Ministry for Primary Industries
Manatū Ahu Matua

5 August 2016

Project Officer Proposal P1034
Food Standards Australia New Zealand
PO Box 10559
The Terrace
WELLINGTON 6036

[redacted]

Dear Sir/Madam

Proposal P1034 – Chemical migration from packaging into food– Call for submissions

Thank you for the opportunity to comment on this paper. The Ministry for Primary Industries (MPI) has the following comments to make:

General comments:

MPI supports the aims of the proposal to increase awareness and understanding of the potential risks posed by food packaging. MPI agrees while there are potential risks from Chemical Migration from Packaging into Food (CMPF), the risks are generally accepted to be low and therefore do not require a prescriptive approach.

MPI prefers Option 4 – the graduated approach as it covers the full range of risk based regulatory and non-regulatory options, including the use of guidelines. This allows maximum limits to be considered for high risk chemicals under the Australia New Zealand Food Standards Code (the Code). Other chemical risks can still be managed by regulation, if needed, under processing requirements. In New Zealand, for example, requirements may be made under the Animal Products Act 1999 or in regulations under the Food Act 2014.

MPI believes that priority could initially be given to guidance for food processors, food service and retail operators to inform them about packaging issues. In particular, how to confirm that the packaging they are purchasing is safe for the products they are producing. The list of information on page 17 would be a useful start for inclusion in a guideline. Guidelines could be developed in conjunction with the Implementation Subcommittee for Food Regulation's (ISFR). Discussion with jurisdictions and other stakeholders on the status, ownership, and development of a guideline would be beneficial. The identified information gaps should be noted and addressed by guidance and information materials particularly for small and medium enterprises (SMEs).

While food businesses are required to use safe packaging in both Australian and NZ food safety legislation, MPI believes that the Food Standards Code should continue to be the best place to set requirements for managing risks from chemical migration from packaging materials into food. This includes adding any limits arising from the phthalate research. This will provide consistency in both New Zealand and Australia for import and export of foods and packaging materials.

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We have attached an updated version of SD1 relating to legislation relevant to New Zealand packaging.

Further comments relating to the questions in the proposal document:

2.2 Risk assessment

2.2.1 Risk profile

Question:

Q1 Do you consider that an ongoing monitoring and surveillance strategy, possibly by jurisdictions responsible for enforcement and compliance of food laws[1] would be a practical measure to identify and manage unknown risks associated with CMPF?

MPI agrees that future surveys could be considered under the ISFR Coordinated Food Survey Plan

Questions:

Q2 Do you agree that FSANZ's analysis of control measures and market information accurately represents how CMPF is being controlled in Australia and New Zealand? If, not please state your reasons?

Q3 For any industry stakeholders who have yet to respond to FSANZ's call for information: What control measures for CMPF does your business use?

No further comments to add.

2.3 Risk management

2.3.1 Option 1: Status quo

Question:

Q4 What problems can you identify with the status quo option and therefore abandoning this proposal?

The option of status quo and abandoning the proposal does not achieve the regulatory certainty needed. MPI agrees that (as per the Call for Submissions paper) that Submissions to the consultation paper indicated that there is lack of clarity and certainty with the Code for food businesses. Control practices are not currently consistently applied across industry and gaps in the awareness and management of CMPF particularly for SMEs. Suitable guidance materials and MLs for identified high risk chemicals, should be considered further.

[1] For example, a future survey could be considered under the Implementation Subcommittee for Food Regulation's (ISFR's) Coordinated Food Survey Plan.

2.3.2 Option 2: Prescriptive approach

Question:

Q5 If you consider that a prescriptive approach is the most appropriate option as per either the US/and/or EU approach, FSANZ invites you to elaborate on those reasons. Specifically, please provide the pros and cons of this position in order to further identify costs and benefits for consumers, industry and government of taking a prescriptive approach?

MPI agrees while there are potential risks from CMPF, the risks are generally accepted to be low and therefore do not require a prescriptive approach.

MPI also notes that there may be legal issues in recognising other countries' regulations (such as those of the EU and the US) in the Code and that these do not cover all packaging materials.

2.3.3 Option 3: Non-regulatory approaches

Non-regulatory approaches are appropriate where no major public health and safety concerns have been associated with the majority of packaging chemicals but that these could form part of a graduated approach option that will allow MLs to be considered when appropriate.

