8 August 2021

Regulatory Redesign Team
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NEW ZEALAND

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Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Regulatory Redesign of Animal Products and Wine Regulations.*

Yours sincerely

Katherine Rich
Chief Executive

Regulatory Redesign of Animal Products and Wine Regulations

Submission by the New Zealand Food & Grocery Council

8 August 2021

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council ("NZFGC") welcomes the opportunity to comment on the *Regulatory Redesigns of Animal Products and Wine Regulations.*

2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over $40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over $34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

3. We appreciate the extensive consultation the Ministry for Primary Industries (MPI) undertook in redesigning the draft regulations, with the establishment of external reference groups for Animal Products and for Wine. The consultative approach through the redesign phase was excellent.

4. As a result, we are generally supportive of the Animal Product draft regulations but there are a number that appear to be new policy for the dairy industry and therefore outside the scope of the Regulatory Redesign project.

5. We have more extensive concerns with the draft Wine Regulations in relation to the extent of regulations that are new policy, new concepts and new requirements. These introduce some very significant impacts for winegrowers especially to practices that have a long tradition and practice such as exemptions for submitting wines for competitions. We therefore concur fully with the comments from the New Zealand Winegrowers.

DETAILED COMMENTS

Draft Animal Products Regulations (draft AP Regulations)

6. The draft AP Regulations have been presented for consultation without the completion of the cross-referencing. This has made the process for assessing the appropriateness of the draft AP Regulations and their impact and providing feedback much harder than it should have been.

7. There are also a number of typographical errors that require correction and edits for readability.

8. There appears to be a number of terms (e.g., 'Associated things', 'Lot', 'Multi-Business') which are used within the draft AP Regulations, but which are not defined in either these Regulations or the *Animal Products Act 1999* (APA). Such definitions should be included and further, the inclusion of a regulation which states that terms defined in the Act and used in the Regulations, without further definition, has the meaning defined in the Act.

9. The definition *of 'hygiene indicator'* uses the term 'following' in relation to the outcome of sampling etc. This reads like an extra step and should be replaced by a word like 'given' or similar would be simpler and more appropriate.

10. The definition of the term '*Maintenance Compound'* presents three problems:
    - It still includes "d) used for personal hygiene of persons". The term, 'personal hygiene', is wide and could be interpreted in include items such as deodorant used by processing personnel, but which do not impact product safety. This issue was raised

during regulation redesign workshops with a request for the use of a better defined and more appropriate term
- It includes redundant use of 'used for' at the beginning of (d)
- Sub-regulation (e) does not syntactically follow the introduction to the list

11. Regulation 12 *Procedures for good operating practices*. Regulation 12(2)(b) does not read clearly: we suggest that it be changed to "..including those working *in,* assessing or verifying *the* processing…".

12. Regulation 15 *Justifying operator-defined limits*. This appears to be a new requirement and therefore a policy change. In any case, it would require provision of a transition period.

13. Regulation 23 *Suitable skills required for certain tasks affecting animal material or animal product*. Regulation 23(1) refers to anyone carrying out a task that could affect the suitability etc is which essentially could include anyone working within the RMP. Regulation 23(2) then requires the RMP to identify the person, the task and the skill required. If this is taken literally, then this is a policy change of significant proportions. This could be avoided by re-wording to require this level of identification to apply only to key tasks under the RMP (not all tasks that could affect suitability). In addition, the Regulation should allow identification by position rather than each person.

14. Regulation 24 *Identification and competency of certain persons.* Regulation 24(1)(b) and d(1)(c) *"how competency will be achieved and maintained*". This clause does not appear to allow for the situation where a person may already have achieved competency outside of the specific RMP. Section 24 (2) (c) requires identification of how these competencies are achieved and maintained. Competency can be achieved in a myriad of ways. It proposed to remove the reference to how they are achieved. Section 24. *Identification and competency of certain persons:*

15. Regulation 26 *Verification by operator of risk management programme.* Regulation 26(2)(c) requires identification of the people who carry out verification activities. For larger RMPs in particular, operator verification can be conducted by many people/positions and both of these can, and do, change on a regular basis within most companies. Identifying these individually would therefore be complex, resource intensive and costly. Instead, the position with overall responsibility for operator verification activities should be identified or the provide for a requirement that this work is undertaken by suitable people (or similar). Without change, this Regulation would result in frequent revision of the RMP without contributing to traceability which is achieved through record keeping requirements.

