



Enquiries to: Food Safety Standards and
Regulation,
Health Protection Unit
Department of Health
Telephone: (07) 3328 9310
Facsimile: (07) 3328 9354
Email: foodsafety@health.qld.gov.au
File Ref: QCHO/006767

12 September 2014

Standards Management Officer
Food Standards Australia New Zealand
PO Box 7186
Canberra BC ACT 2610

Dear Sir / Madam

Submission – P1025 – Code Revision

Thank you for the opportunity to provide a submission on the second call for submissions regarding P1025 Code Revision.

Please find attached technical advice and comments on the proposed changes to the *Australia New Zealand Food Standards Code*. Please note, 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.

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

Food Safety Standards and Regulation
Health Protection Unit
Department of Health

Office
Health Protection Unit
Queensland Health
Level 3, 15 Butterfield Street
Herston QLD 4006

Postal
PO Box 2368
Fortitude Valley BC QLD
4006

Phone
(07) 3328 9310

Fax
(07) 3328 9354

SUBMISSION

P1025 CODE REVISION

SECOND CALL FOR SUBMISSIONS

Food Safety Standards and Regulation

Health Protection Unit

Queensland Department of Health

12 September 2014

This 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 Australia and New Zealand Ministerial Forum on Food Regulation.

Comments on the draft Australian New Zealand Food Standards Code (containing amendments up to No. 148)

Introduction

It is recognised that the Code Revision has been a large and complicated project. Substantial changes to the drafting of the proposed *Australia New Zealand Food Standards Code* (the Code) have been made since the first call for submission based on the comments received. Subject to the correction of drafting errors identified during this round of consultation, on the whole the revised draft of the Code appears to have achieved the intended objectives of the Proposal. That is, strengthened the relationship with State and Territory application Acts, provided more explicit obligations on businesses that may more effectively be enforced and presentation as a unified instrument.

Comments on drafting

1.1.1—8 Prescribed wording

It is agreed that it should be made explicit that warning statements cannot be modified. However, stating in 1.1.1-8 (2) that “If a provision of this Code requires a statement other than a warning statement to be used: (a) that statement may be modified...” suggests that where other specific wording is prescribed (usually indicated in quotation marks) that they may now also be modified. Some examples of other statements that should not be modified include:

- 1.2.5-5: “Best Before”, “Use By” etc
- 2.6.3-4 Labelling of foods containing kava: ‘use in moderation’ and ‘may cause drowsiness’
- 2.7.1-3 Statement of alcohol content: “CONTAINS NOT MORE THAN X% ALCOHOL BY VOLUME”
- 2.9.2-7 (3): “Not recommended for infants under the age of 4 months”
- 2.9.2-8 (1): “Not suitable for infants under the age of 6 months”.

Consideration should be given to making it clear in 1.1.1-8 that prescribed wording, such as in the above examples, should not be modified. Alternatively, it should be made explicit in the actual provisions whether a statement may or may not be modified.

1.1.1—9 (2) Implementation period considering contaminants, residues and microbial limits

In the proposed wording, a food will be considered compliant for 12 months following a variation to the Code if it complied with the requirement in the Code related to composition, packaging and labelling at the time of the variation. However, to be equivalent to current requirements in Standard 1.1.1 1(2) consideration must be given to extend this to also include other requirements in the Code such as contaminants, residues and microbial limits. For example, if a fruit contains a legally permitted chemical residue, and the maximum residue limit for the chemical is removed from the Code, the fruit would still

legally be able to be sold up to a year after the variation to the Code. If there is a particular reason, such as safety, to not allow the continued sale of a food for 12 months after a variation is gazetted, then the date of commencement can be varied in relation to the specific amendment.

1.1.1—10 Novel foods

The requirement in 1.1.1-10 in relation to novel foods are obviously meant to mirror the requirement of the existing Standard 1.5.1 2, which states “A novel food must not be sold by way of retail sale as food or for use as a food ingredient unless...” However, officers from Food Safety Standards and Regulation interpretation of the requirement in relation to ingredients is that a novel food must not be sold for use as a food ingredient regardless of whether it is sold by retail or not, for example, sold by a caterer.

