

SUBMISSION TO
P1025 CODE REVISION

27 SEPTEMBER 2013

SUBMISSION TO FOOD
STANDARDS AUSTRALIA
NEW ZEALAND

SUBMISSION BY THE
ALCOHOLIC BEVERAGES
INDUSTRY GROUP ON LOT
IDENTIFICATION REMOVAL

BACARDI
LION



DIAGEO
AUSTRALIA



Pernod Ricard Australia

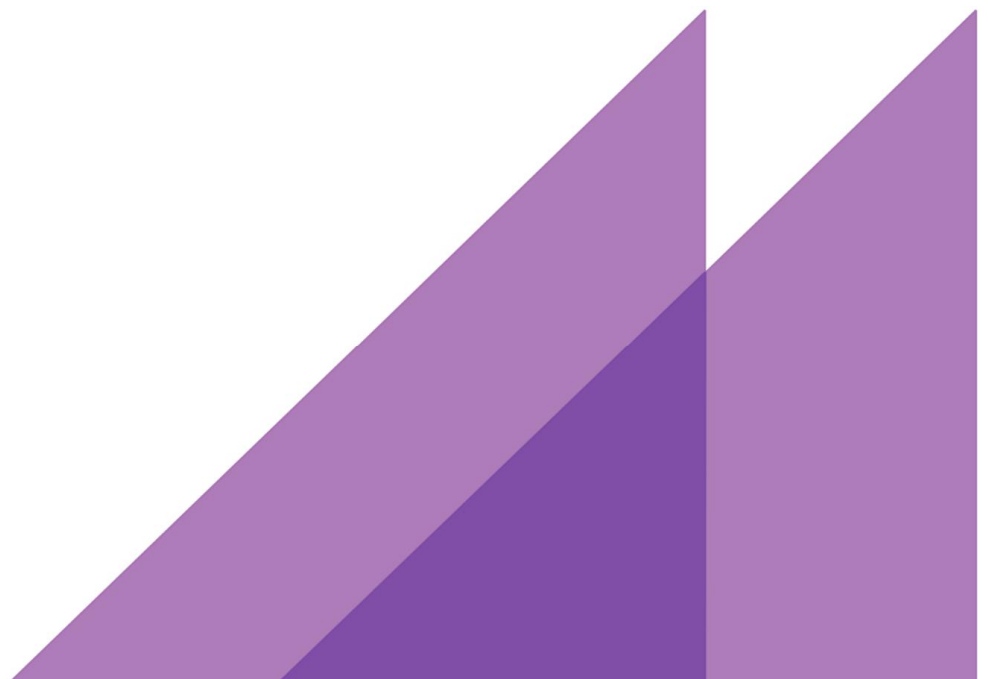


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1 Background to the submission

1.1 About the Alcoholic Beverages Industry Group on Lot Identification Removal

The Alcoholic Beverages Industry Group on Lot Identification Removal ("the Group"), facilitated by ACIL Allen Consulting, is pleased to provide this submission to FSANZ Code Revision P1025.

The Group formed in 2010 through the cooperation of eight organisations in the alcohol and beverage sector (Bacardi Lion, Beam Global, Brown Forman, CUB, Diageo, Lion, Pernod Ricard, and Suntory) to address the growing number of instances in which labelling of imported alcoholic and beverage industry products failed to comply with the *Australia New Zealand Food Standards Code* (the "Food Code"), in particular due to defacing of the manufacturers' lot identification, primarily through parallel importation channels.

The act of removing manufacturers' lot identification in the liquor and beverage industry is undertaken intentionally to reduce the traceability of products through global supply chains. It may be undertaken prior to importation or once imported.

The key challenge associated with stock that has had the manufacturers' lot identification removed is that it is unable to be identified and traced to its original production source and batch. This limits the manufacturer's ability to address and remedy arising consumer product queries and issues, in particular in case of product recall. It also means the source of a product fault cannot be accurately identified.

A further challenge is that the act of lot identification removal, which often involves scratching the identification codes off glass bottles or erasing printed stickers, tampers with the product and can impact on product quality, presentation and consumer confidence.

While the Group does not condone the limitation of competition or the free trade of products, it seeks to minimise risks to consumer safety, and seeks to improve brand and product integrity.

As distributors and owners of many of Australia and the world's largest alcohol brands, the Group seeks to safeguard food products and consumer safety.

