

2-04
17 March 2004

INITIAL/DRAFT ASSESSMENT REPORT

PROPOSAL P284

MINOR AMENDMENTS OMNIBUS V

DEADLINE FOR PUBLIC SUBMISSIONS to FSANZ in relation to this matter:

28 April 2004

(See 'Invitation for Public Submissions' for details)

FOOD STANDARDS AUSTRALIA NEW ZEALAND (FSANZ)

FSANZ's role is to protect the health and safety of people in Australia and New Zealand through the maintenance of a safe food supply. FSANZ is a partnership between ten Governments: the Commonwealth; Australian States and Territories; and New Zealand. It is a statutory authority under Commonwealth law and is an independent, expert body.

FSANZ is responsible for developing, varying and reviewing standards and for developing codes of conduct with industry for food available in Australia and New Zealand covering labelling, composition and contaminants. In Australia, FSANZ also develops food standards for food safety, maximum residue limits, primary production and processing and a range of other functions including the coordination of national food surveillance and recall systems, conducting research and assessing policies about imported food.

The FSANZ Board approves new standards or variations to food standards in accordance with policy guidelines set by the Australia and New Zealand Food Regulation Ministerial Council (Ministerial Council) made up of Commonwealth, State and Territory and New Zealand Health Ministers as lead Ministers, with representation from other portfolios. Approved standards are then notified to the Ministerial Council. The Ministerial Council may then request that FSANZ review a proposed or existing standard. If the Ministerial Council does not request that FSANZ review the draft standard, or amends a draft standard, the standard is adopted by reference under the food laws of the Commonwealth, States, Territories and New Zealand. The Ministerial Council can, independently of a notification from FSANZ, request that FSANZ review a standard.

The process for amending the *Australia New Zealand Food Standards Code* is prescribed in the *Food Standards Australia New Zealand Act 1991* (FSANZ Act). The diagram below represents the different stages in the process including when periods of public consultation occur. This process varies for matters that are urgent or minor in significance or complexity.



INVITATION FOR PUBLIC SUBMISSIONS

FSANZ has prepared an Initial / Draft Assessment Report of Proposal P284; and prepared draft variations to the *Australia New Zealand Food Standards Code* (the Code).

FSANZ invites public comment on this Initial / Draft Assessment Report based on regulation impact principles and the draft variation to the Code for the purpose of preparing an amendment to the Code for approval by the FSANZ Board.

Written submissions are invited from interested individuals and organisations to assist FSANZ in preparing the Final Assessment for this Proposal. Submissions should, where possible, address the objectives of FSANZ as set out in section 10 of the FSANZ Act. Information providing details of potential costs and benefits of the proposed change to the Code from stakeholders is highly desirable. Claims made in submissions should be supported wherever possible by referencing or including relevant studies, research findings, trials, surveys etc. Technical information should be in sufficient detail to allow independent scientific assessment.

The processes of FSANZ are open to public scrutiny, and any submissions received will ordinarily be placed on the public register of FSANZ and made available for inspection. If you wish any information contained in a submission to remain confidential to FSANZ, you should clearly identify the sensitive information and provide justification for treating it as commercial-in-confidence. Section 39 of the FSANZ Act requires FSANZ 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.

Submissions must be made in writing and should clearly be marked with the word 'Submission' and quote the correct project number and name. Submissions may be sent to one of the following addresses:

Food Standards Australia New Zealand
PO Box 7186
Canberra BC ACT 2610
AUSTRALIA
Tel (02) 6271 2222
www.foodstandards.gov.au

Food Standards Australia New Zealand
PO Box 10559
The Terrace WELLINGTON 6036
NEW ZEALAND
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Submissions should be received by FSANZ **by 28 April 2004**.

Submissions received after this date may not be considered, unless the Project Manager has given prior agreement for an extension.

While FSANZ accepts submissions in hard copy to our offices, it is more convenient and quicker to receive submissions electronically through the FSANZ website using the Standards Development tab and then through Documents for Public Comment. Questions relating to making submissions or the application process can be directed to the Standards Management Officer at the above address or by emailing slo@foodstandards.gov.au.

Assessment reports are available for viewing and downloading from the FSANZ website. Alternatively, requests for paper copies of reports or other general inquiries can be directed to FSANZ's Information Officer at either of the above addresses or by emailing info@foodstandards.gov.au.