1.1-10 (4) states “food for sale must not have as an ingredient or component...” In relation to novel foods, this appears to be an extension to the current requirement which only relates to the sale of a novel food and use of a novel food as an ingredient; and not as a component. For example, resveratrol is regarded as a novel food and may not be sold as a novel food or included as an ingredient. However, resveratrol naturally exists as a component of wine. Therefore the proposed requirement may legally prevent the sale of wine, which is not the intention.

1.1.1—10 (4) and 1.1.1—10 (5) Additives and processing aids present by natural occurrence

This section prohibits the sale of food containing ingredients or components that contain substances such as food additives and processing aids that are not permitted by the Code. However, under section 1.1.1—10 (5) it does not apply if it is in the food or an ingredient by natural occurrence. Concern is expressed that this requirement may be harder to prove than expressing the prohibition in terms of the final state of the food that is for sale. For example:

- Analysis of a food that has been sold detects a food additive such as a preservative. To undertake enforcement action against a business it would need to be proven it was an ingredient or component of the food rather than just prove it is present.
- A range of microbial ingredients for food are now available that generate an additive during preparation of the food. It appears these have been developed partly to circumvent labelling requirements that require the declaration of additives. Examples of such products include:
 - Cultured wheat flour, which produces propionic acid.
 - Cultured sugar products, which can produce substance such as benzoates.

Therefore, consideration could be given to amending 1.1.1—10 (4) to extend the prohibitions to also include the substances or foods listed in the final food, for example (amended as underlined), “Unless expressly permitted by this Code, food for sale must not contain, or must not have as an ingredient or a component, any of the following...”

1.1.1—10 (8) Articles and materials in contact with food

Concern is expressed about the new wording of 1.1.1—10 (8) which replaces Standard 1.4.3 – *Articles and Materials in Contact with Food*. The main problem is with the use of the word ‘it’, that is, “Any packaging

and any article or material with which it is in contact, must not if taken into the mouth...” The new wording is not as clear as the old. It reads as if the article or material needs to be in contact with the packaging.

Also, the reference to packaging in the existing Standard 1.4.3 refers to packaging material enclosing articles or material and not to packaging enclosing food. Therefore, consideration could be given to the following alternative wording: “Any article or material, or packaging material that may enclose such article or material, which is in contact with food, must not, if taken into the mouth...”

1.1.1—10 (9) Inclusion in Standard 1.1.1 of the application of labelling requirements to advertising

The prohibitions for labelling also apply to the advertising of food. This is in Standard 1.1.1, 13 of the current version of the Code and has been reproduced in Standard 1.2.1—23. It would be helpful if the obligations in regard to advertising were explicit in Division 4 of Chapter 1 (Basic requirements) under 1.1.1—10 (Requirements relating to food for sale). This would sign post the requirements for those not familiar with the requirement and would probably strengthen the link back to the offence requirements in State and Territory Food Acts. As such, consideration could also be given to the following amendment (as underlined) to 1.1.1—10 (9) “If a labelling or advertising requirement of this Code applies to the sale of food, the labelling or advertising must comply with the requirement”.

1.1.1—10 (10) Information provision requirements

Section 1.1.1—10 (10) states “If an information provision requirement of this Code...” The terms ‘information provision’ and ‘information provision requirement’ are not used elsewhere in the Code. However, the term ‘information requirements’ has been used many times. It would be more consistent if the word ‘provision’ was deleted from 1.1.1—10 (10). For example, 1.1.1—10 (9) does not refer to a ‘labelling provision requirement’ or 1.1.1—10 (7) does not refer to a ‘packaging provision requirement’.

