



Enquiries to: Food Safety Standards and
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Dear Sir / Madam

Submission: P1054 – Pure and highly concentrated caffeine products

Thank you for the opportunity to provide a submission on the Initial Consideration Report for Proposal P1054.

This submission provides technical advice and comments related to this issue. 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 Australia and New Zealand Ministerial Forum on Food Regulation.

Queensland Health supports the need for requirements to restrict the sale of pure and highly concentrated caffeine but does not support the current proposed variation to the Food Standard Code because:

1. The proposed maximum limit of 5% caffeine is high enough to cause serious adverse health effects and may present a life-threatening dose, does not include a margin of safety, does not take into consideration the form of the food and risk of overdosing, or that the limit may be seen as a safe compositional limit.
2. The drafting implies and reinforces an interpretation that the Code permits the addition of up to 5% caffeine where it has not been added as a food additive, such as a stimulant, and does not include any requirements to clarify that caffeine should not be added unless expressly permitted by the Code.
3. The addition of caffeine to food, where it has not been expressly permitted by the Code is against the Ministerial Policy Guideline on Regulatory Management of Caffeine in the Food Supply and could lead to increasing caffeinated foods in the food supply.

Proposed maximum limit

Queensland Health is very concerned the proposed maximum limit may be interpreted as a compositional limit and does not include a sufficient margin of safety. It is understood that FSANZ decided that a 5% limit was appropriate because some existing food products such as instant coffee and instant tea powder may contain up to 4% caffeine. However, the proposal does not consider the form of the food and whether a person may reasonably be able to consume a sufficient quantity of the food to cause serious adverse health effects or even death. A fatal dose of 3,000 mg caffeine would be delivered in 60mL of liquid, such as a caffeine 'shot', which would be very easy to consume compared

to a powdered concentrate such as 60 g of dry instant coffee. It is also noted the acute doses of 3,000 to 10,000 mg of caffeine are for adults and that the acute dose for a child will be lower.

General permission to add caffeine to food

The Department is extremely concerned that the proposed drafting and interpretation by FSANZ that the current drafting in the Code permits the addition of caffeine to food when it has not been used as a food additive, such as when used as a stimulant. Ironically, the proposed maximum limit of 5% caffeine reinforces the interpretation that caffeine can be added to foods other than kola drinks and formulated caffeinated beverages, and that up to 5% caffeine may safely be added to them.

The interpretation provided in P1054, that caffeine is permitted if a manufacturer decides to add it for a purpose other than as a food additive, creates a serious regulatory gap that needs to be urgently fixed. We believe the intention of the Code was to prohibit the addition of caffeine to foods unless expressly permitted. Reasons include:

- It is against the Ministerial Policy Guideline on Regulatory Management of Caffeine in the Food Supply, and was not identified by the Food Regulation Standing Committee Food Regulation Policy Options Paper - The Regulation of Caffeine in Foods. For example, the interpretation provided in P1054 would allow caffeine to be added, as a stimulant, to a whole range of foods including infant formula products and foods for infants, which is clearly not the intent.
- The Second Call for Submissions report of Proposal P1025 - Code Revision reinforces the view that caffeine would be regulated as a food additive, e.g. *'It can be inferred from all editorial notes that it is only the listed substances that are permitted and, by inference, that other substances are not permitted'*.
- The interpretation is inconsistent with the historical drafting of requirement for formulated caffeinated beverages, which was introduced partly to allow the addition of caffeine to them

Inconsistent with the Ministerial Policy Guideline on Regulatory Management of Caffeine in the Food Supply

If the addition of caffeine was truly prohibited unless expressly permitted by the Food Standards Code, it would not be necessary to set a general maximum limit in the Code, because limits are already set for kola drinks and formulated caffeinated beverages, except where caffeine is naturally present in a food. As such, consideration could have been given to setting maximum limits naturally occurring caffeine, such as guarana extracts.

The interpretation provided in P1054, that caffeine is permitted if a manufacturer decides to add it for a purpose other than as a food additive, and the implied permission of setting a general maximum concentration for caffeine, is inconsistent with the Ministerial Policy Guideline on Regulatory Management of Caffeine in the Food Supply because it could contribute to the range of food containing added caffeine in the food supply and may contribute to higher levels of caffeine being consumed by children and vulnerable groups.

Other issues

Care will need to be taken to ensure any requirements in the Code are not inconsistent with reforms proposed by the Therapeutic Goods Administration.

Food Safety Standards and Regulation Unit
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