CONTENTS

EXECUTIVE SUMMARY AND STATEMENT OF REASONS	7
CONCLUSION AND STATEMENT OF REASONS	7
1. INTRODUCTION.....	8
2. REGULATORY PROBLEM.....	8
3. OBJECTIVE	8
4. RELEVANT ISSUES	9
4.1 ASSESSMENT OF DRAFT AMENDMENTS.....	9
5. DETAILS OF PROPOSED AMENDMENTS	10
5.1 PART 1.1 - PRELIMINARY	10
5.1.1 <i>Standard 1.1.1 – Preliminary Provisions – Application, Interpretation and General Prohibitions</i>	10
5.2 PART 1.2 – LABELLING AND OTHER INFORMATION REQUIREMENTS.....	10
5.2.1 <i>Standard 1.2.1 – Application of Labelling and Other Information Requirements</i>	10
5.2.2 <i>Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations</i>	11
5.2.3 <i>Standard 1.2.4 – Labelling of Ingredients, Standard 1.2.8 – Nutrition Information Requirements and Standard 1.2.10 – Characterising Ingredients and Components of Food</i>	11
5.2.4 <i>Standard 1.2.8 – Nutrition Information Requirements</i>	12
5.2.5 <i>Standard 1.2.10 – Characterising Ingredients and Components of Food</i>	12
5.3 PART 1.3 – SUBSTANCES ADDED TO FOOD	12
5.3.1 <i>Standard 1.3.1 – Food Additives</i>	12
5.3.2 <i>Standard 1.3.4 – Identity and Purity</i>	13
5.4 PART 1.5 – FOODS REQUIRING PRE-MARKET CLEARANCE.....	14
5.4.1 <i>Standard 1.5.2 – Food Produced Using Gene Technology</i>	14
5.5 PART 1.6 - MICROBIOLOGICAL AND PROCESSING REQUIREMENTS	14
5.5.1 <i>Standard 1.6.2 – Processing Requirements (Australia only)</i>	14
5.6 PART 2.7 – ALCOHOLIC BEVERAGES	14
5.6.1 <i>Standard 2.7.4 – Wine and Wine Product</i>	14
5.7 PART 2.9 - SPECIAL PURPOSE FOODS.....	15
5.7.1 <i>Standard 2.9.1 – Infant Formula Products</i>	15
5.8 PART 3.1 – INTERPRETATION AND APPLICATION	15
5.8.1 <i>Standard 3.1.1 – Interpretation and Application</i>	15
5.9 PART 3.2 – FOOD SAFETY REQUIREMENTS	15
5.9.1 <i>Standard 3.2.1 – Food Safety Programs</i>	15
5.9.2 <i>Standard 3.2.2 - Food Safety Practices and General Requirements</i>	15
5.10 PART 4.1	16
5.10.1 <i>Standard 4.1.1 – Wine Production Requirements</i>	16
6. REGULATORY OPTIONS.....	16
7. IMPACT ANALYSIS	17
7.1 AFFECTED PARTIES	17
7.2 IMPACT ANALYSIS	17

8. CONSULTATION	17
8.1 WORLD TRADE ORGANIZATION (WTO)	17
9. CONCLUSION AND RECOMMENDATION	18
ATTACHMENT 1 - DRAFT VARIATIONS TO THE AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE.....	19

Executive Summary and Statement of Reasons

Issues

Food Standards Australia New Zealand (FSANZ) has previously prepared four minor omnibus Proposals (P245, P254, P262 and P266) to correct errors that raised issues of minor significance or complexity in the *Australia New Zealand Food Standards Code* (the Code). Proposal P284 is the fifth minor amendments omnibus. The proposed amendments are intended to correct minor errors such as inconsistencies and ambiguities, omissions, misspellings and grammatical errors.

Consultation

Under section 36 of the FSANZ Act, FSANZ has decided to omit one round of public consultation as it is satisfied that the Proposal raises issues of minor significance and complexity only.

Conclusion and Statement of Reasons

- The proposed draft variations contained in this Proposal have been prepared to correct errors that raise issues of minor significance or complexity only, identified since the adoption of the Code.
- This will ensure that the Code is as clear, correct and precise as possible.

1. Introduction

In December 2002, the Code became the sole repository of food product standards in Australia and New Zealand. It is therefore important that the Code be as accurate, unambiguous and as correct as possible.

2. Regulatory Problem

Since the gazettal of the Code in December 2000, a number of matters that raise issues of minor significance or complexity have been identified as needing amendment. These include inconsistencies, misspellings, grammatical errors, omissions and items requiring updating or clarification. These amendments are required to ensure that the requirements contained in the Code are correctly expressed, thereby furthering FSANZ's section 10 objectives. A number of these matters have been corrected already by amendments agreed in the completed Proposals P245, P254, P262 and P266.

3. Objective

This new Proposal includes a number of minor amendments to the Code which have been identified since the previous Omnibus. It is expected that there will be regular Omnibus papers to address minor amendments and corrections to the Code as they are identified.

In developing or varying a food standard, FSANZ is required by its legislation to meet three primary objectives which are set out in section 10 of the FSANZ Act. These are:

- the protection of public health and safety;
- the provision of adequate information relating to food to enable consumers to make informed choices; and
- the prevention of misleading or deceptive conduct.

In developing and varying standards, FSANZ must also have regard to:

- the need for standards to be based on risk analysis using the best available scientific evidence;
- the promotion of consistency between domestic and international food standards;
- the desirability of an efficient and internationally competitive food industry;
- the promotion of fair trading in food; and
- any written policy guidelines formulated by the Ministerial Council.

In seeking to make minor amendments to the Code, FSANZ seeks to maintain the integrity of the Code so protecting public health and safety, ensuring consumers have adequate information and preventing false and misleading conduct.

4. Relevant Issues

The amendments to the Code contained in this Proposal are contained in the following standards:

Standard 1.1.1 – Preliminary Provisions – Application, Interpretation and General Prohibitions;
Standard 1.2.1 – Application of Labelling and Other Information Requirements;
Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations;
Standard 1.2.4 – labelling of Ingredients;
Standard 1.2.8 – Nutrition Information Requirements;
Standard 1.2.10 – Characterising Ingredients and Components of Food;
Standard 1.3.1 – Food Additives;
Standard 1.3.4 – Identity and Purity;
Standard 1.5.2 – Food Produced Using Gene Technology;
Standard 1.6.2 – Processing Requirements;
Standard 2.7.4 – Wine and Wine Product;
Standard 2.9.1 – Infant Formula Products;
Standard 3.1.1 – Interpretation and Application;
Standard 3.2.1 – Food Safety Programs;
Standard 3.2.2 – Food Safety Practices and General Requirements; and
Standard 4.1.1 – Wine Production Requirements.

The adoption of the draft variations is recommended for the following reasons:

- to correct typographical and editorial errors;
- to update information which is no longer relevant;
- to remove inconsistencies and ambiguities in the Code; and
- to clarify the intent of a number of clauses.

4.1 Assessment of draft amendments

The draft amendments listed below in Section 5 are intended to address minor inconsistencies, misspellings, grammatical errors and omissions, and to correct items requiring updating or clarification. The amendments are required to ensure that the information contained in the Code is correct thereby ensuring FSANZ's section 10 objectives are met. Each of these minor amendments has been assessed by scientific and legal staff to ensure that the recommended solutions are consistent with the intent of the Standards within the Code.

