

17 December 2012
[29-12]

Call for submissions – Proposal 1019

Carbon monoxide as a processing aid for fish

FSANZ has assessed a proposal prepared to ensure that carbon monoxide is not permitted to be used as a processing aid for fish and has prepared a draft food regulatory measure. Pursuant to section 61 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), FSANZ now calls for submissions to assist consideration of the draft food regulatory measure.

For information about making a submission, visit the FSANZ website at [information for submitters](#).

All submissions on applications and proposals will be published on our website. We will not publish material that is provided in-confidence, but will record that such information is held. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1991*. Submissions will be published as soon as possible after the end of the public comment period. Where large numbers of documents are involved, FSANZ will make these available on CD, rather than on the website.

Under section 114 of the FSANZ Act, some information provided to FSANZ cannot be disclosed. More information about the disclosure of confidential commercial information is available on the FSANZ website at [information for submitters](#).

Submissions should be made in writing; be marked clearly with the word 'Submission' and quote the correct project number and name. While FSANZ accepts submissions in hard copy to our offices, it is more convenient and quicker to receive submissions electronically through the FSANZ website via the link on [documents for public comment](#). You can also email your submission directly to submissions@foodstandards.gov.au.

There is no need to send a hard copy of your submission if you have submitted it by email or via the FSANZ website. FSANZ endeavours to formally acknowledge receipt of submissions within 3 business days.

DEADLINE FOR SUBMISSIONS: 6pm (Canberra time) 11 February 2013

Submissions received after this date will not be considered unless an extension had been given before the closing date. Extensions will only be granted due to extraordinary circumstances during the submission period. Any agreed extension will be notified on the FSANZ website and will apply to all submitters.

Questions about making submissions or the application process can be sent to standards.management@foodstandards.gov.au.

Hard copy submissions may be sent to one of the following addresses:

Food Standards Australia New Zealand
PO Box 7186
Canberra BC ACT 2610
AUSTRALIA
Tel +61 2 6271 2222

Food Standards Australia New Zealand
PO Box 10559
The Terrace WELLINGTON 6143
NEW ZEALAND
Tel +64 4 978 5630

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1. Executive summary

The process of treating high value red-fleshed fish with carbon monoxide to maintain colour is well known and has been practised for at least 12 years in some parts of the world. Unlike other gases commonly used in fish and meat packaging (for instance nitrogen), carbon monoxide is neither inert nor are its effects reversible. Carbon monoxide treatment of fish is used where the red colour is an important quality attribute. Internationally it has been of concern because of its ability to hide the age of fish and potential food safety issues associated with poorly handled tuna.

Agencies responsible for enforcing the *Australia New Zealand Food Standards Code* (the Code) have consistently regarded the treatment of fish with carbon monoxide gas to fish as not permitted by the Code.

It has been reported that some processors are using carbon monoxide as a processing aid during fish processing.

The purpose of this Proposal is to make it clear that, because carbon monoxide has an ongoing technological function in fish (colouring and/or colour fixing), it is not permitted to be used as a processing aid.

FSANZ has been advised that the current wording in the Code in regard to treating fish with carbon monoxide is not specific enough and that, as there is an established risk of its non-permitted use in the treatment of fish in domestic and international trade, clarification is required to reinforce that this treatment is not permitted.

This clarification is consistent with international food standards and many other countries' standards. Codex Alimentarius does not list carbon monoxide as a food additive, and in the Codex Alimentarius Inventory of Processing Aids carbon monoxide is only listed as minor component of a combustion product gas. The treatment of fish with carbon monoxide gas is not permitted in the USA, Singapore, Canada, the EU and Japan. These views relate to the use of carbon monoxide gas directly.

An amendment is proposed to the processing aid standard to remove the permission for carbon monoxide as a processing aid for fish.

2. Introduction

2.1 The Proposal

The purpose of this Proposal is to make it clear that, because carbon monoxide has an ongoing technological function in fish (colouring and/or colour fixing), it is not permitted to be used as a processing aid.

