Brewers Association of Australia & New Zealand Inc

Brewers Association of Australia and New Zealand Submission to Food Standards Australia New Zealand

2nd Call for Submissions - Proposal P1025

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Contact: Bryan Mundy, Research & Policy Analyst, (02) 6295 7199, PO Box 4021 Manuka ACT 2601

Introduction

The Brewers Association of Australia and New Zealand (Brewers Association) welcomes the invitation to provide comment on the second consultation draft of Proposal P1025.

Australian members of the Brewers Association comprise Carlton & United Breweries, Coopers and Lion Co that produce and distribute around 95% of domestically brewed beer. New Zealand members comprise DB Breweries and Lion Co who are similarly the major brewers in the New Zealand market.

In this submission, the Brewers Association seeks to address points of concern that remain within the latest draft of the Revised Code.

Recommendations

1.1.2 – 11 Definition of used as a food additive, etc.

In our first submission, it was noted that:

> *"The new definition of "use of an additive" and "additive" is more restrictive than the existing definitions and may constrain the use of materials that have been historically used in the industry such as clouding agents and natural colourants derived from the permitted ingredients of beer. These include extracts of coloured malt, which have minimal residual fermentability, or clouding agents derived from yeast or pectin. Under the proposed new definition, these ingredients could be considered food additives and require premarket approval before use."*

In its response, FSANZ stated:

> *"FSANZ does not agree that the proposed definition is more restrictive. The provision does ensure that the safety of all relevant substances is considered. The current provision only provides permission for the limited range of substances that are assessed as being safe for use as a food additive, but leaves a significant gap in which substances that have not been assessed are treated in the same manner as substances that have been assessed but found not to be safe, i.e. they are not permitted but, on the other hand, are not explicitly prohibited."*

The removal of the qualifying criteria "is not normally sold as a food product" and "is not normally used as an ingredient by consumers", in the 2nd draft, and introduction of *intent*, "selectively concentrated or refined, or synthesised…" increases the potential for confusion.

This new definition fails to recognise the nuances between:

- Concentrated or refined substance that are generally recognised to be safe as unstandardized food ingredients, despite being used to perform food additive type technological purposes; and
- Those that are considered to be food additives.

In many cases the differences are not that the latter group of substance are more concentrated and/or extracted but, rather, that the former group have a history of use in western food production that pre-dates the development of modern food additive regulation.

A clear roadmap would enable producers to determine whether substances qualified as an additive or not.

In our submission to the 1st Draft, we included an example that may have been misunderstood. There are multiple examples within the food industry where ingredients ("raw materials") which have been "selectively concentrated" are added to a food could be said to perform a technological function and thus be caught under the new draft definition for 'Additive'. They would then require pre-approval as additives despite their common historical usage.

(Specific to beer, this would include puremalt for colouring and yeast extract for clouding)

To further illustrate this point, we acknowledge other examples of food ingredients and food additives that have similar properties and are used for the same technological purpose:

- Sodium Chloride vs. Potassium Chloride - used as a preservative to reduce water activity in cheeses, smallgoods, and yeast extracts etc.
- Distilled vinegar vs. Acetic acid - used as preservative in pickles.
- Gelatine (a food defined in the Code) vs. Agar - used as a gelling agent.
- Cornflour (i.e. highly refined starch) vs. chemically or enzymatically modified starches used as thickeners.

The Brewers Association recommends that *Standard 1.1.2 – 11 Definition of used as a food additive* should remove the wording "selectively concentrated" and revert to "extracted, refined, or synthesised".

Furthermore, we also suggest that FSANZ seek to qualify the provision in terms of:

(i) the prior history of use of the source as a food; and/or,
(ii) the extent of concentration and/or refining required, and whether chemical or enzymatic modification is also necessary, before the specific substance is considered to be a food additive

1.2.4 Information Requirements – Statement of Ingredients

Removal of the definition of 'ingredient' has increased confusion around the varying statuses of ingredients, additives and processing aids.

In our first submission, it was noted that:

The change in the definition of ingredient now includes processing aids. As an example of how this may impact, filters using filter powder are used to clarify beer prior to packaging. If there is any powder bleed, this would be considered an "ingredient" under the new definition. There are other complications with this new definition including cross contamination and label claims.

In its response, FSANZ stated:

This comment demonstrates a basic misunderstanding of both the current regulatory provisions and the proposed revision.

First, the current definition of ingredient in the Code is a definition that has a limited application for labelling in Standard 1.2.4. It is quite clear that the definition does not exclude processing aids from the concept of ingredient, as clause 3 specifically excludes processing aids from the labelling requirement. That exclusion would not be required if processing aids were not ingredients.

Second, the proposed statement, which is not required in the revision, did no more than provide examples of the circumstances in which a food might be an ingredient.

The notion that powder bleed from a filter paper might be an ingredient under the proposed provision is fanciful.

The current Code does not contain a definition of "ingredient" but uses the term throughout and, in places, inconsistently. In the first draft of the Code revision a definition of "ingredient" was proposed but the inconsistencies remained. The 2nd revision draft does not contain a definition of ingredient but seeks to classify what may be used as an "ingredient" in a food for sale, including identifying those substances that are subject to specific approval in the Code and those that are not permitted to be used as "ingredients".