The following details are provided with regard to each proposed amendment arranged under the relevant Standards:

Location: the relevant clause, subclause, paragraph, sub-paragraph or Table where the problems arise or, where relevant, additional details such as section heading or column;

Explanation: the nature of the problem/error and rationale for the suggested amendment; and

Solution: proposed solution.

5. Details of proposed amendments

5.1 Part 1.1 - Preliminary

5.1.1 *Standard 1.1.1 – Preliminary Provisions – Application, Interpretation and General Prohibitions*

Location: Commentary.

Explanation: The commentary is outdated and does not reflect the new food regulatory environment in Australia and New Zealand.

Solution: Amend the commentary to reflect the new food regulatory environment in Australia and New Zealand and to include additional commentary about the new Chapter 4 standards.

Location: Clause 2, paragraph (c).

Explanation: The definition of **warning statement** in (c) should refer to subclause 26(1), Standard 2.9.1 and not subclause 27(1), Standard 2.9.1.

Solution: In clause 2, paragraph (c), replace the reference to subclause 27(1) with subclause 26(1).

Location: Subclause 5(2)

Explanation: Subclause 5(2) states that editorial notes are for information only and are not legally binding. This subclause should also include a reference to the Commentary.

Solution: Amend subclause 5(2) to include both the Commentary and editorial notes as being for information only and not legally binding.

5.2 Part 1.2 – Labelling and other Information Requirements

5.2.1 *Standard 1.2.1 – Application of Labelling and Other Information Requirements*

Location: Subclause 2(2).

Explanation: Subclause 2(1) exempts food for retail sale and catering purposes from bearing a label setting out all the information prescribed in the Code, subject to subclause 2(2). Subclause 2(2) requires that certain information must be provided, notwithstanding any exemptions from labelling that may apply under subclause 2(1). Subclauses 3(1), 3(2), 3(3) and 3(4), Standard 2.9.4 – Formulated Supplementary Sports Foods require that specific information is provided on the label of a Formulated Supplementary Sports Food. However, if a supplementary sports food is exempt from bearing a label, this information is currently not required as it is not cross-referenced in Standard 1.2.1, subclause 2(2).

Solution: Include references to subclauses 3(1), 3(2), 3(3) and 3(4), Standard 2.9.4 in subclause 2(2), Standard 1.2.1.

5.2.2 *Standard 1.2.3 – Mandatory Warning and Advisory Statements and Declarations*

Location: Table to clause 2.
Explanation: ‘Bee pollen’ and ‘propolis’ are listed separately in Column 1 of the Table to clause 2 and their respective advisory statements are listed in Column 2 (Amendment No. 64, 13/12/02). The words ‘bee pollen’ and ‘propolis’ on their own imply that the advisory statements are not required for foods containing these substances as ingredients, but only for ‘bee pollen and ‘propolis’ sold as foods. The advisory statements should also apply to foods containing these substances as ingredients.
Solution: Amend the separate references to bee pollen and propolis in Column 1 to include bee pollen when presented as a food or a food containing bee pollen as an ingredient; and propolis when presented as a food or a food containing propolis as an ingredient.

Location: Table to Clause 2.
Explanation: ‘Kola beverages containing added caffeine’ are listed in Column 1 of the Table to clause 2 and Column 2 lists that they must have an advisory statement to the effect that the product contains caffeine. The current wording implies that the advisory statement does not capture a food containing a kola beverage that contains added caffeine. The advisory statement should also be required for foods that contain kola beverages containing added caffeine.
Solution: Amend Column 1 requires amending to ensure that the advisory statement also applies to foods containing kola beverages that contain added caffeine.

Location: Subclause 4(2).
Explanation: The wording in subclause 4(2) is such that, where the food is not required to bear a label, the substances listed in the Table to clause 4 must be displayed on or in connection with the display of the food or provided to the purchaser on request. This declaration should relate to the presence of the substance rather than the substance itself.
Solution: Amend subclause 4(2) to refer to the **presence** of the substance rather than the **actual** substance.

5.2.3 *Standard 1.2.4 – Labelling of Ingredients, Standard 1.2.8 – Nutrition Information Requirements and Standard 1.2.10 – Characterising Ingredients and Components of Food*

Location: Paragraph 2(b), Standard 1.2.4; paragraphs 3(b) and 3(p), Standard 1.2.8; and paragraph 2(4)(i), Standard 1.2.10.
Explanation: Currently any references to alcoholic beverages throughout the Code refer to the words ‘...alcoholic beverage standardised in Part 2.7 of this Code’. The Distilled Spirits Industry Council of Australia (DSICA) has requested an amendment to the references to alcoholic beverages throughout the Code to clarify that Standard 2.7.1 is not to be considered.
Solution: Amend paragraph 2(b), Standard 1.2.4; paragraphs 3(b) and 3(p), Standard 1.2.8; and paragraph 2(4)(i), Standard 1.2.10 to refer to alcoholic beverages standardised in Standard 2.7.2 to Standard 2.7.5.

5.2.4 Standard 1.2.8 – Nutrition Information Requirements

- Location:** Clause 17
- Explanation:** The heading to clause 17 and subclause 17(2) refer to claims in respect of the salt, sodium or potassium content of a food, however subclause 17(1) refers to a claim to the effect that a food is low in sodium content alone. This is confusing and should be extended to include a claim that a food is low in salt.
- Solution:** Amend subclause 17(2) to include a claim that a food is low in salt, as well as low in sodium.
- Location:** Paragraph 5(1)(a).
- Explanation:** Paragraph 5(1)(a) states that the nutrition information panel must include the number of servings in a package of food. This can be a problem for manufacturers where the food is packaged in non-standardised portions, as the number of servings in the package will vary depending on the size of the portion.
- Solution:** Permit the nutrition information panel to also include the number of servings per kilo (or other appropriate unit) for those foods packaged in non-standardised portions.