The primary objective of this submission by the Group is to seek clear legislated provisions within the model *Food Code* provisions regarding the need for products to include the manufacturers' lot identification, and for these provisions to be enforced rigorously and uniformly across all jurisdictions.

1.2 Group activities to improve interpretation and enforcement

Over the past three years, the Group has pursued its primary objective through:

- Preparing an issues paper regarding decoding (the removal of lot identification from alcoholic beverages either prior to importation or sale);
- Raising industry awareness among the alcohol and beverage sector of the requirement to include lot identification, through advertisements in trade magazines;
- Clarifying differences in interpretation of the *Food Code* between States and Territories through a number of face-to-face meetings with enforcement agencies and a series of letters to Ministers;
- Establishing processes to report breaches of lot identification requirements;
- Liaising with food authorities in New Zealand to learn of their success in ensuring breaches of lot identification requirements are successfully enforced;
- Supporting clarity of lot identification requirements, including through:
 - › Seeking legal interpretation regarding decoding and recoding (the practice of adding false lot identification in place of the manufacturers' lot identification) through the FSANZ Code Interpretation Service;
 - › Developing a *Guide to Lot Identification* and circulating this among enforcement bodies to detail the required structure of beverage lot identification to help target instances of legislative breaches; and
 - › aiding states and territories to publicise requirements with enforcement bodies, including through media releases and food unit notices.
- Providing submissions to inquiries, including the National Food Plan Green Paper.

1.3 Pressing imperative to clarify lot identification requirements

Despite the extensive work of the Group to seek clarity regarding legislative provisions, there remain varying interpretations of the *Food Code* by different jurisdictions in relation to requirements to include lot identification. This results in ongoing variability in enforcement activities by jurisdictions. Indeed, there has been genuine confusion at the enforcement level over what qualifies as genuine and effective lot identification and many have suggested that greater clarity around the issue would be welcome.

Case examples of recurring issues include:

- the forcible removal of manufacturers' lot codes from external packaging and beverage bottles either prior to or following importation; and
- in some jurisdictions, failure to enforce regulation where alternative lot identification is added by importers, despite bearing no resemblance or correlation to the manufacturers' lot identification, which has been removed (such failure primarily resulting from a lack of clarity around lot identification requirements, as opposed to a lack of desire to take

action where the manufacturers' lot identification has been deliberately removed, altered or replaced at some point along the supply chain).

1.4 Principles to be covered in the Food Code

The Group considers the following key principles must be explicitly addressed in the Food Code:

- Where a food product is required to include lot identification, only the manufacturer's lot identification should be accepted. *It is only the manufacturer's lot identification that a manufacturer can rely on to conduct recalls or source the origin of product faults.*
- A label on a food product that has had the manufacturer's lot identification removed, altered or replaced (by anyone other than the manufacturer or the manufacturer's authorised agent with the written consent of the manufacturer), should not be considered compliant (regardless of where the removal, alteration or replacement took place); and
- Any alterations to labels must not obscure the manufacturer's lot identification.
- A person dealing in food that is not the manufacturer may add their own lot identification to a label but it must not obscure the manufacturer's lot identification.

1.5 Comments on proposed Food Code amendments

The *Food Code* revisions present an opportunity for FSANZ to address ambiguities within the existing legislation. This section outlines the Group's proposals to achieve a level of clarity for food manufacturers, importers, distributors and regulatory bodies.

The Group's objective for improved clarity in the Food Code aims to achieve higher levels of product safety and support better enforcement. The importance of clarity is noted in FSANZ statements regarding offense provisions: "If the provisions of the Code that impose requirements are to be enforced, they must have certainty of interpretation and must establish clear requirements. Any uncertainty will be applied in favour of the defendant in a prosecution under the application Acts" (Call for Submissions, p.8).

At present, there remains ambiguity in relation to interpretation of lot identification requirements that should be addressed by any revision to the Food Code.

Intention of the changes

The Group notes the intention of the proposed revisions are to "modernise how the Code is presented to create an instrument that better meets the needs of a very broad range of stakeholders in industry, commerce and enforcement". In doing so, to "more clearly present requirements that impose an obligation in relation to the conduct of a food business or the sale of food, or relating to the composition of food or labelling" (Call for Submissions, p.3).

The Group acknowledges that FSANZ has flagged further work in response to *Labelling Logic*, in particular in relation to the nutrition information panel, country of origin labelling and irradiation labelling requirements is continuing, and that drafting has avoided changing the

labelling requirements, which is being addressed through another proposal (Call for Submissions, p.15).

