confusion about which is the current version of the document.
17 Allowing verifiers to carry out verification functions and activities This clause provides recognised verifiers with the rights to go into the business and carry out the tasks of a verifier.	Proposal: include a requirement that an operator's RMP must include a provision allowing the verifier to see operations in action. Purpose: in order to satisfactorily complete the verification task, it is important that verifiers are able to see operations in action. While this could be considered as implicit in the existing requirements, we consider that it would be helpful to clarify the requirement in this respect in the proposed regulations. The extra clarification ensures that verifiers are clearly able to request seeing an operation in action.

19 Document control Systems to ensure that RMP documents are current, authorised, and readily available, and that obsolete documents are removed and archived.	Proposal: Clarify that validation evidence forms part of the RMP documentation, and must be readily accessible. Obsolete validation documentation must be retained in accordance with the current retention periods. Purpose: To avoid doubt that validation evidence, like other documentation that makes up the RMP, needs to be retained. The need to retain validation evidence would be particularly important if there were a food safety incident and the validation evidence needed to be reviewed. It also provides evidence of due diligence.
21 Documentation to be submitted for registration of a significant amendment of a risk management programme To register a significant amendment to a RMP, the following documents must be submitted: • pages affected by the amendment; and • the protocol when a significant amendment is made (where appropriate).	Proposal: The following documents must be submitted for registration of a significant amendment of a risk management programme: • Full outline with amendments identified; or • Full RMP with amendments identified. Purpose: the current requirements can make the registration process more onerous for the MPI assessors, as they often need to go back through the files to see how the amendment fits with the existing RMP. By requiring the complete RMP or outline to be submitted when registering a significant amendment, it also ensures that the most recently registered version can be more readily accessed by MPI.