5.2.5 Standard 1.2.10 – Characterising Ingredients and Components of Food

- Location:** Paragraph 2(4)(g)
- Explanation:** Paragraph 2(4)(g) should be followed by ‘; or’ and not a full stop.
- Solution:** Amend paragraph 2(4)(g) as follows: (g) food standardised in Standard 1.1A.1 or Standard 2.9.1; or

5.3 Part 1.3 – Substances Added to Food

5.3.1 Standard 1.3.1 – Food Additives

- Location:** Clause 4
- Explanation:** Various industry stakeholders believe the current wording is ambiguous and could infer that a more restrictive use of intense sweeteners was intended. Some interpret the clause to mean that intense sweeteners may be used only for total replacement of sugars, rather than for partial replacement. The former Australian *Food Standards Code* permitted reduced joule foods if at least 25% of the sugars were replaced by intense sweeteners and there was not an intention to restrict their use further in the new Code.
- Solution:** Amend clause 4, Standard 1.3.1 to clarify the original intent, which was to permit the use of intense sweeteners for either partial replacement or total replacement of sugars in a food.
- Location:** Paragraph 11(a)(i).
- Explanation:** Update reference for Generally Recognised as Safe (GRAS) lists of flavourings substances from Food Technology, to include GRAS 21, published in May 2003.
- Solution:** In paragraph 11(a)(i), replace ‘December 2001’ with ‘May 2003’.

Location: Schedule 1, item 0 General Provisions and Schedule 4 headings.
Explanation: A previous omnibus amendment which clarified the permission for the colours in Schedule 4 in foods ‘other than beverages’ and for ‘beverages’, no longer specifies that only processed foods are to be given the permission. This needs to be corrected. The headings to Schedule 4, alphabetical and numerical listings also need to be corrected as they are inconsistent with the wording for Schedules 1, 2 and 3 which all specify that food additives are permitted only for processed foods.
Solution: Amend the wording in item 0 to specify that the colours in Schedule 4 may only be added to processed foods. Also amend the headings to Schedule 4.

Location: Schedule 1, item 13.4 Formulated supplementary sports foods.
Explanation: Formulated supplementary sports foods were regulated by Standard R10 in Volume 1 and permission for the addition of alitame and acesulphame potassium were given in Volume 1. Proposal P216 transported the contents of Standard R10 to Standard 2.9.4 in Volume 2 without a thorough review and with only minor amendment. The permissions for the addition of alitame and acesulphame potassium in formulated supplementary sports foods were not carried over to Volume 2 due to an omission.
Solution: Amend Schedule 1, item 13.4 – Formulated supplementary sports foods to include permissions for alitame (40 mg/kg) and acesulphame potassium (500 mg/kg) as per Volume 1.

Location: Schedule 1, item 13.4 Formulated supplementary sports foods.
Explanation: Application A452 has now resulted in approval for a new intense sweetener, aspartame-acesulphame salt in the Code wherever a current permission for both parent sweeteners (aspartame and acesulphame potassium) is present. As the permission for acesulphame potassium will be reinserted (as per above entry), a corresponding amendment for aspartame-acesulphame salt is also required.
Solution: Amend Schedule 1, item 13.4 - Formulated supplementary sports foods to include permission for aspartame-acesulphame salt (1100 mg/kg).

Location: Schedule 1, item 14.1.3, sub-item Electrolyte drink and electrolyte drink base.
Explanation: The permission for the addition of acesulphame potassium in electrolyte drink and electrolyte drink base in Volume 1 (150 mg/kg) was inadvertently omitted from Volume 2.
Solution: Amend Schedule 1, item 14.1.3, sub-item Electrolyte drink and electrolyte drink base to include permission for acesulphame potassium (150 mg/kg) as per Volume 1.

5.3.2 *Standard 1.3.4 – Identity and Purity*

Location: Schedule to Standard 1.3.4, Specification for quaternary amine cellulose ion exchange resin, paragraph (c).
Explanation: The word ‘shall’ is missing from paragraph (c).

Solution: Insert ‘shall’ in paragraph (c) as follows: ‘When subjected to the extraction regime listed in the CFR Title 21 part 173.25(c)(4), but using dilute hydrochloric acid at pH2 in place of 5% acetic acid, the ion exchange resins shall result in no more than 25 ppm of organic extractives’.

5.4 Part 1.5 – Foods Requiring Pre-Market Clearance

5.4.1 Standard 1.5.2 – Food Produced Using Gene Technology

Location: Clause 3.

Explanation: Clause 3 provides an exemption to the general prohibition on sale and use of food produced using gene technology, providing the conditions specified in subclause (2) are met. This exemption was intended to apply as a transitional arrangement only, until such time as the safety assessment of 20 applications were completed. These have now been completed, therefore the exemption in clause 3 no longer applies.

Solution: Delete clause 3 as it is now redundant.

5.5 Part 1.6 - Microbiological and Processing Requirements

5.5.1 Standard 1.6.2 – Processing Requirements (Australia only)

Location: Paragraph 1, editorial note to clause 2.

Explanation: Paragraph 2(1)(b), exempts raw milk extra hard grating cheeses, as a category, from the milk heat treatment requirement provided they meet the criteria of having less than 36% moisture, are stored for at least 6 months at no less than 10°C and have undergone a curd cooking step of no less than 48°C. This exemption was due to be reviewed within 12 months from its date of gazettal, that is, by 13 December 2003. This review was completed on 10 December 2003, therefore paragraph 1 of the editorial note to clause 2 is now redundant.

Solution: Delete the following editorial note to clause 2: ‘Paragraph 2(1)(b) is to be reviewed within 12 months from its date of gazettal’.

