



Disposal of Non-conforming Dairy Material or Dairy Product

6 December 2016

TITLE

Animal Products Notice: Disposal of Non-conforming Dairy Material or Dairy Product

COMMENCEMENT

This Animal Products Notice comes into force on 6 December 2016

REVOCATION

This Animal Products Notice revokes and replaces the Animal Products (Disposal of Non-conforming Dairy Material or Dairy Product) Notice 2013 dated 18th February 2013.

ISSUING AUTHORITY

This Animal Products Notice is issued under sections 45, 167(1)(h) and 167(1)(maab) of the Animal Products Act 1999 and regulation 5 of the Animal Products (Dairy) Regulations 2005 having had regard to the matters specified in section 44(7) and having undertaken consultation in accordance with section 163 of the Animal Products Act 1999.

Dated at Wellington this 6th day of December 2016

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Ministry for Primary Industries
(acting under delegated authority of the Director-General)

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Introduction

This introduction is not part of the Animal Products Notice, but is intended to indicate its general effect.

Purpose

This notice prescribes procedures and requirements for the disposal of non-conforming dairy material or dairy product for the purpose of regulation 5 of the Regulations.

The prescribed procedures in Part 2 may be followed by a risk management programme (RMP) operator as an alternative to obtaining the written consent of the Director-General under regulation 5(1) of the Regulations before disposing of non-conforming dairy material or dairy product.

Background

This notice contains specifications issued under sections 45 and 167 of the Animal Products Act 1999 (Act) that are necessary or desirable to give effect to, or to amplify, the animal product standard prescribed by regulation 5 of the Regulations.

Regulation 5(1) of the Regulations provides that before disposing of non-conforming dairy material or dairy product, RMP operators must either comply with prescribed procedures specified by the Director-General or obtain the written consent of the Director-General. This notice provides the prescribed procedures for disposal of non-conforming dairy material or dairy product.

Who should read this Animal Products Notice?

The following persons should read this Notice:

- a) operators of dairy RMPs; and
- b) recognised agencies responsible for verification of dairy RMPs.

Why is this important?

A person who fails to comply with the requirements of this Animal Products Notice may be committing an offence under Part 10 of the Act.

Document history

This Notice replaces the Animal Products (Disposal of Non-conforming Dairy Material or Dairy Product) Notice 2013 dated 18th February 2013.

Other information

Processors, RMP operators and exporters of dairy material and dairy product intended for export must identify and ensure compliance with all relevant general and market specific export requirements in accordance with Part 5 of the Act. The relevant export requirements can be obtained from the MPI website (search on "exporting dairy").

Non-conforming dairy material or dairy product is also subject to relevant requirements in the:

- a) Animal Products Act 1999.
- b) Animal Products (Dairy) Regulations 2005.
- c) Animal Products (Exemptions and Inclusions) Order 2000.

- d) Agricultural Compounds and Veterinary Medicines Act 1997.
- e) Agricultural Compounds and Veterinary Medicines (Exemptions and Prohibited Substances) Regulations 2011.
- f) Australian New Zealand Food Standards Code.
- g) Resource Management Act 1991.

It is expected that an RMP operator will also meet the requirements of local government and any other relevant legislation.

Part 1: Requirements

1.1 Incorporation by reference

- (1) Under section 168 of the Act, the following documents are incorporated into, and form part of this Notice:
 - a) DPC 1: Animal Products (Dairy): Approved Criteria for General Dairy Processing (DPC 1); and
 - b) DPC 3: Animal Products (Dairy): Approved Criteria for the Manufacturing of Dairy Material and Product (DPC 3).

