Ministry for Primary Industries
Manatū Ahu Matua

Proposed Animal Products Notice: Official Devices

Ministry for Primary Industries Discussion Paper No: 2019/08

Prepared for all exporters of animal material and animal products
By the MPI Food & Live Animal Assurance Team

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This publication is available on the Ministry for Primary Industries website at http://www.mpi.govt.nz/news-resources/publications.aspx

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1. Submissions

The Ministry for Primary Industries (MPI) invites your comment on this discussion paper and on the proposed Animal Products Notice: Export Requirements for Official Devices.

You may compile your submissions by answering the 13 questions in this discussion document or commenting on any of the provisions in the proposed notice.

MPI recommends that the body of your submission is set out in a format that is identical or similar to the table in Annex 2.

Consultation closes on 6 December 2019

1.1 HOW TO HAVE YOUR SAY

MPI encourages submitters to make their submission electronically so please email your submission to: food.assurance@mpi.govt.nz.

If you choose to convey your submission in writing, it should be posted to the following address:

Consultation – Exemptions for Exported Food
Food & Live Animal Assurance Team (Level 11 TSB Tower)
PO Box 2526
Wellington 6140

Please include the following information in your submission:

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

The following points may be of assistance in preparing comments:

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

1.2 THE OFFICIAL INFORMATION ACT 1982 (THE OIA)

Everyone has the right to request information held by government agencies, known as "official information". Under the OIA, information is to be made available to requesters unless there are reasonable grounds for withholding it. The grounds for withholding information are outlined in the OIA.

If you are submitting on this discussion document, you may wish to indicate any grounds for withholding information contained in your submission. Reasons for withholding information could include commercially sensitivity or privacy. MPI will consider such grounds when deciding whether or not to release information.

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

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

1.3 WHAT HAPPENS NEXT

MPI will consider all submission after consultation has closed and a recommendation will be made to the relevant decision maker about the final version of the proposed Notice to be issued. A summary of submissions and analysis will be sent to all submitters and posted on the MPI website.

The new Notice is scheduled be issued on 2 March

Indicative timeframes

	Action
Friday 25 October 2019	Consultation starts
Friday 6 December 2019	Consultation closes (6 weeks consultation)
Friday 14 February 2020	Consideration of submissions complete
Friday 28 February 2020	Final review (2 week)
Monday 2 March 2020	Notice is issued

2. Background

In order to safeguard assurances provided by New Zealand in respect of animal material and animal products, and to facilitate access to overseas markets, MPI regulates a number of official devices that are used for the identification, differentiation, or security of animal material and animal products.

MPI's mandate to regulate official devices is provided for under the Animal Products Act 1999 (the Act). The Act authorises MPI to specify or approve the following by notice:

- systems and devices providing for the identification, differentiation, or security of animal material, animal products, premises or places, and associated things; and
- the persons who may operate or apply such systems and devices; and
- the persons who may manufacture identification, differentiation, and security systems and devices, and the security of the processes used to manufacture them; and
- conditions on the use and security of the identification systems or devices.

Currently, MPI allows, and regulates, the use of the following official devices:

- branding devices; and
- carton seals; and
- carton strapping; and
- container seals; and
- reduced size legends.

Requirements which regulate the use of MPI official devices are currently specified under the following documents:

- Animal Products (Branding and Associated Requirements) Notice 2006; and
- Animal Products (Export Requirements for Branding, Marking and Security Devices) Notice 2012; and
- Animal Products – Official Devices Programme: Interim Requirements and Guidance for Operator Seal Use; and
- Animal Products – Official Devices: NZFSA Container Seals; and
- Approval Notice Amending Carton Seals and Interventions Seals; and
- Manual 15 – Brands – Inspection Legend Material – Container Seals
- TD 00/41 Control of Brands, Seals and Legend Bearing Packaging Materials in Export Establishments.

2.1 AMALGAMATION OF REQUIREMENTS

MPI proposes amalgamation of all requirements regarding supply and use of official devices into a single notice issued under the Animal Products Act. This will assist exporters to understand what the requirements are and remove any uncertainty about what is guidance and what is legally mandated.

Having a single notice, will also avoid duplication and confusion and assist with compliance.

Question 1
Do you support the amalgamation of all requirements into one notice as proposed?

In amalgamating the requirements MPI has also reviewed them to ensure that they are fit for purpose. MPI proposes:

- only transitioning requirements that are current, applicable for export and fit for purpose. E.g. for brands:
    - Only the oval brand format has been transitioned from Manual 15. This is the only format applicable for export.
    - Minimum number of brands per carcass reflects current practice; and
- expanding the application of the notice to live animals and germplasm for export; and
- new definitions to aid clarity and to cover the expanded scope; and
- clarifying requirements where necessary.

