

15 March 2000

11/00

EXPLANATORY NOTES

PROPOSAL P219: LABELLING OF FOODS CONTAINING ALCOHOL

The Australia New Zealand Food Authority has before it a proposal to amend the Australian *Food Standards Code* (FSC) to require that foods containing more than 1.15% alcohol be required to declare the alcohol concentration, and, for foods containing significant amounts of alcohol, other than alcoholic beverages, a statement advising that the food should be kept out of reach of children.

ANZFA is proposing these draft variations for the following reasons:

- There is currently a public health and safety concern due to:
 - a lack of labelling with alcohol concentrations on some foods containing alcohol; and
 - a lack of awareness by some consumers as to the presence of alcohol in some foods, and its unsuitability for children.
- Requiring all foods containing alcohol to be labelled with the concentration of alcohol will ensure that consumers are provided with sufficient information to enable them to make informed decisions as to the amount of alcohol they are consuming.
- Where the consumer may not expect a product to contain alcohol, a statement advising that the product be kept out of reach of children will ensure that the consumer is made aware of the alcoholic content of the product.
- As there are health and safety implication in relation to labelling foods with an alcohol concentration, this proposal is being progressed pursuant to s37 of the *Australia New Zealand Food Authority Act 1991*, (the Act), by omitting to invite public submissions into the proposal as would otherwise be required under section 22 of the Act, for inclusion into the existing FSC, rather than wait for inclusion in the joint FSC, as was the original intention.

FULL ASSESSMENT REPORT

The Authority's Full Assessment report on this matter is attached and provides further information.

PROPOSED DRAFT VARIATION TO THE AUSTRALIAN *FOOD STANDARDS CODE*

To commence: On gazettal

Standard A1 of the Food Standards Code is varied by inserting immediately following clause (33) -

(34) The label on a package of food, other than a food standardised in Part K or Part P, which contains more than 11.5 mL/L of ethanol, must include a statement of the percentage by volume of alcohol in the food, in standard type in the form –

‘CONTAINS X% ALCOHOL’

or words having the same or similar effect, inserting the proportion of ethanol that may be present at 20° C.

(35) The label on a package of food, other than a food standardised in Part P, which contains more than 50 mL/L of ethanol by volume at 20° C, must include a statement in association with the declaration required in clause (34), in standard type in the form -

‘KEEP OUT OF REACH OF CHILDREN’.

REGULATION IMPACT ANALYSIS

The Authority develops food regulation suitable for adoption in Australia and New Zealand. It is required to consider the impact, including compliance costs to business, of various regulatory (and non-regulatory) options on all sectors of the community, which includes the consumers, food industry and governments in both countries. The regulation impact assessment will identify and evaluate, though not be limited to, the costs and benefits of the regulation, and its health, economic and social impacts. In the course of assessing the regulatory impact, the Authority is guided by the *Australian Guide to Regulation* (Commonwealth of Australia 1997) and *New Zealand Code of Good Regulatory Practice*.

Consideration of the Regulatory Impact for this proposal concludes that while there may be some additional labelling costs for manufacturers, these costs are outweighed by the public health and safety benefits for all consumers.

WORLD TRADE ORGANIZATION (WTO) NOTIFICATION

Australia and New Zealand are members of the WTO and are bound as parties to WTO agreements. In Australia, an agreement developed by the Council of Australian Governments (COAG) requires States and Territories to be bound as parties to those WTO agreements to which the Commonwealth is a signatory. Under the agreement between the Governments of Australia and New Zealand on Uniform Food Standards, ANZFA is required to ensure that food standards are consistent with the obligations of both countries as members of the WTO.

In certain circumstances Australia and New Zealand have an obligation to notify the WTO of changes to food standards to enable other member countries of the WTO to make comment. Notification is required in the case of any new or changed standards which may have a significant trade effect and which depart from the relevant international standard (or where no international standard exists).

Matters relating to public health and safety are notified as a Sanitary or Phytosanitary (SPS) notification, and other matters as a Technical Barrier to Trade (TBT) notification.

