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To: submissions
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Subject: SA Health Submission to P1013 CODE MAINTENANCE
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Please find attached the SA Health submission to proposal P1013 – Code Maintenance.

Kind regards

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SUBMISSION ON PROPOSAL P1013 CODE MAINTENANCE IX (ASSESSMENT REPORT)

Food Policy and Programs Branch, SA Health
8 February 2011

Thank you for the opportunity to provide comments to the Assessment Report for P1013. Please note the following comments from SA Health.

General Comments

The recent legislative audit of the Code recommended several structural changes to the Code as well as a revision of wording. It is considered that there has not been sufficient consultation with jurisdictions on implementation of this audit and therefore it is premature to making amendments to the Code.

In particular the proposed changes contained in this Code Maintenance proposal which remove cross referencing make the Code more difficult to use in its current form and should not be progressed until decisions such as structure of the Code have been made.

For example, in several places, the proposal suggests removing references to other Standards in the Purpose (e.g. Issue 93 Eggs and Issue 114 Sugars), to aid in streamlining the Code and making it more consistent with the drafting of other legislation. However, from a user perspective, these cross references aid enforcement agencies and industry in knowing what the limitations of a particular Standard are and where in the Code other related issues might be addressed.

Specific Issues

Issue 23 – Std 1.2.4. - Labelling of Ingredients - Clause 8(2) 8(4) and 8(5). Amend clause 8 to clarify that the food additive class name used in the statement of ingredients must describe the primary technological role of that food additive in the food and to clarify that the names in Schedule 2 are prescribed names.

Response

This issue should not be addressed via an omnibus proposal.

To change the drafting of Standard 1.2.4 to relate the class name to technological function would require a full FSANZ consultation process, because any proposed changes would be substantial.

Changes to food additive class names are likely to be associated with significant impacts on labelling costs; and changes to food additive technological functions are likely to be associated with impacts on food additive regulation and hence food manufacturers.

Food additives listed in ingredient lists must be declared (wherever possible) by use of their prescribed class names as listed in Schedule 1 of Standard 1.2.4 – Labelling of Ingredients. The main purpose of the food additive class names in ingredient labelling is for consumer information.

Whilst the food additive class names enhance consumers' understanding of food additives present in food, they are not 'technical' in nature. The technological functions are not directly related to ingredient labelling provisions for food additives, though some of the terms are common to both lists.

The permitted technological functions of food additives are listed in Schedule 5 of Standard 1.3.1– Food Additives. If a permitted food additive (i.e. listed in Schedule 1 of Standard 1.3.1) does not perform one of the technological functions listed in Schedule 5 then its use is not permitted in food. The purpose of the list in Schedule 5 is therefore quite different from the list in Schedule 1 of Standard 1.2.4.

The list of functional classes of additives in Schedule 5 of Standard 1.3.1 was designed to broadly describe all the permitted technological functions of food additives. Each functional class is further qualified by words describing related, similar functions. In this way, a wide range of related functions is permitted by listing those permissions in a way that is not unnecessarily restrictive. The technological functions are not directly related to ingredient labelling provisions for food additives, though some of the terms are common to both lists.

The amendments proposed in P1013 Issue 23 would have the effect of linking the class names in Schedule 1 of Standard 1.2.4 to the technological functions in Schedule 5 of Standard 1.3.1; however the list in Standard 1.2.4 is not a list of technological functions.

Issue 32 – Std 1.2.8 para 3(a). Delete exemption for food sold at fund raising events from including a NIP because it is already exempt under Standard 1.2.1.

Response

This paragraph should be retained as it lists the exemption conditions in one place. While these exemptions are repeated in 1.2.1 it is helpful for enforcement agencies and retailers to have this information repeated under 'Nutrition Information Panels'. Alternatively, these exemption conditions could be referenced in the Purpose of 1.2.8.

Issue 43 – Standard 1.3.1 Food Additives. GMP is not used uniformly throughout the Code. Delete Editorial Note following clause 3 and add definition of GMP with respect to food additives and processing aids only to Standard 1.1.1 based on what was in the Editorial Note. Delete the definition

of GMP in Interpretation of Standard 1.3.3 and modify (b) of the processing aid interpretation in clause 1 of Standard 1.3.3 to include reference to GMP.

Response

Creating a new definition via this proposal is not supported. Introduction of a new definition is more appropriately addressed in a separate proposal as there may be intricacies that need further exploration.

The introduction of a definition of GMP may raise issues for enforcement agencies, particularly in establishing the appropriate level of an additive necessary to achieve a desired function in a specific food. These issues need to be further considered.

The definition proposed in P1013 is also inconsistent with the wording of the definition of GMP in the Codex General Standard for Food Additives CODEX STAN 192-1995 which makes reference to 'appropriate food grade quality'. The new definition also includes 'processing aids' wherever 'additive' is mentioned. Additionally, the Codex Guidelines for Processing Aids includes other conditions to GMP.

Issue 51– Std 1.3.1 Schedule 1 item 4.1.3 – proposal to replace 'peeled and/or cut fruits and vegetables' with 'peeled or cut fruits and vegetables'; and

Issue 95 – Std 2.3.1 – Fruit and Vegetables – delete definition for 'peeled and/or cut vegetables'.

Response

Changing from 'and/or' to 'or' in Std 1.3.1 changes the meaning since fruits/vegetables may be peeled *and* cut not just one or the other.

A definition of 'fruit and/or cut vegetables' should be retained in Standard 2.3.1 in order for the hierarchy of additive permissions in Standard 1.3.1 to operate.

Issue 57 & 58 – Adding new additives to Std 1.3.1 Schedule 2 and Std 1.2.4 Schedule 2.

