

SUBMISSION – September 2013

Submission to

Food Standards Australia New Zealand

in response to:

Proposal P1025
CODE REVISION

September 2013

Introduction

Having worked in the food industry for many years, and in the last 15 years particularly working directly with the Food Standards Australia and New Zealand Code along with regulators and jurisdiction, I have a good understanding of the issues which face standards setting authorities, regulatory bodies, suppliers and consumers. With this experience, I make comments with respect to the proposed Revision as well as offer alternatives

Details

It is commendable that FSANZ should revise the current version of the Code to make it more workable. It is unfortunate, however, that the premise for this Revision should be to make it easier to prosecute those who may have transgressed, rather than formatting the Code so that it is easier to understand what the requirements are and therefore to comply. Typically those preparing labels will be less familiar with the nuances of the Code than those who are charged with ensuring compliance who will typically be working with it on a daily basis. Consequently, unless it is easy to understand and navigate by those preparing the labels, there will inevitably be oversights. This review will suggest some changes to layout to attempt to address these issues, as well as present particular issues with the proposed new Revision.

Comments on the Introduction to the Proposed Revision

Aiding Navigation

It is proposed that the new format will aid navigation. This is hardly the case. One has to work with at least 3 documents open to ensure that what is required is understood:

- 1 The regulations being consulted
- 2 The schedules which pertain
- 3 The definitions. The definitions (or indications as to where they might be found) have supposedly been gathered into one place, but there are still so many others not referred to in this index which are scattered through the Code one wonders whether the authors themselves gave up.

Within key information being in 3 different places, one has to navigate backwards and forwards to try and make any sense of the Code. This is hardly beneficial for those who are not expert but are trying to comply. It is not particularly easy to do this on a single computer screen, so that working with the regulations will require users to have paper copies all the time which will need to be updated each time there is a change. (Currently it is only the specific Standard which needs to be updated.) This is will be particularly onerous, and as new requirements are introduced they will not necessarily appear in the most logical place.

Significance not Addressed

It is stated on p9 of the Proposal that “The overarching policy principle is that it should be permissible to add substances to foods where:

- ▲ the purpose for adding the substance can be articulated clearly by the manufacturer (ie the 'stated purpose'); and
- ▲ the addition of the substance to food is safe for human consumption; and
- ▲ the substance is added in a quantity and a form that is consistent with delivering the stated purpose; and
- ▲ the addition of the substance is not likely to create a significant negative public health impact to the general population or sub population; and
- ▲ the presence of the substance does not mislead the consumer as to the nutritional quality of the food.”

It would be helpful to give better guidance as to what is meant by significant negative public health impact. Is this 80%, 20%, 2% of the population which is impacted, or does it require that the type of impact be significant, ie require medical intervention? It is important to have a measure of what this figure is (order of magnitude is fine) so that decision-making can be consistent.

Numbering System

A major structural flaw with the new Code is the numbering system. It is not logical to start off with “Section 1.01” and progress through to “Section 1.99” with the next being “Section 1.100”. Consider “Section 1.11” is different to “Section 1.110”! “Section 1.11” would be much better expressed as “Section 1.011”. Please be consistent and number each section with 3 digits, ie start at “section 1.001” et seq. as the proposed method is very confusing.

Comparison Tables

It should be noted that Attachments E and F contain many errors. It is obvious that some paragraphs were either added or deleted in the drafting after these tables were prepared, and these attachments were not updated. This will continue to be the issue when sections are added or deleted from the Code so the confusion of all who use it. The proposed format solves some problems but creates others.

Structure Recommendations

The order of Parts in Chapter 1 is not logical from a product developers’ point of view, nor from a public health point of view. It should proceed from safety from acute problems, through safety from chronic issues, through facts/information and then on to claims, and in each focus area from the most commonly encountered issues through to the less encountered issues. The helps reinforce to the developer the priorities while developing the product as well as while labelling it.

Such an approach would have the Parts and Divisions in the following order :

- Preliminary
- Basic Concepts and Basic Requirements
- Substances added to or present in food (ie food safety)
 - Microbiological limits
 - Contaminants and natural toxicants
 - Prohibited and restricted plants and fungi
 - Agvet chemicals
 - Food Additives
 - Vitamins and minerals
 - Processing aids
 - Novel Foods
 - Foods produced using gene technology
- Processing requirements (ie further possible health risks)
 - Article or materials in contact with food
 - (Processing requirements for meat should be in Chapter 2)
 - Irradiation of food
- Labelling and other Information requirements (ie communication)
 - Requirements to have a label or otherwise provide information
 - Information requirements – warning statements, advisory statements and declarations
 - Date marking of food products
 - Directions for use and storage
 - Information requirements – statement of ingredients
 - Characterising ingredients and components of food
 - Nutrition information requirements
 - Traceability
 - Nutrition, health and related claims
 - Country of origin labelling requirements

