

30 August 2000  
04/01

**Development of joint  
Australia New Zealand Food Standards**

**As part of the process of the Review of the  
*Food Standards Code***

**Preliminary Provisions – Application, Interpretation and  
General Prohibitions**

**Proposal/Full Assessment Report**

**Proposal P225**

**August 2000**

The Authority should receive written submissions  
no later than **12 September 2000**

Submissions should be sent to:

**The Project Manager - Proposal P225**  
Australia New Zealand Food Authority  
at one of the following addresses:

PO Box 7186  
Canberra Mail Centre ACT 2610  
Australia

or

PO Box 10559  
The Terrace  
Wellington 6036  
New Zealand

Submissions will be placed on the Authority's public register (unless a claim of commercial confidentiality is made and accepted by the Authority) and will therefore be open to public scrutiny.

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This paper was prepared by the Australia New Zealand Food Authority.

## **1 PREFACE**

In July 1996 an Agreement between Australia and New Zealand came into force which established the Australia New Zealand Food Authority (the Authority)—a system for developing joint food standards and an Australia New Zealand Food Standards Code.

The aim of the Agreement is to extend the Australian food standard system to include New Zealand so that food standards developed by the Authority and approved by the Australia New Zealand Food Standards Council can be adopted throughout Australia and in New Zealand. The current review of the Australian *Food Standards Code* is an important element in developing joint standards. The provisions of the Agreement provide common policy objectives for developing food standards and a common approach to a transparent, timely, consultative and accountable standards setting process—both key features of the review process. The Authority is seeking to ensure full New Zealand participation in the standards setting process and the review of food standards.

Public comment was sought on the recommendations made in the paper. This paper takes these comments received in respect of each issue into consideration and makes further recommendations and proposes draft variations to the *Food Standards Code* for revised requirements for public comment.

## **2 BACKGROUND**

### **2.1 Australia New Zealand Food Authority**

The Australia New Zealand Food Authority is a joint statutory body responsible for making recommendations on food standards which, when approved by the Australia New Zealand Food Standards Council, are adopted by reference and without amendment into the food laws of the Australian States and Territories. In New Zealand, for the time being, such standards apply as part of a system of dual standards, where the Australian *Food Standards Code* (AFSC) is recognised as an alternative to the New Zealand *Food Regulations 1984* (NZFR). At a future date, standards in the NZFR will be repealed and the standards developed under the joint system will apply in both countries.

The Authority's other functions include;

- developing codes of practice for industry on any matter that may be included in a food standard;
  - coordinating the surveillance of food in Australia;
  - liaising with the Ministry of Health in New Zealand on arrangements for imported foods;
  - conducting research and surveys in relation to food standards matters;
  - developing food safety education initiatives in cooperation with the States and Territories;
- and

- assisting in the coordination of food recalls in Australia.

The Ministry of Health manages recalls in New Zealand. In Australia, the Authority develops assessment policies in relation to imported food.

## **2.2 Review of Food Standards**

In July 1996 an Agreement between Australia and New Zealand came into force which established the Australia New Zealand Food Authority (ANZFA) - a system for developing joint standards and an Australia New Zealand *Food Standards Code* (joint FSC).

The aim of the Agreement is to extend the Australian food standard system to include New Zealand so that food standards developed by the Australia New Zealand Food Authority and approved by Ministerial Council can be adopted throughout Australia and in New Zealand. The provisions of the Agreement provide common policy objectives for developing food standards and a common approach to a transparent, timely, consultative and accountable standards setting process - both key features of the review process. The Authority is seeking to ensure full New Zealand participation in the standards setting process and the review of food standards.

In developing or reviewing food standards, the Authority must have regard to the objectives outlined in section 10 of the *Australia New Zealand Food Authority Act 1991*.

Consistent with these statutory objectives and the policies of the Authority, the review will, where possible;

- reduce the level of prescriptiveness of standards to facilitate innovation by allowing wider permission on the use of ingredients and additives, but with consideration of the possible increased need for consumer information;
- develop standards which are easier to understand and make amendment more straightforward;
- replace standards which regulate individual foods with standards that apply across all foods or a range of foods;
- consider the possibility of industry codes of practice as an alternative to regulation; and
- facilitate harmonisation of food standards between Australia and New Zealand.

The review will also be carried out in accordance with the competition policy principles which have been adopted by the Council of Australian Governments (COAG) and the draft Code of Good Regulatory Practice (New Zealand). These principles require the review of all business regulation to remove unnecessary obstacles to competition, and an assessment of the social, environmental, and economic impacts as well as the impacts on health of proposed regulation on all affected sectors of the community.

## 2.3 Food Standards Setting in Australia and New Zealand

The Governments of Australia and New Zealand entered an Agreement in December 1995 establishing a system for the development of joint food standards. ANZFA is now developing a joint FSC, which will provide compositional and labelling standards for food in both Australia and New Zealand.

- **Food imported into New Zealand other than from Australia** must comply with either the Australian *Food Standards Code*, as gazetted in New Zealand, or the New Zealand *Food Regulations 1984*, but not a combination of both. However, in all cases maximum residue limits for agricultural and veterinary chemicals must comply solely with those limits specified in the New Zealand *Food Regulations 1984*.
- **Food imported into New Zealand from Australia** must comply with either the Australian *Food Standards Code* or the New Zealand *Food Regulations 1984*, but not a combination of both. However, in all cases maximum residue limits for agricultural and veterinary chemicals must comply solely with those limits specified in the New Zealand (Maximum Residue Limits of Agricultural Compounds) Mandatory Food Standard 1999
- **Food imported into New Zealand from Australia** must comply with either the Australian *Food Standards Code* or the New Zealand *Food Regulations 1984*, but not a combination of both.
- **Food imported into Australia from New Zealand** must comply with the Australian *Food Standards Code*. However, under the provisions of the Trans-Tasman Mutual Recognition Arrangement, food may be imported into Australia from New Zealand if it complies with the New Zealand *Food Regulations 1984* or *Dietary Supplements Regulations 1985*.
- **Food manufactured in Australia and sold in Australia** must comply solely with the Australian *Food Standards Code*, except for exemptions granted in Standard T1.

In addition to the above, all food sold in New Zealand must comply with the New Zealand *Fair Trading Act 1986* and all food sold in Australia must comply with the Australian *Trade Practices Act 1974*, and the respective Australian State and Territory *Fair Trading Acts*.

Any person or organisation may apply to ANZFA to have the *Food Standards Code* amended. In addition, ANZFA may develop proposals to amend the Australian *Food Standards Code* or to develop joint Australia New Zealand food standards. ANZFA can provide advice on the requirements for applications to amend the *Food Standards Code*.

## 2.4 Regulatory Impact Analysis

The Authority is required, in the course of development of regulations suitable for adoption in Australia and New Zealand, to consider the impact of various options (including non-regulatory options) on all sectors of the community, including consumers, the food industry and governments in both countries. The regulatory impact assessment will identify and evaluate, though not be limited to, the costs and benefits of the regulation, and its health, economic and social impacts.

To assist in this process, comment on potential impacts or issues pertaining to these regulatory options are sought from all interested parties in order to complete the development of the regulatory impact statement. Public submissions should clearly identify relevant impact(s) or issues and provide support documentation where possible.

## **2.5 World Trade Organization (WTO) Notification**

Both Australia and New Zealand are members of the World Trade Organization and signatories to the agreements on the Application of Sanitary and Phytosanitary Measures (SPS agreement) and on Technical Barriers to Trade (TBT agreement). Within Australia, a memorandum of understanding binding all States and Territories to the agreements has been put in place by the COAG.

In addition, the agreement between the Government of Australia and the Government of New Zealand on joint food standards explicitly requires the Authority to ensure that food standards are consistent with the WTO obligations of both countries.

The WTO agreements are predicated on a set of underlying principles that standards and other regulatory measures should be;

- based on sound scientific principles;
- developed using consistent risk assessment practices;
- transparent;
- no more trade-restrictive than necessary to achieve a legitimate objective;
- recognise the equivalence of similar measures in other countries; and
- not used as arbitrary barriers to trade.

As members of the WTO, both Australia and New Zealand have an obligation to notify the WTO of changes to food standards to enable other member countries of the WTO to make comment. Notification is required in the case of any new or changed standards which may have a significant trade effect and which depart from the relevant international standard (or where no international standard exists).

### **SPS Notifications**

These are primarily health related, and refer to any measure applied;

- to protect animal or plant life from risks arising from the entry, establishment or spread of pests, diseases or disease carrying organisms;
- to protect human or animal life or health from risks arising from additives, contaminants, toxins or disease-carrying organisms in foods, beverages or foodstuffs;

- to protect human life or health from risks arising from diseases carried by animals, plants or products thereof, or from the entry, establishment or spread of pests; and
- to prevent or limit other damage from the entry, establishment or spread of pests.