Response

It is considered inappropriate to insert new additives into the Code via an Omnibus Proposal which is designed to deal only with minor technical or administrative amendments. This is a substantive change and the process requires a full FSANZ consultative process as required by its legislation. Although the JECFA evaluation supports their safety, there has been no FSANZ evaluation of the technological justification for use of these additives as well as no identity and purity reference provided and no impact analysis completed.

Issue 68 – Std 1.3.4 Clause 1 and Purpose – amend reference to ‘substances’ to reflect that the Standard applies to food additives, processing aides, vitamins, minerals and other added nutrients.

Response

The drafting amendment to the Purpose does not adequately link to the new Clause 1 which also refers to ‘novel foods and nutritive substances’. These substances are not wholly captured by the term ‘nutrients’ in the Purpose.

Issue 87 – Std 2.2.1 Meat and Meat Products. Delete all of existing Purpose except for first sentence.

Response

Retain 2nd sentence as this makes reference to where in the Code to find processing requirements for processed meat products. This is helpful from a regulatory perspective.

Issue 93 - Std 2.2.2 –Egg and Egg Products. Delete the second sentence of Purpose.

Response

Leave this sentence which provides a cross reference to another part of the Code and aids regulators.

Issue 94 – Std 2.2.3- Fish and Fish Products. Delete clause 2 and include limit for histamine in fish in the Table to clause 5 of Std 1.4.1 – Contaminants and Natural Toxicants. Also remove reference to histamine in Purpose.

Response

Clause 2 should not be deleted from Standard 2.2.3. Some fish species contain the amino acid, histidine, which can convert to histamine. Histamine is not a natural toxin, as stated in the proposal or a contaminant since it results from a compositional change to the fish rather than addition of a toxin to the fish from an external source. As histamine is a compositional issue in Fish and Fish Products it should remain with Standard 2.2.3.

Issue 96 – Std 2.4.1 – Amend definition of edible oils in Clause 1 from ‘triglycerides and/or diglycerides of fatty acids’ to ‘triglycerides and diglycerides’.

Response

The meaning of the definition of ‘edible oils’ would be substantially changed by the proposed amendment.

The current definition is –

“edible oils mean the triglycerides and/or diglycerides of fatty acids of plant or animal origin including aquatic plants and aquatic animals.”

It is questioned whether the effect of changing 'and/or' to include 'triglycerides and diglycerides' would mean that edible oils must be composed of both triglycerides and diglycerides.

Most edible oils are triglycerides and may not necessarily contain diglycerides, also the definition of edible oils was amended by Application A505 - Diacylglycerol oil so that new products based on diglycerides could also be permitted for sale in Australia and New Zealand. Assurance is sought that the proposed amendment does not prohibit the sale of edible oils if they do not contain diglycerides.

Issue 98 – Std 2.5.1 - Milk. Delete clause 4 and references to Standard 4.2.4 in the Purpose.

Response

Retain clause 4 which is reference to milk processing requirements in Standard 4.2.4.

It is suggested that this amendment be considered in a separate proposal as further consideration is needed of the legal implications.

As standard 4.2.4 does not apply to retail sale activities, it is not clear whether removal of this provision in standard 2.5.1 will impact on the requirements for milk sold at retail to be processed in accordance with standard 4.2.4.

Retain cross references in the Purpose of 2.5.1 to aid interpretation.

Issue 99 – Various Part 2.5 Standards. Delete reference to processing requirements from the Purpose.

Response

Retain references to other processing requirements in other parts of Code. This is helpful from a regulatory perspective.

Issue 107 – Standard 2.6.2 – Non Alcoholic Beverages and Brewed Soft Drinks clause 2(2) and Table to subclause 2(2). Update provisions for composition of packaged waters in relation to the presence of certain substances in line with WHO guideline values.

Clarify that Standard 1.4.2 (Maximum Residue Limits) does not apply to packaged water.

Response

These amendments are based on an application by the Australasian Bottled Water Institute (A1043) in March 2010 seeking the adoption by reference of WHO guideline values for chemicals of health significance in drinking water.

As this issue may need more evaluation and discussion it is proposed that these changes be considered in a separate proposal or via the aforesaid application.

Issue 114 – Standard 2.8.1 Sugars. Delete the reference in the Purpose to the location in the Code of the regulation of intense sweeteners.

Response

Retain this cross reference. This is helpful from a regulatory perspective.

Issue 115 – Standard 2.9.1 Infant Formula Products. Delete references in the Purpose to other provisions in the Code relating to infant formula products.

Response

Retain. This is helpful from a regulatory perspective.

Issue 120 - Standard 2.9.2 – Foods for Infants. Delete references in Purpose to other provisions in Code.

Response

Retain. This is helpful from a regulatory perspective.

Issue 124 – Standard 2.9.4 – Formulated Supplementary Sports Foods, Clause 7(3)(a). Replace 'the product is useful either before, during and/or after sustained strenuous exercise' with 'the product is useful for one or more of before, during or after sustained strenuous exercise'.

Response

The replacement sentence is not clear and needs reworking. Retain the current sentence.

Issue 128 – Standard 4.5.1 – Wine Production Requirements. Remove subclause 5(4) which lists limits of methanol permitted in wine because limits are already prescribed in Standard 1.4.1 and it is not considered appropriate to reference these limits again in a production standard. The limits are also different in each Standard.

Response

Retain this subclause and align levels. It is helpful from a regulatory perspective to have all relevant compositional limits listed in the one Standard. Alternatively a reference to Standard 1.4.1 could be made.

Issue 143 – Standard 2.7.5 - Spirits. Delete Editorial note following clause 4 containing references to other Standards.

Response

Retain. This is helpful from a regulatory perspective.

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