A problem exists with the inconsistent use of "ingredient" within the Code. In addition to the common meaning, being *anything intentionally added during manufacturing*, the term is on occasions used in a way that is similar to the use in the Food Act, i.e. to differentiate between "ingredients" and other substances added to food, such as food additives, nutritive substances and processing aids.

The first or common use would appear to be related to a perceived need for enforcement agencies to be able to take action against foods containing substances that are not permitted or prohibited. In contrast, the second usage is to distinguish between ingredients that are not subject to pre-approval in the Code and, subject to compositional limitations in individual commodity standards, may be added to a food without express permission and those substances, such as food additives, that are subject to preapproval and also to apply different labelling requirements to "ingredient" and "food additives".

The Code would benefit from the use of consistent terminology throughout and preferably this should be consistent with the terminology of the food acts under which the Code is enforced.

There is a benefit in a clear means of differentiating between:

1. Ingredients in a food that are intrinsic its nature and are allowed provided they are not unsafe or unsuitable. In the case of beer these might include hops, barley and other cereals, yeast, sugars, honey, fruits etc., and products prepared from them, including clouding agents; and,

2. Substances that are added solely for technological or processing purposes, i.e. food additives and processing aids, and are subject to premarket approval. In the case of beer these might include mash enzymes etc.

There may also be a benefit for enforcement agencies in a definition that describes all of the components of a food that are intentionally added during manufacturing/ processing, including food additives and processing aids, although it is questionable whether "ingredient" is the correct term. It is apparent that the definition in the 1st draft, which has been subsequently removed, did not achieve the desired objective.

The Brewers Association recommends the reinstatement of the definition in current standard 1.2.4 to the definition section of the code.

1.2.7 – 16 Comparative Claims

In our first submission, clarity was sought on the status of 'Light Alcohol' claims made by association members on their products.

The Brewers Association stated:

> *The status of "Light" alcohol claim is unclear. Technically there is an argument that "Light" is a "nutrition content claim" because alcohol is a biologically active substance and "light" is not a claim about "the presence or absence of alcohol" rather it is a quantitative claim. If "Light" is a nutritional content claim then it is prohibited by 1.2.7. Clearly this is not the intent of the regulation and this should be clarified in the revised Code.*

In their response, FSANZ replied:

> *"This suggestion is considered to be out of scope for P1025"*

However, in their response to DB Breweries' submission query on the same matter, it was commented:

> *"A claim about light alcohol beer is not a health claim, and cannot be as it does not relate to the relationship between a food and a health effect. It is a nutrition content claim."*

The FSANZ response that 'light alcohol' is a "nutrition content claim" reinforces the confusion surrounding its status. If this is so, then it is prohibited as the only permitted nutrition content claims are for carbohydrate and energy (1.2.7 – 4). Such a restriction would counter government policy to improve public health by moderating the consumption of alcoholic beverages.

The Brewers Association notes the relevant clauses are consistent between the current code (Standard 1.2.7) and the proposed revision drafts. A claim that refers to the presence or absence of alcohol is exempted from the definition of a nutrition content claim (*Section 1.1.2 – 9 (1) (b)*). The relevant clause does not limit the exemption to claims about the absolute presence or absence of alcohol (i.e. non-alcoholic vs. contains alcohol) but also applies to relative comparisons. In order to clarify this permission, *Section 1.1.2 – 9 (1) (b)*) should be modified to *"presence, absence or reduction of alcohol"*

The Brewers Association recommends that for clarification of the Food Code, the ambiguity surrounding the status of "light alcohol" claims be addressed by modifying *Section 1.1.2 – 9 (1) (b)*) to read "*does not refer to the presence, absence or reduction of alcohol*".

Division 6 – Legibility Requirements
1.2.1 – 24 General legibility requirements

The Brewers Association raised concerns in its 1st Submission to Proposal P1025 on the ambiguous requirements in the current code that stipulate statements be written "legibly and prominently such as to afford a distinct contrast to the background".

In subsequent revisions, the terms "legible", "prominent" and "contrast" have all been separated to their own dot points ((a),(b) and (c) respectively).

Under the current code, it is inferred that the term "prominently" reflects on the word "contrast" (a prominent contrast). As such, the division of these terms in subsequent Draft Revisions gives meaning to "prominent" concerning placement on packaging.

Some beer products sold in the market currently contain the address and company statements on the base of their packaging.

A regulatory impact statement would be necessitated and 2-year implementation phase be required for these producers to comply with the revised Code.

The Brewers Association suggests that the current phrasing in the Code in Standard 1.2.9, section 2(1), be retained and that, until a Proposal is raised to make a change, section 1.2.1—24(1) read:

1.2.1—24 General legibility requirements

(1) If this Code requires a word, statement, expression or design to be contained, written or set out on a label, the word, statement, expression or design must, wherever occurring:

(a) be legible; and
(b) prominent such as to afford a distinct contrast distinctly with the background of the label; and
(c) be in English.