### **TBT Notifications**

These are primarily not related to health, but are related to matters such as trade, food composition and labelling.

### **WTO Notification**

It is considered that the matters raised in this Full Assessment Report **do not** require a notification to the WTO because the proposed provisions simply implement other provisions elsewhere in the joint Code.

## **2.6 Invitation for Public Submissions**

### **Simplified procedures**

The Authority has decided, pursuant to section 36 of the *Australia New Zealand Food Authority Act 1991*, to omit to invite public submissions in relation to the proposal prior to making a full assessment. The Authority is satisfied that omitting to invite public submissions prior to making a full assessment will not significantly adversely affect the interests of any person or body.

The Authority considers that extensive consultation has occurred in relation to draft Standard 1.1.1 and to the provisions relating to lot identification and as such, the omission of one round of public comment in relation to the proposal will not have a significant adverse effect on the interests of anyone. In addition to the consultation in relation to Proposal P141, the Authority included the relevant provisions in the draft joint Australia New Zealand Food Standards Code in relation to which comment was sought in Australia and New Zealand from March 2000 until May 2000.

Section 63 of the Act provides that, subject to the *Administrative Appeals Tribunal Act 1975*, an application for a review of the Authority's decision may be made to the Administrative Appeals Tribunal by a person whose interests are significantly affected by the decision to omit to invite public submissions in relation to the proposal.

The Authority has completed a full assessment of the proposal, developed a draft joint Australia New Zealand food standard and will now conduct an inquiry to consider the draft standard and its regulatory impact.

Written submissions containing technical or other relevant information which will assist the Authority in undertaking a full assessment on matters relevant to the application, including consideration of its regulatory impact, are invited from interested individuals and organisations. Technical information presented should be in sufficient detail to allow independent scientific assessment.

Submissions providing more general comment and opinion are also invited. The Authority's policy on the management of submissions is available from the Standards Liaison Officer upon request.

The processes of the Authority are open to public scrutiny, and any submissions received will ordinarily be placed on the public register of the Authority and made available for inspection. If you wish any confidential information contained in a submission to remain confidential to the Authority, you should clearly identify the sensitive information and provide justification for treating it in confidence. The *Australia New Zealand Food Authority Act 1991* requires the Authority to treat in confidence trade secrets relating to food and any other information relating to food, the commercial value of which would be or could reasonably be expected to be, destroyed or diminished by disclosure.

All correspondence and submissions on this matter should be addressed to the **Project Manager - Proposal P225** at one of the following addresses:

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Submissions should be received by the Authority by **12 September 2000**.

General queries on this matter and other Authority business can be directed to the Standards Liaison Officer at the above address or by Email on <slo@anzfa.gov.au>. Submissions should not be sent by Email as the Authority cannot guarantee receipt. Requests for more general information on the Authority can be directed to the Information Officer at the above address or by Email <info@anzfa.gov.au>.



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## **EXECUTIVE SUMMARY**

In July 1995, the then National Food Authority published a draft concept paper on the 'Revised Structure of the Food Standards Code'. This paper focused on the issues of the structure and broad content of the Code. One of the concepts was that an interpretation standard be included. The Authority released for public comment in June 1996 a Full Assessment Report which set out a draft interpretation standard and rewrote Standard A1 - Labelling and Advertising. Proposal P141 aimed to make provisions easy to locate and to maximise clarity and comprehension. Submissions closed at the end of October 1996 after allowing an extended period of public comment in order to receive comments from New Zealand consumers, industry and government.

In addition, the Interpretation part of the New Zealand Food Regulations (NZFR) was examined to determine whether there are provisions which should be included into the Code.

An Inquiry Report was completed in 1998, and a recommendation was made to ANZFSO to adopt the proposed amendments. This recommendation was subsequently withdrawn when the structure of the joint Australia New Zealand Food Standards Code (draft joint Code) was substantially revised in a manner that was not consistent with the drafting proposed in Proposal P141.

This Proposal incorporates some of the draft amendments proposed in Proposal P141, but makes some changes consistent with the proposed structure of the draft joint Code. The purpose of this proposal is to develop Preliminary Provisions for inclusion in the joint Australia New Zealand Food Standards Code. The purpose of Proposal P141 was to consider a wide range of provisions in the Food Standards Code, and:

- determine whether they are appropriate for inclusion in the Code;
- examine whether general principles can be established and thereby remove inconsistencies and exemptions to the provisions where they are outdated or ad hoc;
- rewrite provisions into plain English especially where there is any ambiguity arising from the way they are currently written;
- move provisions into more logical and ordered positions in the Code, specifically creating an interpretation and definition standard of the Code; and
- develop a coherent framework for the remaining standards.

## **SECTION 36 - OMITTING ONE ROUND OF PUBLIC COMMENT**

The Authority considers that extensive consultation has occurred in relation to draft Standard 1.1.1 and the provisions relating to lot identification and as such, the omission of one round of public comment in relation to the proposal will not have a significant adverse effect on the interests of anyone. In addition to the consultation in relation to Proposal P141, the Authority included the relevant provisions in the draft joint Australia New Zealand Food Standards Code in relation to which comment was sought in Australia and New Zealand from March 2000 until May 2000.

## PROPOSAL/FULL ASSESSMENT REPORT

**SUBJECT: REVIEW OF PRELIMINARY PROVISIONS AND LOT IDENTIFICATION**

### **PROPOSED PROVISIONS OF DRAFT STANDARD 1.1.1**

#### **Proposed clause 1 - Application of this Code**

##### **1 Application of this Code**

Unless specifically provided elsewhere in this Code, the provisions of this Code apply to food which is –

- (a) sold or prepared for sale in Australia and/or New Zealand; and/or
- (b) imported into Australia and/or New Zealand.

#### **Discussion**

The proposed clause 1 provides the scope of the Australia New Zealand Food Standards Code with respect to its application. The Food/Health Acts of New Zealand and the Australian States and Territories and the *Imported Food Control Act 1992(Cth)* apply the provisions of the draft joint Code to the circumstances listed in paragraphs (a) and (b) of clause 1.

#### **Proposed clause 2 Interpretation**

Clause 2 of draft Standard 1.1.1 sets out definitions of terms that appear throughout the Code. The majority of the proposed definitions were detailed in the Full Assessment and Inquiry Reports for Proposal P141, and the following discussions repeats in certain respects the assessments of the issues raised in those reports.

#### **Proposed definition “Act”**

**Act** means the Act, as amended or, as the case may be, Ordinance of a State, Territory, External Territory, Commonwealth or New Zealand, under the authority of which the Code is enforced.

#### **Discussion**

The definition contained in the Preliminary Provisions in the existing *Food Standards Code* was proposed in Proposal P141 to be retained, but also incorporating the Commonwealth with respect to imported food and New Zealand.

In Proposal P141, the recommendation was fully supported and there were no issues raised in public submissions. No change was suggested from the recommendation at full assessment.

It has however become clear since Proposal P141 that the Code is not “adopted” as such in all of the relevant jurisdictions. It is more appropriate to state that the “Act” is the Act under which the Code is enforced.

**Proposed definition “AOAC”**

**AOAC** means the publication entitled "Official Methods of Analysis of AOAC International" published by AOAC International, Virginia USA and includes earlier editions of this publication under its previous names.

**Discussion**

The comments received in relation to the Full Assessment Report for Proposal P141 gave general support for updating this abbreviation. One submission supported the retention of the definition 'AOAC' and suggests that it be worded so that future changes can be accommodated without the necessity of amending the Code. It was suggested that the reference to AOAC should be ambulatory which would mean that whenever an AOAC method was updated, it would automatically become the required method in Australia.

It was stated in the Inquiry Report for Proposal P141 that it was “not appropriate at this stage of the review but should be considered when methods of analysis as a whole are being reviewed.” It would be inappropriate and unlawful to allow for an open-ended reference to any document that is ambulatory in nature. To do so, would be an unlawful delegation of the Authority’s functions and therefore should not be countenanced at any time.

**Proposed definitions “Australian Approved Name”, “Australian Approved Names List”**

**Australian Approved Name** means a name included in the “Herbal Substances AAN List” of the “Australian Approved Names List”.

**Australian Approved Names List** means the list of names or terms included in the document entitled “Australian Approved Names for Pharmaceutical Substances” published by the Therapeutic Goods Administration in its edition “TGA Approved Terminology for Medicines” dated July 1999.

**Discussion**

The Therapeutic Goods Administration (TGA) Approved Terminology for Medicines lists botanical names for herbal species, not all of which have been recognised as the Authorised Australian name. Where possible in Standard 1.4.4, Prohibited and Restricted Plants and Fungi, the Authorised Australian Name has been used in accordance with the TGA classification. However, there are a few listed species that do not have Authorised Australian Names and these have been designated as such.