This matter will be notified to the WTO as a Technical Barriers to Trade (TBT) notification because there are no existing relevant international standards, and there may be an impact on the trade of other WTO member countries.

FOOD STANDARDS SETTING IN AUSTRALIA AND NEW ZEALAND

The Governments of Australia and New Zealand entered an Agreement in December 1995 establishing a system for the development of joint food standards. The Australia New Zealand Food Authority is now developing a joint *Australia New Zealand Food Standards Code*, which will provide compositional and labelling standards for food in both Australia and New Zealand.

Until the joint *Australia New Zealand Food Standards Code* is finalised the following arrangements for the two countries apply:

- **Food imported into New Zealand other than from Australia** must comply with either the Australian *Food Standards Code*, as gazetted in New Zealand, or the New Zealand *Food Regulations 1984*, but not a combination of both. However, in all cases maximum residue limits for agricultural and veterinary chemicals must comply solely with those limits specified in the New Zealand *Food Regulations 1984*.
- **Food imported into Australia other than from New Zealand** must comply solely with the Australian *Food Standards Code*.
- **Food imported into New Zealand from Australia** must comply with either the Australian *Food Standards Code* or the New Zealand *Food Regulations 1984*, but not a combination of both.
- **Food imported into Australia from New Zealand** must comply with the Australian *Food Standards Code*. However, under the provisions of the Trans-Tasman Mutual Recognition Arrangement, food may be imported into Australia from New Zealand if it complies with the New Zealand *Food Regulations 1984* or *Dietary Supplements Regulations 1985*.
- **Food manufactured in Australia and sold in Australia** must comply solely with the Australian *Food Standards Code*, except for exemptions granted in Standard T1.

In addition to the above, all food sold in New Zealand must comply with the New Zealand *Fair Trading Act 1986* and all food sold in Australia must comply with the Australian *Trade Practices Act 1974*, and the respective Australian State and Territory *Fair Trading Acts*.

Any person or organisation may apply to ANZFA to have the *Food Standards Code* amended. In addition, ANZFA may develop proposals to amend the Australian *Food Standards Code* or to develop joint Australia New Zealand food standards. ANZFA can provide advice on the requirements for applications to amend the *Food Standards Code*.

INVITATION FOR PUBLIC SUBMISSIONS

Simplified procedures. The Authority has decided, pursuant to section 37 of the *Australia New Zealand Food Authority Act 1991*, to omit to invite public submissions in relation to the proposal prior to making a full assessment. The Authority considers that the proposal raises issues of public health and safety concern, and that to omit to invite public submissions prior to making a full assessment is warranted.

The Authority has completed a full assessment of the proposal, prepared draft variations to the Australian *Food Standards Code* and will now conduct an inquiry to consider the draft variations and its regulatory impact.

Written submissions containing technical or other relevant information which will assist the Authority in undertaking an Inquiry on matters relevant to the application, including consideration of its regulatory impact, are invited from interested individuals and organisations. Technical information presented should be in sufficient detail to allow independent scientific assessment.

Submissions providing more general comment and opinion are also invited. The Authority's policy on the management of submissions is available from the Standards Liaison Officer upon request.

The processes of the Authority are open to public scrutiny, and any submissions received will ordinarily be placed on the public register of the Authority and made available for inspection. If you wish any confidential information contained in a submission to remain confidential to the Authority, you should clearly identify the sensitive information and provide justification for treating it in confidence. The *Australia New Zealand Food Authority Act 1991* requires the Authority to treat in confidence trade secrets relating to food and any other information relating to food, the commercial value of which would be or could reasonably be expected to be, destroyed or diminished by disclosure.

All correspondence and submissions on this matter should be addressed to the **Project Manager - Proposal P219** at one of the following addresses:

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PO Box 7186
Canberra Mail Centre ACT 2610
AUSTRALIA
Tel (02) 6271 2222 Fax (02) 6271 2278

Australia New Zealand Food Authority
PO Box 10559
The Terrace WELLINGTON 6036
NEW ZEALAND
Tel (04) 473 9942 Fax (04) 473 9855

The Authority should receive submissions by **12 April 2000**.

