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FOOD STANDARDS Australia New Zealand
Te Mana Kounga Kai – Ahitereiria me Aotearoa

FSANZ: Applications and Submissions - Submission

Wednesday, 9 February, 2011

1. **Assessment Report Number:** P1013
2. **Assessment Report Title:** Code Maintenance IX - 1st Assessment
3. **Organisation Name:** Victorian Department of Health
4. **Organisation Type:** Government Agency
5. **Representing:** Victorian Department of Health
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12. **Submission Text:** PROPOSAL P1013. Code Maintenance IX – First Assessment. The

PROPOSAL P1013.

Code Maintenance IX – First Assessment.

The Department of Health Victoria welcomes the opportunity to comment on the assessment report for Proposal P1013 – Code maintenance IX.

General Comments

The Department supports FSANZ's attempts to keep the Code up to date by issuing Code maintenance standards from time to time. It also recognises that sometimes it may be difficult to know where to "draw the line" in deciding whether to include a particular item in such a revision.

This proposal appears to include not only typical "housekeeping" measures such as unintended inconsistencies, misspellings, grammatical and typographical errors, omissions and items requiring updating or clarification. It also includes a number of more complex issues, including recommendations raised by the OLDP's audit of the Code (the Audit) and consideration of Application A1043 – WHO limits for Packaged Water.

The explanation for the changes in these more complex areas is quite brief. This makes it difficult to consider a number of aspects of the Proposal, particularly where policy questions arise or potential impacts on businesses need to be considered.

The options available for this Proposal are:
Option 1 – To abandon the Proposal;
Option 2 – To prepare draft variations to the Code to incorporate the proposed amendments.

These options are appropriate for the usual Code Maintenance issues. However, the diverse and complex nature of the 146 issues identified in this Proposal in our view means that an 'all in' or 'all out' option is not suitable.

It is suggested that some areas may best be excluded from the proposal, so that it can be refined back to "housekeeping" measures.

In all cases the rationale for the particular proposal should be sufficient to enable informed comment on the proposed change. Often this will simply involve fleshing out in more detail the problem and the reason for the suggested solution.

Some issues do not appear to be of a housekeeping nature and may therefore not be appropriate for this Proposal. For instance, issue 107 deals with Application A1043 quite briefly. However it asks submitters 'As there are some differences between the WHO guidelines and the current Code, please identify if this change would have commercial, trade or health impacts?'. It is suggested that there is insufficient information provided for this question to be answered. Such issues would usually be addressed by FSANZ in a full assessment report which takes consideration of the application well beyond the scope of the Code Maintenance approach.

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Further, given the pending implementation of the Audit recommendations, a number of the issues addressed in this Proposal, would be better dealt with on a Code-wide basis once fundamental drafting templates are established.

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Similarly, where a standard is likely to be reviewed as part of a current Application or Proposal, then unless there is a pressing need, addressing issues of clarity or inconsistency within the existing standard should be held over to avoid duplication of effort.

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Therefore in general, in the absence of any evidence of immediate enforcement problems, the preference is that following issues be prioritised and dealt with systematically and consistently by the Code Audit working group/s (CAWG):

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1. definitions;
2. treatment of compositional requirements;
3. treatment of references to external documents (except the removal of redundant references);
4. clarification as to whom has obligations to comply with the Code;
5. cross referencing of standards; and
6. Purpose, Application, Interpretation and Editorial Note sections (including the rationale for the inclusion of any or all of them).

The Department's preferred approach to address the matters arising from the audit is set out in our submission to FSANZ on 28 October 2010 which has already been emailed to FSANZ. A further copy can be provided if required.

Comments on the specific issues raised in the Proposal

The Audit identified that the use of 'and/or' requires too much work from the reader and can be interpreted in different ways.
The proposed solution to redraft expressions in the 32 instances identified is supported however the redrafting is inconsistent in that some are 'X and Y, or ,X or Y' some are 'X or Y' and others 'X and Y' and it is therefore questionable whether the intent is correctly captured. This may require consultation with the OLDP.

Issue 23 – Response to Question 1 – We are not aware of any foods that would require relabelling as a result of this amendment.

Issue 24 – This is a good illustration of where a cross reference is appropriate. There are a number of other issues which propose the deletion of cross references from Purpose statements but this appears to be dealt with on a more ad hoc basis. The preferred approach would be to establish principles on when and where cross referencing would be appropriate. This will become more evident as the CAWG progresses, and particularly when structural issues are considered.