16. Regulation 29 *Content of a risk management programme for document control.* Regulation 29(1) includes the phrase *"must contain procedures for effective document control of the documents that make**s** up the programme ..."* The word 'makes' should be replaced with 'make'.

17. Regulation 30 *Procedure for meeting reporting requirements.* This requires a procedure for meeting reporting requirements but there is no reference to a Regulation that identifies the reporting required although it could be in relation to Regulation 43. This should be clarified.

18. Regulation 32 *Information requirements of all registration requirements.* Regulation 32(2) and Regulation 32(2)(a) both repeat the phrase 'a statement in writing…for the verification of the programme*'* This requires rewriting.

19. Regulation 33 *Director-General to issue notice prescribing further information* does not read well, particularly the phrase 'which a copy of part only of the programme'. There may be words missing.

20. Regulation 35 *Application to register significant amendment to risk management programme.* The incomplete referencing means it is difficult to tell if the requirements for submitting a significant amendment that has not been validated, in term of provision of a validation protocol are in place. This must either be included or suitably referenced as not all significant amendments will be considered valid on registration.

21. Regulation 36 *Significant Amendment to Risk Management Programme.* The determination of the 'significance' of amendments requires an understanding of the risk profile of processing and product type. Regulation 36(c)(ii) includes the word 'substantially' which should be removed from the Regulation. It does not add to the sense of the Regulation and, as previously stated, such assessment should be based on the risk profiles of processing and product type.

22. Regulation 38 *Notice about minor amendments.* The wording is incomplete.

23. Regulation 39 *Control of risk management programme documents.* Regulation 39(3)(a) should be moved to Regulation 32 *Information requirements for all registration applications* or at least referenced within this Regulation. Regulation 39(3)(b) appears to have a missing 'of' between the 'any' and the 'the'.

24. Regulation 40 *Validation of risk management programme effectiveness.* Reference to Regulation 40(1) should be included in Regulation 36. Regulation 40(2)(b) requires the operator to submit validation evidence to the verifier. This is incorrect and perhaps should be 'evaluator'. The tense in the wording of Regulation 40(b)(ii) should be in past tense not future.

25. Regulation 45 *Operator of risk management programme to report certain information to Director general.* This is new policy as it is not a current requirement on dairy RMP operators, other than for those processors operating under the *Animal Products Notice: Export Requirements for Infant Formula Products and Formulated Supplementary Foods for Young Children.* If this proceeds, it should be acknowledged as new policy and will require transition arrangements.

26. Regulation 47 *Technical grade dairy product.* Regulation 47(2) should be deleted and the definition of '*Technical grade dairy'* be included in the Interpretation section.

27. Regulation 51 *Notices for premises, places, facilities, equipment, and essential services*. Regulation 51(e) concerning requirements for calibrating equipment should only be required for measuring equipment and monitoring equipment *used for critical measurements.* This limitation needs to be added.

28. Regulation 54 *Operator must manage waste.* Regulation 54(1)(b) should be amended to read: 'Being used for, or the processing of, animal material and animal products'.

29. Subpart 3—*Cleaning, maintenance, waste, and pest management.* This title includes 'waste' but waste is covered in Subpart Two. The heading requires correcting.

30. Regulation 59 *Use of maintenance compounds.* In c) (3) "An operator that this Part applies to must use only maintenance compounds that are approved by the Director-General' should be amended to "where specified, only approved maintenance compounds may be

used". This amendment would provide greater clarity, as dairy manufacturers are not currently required to use only approved maintenance compounds

31. Regulation 61 Regulation 61(4) doesn't read well – it should refer to illnesses that can be transmitted from humans to animal material, product or associated things.