## **Proposed definitions “AS”, “NZS”, “ANZS”**

**AS** means an Australian Standard published by Standards Australia.

**NZS** means a New Zealand Standard published by Standards New Zealand.

**ANZS** means a joint Australia New Zealand Standard published by either Standards Australia or Standards New Zealand.

## **Discussion**

In response to the drafting proposed in Proposal P141, Standards Australia advised the Authority that there are Australian Standards, New Zealand Standards and Australia New Zealand Standards. It is therefore appropriate to include definitions for all three of these.

## **Proposed definition “average quantity”**

**average quantity** in relation to a substance in a food is the quantity determined from one or more of the following –

- (a) the manufacturer's analysis of the food; or
- (b) calculation from the actual or average quantity of nutrients in the ingredients used; or
- (c) calculation from generally accepted data;

which best represents the quantity of the substance that the food contains, allowing for seasonal variability and other known factors that could cause actual values to vary.

### **Editorial note:**

The substances referred to in the definition of ‘average quantity’ are, for example, sodium, potassium, fatty acids, amino acids and vitamins and minerals.

## Discussion

This definition is used throughout the draft joint Code. It is used in Standard 1.2.8, Standard 1.3.2 and Standard 2.9.3 and is necessary for their effective functioning. This definition is included in draft Standard 1.1.1 as it is common to a number of standards.

### Proposed definition “bulk cargo container”

**bulk cargo container** means an article of transport equipment, being a lift van, movable tank, or other similar structure –

- (a) of a permanent character and accordingly strong enough to be suitable for repeated use; and
- (b) specifically designed to facilitate the carriage of goods by one or more modes of transport, without immediate repacking; and
- (c) fitted with devices permitting its ready handling and its transfer from one mode of transport to another; and
- (d) so designed as to be easy to fill and empty; and
- (e) having an internal volume of one cubic metre or more; and
- (f) includes the normal accessories and equipment of the container, when imported with the container and used exclusively with it; and
- (g) shipping container or aircraft cargo container;

but does not include –

- (h) any vehicle, or any ordinary packing case, crate, box, or other similar article used for packing.

## Discussion

This definition is included in the *Food Act 1981 (New Zealand)* and is necessary to effectively exempt such containers from the definition of ‘package’ and therefore from the labelling requirements relevant to ‘packages’ of food as prescribed in Part 1.2 of the draft joint Code.

### Proposed definitions “business address” and “supplier”

**business address** means a description of the location of the premises from which the business in question is being operated, but does not include a postal address.

**supplier** means the packer, manufacturer, vendor, or importer of the food in question.

## Discussion

In Proposal P141, it was proposed to combine the two above definitions and read as follows

“business address of the vendor, manufacturer, packer or importer required to be written or set out in the label on or attached to a package of food shall consist of a description of the location of the premises in question is being carried on sufficient for the purpose of ready identification of those premises including, with reference to that location the road or street number, if any, officially assigned to the premises;

the name of –  
the road or street;  
the suburb, if any;  
the city, town or other locality;  
the State, or Territory or an abbreviation of that name in general use;  
the country or an abbreviation of that name in general use.”

It is considered appropriate to define ‘supplier’ to include the ‘packer, manufacturer, vendor, or importer of the food in question’. Clause 3 of draft Standard 1.2.2 requires that the ‘label on a package of food must include the name and business address in Australia or New Zealand, of the supplier of the food.’.

The requirement for the ready location of the supplier's premises is already located in the proposed definition of business address. The Authority considers that the country need not be included, but should be where its omission would not permit the identification of the premises.

In relation to postcodes, there should be no obstacle to omitting the State or Territory for Australian producers as the postcode does indicate the State. The same will apply in New Zealand although postcodes are not as widely used.

The Authority considers that the name and address in either Australia or New Zealand, of the supplier of the food, should be included on the food in sufficient detail to enable ready location of the supplier's premises by any person reading the label. There is no need for prescriptive detail of what this should include.

## Proposed definition “claim”

**claim** means any statement, representation, information, design, words or reference in relation to a food which is not mandatory in this Code.

Editorial note:

A claim may be made for example, on the label on a package of food or in an advertisement.

## Discussion

This term ‘claim’ is used in a number of standards, for example in draft Standard 1.2.8, where the making of a claim on a small package triggers the requirement to include a nutrition information in relation to a food. A claim is distinguished from other prescribed information in this Code, in that a ‘claim’ refers only to information not mandatory in this Code.

### Proposed definition “Code”

<p><b>Code</b> means the Australia New Zealand Food Standards Code as defined in section 3 of the Australia New Zealand Food Authority Act 1991.</p>
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## Discussion

In order to avoid having to repeat *Australia New Zealand Food Standards Code* each time the term is used, it is considered appropriate to define ‘Code’ as set out above.

### Proposed definition “code number”

<p><b>code number</b>, used in relation to a food additive, means either –</p> <ul style="list-style-type: none"><li>(a) the number set out in the Schedules to Standard 1.3.1 in relation to that food additive;</li><li>or</li><li>(b) the number referred to in (a) preceded by the letter “E”.</li></ul>
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## Discussion

Clause 8 of Standard 1.2.4 (Labelling of Ingredients) permits food additives to be declared either by the specific name of the additive or by the additive's code number. The proposed definition is consistent with draft Standard 1.2.4.

Furthermore, Standard 1.3.1 refers to additives both by the specific name and the code numbers listed in the Schedules to the Standard. This definition is located in draft Standard 1.1.1 as it is common to more than one standard in the draft joint Code.

### Proposed definition “Commonwealth”

**Commonwealth** means the Commonwealth of Australia.

## Discussion

In Proposal P141 it was proposed not to include a definition for Commonwealth as it was considered sufficient to rely on the *Acts Interpretation Act 1901 Cth*). While such a definition is not strictly required, it has been included to assist users of the document who do not necessarily have access to the *Acts Interpretation Act 1901*.

### Proposed definition “component”

**component** means any substance including a food additive used in the preparation of an ingredient and present in the final product in a primary or modified form.

## Discussion

This definition of 'component' was proposed in Proposal P141, to be included in the definitions in standard in the draft joint Code, in Proposal P141, pending consideration of ingredient labelling provisions.

In Proposal P141, this recommendation was fully supported and there were no issues raised in public submissions. It has become apparent since this time that this definition of “component” is also relevant to draft Standard 1.2.10 of the draft Australia New Zealand Food Standards Code. Proposal P205/206 has proposed that the proportion of the characterising component of a food should be declared as a percentage. This proposal intended that characterising component included for example milkfat in ice cream. Milkfat is often not an ingredient but comprises part of a range of ingredients

### Proposed definition “ESADDI”

**ESADDI** means, for a vitamin or mineral in column 1 of the Schedule, the Estimated Safe and Adequate Daily Dietary Intake, specified for that vitamin or mineral –

(a) in column 3; and

(b) in column 4 for children aged one to three years;  
calculated and expressed in the form specified in column 2.

### **Discussion**

This definition has been located in draft Standard 1.1.1 as it is common to a number of standards. The above definition is used in among others, Standard 1.3.2 and Standard 2.9.3.

### **Proposed definition “label”**

**label** means any tag, brand, mark or statement in writing or any representation or design or descriptive matter on or attached to or used in connection with or accompanying any food or package.

### **Discussion**

This definition is necessary to indicate the meaning of the term for the purposes of the Code, given the wide variety of definitions of ‘label’ used in the Food/Health Acts of New Zealand and the Australian States and Territories. This definition is identical to that proposed in Annex A of the Model Food Bill.

### **Proposed definition “nutrition information panel”**

**nutrition information panel** or **panel** means a panel which complies with the requirements of Division 2 of Standard 1.2.8.

### **Discussion**

This definition is common to a number of Standards, such as Standard 2.9.3, and has therefore been located in draft Standard 1.1.1.

## Proposed definition “nutritive substance”

**nutritive substance** means a substance not normally consumed as a food in itself and not normally used as an ingredient of food, but which, after extraction and/or refinement, or synthesis, is intentionally added to a food to achieve a nutritional purpose, and includes vitamins, minerals, amino acids, electrolytes and nucleotides.

### Discussion

‘Nutritive substances’ as defined above are considered to be ‘food additives’ for the purposes of Standard A3 of the existing *Food Standards Code*. Standard 1.3.1 has re-defined ‘food additive’ in such a way as to exclude these types of substances. The Authority considers that the requirement for express permission for the inclusion of these substances to be added to food should remain. ‘Nutritive substances’ are distinguished from foods in that extraction and/or refinement from foods is necessary.