A table is provided in Annex 1 to assist stakeholders locate information in existing legislation and determine where it is covered in the draft notice.

Question 2
Do you believe there are current applicable requirements that are not reflected in this draft notice?
If so please give detail as to what they are?

3. Proposed Changes

3.1 LIVE ANIMAL AND GERMPLASM

Currently dark green plastic strap seals with an alphanumeric identifier consisting of the letters "NZMPI" followed by 6 numeric digits are used to seal the outer container for live animals and germplasm during export. These seals are referred to as an official seal and the seal identifier is referenced on the official assurance.

Where seal identifiers are referenced on official assurances MPI needs to be able to demonstrate that there is sufficient control over the type and use of seals and the security during manufacture and distribution.

For this reason it is proposed that the seal used for live animal and germplasm exports be officially approved and that similar controls are required for its manufacture, distribution and use as for other official devices.

The parts in the proposed notice specifically relating to the seal used for live animal and germplasm exports are:

- Part 7.1 Use of security seals on transportation outers for live animal and germplasm.
- Part 14.3.2 MPI Plastic Strap Seal.

Parts 1, 2 and 8-12 also propose requirements that would be applicable where the plastic strap seal are used. Such requirements would also apply to any future seals approved for use for live animals or germplasm exports (by subsequent versions of the proposed notice).

Question 3
Do you feel that the incorporation of seals for live animal and germplasm exports should be included in this Notice? If not how do you propose that appropriate controls around the use of such seals could be required?

Question 4
Do you have any concerns about the general requirements for official devices (their use, manufacture and distribution) being applied to devices for live animal and germplasm exports? If so please give detail about these concerns

3.2 SUPPLIERS OF OFFICIAL DEVICES

A systems audit carried out in 2016 identified a number of non-compliances by approved manufacturers of official devices. These included:

- Subcontracting without documentation and appropriate security arrangements.
- Lack of documentation around overseas manufacturers' operations.
- Accepting orders from persons not formally authorised and notified to the supplier.
- Manufacture being in excess of that delivered to MPI, surplus being stored by supplier.

The findings of the audit clearly indicate that the current control of approving manufacturers is insufficient to ensure security around manufacture and distribution of devices. The behaviours found offer many opportunities for devices to come into the possession of unauthorised persons and increase the risk of fraudulent use of official devices and misrepresentation of goods as "Product of NZ"

Manufacturers of official devices are currently required to be approved by MPI however once approved there are no legislative requirements for review of performance or update of registration details.

The draft notice looks to address this lack of control and proposes that:

1. The Director General be empowered to set an expiry date for the approval.
2. All approved manufacturers are required to undergo an annual audit to ensure that they are compliant with requirements as specified in the draft notice.

When the notice is issued it is proposed that the existing approved manufacturers be deemed as approved manufacturers of official devices for 6 months after the date which the notice comes into force. This will allow time for the approved manufacturers to be audited prior to reapplying for approval.

Question 5
Do you agree that the requirement for annual verification and renewal of approval for manufactures of official devices is appropriate to ensure fitness for purpose and security while under the manufacturer's control?

If not what alternative controls would you propose?

Question 6
Do you agree with the timeframe of 6 months to allow existing Approved Manufacturers to obtain an audit and reapply for approval?

If not what timeframe do you believe would be appropriate?

3.3 SUBCONTRACTING OF APPROVED MANUFACTURERS

Part 10.2(2)(a) of the draft notice permits Approved Manufacturers of branding tools to subcontract production of materials that do not include any official assurance legend. This change recognises the fact that some components of branding tools (e.g. handles) are effectively generic items and the risks associated with their manufacture and distribution are lower than those associated with the finished official device or component that includes an official assurance legend or government coat of arms.

Section 10.2(1)(a) permits Approved Manufacturers to sub-contract the production of container seals. This is to recognise the limitation that few (if any) container seals are actually manufactured in New Zealand. Noting that the Approved Manufacturer needs to be resident in New Zealand in order for requirements to be enforceable.

Question 7:
Do you believe that allowing Approved Manufactures to subcontract the following items is appropriately given the level of risk to the integrity of the official assurance framework?

a. container seals and
b. production materials for branding tools that do not include any official assurance legend

If not please give detail as to why not.