While the use of carbon monoxide during processing of fish may have a technological purpose, it is well recognised that it reacts irreversibly with dark muscle tissue of tuna and similar fish, resulting in the stabilisation of colour (bright cherry red). Oxidation and discoloration are prevented when carbon monoxide is bound, preserving, for an extended period of time, the bright red colour associated with tissue that is fresh. (Anderson and Wu, 2005).

2.2 The current Standard

A **processing aid** is defined in clause 1 of Standard 1.3.3 of the *Australia New Zealand Food Standards Code (the Code)* as *a substance used in the processing of raw materials, foods or ingredients, to fulfil a technological purpose relating to treatment or processing, but does not perform a technological function in the final food.*

Unless permitted in Standard 1.3.3, processing aids must not be added to food.

Carbon monoxide is listed in Standard 1.3.3 as a generally permitted processing aid, *that may be used in the course of manufacture of any food at a level necessary to achieve a function in the processing of that food.*

A substance used as a processing aid in accordance with Standard 1.3.3 is not required to be included in the list of ingredients.

A processing aid is differentiated from a **food additive**, which is described in Standard 1.3.1 as *a substance not normally consumed as a food in itself and not normally used as an ingredient of food, but which is intentionally added to a food to achieve one or more of the technological functions specified in Schedule 5.* Schedule 5 includes the technological functions colouring (*adds or restores colour to foods*) and colour fixative (*stabilises, retains or intensifies an existing colour of a food*). There is no permission for carbon monoxide to be used as a food additive.

2.3 Reasons for preparing the Proposal

It has been reported that some processors are using carbon monoxide as a processing aid during fish processing.

The Proposal was prepared because regulators and industry requested regulatory certainty that, as an effect of the carbon monoxide treatment is colour preservation in the final food, its use in fish does not meet the definition of a processing aid.

2.4 Procedure for assessment

The Proposal is being assessed under the General Procedure.

3. Summary of the assessment

3.1 Risk assessment

The process of treating high value red-fleshed fish with carbon monoxide is well known and has been practised for at least 10 years in some parts of the world (for example, see <http://www.nytimes.com/2004/10/06/dining/06TUNA.html>). Unlike other gases commonly used in fish and meat packaging (for instance nitrogen), carbon monoxide is neither inert nor are its effects reversible. Apart from any specific issues with the Code, it has been of concern because of its ability to hide fish age and potential food safety issues associated with poorly handled tuna (e.g. see Anderson and Wu (2005) and Agri-Food and Veterinary Authority of Singapore, <http://www.ava.gov.sg/NR/ronlyres/491431C1-248F-4BE3-BA78-07AA5D32163D/13369/CarbonMonoxideTreatedTuna991.pdf>).

Carbon monoxide treatment of fish is used typically where the red colour is an important quality attribute. It's most commonly used for tuna, but other similar fish such as mahi-mahi are treated, and even tilapia (for example, see <http://www.seafoodsource.com/newsarticledetail.aspx?id=4294991123>).

Referring to www.Alibaba.com , a trading website, there are numerous examples of both treated and untreated tuna and other species. For example, http://www.alibaba.com/product-free/126585634/Tuna_steak_Tuna_saku_Tuna_loin.html

Where carbon monoxide treatment as an additive is permitted e.g. in the USA, labelling is required. Some Yellowfish Tuna Loins imported into Australia were labelled "treated with carbon monoxide to promote color retention".

3.1.1 Past views of regulators re carbon monoxide treatment of fish

Australian and New Zealand agencies that enforce the Code have consistently regarded the treatment of fish with carbon monoxide gas to fish as not permitted by the Code. Examples include letters from FSANZ and Australian state agencies to various seafood processors and sellers, a letter from AQIS to the Seafood Importers' Association, and a presentation from the NSW Food Authority to a seafood conference in 2005.

In addition, in December 2000 AQIS revoked the Food Processing Accreditation System of a fish processor in Queensland because of the discovery of the use of carbon monoxide in the processing of fish for export. It is reported that this fish was not able to be exported or sold on the local market.