Proposal P166 (Vitamins and Minerals) introduced the concept of ‘nutritive substance’ and the following discussion was included in the Full Assessment report –

“The review of food additives (P150) developed draft Standard 1.3.1 which narrowed the scope of the term 'food additive' to refer to:

*"...any 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 [several listed] technological functions. Food additives are distinguished from processing aids and vitamins and minerals added to food for nutritional purposes."*

From the above table, vitamins and minerals added to foods have more in common with food additives than with ingredients, however there are some fundamental differences in purpose and function that relate to ingredients. It is therefore proposed that a new term be coined to cover vitamins, minerals as well as amino acids, electrolytes, nucleotides and new chemical forms of beneficial biologically active substances.

It should be confined to chemical entities rather than apply to beneficial microbiological species. It is proposed to develop a new definition to encompass this group so that a consistent regulatory approach can be applied.

Possible terms are:

- 1 nutritive/nutritional substances; or
- 2 nutritive/nutritional additives.

Perusal of the Macquarie and Oxford dictionaries yielded the following definitions:

**nutritive** - serving to nourish; affording nutriment

**nutrition(al)** - the act or process of nourishing or being nourished. 2 food, nutriment. 3 the process by which the food material taken into an organism is converted into living tissue etc.

Nutritive is the preferred adjective and if adopted, relevant draft Standards should be revised to reflect the use of that preferred term. Because the use of the term 'additives' could cause confusion, the term substance is preferred.”

### **Proposed definition “package”**

**package** means any container or wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packaged and, in the case of food carried or sold or intended to be carried and sold in more than one package, includes every such package, but does not include –

- (a) bulk cargo containers; or
- (b) pallet overwraps; or
- (c) crates and packages which do not obscure labels on the food; or
- (d) transportation vehicles.

### **Discussion**

This definition of package is proposed as there are a variety of difference definitions in the Food and Health Acts of New Zealand, the Australian States and Territories. The *Imported Food Control Act 1992* (Commonwealth) which requires that all food imported into Australia comply with the draft joint Code, does not contain a definition of ‘package’. In order to achieve consistency of interpretation of the draft joint Code, it is considered appropriate to define ‘package’ for the purposes of the Code within the Code itself and not rely on Food/Health Act definitions. This definition is based on that proposed in the draft Food Bill, with the addition of the exclusions set out above.

### **Proposed definition “permitted form”**

permitted form means a form of a vitamin or mineral specified in column 2 of the Schedule.

#### **Discussion**

This definition is located in this Standard, as it is common to a number of Standards in this Code eg. Standard 1.2.8.

### **Proposed definition “prescribed name”**

**prescribed name** means a name by which a food is defined or described in a Standard, and is declared in this Code to be a prescribed name.

#### **Discussion**

Clause 1 of Standard 1.2.2 requires that –

- ‘(1) The label on a package of food must include -
  - (a) the prescribed name of the food, where the name of a food is declared in this Code to be a prescribed name;....’

In Proposal P156, the Authority proposed that where a name is prescribed to be used for a particular food then that name must be included in the label of that food. The proposed definition of ‘prescribed name’ and paragraph (1)(a) of Standard 1.2.2 combine to give effect to the above-stated principle.

### **Proposed definition “RDI”**

**RDI** means, for a vitamin or mineral in column 1 of the Schedule, the Recommended Dietary Intake, specified for that vitamin or mineral –

- (a) in column 3; and
- (b) in column 4 for children aged one to three years;

calculated and expressed in the form specified in column 2.

**Editorial note:**

The RDIs used in this Code are based on those published by the National Health and Medical Research Council (NHMRC) of Australia in 1991.

**Discussion**

This definition has been located in draft Standard 1.1.1 as it is common to a number of standards. The above definition is used in among others, Standard 1.3.2 and Standard 2.9.3.

**Proposed definition “relevant authority”**

**relevant authority** means the authority responsible for the enforcement of this Code.

**Discussion**

Clause 11 of draft Standard 1.1.1 prohibits the alteration of labels except where permitted by the relevant authority. The ‘relevant authority’ for the purposes of this prohibition means the authority responsible for the enforcement of this Code. In this case, the ‘relevant authority’ includes the New Zealand and State and Territory health departments and the Australian Quarantine Inspection Service in relation to food imported into Australia.

**Proposed definition “State”**

**State** means a State of the Commonwealth of Australia.

**Discussion**

In Proposal P141, this recommendation was fully supported and there were no issues raised in public submissions.

**Proposed definition “statement of ingredients”**

**statement of ingredients** means a statement as required in Standard 1.2.4 in this Code.

**Discussion**

This term is used in a number of standards and is therefore defined in draft Standard 1.1.1.

**Proposed definition “Territory”**

**Territory** means a Territory of the Commonwealth of Australia.

## Discussion

In Proposal P141, this recommendation was fully supported and there were no issues raised in public submissions. The Authority continues to consider that this definition remains necessary.

### Proposed definition “warning statement”

**warning statement** means a statement required to be expressed in the text as so prescribed in this Code, in –

- (a) clause 3 of Standard 1.2.3; and
- (b) clause 3 of Standard 2.6.3; and
- (c) subclause 6(3) of Standard 2.9.2; and
- (d) subclause 7(2) of Standard 2.9.2; and
- (e) clause 15 of Standard 2.9.1; and
- (f) subclauses 15(1), 15(3), 15(5) and 27(1) of Standard 2.9.1; and
- (g) subclauses 3(3) and 3(4) of Standard 2.9.4.

## Discussion

This definition is read in conjunction with the print size requirements set out in draft Standard 1.2.9. In order to avoid any confusion about which mandatory statements needed to be set out in the print size specified in that standard, the Standard lists all the provisions containing a warning statement.

### **Proposed clause 3 - Prescribed standards for food**

#### **3 Prescribed standards for food**

A reference in this Code to the nature, substance, composition, strength, weight, quantity, purity or quality of any food, article, ingredient or component is the prescribed standard for that food, article, ingredient or component.

#### **Editorial note:**

It is an offence under State and Territory legislation for food not to comply with a prescribed standard where a prescribed standard has been established for that food. This Code establishes the "prescribed standard".

It is an offence under the New Zealand *Food Act 1981* for food not to comply with applicable food standards issued under that Act.

#### **Discussion**

There was general support for this recommendation and no further issues were raised in submissions. A drafting issue raised was that 'weight' can be omitted, as it is included in 'quantity' but if 'weight' remains then 'volume' should be included. For the sake of clarity, weight should be retained and volume should be included in the draft standard. Otherwise the existing provision should be omitted and the proposed draft provisions should be inserted.

### **Proposed clause 4 - Reference to Acts**

#### **4 Reference to Acts**

In this Code, a reference to an Act includes any regulations made under that Act.

#### **Discussion**

This provision is included to ensure that it is clear that regulations are included in any reference to an Act.

### **Proposed clause 5 - Guidelines and editorial notes**

#### **5 Guidelines and editorial notes**

(1) In this Code, guidelines as developed by the Australia New Zealand Food Authority pursuant to paragraph 7(1)(c) of the *Australia New Zealand Food Authority Act 1991*, to assist in the interpretation of the Code are not legally binding.

(2) In this Code, editorial notes are for information only and are not legally binding.



## Discussion

The proposed subclause 5(1) is included so as to clarify the legal status of guidelines developed pursuant to paragraph 7(1)(c) which was inserted in the *Australia New Zealand Food Authority 1991* in 1999.

The proposed subclause 5(2) states the legal status of the editorial notes included in this Code.

## Proposed clause 6 - Units of measurement

### 6 Units of measurement

- (1) A symbol of measurement used in this Code –
- (a) has the meaning assigned to it under the *Australian National Measurement Act 1960* as amended, or the *New Zealand Weights and Measures Act 1987*; or
  - (b) if there is no meaning assigned under the *Australian National Measurement Act 1960* as amended, has the meaning assigned to it in the *Systeme Internationale d'Unites*; or
  - (c) if there is no meaning assigned in the *Australian National Measurement Act 1960* as amended or the *Systeme Internationale d'Unites*, has the same meaning assigned to it in the *Glossary of Units* in this Standard.
- (2) Where a unit of measurement is referred to in the heading of a table in this Code, the amounts specified in the table are to be measured according to those units unless a different unit of measurement is specified in relation to a particular item in the table.

## Discussion

There was general support for this recommendation in the submissions in relation to the Full Assessment Report for Proposal P141.

## Proposed clause 7 - Interpretation of compositional provisions

### 7 Interpretation of compositional provisions

A reference to a compositional permission or requirement in this Code is a reference to the composition of the final food, unless expressly stated otherwise.

## Discussion

This provision is included to clarify the application of compositional provisions elsewhere in this Code.