Likewise in section 1.33 this same logic of important to less important from a safe consumption point of view should prevail when it comes to labelling the food. The order then becomes identification of the food, warnings, traceability, safe storage and usage, ingredients, nutrition, then claims:

- Name of the food (see section 1.5.2)
- Any advisory and warning statements and declarations (see sections 1.55, 1.56 and 1.57)
 - ◆ for formulated caffeine beverages:
 - declarations of average quantities (see section 2.61);
 - any advisory statements (section 2.61)
 - ◆ for a food product that contains alcohol – if required:
 - a statement of the alcohol content (see section 2.63); or
 - a statement of the number of standard drinks in the product (see section 2.64);
 - ◆ any statements relating to kava (see section 2.57);

- Date marking information (see section 1.66)
- Name and address of supplier (see section 1.54)
- Lot identification (see section 1.53)
- Any storage conditions and directions for use (see section 1.69)
- a statement of ingredients (see section 1.58)
 - information about characterising ingredients and components (see section 1.111)
 - information relating to foods produced using gene technology (see section 1.156)
 - information relating to irradiation of food (see section 1.167)
- Specific Food requirements
 - ◆ For minced meat- if required, the maximum proportion of fat in the minced meat (see section 2.10);
 - ◆ for raw meat joined or formed into the semblance of a cut of meat – any required information relating to that meat (see section 2.11);
 - ◆ for fermented comminuted processed or manufactured meat – any required information relating to how the meat has been processed (see sections 2.12 and 2.13);
 - ◆ for formed or joined fish – any required information relating to that fish (see section 2.20);
 - ◆ any required process declaration for edible oils (see section 2.25);
 - ◆ for juice blend - if required, the name and percentage by volume of each juice in the blend (see section 2.43);
- nutrition information panel (see section 1.100)
 - ◆ any information related to the composition of packaged water (see section 2.47);
 - ◆ for an electrolyte drink or electrolyte drink base - a declaration of the required compositional information (subsection 2.51(3));
 - ◆ as required information for reduced sodium salt mixtures and salt substitutes (see section 2.163);
- for a food product in a small package – the required nutrition information
- Information about characterising ingredients and components
- information relating to nutrition, health and related claims (see sub-section 1.95(4))
 - ◆ for an electrolyte drink or electrolyte drink base - if a claim is made that the drink is isotonic, hypertonic – a declaration of the osmolality of the drink (See section 2.53);
 - ◆ for special purpose foods or amino acid modified foods (see sections 2.156 and 2.157);
 - ◆ the required statements and other information for infant formula product (see Division 1 of Part 9 of Chapter 2);
 - the required statements and other information for food for infants (see Division 2 of Part 9 of Chapter 2);
 - ◆ the required statements and other information for formulated meal replacements and formulated supplementary foods (see Division 3 of Part 9 of Chapter 2);

- ◆ the required statements and other information for formulated supplementary sports foods (see Division 4 of Part 9 of Chapter 2);
- ◆ the required statements and other information for foods for special medical purposes (see Division 5 of Part 9 of Chapter 2);
- Country of origin information if required (see section 1.32)

Specific Comments on Proposed Code Sections

We were asked in the Introduction to the proposal to comment mainly on the structure of the Code as provided in the Proposal. Having done that above, the following are comments on individual sections throughout the proposed Code.

Section 1.06

“... unless the contrary intention appears” should not be included in this section. There should be no case within the Code where it contradicts itself – especially as all definitions are now being brought into the one listing. Presumably this relates to the suggestion that there are some terms which have different definitions in various parts of the Code. If this is the case, these should be highlighted so that recommendations for resolution can be sought.

“lot” and “lot identification” are improvements over the old definitions

The definition of “salt” gives a lot of difficulty. For the purposes of the Code, would a better definition be “the word salt without any other descriptor shall mean sodium chloride”

It is stated that the definition of “sugar” gives difficulty. I recommend that for the purpose of the Code “sugar” should refer to sucrose and those foods which are predominantly sucrose. “Sugars” on the other hand is defined in section 2.75.

The Code requires the 'average quantity' of a variety of substances to be listed in the nutrition information about a food product, for example sodium, potassium, fatty acids, amino acids and vitamins and minerals. It is preferable that the examples should refer to the components which are in all Nutrition Panels such as protein, total fat and sodium as these are in all Nutrition Panels. There are limits to the amounts of vitamins and some minerals which can be declared in Nutrition Panels and therefore these are not necessarily average values.