General queries on this matter and other Authority business can be directed to the Standards Liaison Officer at the above address or by Email on <slo@anzfa.gov.au>. Submissions should not be sent by Email as the Authority cannot guarantee receipt. Requests for more general information on the Authority can be directed to the Information Officer at the above address or by Email <info@anzfa.gov.au>.

P219 -FULL ASSESSMENT REPORT

BACKGROUND

There has been a history of abuse of certain alcoholic essence products by some groups of the community.

The *Food Standards Code* (FSC) permits alcohol as a solvent or carrier which may be used in the manufacture of flavourings. There is no prescribed maximum or minimum concentration of alcohol in food essences. The FSC prescribes that alcohol in flavourings and essences must be used only to a level which would maintain the flavourings in a stable and usable form. Currently, essences containing alcohol are not required by the FSC to declare the concentration of alcohol in the product. The New Zealand Food Regulations contain similar permissions for the use of alcohol in natural food essences for retail sale, the concentration of which need not be declared.

There have been concerns raised in relation to particular products, labelled as 'essences', which can be made into alcoholic beverages, often imitations of genuine spirits. These products are usually sold in larger (375 ml) volumes, have very high alcohol concentrations (50-80% alc/vol) and often come with instructions on how to dilute them to make alcoholic beverages. Until recently these products were able to be manufactured using duty free spirit, making them extremely cheap and therefore enhancing their attraction to under aged drinkers.

There are three issues surrounding the availability and sale of these products:

- Availability to minors - which is the responsibility of the States and Territories under their liquor licensing laws;
- Price - which is influenced by the excise payable on the spirit which is under the jurisdiction of the Excise Branch of the Australian Taxation Office (ATO); and
- Labelling - which is the responsibility of ANZFA;

Availability

All States and Territories now generally require alcoholic essences sold in volumes of greater than 50 ml (or 100 ml for vanilla essence) to be sold from licensed outlets, in order to limit access to these products by minors.

Price

The ATO, which is responsible for excise issues, has advised that manufacturers are generally no longer be able to gain tax concessions for spirit used in the manufacture of essences sold at the retail level, in containers of greater than 50 ml (or 100 ml for vanilla essence) and which can be made into alcoholic drinks. Removal of this concession means that those essences sold in larger volumes, which can be made into alcoholic drinks, will lose their current competitive price advantage over genuine alcoholic drinks.

Labelling

As a part of the review of the FSC, alcoholic beverages and foods containing alcohol have been considered. Proposal P204 – Review of Alcoholic Beverages and Foods Containing Alcohol, was endorsed by ANZFA at Inquiry in November 1999. ANZFA is recommending that:

- food, including alcoholic beverages, containing more than 1.15 per cent alcohol by volume must include a statement of the alcohol content; and
- a package of a beverage or a food capable of being consumed as a beverage, which contains more than 0.5 per cent alcohol by volume must be labelled with a statement of the approximate number of standard drinks in the package.

These proposed changes will ensure that all foods containing alcohol (for example, essences, alcoholic icy poles, liqueur chocolates, any new products which are developed) will be adequately labelled with an alcohol concentration, and in some cases, the number of standard drinks, enabling consumers to make informed decisions as to the quantity of alcohol they are consuming.

ISSUE

The absence of any indication as to the concentration of alcohol in products, containing in many cases quite high concentrations, may present a public health and safety risk to some members of the community. ANZFA's number one priority is the protection of public health and safety. Therefore, labelling provisions requiring the declaration of alcohol concentration on foods containing alcohol should be included in the FSC.

PROPOSED ACTION

1. LABELLING OF FOODS CONTAINING ALCOHOL

ANZFA proposes to include labelling requirements for foods containing alcohol in Standard A1 – Labelling and Advertising, of the existing Australian FSC.

It had been intended that alcohol labelling provisions proposed as a part of the review of food standards would be agreed to by the Australia New Zealand Food Standards Council (ANZFSC) towards the end of 2000, as part of the complete package of review proposals, for incorporation in the joint *Australia New Zealand Food Standards Code* (joint FSC). However, due to the public health and safety concerns raised due to lack of labelling of some foods containing alcohol, at a meeting of the ANZFSC in October 1999, Council Members agreed to consider alcohol-labelling requirements ahead of schedule for addition into the existing FSC. ANZFA proposed to circulate recommendations to Ministers requesting out-of-session approval.