Issue 40 – In most cases the proposed amendment will not cause any problems as the majority of characterising ingredients or components will be present in significant amounts.

There may be difficulties, as there are now, associated with levels less than 0.5%, which is often the case with the addition of plant extracts. We have seen levels of ginseng and green tea extracts reported at 0.01%.

Permission to round is sometimes interpreted as rounding up. A major manufacturer recently stated in the list of ingredients on a bottle of tonic water that the level of quinine was 0.5% where the actual level was less than 0.1%, which is the maximum permitted. Whilst the manufacturer was wrong on a number of counts, this interpretation caused some customer concerns.

When estimating theoretical levels of caffeine in products it is important to know the level of guarana extract present. One of the most common extracts contains 27% caffeine and recent label assessments of drinks, promoted as containing guarana, were assisted by the fact that levels were stated at 0.1% and not rounded.

It is beyond the scope of a Code Maintenance Proposal to consider other options for the declaration of low levels of characterising ingredients, however it may be an issue that could be taken up by the CAWG.

The amendment is supported.

Response to Question 3 – Yes.

Issue 43 – The principle of 'one term one meaning' (one of the Audit recommendations) is supported as is locating those terms in Standard 1.1.1.

Issue 56 – The intense sweetener additive permissions are for soup bases, not soup generally, but the levels are, by necessity, on the product made up as directed due to the variability of moisture content of soup bases.
There are other examples in the Code where a standard applies to a food 'prepared in accordance with directions' e.g. Table to clause 3 of Standard 1.3.2.

The current wording is not considered confusing and this amendment is not supported.

Issue 66 – The table already has 'function' as the header to the second column, so the amendment is not required.

Issue 68 – The Department is not aware of any enforcement or interpretation difficulties associated with the wording of the current standard. The word 'substance' is well understood and in our view is correctly applied to capture the broad application of the standard.

The amendment to Clause 1 effectively narrows the application of the Standard, given that the legal status of the purpose statement is questionable, as 'biologically active substances' and 'other nutrients' are not listed.

It is strongly suggested that the need for this change be considered, and if FSANZ remains of the view that ti should be included, that a full explanation of the reason for the proposed change is included.

Note: "nutritive substances" include vitamins and minerals so there is no need to list them separately.

At this stage as the reason for making the change is not apparent the amendment is not supported.

Response to Question 5 - Yes.

Issue 84 – Proposal P1007 PPP requirements for raw milk products will include the consideration of a microbiological standard for unpasteurised milk to be used in the manufacture of raw milk products so any amendments to Standard 1.6.1

should be made when that Proposal is finalised, and not be included in this proposal.

Issue 101 – The term 'culture' is well understood by industry and enforcement agencies. It is suggested that whether or not it needs to be defined, as it currently is in Standard 4.5.1 Cl 3 & 4, requires discussion and should therefore be left to the CAWG's consideration of definitions and interpretation so that issues are dealt with consistently.

The Table does not need to mention viable organisms as the requirement is written in terms of colony forming units (cfu) and colonies can only be formed by viable microorganisms.

We agree that the term 'proportion' does not apply to pH however this raises the greater issue of the lack of consistency in the way compositional requirements are set out across the Code viz some in tabular form, some in text, and all with varying terminology. The format for compositional requirements should be standardised as part of the CAWG's considerations.

Issue 104 – We have no concerns with the current compositional requirements including both 'must contain' and 'may' contain subclauses, rather, as stated above, we would be seeking a standardised format.

The proposed amendment could create more uncertainty as the emphasis on 'permitted ingredients' implies that the list is comprehensive and therefore fully inclusive of additive permissions as well. The interpretation of amendments by the different groups reading the Code must be kept in mind.

For these reason, at this stage the amendment and the approach is **not supported**.

Issue 107 – For the reason outlined above, it is preferable for application A1043 to be excluded from this Proposal.

Issue 111 – Similar issues arise as for Issue 104. The drafting of definitions and compositional requirements requires further discussion at officer level, to avoid the need for further amendment.
For these reasons, in the absences of further information the amendment is not supported.

Issue 128 – This is clearly a Code Maintenance issue and the amendment is supported.

Note: Standard 4.5.1 Cl 1. sets a compositional requirement for the maximum methanol content of grape spirit. Whilst the methanol limits for wine vary only slightly between Standards 4.5.1 and 1.4.1, there is a significant difference between the Standards for grape spirit which is 8 g per litre of ethanol in 1.4.1 and 3 g per litre of ethanol in 4.5.1. A risk assessment could be conducted by FSANZ to determine the appropriate level.