The context of these views relates to the use of carbon monoxide gas directly. It is recognised that wood smoke naturally contains some carbon monoxide; however Australian and New Zealand regulators have considered that smoking tuna is effectively regulated by the Code.

3.1.2 Code clarity

The Code does not currently permit the use of carbon monoxide as a food additive. However, it does provide a general permission for its use on any food as a processing aid.

FSANZ has been advised that even though regulators do not believe that treatment of fish with carbon monoxide meets the definition of a processing aid, there is a concern that the general permission for the use of carbon monoxide as a processing aid could permit its use on fish.

3.1.3 Food Safety

Myoglobin and haemoglobin are the oxygen-carrying proteins that occur in muscle and blood, respectively. Carbon monoxide also binds to both proteins but with much higher affinity than oxygen (~1-2 orders of magnitude). The treatment of any muscle, such as tuna flesh, with carbon monoxide results in the formation of carboxymyoglobin, which gives the muscle a stable red colour.

Carboxymyoglobin (or more specifically the red colour that it imparts) is relatively stable during frozen storage and to bacterial spoilage, and can last beyond the actual shelf-life of the fish (Kristinsson et al 2006). As a change in colour is used by consumers as a primary assessment of quality, carbon monoxide treatment has the potential to make inferior quality fish appear aesthetically more pleasing to consumers (Pivarnik et al 2011) or to mask decomposition resulting in an increased risk of histamine fish poisoning. Indeed Ludlow et al (2004) reported that histamine can reach high levels in carbon monoxide treated tuna while the colour remains acceptable.

On this basis, the use of carbon monoxide as a food additive to colour tuna is considered to pose a food safety issue.

3.1.4 International comparison of permissions for carbon monoxide permissions

Codex Alimentarius does not list carbon monoxide as a food additive, and in the Codex Inventory of Processing Aids carbon monoxide is only listed as a minor component of a combustion product gas.

The use of carbon monoxide to treat fish is undertaken in some Asian countries.

The treatment of fish with carbon monoxide gas is not permitted in other countries/regions, such as USA (see Acheson, D (2007) for the USA position), Singapore, Canada, the EU and Japan.

Nevertheless, the export or attempted export of carbon-monoxide treated fish to these countries persists e.g. see https://webgate.ec.europa.eu/rasff-window/portal/index.cfm?event=notificationDetail&NOTIF_REFERENCE=2010.1352.

3.2 Cost benefit issues

In a letter dated 3 July 2012, reference 13209, the Office of Best Practice Regulation ruled that this Proposal was a clarification of existing requirements and was considered machinery in nature. Therefore a Regulation Impact Statement is not required.

3.2.1 Food industry

FSANZ is unaware of domestic food industry participants in Australia using carbon monoxide treatment of fish. Some imported fish, particularly tuna, is subjected to this process. The volume of imported tuna using carbon monoxide is estimated at around 100 tons per month, with a value of around \$A12 million per annum. In terms of the intention of the Code these are prohibited imports. It could be argued that because they are dealing in treated tuna that may look deceptively fresher, their commercial advantage comes at a cost to the consumer.

FSANZ is unaware of carbon monoxide treated fish being produced in New Zealand.

Some importers, who are currently importing fish treated with carbon monoxide, may lose some sources of supply. They will of course be able to sell tuna processed in ways that do meet the Code requirements. It is estimated that the additional cost may be around 10 per cent, or about a million dollars a year. However, these costs arise from amending processing and purchasing procedures so as to be consistent with the current requirements of the Code.

On the other hand, those trading in untreated fish, including Australian-sourced, would benefit as a consequence of the 'level playing field'.

3.2.2 Regulators

Jurisdictions will benefit because there will be a greater degree of certainty when dealing with industry. An amendment to the Code, specifically prohibiting the treatment of fish with carbon monoxide will end the prevailing ambiguity faced by regulators and industry, and increase the likelihood of consumer health and safety.

