

Standard 4.2.8 – Primary Production and Processing requirements for Horticulture (Leafy Vegetables)

1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 2 of Part 3 of the FSANZ Act specifies that the Authority may prepare a proposal for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering a proposal for the development or variation of food regulatory measures.

The Authority prepared Proposal P1052 – Primary Production and Processing requirements for Horticulture (berries, leafy vegetables and melons). The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved this draft Standard and a consequential variation.

2. Variation is a legislative instrument

The approved draft variation is a legislative instrument for the purposes of the *Legislation Act 2003* (see section 94 of the FSANZ Act) and is publicly available on the Federal Register of Legislation (www.legislation.gov.au).

This instrument is not subject to the disallowance or sunset provisions of the *Legislation Act 2003*. Subsections 44(1) and 54(1) of that Act provide that a legislative instrument is not disallowable or subject to sunset if the enabling legislation for the instrument (in this case, the FSANZ Act): (a) facilitates the establishment or operation of an intergovernmental scheme involving the Commonwealth and one or more States; and (b) authorises the instrument to be made for the purposes of the scheme. Regulation 11 of the *Legislation (Exemptions and other Matters) Regulation 2015* also exempts from sunset legislative instruments a primary purpose of which is to give effect to an international obligation of Australia.

The FSANZ Act gives effect to an intergovernmental agreement (the Food Regulation Agreement) and facilitates the establishment or operation of an intergovernmental scheme (national uniform food regulation). That Act also gives effect to Australia's obligations under an international agreement between Australia and New Zealand. For these purposes, the Act establishes the Authority to develop food standards for consideration and endorsement by the Food Ministers Meeting (FMM). The FMM is established under the Food Regulation Agreement and the international agreement between Australia and New Zealand, and consists of New Zealand, Commonwealth and State/Territory members. If endorsed by the FMM, the food standards on gazettal and registration are incorporated into and become part of Commonwealth, State and Territory and New Zealand food laws. These standards or instruments are then administered, applied and enforced by these jurisdictions' regulators as part of those food laws.

3. Purpose

The Authority has approved draft Standard 4.2.8 to minimise food safety risks associated with the primary production and processing of fresh leafy vegetables in Australia.

Leafy vegetables contaminated by pathogenic microorganisms present an unacceptable health risk to consumers. In recent years, outbreaks of foodborne illness have been associated with the consumption of leafy vegetables both in Australia and overseas.

The food regulatory measures in Standard 4.2.8, along with existing measures in the Code, address the public health and safety problem identified with leafy vegetables in the most cost-effective manner.

4. Documents incorporated by reference

The approved draft Standard does not incorporate any documents by reference.

5. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1052 included two rounds of public comment following an assessment, targeted communication with key stakeholders, and the preparation of three draft standards and associated assessment summaries.

The first call for submissions was held between February and March 2020. Targeted consultation was undertaken in December 2020–January 2021. The second call for submissions was held between November 2021 and February 2022.

A Standards Development Advisory Group was established with representatives from the industry sector and State, Territory and federal government agencies to provide ongoing advice to FSANZ throughout the standard development process. A Horticulture Implementation Working Group comprised of State, Territory and federal government regulators was established by the Implementation Sub-committee for Food Regulation to work with FSANZ and ensure a nationally consistent approach to implementation of the standards.

A decision Regulation Impact Statement (DRIS) was prepared by the Authority and has been approved by The Office of Best Practice Regulation (Reference - OBPR22-01822).

6. Statement of compatibility with human rights

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the *Legislation Act 2003*.

7. Approved Draft Standard

General: The approved draft Standard is introduced by two notes providing information about the place of the Standard within the Code and the application or otherwise of the Standard in New Zealand. The first note in the Standard explains that the instrument is a standard under the FSANZ Act, and that the Standard and the other standards together make up the Code. The second note in the Standard explains that the relevant draft Standard applies only in Australia.

Section 1: This provision establishes the name of the relevant Standard:

- the *Australia New Zealand Food Standards Code – Standard 4.2.8 - Primary Production and Processing Standard for Leafy Vegetables*.

The note to section 1 in the draft Standard explains that the Standard will commence on the date that is 30 months following the date of gazettal, being the date specified in accordance with section 92 of the FSANZ Act.

Section 2: This provision sets out the definitions for key words and phrases used in the standard, or signposts to where those definitions are provided in other standards in the Code.