Alcohol labelling requirements proposed for inclusion in the Joint FSC have already been advertised for public comment as a part of the review proposal process. In addition, there has been extensive targeted consultation with the alcoholic beverage industry. However, consultation which has taken place has been in the expectation that proposed labelling requirements will be for inclusion in the Joint FSC, rather than for inclusion in the current Australian FSC. Hence, a separate proposal has been raised, pursuant to section 37 of the *Australia New Zealand Food Authority Act 1991* (the Act), by omitting to invite public submissions into the proposal as would otherwise be required under section 22 of the Act, specifically to include proposed alcohol labelling requirements in the existing Australian FSC.

2. LABELLING OF FOOD CONTAINING ALCOHOL (APART FROM ALCOHOLIC BEVERAGES) WITH AN ADVISORY STATEMENT

ANZFA proposes to include further labelling requirements for foods containing significant amounts of alcohol, where alcohol content may not be expected by the consumer.

In general, consumers are aware of what alcoholic beverages are, that they contain alcohol, and that children should not consume these products. However, there may not be the same degree of consumer awareness in relation to the alcohol content of some foods, such as essences.

In addition to requiring percentage labelling of alcohol content on all foods containing more than 1.15% alcohol/volume, ANZFA is considering prescribing that foods, other than alcoholic beverages, containing significant amounts of alcohol should also be labelled with a statement to the effect that it should be kept out of reach of children. This additional statement would serve to highlight the fact that the product does contain significant amounts of alcohol, a fact that many consumers may not be aware of.

This approach is consistent with ANZFA's policy that storage instructions should be prescribed where there is a public health and safety issue.

There has been no previous consultation on this second proposed labelling requirement. However, it is proposed to progress these two labelling requirements together. This will ensure any labelling changes required as a result of the two proposed labelling provisions occur at the one time, thus minimising the impact on manufacturers.

POTENTIAL REGULATORY IMPACTS FROM AN AMENDMENT TO STANDARD A1

Advantages / Benefits

Government

- The government is fulfilling its obligations to protect public health and safety by providing sufficient information to enable consumers to make informed choices.

Industry

- None.

Consumers

- Consumer public health and safety is protected by the provision of adequate information for the consumer to be able to make an informed decision as to the amount of alcohol they choose to consume.

Disadvantages / Costs

Government

- There may be a small cost for enforcement agencies to become familiar with and administer new requirements.

Industry

- There may be significant costs to a small section of industry producing alcohol-based foods, other than beverages. This would be mainly in relation to the printing of new labels, and re-labelling of existing stocks of foods containing alcohol, which currently are not required to declare the alcohol concentration or carry a warning statement.

Consumers

- It would be expected that there would be no costs to consumers from the proposed amendment to A1. Increased labelling costs for industry may result in the cost being passed on to consumers through an increased price being charged for products containing alcohol.

Conclusion

There may be some costs to a small number of businesses where manufacturers are required to comply with additional labelling requirements. However, the costs to industry are greatly outweighed by the public health and safety benefits to consumers who will be provided with sufficient information to ensure that they can make informed decisions as to the amount of alcohol they are consuming, and the safe storage of foods containing alcohol.

SECTION 10 OBJECTIVES OF THE AUTHORITY IN DEVELOPING FOOD REGULATORY MEASURES AND VARIATIONS TO FOOD REGULATORY MEASURES

(1) The objectives (in descending order of priority) if the Authority in developing food regulatory measures and variations to food regulatory measures:

(1)(a) Protection of Public Health and Safety

The absence of adequate labelling of the alcohol concentration of food has raised serious public health and safety concerns. Foods such as alcoholic essences have been a source of cheap and, until recently, freely available alcohol which has been misused and abused by some groups of the community. Adequate information on alcohol concentrations in a food is necessary to enable consumers to make informed choices.