5.6 Part 2.7 – Alcoholic Beverages

5.6.1 Standard 2.7.4 – Wine and Wine Product

Location: Editorial note to Purpose.

Explanation: The purpose of the NZ Geographical Indications Act requires clarification.

Solution: Change ‘appellations’ to ‘geographical indications’.

Location: Editorial note to clause 2.

Explanation: The Editorial note should refer to the New Zealand *Wine Makers Act 1981* as a source of information relating to wine production in New Zealand.

Solution: Amend the Editorial note to indicate that New Zealand information for wine production can be found in the New Zealand *Wine Makers Act 1981*.

5.7 Part 2.9 - Special Purpose Foods

5.7.1 Standard 2.9.1 – Infant Formula Products

- Location:** Table to subclause 24(1) and Schedule 1.
- Explanation:** For the purposes of the Code, potassium and sodium are considered electrolytes rather than minerals and therefore should not be included as minerals in the Table to subclause 24(1) and Schedule 1.
- Solution:** Remove references to potassium and sodium as minerals in the Table to subclause 24(1) and Schedule 1 and include them as electrolytes.

5.8 Part 3.1 – Interpretation and Application

5.8.1 Standard 3.1.1 – Interpretation and Application

- Location:** Clause 1.
- Explanation:** It is unclear whether the definition of "equipment" encompasses shopping trolleys. Advice from OLC is that it is unlikely that the definition would encompass shopping trolleys, however the matter is not free from doubt, and that shopping trolleys would more likely be termed as vehicles used to transport food. The matter requires clarification as differing outcomes may result.
- Solution:** Provide a definition that makes clear that vehicles used to transport food includes shopping trolleys, and make clear the cleaning and maintenance requirements.

5.9 Part 3.2 – Food Safety Requirements

5.9.1 Standard 3.2.1 – Food Safety Programs

- Location:** Clause 2(1).
- Explanation:** The reference to Standard 3.1.1 is incorrect.
- Solution:** Remove the words 'Interpretation and Application' after Standard 3.1.1.

5.9.2 Standard 3.2.2 - Food Safety Practices and General Requirements

- Location:** Subclauses 19(2) and 21(1).
- Explanation:** It is not clear where shopping baskets provided by food businesses are covered by this part of the Code. For similar reasons to why shopping trolleys may not be considered "equipment", clarification is needed for shopping baskets.
- Solution:** Vary subclauses 19(2) and 21(1) to provide that items used to transport food are covered by these subclauses to make clear to food businesses the cleaning and maintenance requirements for such items.

5.10 Part 4.1

5.10.1 Standard 4.1.1 – Wine Production Requirements

- Location:** Table to clause 3
Explanation: Grape skin extract, which is permitted to be added to wine under Standard 1.3.1 has been omitted from the Table to clause 3 (additives).
Solution: Add grape skin extract to the Table to clause 3.
- Location:** Table to clause 3 and Table to clause 4.
Explanation: Calcium carbonate, potassium carbonate and potassium hydrogen carbonate are currently listed in the Table to clause 3 (additives), however, these substances are used for deacidification and are more correctly processing aids as they no longer have a functional effect in the final product. They should therefore be listed in the Table to clause 4 (processing aids).
Solution: Remove calcium carbonate, potassium carbonate and potassium hydrogen carbonate from the Table to clause 3 and add to the Table to clause 4.
- Location:** Table to clause 4.
Explanation: The permission for dimethylpolysiloxane as a processing aid was overlooked when developing the Standard. It is permitted for use in wine made in accordance with Standard 2.7.4 and so has already been assessed for technological justification and raises no public health and safety concerns.
Solution: Add dimethylpolysiloxane to the list of processing aids in the Table to clause 4.
- Location:** Subclause 5(6).
Explanation: Subclause 5(6) restricts the presence of water in wine to that used for adding permitted food additives and processing aids only. There is no permission for the presence of small amounts of water in wine due to processes that are incidental to the winemaking process (such as water in cleaning lines etc).
Solution: Amend subclause 5(6) to also permit the presence of water in wine due to processes that are incidental to the winemaking process.
- Location:** Subclause 6(1).
Explanation: Paragraph 6(1)(a) is listed twice.
Solution: Amend second reference to ‘(a)’, to ‘(b)’.

6. Regulatory Options

The two options for the amendments are outlined in this Proposal are:

1. adopt the proposed draft variations contained in this Proposal; or
2. reject the proposed draft variations contained in this Proposal.

7. Impact Analysis

7.1 Affected Parties

The parties affected by this Proposal are:

- Consumers in Australia and New Zealand.
- Food industry, including Australian and New Zealand manufacturers, exporters to Australia and New Zealand including multi-national manufacturers, and Australia and New Zealand importers.
- Government agencies in Australia and New Zealand who enforce the Code.

7.2 Impact Analysis

Assessment of this Proposal was undertaken to examine primarily whether there were any significant public health and safety risks. There are no identifiable public health and safety risks associated with the proposed amendments to the Code.

By correcting minor errors the Proposal also ensures the provision of adequate information to consumers and prevents misleading or deceptive conduct. The assessment also has regard to using the best available scientific risk assessment and ensuring consistency between domestic and international food standards.

Overall there are no significant costs related to the Proposal and there are some benefits to be gained by consumers, industry and governments. There are no perceived benefits associated with remaining with the status quo. Finally, the Proposal will not adversely affect international trade.

8. Consultation

FSANZ decided, pursuant to section 36 of the FSANZ Act, to omit to invite public submissions in relation to the Proposal prior to making a Draft Assessment. FSANZ is satisfied that this step will not have an adverse effect on anyone's interests and that the Proposal raises issues of minor complexity only.

