Response to

P1027 Consultation Paper – Managing Low-level Ag and Vet Chemicals without Maximum Residue Limits

Food Standards Australia New Zealand

Prepared by Dairy Australia

Contact

[redacted] — Manager Regulatory Affairs, Dairy Australia

[redacted]

Level 5 IBM Centre 60 City Road, Southbank Victoria 3006

February 2015

The Australian Dairy Industry

Dairy Australia welcomes the chance to present this submission in response to the P1027 Consultation Paper on Managing Low-level Ag and Vet Chemicals without Maximum Residue Limits.

Dairy Australia is the national services body for dairy farmers and the industry. Its role is to help farmers adapt to a changing operating environment, and achieve a profitable, sustainable dairy industry. As the industry's research and development corporation (RDC), it is the 'investment arm' of the industry, investing in projects that can't be done efficiently by individual farmers or companies.

Australian dairy is a $13 billion farm, manufacturing and export industry, with an extremely positive future.

Australia's 6400 dairy farmers produce around 9.2 billion litres of milk a year.

The Australian dairy industry directly employs 43,000 Australians on farms and in factories, while more than 100,000 Australians are indirectly employed in related service industries.

Our industry has the potential to grow substantially over the next decade to meet growing domestic and international demand.

Realising this growth potential and expanding the industry's economic, social and environment benefits depends on a positive national and international operating environment.

Key points

- The approach outlined in the Consultation Paper is inadequate to address the issues associated with low level residues currently facing industries like the dairy industry, in particular consistency of approach with international trading partners and facilitation of trade. On this basis we do not support the proposed approach as it is not sufficient to address the problems facing food industries.

- FSANZ needs to go back to the problem definition and come up with complementary measures that address these issues, including:
  - Continuation and streamlining of the annual omnibus proposals for varying MRLs
  - Acceptance of Codex MRLs
  - Further consideration of a default MRL

- The approach proposed in P1027 would address issues of inadvertent presence of low level residues in domestically produced food. However it is unclear how this would be implemented, and we would need to see detailed analysis of costs and benefits in comparison to other approaches (such as a general default MRL) before we could comment further.

Problem definition

The P1027 Consultation Paper states that 'This proposal has been prepared to consider an approach that sets MRLs for '*all other foods'* to address the inadvertent presence of low level chemical residues in food commodities that were not treated with a specific agvet chemical product'.

It goes on to discuss the 2006 Ministerial Policy Guidelines, and the consultation around these. However it fails to identify that the Policy Guidelines have a broader remit: to form the framework within which alternative approaches to address the issues associated with the existing regulatory system for managing residues of agricultural and veterinary chemicals in food.

As outlined in the Consultation Paper for the Policy Guidelines 'The key problem identified in the current regulatory approach is the 'no detectable residue' (zero tolerance approach) requirement for the chemicals for which no MRL has been established in Standard 1.4.2 of the Code'.

We are disappointed that the definition of the problem in Proposal P1027 is inconsistent with the intent of the Policy Guidelines (only covering one part of the problem) and therefore the proposed solution is inadequate. Either this proposal needs to redefine the problem it is addressing, or we expect another FSANZ proposal in the near future that addresses the wider issues.

The key problems for the dairy industry are:

International consistency

Australia sells almost half of its annual milk production directly into export markets as manufactured food products and ingredients. Our production environment is significantly different to that in most other major dairy exporters. This means we are consistently arguing that our customers need to accept our different chemical use patterns, and therefore often different MRLs to those which would be defined by Good Agricultural Practice within their own domestic industries. The current Australian zero tolerance approach undermines our credibility in making these arguments, and potentially disadvantages Australian food exporters.

The dairy industry assesses any changes in milk MRLs among our major trading partners. As more and more countries implement 'positive list' systems for defining acceptable residues it has become clear how important it is that these take account of internationally traded food. Where countries accept Codex MRLs, or have a tolerance for a detectable, but very low level of a chemical, we are confident that these expectations can be managed within our existing system. Where there is a zero tolerance approach we are faced with the risk that a very small residue trace from legitimate use may render Australian product unsuitable.