3.4 SECURITY OF DEVICES AT SITES

Review of the requirements in Manual 15 relating to security of devices on RMP premises revealed that the requirements for each type of device are similar although the person responsible for security may differ. Part 8 of the proposed notice has therefore been drafted to reflect this similarity while clearly outlining the roles and responsibilities of different parties.

Part 8.5 also brings the verification requirements in line with general export verification requirements and requirements set under the Official Assurance Specification.

Consideration has been given to whether the responsible party for carton seals and container seals could change to the operator rather than the OA verifier however due to the expectations of key trading partners this is not possible.

Question 8
Do you think that the alignment of verification requirements with the export verification requirements and Official Assurance specification is appropriate?

3.5 USE OF OFFICIAL ASSURANCE LEGEND

The draft notice clarifies the requirement that the official assurance legend may only be used where the product is derived from animal material that has been subjected to ante and/or post mortem examination and confirmed as fit for human consumption.

The official assurance legend is derived from the brand, the symbol or mark used to indicate that a carcass is fit for human consumption. Historically therefore use of the official assurance legend was also limited to such products.

A review of OMARs suggests that there are some situations where the official assurance legend is being applied to product that is either

- not from material subject to ante and/or post mortem examination (e.g. Deer velvet)
- or is not fit for human consumption (e.g. freeze dried, powdered bovine thyroid glands).

MPI believes that this is due to lack of clarity in the current legislation and is looking to address this.

The tamper evident seal also proposed in the notice (see section 3.6 of this document) provides an alternative official device which could be used in situations where the importing market requires an official device on cartons and it is not appropriate to use a device bearing an official assurance.

MPI recognise that there will need to be a transitional period during which carton seals will continue to be permitted in these situations. It is proposed that this transition period be 6 months.

Question 9
Do you see any risks in reverting back to use of the official assurance legend only where the product is derived from animal material that has been subjected to ante and/or post mortem examination and confirmed as fit for human consumption?

3.6 CONTAINER AND OPERATOR SEAL USE

In late 2018 MPI undertook a review of the current legislation and use of high security container seals for the export of animal products with official assurance. The findings of the review are discussed in the Options Paper – *Controls around Container and Operator Seals.* One of the key findings in the review was that current controls around use of operator seals are insufficient to support official assurances. Seals being used no longer clearly identify the exporter or RMP premises and are being sourced from suppliers that are not legislated which means there is no certainty that:

- seals are fit for purpose; or
- uniqueness of seal identifiers is maintained; or
- seals are not released to persons with the intent to cause fraud.

Consultation has already taken place on the options paper and as part of this the dairy industry raised concerns about MPI's preferred option of requiring NZMPI official seals on containers for all animal products exported as human food or pet food with official assurance. The concerns raised were regarding increased costs and logistics. MPI has taken this feedback on board and is now proposing that:

- Container seals only be mandatory where required by Overseas Market Access Requirements (OMAR).
- Where an OMAR requires containers to be sealed then an NZMPI official seal (Approved Seal) must be used.
- Companies will be permitted to use the NZMPI official seal for all animal products exported with an official assurance.
- Operator seals will not be considered official devices.
- Companies may choose to use operator seals where the OMAR does not require a container seal but operator seals will not be permitted to be referenced on the official assurance even in as unofficial commercial information.

This proposal in conjunction with that around renewal of approval and verification of Approved Manufacturers will ensure that MPI is able to demonstrate, to Competent Authorities of trading partners, that there is sufficient control over the seal quality, security, distribution and use.

It is recognised that this proposal changes the current policy regarding mandatory sealing of all sea freight containers this is being considered for the following reasons.

- A container seal does not necessarily ensure integrity of goods, it is just a hurdle for those who would wish to tamper.
- Use of container seals is not universal, quite a few countries including the USA do not officially seal export shipping containers.
- MPI does not require mandatory container sealing for airfreight containers or for containers of honey or eggs and this has not caused issues.

If the proposed option is legislated MPI will look to create a multi-market OMAR to specify countries and commodities that require sealing of containers.

Question 10
Do you have any concerns with the proposal for container seal use?

If so what alternatives do you suggest for ensuring a similar level of control?

3.7 REDUCED SIZE LEGEND - UNCONTROLLED FORMAT

In the draft notice the uncontrolled format of the reduced size legend is not approved as an official device although this format may continue to be used.
A review of reduced size legends (RSL) carried out in 2012 resulted in a decision to allow RSL packaging material to be sourced from overseas in order to allow the meat industry greater ability to quickly find and utilise specialist packaging to facilitate the development of innovative, specialist and high value products without having to go through the expense and delay of establishing the manufacturing capacity in New Zealand.
Given this earlier decision the draft notice does require RSL packaging to be manufactured by an approved manufacturer. It is for this reason and the lack of control around the format this device is not considered to be an official device.