Option 3a: Education/Awareness/Information programs

Questions:

Q6 What do you see as the costs/benefits of this option for consumers, industry and government? Do you consider it would ensure industry has adequate knowledge of the risks from CMPF and implemented available risk mitigation measures?

Q7 Focusing on the three key areas outlined above, what information do you think would be the most suitable to include in an information/awareness program?

Q8 Do you agree that FSANZ, the AFGC/NZFGC and packaging peak bodies are the most appropriate organisations to undertake this program? If not, can you identify other appropriate agencies, and peak bodies?

Non-regulatory approaches could form part of a graduated approach option that will allow MLs to be considered when appropriate.

MPI notes that P1034 identifies a lack of awareness from some food manufacturer's businesses of risks of CMPF. Raising awareness with packaging suppliers, manufacturers, importers, and food manufacturers to consider the safety of CMPF is needed. This could be done under a program that is led and facilitated by expertise within FSANZ.

Agree that information and awareness programs could be targeted at the responsibilities of food businesses, particularly SMEs to use safe packaging materials and the regulatory requirements. It would also be helpful to provide more general information to consumers as there is both huge interest and confusion generated internationally.

Option 3b: Industry self-regulation by industry standards or codes of practice

Option 3c: Industry self-regulation by a co-regulatory approach

Question:

Q9 What are the perceived cost and benefits for industry, consumers and industry of a non-regulatory approach? Do you think either option 3a, 3bor 3c would be cost effective?

Agree that these may provide an incentive for individuals and companies to develop and comply with self-regulatory arrangements in order to mitigate hazards from CMPF but that these should form part of a graduated approach option that will allow MLs to be considered when appropriate.

2.3.4 Option 4: Graduated approach

Questions:

Q10 A guideline would involve a degree of prescription[2] (*although it would not be mandated in the Code*). FSANZ invites stakeholders to identify the costs and benefits to industry, consumers and government of this approach in assisting industry (specifically SMEs) with identifying, characterising and managing risks arising from CMPF.

Q11 Would the above information be appropriate for including in a guideline or can you identify others that should be included?

Q12 Should all the industry standards and CoPs identified in option 3b be included in a guideline under this current Proposal (versus a separate process) to maximise coverage of all requirements for packaging or only specific ones that include reference to food safety measures or prescribed limits in them? In your answer please be as specific as possible to identify the most-appropriate guideline that would address CMPF.

MPI believes that priority could initially be given to guidance for food processors, food service operators to highlight the packaging issues including those listed on page 17 and how to confirm that the packaging they are purchasing is safe. The list on page 17 of the proposal is a good start.

As noted earlier, non-regulatory approaches are appropriate where no major public health and safety concerns have been associated with the majority of packaging chemicals, but these could form part of a graduated approach option that will allow MLs to be considered when appropriate.

MPI agrees that an information/awareness program (as per option 3a) could be undertaken independent of, or as part of, a graduated approach. Chemicals falling within the category of low risk could be managed through use of voluntary industry guidelines and or audit requirements under either a guideline and/or strengthening current requirements in the Code.

[2] The OBPR has advised FSANZ that it also views guidelines as a prescriptive measure

Strengthening requirements in the Code (regulatory)

Questions:

Q13 What do you see as costs and benefits for government, consumers and industry of this measure? Would it be cost effective? Please detail any other options that you think are appropriate, or available, to strengthen or clarify existing Code requirements and the reasons why, including the costs and benefits of such a measure?

Q14 Do you consider that there is scope to improve the Food Acts provisions regulating the sale of food packaging in Australia and New Zealand?

The Food Act provisions need to provide a sufficiently broad scope for further detail in regulation where needed. Food Acts have limited ability to make standards that apply directly to packaging businesses, but have considerable scope for control of packaging used for food and requirements for food businesses.

It may help food businesses awareness of their responsibilities and provide clarity, to include general requirements for packaging safety and suitability in the Code that are consistent with the clauses in the various Food Acts. Most businesses will be familiar with the Code but may not be aware of the relevant clauses in the Food Acts or of the existence of other documents including COPs or guidelines. A general provision in the Food Code, consistent with the Food Acts, provides a clear link to the MLs in the Code that relate to packaging. If there were no such requirement, there could be questions regarding the appropriateness in the Code of MLs that relate to packaging.