## Proposed clause 8 - Glossary of symbols and units

### 8 Glossary of symbols and units

Symbols and units used in this Code have the following meanings –

<b>Symbol/Unit</b>	<b>Meaning</b>
%	per cent
Bq	becquerel
°C	degrees Celsius
cfu/g	colony forming units per gram
Cal or kcal	kilocalorie
cm <sup>2</sup>	square centimetre
cm	centimetre
dm <sup>2</sup>	square decimetre
g or G	gram
gN/kg	gram of nitrogen/kg
Gy	Grays
J	joule
kg	kilogram
kJ	kilojoule
kPa	kilopascal
L or l	litre
M	Molar concentration
mg	milligram
mg/kg	milligram/kilogram
milliequiv	milliequivalent
mL or ml	millilitre
m/m	mass per mass
mm	millimetre
mmol	millimole
mOsm	milliosmoles
nm	nanometre
Osm	osmoles
Pa	pascal
ppm	parts per million
µg or mcg	microgram
µg/kg	microgram/kilogram
µL or µl	microlitre
µm	micrometre

## Discussion

This glossary of units lists all of those units used throughout this Code.

Most submissions in response to the Full Assessment Report in relation to Proposal P141, gave general support to the revised Glossary of Terms. The Glossary of Terms is intended as a guide to the symbols provided in the Australia New Zealand Food Standards Code. For completeness it is proposed that the symbols used in the New Zealand Food Regulations be included in the Glossary of Terms. So as not to cause confusion, an editorial note explaining that the symbols have been included for completeness would be appropriate.

Two submissions, including one from New Zealand industry, suggested that as NZFR allow 'l' and 'ml' as the symbols for litre and millilitre respectively, that both 'l' and 'ml' and 'L' and 'mL' be permitted. A similar situation applies in respect of 'kcal' which appears as the symbol for kilocalories in the NZFR as against 'Cal' for kilocalories in the Code. The NZ Industry submission believes it is more accurate to retain 'k' to indicate that the unit is in kilocalories. Similarly, as centimetre (cm) and Grays (Gy) are included in the NZFR they should be inserted in the glossary.

The symbol for kilocalorie is now proposed as 'Cal or kcal'.

Other comments received were that it was not necessary to define 'mg/kg' or 'µg/kg' as these are expressions derived from units already defined. The term 'gN/kg' is used in the formula for the calculation of protein content from the nitrogen content of a food. It would be defined elsewhere in the Code. One submission questioned the need to include 'mg/kg', 'µg/kg' and 'gN/kg'. To assist users of the Food Standards Code, it is proposed that these symbols be retained.

A further submission indicated that 'Mol' and not 'M' means 'mole' under the Systeme Internationale d'Unites. 'M' denotes molar concentration and is used in Standard All. This should therefore be included after the symbol 'L'. One submission questioned whether the symbol 'M' should be retained with a meaning of 'molar concentration'. To assist users of this Food Standards Code, it is appropriate that this symbol with the proposed meaning be included.

### **Proposed clause 9 - Prohibition on addition of nutritive substances to food**

<b>9 Prohibition on addition of nutritive substances to food</b>
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Nutritive substances must not be added to food unless expressly permitted in this Code.
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## Discussion

In the Full Assessment Report for Proposal P166, the Authority stated that

“Because of the degree of commonality of nutritive substances with food additives, it is proposed that the regulatory status of nutritive substances and the manner in which they are dealt with by the Australia New Zealand Joint Food Standards Code (JFSC) should be the same as for food additives (not ingredients). They therefore should continue to

require positive permission for addition, and chemical specification. Further, that new organic forms of micronutrients should be treated as nutritive substances, rather than as food ingredients that do not require specific permission for addition.”

### Conclusion

It is concluded that in the light of the new definition of food additives, there is a need to introduce a third regulatory category - nutritive substances to cover added forms of vitamins, minerals, amino acids and other beneficial biologically active substances, to be treated in the same way as food additives but distinct from ingredients.”

### **Proposed clause 10 - Addition of “other foods”**

#### **10 Addition of “other foods”**

- (1) A reference to the addition or use of “other foods” in the composition of a food for which a standard is prescribed is not a permission for the addition or use of a nutritive substance, vitamin, mineral, processing aid or food additive in the food.
- (2) Compositional requirements for a food apply to the final food irrespective of any presence or permission to add other foods.

### **Discussion**

This provisions complements the provisions of this Code as they relate to food additives, nutritive substances, processing aids and vitamins and minerals. The interpretation note in Standard A3 of the current Code, relating to the use of 'other foods' not being a permission to add additives, has been transferred to draft Standard 1.1.1.

### **Proposed clause 11 - Prohibition on altering labels**

#### **11 Prohibition on altering labels**

- (1) Subject to subclause (2), the label on package of food must not be altered, removed, erased, obliterated or obscured except with the permission of the relevant authority.
- (2) A package of food may be relabelled by placing a new label over the incorrect one provided that the new label is not able to be removed so that the incorrect information is visible.

### **Discussion**

The Full Assessment Report in relation to Proposal P141 initially proposed to include subclause (1) and subclause (2) as an editorial note. This recommendation was supported and there were no new issues raised. However the Authority recognises that the prohibition and the permission to correct labelling should be in the clause rather than as an editorial note to give proper legal effect.

## **Proposed clause 12 – Modification of prescribed statements**

### **12 Modification of prescribed statements**

A statement or information which is required by this Code or the relevant Act to be included in a label or advertisement for food, may include words which modify that statement or information provided that those words do not contradict, or detract from the intended effect of, the required statement or information.

#### **Discussion**

There was general support for this recommendation and there were no new issues raised at inquiry. This provision is necessary so as to prevent food manufacturers complying with the relevant provisions of the Code, while also including information which negates the effect of the mandatory information.

## **Proposed clause 13 - Application of labelling provisions to advertising**

### **13 Application of labelling provisions to advertising**

Advertisements for food must not contain any statements, information, designs or representations which are prohibited by this Code from being included in a label for that food.

#### **Discussion**

The wording proposed in the Full Assessment Report in relation to Proposal P141 was amended at Inquiry to include the terms 'claim', 'word' and 'reference'. The Authority considers that it is appropriate to prohibit statements in advertisements in relation to a food that would be prohibited on the label on the food being advertised.

## **LOT MARKING**

### **Length of a lot**

A 'lot' is defined currently in the -

- **Food Standards Code (Paragraph 3(a) of Standard A1) as -**

For the purposes of this clause 'lot' means a quantity of food prepared or packed under essentially the same conditions ordinarily from a particular preparation or packing unit and during a particular time ordinarily not exceeding 24 hours.

- **New Zealand Food Regulations (Regulation 2) as -**

“Lot” means a quantity of food produced under essentially the same conditions during a particular period, and usually from a particular “line” or other identifiable processing unit.

▪ **Codex Alimentarius (Section 4 Codex General Standard for the Labelling of Prepackaged Food Codex Stand 1-1985 (Rev. 1-1991))**

“Lot” means a definitive quantity of a commodity produced essentially under the same conditions.

## **Discussion**

The longer the lot is considered to be by the manufacturer, the greater the number of products which would have to be recalled and the fewer number of lot numbers etc that consumers will be required to locate. This is not a consumer issue as there will always have to be some form of identification which will identify the product in question to the consumer. However, the size of a recall may be affected by having greater 'lots' which can prove administratively unworkable for enforcement agencies.

At present the requirement is that a lot will ordinarily be a 24 hour time period. The manufacturer has, and should retain the flexibility to make this longer or shorter. The existing provision, that a lot is ordinarily 24 hours should be retained. The proposed definition in Standard 1.1.1 is consistent with this definition.

## **Format of lot identification**

Symbols and colours are able to be used as part of the lot identification. The use of colour contrast is not a current requirement and in many canning operations lot identification is embossed on the end of the can. This should continue to be permitted.

Lot identification should be in the form of letters, numbers or a combination of both, but this should not necessarily apply to premise identification as other means are often used, eg, colour coding, unique packaging, etc.

## **Premises Identification**

The Authority proposes the following definition of ‘lot identification –

<p><b>lot identification</b> means information, which indicates in a clearly identifiable form, the -</p> <ul style="list-style-type: none"><li>(a) premises where the food was packed or prepared; and</li><li>(b) lot of the food in question.</li></ul>
--

## **Discussion**

The method of premise identification should be left to the supplier provided that the method used can easily be identified for tracing purposes. One submission stated that the company had two manufacturing sites. Products from each premise can be identified by the area where the product was sold and by slightly different date coding.

In relation to premises identification, the liberalisation of what can be included as a lot identification, along with the existing flexibility in that any information on the label must contain some information which enables ready identification of the premises and the lot in question, ensures that manufacturers are able to continue to use existing methods of premises identification.