Leafy vegetables means vegetables of a leafy nature where the leaf is consumed raw; and includes baby leaves, lettuce, and leafy herbs; and does not include seed sprouts. The definition is inclusive in that baby leaves, lettuce and leafy herbs are intended as examples of leafy vegetables, rather than constituting an exhaustive list. The intent is to include any vegetables and herbs (except seed sprouts) with one or more leaves when the leaves are consumed fresh and raw. 'Leafy vegetables' does not include seed sprouts. Seed sprouts are covered by Standard 4.2.6.

Growing site means any site used to grow leafy vegetables; and includes an open, partially enclosed or enclosed planting area. The definition clarifies that the Standard applies to open fields as well as other cropping arrangements in fully or partially enclosed structures, such as hydroponic set ups.

Harvest means all activities related to the collection and removal of leafy vegetables from a growing site; and includes picking, cutting, field packing (including packaging for retail sale), and transport from the growing site to the next step in the supply chain.

Premises and equipment means equipment, infrastructure, structures and vehicles that a) are used by a primary horticulture producer or by a primary horticulture processor; and b) have direct or indirect contact with leafy vegetables. Examples of 'indirect contact' include pipes used to carry irrigation water, and equipment that may be placed on a food contact surface.

Primary horticulture producer means a business, enterprise or activity that is involved in the growing and / or harvesting of leafy vegetables.

Primary horticulture processor means a business, enterprise or activity that is involved in one or more of the following activities in relation to leafy vegetables, that have been harvested: washing, trimming, sorting, sanitising, storing, combining products, packing, and transport between primary processing premises. Primary processing is intended to include minimal post-harvest processing activities and does not include further processing or manufacturing activities such as freezing, drying, cooking, canning or blending leafy vegetables with other ingredients. Transport other than transport from primary processing facilities is not included. Chapter 3 would already apply to these further processing and transport activities.

Relevant activity means, in relation to a primary horticulture producer, the growing and/or harvesting of leafy vegetables. In relation to a primary horticulture processor, relevant activities mean the following activities with harvested leafy vegetables: washing, trimming, sorting, sanitising, storing, combining products, packing, and transport between primary processing premises. The definition is provided to clarify which activities pertain to certain requirements in the Standard. Primary processing relevant activities are intended to include minimal post-harvest processing activities and not to include further processing or manufacturing activities such as freezing,

drying, cooking, canning or blending leafy vegetables with other ingredients. Chapter 3 would already apply to these further processing activities. Transport other than transport from primary processing facilities is not included in the definition. Chapter 3 would already apply to these transport activities.

Notes: Notes 1 and 2 in section 2 signpost relevant definitions contained in other parts of the Code. Note 1 refers readers to the definitions of *general food safety management requirements* and *inputs* in clause 1 of Standard 4.1.1. Note 2 refers readers to clause 3 of Standard 4.1.1, which sets out when a food will be unacceptable for the purposes of Chapter 4 Standards, which would include this draft Standard.

Section 3: This provision deals with the application of the draft Standard.

Subsection (1) provides that the draft Standard applies only to primary production and primary processing in Australia. The Standard does not apply to activities that are not captured by the definition of ‘primary horticulture producer’ and of ‘primary horticulture processor’.

Subsection (2) provides that the Standard does not apply to retail sale activities of leafy vegetables. Chapter 3 of the Code already applies to retail activities.

Subsection (3) provides that the Standard does not apply to manufacturing activities of harvested leafy vegetables, which include but are not limited to cooking, freezing, drying, preserving, blending or juicing of harvested leafy vegetables or the addition of other foods to harvested leafy vegetables. Chapter 3 of the Code already applies to manufacturing activities.

Section 4: The provision in the draft Standard requires a primary horticulture producer and a primary horticulture processor of leafy vegetables to comply with the general food safety management requirements in Standard 4.1.1. Clauses 4 and 5 of Standard 4.1.1 set out the general food safety management requirements; and requirements specifically related to a food safety management statement (FSMS). The primary horticulture producer and primary horticulture processor need to (among other things) prepare a FSMS setting out how the requirements in Chapter 4 of the Code are being complied with. In accordance with clause 5 of Standard 4.1.1, this statement must be approved or endorsed or recognised by the relevant authority.

Section 5: This provision requires a primary horticulture producer and a primary horticulture processor to have a system in place that identifies from whom leafy vegetables were received and to whom they were supplied. The intent is that the system would enable the business to trace the produce one step back and one step forward, as a minimum. The required information will enable a rapid response and removal of unsafe produce if a food safety issue arises and/or a product recall is required.