32. Regulation 71: *Persons examining, etc. must be skilled.* We suggest that the use of the term '*etc*' in the title lacks clarity and that it would be more appropriate to include the terminology used in the section itself ('*examination, sampling, or testing'*) in the section title.

33. Regulation 78 *Processing non-conforming animal material or animal product.* This section is difficult to understand and is confusing particularly as (2) does not follow easily from (1). How can material/product be fit for its intended purpose if it comes under (1), being not fit for its intended purpose? As well, (2)(a) should read 'process the material or product *so that it is fit* for its original intended purpose or a different purpose'.

34. Regulation 90 *Restriction on verification by previous evaluator:* With respect to*: A verifier must not verify a risk management programme that they previously evaluated within a 2-year period after the date of the evaluation, unless other- wise agreed to in writing by the Director-General.* This regulation should be reconsidered and removed. There is a significant difference between evaluation and verification processes. There is no conflict, and this provision continues to limit the availability of RA's where they are capable of performing both functions

35. Regulation 109 – this is a new requirement for verifiers of seafood businesses. We propose that this section is removed, or if it must be retained then the timeframe required for reporting must not place significant additional work on verifiers.

36. Part 5—*Traceability and Recall*. There is nothing provided in this part.

37. Regulation 170 *Application of this sub part* refers to a schedule (schedule 9) which is not included in the regulation.

38. Regulation 184 *Application for re-test.* The risk source operator should not have to pay for a retest if the result of the retest shows that the original result was not valid.

39. Regulation 213 *Reporting by recognised agencies.* Regulation 213(2)(c) is a new requirement and therefore new policy. Further, it is not reasonable to require the reporting of any non-compliance within one day. Such a requirement should only be considered for critical non-compliances and if adopted should be notified as a new policy addition with a reasonable transition attached to it.

40. Regulation 231 *Conditions of registration or listing.* Any conditions (and changes to conditions) imposed on registration or listing should require disclosure to the verifier of the person, premises or thing that is registered.

41. Section 232 *Refusal to register or list.* Regulation 232(1)(b) would be more useable if greater clarity could be provided around the use of the term 'good grounds'.

Draft Wine Regulations

Policy changes in the redesign

42. As noted at the outset, and as with the draft AP Regulations, there are a number of new policy changes or shifts of emphasis that have been introduced. While in some cases this drafting may be unintended consequences of word changes, these changes will have significant implications, particularly as many of them will have offences attached to them.

43. One issue that creates significant concern is a misunderstanding of the central concept of the Wine Act's 'fit for intended purpose'. This relates to the 'wine standards management plan' (WSMP). A WSMP is "a plan designed to identify, control, manage, and eliminate or minimise hazards and other risk factors in relation to the making of wine in order to ensure that the wine is fit for its intended purpose." 'Fit for intended purpose' means that the 'wine has been made in accordance with the requirements of this Act and that meets any relevant wine standards and supplementary notices and any relevant New Zealand food standards'.[1] New Zealand food standards refers to food standards issued under the *Food Act 2014* (the Food Act) which are in the main, the standards of the Australia New Zealand Food Standards Code as incorporated through the Food Act. This has two significant impacts:
    - 'fit for intended purpose' relates to 'wine' as the final product. It does not apply to commodities, process or other incidental winemaking steps.
    - it does not cover compliance with all regulations, notices or other requirements of the Food Act, only those that are standards.

44. Two other key concerns relate to changes that appear to alter the definition of 'area of origin' and the apparent removal of the exemption from export eligibility requirements for commercial samples. These are both matters that will have a significant impact on wine business operations.

45. Finally, the inclusion of a power for the Director General to direct that a verifier undertake an unscheduled verification is of significant concern. We concur with the New Zealand Winegrowers view that entry and verification by a verifier without the consent of the wine business is effectively an unwarranted entry and search for which there is no power in the Wine Act.