3.2.3 Consumers

Since the use of carbon monoxide has the ability to enable fish to maintain a permanent red colour, consumers could be deceived into believing that they are purchasing a high quality piece of fish paying higher than the market price for an equivalent non-treated piece of fish. The other potential cost relates to potential health cost to the consumer. Carbon monoxide treatment may cover evidence that a product has been mistreated preventing the consumers from identifying spoilt product or product treated in a way that could cause histamine poisoning.

3.3 Risk management

FSANZ has considered whether non-regulatory measures could be used to address this issue, such as an editorial note in the Code or additional advice to industry, and has concluded that these would not be effective, and therefore the appropriate risk management measure is to amend the Code.

3.3.1 Compliance and enforcement

As one of the compliance and enforcement tools, it is possible to conclude whether a particular product has or has not been treated with carbon monoxide, for example see Anderson and Wu (2005) and Bernardi et al (2008).

Imports of fish into the EU are routinely screened for treatment with carbon monoxide and the result used to determine import eligibility.

3.4 Decision

FSANZ is proposing to remove the permission for carbon monoxide as a processing aid for fish.

3.5 Approach to the assessment

When assessing this Proposal and the subsequent development of a food regulatory measure, FSANZ has had regard to the following matters in section 59 of the FSANZ Act:

- whether costs that would arise from a food regulatory measure developed or varied as a result of the proposal outweigh the direct and indirect benefits to the community, Government or industry that would arise from the development or variation of the food regulatory measure
 - Section 3.2 outlines the costs and benefits, and it is concluded it is appropriate to clarify that it is not permissible to treat fish with carbon monoxide.
- whether other measures (whether available to FSANZ or not) would be more cost-effective than a food regulatory measure developed or varied as a result of the Proposal
 - As this proposal is intended to clarify an existing Code restriction and to make it more enforceable, there are no other measures that would be more cost-effective.
- any relevant New Zealand standards
 - There are no additional relevant New Zealand standards
- any other relevant matters
 - There are no other relevant matters.

3.5.1. Addressing FSANZ’s objectives for standards-setting

FSANZ has also considered the three objectives in subsection 18(1) of the FSANZ Act during the assessment.

3.5.1.1 Protection of public health and safety

This is addressed in part 3.1.3, which identified that the use of carbon monoxide could disguise the age and poor handling of fish, which in some cases could result in food safety issues.

3.5.1.2 The provision of adequate information relating to food to enable consumers to make informed choices

No issues were identified under this objective.

3.5.1.3 The prevention of misleading or deceptive conduct

While there is the potential for fish treated with carbon monoxide to mislead consumers regarding the age or condition of the fish, the main basis of the Proposal is to clarify an existing Standard in the Code to make it clear that this treatment is not permitted.

3.5.1.4 Subsection 18(2) considerations

FSANZ has also had regard to the matters listed in subsection 18(2):

- the need for standards to be based on risk analysis using the best available scientific evidence
 - the proposed clarification of the standard is based on the best available scientific evidence, in particular see section 3

- the promotion of consistency between domestic and international food standards
 - this is addressed in section 3.1.4
- the desirability of an efficient and internationally competitive food industry
 - this is addressed in section 3.2
- the promotion of fair trading in food
 - this is addressed in section 3.2
- any written policy guidelines formulated by the Ministerial Council¹.
 - there are no relevant policy guidelines for this proposal

3.6. Risk communication

A communication strategy has been developed for this Proposal. All calls for submissions are notified via the FSANZ Notification Circular, media release and through FSANZ's social media tools and *Food Standards News*.

Subscribers and interested parties are also notified via email about the availability of reports for public comment.

The process by which FSANZ considers standard development matters is open, accountable, consultative and transparent. Public submissions are called to obtain the views of interested parties on issues raised by the proposal and the impacts of regulatory options. Documents relating to P1019 are available on the website at:

<http://www.foodstandards.gov.au/foodstandards/proposals/proposalp1019carbonm5490.cfm>.

Draft variations are considered for approval by the FSANZ Board taking into account public comments received from this call for submissions.