1.2 Definitions

- (1) In this Notice, unless the context otherwise requires -

Act means the Animal Products Act 1999

ACVM mean the Agricultural Compounds and Veterinary Medicines Act 1997

ACVM Regs means the Agricultural Compounds and Veterinary Medicines (Exemptions and Prohibited Substances) Regulations 2011

applicable recognised agency means the agency recognised by the Director-General and engaged by the RMP business for the purposes of verification of the RMP that covers the non-conforming dairy material or dairy product

CCP means critical control point

liquid dairy material means raw milk or partially processed unpackaged dairy material in a liquid state

local market means the New Zealand domestic market

MPI means the Ministry for Primary Industries

non-conforming dairy material or dairy product means any dairy material or dairy product that is suspected or known not to meet regulatory requirements or not to have been processed in accordance with regulatory requirements

product disposal application means an application to the applicable recognised agency for the approval to dispose of any non-conforming dairy material or dairy product

Regulations means the Animal Products (Dairy) Regulations 2005

RMP means risk management programme registered under the Act, and **programme** when used in this document has a corresponding meaning

use-by date has the meaning given to it in the Australia New Zealand Food Standards Code

- (2) Any term or expression defined in the Act or Regulations that is used, but not defined, in this Notice has the same meaning as in the Act or Regulations (as the case may be).
- (3) If there is any conflict, duplication, or inconsistency between the requirements of this notice and the requirements of the Animal Products (Dairy Processing Specifications) Notice 2011 the requirements of this notice prevail.

Part 2: Disposal of Non-Conforming Dairy Material and Dairy Product

2.1 Procedures for disposal of non-conforming dairy material or dairy product

- (1) An RMP operator must obtain consent in writing from the Director-General before disposing of non-conforming dairy material or dairy product except where non-conforming:
 - a) dairy material or dairy product is destroyed or disposed of at a landfill in accordance with clause 2.2(1); or
 - b) liquid dairy material is disposed of to a primary producer for the purposes of animal consumption in accordance with clause 2.2(2); or
 - c) liquid dairy material is disposed of to land or waste system in accordance with clause 2.2(3); or
 - d) dairy material or dairy product with an expired use-by date mark is disposed of for the purposes of animal consumption in accordance with clause 2.2(4); or
 - e) dairy material or dairy product with compromised packaging is disposed of for the purposes of animal consumption in accordance with clause 2.2(5); or
 - f) dairy material or dairy product is disposed of in accordance with a written approval obtained from the applicable recognised agency in accordance with clause [2.3 Recognised agency managed product disposal](#).

2.2 Operator managed product disposal

- (1) An RMP operator may destroy or dispose of non-conforming dairy material or dairy product at a landfill provided that:
 - a) no other restrictions have been placed on movement of the dairy material or dairy product by or under the Act; and
 - b) the RMP operator ensures the dairy material or dairy product is disposed of correctly, and has controls in place to prevent re-release of the product; and
 - c) the date, place and method of disposal is notified to the applicable recognised agency within 72 hours of the disposal; and
 - d) evidence is provided to the applicable recognised agency to confirm the disposal occurred as notified (such as landfill receipts) within 72 hours of the disposal.
- (2) An RMP operator may dispose of non-conforming liquid dairy material to a primary producer for the purposes of animal consumption provided that:
 - a) no other restrictions have been placed on movement of the product by or under the Act; and
 - b) the liquid dairy material is delivered directly to the primary producer; and
 - c) the RMP operator informs the primary producer that the liquid dairy material must not be subject to further sale or trade; and
 - d) the liquid dairy material remains under the control of the RMP operator until it is received by the primary producer; and
 - e) the RMP operator retains evidence to confirm the disposal occurred as provided for in this clause; and
 - f) the date, place and method of disposal (including the recipient of the liquid dairy material) is notified to the applicable recognised agency within an agreed timeframe; and
 - g) the non-conforming liquid dairy material complies with all applicable requirements under ACVM and regulations 7 and 8 of the ACVM Regs.
- (3) An RMP operator may dispose of non-conforming liquid dairy material to land or a waste system provided that:

- a) no other restrictions have been placed on movement of the material by or under the Act; and
 - b) the RMP operator ensures that: —
 - i) the method of disposal is appropriate for liquid dairy material; and
 - ii) the liquid dairy material is delivered directly to the place of disposal; and
 - iii) the person responsible for activities at the place where disposal occurs is advised that the liquid dairy material is not for human or animal consumption; and
 - iv) the liquid dairy material remains under the control of the RMP operator until the point of disposal to ensure it is disposed of correctly; and
 - v) evidence is retained to confirm the disposal occurred as provided for in this clause; and
 - vi) the date, place and method of disposal (including the recipient of the liquid dairy material) is notified to the applicable recognised agency within an agreed timeframe.
- (4) An RMP operator may dispose of packaged dairy material or dairy product with an expired use-by date mark for the purposes of animal consumption provided that:
- a) no other restrictions have been placed on movement of the product by or under the Act; and
 - b) the dairy material or dairy product remains under the control of the RMP operator until it is received by the recipient; and
 - c) the RMP operator has an agreement with the recipient that the recipient will take all reasonable steps to ensure that the product will only be used for animal consumption; and
 - d) the RMP operator retains evidence to confirm the disposal occurred as provided for in this clause; and
 - e) the date, place and method of disposal (including the recipient of the dairy material or dairy product) is notified to the applicable recognised agency within an agreed timeframe; and
 - f) the dairy material or dairy product complies with all applicable requirements under ACVM and regulations 7 and 8 of the ACVM Regs.
- (5) An RMP operator may dispose of any dairy material or dairy product with compromised packaging for the purposes of animal consumption provided that:
- a) no other restrictions have been placed on movement of the product by or under the Act; and
 - b) the dairy material or dairy product remains under the control of the RMP operator until it is received by the recipient; and
 - c) the RMP operator has an agreement with the recipient that the recipient will take all reasonable steps to ensure that the product will only be used for animal consumption; and
 - d) the RMP operator retains evidence to confirm the disposal occurred as provided for in this clause; and
 - e) the date, place and method of disposal (including the recipient of the dairy material or dairy product) is notified to the applicable recognised agency within an agreed timeframe; and
 - f) the dairy material or dairy product complies with all applicable requirements under ACVM and regulations 7 and 8 of the ACVM Regs.

2.3 Recognised agency managed product disposal

- (1) An RMP operator may submit a product disposal application to the applicable recognised agency for approval if:
- a) the product disposal application relates to a non-conformance of a type set out in Column 1 (Non-conformance) of the Schedule; and
 - b) the non-conforming dairy material or dairy product is intended for a use set out in the corresponding row in Column 2 (Disposal option) of the Schedule; and
 - c) all applicable requirements specified in the corresponding row of Column 3 (Requirements) of the Schedule are met.
- (2) A product disposal application must:
- a) identify the non-conforming dairy material or dairy product; and

- b) specify the reasons for the non-conformance; and
 - c) specify the corrective actions taken by the RMP operator; and
 - d) specify the manner of disposal proposed.
- (3) If an applicable recognised agency approves a product disposal application, the RMP operator must dispose of the non-conforming dairy material or dairy product in the manner approved by the applicable recognised agency.

2.4 Recognised agency requirements

- (1) An applicable recognised agency that receives a product disposal application must not approve the application unless it can verify that the requirements in clause 2.3(1) have been met.
- (2) If the applicable recognised agency has verified that the requirements in clause 2.3(1) have been met, the applicable recognised agency must, subject to subclause (3), approve the product disposal application in writing.
- (3) The applicable recognised agency may, if it considers it necessary and after consultation with the RMP operator, approve a manner of disposal that differs from that submitted by the RMP operator.
- (4) The applicable recognised agency must, prior to, or in conjunction with giving the RMP operator written approval for disposal pursuant to subclause (2), notify in writing to the Director-General confirming the agency's verification of the application of clause 2.3(1).

2.5 Labelling requirements

- (1) An applicable recognised agency may approve a product disposal application with a requirement for additional labelling to be applied when this is considered necessary to ensure that the status of the dairy material or dairy product is clearly represented.
- (2) In such situations, the RMP operator must:
- a) label the product to the satisfaction of the applicable recognised agency; and
 - b) retain evidence to confirm the labelling has occurred.

2.6 Operator communication requirements

- (1) If an applicable recognised agency approves a product disposal application for further processing at another premises to rectify the non-conformance, the RMP operator must inform the receiver of the non-conforming product of:
- a) the nature of the non-conformance; and
 - b) any requirements advised by the applicable recognised agency prior to the product being released from the RMP premises.

2.7 Records

- (1) The RMP operator must retain records required to be kept for the purposes of this Notice:
- a) for at least 4 years; and
 - b) must ensure that the records are retrievable within 2 working days of a request from the Director-General or the applicable recognised agency.