### **Need for lot identification**

The Authority considers that lot identification is necessary for public health and safety reasons specifically to enable effective recall. Recalls can be effective as long as there is something on the product which can be communicated to consumer or to retailers to enable them to identify the products which should be removed from shelves or returned to stores. The format of this identifying mark is not critical. Therefore if a product is date marked, that date mark will satisfy the lot identification requirements.

These requirements are currently in force in Australia and have been for many years. Most foods are required to be lot marked other than soft drinks, ice creams and confectionery in small packages.

In New Zealand the requirements are not as strict. All canned food must have lot and premises identification. Additionally, all food which has a minimum durable life of less than 90 days and all frozen fish must be date marked. There are also a substantial number of specific classes of foods which are then exempt from date marking. It is difficult to determine the proportion of food in New Zealand that has lot identification or date marking voluntarily.

Codex Alimentarius in the Codex Standard for the Labelling of Prepackaged Foods (Codex Stand 1-1985) requires that “each container shall be embossed or otherwise permanently marked in code or in clear to identify the producing factory and the lot”. The current Australian requirements align with Codex and with the EC - where most products are required to have either a lot number or date marking in order to enable effective food recalls. Logically, a significant number of New Zealand products would be required to have lot identification for export. Presumably these products would not be relabelled without lot identification for the New Zealand domestic market.

The Authority is aware that lot identification is currently only required on canned foods in New Zealand. However the Authority considers it appropriate that lot identification be extended to New Zealand as lot identification is an essential requirement so as to facilitate effective recalls and trace back of products. There is proposed to be a two year transitional period for industry in New Zealand to comply with this requirement.

New Zealand bottled milk is date marked - this satisfies the lot identification criteria and therefore there is no need for an exemption. There was no indication that date marking of bottled milk would not continue.

### **Exemptions to lot identification requirements**

Clause 2 of draft Standard 1.2.2 sets out the circumstances in which lot identification is not required.

#### **2 Lot identification**

The label on a package of food must include its lot identification, unless the food is -

- (a) an individual portion of ice cream or ice confection; or
- (b) in small packages, and the bulk packages and the bulk container in which the food is stored or displayed for sale includes lot identification.

### **Discussion**

These exemptions are based on technological reasons, and more generally on the basis that these foods are usually consumed at the time of purchase. Lot identification on these products would be meaningless as the food is consumed immediately and the wrappers discarded. Food at the retailer's premises is required to have lot identification in all cases. For the same reasons that ice cream in individual portions is exempt from the date marking requirements of draft Standard 1.2.5, ice cream in individual portions should be exempt from lot marking requirements. In the Inquiry Report for Proposal P139 (Date Marking) the following rationale was given -

“The exemption from date marking, for individual serves of ice cream, has been recommended on the basis that the ice creams are purchased for immediate consumption and therefore the wrappers are discarded shortly after sale. This does not apply to other ice creams, which will be taken home by the consumer and stored for use.....Therefore, this information should be required to be included on ice creams that are not for individual sale.

While the individual serves of ice cream are not required to be date marked, the packages that contain these ice creams would need to be date marked. This information could be used to stock rotate the packages until they are displayed individually for retail sale.”

The Authority considers it appropriate to exempt from the lot identification requirements of this Code, small packages, where the bulk packages and the bulk container in which the food is stored or displayed for sale includes lot identification. Where small packages are exempt from the lot identification requirements of this Code, it will still be possible to conduct an effective recall of any food requiring such remedial actions.



## REGULATORY IMPACT STATEMENT

### PRELIMINARY PROVISIONS – APPLICATION, INTERPRETATION AND GENERAL PROHIBITIONS

#### Background

As part of ANZFA's general review of the *Food Standards Code* (the Code), this proposal for a draft standard to the Code incorporates preliminary and other interpretative provisions, and those relating to lot marking into the draft Australia New Zealand Food Standards Code. Certain provisions within draft Standard 1.1.1 define terms such as “business address” and “supplier” which other draft Standards in the Code require to be included on the labels on certain packaged foods. In addition, this addresses the requirements of this Code with respect to lot marking. The two main considerations in determining what information is required to be declared on the labels on packaged foods relate to public health and safety and a purchaser’s ability to make informed choices.

It has been decided that an omnibus RIS would be appropriate, as there are a number of small changes that individually are quite minor and insignificant. Furthermore, the regulatory impact is for the most part attributable to other provisions in this Code, which make the definitions relevant in a legal sense.

The matters under consideration in this proposal are, for the greater part, not new requirements, and in many instances, will also have little or no measurable economic impact on the food industry of Australia and New Zealand. It is therefore not considered necessary to embark on the usual benefit cost analysis. Nevertheless, there are intangible benefits and they will be examined later in this paper.

Furthermore, the Authority completed a RIS in Proposal P141 which has previously considered many of the provisions discussed in this Proposal.

#### Problems

The main criticisms of the Code in its current format are that it is too prescriptive; it can be difficult to find out exactly what requirements apply to different foods; and there is too much legal and scientific language.

The preliminary provisions and mandatory generic provisions in standards are also beset by these problems of over prescriptiveness, inadequate cross-referencing, etc.

#### Objectives

The objective of the review of the whole of the Code is to ensure that the new Code is less prescriptive, easier to use and understand and free of inconsistencies to the greatest extent possible. It has also been decided that standards relevant to a number of foods are preferable to standards relating to individual foods.

The objective of this proposal is to review the preliminary and mandatory generic provisions in a manner that is consistent with the overall review objective by making these sections of the Code easier to use and understand and consistent with the remainder of the Code as developed by the Authority.

## **Consultations**

Normally two rounds of public comment are sought on applications and proposals to vary the Code. In this instance, because the proposal is being progressed under section 36, only one round of public comment will be invited. Comments have previously been sought from industry, consumer groups, New Zealand, Commonwealth, State and Territory governments, as well as other groups and members of the public, in the context of Proposal P141.

The requirements of the proposed provisions are less restrictive than current requirements and any labelling changes that a manufacturer decides to make will be voluntary. Hence any cost incurred in a labelling change should not be attributed to these amendments of the Code.

## **Options**

There are three main options in this Proposal.

The first option is retain the status quo.

The second option is to review the provisions following the same format as the existing Code, and re-write those parts that are less than clear or where inconsistencies have been identified.

The third option is to review all the existing provisions and fit them into the revised structure of the Code as published in 1998.

## **Evaluation of Options**

### Option 1

The status quo is the first option.

#### *Benefits*

The current users of the Code, manufacturers and the enforcement agencies, are familiar with the Code in its present form and have operated within its present form and parameters for a number of years. It is not possible to quantify or put a price on this 'comfort zone', but, nonetheless, it would be real to them.

### *Costs*

Difficulties in comprehension in some areas and inconsistencies would remain. Industry would continue to feel frustrated about some aspects of the Code and the time taken by industry decision makers to understand complex requirements would continue to be longer than necessary.

### *Evaluation*

While this might appear to be a valid option, it can be only be found to be so if, after a thorough review of the provisions, the existing standards are found to be perfect and cannot be improved upon. One of the aims of the Review of the Code is to develop joint food standards for Australia and New Zealand. The retention of the existing Code without amendment would not serve the purposes of New Zealand, and as such the Authority considers it necessary to consider the provisions of the Code, and in addition, the relevant provisions of the New Zealand *Food Regulations 1984*. It would appear difficult to adequately address the issues relevant to New Zealand, merely by repeating the existing provisions.

### Option No 2

This option is for the same format as the existing Code but re-write the Preliminary Provisions and Standard A1 to improve readability and remove inconsistencies.

### *Benefits*

The benefits would be some improvement in the clarity of the Code and its useability. These benefits would accrue to both industry and to the State and Territory agencies responsible for enforcing the Code. It is not possible to quantify the benefits but it can be safely assumed that it would lead to at least a marginal improvement in the efficiency of management.

### *Costs*

It could be expected that it would take the users of the Code a very small amount of time to adapt to the changes. The continuing duplication of some matters in the Code could lead to inconsistencies in labelling requirements developing at a later date. It is not possible to quantify these costs. In progressing other proposals constituting the Review of the Food Standards Code, the Authority has found the current Code to be deficient in many respects and has proposed a significant re-structure for the joint Code.

### *Evaluation*

While such an approach might achieve some of the objectives in that the final product would no doubt be clearer and more easily understood, it would not necessarily meet all of the objectives and there would still be provisions relating to the same matter in different parts of the Code.

### Option No 3

This option picks up the Authority's proposed revised structure of the Code.

This envisages the creation of an interpretation standard which would be the repository in the Code of the majority of definitions and interpretations and other generic provisions.