Section 63 of the FSANZ Act provides that, subject to the *Administrative Appeals Tribunal Act 1975*, an application for review of FSANZ's decision to omit to invite public submissions prior to making a Draft Assessment, may be made to the Administrative Appeals Tribunal.

The proposed amendments in this Proposal have been discussed internally within the Authority by relevant scientific and legal staff to ensure they are accurate and consistent with the Code. FSANZ now invites written submissions for the purpose of the Final Assessment under s.17(3)(c) of the FSANZ Act and will have regard to any submissions received.

8.1 World Trade Organization (WTO)

As members of the World Trade Organization (WTO), Australia and New Zealand are obligated to notify WTO member nations where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

The proposed amendments to the Code to correct errors and clarify the intent of certain provisions is unlikely to have a significant effect on international trade as the issues are minor and without serious implication. The issues will therefore, not be notified to the agencies responsible for Australia and New Zealand's obligations under the WTO Technical Barrier to Trade (TBT) or Sanitary and Phytosanitary Measure (SPS) Agreements.

9. Conclusion and Recommendation

The proposed draft variations in this Proposal have been prepared to correct errors of minor significance and complexity (including inconsistencies, misspellings, grammatical errors and omissions) identified in the Code. It is recommended that this Proposal be circulated for public comment pursuant to section 36 of the FSANZ Act. FSANZ's section 10 objectives will be maintained by ensuring minor errors are amended and there is consistency in the Code.

ATTACHMENTS

Attachments to the Assessment Report could include:

1. Draft variations to the *Australia New Zealand Food Standards Code*.

Draft Variations to the *Australia New Zealand Food Standards Code*

To commence: On gazettal

[1] *The Australia New Zealand Food Standards Code is varied by –*

[1.1] *omitting the Commentary, substituting –*

COMMENTARY

THE AUSTRALIA NEW ZEALAND FOOD STANDARDS SYSTEM

The Australia New Zealand food standards system is a cooperative arrangement between Australia, New Zealand and the Australian States and mainland Territories to develop and implement uniform food standards.

The system for the development of joint Australia New Zealand food standards was first established under a treaty between Australia and New Zealand signed in December 1995. Within Australia, the system is based upon the initial 1991 Commonwealth, State and Territory Agreement in relation to the adoption of uniform food standards. This system continues in operation under the Food Regulation Agreement 2002, and is implemented by food legislation in each State and Territory and in New Zealand, and by the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) of the Commonwealth of Australia. The FSANZ Act establishes the mechanisms for the development of joint food regulatory measures (a food standard or a code of practice) and creates Food Standards Australia New Zealand (the Authority) as the agency responsible for the development and maintenance of a joint *Australia New Zealand Food Standards Code* (the Code).

Although the Authority develops food standards, responsibility for enforcing and policing food standards rests with the States and Territories in Australia and the New Zealand government in New Zealand. Further, in relation to imported food, the Commonwealth, through the *Imported Food Control Act 1992*, enforces the Code. Within each jurisdiction there are one or more agencies responsible for food surveillance charged with the task of ensuring the requirements of the Code are met.

Australia New Zealand Food Standards Code

The Code is a collection of individual food standards. Standards on related matters are grouped together into Parts, which in turn are collected together into four Chapters. Chapter 1 deals with standards which apply to all foods, with the exception of Maximum Residue Limits (MRLs) and processing requirements for which New Zealand has its own regulations. Chapter 2 deals with standards affecting particular classes of foods. Food hygiene is not part of the joint food standards system and Chapter 3 deals with food hygiene issues specific to Australia. New Zealand has its own food hygiene arrangements. Chapter 4 contains standards dealing with the primary production of food. Again, New Zealand has its own arrangements for primary production of food.

Food standards have the force of law. It is an offence in New Zealand, and a criminal offence in Australia to supply food that does not comply with relevant food standards.

Notwithstanding food standards, it is also an offence to sell food which is damaged, deteriorated or perished, which is adulterated, or which is unfit for human consumption. Because food standards are given legal effect by State, Territory and New Zealand laws, it is important to read this Food Standards Code in conjunction with the relevant food legislation.

This Code should also be read in conjunction with other applicable laws, such as the Australian *Trade Practices Act 1974*, the New Zealand and State and Territory Fair Trading Acts and the State and Territory Food Acts. The provisions in these Acts, particularly relating to conduct which is false, misleading or deceptive, apply to the supply of food in trade and commerce.

Food standards are developed or varied by the Authority, either by application from any agency, body, or person, or by a proposal of its own initiative. Notices are published in Australia and New Zealand seeking comment from the public on applications and proposals.

The Authority is required by the FSANZ Act to observe certain processes in the course of developing or reviewing food regulatory measures. However the Authority must have regard to the following overarching objectives, in priority order

- the protection of public health and safety; and
- the provision of adequate information relating to food to enable consumers to make informed choices; and
- the prevention of misleading or deceptive conduct.

The Authority must also have regard to the following:

- the need for standards to be based on risk analysis using the best available scientific evidence;
- the promotion of consistency between domestic and international food standards;
- the desirability of an efficient and internationally competitive food industry;
- the promotion of fair trading in food;
- any written policy guidelines formulated by the Council for the purposes of this paragraph and notified to the Authority.

Standards or variations to standards developed and approved by the Authority are subject to review by a council of Health Ministers known as the Australia and New Zealand Food Regulation Ministerial Council. The Council meets approximately twice a year, with some business conducted out-of-session through correspondence.

Standards approved by the Authority are published in the Commonwealth of Australia Gazette and the New Zealand Gazette and become legally binding. A commencement date for the standard is also specified. The standards published in the Gazettes are adopted by reference and without amendment into the food laws of the States and Territories and of New Zealand.