These areas are less concerned with lot identification requirements, which should be addressed through the current drafting process.

Definitions

Existing *Food Code* definitions and proposed changes relating to lot identification are outlined below. The view of the Group in relation to these changes is provided.

Table 1 **Proposed changes to definitions**

Existing <i>Food Code</i> definition	Proposed <i>Food Code</i> definition	Group comment
<p>lot means a quantity of food which is prepared or packed under essentially the same conditions usually –</p> <p>(a) from a particular preparation or packing unit; and</p> <p>(b) during a particular time ordinarily not exceeding 24 hours.</p>	<p>lot means a quantity of a food that the manufacturer or producer identifies as having been prepared, or from which foods have been packaged or otherwise separated for sale, under essentially the same conditions, for example:</p> <p>(a) from a particular preparation or packing unit; and</p> <p>(b) during a particular time ordinarily not exceeding 24 hours.</p>	<p>The Group supports the revised definition of a lot, noting the centrality of the manufacturer or producer in categorising lots.</p>
<p>lot identification means information which indicates, in a clearly identifiable form, the –</p> <p>(a) premises where the food was packed or prepared; and</p> <p>(b) lot of the food in question.</p>	<p>Lot identification for a food product, means a number or other information that identifies:</p> <p>(a) the premises where the food product was prepared or packed; and</p> <p>(b) the lot of which the food product is a part.</p>	<p>The Group considers that the revised definition of lot identification should explicitly reference that the lot identification must be the manufacturer or producer's lot identification.</p> <p>Suggested alternative:</p> <p><i>"Lot identification for a food product means the manufacturer or producers' number or other information that identifies...."</i></p>

Source: FSANZ, 2013; ACIL Allen Consulting 2013

Proposed application of amendments

Under the proposed amendments, the inclusion of lot identification is a mandatory labelling requirement for food for retail sale (Section 1.33), sale to caterers (Section 1.40) and for other sales of food products (Section 1.45). There are however, conditional exceptions in relation to the need for lot identification to be included on both outer and inner packages for supply to caterers and for other sales.

The model food provisions in the *Food Code* relevant to lot identification are outlined below. The view of the Group in relation to these changes is outlined.

Table 2 Group comment on the model food provisions

Proposed amendments	FSANZ guidance regarding proposed amendments (<i>Based on Attachment B</i>)	Group comment
<p>1.47 Prohibition on altering labels</p> <p>(1) A person who sells a food product that is packaged, or deals with a packaged food product before its sale, must not deface the label on the package unless:</p> <p>(a) the relevant authority has given its permission; and</p> <p>(b) if the relevant authority has imposed any conditions on its permission—those conditions have been complied with.</p> <p>(2) Despite subsection (1), a person who sells a food product that is packaged, or deals with a packaged food product before its sale, may re-label the food product if the label contains incorrect information, by placing a new label over the incorrect one in such a way that:</p> <p>(a) the new label is not able to be removed; and</p> <p>(b) the incorrect information is not visible.</p> <p>(3) In this section:</p> <p><i>deface includes alter, remove, erase, obliterate and obscure.</i></p>	<p>This clause repeats the current general prohibition on altering a label on a food product, and the permission for over-labelling, that is now in clause 11 of Standard 1.1.1. The provision is moved to co-locate it with other labelling provisions and has been revised to improve clarity and function. The effect of the provision is that a label may not be altered before sale, without the approval of a relevant authority, unless the label is replaced by a complying label.</p>	<p>The Group supports the intention of this amendment, but considers that any change to labelling must not obscure the manufacturer's lot identification.</p> <p><i>Suggested alternative:</i></p> <p><i>1.47 (2) "Despite subsection (1), a person who sells a food product that is packaged, or deals with a packaged food product before its sale, may re-label the food product if the label contains incorrect information, by placing a new label over the incorrect one in such a way that:</i></p> <p><i>(a) the new label is not able to be removed;</i></p> <p><i>(b) the incorrect information is not visible; and</i></p> <p><i>(c) does not obscure the manufacturer's lot identification, unless it corrects an error in the lot identification and the manufacturer has provided written agreement and instructions to do so".</i></p>

Further clarification or information

The Group welcomes the opportunity to provide further clarification or information to FSANZ. Please contact Charlie Tulloch, Senior Consultant, ACIL Allen Consulting, on (03) 8650 6000 or at c.tulloch@acilallen.com.au to discuss these proposed amendments further.



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