Queensland Government

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Standards Management Officer
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Dear Sir / Madam

Submission: – Proposal P1017 Criteria for *Listeria monocytogenes* – Microbiological Limits for Foods

Thank you for the opportunity to provide a submission on the call for submissions regarding Proposal P1017 - Criteria for *Listeria monocytogenes* – Microbiological Limits for Foods.

This submission provides technical advice and comments related to this issue. It was prepared with the advice of officers from Safe Food Production Queensland (SFPQ) and the Queensland Department of Agriculture, Fisheries and Forestry (DAFF). The submission does not represent a Queensland Government position, which will be a matter for the Queensland Government when notification is made by the FSANZ Board to the Legislative and Governance Forum on Food Regulation.

In Queensland SFPQ is primarily responsible for the administration and enforcement of food safety schemes in relation to the primary production and processing standards in Chapter 4 of the *Australia New Zealand Food Standards Code* (the Code). The Queensland Department of Health's role includes administration and compliance activities related to Chapters 1, 2 and 3 of the Code. In addition, both the Department of Health and SFPQ have requirements related to the isolation of *Listeria monocytogenes* in foods. DAFF's role includes industry development, research, and extension activities related to agricultural industries, plus food technology and innovation.

Separate comments are provided below by the abovementioned three Queensland government stakeholders.

Comments from Safe Food Production Queensland

SFPQ does not support the progression of this Proposal as outlined in the Call for Submissions (8/11/13) for the reasons outlined below.

Purpose

The proposed amendments to Standard 1.6.1 do not address the ambiguity regarding the purpose of the Standard and its relationship to other Standards in the Code. For example the proposed amendments:

- aim at defining the acceptability of a lot/consignment of food for sale or intended for sale without giving consideration to alternative scientific validations or compliance arrangements by a food business that have been considered and approved by the relevant food agency
- places requirements on an authorised officer (not defined). Such provisions, which in this case relate to sampling procedures, should be outlined in relevant state and territory food legislation. By including these provisions in the Code, an authorised officer could, in theory, be prosecuted for a failure to comply with the Code under the Queensland *Food Act 2006*.
- does not consider the procedure for the sampling of food by a food business in response to a customer complaint.

SFPQ also notes the results of the adoption of the applicable Codex Guidelines internationally. For example, since implementation in 2006 the EU has continued to experience a rise in the rate of Listeriosis. This rise is more pronounced in Canada, where similar regulatory limits have been in place since 2006 (go to http://dsol-smed.phac-aspc.gc.ca/dsol-smed/ndis/charts.php?c=pl)

Cost Benefit Analysis

SFPQ disagrees with OBPR's conclusion that there is no need for a RIS to be undertaken (page 16). There is every likelihood that many businesses will experience increased costs by way of validating compliance with the proposed limits e.g. determining growth rates during shelf life. In addition, any business that classifies each of their products as outlined in the Proposal may need to undertake a validation exercise and maintain such document for future reference.

FSANZ's view that "enforcement agencies should be able to provide advice and guidance to small businesses on sampling procedures and requirements appropriate to their product and circumstance" (page 8) is incorrect. It is not the role of food regulators to act as an advisory body to businesses. This is the role of each individual business, who may engage consultants or utilise peak bodies for assistance, and it is expected that there will be a cost to business for undertaking such activities. It is expected that this cost would multiple as the proposed criteria are applied to other pathogens on ready-to-eat (RTE) foods e.g. salmonella.

Food categorisation

The proposed classification categories for foods are confusing, complex and unenforceable by regulatory agencies. As examples:

- stating that growth is not considered to occur in a RTE food where growth will not exceed 0.5 log or where refrigerated shelf-life is less than 5 days is nonsensical
- the proposed definition of RTE food would mean that a whole celery is not a RTE food but a half-celery is RTE, although both forms of celery may be used for the same purpose.

The current Standard, which has a zero tolerance for Listeria monocytogenes (LM) in many RTE foods, contributes to the sustainable behaviour desired by SFPQ. Currently SFPQ requires that if a business, such as a butcher processing hams, detects LM in the ham the sale of such RTE foods processed at the premises must cease until a Listeria Clearance Program is undertaken by the business. Such a detection indicates a breakdown in process control and therefore this clearance program focuses on the absence of Listeria spp., rather than just LM.