How to seek a variation to a food standard

If you wish to apply for the development of a new standard, or variation of an existing standard, an application form can be obtained by writing to the Standards Management Officer at either of the addresses shown below:

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

Food Standards Australia New Zealand
PO Box 10559 The Terrace
Wellington 6036
NEW ZEALAND

[2] **Standard 1.1.1** of the Australia New Zealand Food Standards Code is varied by –

[2.1] *omitting from clause 2, paragraph (c) of the definition of warning statement, substituting –*

(c) subclauses 15(1), 15(3) and 26(1) of Standard 2.9.1; and

[2.2] *omitting subclause 5(2), substituting –*

(2) In this Code, the Commentary and editorial notes are for information only and are not legally binding.

[3] **Standard 1.2.1** of the Australia New Zealand Food Standards Code is varied by –

[3.1] *omitting subclause 2(2)(o), substituting –*

- (o) subclause 3(4) of Standard 2.6.4; and
- (p) subclause 3(1) of Standard 2.9.4; and
- (q) subclause 3(2) of Standard 2.9.4; and
- (r) subclause 3(3) of Standard 2.9.4; and
- (s) subclause 3(4) of Standard 2.9.4.

[4] **Standard 1.2.3** of the Australia New Zealand Food Standards Code is varied by –

[4.1] *omitting from Column 1 of the Table to clause 2, Bee Pollen, Kola beverages containing added caffeine and Propolis, substituting –*

Bee pollen presented as a food, or a food containing bee pollen as an ingredient as defined in Standard 1.2.4
Kola beverages containing added caffeine, or food containing kola beverages containing added caffeine
Propolis presented as a food, or food containing propolis as an ingredient as defined in Standard 1.2.4.

[4.2] *omitting subclause 4(2), substituting –*

(2) The presence of the substances listed in the Table to this clause must be –

- (a) declared on the label on a package of the food; or
- (b) where the food is not required to bear a label pursuant to clause 2 of Standard 1.2.1 –
 - (i) declared on or in connection with the display of the food; or
 - (ii) declared to the purchaser upon request.

[5] **Standard 1.2.4** of the Australia New Zealand Food Standards Code is varied by –

[5.1] *omitting paragraph 2(b), substituting –*

- (b) the food is an alcoholic beverage standardised in Standard 2.7.2 to Standard 2.7.5 of this Code; or

[6] **Standard 1.2.8** of the Australia New Zealand Food Standards Code is varied by –

[6.1] *omitting paragraph 3(b), substituting –*

- (b) an alcoholic beverage standardised in Standard 2.7.2 to Standard 2.7.5 of this Code; or

[6.2] *omitting paragraph 3(o), substituting –*

- (o) a kit which is intended to be used to produce an alcoholic beverage standardised in Standard 2.7.2 to Standard 2.7.5 of this Code.

[6.3] *omitting paragraph 5(1)(a), substituting –*

- (a) the number of servings of the food in the package expressed as either –
 - (i) the number of servings of the food, or
 - (ii) the number of servings of the food per g, mg, µg (or other units as appropriate) where the food is packaged in non-standardised portions; and

[6.4] *omitting subclause 17(1), substituting –*

- (1) A claim to the effect that a food is low in salt or sodium content must not be made unless the food contains no more than 120 mg of sodium per 100 g of the food.

[7] **Standard 1.2.10** of the Australia New Zealand Food Standards Code is varied by –

[7.1] *omitting paragraph 2(4)(g), substituting –*

- (g) food standardised in Standard 1.1A.1 or Standard 2.9.1; or

[7.2] *omitting paragraph 2(4)(i), substituting –*

- (i) alcoholic beverages standardised in Standards 2.7.2 to 2.7.5 of this Code.

[8] **Standard 1.3.1 of the Australia New Zealand Food Standards Code is varied by –**

[8.1] *omitting clause 4, substituting –*

4 Requirements for use of intense sweeteners

Save where otherwise expressly stated in Schedule 1 and notwithstanding any specific level specified in a Schedule to this Standard, intense sweeteners may only be added to food as a flavour enhancer or in an amount necessary to replace, either wholly or partially, the sweetness normally provided by sugars.

[8.2] *omitting from paragraph 11 (a)(i), December 2001; or substituting –*

May 2003; or

[8.3] *omitting from the General Provisions of Schedule 1 –*

Colours in Schedule 4 may be present to a maximum level of 290 mg/kg in foods other than beverages and 70 mg/L in beverages except where expressly prohibited in this schedule

substituting –

Colours in Schedule 4 may be present in processed foods to a maximum level of 290 mg/kg in foods other than beverages and 70 mg/L in beverages except where expressly prohibited in this schedule

[8.4] *inserting in Schedule 1, under item 13.4 –*

950	Acesulphame potassium	500	mg/kg
956	Alitame	40	mg/kg
962	Aspartame-acesulphame salt	1100	mg/kg

[8.5] *inserting in Schedule 1, under item 14.1.3 sub-item Electrolyte and electrolyte drink base –*

950	Acesulphame potassium	150	mg/kg
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[8.6] *omitting the headings to Schedule 4, alphabetical and numeric listings, substituting –*

Colours permitted in processed foods to a maximum of 70 mg/L in beverages and 290 mg/kg in foods other than beverages specified in Schedule 1

[9] **Standard 1.3.4 of the Australia New Zealand Food Standards Code is varied by –**

[9.1] *omitting from the Schedule, under the heading Specification for quaternary amine cellulose ion exchange resin, paragraph (c), substituting –*

(c) When subjected to the extraction regime listed in the CFR Title 21 part 173.25(c)(4), but using dilute hydrochloric acid at pH2 in place of 5% acetic acid, the ion exchange resins shall result in no more than 25 ppm of organic extractives.