Transition

46. The compliance timeframe of March 2022 to July 2022 would be too short for those wine businesses scheduled for verification shortly after the transition. We understand that if a wine business has not changed to the new WSMP at the time of verification, this will be a remedial action to be addressed before the next verification and will not be recorded as a non-compliance. This would address concerns regarding the timing of the transition.

47. Interpretation. There are several concerns with terms defined:
    - 'area of origin'. The original wording clearly excluded the name of the country from the scope of this definition. Under the new wording, the locality of the country of New Zealand could in fact be New Zealand. This should be changed back to the original wording
    - 'clean water'. Removing explicit requirements in Schedule 1 creates uncertainty. Any supplementary notice must not change the requirements for self-supplied water
    - 'loss of control'. This is not mentioned in the draft regulations other than in the definition and should be removed.

[1] Wine Act 2003, s 4(2).

- ‘regulatory requirement’. The reference to the Food Act introduces a newly expanded concept that goes beyond the framework of the Wine Act. By expanding the definition of ‘regulatory requirement’ to include other regulations, notices and requirements under the Food Act that are not food standards, this proposed change goes well beyond the scope of the Wine Act, the WSMP system and its verification. The regulations should remove the reference to ‘regulatory requirement’ and should revert to the ‘fit for intended purpose’ requirement.
- ‘restore control’ is not mentioned in the draft Regulations other than in the definition and should be removed.

48. Regulation 5 *Further contents of and requirements for wine standards management plan*. Regulations 5(2) – (4) introduce requirements that are not currently specified in the Wine Act and therefore represent new policy.

49. Regulation 7 *Application to register significant amendment to wine standards management plan.* Regulation 7(b) is not in existing requirements and incorporates Regulations 5(2) and (3) which are not in existing requirements and therefore represent new policy.

50. Regulation 9 *Document control and accessibility requirements*. Regulation 3(c) is a change of policy. Previously, the requirement for information not immediately available was 2 days. Given the potential for information requests to be broad in scope, there is concern that it could take longer than 24 hours to identify and make traceability information available. Such short timeframes may also not be feasible at critical times of the year (eg during harvest). This same comment is also relevant for Regulation 34 below.

51. Regulation 10 *Operator reporting requirements*. Regulation 10(3) is not in existing requirements. This is new policy and imposes a significant new duty on operators. Whether or not such a duty may be appropriate, it is outside the scope of the Regulatory Redesign exercise.

52. Regulation 16. Commodities to be free from hazards This is a policy change that imposes a new duty on winemakers. Under the existing requirement, the supplier of commodities has primary responsibility for ensuring that the commodities are free from hazards and there are positive requirements on grape growers to supply relevant information. This aligns with MRL regulations which place the obligation for compliance on the *seller* of commodities. The winemaker’s responsibility is to ensure that they do not introduce any hazards during the winemaking process.

53. Regulation 17 *Information requirements about commodities*. Regulation 17(3) is not in existing requirements. This is a policy change.

54. Regulation 21 *Operators’ procedures for good operating practices*. Regulation 21(1) and (2) are not in existing requirements. This clause simply reproduces the substance of the operator’s duties under s 14 of the Wine Act under the unnecessary new name “good operating practices”. This new clause is duplicative and not required.

55. Regulation 23 Water. Regulation 23(2) omits explicit requirements in Schedule 1 of Wine (Specifications) Notice and as a result creates uncertainty.

56. Regulation 30 *Control of commodities and winemaking inputs*. This is a policy change. It introduces a requirement for commodities to be ‘clearly identified’, whereas this previously applied only to winemaking inputs. This is impractical and unclear.

57. Regulation 31 *Processes and practices*. This is a policy change. It introduces a 'fit for intended purpose' requirement in relation to processes and practices. This does not make sense in this context.