Individuals and organisations that make submissions on this Proposal will be notified at each stage of the assessment.

If a draft variation to the Code is approved by the FSANZ Board, that decision is notified to COAG Legislative and Governance Forum on Food Regulation. If the decision is not subject to a request for a review, stakeholders including the public will be notified of the gazettal of the variation to the Code in the national press and on the FSANZ website.

3.6.1 World Trade Organization (WTO)

As members of the World Trade Organization (WTO), Australia and New Zealand are obliged to notify WTO member nations where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

¹ Now known as the COAG Legislative and Governance Forum on Food Regulation

There are no relevant international standards, and this treatment is not listed in Codex Alimentarius, so amending the Code to make it clear that treatment of fish with carbon monoxide is not permitted is unlikely to have a significant effect on international trade as various government agencies have previously advised fish processors and importers that this treatment is not intended to be permitted. Therefore, a notification to the WTO under Australia's and New Zealand's obligations under the WTO Sanitary and Phytosanitary Measures Agreement was not considered necessary.

4. Draft variation

The draft variation to remove the permission for carbon monoxide as a processing aid for fish is at Attachment A.

4.1.1 Implementation

As some fish is likely to be contracted in advance, a reasonable period is needed to enable new contracts. However, given the supply chain, there seems no need for an additional stock in trade provision.

The variations will take effect 6 months after their gazettal, and there are to be no transitional arrangements. Stock in trade provisions will not apply.

5. References

Acheson, D (2007), Statement on FDA Import Protection Plan
<http://www.fda.gov/NewsEvents/Testimony/ucm109636.htm>

Bernardi C, Chiesa LM, Soncin S, Passerò E, Biondi PA, Determination of carbon monoxide in tuna by gas chromatography with micro-thermal conductivity detector. J Chromatogr Sci., 2008 May-Jun, 46(5):392-4.

Anderson C. R. and Wen-Hsin Wu, Analysis of Carbon Monoxide in Commercially Treated Tuna (Thunnus spp.) and Mahi-Mahi (Coryphaena hippurus) by Gas Chromatography/Mass Spectrometry. . J. Agric. Food Chem., 2005, 53 (18), pp 7019–7023

Kristinsson HG, Balaban MO & Otwell WS (2006) Microbial and quality consequences of aquatic foods treated with carbon monoxide and filtered wood smoke. In: Modified atmospheric processing and packaging of fish: Filtered smokes, carbon monoxide and reduced oxygen packaging. Blackwell publishing.

Ludlow, N, and Kristinsson, H.G., Balaban, M.O. and Welt, B.A. (2004). Effect of different carbon monoxide and filtered smoke treatments on the quality and safety of yellowfin tuna (Thunnus albacares) muscle. Proceedings from the 2004 Institute of Food Technology Annual Meeting.
http://ift.confex.com/ift/2004/techprogram/paper_24784.htm .

Pivarnik LF, Faustman C, Rossi S, Suman SP, Palmer C, Richard NL, Ellis PC & DiLiberti M (2011) Quality Assessment of Filtered Smoked Yellowfin Tuna (Thunnus albacares) Steaks. Journal of Food Science 76(6): S369-S379

Attachments

- A. Draft variation to the *Australia New Zealand Food Standards Code*
- B. Draft Explanatory Statement

Attachment A – Draft variation to the *Australia New Zealand Food Standards Code*



Food Standards (Proposal P1019 – Carbon Monoxide as a Processing Aid for Fish) Variation

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The Standard commences on the date specified in clause 3 of this variation.

Dated [To be completed by Standards Management Officer]

Standards Management Officer
Delegate of the Board of Food Standards Australia New Zealand

1 Name

This instrument is the *Food Standards (Proposal P1019 – Carbon Monoxide as a Processing Aid for Fish) Variation*.

2 Variation to Standards in the *Australia New Zealand Food Standards Code*

The Schedule varies the Standards in the *Australia New Zealand Food Standards Code*.

3 Commencement

The variation commences 6 months after the date of gazettal, except for Item 1.2 which commences 18 months after the date of gazettal.