Schedule – Circumstances for recognised agency managed product disposal

Column 1	Column 2	Column 3
Non-conformance	Disposal option	Requirements
Known or suspected foreign matter contamination	Release for unrestricted use without further processing	<p>(1) The product meets the requirement for wholesomeness under regulation 6 of the Regulations.</p> <p>(2) There is either:</p> <ul style="list-style-type: none"> a) a downstream CCP to control the potential hazard (for example, metal detector, filter or sifter); or b) the foreign matter present: <ul style="list-style-type: none"> i) is not of a size or sharpness to cause injury to the mouth or gastrointestinal tract by perforation or other mechanisms; and ii) will not release compounds harmful to health; and iii) is not glass greater than 0.1mm.
	Release for unrestricted use with further processing	<p>(1) Further processing is carried out in New Zealand, in a premises which has an RMP for this type of operation.</p> <p>(2) The further processing includes either a:</p> <ul style="list-style-type: none"> a) validated step (for example, filters, separators or sifters) which will remove the potential foreign matter present; or b) metal detection/x-ray step which will detect the presence of foreign matter. This step must be a CCP or operation approved by the applicable recognised agency for the premises carrying out the further processing.
	Release for local market animal consumption use without further processing	<p>(1) The product meets the requirement for wholesomeness under regulation 6 of the Regulations.</p> <p>(2) The foreign matter present:</p> <ul style="list-style-type: none"> a) is not of a size or sharpness to cause injury to the mouth or gastrointestinal tract by perforation or other mechanisms; and b) will not release compounds harmful to health; and c) is not glass greater than 0.1mm.

Column 1	Column 2	Column 3
Non-conformance	Disposal option	Requirements
Known or suspected foreign matter contamination	Release for local market animal consumption use with further processing	<p>(1) Further processing is carried out within New Zealand in a premises that meets the Act and/or ACVM requirements (as applicable).</p> <p>(2) The further processing includes a:</p> <ul style="list-style-type: none"> a) validated step (for example, filters, separators or sifters) which will remove the potential foreign matter present; b) metal detection/x-ray step which will detect the presence of foreign matter. Appropriate calibration and validation of operational records must be maintained by the RMP operator.
	Release for technical grade industrial application (not for human or animal consumption) use	Product is not to be exported to any market requiring official assurances and the RMP operator must inform the person receiving the product, in writing, that it is not for human or animal consumption.
Heat treatment failures, including CCP failures, (as stated in the operator's RMP) where not all applicable heat treatment criteria have been met	Release for unrestricted use with further processing	Further processing is carried out within New Zealand in a premises which has an RMP for this type of operation, and the further processing must include a heat treatment step compliant with DPC 3 heat treatment criteria, which will ensure the resultant product has received an applicable heat treatment compliant with relevant requirements.
	Release for unrestricted use without further processing	<p>(1) An assessment has been carried out by an MPI recognised RMP evaluator with a Heat Treatment – Dairy endorsement (go to the MPI website and search on “registers & lists”). The documented assessment must confirm that:</p> <ul style="list-style-type: none"> a) the product has received a heat treatment that is compliant with the minimum time and temperature requirements prescribed in DPC3; or b) for loss of heat treatment records, all heat treatment criteria have been met.
	Release for animal consumption use without further processing	Product is not to be exported to any market requiring official assurances which require heat treatment attestations.