#### *Benefits*

All mandatory generic labelling provisions would be brought together in one section of the Code. Inconsistencies would be removed. The Code would be much less prescriptive, it would be written in plain English and would be much more user friendly. The major beneficiaries would be industry, particularly the decision makers, where the Code's enhanced useability could be expected to have a positive effect on efficiency in the longer term. Regulatory authorities are also expected to experience similar benefits. However, it is not possible to measure these in monetary terms for either of the two groups.

Enforcement agencies will benefit greatly from the adoption of joint standards for Australia and New Zealand. Under current Trans-Tasman Mutual Recognition Arrangements, enforcement agencies in both Australia and New Zealand need to assess for compliance against two sets of provisions, namely the Code, and the New Zealand *Food Regulations 1984*. Option 3 will ultimately remove this imposition.

#### *Costs*

Codex Alimentarius standards currently require lot marking and it is therefore more than likely that food exported from New Zealand would be required to be labelled accordingly. As the New Zealand food industry is particularly export oriented the cost impact of joint standards is expected to be minimal.

#### *Evaluation*

The proposed interpretation standard and other generic provisions are less prescriptive, easier to read and understand than the provisions in the existing Code. This will be facilitated by guidelines for food labelling for use in conjunction with the new standards that are being developed by the industry in co-operation with the Authority. These new standards are consistent with the review of the other generic standards as well as the commodity standards on a basis that should enable the objectives outlined above to be met to a great degree.

### **Conclusion**

The preferred option is Option 3. It is the one that is most likely to meet the perceived shortcomings in the present Code and, as far as possible, achieve the objectives set out earlier in the paper.

It is expected to be welcomed by industry and New Zealand, Commonwealth, State and Territory Governments who are responsible for ensuring adherence to the Code.

## Standard 1.1.1

# Preliminary Provisions – Application, Interpretation and General Prohibitions

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### **Purpose**

This Standard sets out preliminary provisions which apply generally to the *Australia New Zealand Food Standards Code*. General application and interpretation provisions are contained in this Standard. Application and interpretation provisions specific to individual food standards are to be found in those specific standards.

This Standard should always be consulted as a starting point in the use of the Code because it regulates the general operation of the Code in its entirety. Many definitions which have general application to the Code are contained in this Standard.

### **Editorial note:**

This Code is adopted as the required standards for food produced in New Zealand and the States, Territories and Commonwealth of Australia in relation to food sold and/or imported into both countries under the following Acts -

Food Act 1981 (New Zealand)  
 Health Act 1911 (Western Australia)  
 Food Act 1992 (Australian Capital Territory)  
 Food Act 1981 (Queensland)  
 Food Act 1989 (New South Wales)  
 Food Act 1998 (Tasmania)  
 Food Act 1986 (Northern Territory)  
 Food Act 1984 (Victoria)  
 Food Act 1985 (South Australia)  
 Imported Food Control Act 1992 (Commonwealth)

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## Clauses

### Division 1 – Interpretation and Application

#### 1 Application of this Code

Unless specifically provided elsewhere in this Code, the provisions of this Code apply to food which is -

- (a) sold or prepared for sale in Australia and/or New Zealand; and/or
- (b) imported into Australia and/or New Zealand.

#### **Editorial note:**

Food for which no specific standard is contained in Chapter 2 of this Code, must comply with the general provisions of Chapter 1.

#### 2 Interpretation

Unless expressly defined elsewhere in this Code -

**Act** means the Act, as amended or, as the case may be, Ordinance of a State, Territory, External Territory, Commonwealth or New Zealand, under the authority of which this Code is adopted.

**ANZS** means a joint Australia New Zealand Standard published by Standards Australia.

**AOAC** means the publication entitled “Official methods of Analysis of AOAC International” published by AOAC International, Virginia USA and includes earlier editions of this publication under its previous name.

**AS** means an Australian Standard published by Standards Australia.

**Australian Approved Name** means a name included in the “Herbal Substances AAN List” of the “Australian Approved Names List”.

**Australian Approved Names List** means the list of names or terms included in the document entitled “Australian Approved Names for Pharmaceutical Substances” published by the Therapeutic Goods Administration in its edition “TGA Approved Terminology for Medicines” dated July 1999.

**average quantity** in relation to a substance in a food is the quantity determined from one or more of the following -

- (a) the manufacturer's analysis of the food; or
- (b) calculation from the actual or average quantity of nutrients in the ingredients used; or
- (c) calculation from generally accepted data;

which best represents the quantity of the substance that the food contains, allowing for seasonal variability and other known factors that could cause actual values to vary.

**Editorial note:**

The substances referred to in the definition of ‘average quantity’ are, for example, sodium, potassium, fatty acids, amino acids and vitamins and minerals.

**bulk cargo container** means an article of transport equipment, being a lift van, movable tank, or other similar structure –

- (a) of a permanent character and accordingly strong enough to be suitable for repeated use; and
  - (b) specifically designed to facilitate the carriage of goods by one or more modes of transport, without immediate repacking; and
  - (c) fitted with devices permitting its ready handling and its transfer from one mode of transport to another; and
  - (d) so designed as to be easy to fill and empty; and
  - (e) having an internal volume of one cubic metre or more; and
  - (f) includes the normal accessories and equipment of the container, when imported with the container and used exclusively with it; and
  - (g) shipping container or aircraft cargo container;
- but does not include -
- (h) any vehicle, or any ordinary packing case, crate, box, or other similar article used for packing.

**business address** means a description of the location of the premises from which the business in question is being operated, but does not include a postal address.

**claim** means any statement, representation, information, design, words or reference in relation to a food which is not mandatory in this Code.

**Editorial note:**

A claim may be made for example, on the label on a package of food or in an advertisement.

**Code** means the *Australia New Zealand Food Standards Code* as defined in section 3 of the *Australia New Zealand Food Authority Act 1991*.



**code number**, used in relation to a food additive, means either –

- (a) the number set out in the Schedules to Standard 1.3.1 in relation to that food additive; or
- (b) the number referred to in (a) preceded by the letter “E”.

**Commonwealth** means the Commonwealth of Australia.

**component** means any substance including a food additive used in the preparation of an ingredient and present in the final product in a primary or modified form.

**ESADDI** means, for a vitamin or mineral in column 1 of the Schedule, the Estimated Safe and Adequate Daily Dietary Intake, specified for that vitamin or mineral

- 
- (a) in column 3; and
- (b) in column 4 for children aged one to three years;

calculated and expressed in the form specified in column 2.

**label** means any tag, brand, mark or statement in writing or any representation or design or descriptive matter on or attached to or used in connection with or accompanying any food or package.

**lot** means a quantity of food which is prepared or packed under essentially the same conditions usually –

- (a) from a particular preparation or packing unit; and
- (b) during a particular time ordinarily not exceeding 24 hours.

**lot identification** means information which indicates, in a clearly identifiable form, the -

- (a) premises where the food was packed or prepared; and
- (b) lot of the food in question.

**nutrition information panel** or **panel** means a panel which complies with the requirements of Division 2 of Standard 1.2.8.

**nutritive substance** means a substance not normally consumed as a food in itself and not normally used as an ingredient of food, but which, after extraction and/or refinement, or synthesis, is intentionally added to a food to achieve a nutritional purpose, and includes vitamins, minerals, amino acids, electrolytes and nucleotides.

**NZS** means a New Zealand Standard published by Standards New Zealand.

**package** means any container or wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packaged and, in the case of food carried or sold or intended to be carried and sold in more than one package, includes every such package, but does not include –

- (a) bulk cargo containers; or
- (b) pallet overwraps; or
- (c) crates and packages which do not obscure labels on the food; or
- (d) transportation vehicles.

**Editorial note:**

**package** includes any container or wrapper in or by which food intended for sale is wholly or partly encased, covered, enclosed, contained or packaged and, in the case of food carried or sold or intended to be carried and sold in more than one package, includes every such package.

**permitted form** means a form of a vitamin or mineral specified in column 2 of the Schedule.

**prescribed name** means a name by which a food is defined or described in a Standard, and is declared in this Code to be a prescribed name.

**RDI** means, for a vitamin or mineral in column 1 of the Schedule, the Recommended Dietary Intake, specified for that vitamin or mineral –

- (a) in column 3; and
- (b) in column 4 for children aged one to three years;

calculated and expressed in the form specified in column 2.

**Editorial note:**

The RDIs used in this Code are based on those published by the National Health and Medical Research Council (NHMRC) of Australia in 1991.