SCHEDULE

[1] Standard 1.3.3 is varied by

[1.1] omitting clause 3 and substituting

“3 Generally permitted processing aids

(1) The following processing aids may be used in the course of manufacture of any food at a level necessary to achieve a function in the processing of that food –

- (a) foods, including water; and
- (b) food additives listed in Schedule 2 of Standard 1.3.1; and
- (c) a processing aid specified in the Table to this clause.

(2) Carbon monoxide may be used as a processing aid in the course of manufacture of any food, except for fish, at a level necessary to achieve a function in the processing of that food.

(3) Fish that has been treated with carbon monoxide prior to the commencement of Item 1 of the Schedule to the *Food Standards (Proposal P1019 – Carbon Monoxide as a Processing Aid for Fish) Variation* shall not be taken to comply with subclause 3(2) by virtue of subclause 1(2) of Standard 1.1.1.

Table to clause 3

Activated carbon
Ammonia
Ammonium hydroxide
Argon
Bone phosphate
Diatomaceous earth
Ethoxylated fatty alcohols
Ethyl alcohol
Fatty acid polyalkylene glycol ester
Furcellaran
Hydrogenated glucose syrups
Isopropyl alcohol
Magnesium hydroxide
Oleic acid
Oleyl oleate
Oxygen
Perlite
Phospholipids
Phosphoric acid
Polyethylene glycols
Polyglycerol esters of fatty acids
Polyglycerol esters of interesterified ricinoleic acid

Polyoxyethylene 40 stearate
Potassium hydroxide
Propylene glycol alginate
Silica or silicates
Sodium hydroxide
Sodium lauryl sulphate
Sulphuric acid
Tannic acid

”

[1.2] omitting subclause 3(3)

Attachment B – Draft Explanatory Statement

1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 2 of Part 3 of the FSANZ Act specifies that the Authority may prepare a proposal for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering a proposal for the development or variation of food regulatory measures.

FSANZ prepared Proposal P1019 to ensure that carbon monoxide is not permitted to be used as a processing aid for fish and has prepared a draft food regulatory measure. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft Standard.

2. Purpose and operation

The Authority has approved a variation to the Code to clarify that carbon monoxide treatment of fish does not comply with the interpretation of a processing aid in Code Standard 1.3.3. This is because treating fish with carbon monoxide gas performs a technological function in the fish, namely colouring and/or colour fixing.

The listing of carbon monoxide as a generally permitted processing aid in all foods may result in ambiguity. Accordingly this permission is revoked for fish.

As some fish will be contracted in advance, a reasonable period is needed to enable new contracts and to sell current stock. To accommodate that, the variation will take effect 6 months after gazettal.

Given the supply chain, there seems no need for an additional stock in trade provision, and so this provision will be excluded. This exclusion ceases to have relevance 12 months after commencement, and so will be removed at that point.

3. Documents incorporated by reference

The variation to food regulatory measures does not incorporate any documents by reference.

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1019 has included one round of public consultation following an assessment and the preparation of a draft Standard and associated report. Submissions were called for on 17 December 2012 for an eight-week consultation period.

A Regulation Impact Statement (RIS) was not required because the proposed variations to Standard 1.3.3 are intended to clarify existing requirements.

5. Statement of compatibility with human rights

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

6. Variations

6.1 *Item [1.1]*

This Item replaces the current clause 3 with subclauses 3(1)–(3).

Subclause 3(1) is a restatement of the current clause 3.

Subclause 3(2) permits the use of carbon monoxide as a processing aid for any food except fish.

Subclause 3(3) expressly provides that the stock in trade provision in subclause 1(2) of Standard 1.1.1 does not apply to fish treated with carbon monoxide before the commencement of this variation.

The Table to the clause is a restatement of the current Table, apart from the removal of carbon monoxide.

This variation takes place 6 months after gazettal.

6.1 *Item [1.2]*

This Item removes the new subclause 3(3).

This variation takes place 18 months after gazettal.