Question 11
Do you have any concerns with the proposed approach for reduced size legend uncontrolled format? i.e. that these are not approved as official devices.

If so please give detail?

3.8 TAMPER EVIDENT SEALS

MPI is proposing a new tamper evident seal. This seal will help to address two situations that MPI has become aware of as follows:

1 Airfreight

There are a few OMARs that recommend tamper evident seals for airfreight of animal products. For example for all animal products to Korea, and for meat and meat products to Japan and Taiwan that are trans-shipped through third countries.
The design of the transportation outer used for airfreight often means that existing container seals are unable to be applied. MPI is aware that intervention seals have in some instances been used in this situation however this is an inappropriate use of intervention seals as Manual 15 3.6 states "Intervention seals are only to be used by representatives of the Verification Agency when cartons or immediate containers have been officially opened for inspection purposes by the NZ Ministry of Agriculture and Forestry." And the text on the label refers to this.

2. Inappropriate use of official assurance legends

Clause 2.1(4) of the draft notice proposes preventing the use of official assurance legends in situations where the product is either:

- not from material subject to ante and/or post mortem examination (e.g. Deer velvet)
- or is not fit for human consumption (e.g. freeze dried, powdered bovine thyroid glands, products for animal consumption).

Where a tamper evident seal or official device is required to seal cartons of product that don't meet the criteria for application of the official assurance legend, the tamper evident seal could be used.

It is also proposed that tamper evident seals are permitted for use under the Food Act where appropriate legislative controls are in place. A possible use under the Food Act is for the sealing of imported food samples for analysis by approved laboratories.

Question 12
Do you believe there is a need for a Tamper Evident Seal as specified in the draft notice? Are there additional situations where you believe that this seal should be permitted to be used?

3.9 DISPENSATIONS

Part 11 of the draft notice proposes that the Director General has the ability to issue dispensations in situations where the animal material or animal product remains fit for purpose and any non-compliance does not breach the OMAR.

Question 13
Do you have any concerns about the proposed dispensation clauses?

Annex 1: Mapping of existing requirements to locations in the proposed notice.

	Existing Documents	Proposed Notice
General Requirements		
• **Official marking**	AP (Export Notice) 2012 7	Part 2.2
Procedures	AP (Export Notice) 2012 5(1)	Part 8.1
Approval of devices	AP (Export Notice) 2012 5(3)	Part 12
Brands		
• **Use**	Manual 15 Section 2	Part 3
• **Format / Specification**	Section 8	Part 13.3
• **Security**	Manual 15 Section 2.4	Part 8
Carton Seals (including carton seal tape and intervention seals)		
• **Use**	Manual 15 Section 3.3 and 3.4	Part 4
• **Format / Specification**	Manual 15 Section 9 Approval Notice Amending Carton Seals and Intervention Seals	Part 13.4 / 13.5
• **Security**	Manual 15 Section 3.5 Tech Directive 00/41 3.2.2	Part 8
Reduced size inspection legend		
• **Use**	Manual 15 Section 4	Part 5
• **Format / Specification**	Manual 15 Section 4.2 and 10	Part 13.2 / Part 5.3
• **Security**	Manual 15 Section 4.3 Tech Directive 00/41 3.3	Part 8
• **Container Seals**		
• **Use**	Manual 15 Section 5.3 AP (Export Notice) 2012 7 Animal Products - Official Devices: NZFSA Container Seals	Part 6
• **Format / Specification**	Manual 15 Section 11 Animal Products - Official Devices: NZFSA Container Seals	Part 14
• **Security**	Manual 15 Section 5.4 and 5.5	Part 8
Approval to Manufacture Devices		

• **Approval Processes**	Manual 15 Section 6.1 and 4.3 AP (Export Notice) 2012 9,10 and 11	Part 9
• **Subcontracting**	Manual 15 Section 6.4	Part 10.2
• **Obligations**	Manual 15 Section 6.5	Part 10.3
• **Security Arrangements**	Manual 15 Section 7	Part 10.3
Verification of Operators and Exporters	AP (Export Notice) 2012 5(4) Tech Directive 00/41 3.2.2	Part 8.5

Annex 2: Recommended table of submissions

Please answer the question at the end of each proposal. You may write down your answer and any additional comments to each question in the format below.

Question Number	Comments
1	
2	
3	
4	
5	

Question Number	Comments
6	
7	
8	
9	
10	
11	
12	
13	