Section 6: This provision requires a producer and a primary processor of leafy vegetables to take all reasonable measures to ensure that specified inputs do not make leafy vegetables unacceptable. The specified inputs are seeds, seedlings, soil, soil amendments (including manure, human biosolids, compost, and plant bio-waste), fertiliser, and water. ‘Water’ is intended to include recycled water, but is not intended to include falling rain.

Section 7: These provisions require a primary horticulture producer of leafy vegetables to ensure that a growing site is located, designed, constructed, maintained and operated such that leafy vegetables are not made unacceptable. These provisions also require ongoing management of growing sites by primary producers to ensure leafy vegetables do not become unacceptable during growing and harvest activities.

Section 8: These provisions require a primary horticulture producer and a primary horticulture processor to take appropriate remedial action to ensure that leafy vegetables adversely affected by weather conditions (e.g. a flood, hail storm or dust storm) are not unacceptable. The intent is that any unacceptable leafy vegetables do not enter the fresh produce supply chain. Examples of appropriate remedial action are product disposal, treatment of product to thoroughly remove adversely affected areas (e.g. through trimming, cleaning, sanitisation), or diversion of product to another supply chain where adequate treatment (e.g. retorting) will ensure the safety of the product.

Section 9: These provisions deal with premises and equipment. Subsection (1) of each provision requires a primary horticulture producer and a primary horticulture processor to take all reasonable measures to ensure that premises and equipment are designed, constructed, maintained and operated in a way that allows for effective cleaning and sanitisation of the premises and equipment; and does not make leafy vegetables unacceptable. Subsection (2) of each provision requires a primary horticulture producer and a primary horticulture processor to ensure that premises and equipment are maintained, cleaned and if necessary sanitised; each to the extent needed to ensure that leafy vegetables are not made unacceptable. The intent of these provisions is that premises and equipment, including transport vehicles, do not present a source of product contamination, damage or other adverse outcome.

Section 10: These provisions require a primary horticulture producer and a primary horticulture processor to keep harvested leafy vegetables at a temperature that would not make the produce unacceptable. The intent of these provisions is that harvested product is cooled, if necessary, and kept cool during post-harvest handling, transport and storage to prevent or minimise growth of any pathogenic microorganisms that may be present on harvested leafy vegetables. Primary producers and primary processors must consider the location and timing of relevant activities (for example, the time taken to harvest product and transport it to a primary processing facility), to ensure the harvested product does not remain at temperatures for a time that would enable microbial growth to levels that would make the product unacceptable.

Section 11: These provisions require a primary horticulture processor to take all reasonable measures to ensure that visible extraneous material (for example, surface dirt) is removed from harvested leafy vegetables, and that any wash or sanitisation step used does not make leafy vegetables unacceptable. The intent for washing is that where a wash step is used, the washing cleans the produce and does not introduce contamination (for example through use of excessively dirty water) or make the produce otherwise unacceptable. The intent for sanitisation is that when a sanitisation process is used, the process reduces microorganisms on the surface of leafy vegetables to safe levels and does not make the product unsafe or otherwise unacceptable; for example, through use of inadequate sanitiser concentration. Under Standard 4.1.1, only approved chemicals can be used to treat fresh leafy vegetables.

Section 12: These provisions require a primary horticulture producer and a primary horticulture processor to take all reasonable measures to minimise the presence of animals, vermin and pests at growing sites and in premises and equipment, to ensure that leafy vegetables are not made unacceptable. The intent of this requirement is that growing areas, premises and equipment are designed, constructed and maintained in such a way to prevent and minimise entry and harbourage of domestic or wild animals, vermin and pests to an extent that would cause leafy vegetables to become unacceptable.

Section 13: These provisions require a primary horticulture producer and a primary horticulture processor to ensure that persons engaged in; or supervising a person engaged

in, relevant activities listed for leafy vegetables have skills and knowledge in both food safety and food hygiene commensurate with their work. The purpose of this provision is to ensure those people do not make the product unacceptable through contamination or other adverse outcomes.

Section 14: These provisions require a primary horticulture producer and a primary horticulture processor to take all reasonable measures to ensure that personnel and visitors exercise personal hygiene and health practices that do not make leafy vegetables unacceptable. The intent is that personnel and visitors do not present a source of product contamination or other adverse product outcome from illness or poor hygiene practices.

Section 15: These provisions prohibit a primary horticulture producer or a primary horticulture processor from selling or supplying leafy vegetables for human consumption if they ought reasonably know, or ought reasonably suspect, that the relevant food is unacceptable. This requirement is intended to prevent the introduction or transfer of unacceptable leafy vegetables through the fresh food supply chain.