[10] **Standard 1.5.2 of the Australia New Zealand Food Standards Code is varied by –**

[10.1] *omitting from the Table of Provisions –*

3 Exemption to general prohibition on sale and use

substituting –

3 Deleted

[10.2] *omitting clause 3 substituting –*

3 Deleted

[11] **Standard 1.6.2 of the Australia New Zealand Food Standards Code is varied by –**

[11.1] *omitting from the Editorial note to clause 2 –*

Paragraph 2(1)(b) is to be reviewed within 12 months from its date of gazettal.

[12] **Standard 2.7.4 of the Australia New Zealand Food Standards Code is varied by –**

[12.1] *omitting from the Editorial note to the Purpose, appellations, substituting –*

geographical indications

[12.2] *omitting the first paragraph of the Editorial note to clause 2, substituting –*

For the production of wine in New Zealand clause 2 of this Standard applies, and should be read in conjunction with the New Zealand *Wine Makers Act 1981*. For the production of wine in Australia, clause 2 of this Standard should be read in conjunction with clause 3 of Standard 4.1.1.

[13] **Standard 2.9.1 of the Australia New Zealand Food Standards Code is varied by –**

[13.1] *omitting from the Table of Provisions –*

24 Vitamins and minerals

substituting –

24 Vitamins, minerals and electrolytes

[13.2] *omitting the heading to clause 24, subclause 24(1) and the Table to subclause 24(1), substituting –*

24 Vitamins, minerals and electrolytes

(1) Infant formula and follow-on formula must contain the vitamins, minerals and electrolytes specified in column 1 of the Table to this subclause provided that, in relation to each vitamin, mineral or electrolyte –

- (a) the added vitamin, mineral or electrolyte is in a permitted form as listed in Schedule 1; and
- (b) the infant formula or follow-on formula contains no less than the amount specified in column 2 of the Table; and
- (c) the infant formula or follow-on formula contains no more than the amount specified in column 3 of the Table, if any.

Table to subclause 24(1)

Column 1	Column 2	Column 3
Nutrient	Minimum amount per 100 kJ	Maximum amount per 100 kJ
Vitamins		
Vitamin A	14 µg	43 µg
Vitamin D	0.25 µg	0.63 µg
Vitamin C	1.7 mg	
Thiamin	10 µg	
Riboflavin	14 µg	
Preformed Niacin	130 µg	
Vitamin B ₆	9 µg	36 µg
Folate	2.0 µg	
Pantothenic acid	70 µg	
Vitamin B ₁₂	0.025 µg	
Biotin	0.36 µg	
Vitamin E	0.11 mg	1.1 mg
Vitamin K	1.0 µg	
Minerals		
Chloride	12 mg	35 mg
Calcium	12 mg	
Phosphorus	6 mg	25 mg
Magnesium	1.2 mg	4.0 mg
Iron	0.2 mg	0.5 mg
Iodine	1.2 µg	10 µg
Copper	14 µg	43 µg
Zinc	0.12 mg	0.43 mg
Manganese	0.24 µg	24.0 µg
Selenium	0.25 µg	1.19 µg
Electrolytes		
Sodium	5 mg	15 mg
Potassium	20 mg	50 mg

[13.3] *omitting the Editorial note following subclause 24(4), substituting –*

Editorial note:

This Standard contains guidelines setting out the recommended levels of vitamins, minerals and electrolytes that as a matter of good practice should not be exceeded.

[13.4] *omitting the Editorial note to clause 33, substituting –*

Editorial note:

The provisions of clause 24 of this Standard also apply in respect of the vitamins, minerals and electrolytes permitted in an infant formula product for specific dietary use based upon protein substitutes.

[13.5] *omitting the heading to Schedule 1, substituting –*

Permitted forms of vitamins, minerals and electrolytes in infant formula products

[13.6] *omitting the column heading from Column 1 of Schedule 1, substituting –*

Vitamins, Minerals and Electrolytes

[14] **Standard 3.1.1** of the Australia New Zealand Food Standards Code is varied by –

[14.1] *inserting in clause 1 –*

Vehicles used to transport food includes shopping trolleys.

[15] **Standard 3.2.1** of the Australia New Zealand Food Standards Code is varied by –

[15.1] *omitting subclause 2(1), substituting –*

(1) This Standard applies to food businesses in Australia in accordance with Standard 3.1.1 and subclause (2).

[16] **Standard 3.2.2** of the Australia New Zealand Food Standards Code is varied by –

[16.1] *omitting subclause 19(2), substituting –*

(2) A food business must maintain all fixtures, fittings and equipment, having regard to its use, and those parts of vehicles that are used to transport food, and other items provided by the business to purchasers to transport food, to a standard of cleanliness where there is no accumulation of:

- (a) food waste;
- (b) dirt;
- (c) grease; or
- (d) other visible matter.

[16.2] *omitting subclause 21(1), substituting –*

(1) A food business must maintain all fixtures, fittings and equipment, having regard to its use, and those parts of vehicles that are used to transport food, and other items provided by the business to purchasers to transport food, in a good state of repair and working order having regard to their use.

[17] *Standard 4.1.1 of the Australia New Zealand Food Standards Code is varied by –*

[17.1] *inserting in the Table to clause 3 –*

Grape skin extract

[17.2] *omitting from the Table to clause 3 and inserting in the Table to clause 4 –*

Calcium carbonate Potassium carbonate Potassium hydrogen carbonate
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[17.3] *inserting in the Table to clause 4 –*

Dimethylpolysiloxane

[17.4] *omitting subclause 5(6), substituting –*

(6) Wine, sparkling wine and fortified wine may contain water in proportion not exceeding 30 mL/L where the water is necessary for the incorporation of any substance specified in clause 3 or clause 4, or where the water is incidental to the winemaking process.

[17.5] *omitting subclause 6(1), substituting –*

(1) In addition to the substances permitted by clauses 3 and 4 of this Standard, sparkling wine may also contain –

- (a) grape spirit; and
- (b) brandy; and
- (c) sugars.