Of highest risk are those chemicals where Australia uses a compound differently to the importing country due to our pest status, environment, or farming system. A good example is our use of agvet chemicals to control parasites. As Australian cows generally spend most of their time outside grazing on pasture, they are exposed to different parasites than cows in a farming system where they spend most of their time in a barn. Accordingly they legitimately need different treatments that may be simply irrelevant for some farming systems. Australia inputs into Codex processes to make sure these uses are accepted at an international level.

We would therefore argue strongly against a key trading partner requiring 'zero tolerance' for residues of these legitimate chemical uses, particularly where these had been accepted in international trade through, for example, a Codex level.

As an industry this is not an issue of milk MRLs – we are confident in the coverage of existing milk MRLs and the proposed approach for domestic production. The problem for dairy arises when a key trading partner looks at Australia's treatment of its horticultural, or grain exports, and applies the same logic when we have a dairy export issue.

Increased sensitivity of testing

What 'zero' means in practice has changed significantly since the Food Standards Code was established as improved analytical techniques enable increase sensitivity of testing. When 'no detectable residue' was put in place, analytical limitations effectively set a default level below which there were no safety concerns and no regulatory action could be taken. Increased sensitivity of testing mean that tiny traces can now be detected which are far below any level of health or safety concern, but are a technical violation of the Code. While this has not been a problem in practice for dairy foods to date, it remains unknown what extremely high sensitivity testing may be able to detect in the future. The proposed approach addresses most conceivable issues for domestic foods by covering off all agvet chemicals listed in the Code. However it does not address the issues of residue traces in traded food, or where a compound is not already listed in the Code and there may be uncertainty over whether it is covered by the definition of an 'agvet chemical'. While these are largely theoretical issues at this time, the proposal misses an opportunity to reconsider the underlying principles behind legislation in light of changing technologies, and head off potential issues in the future.

Inadequate solution

The approach put forward in the P1027 Consultation Paper aims only to address the issue of 'inadvertent' presence of approved agvet chemicals, for example due to spray drift. We recognise this is an issue that needs to be dealt with. However reducing the proposal to only this problem fails to address the above key issues for the dairy industry. **On this basis we do not support the proposed approach**.

Considering the proposed approach as a solution to just the issue of inadvertent presence in domestically produced foods, we recognise that the proposal would overcome regulatory issues associated with low concentrations of residues. However the approach appears to be very complex and resource intensive. No detail is provided about how FSANZ would implement this, for example: How will MRLs be determined? Will this be based on the likely highest residue from inadvertent contamination or a value chosen to ensure acute dietary intake estimates are below the acute reference dose? What approach will be used for dietary risk assessments? How long (realistically) would it take to fully implement the proposal?

Recognising that FSANZ has limited resources we question the time and resources required to individually analyse and define an MRL for 'all other foods' for each individual chemical. This may take years to complete, and may not result in any better outcome than setting a general default MRL for all specified chemicals (with noted restrictions for those of particular concern). Without more detail on the approach and resourcing including analysis of the costs and benefits, we cannot comment further.

Alternative approaches

With this in mind, FSANZ needs to go back to the problem definition and come up with an alternative proposal that includes additional measures that address the other key problems with the current approach to agvet chemical residues.

This should not be limited by a misconception that MRLs within the Food Standards Code are the way to control inappropriate use of agvet chemicals within Australia, or that addressing these issues of low level residues in any way undermines Australia's regulatory system for controlling the appropriate use of chemicals under APVMA and state legislation. Where there may be issues with some jurisdictions using the Food Standards Code MRLs to regulate control of use, these should be addressed directly.

