



Procedure for Principally Dairy Determinations

Introduction

Multi-ingredient foods can complicate the boundary between a food that is considered as a dairy product and a food that is not. This guideline is intended to help determine whether a multi-ingredient food is considered to be a dairy product under New Zealand Standards (see [Animal Product Regulations 2021 Schedule 2 Regulation 16](#)).

Specific requirements apply to dairy products, processors, and exporters of dairy such as requiring a Risk Management Programme (RMP). An RMP is required for dairy products to be exported other than to Australia.

As well as multi-ingredient foods, products such as tablets, supplements and fortified food that contain dairy ingredients should undergo a principally dairy determination.

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

What does a Principally Dairy Determination do?

A principally dairy determination only determines whether New Zealand requires the product to be made under an RMP.

A principally dairy determination **does not** cover whether a particular overseas market considers the product to be a dairy product or whether the importing country requires an official assurance for that product or an ingredient of that product.

When to carry out a Principally Dairy Determination

If you are making a multi-ingredient product that contains dairy ingredients, and you want to export to countries other than Australia, you will need to know whether your product is considered principally dairy (must be made under an RMP) or not (can be made under the Food Act).

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



You might prefer to manufacture a product under an RMP when it is not considered principally dairy. This could occur when you already produce other similar products that are principally dairy which are under an RMP, or you require official certification for the dairy component of the mixed ingredient food. With the operation under an RMP, a principally dairy determination is required to identify which non-conformance/product disposition pathway the product will need to use.

Considerations for determination of principally dairy

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

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

Note: Also consider the nature of the food (e.g. lactose as an inert carrier in tableted products), dilution and concentration through processing, and any other relevant factors.

Dairy products include:

- foods for human consumption; or
- feeds for animals; or
- products for non-edible uses; or
- products in their ready to consume form; or
- ingredients intended to be added to any of the above.

Consider the following list of fat spreads – where on the list is the cut off between a dairy product, and a non-dairy product?

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

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

This means the determination of principally dairy is not on composition alone. Therefore, a number of parameters are needed to make the determination:

- complete formulation including ingredients and amounts; and
- intended name of product; and
- other relevant information on the label e.g. picture of dairy, claims.



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

- mentioned in the name of a food;
- usually associated with the name of a food by the consumer; or
- emphasised on the label of a food in words, pictures, or graphics.

In the example above, calling the product Butter Spread, even though the amount of dairy product is less than the amount of other ingredients, can be the deciding point between whether the product is seen as principally dairy or not.

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

- certain multi-ingredient foods, formulated caffeinated beverages and alcoholic beverages as outlined under Animal Products Regulations 2021 Schedule 2 Regulation 16;
- lactic acid (except as noted below);
- galacto-oligosaccharides (GOS);
- lactose when used as a carrier or binding agent e.g. in tableted products.

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

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

Carrying out a Principally Dairy Determination

You can do a principally dairy determination yourself. If it is not clear whether a product is principally dairy, we recommend that you discuss with your verifier. If further clarification is required, you can request a principally dairy determination from MPI.

You will need to keep records of the determination and the justification for the decision.



Request a Principally Dairy Determination

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

MPI requires receipt of any relevant specification/recipe, with a list of ingredients with the percentage of each by weight or volume.

Note: This determination does not consider any applicable export requirements.

When your product is Principally Dairy

If your product is principally dairy, and it will be exported **with** an official assurance, then your product and all the dairy ingredients it is made with must be:

- manufactured under an RMP; and
- transported under a RMP or a Regulated Control Scheme (RCS); and
- all RMPs in the chain must include dairy and cover export to the same area you are exporting to.

If your product is principally dairy, and it will be exported **without** an official assurance, then your product and all the dairy ingredients it is made with must be:

- manufactured under an RMP; and
- transported under an RMP, RCS, Food Control Plan or National Programme; and
- all RMPs in the chain must cover export to the same area you are exporting to

Example: ABC Company is making a principally dairy product using grated cheese they purchase from Supplier D. Supplier D grates cheese blocks they buy from Supplier E. Supplier E makes cheese using milk from Farmer F.

Farmer F and Supplier E have an RMP that includes dairy and covers export to the appropriate area. But Supplier D operates under a Food Control Plan.

Some options ABC Company have to resolve this are:

- ask Supplier D to move to an RMP that includes dairy and covers export to the appropriate area; or
- find another supplier that already operates under an RMP that includes dairy and covers export to the appropriate area; or
- reformulate (or rename/relabel) their product so that it is not considered to be principally dairy.



Other considerations

You can find information on the MPI website about [choosing the right food safety programme for your business](#).

You can use the “My Food Rules” tool available on the MPI website to help you decide which risk management measure is best for you: [My Food Rules](#)

You will also need to check any additional overseas market access requirements that may apply. There may be additional requirements to apply for listing of your company and/or product to supply specific markets e.g. China. See [Steps to exporting dairy products](#).

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



Appendix 1: Background

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

The Animal Products Regulations 2021 outlines a number of exemptions, including the ability to operate under a risk-based measure under the Food Act 2014 for multi-ingredient products (other than ice cream) that do not consist principally of dairy material or dairy products (Schedule 2 Regulation 16).

[Animal Products Regulations 2021, Schedule 2 Regulation 16: Processing of certain dairy products that are food](#)

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

alcoholic beverage means an alcoholic beverage that contains dairy product or alcohol derived from dairy material or dairy product

formulated caffeinated beverage has the meaning set out in section 1.1.2—6 of the Food Standards Code

ice cream has the meaning set out in section 1.1.2—3 of the Food Standards Code.



Contact for enquiries

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