1.1.1—13 Use of food with specified name or nature

This section should clarify a number of interpretational issues concerning the application of various requirements in the Code related to the names of various foods. However, it is still appears somewhat uncertain how the section applies to the naming of analogue foods (i.e. food alternatives, imitation food and food substitutes), such as soy cheese, soy ice cream, coconut ice cream, coconut yoghurt, etcetera, as well as foods that have well recognised names such as coconut cream and coconut milk.

Under section 1.2.2—2 the name or description of a food has to indicate the true nature of the food, and the compositional requirements describe the intended ‘true nature’ of some foods, for example, yogurt is a fermented milk product. However, there appears there may be valid alternative interpretations of the overall requirements, for example, a product described ‘coconut yoghurt’ may be a fermented milk product flavoured with coconut or an analogue of yoghurt made from coconut. In this case the compositional requirements clearly apply to fermented milk products but the application of 1.2.2—2 is less clear. Standard 1.1.1—13 (3) by stating “the sale is taken to be a sale of the food as the named food unless the context makes it clear this is not the intention” could possibly clarify the application of the compositional and naming requirements. For example, if elsewhere on a label of ‘coconut yoghurt’ there were statements that provide a context for the name of it such as ‘dairy free’.

It would be helpful to consumers, industry and enforcement agencies if the application of the code to analogue foods was explicit. At a minimum, the inclusion of an example in section 1.1.1—13 related to analogue foods may help.

1.1.1—13 (2)

The first example provided has potential to be confusing in relation to water-based beverages because it reads like it is linked to the example for cocoa based confectionery. Consideration could be given to placing a comma after ‘chocolate confectionery’ to separate the examples.

1.1.2—2 Definition of Comminuted

There is a need for the term ‘comminuted’ to be defined in the Code because the dictionary definition does not provide sufficient certainty of the meaning and the subsequent application of various requirements in the Code such as food additive requirements. However, the proposed meaning “chopped, diced or minced” is clearly not the originally intended meaning when the term was incorporated into the Code.

Preservatives such as sulphites, nitrites and nitrates are not permitted to be added to meat which has just been boned, sliced, diced, chopped or minced. Under Schedule S15—5, 8 nitrites and sulphur dioxide/sulphites may be added to ‘processed comminuted meat, poultry and game products’, nitrates may be added to ‘fermented, uncooked processed comminuted meat products’, and sulphur dioxide/sulphites may be added to ‘sausage and sausage meat containing raw, unprocessed meat.’ Defining comminuted as “chopped, diced or minced” will in effect legally extend the permission for nitrites and sulphur dioxide/sulphites to be added to mince and cuts of meat.

Because comminuted has not been defined in the current version of the Code, there has been some uncertainty about the different types of meat products to which these additives can be included. This has potentially contributed to some large retailers selling products described by terms such as burgers and rissoles that contain sulphur dioxide/sulphites and which apparently are not sausage meat.

Since the main objective of defining comminuted is to make it clear which additive permissions apply, it may be better to define the actual term used in Schedule S15—5, that is ‘processed comminuted meat, poultry and game products’. Consideration could be given to in this meaning excluding boned, sliced, diced, and chopped meat products as well as mince and mixed foods containing mince such as rissole.

1.1.2—2 No definition of Ingredient

The term ‘ingredient’ is not defined in the draft Code despite it being a key term crucial to accurately interpreting some requirements. Without being defined in the Code, the Australian Macquarie dictionary definition should be applied, which defines it as “n. 1. Something that enters as an element into a mixture; *the ingredients of a cake*. 2. A constituent element of anything” (Macquarie Concise Dictionary 5th edition). However, this definition is not particularly helpful in relation to interpreting the Code. Though it is acknowledged that a general meaning is probably most relevant to the Code, that is, an ingredient is anything added to food, whether intentionally or unintentionally added.

1.2.1—22 Prohibition on altering labels

This section makes it an offence to deface a label. The current wording would make it an offence for a retailer to apply a sticker, such as a price label, on any part of the label even those parts which do not contain information required by the Code. Consideration could be given to clarifying in the Code that this requirement only applies to information prescribed by the Code. The section could possibly be amended as indicated by underlining: “A person who sells a food for sale that is packaged, or deals with a packaged food for sale, must not deface any part of the label on the package that is required by this Code unless...”