Therefore the proposal that RTE food in which growth of LM will occur being able to be released (<100 cfu/g) is very problematic from a regulatory and enforcement perspective. For example, if there was a detection of LM in a food and the business was claiming that the product was a 'RTE food in which the growth of LM will not occur', unless there had been appropriate verification of the characteristics and processing factors by the business the default position of 'not detected in 25 g' would apply and the business would need to take the necessary actions e.g. recall. However, another business may have the same issue and has undertaken the same processing procedure but as the business had undertaken a validation process no action is required. In reality the ability of a particular product type to support/not support the growth of LM is variable (even with a specific product with variations to ingredients).

The practical application of such a standard is unachievable due to the mixed nature of processing businesses. In many cases those producing products that do not support the growth of LM also produce products that do. This creates challenges in how the limits apply to environmental testing in such facilities e.g. do they apply a zero-tolerance to all products? If so, what changes the status quo?

Given the above, FSANZ's view that the proposed changes would "provide greater clarity for enforcement agencies as to the limit that should be applied in different circumstances provide the basis for consistent implementation" is incorrect. In reality achieving consistency within a jurisdiction will be problematic as what action (if any) is required by an agency will be based on the information held by each business, as per the health claims standard. In addition, agencies may be required to review a body of information on a product before determining what action is required; this may slow down the response time, which in turn may impact on public health and safety.

The complexity regarding this issue will be exacerbated by the potential for further pathogens to be permitted in products in the same manner as proposed for LM in P1017.

Shelf life

Shelf life is a critical aspect of this proposal and is left squarely in the hands of the business to determine. However, 'shelf life' is not defined and it could be argued that for products with a best before date the shelf life can extend beyond this date and may still be legally sold.

Risk communication

If the proposed amendments are progressed consumers and businesses will receive mixed messages about food safety e.g. "it's permissible to have pathogenic bacteria in your ready-to-eat food" which may lead to less vigilance in the management of the process and hence food safety outcomes of the product being manufactured.

It is therefore essential that there is an emphasis on a through chain approach that targets a 'zero tolerance' at every stage of the process.

Impact on other Proposals

Given the implications of Proposal P1017 it is strongly recommended that Proposal P1022 *Dairy – Raw Milk Products* be progressed and finalised in unison with other planned Proposals relating to microbiological limits.

Comments from the Queensland Department of Agriculture, Fisheries and Forestry (Food Technology, Agri-Science Queensland)

RTE foods are not nominated as a class in Standard 1.6.1. so are not regulated in terms of microbiological limits in the Code. They can however in some cases be regarded as potentially hazardous due to the ability of such foods to support the growth of pathogenic bacteria - including *Listeria monocytogenes*. Many of us working in this area (as research scientists) currently rely heavily on the Guidelines for the microbiological examination of ready-to-eat foods that was published by FSANZ in 2001 to provide a benchmark for food safety and effectiveness of processing. It makes sense that a portion of the Guidelines has now been formalised for incorporation into the Code.

So from a processing and industry point of view, we would strongly support this proposal as it moves from a limited product-by-product approach to a more generalised risk based model that is underpinned by rigorous scientific testing. This provides processors with broad guidelines for the effective control of *Listeria monocytogenes* in RTE products and encourages each company to categorise their range in terms of product and process characteristics. Interpretation and consistency across industry is achieved by the provision of the guidance document.

Comments from the Queensland Department of Health

The Queensland *Food Act 2006* includes a requirement for the Queensland Department of Health to be notified of the isolation of *Listeria monocytogenes* in a food sample. In 2013, the Department was notified of 250 detections of *Listeria monocytogenes*, the majority being in RTE foods. Detections of *Listeria monocytogenes* are investigated and when necessary appropriate actions taken to ensure contaminated food is not sold or consumed. Appropriate actions are also taken to reduce the risk of other foods produced by the business being contaminated.

When *Listeria monocytogenes* is detected in a RTE food, a decision needs to be made quickly on what actions are appropriate to protect public health. The proposed variations to the Code will significantly complicate and delay these risk assessment decisions when relevant information in the proposed clause 6 is not known such as water activity, pH, and evidence *Listeria monocytogenes* will not increase more than 0.5 log over the shelf life of the food.