The proposed percentage alcohol and standard drink labelling requirements are unlikely to prevent alcohol abuse. It was argued in some submissions, during the review of alcoholic beverages, that providing such information may be used to determine the 'best value for money' by some consumers. While this may be the case in some instances, it is more important to ensure that any consumers are adequately informed of the quantity of alcohol they may be consuming.

There is also a public health and safety concern in relation to the inadvertent consumption of alcohol where that alcohol may not be expected to be an ingredient of a food. An additional statement indicating it is not suitable for children will ensure parents are aware of the alcoholic content of the food.

(1)(b) The Provision of Adequate Information Relating to Food to Enable Consumers to Make Informed Choices.

The provision of alcohol concentration labelling on all foods containing more than 1.15% alcohol, and statements of storage instructions, will enable consumers to make an informed choice as to the amount of alcohol they are consuming, and how they store foods containing alcohol.

(1)(c) The Prevention of Misleading or Deceptive Conduct.

There may be instances where the consumer is misled as to the presence of, or concentration of, alcohol in a food, where that alcohol content may not be expected. Requiring alcohol concentration labelling, and a statement to the effect that the product should be stored out of reach of children, will serve to highlight the presence of alcohol in the product, reducing the chances that the consumer is being misled or deceived.

(2) In developing food regulatory measures and variations of food regulatory measures, the Authority must also have regard to the following:

(2)(a) Standards to be based on Risk Analysis Using the Best Available Scientific Evidence

A formal risk analysis of this issue using the best available scientific data has not been carried out at this time. However, there have been a number of reported incidents of hospitalisation of under-aged youths as a result of consuming alcohol based food essences. The risk-based approach is to require labelling of foods containing alcohol to address a public health and safety concern, ANZFA's number one priority. Further assessment of the proposed approach to addressing that risk will be carried out following consultation.

(2)(b) The Promotion of Consistency Between Domestic and International Food Standards.

Codex Alimentarius does not standardise the labelling of foods containing alcohol or alcoholic beverages.

New Zealand Food Regulations (NZFR) does not provide general labelling requirements for foods containing alcohol.

Under the Trans Tasman Mutual Recognition Agreement foods containing alcohol may be imported from New Zealand which do not declare the concentration of alcohol in the product, or do not carry an advisory statement for those products which contain significant quantities of alcohol where that alcohol content may not be expected.

The proposed labelling provisions do not promote consistency between domestic and international standards. However, this consideration is over-ridden by ANZFA's number one objective to protect public health and safety.

(2)(c) The Desirability of an Efficient and Internationally Competitive Food Industry.

The proposed labelling requirements do not restrict manufacturers in the development of innovative products containing alcohol. However, existing and new foods containing alcohol will all be required to be similarly labelled with a statement of the alcohol concentration in the food, and in some cases a statement advising that the food be stored out of reach of children.

(2)(d) The Promotion of Fair Trading in Food.

The proposed labelling requirements will equally affect all manufacturers of foods containing alcohol.

WTO NOTIFICATION

This matter **does** need to be advised to the WTO as a TBT Notification. There are no existing relevant international standards, and there may be an impact on the trade of other WTO member countries.

CONCLUSION

- There is currently a public health and safety concern due to:
 - a lack of labelling with alcohol concentrations on some foods containing alcohol; and
 - a lack of awareness by some consumers as to the presence of alcohol in some foods, and its unsuitability for children.
- Requiring all foods containing alcohol to be labelled with the concentration of alcohol will ensure that consumers are provided with sufficient information to enable them to make informed decisions as to the amount of alcohol they are consuming.
- Where the consumer may not expect a product to contain alcohol, a statement advising that the product be stored out of reach of children will ensure that the consumer is made aware of the alcoholic content of the product.
- As there are health and safety implication in relation to labelling foods with an alcohol concentration, this proposal should be progressed pursuant to s37 of the Act, by omitting to invite public submissions into the proposal as would otherwise be required under section 22 of the Act, for inclusion into the existing FSC, rather than wait for inclusion in the joint FSC, as was the original intention.