1.2.1—24 General legibility requirements

Note that 1.50 (1)(c) of the previous draft has been removed in the current revision i.e. be large enough so that it can be read easily. The editorial note in the current Standard 1.2.9 states that “The requirements of this Standard will also not be met where prescribed information is printed in a small font so that the statement cannot be read easily.” As size of the font is not being prescribed (except for warning statements) adding this statement is considered to be an example of clarification and is not a change. It is also probably a substantive requirement that probably should have been included in the requirements and not included as an editorial note. It is considered that legibility is not necessarily the same as able to be read easily.

1.2.5—3 (3) Date marking of small packages

Standard 1.2.5 of the current Code provides an exemption for small packages from bearing a best-before date, unless a use-by date is required because of health or safety reasons. It is noted the current exemption from date marking small packages with a best-before date does not appear to have been included in the proposed draft of the Code.

1.2.1—2 Definitions—general (Page 22)

Used as a nutritive substance, section 1.1.2—10 should read section 1.1.2—12

1.2.7—22 Statement for claims about phytosterols, phytosterols and their esters, (Page 83)

Line 2 should read 1.2.7—20(4)(a) not 1.2.7—21(4)(a)

1.2.8—6 (1)(d)(ii) Declaration of saturated fat in a nutritional information panel

The requirement for the average quantity of saturated fat to be declared in nutritional information panels appears to have been omitted from the draft and should be corrected. This requirement is currently set out in the current Code under Standard 1.2.8 5(1)(e) and the example of a nutrition information panel.

Schedule abbreviations

It is common when quoting sections in legislation to abbreviate the word section to ‘s’, for example Section 3(1) would be abbreviated as ‘s3(1)’. The revised version of the Code, including the schedules includes sections. Also, in the draft the sections within the schedules have been similarly abbreviated with a capital S, for example S11—3. As such, there is potential for confusion between referring to sections with a lower

case s and an upper case S. Furthermore, an abbreviation of a section from a schedule may be confusing, for example 's S6—2 (a)'.

Schedule 2—2 Units of measurement

The schedule states 'mmol' means 'millimolep', which should be written as 'millimole'.

Schedule 15 Substances that may used as food additives

It is noted that a number of dots (tab leader dots) appear before each numbered entry in the permissions for food additives table, which do not appear in the current version of the Code.

Schedules 8 and 16 Food Additives

There is potential for confusion to arise between Schedules 8 and 16 due to their similarity and the further consideration may need to be given to whether they can be combined.

Next Steps

At the outset it was anticipated Proposal P1025 would be able to more comprehensively review and update requirements and correct a number of longstanding concerns with the Code. The last major review that produced the current 'joint' Code was completed 14 years ago in what was effectively a compressed timeframe considering the scope, size and complexity of the task, which did not allow for all issues to be properly considered. A number of problems with the Code, some identified many years ago, have still not been addressed. However, it is acknowledged many of these issues are probably outside the scope of the current Proposal.

While the Proposal at this stage appears to have on the whole achieved its stated purpose, there is potential it has fallen short of some of the expectations of stakeholders to resolve long standing issues raised over many years. Prior to notification and presentation of the final draft of the revised Code by the FSANZ Board to the Australia and New Zealand Ministerial Forum on Food Regulation, consideration will need to be given to how to manage the most important unresolved issues identified during the Code Revision in a coordinated manner.

Due to the size and complexity of the Code and the major transformation that is being undertaken, prior to finalisation consideration will need to be given to what processes should be put in place to rectify any unidentified drafting errors.

Furthermore, FSANZ and jurisdictions will need to consider what strategies are needed to implement the revised Code.

If necessary, Food Safety Standards and Regulation would be willing to participate in any targeted consultation to resolve any outstanding issues with the proposed draft of the Code prior to its finalisation.