Many of the detections of *Listeria monocytogenes* in food that the Queensland Department of Health has received have been manufactured by small businesses such as butchers. Small businesses may not be in a position to have the resources and knowledge to undertake validation activities in the manufacture or development of their products that provides information on the pH, water activity, shelf life and growth of *Listeria monocytogenes.*

Furthermore, information on the measures outlined in clause 6 may not be available in relation to food samples obtained in the marketplace by enforcement officers. However, additional analyses may be able to be done to determine pH and water activity, which would increase sampling costs.

If the proposed requirements in Standard 1.6.1 related to 'ready-to-eat food in which the growth of *Listeria monocytogenes* will not occur' are implemented, the changes should also be accompanied by a requirement that businesses need to provide to the relevant authority suitable evidence (e.g. a dossier) proving 'the growth of *Listeria monocytogenes* will not occur' as defined by clause 6. A maximum period of 24 hours may be appropriate to provide this information. Furthermore, a requirement should be included that where suitable information cannot be provided within the stated timeframe, the food will be considered to be a RTE in which the growth of *Listeria monocytogenes* can occur, making it an offence to sell the food.

Consideration may need to be given to clarifying that even if a food complies with Standard 1.6.1, that it may still be an offence to sell it under the safe and suitable offences in State and Territory food laws (the application Acts).

Proposed Purpose of Standard 1.6.1

The 'purpose' paragraph proposed to be included in Standard 1.6.1 states in the last sentence "Foods that fail to meet these limits may pose a risk to human health and must not be offered for sale." In accordance with the principles that were developed to guide amendments to the Code as part of 'Proposal P1025 – Code Revision' (that is, paragraphs 3.2.3 and 3.2.9.1 of the Call for Submissions report) consideration should be given to making the statement "must not be offered for sale" a substantive provision in the Code. This would provide greater legal clarity that it is an offence to sell a food that does not comply with Standard 1.6.1 and help link the requirement back to the offence provisions in State and Territory food laws (the application Acts).

Proposed Clause 3 of Standard 1.6.1

Clauses 3(2) and 3(3) proposed to be included in Standard 1.6.1 refer to 'an authorised officer'. To provide greater legal clarity, consideration should be given to clarifying that the term relates to authorised officers under State and Territory food laws (the application Acts), and presumably the *Imported Food Control Act 1992*.

The proposed clause 3 of Standard 1.6.1 refers to a 'sample of food', which is not defined. In practice, a sample of food can include a number of separate packages of the same batch obtained at the same time and submitted as one sample to an analyst. In this case, the 'sample' can be safely be divided into separate parts (i.e. separate packages) without opening any of the packages during sampling and hence not microbiologically compromise any sample part. As such, 3(2)(a) is not correct. The key point that needs to be expressed is that sealed packages should not be divided into separate parts during sampling or prior to it be submitted for analysis.

The proposed clause 3(3) should be amended to clarify that the clause also applies when there are insufficient sealed packages to divide into the number of sample parts specified in Column 3 of the table. This scenario can also exist when obtaining samples as part of a survey or during a compliance/enforcement action and is not just restricted to investigating suspected food poisoning incidents and consumer complaints.

The reference to 'authorised officer' as proposed restricts the application of clause 3 to enforcement agencies. However, businesses also sample food, for example: as part of an accreditation requirement, quality assurance program, shelf life validation, product development, etc. Since the same principles of not opening sealed packages during sampling apply to any sample, consideration could be given to broadening the application of proposed clause 3(2) to samples obtained by or on behalf of businesses.

Proposed Clause 6 of Standard 1.6.1

The intent of clause 5(d) "the food has a refrigerated shelf life of ≤ 5 days" as worded is not clear. It would appear the provision should also apply to foods which have a refrigerated shelf life greater than five days if the food will not be consumed after five days. Consideration should be given to rewording clause 6(d) along the lines 'the food is refrigerated at less than or equal to 5 degrees Celsius and will not be consumed after 5 days.' If the term 'shelf life' is used, it should be defined because the term is too open to interpretation.

Consideration should also be given to clarifying when the 'shelf life' period is to be applied. For example, from the time of manufacture, or in the case of a frozen food (e.g. frozen cheese cake) from when it is defrosted, or in the case of a hermetically sealed sterile food from when it is opened.

Should you require further information in relation to this matter, please contact Food Safety Standards and Regulation, Health Protection Unit, Department of Health on (07) 3328 9310 or at foodsafety@health.qld.gov.au

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