58. Regulation 34 *Staff competency and training*. Regulation 34(1) and (2) are not in existing requirements and is new policy.

59. Regulation 35 *Grape wine not to be associated with false or misleading labelling*. Regulation 35(1(c) is a policy change with very significant implications for wine labelling. The careful drafting of the existing regulations and notice was intended to exclude country of origin labelling from the 85% rule that applies to the 'area of origin'. That is because there is a stricter 100% grape material rule for country of origin. This change would have the effect of reducing this to an 85% rule. As noted in relation to the definition of 'area of origin' above, the exclusions for producer addresses, business names and trademarks have been removed. Again, this would have serious implications. Many businesses have long-standing trademarks or business names that include the name of an area of origin. In most cases, this is because the trademark or business name was adopted by the first producers in an area (e.g. Martinborough Estate) and before that area name had any recognition. The proposed change would have a very material effect on the intellectual property rights attached to such names.

60. Part 5— *Evaluation* Regulations 40-47 are not in existing requirements. This is all new policy and therefore outside of the scope of the Regulatory Redesign.

61. Regulation 57 *Unscheduled verification.* Regulations (1) to (4) are not in existing requirements. This is new policy with significant consequences. Mandatory unscheduled verification is effectively a warrantless entry and search for which there is no power in the Wine Act. The DG does not have the power in the Wine Act to require a verifier to undertake an unscheduled verification. Only wine officers have a power of mandatory entry and search or inspection of a winery.

62. Regulation 61 *Verification decision*. Regulations 61(1) to (3) are a policy change. It changes the definitions of acceptable and unacceptable outcome in significant ways. Under the existing requirements, an outcome is only unacceptable if the operator has failed to identify or effectively address a critical non-compliance. Under the new requirements, any critical non-compliance whether effectively addressed or not is a cause for an unacceptable outcome. There is no rationale for such an extreme approach.

63. Regulation 65 *Verifier or verifying agency must require corrective action*. There is a shift in the nature of the obligations in this Regulation. Under the existing requirement, the parties agree a timeframe for corrective actions. Under the new requirement, the timeframe is mandated by the verifier.

64. Regulation 66 *Corrective action plan for unacceptable outcome*. This is a change in policy because it applies only when an unacceptable outcome has been assigned and therefore precludes an acceptable outcome from being assigned along with corrective actions where there are only minor issues to be addressed.

65. Part 7—*Traceability and recall.* No provisions have been included.

66. Regulation 81 *Application of this Part.* Part 8 represents a structural change. It replaces the existing record-keeping and audit requirements under the Export Eligibility Requirements Notice which were separate from the WSMP requirements. One element missing is the intent of Export Eligibility Requirements to apply only to New Zealand grape wine that is intended for export for reward or for purposes of trade. By removing the

reference to ‘New Zealand grape wine’ Regulation 81 effectively expands the scope of the Export Eligibility Requirements to cover all non-commercial exports of wine which was never the intent. This issue is not resolved by clause 82.

67. Regulation 82 *Exemptions from export requirements.* This is a policy change with potentially significant implications. First, the exemption for commercial samples has been removed and is critical for wine producers wishing to showcase their wines in international shows or competitions or send samples to buyers, a practice that is at least 100 years old. Second, the removal of the existing exemption / exclusion for non-commercial wine creates uncertainty. Notices to address this must be published concurrently with the Regulations. Third, nowhere in the existing requirements is there a specific exception for the export of a gift.

68. Regulation 84 *Export eligibility statement*. The Export Eligibility Requirements statement is not a certificate. That is the specific reason that it was called a ‘statement’ and not a ‘certificate’. Therefore ‘to certify’ and ‘certifying’ is confusing terminology.

69. Regulation 87 Record keeping requirements. Regulation 87(1)(d) refers to country of origin. This should have added to it ‘except New Zealand’.

70. Regulation 88 Accessibility of records. Regulation 88(2)(c) requires records that might by over 7 years old to be retried within 2 days. This is extremely harsh and impractical.