Column 1	Column 2	Column 3
Non-conformance	Disposal option	Requirements
CCP failure other than heat treatment (as stated in the operator's RMP)	Release for unrestricted use	Measures have been taken to ensure the product remains fit for intended purpose as required under the Act. For example: <ol style="list-style-type: none"> a) filter/sifter failures where all foreign matter has been recovered and/or where it has been positively identified that there would have been little/no foreign matter risk e.g. checking of intrusive maintenance records etc.; or b) metal detector check failures, where the potentially affected product has been rescanned through a fully functioning metal detector.
	Release for unrestricted use with further processing	Further processing is carried out within New Zealand in a premises which has an RMP for this type of operation, and the further processing includes a step which will ensure the resultant product is compliant with relevant requirements. This step must be a CCP or operation approved by the applicable recognised agency for the premises carrying out the further processing.
	Release for local market animal consumption use with or without further processing	<ol style="list-style-type: none"> (1) Product complies with regulations 7 and 8 of the ACVM Regs. (2) Further processing is carried out within New Zealand in a premises that meets the Act and/or ACVM requirements (as applicable).
<i>Cronobacter sakazakii</i> (<i>E.sakazakii</i>) levels exceeding the limit specified in Table A1.0 of DPC1	Release for unrestricted use with further processing	<ol style="list-style-type: none"> (1) Further processing is carried out within New Zealand, in a premises which has an RMP for this type of operation. (2) The further processing includes a heat treatment step compliant with DPC 3 heat treatment criteria, which will ensure the: <ol style="list-style-type: none"> a) product has received a heat treatment compliant with all applicable heat treatment criteria; and b) resultant product meets any applicable limits. (3) The tipping and reconstitution areas must be segregated from the blending and packing areas.

Column 1	Column 2	Column 3
Non-conformance	Disposal option	Requirements
<i>Bacillus cereus</i> or <i>Staphylococcus aureus</i> microbiological levels exceeding the limit specified in Table A1.0 of DPC1	Release for unrestricted market animal consumption use without further processing	(1) The level of <i>B. cereus</i> must not exceed 20,000 cfu/g. (2) The level of <i>S. aureus</i> must not exceed 100,000 cfu/g.
	Release for unrestricted market animal consumption use with further processing	(1) Further processing is carried out within New Zealand in a premises which has an RMP for this type of operation. (2) The level of <i>B. cereus</i> in the resultant product must not exceed 20,000 cfu/g. (3) The level of <i>S. aureus</i> in the resultant product must not exceed 100,000 cfu/g.
	Release for local market animal consumption use with further processing	(1) Further processing is carried out within New Zealand in a premises that meets the Act and/or ACVM requirements (as applicable). (2) The level of <i>B. cereus</i> in the resultant product must not exceed 20,000 cfu/g. (3) The level of <i>S. aureus</i> in the resultant product must not exceed 100,000 cfu/g.
<i>Escherichia coli</i> microbiological levels exceeding the limit specified in Table A1.0 of DPC1	Release for unrestricted use with further processing	(1) Further processing is carried out within New Zealand in a premises which has an RMP for this type of operation. (2) The further processing includes a heat treatment step compliant with DPC 3 heat treatment criteria, which will ensure the: a) product has received a heat treatment compliant with all applicable heat treatment criteria; and b) resultant product meets any applicable limits.
	Release for local market animal consumption use without further processing	(1) Non-conforming dairy material or dairy product must only be given to animals older than 2 weeks post weaning. (2) The level of <i>E. coli</i> in non-conforming dairy material or dairy product provided to pigs must not exceed 50,000 cfu/g. (3) The level of <i>E. coli</i> in non-conforming dairy material or dairy product provided to species other than pigs must meet the fitness for purpose requirements under regulations 7 and 8 of the ACVM Regs.

Column 1	Column 2	Column 3
Non-conformance	Disposal option	Requirements
Pathogen levels exceeding the limit specified in Table A1.0 of DPC1	Release for rendering for industrial (not for human or animal consumption) use	The RMP operator must inform the person undertaking rendering that the resultant product(s) is not for human or animal consumption.
Standard Plate Count (SPC) levels exceeding the limit specified in the Australia New Zealand Food Standards code for powdered infant formula products	Release for non-infant formula products with further processing	<ol style="list-style-type: none"> (1) Further processing is carried out within New Zealand, in a premises which has an RMP for this type of operation. (2) The further processing will ensure the resultant product: <ol style="list-style-type: none"> a) complies with the current Australia New Zealand Foods Standards Code, as applicable; and b) is truthfully represented.
Truth of labelling failures other than infant formula products	Release for unrestricted use with further processing	<ol style="list-style-type: none"> (1) Further processing is carried out within New Zealand, in a premises which has an RMP for this type of operation. (2) The further processing will ensure the resultant product complies with: <ol style="list-style-type: none"> a) the Australia New Zealand Food Standards Code; and b) any relevant Overseas Market Access Requirements (OMARs) under the Act, as applicable.
Truth of labelling failures other than infant formula products	Release for local market animal consumption use with or without further processing	<ol style="list-style-type: none"> (1) Product complies with regulations 7 and 8 of the ACVM Regs. (2) Further processing is carried out within New Zealand in a premises that meets the Act and/or ACVM requirements (as applicable).