Part 3 Labelling and other information requirements.

This section of the Code is particularly cumbersome and difficult to work through. There is not a great deal of logic to it. If it was set up in a manner that presented the reasons for the various elements in priority order, then it becomes more obvious why the different sets of information need to be provided on labels or by other means. My recommendation is that it should be set up as below. (I have used the term Priority so as not to confuse the partition

with that in either the current or proposed code. A more appropriate term should be used if this proposal is adopted.)

Priority 1

Packaged products must be traceable

Supplier name and address

Date Marking

Lot number

Priority 2

Packaged foods must have warning statements for certain substances

Priority 3

Packaged products must be warned of some possible safety issues

Storage and use

Irradiation of foods

Genetically-modified foods

Priority 4

Packaged products must declare ingredients

Priority 5

Nutrition information shall be provided

Priority 6

Claims permitted by regulations may be made.

For Australia, country of origin must be declared

With this structure, the various requirements can be introduced as follows:

- ◆ Packaged Retail Products provide the information against all priorities
- ◆ Food products in hampers require packaged items to comply with all priorities and unpackaged items must be accompanied by information on all priorities as well as the hamper itself requiring the name and address of the supplier of the hamper (presumably the packed hamper rather than the carrying item itself)
- ◆ Retail sales of food products in individual portion pack items require labels under Priority 2
- ◆ The name and address of the supplier must be prominently displayed in or on vending machines.
- ◆ For food which does not require to bear a label, any instructions related to storage and use must accompany the product, information according to Priority 2 must be displayed. Information according to Priorities 1-6 must be available to the purchaser either on request, accompanying the food or displayed with the food.

- ◆ Food sold to caterers must be labelled according to Priorities 1, 2 and 3. If the food product is contained in more than one package, the package that is visible to the purchaser at the time of purchase (*the outer package*) is required to bear a label that includes the name of the product and the information in Priority 1 provided that another package within the outer package bears a label which includes the information according to Priorities 2 and 3. Information according to Priorities 4, 5 and 6 must be made available to the purchaser on request to enable the Purchaser to comply with the Code in a sale or of another food product using it as an ingredient. If this information is requested by the purchaser or by a relevant authority, it must be supplied.

This simplification would make the requirements a lot easier to understand and therefore to comply with.

Section 1.33 See the recommendations under the heading Structure Recommendations (above).

Section 1.39 The two sections 1.32 and 1.39 are essentially the same. 1.32 is in the more appropriate place, so 1.39 should be deleted.

Section 1.50 General legibility requirements. 1(a) legible (means “Clear enough to read”), therefore 1(c) be large enough so that it can be read easily would appear to be superfluous. However, this is an indeterminate condition as people with failing eyesight may not be able to read it easily. It requires some further and tighter definition.

Section 1.55 This is set out better than in the original

Section 1.58 This is clearer than in the original

Section 1.61 This is clearer than in the original

Section 1.69 The phrase “... ensure that the food product will keep until the use-by date ...” needs to be reworded. A suitable alternative might be “... ensure that the food product will maintain its intended quality until the use-by date ...”.

1.102(2)(b) Carbohydrate may be replaced by 'Carbohydrate, total'. Where does the term Carbohydrate come from? We are informed in section S11.02 in Schedule 11 how to calculate 'carbohydrate by difference' and 'available carbohydrate', but we are not informed where the value for 'carbohydrate' or 'carbohydrate, total' comes from. It is presumed, but not stated, that either of these values 'carbohydrate by difference' or 'available carbohydrate' is acceptable.

1.124(1), 1.133(2) '... an additive permitted at GMP; ...' GMP stand for Good Manufacturing Practice, so surely this phrase should read '... an additive permitted according to GMP; ...'.

1.130(3) This subsection states the M_{rq} is rounded to the nearest 2 significant figures, whereas the original in 1.3.2 section 8(2) is rounded to the nearest multiple of 5. This is an unflagged change.

Schedule 11 S11.02 This section describes the calculation of available carbohydrate and carbohydrate by difference. In constructing the Nutrition Information Panel, we need a value for Carbohydrate. There is no instruction as to which of available carbohydrate or carbohydrate by difference are to be used or indeed if some other value is required. See comments on Section 1.102(2)(b) above.

Summary

This is a good opportunity to make the Code more user friendly for those who have to comply with it, and recommendations are made as to how this should be done. Some of the recommended changes to definitions are good in that they are clearer and more precise, and further clarifications have been recommended or requested.

I look forward to the next round of reviews which are expected to focus more on the details.

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