Annual omnibus proposals for varying MRLs

We note that some of our trading partners (particularly the USA) have identified the opportunity to apply for different MRLs that account for their use through the annual omnibus MRL proposals. This is one avenue for specific countries to apply for MRLs that align with their own or Codex standards to account for legitimate residues. This approach has the advantage of allowing trading partners the opportunity to be treated as we would wish our exporters to be treated, and allowing food to be sold with legitimate residues that are not elsewhere covered.

It is worth noting that this approach has already incorporated a number of MRLs into the Food Standards Code in order to further align the Code with Codex or trading partner standards. While these equally apply to domestic and imported foods, there is no evidence to suggest they have undermined Australia's control of use, or in any way changed domestic use of these chemicals.

However this piecemeal approach makes harmonisation and international consistency the exception rather than the rule. In doing so it favours those countries with the significant resources required to comb through the opportunities presented by Australia as a relatively small market, and put together an application.

The opportunity to apply to vary MRLs through an annual omnibus proposal should be continued and streamlined if possible, but is not sufficient on its own to address the issues with Australia's zero tolerance approach.

Acceptance of Codex MRLs

To allow for a more level playing field, and show Australia's true commitment to international standards, **Australia should as a matter of course accept food that meets Codex MRLs**. This would allow for a safe, risk assessed basis for incorporating a wider range of MRLs into the Food Standards Code. Codex limits provide a sound guide to acceptable levels of residues in international food trade. While acceptance of Codex MRLs does not directly address low level residues, it would forestall any issues for the very wide range of chemical commodity combinations covered by Codex MRLs. By covering this wider base of acceptable food, the 'zero tolerance' approach would be less problematic as it would no longer block traded foods with legitimate residues generally accepted in international trade.

As part of its remit, FSANZ must have regard to its WTO obligations, the promotion of consistency between domestic and international food standards and the promotion of fair trading in food. Aligning Australian standards with Codex standards as a principle goes beyond the current 'letter of the law' approach to show a real commitment to the spirit of harmonisation and consistency. In turn this would benefit our food exporters as it would provide a much stronger position from which Australia can argue for the acceptance of international standards among our trading partners.

This is consistent with the government's commitment to reducing red tape, and the recently released proposal from the Department of the Prime Minister and Cabinet for dealing with International Standards and Risk Assessments, with the proposed principle that:

> 'Where a trusted international standard or risk assessment already exists, and a system, service or product has been approved under that trusted standard or assessment, then

> regulators should not impose any additional requirements for approval in Australia, unless it can be demonstrated that there is good reason to do so.'[1]

Australia's ongoing involvement in and commitment to Codex means we should accept the rigour of the process used to set MRLs. Doing so is quite distinct from accepting the appropriateness of the use of these chemicals in Australian conditions, which is appropriately dealt with through the APVMA.

This approach would also increase consistency with New Zealand.

Further consideration of a default MRL

We recognise that there are challenges with introducing a default MRL, but note that a very low default MRL, in combination with acceptance of Codex MRLs, and with appropriate restrictions, would address the remaining issues with the current zero tolerance approach. **The introduction of a default MRL should therefore be considered further.**

As already stated, the issue of inadvertent presence in domestic products outlined in P1027 does need to be addressed, and this could be done through the proposed approach or a more general default MRL, depending on the outcome of detailed analysis of costs and benefits.

Conclusion

At the moment, the MRLs listed in the Food Standards Code are derived from:

- MRLs established by the APVMA in line with expected residues from registered uses
- MRLs requested by trading partners (eg through the annual omnibus proposals for varying MRLs)

P1027 as it currently stands also proposes to include:

- MRLs to accommodate inadvertent contamination (eg spray drift, contact with contaminated bins, factory equipment etc)

Other complementary measures are also required to address the other issues facing food industries and bring about trade improvements. To do this it would also be appropriate to incorporate:

- Codex MRLs

Further work should also be undertaken on a general default MRL, including comparing the costs and benefits of the approach currently proposed in P1027.

[1] http://ris.dpmc.gov.au/2014/12/22/5538/