Column 1	Column 2	Column 3
Non-conformance	Disposal option	Requirements
Truth of labelling failures for infant formula products	Release for local market animal consumption use with further processing	<p>(1) Further processing is carried out within New Zealand, in a premises;</p> <p>a) which has an RMP for this type of operation; or</p> <p>b) where no other operations requiring an RMP take place.</p> <p>(2) The RMP operator maintains control of the product until it is delivered to the place where further processing will occur.</p> <p>(3) The RMP operator must have an agreement:</p> <p>a) with the recipient that no product is on sold or supplied to another person in its original packaging; and</p> <p>b) that the recipient takes all reasonable steps to ensure that the product is only used for animal consumption.</p>
Truth of labelling failures for infant formula products	Release for local market animal consumption use without further processing	<p>(1) Product complies with regulations 7 and 8 of the ACVM Regs.</p> <p>(2) The RMP operator must maintain control of the product until it is delivered to the place where animal consumption will occur.</p> <p>(3) The RMP operator must have an agreement:</p> <p>a) with the recipient that the product is not to be sold or supplied to another person, and</p> <p>b) that ensures the recipient takes all reasonable steps to ensure that the product is only used for animal consumption.</p>
Incorrect scoop size or missing scoop for canned powdered infant formula products	Release for local market animal consumption use with further processing	<p>(1) Further processing is carried out within New Zealand, in a premises;</p> <p>a) which has an RMP for this type of operation; or</p> <p>b) where no other operations requiring an RMP take place.</p> <p>(2) The RMP operator maintains control of the product until it is delivered to the place where further processing will occur.</p> <p>(3) The RMP operator must have an agreement:</p> <p>a) with the recipient that no product is on sold or supplied to another person in its original packaging; and</p> <p>b) that the recipient takes all reasonable steps to ensure that the product is only used for animal consumption.</p>

Column 1	Column 2	Column 3
Non-conformance	Disposal option	Requirements
Incorrect scoop size or missing scoop for canned powdered infant formula products	Release for local market animal consumption use without further processing	<p>(1) The product complies with regulations 7 and 8 of the ACVM Regs.</p> <p>(2) The RMP operator must maintain control of the product until it is delivered to the place where animal consumption will occur.</p> <p>(3) The RMP operator must have an agreement:</p> <ul style="list-style-type: none"> a) with the recipient that the product is not to be sold or supplied to another person, and b) that ensures the recipient takes all reasonable steps to ensure that the product is only used for animal consumption.
Sorbic acid levels exceeding the limit specified in the Australia New Zealand Food Standards code	Release for animal consumption use without further processing	Product complies with regulations 7 and 8 of the ACVM Regs.
Beta Lactam or other identified antibiotic residues	Release for local market animal consumption use	Product complies with regulations 7 and 8 of the ACVM Regs.
Nitrates and Nitrites levels exceeding the limit specified in Table A2.0 of DPC1	Release for unrestricted human consumption use with further processing	<p>(1) Further processing is carried out within New Zealand, in a premises which has an RMP for this type of operation.</p> <p>(2) The further processing will ensure the resultant product is:</p> <ul style="list-style-type: none"> a) in compliance with sections 9 and 10 Specified Contaminants of DPC1; and b) sampled and tested at an increased frequency, where limits apply.
	Release for animal consumption use with or without further processing	Product complies with regulations 7 and 8 of the ACVM Regs.

Column 1	Column 2	Column 3
Non-conformance	Disposal option	Requirements
Product stored outside RMP chain	Release for export to Australia without official assurances or local market use	The product has been stored in accordance with an appropriate risk based measure under the Food Act 2014.
Product intended for export with official assurances that has been transported outside RMP/Regulated Control Scheme chain	Release for export without official assurances or local market use	The product has been transported in accordance with an appropriate risk based measure under the Food Act 2014.