2.3.4.2 Chemicals of concern or high risk (regulatory approach)

Question:

Q15 Do you consider that the Code should include specific limits for DEHP and DINP for all foods similar to the limits set used for other packaging chemicals (tin, vinyl chloride and acrylonitrile). What do you see as the costs and benefits to industry, enforcement agencies and consumers of this approach?

The Code should continue to set limits for chemicals of concern to provide consumers with safety assurance and industry with regulatory certainty.

MPI believes that the Food Standards Code should continue to be the best place to set requirements for packaging materials. This includes adding any limits arising from the phthalate research. This provides consistency in both New Zealand and Australia for import and export of foods and packaging materials.

2.3.5 Post-market surveillance

Questions:

Q16 Which peak bodies should be involved in familiarising industry with any new provisions or raising awareness of CMPF?

Q17 How could post-market surveillance be conducted satisfactorily? Who would undertake such surveillance?

All peak bodies that are involved in packaging – including packaging suppliers, food businesses, caterers, importers and retailers.

Future surveys could be considered under the ISFR Coordinated Food Survey Plan

2.3.6 Additional risk management questions

FSANZ also invites your additional input on the following:

Questions:

In order to help prepare a future regulatory impact statement (RIS) (if required), please consider the following general questions:

Q18 How will the options listed affect you; such as the choices available to your business and current process practices, consumption choices or regulatory activities?

Q 19 Are there other affected parties that have not been identified by FSANZ that you feel should be included?

Q 20 Are there specific costs or benefits to consumers, industry and/or government that you feel should be considered in a future Regulation Impact Statement? If you have any data or information to support your views on these questions, FSANZ would welcome the opportunity to consider it.

Option 4 – graduated risk approach, means chemicals of concerns are contained in the Code, and not left to generic provisions in the Food Acts. Greater protection of public health, as a clearer requirement to have the chemicals listed, rather than putting onus on industry to demonstrate all packaging is safe when sold with food.

Option 4 should provide regulatory certainty for these groups in terms of safe packaging materials used to sell food, sometimes higher risk as the food may be served hot.

It is important that the views of retailers associations, caterers and fast food industries are sought.

Signed

Yours sincerely

[redacted]

Manager Food Science and Risk Assessment

Update to Supporting Document 1 Sections 2.1, 2.2 and 2.3

2 New Zealand

There are several pieces of legislation in New Zealand that relate to food business' use of packaging:

2.1 Food Act 2014

The *Food Act 2014* came into effect on 1 March 2016, replacing the *Food Act 1981*.

The Act does not currently impose obligations on manufacturers of food packaging (ie, as opposed to those who package food). The Act provides for a risk-based approach to food safety to be taken by all food operators and enables food safety regulations to be made in relation to 'food related accessories'. The latter term is defined by the Act to include food packaging.

Under the Act, regulations for packaging and other food contact materials require that a food business operator must ensure that food-related accessories are able to maintain the safety and suitability of food (to the extent that maintaining the safety and suitability of food is their intended use); and do not create or contribute to hazards

The regulations require operators to control hazards during the production, processing and handling of food. They are outcomes-based and have the flexibility to accommodate developments in technology including anti-microbial finishes and nanomaterials for food contact uses.

The Ministry for Primary Industries is undertaking work to identify whether there are any further requirements (in particular for food sectors) needed under the Act. This work will also consider whether more specific requirements for packaging are needed[1].

2.3 Food Hygiene Regulations 1974[2]

Food businesses that do not have a RMP or FSP and were operating on the 1 March 2016 have to continue to comply with the requirements of the Food Hygiene Regulations 1974[3] until becoming registered with a risk-based measure under the Food Act 2014. There is a phased approach for these businesses during the three-year introductory period of the Act, which ends on 28th February 2019.

[1] https://www.mpi.govt.nz/food-safety/food-act-2014/
[2] At the end of the three-year introduction period, the *Food Hygiene Regulations 1974* will be revoked.
[3] http://www.legislation.govt.nz/regulation/public/1974/0169/latest/DLM42658.html?search=qs_regulation_food+hygiene+regulations+1974_resel&sr=1