**relevant authority** means the authority responsible for the enforcement of this Code.

**State** means a State of the Commonwealth of Australia.

**statement of ingredients** means a statement as required in Standard 1.2.4 in this Code.

**supplier** means the packer, manufacturer, vendor or importer of the food in question.

**Territory** means a Territory of the Commonwealth of Australia.

**warning statement** means a statement required to be expressed in the text as so prescribed in this Code, in –

- (a) clause 3 of Standard 1.2.3; and
- (b) clause 3 of Standard 2.6.3; and
- (c) subclause 6(3) of Standard 2.9.2; and
- (d) subclause 7(2) of Standard 2.9.2; and
- (e) clause 15 of Standard 2.9.1; and
- (f) subclauses 15(1), 15(3), and 27(1) of Standard 2.9.1; and
- (g) subclauses 3(3) and 3(4) of Standard 2.9.4.

### **3 Prescribed standards for food**

A reference in this Code to the nature, substance, composition, strength, weight, volume, quantity, purity or quality of any food, article, ingredient or component is the prescribed standard for that food, article, ingredient or component.

**Editorial Note:**

It is an offence under State and Territory and Commonwealth legislation for food not to comply with a prescribed standard where a prescribed standard has been established for that food. This Code establishes that “prescribed standard”.

It is an offence under the New Zealand *Food Act 1981* for food not to comply with applicable food standards issued under that Act.

### **4 Reference to Acts**

In this Code, a reference to an Act includes any regulations made under that Act.

### **5 Guidelines and editorial notes**

- (1) In this Code, guidelines as developed by the Australia New Zealand Food Authority pursuant to paragraph 7(1)(c) of the *Australia New Zealand Food Authority Act 1991*, to assist in the interpretation of the Code are not legally binding.
- (2) In this Code, editorial notes are for information only and are not legally binding.

### **6 Units of measurement**

- (1) A symbol of measurement used in this Code -
  - (a) has the meaning assigned to it under the *Australian National Measurement Act 1960* as amended, or the New Zealand *Weights and Measures Act 1987*; or
  - (b) if there is no meaning assigned under the *Australian National Measurement Act 1960* as amended, has the meaning assigned to it in the Systeme Internationale d’Unites; or

(c) if there is no meaning assigned in the *Australian National Measurement Act 1960* as amended or the Systeme Internationale d'Unites, has the same meaning assigned to it in the Glossary of Units in this Standard.

(2) Where a unit of measurement is referred to in the heading of a table in this Code, the amounts specified in the table are to be measured according to those units unless a different unit of measurement is specified in relation to a particular item in the table.

## **7 Interpretation of compositional provisions**

A reference to a compositional permission or requirement in this Code is a reference to the composition of the final food, unless expressly stated otherwise.

## 8 Glossary of symbols and units

Symbols and units used in this Code have the following meanings –

Symbol/Unit	Meaning
%	per cent
Bq	becquerel
°C	degrees Celsius
cfu/g	colony forming units per gram
Cal or kcal	kilocalorie
cm <sup>2</sup>	square centimetre
cm	centimetre
dm <sup>2</sup>	square decimetre
g or G	gram
gN/kg	gram of nitrogen/kg
Gy	Grays
J	joule
kg	kilogram
kJ	kilojoule
kPa	kilopascal
L or l	litre
M	Molar concentration
mg	milligram
mg/kg	milligram/kilogram
milliequiv	milliequivalent
mL or ml	millilitre
m/m	mass per mass
mm	millimetre
mmol	millimole
mOsm	milliosmoles
nm	nanometre
Osm	osmoles
Pa	pascal
ppm	parts per million
µg or mcg	microgram
µg/kg	microgram/kilogram
µL or µl	microlitre
µm	micrometre

## Division 2 – General Prohibitions

### 9 Prohibition on addition of nutritive substances to food

Nutritive substances must not be added to food unless expressly permitted in this Code.

## **10 Addition of “other foods”**

- (1) A reference to the addition or use of “other foods” in the composition of a food for which a standard is prescribed is not a permission for the addition or use of a nutritive substance, vitamin, mineral, processing aid or food additive in the food.
- (2) Compositional requirements for a food apply to the final food irrespective of any presence or permission to add other foods.

## **11 Prohibition on altering labels**

- (1) Subject to subclause (2), the label on package of food must not be altered, removed, erased, obliterated or obscured except with the permission of the relevant authority.
- (2) A package of food may be relabelled by placing a new label over the incorrect one provided that the new label is not able to be removed so that the incorrect information is visible.

## **12 Modification of prescribed statements**

A statement or information which is required by this Code or the relevant Act to be included in a label or advertisement for food, may include words which modify that statement or information provided that those words do not contradict, or detract from the intended effect of, the required statement or information.

## **13 Application of labelling provisions to advertising**

Advertisements for food must not contain any statement, information, designs or representations which are prohibited by this Code from being included in a label for that food.

## Schedule

### Permitted Forms of and Recommended Dietary Intakes (RDIs) and Estimated Safe and Adequate Daily Dietary Intakes (ESADDIs) for Vitamins and Minerals

Column 1 Vitamin or Mineral	Column 2 Permitted Forms	Column 3 RDI (unless stated otherwise)	Column 4 RDI (unless stated otherwise) for children aged 1 – 3 years
<b>Vitamins</b>			
Vitamin A	<p><i>Retinol Forms</i>            vitamin A (retinol)            vitamin A acetate (retinyl acetate)            vitamin A palmitate (retinyl palmitate)            vitamin A propionate (retinyl propionate)</p> <p><i>Carotenoid Forms</i>            beta-apo-8'-carotenal            beta -carotene-synthetic            carotenes-natural            beta -apo-8'-carotenoic acid ethyl ester</p>	750 µg retinol equivalents <sup>1</sup>	300 µg retinol equivalents <sup>1</sup>
Thiamin (Vitamin B <sub>1</sub> )	thiamin hydrochloride thiamin mononitrate thiamin monophosphate	1.1 mg thiamin	0.5 mg thiamin
Riboflavin (Vitamin B <sub>2</sub> )	riboflavin riboflavin 5'-phosphate sodium	1.7 mg riboflavin	0.8 mg riboflavin
Niacin	niacinamide (nicotinamide) nicotinic acid	10 mg niacin <sup>2</sup>	5 mg niacin <sup>2</sup>
Folate	folic acid	200 µg folic acid	100 µg folic acid
Vitamin B <sub>6</sub>	pyridoxine hydrochloride	1.6 mg pyridoxine	0.7 mg pyridoxine

Vitamin B <sub>12</sub>	cyanocobalamin hydroxocobalamin	2.0 µg cyanocobalamin	1.0 µg cyanocobalamin
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**Schedule (Continued)**

Column 1 Vitamin or Mineral	Column 2 Permitted Forms	Column 3 RDI (unless stated otherwise)	Column 4 RDI (unless stated otherwise) for children aged 1 – 3 years
<b>Vitamins (Continued)</b>			
Biotin	No permitted form specified	30 µg biotin (ESADDI)	8 µg biotin (ESADDI)
Pantothenic acid	No permitted form specified	5.0 mg pantothenic acid (ESADDI)	2.0 mg pantothenic acid (ESADDI)
Vitamin C	L-ascorbic acid ascorbyl palmitate calcium ascorbate potassium ascorbate sodium ascorbate	40 mg in total of L-ascorbic acid and dehydroascorbic acid	30 mg in total of L-ascorbic acid and dehydroascorbic acid
Vitamin D	vitamin D <sub>2</sub> (ergocalciferol) vitamin D <sub>3</sub> (cholecalciferol)	10 µg cholecalciferol <sup>3</sup>	5 µg cholecalciferol <sup>3</sup>
Vitamin E	dl-alpha-tocopherol d- alpha -tocopherol concentrate tocopherols concentrate, mixed d- alpha -tocopheryl acetate dl- alpha -tocopheryl acetate d- alpha -tocopheryl acetate concentrate d- alpha -tocopheryl acid succinate	10 mg alpha -tocopherol equivalents <sup>4</sup>	5 mg alpha -tocopherol equivalents <sup>4</sup>
Vitamin K	No permitted form specified	80 µg phylloquinone (ESADDI)	15 µg phylloquinone (ESADDI)

Calcium	calcium carbonate calcium chloride calcium chloride, anhydrous calcium chloride solution calcium citrate calcium gluconate	800 mg calcium	700 mg calcium
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**Schedule (Continued)**

Column 1 Vitamin or Mineral	Column 2 Permitted Forms	Column 3 RDI (unless stated otherwise)	Column 4 RDI (unless stated otherwise) for children aged 1 – 3 years
Calcium (Continued)	calcium glycerophosphate calcium lactate calcium oxide calcium phosphate, dibasic calcium phosphate, monobasic calcium phosphate, tribasic calcium sodium lactate calcium sulphate	800 mg calcium	700 mg calcium
<b>Minerals</b>			
Chromium	No permitted form specified	200 µg chromium (ESADDI)	60 µg chromium (ESADDI)
Copper	No permitted form specified	3.0 mg copper (ESADDI)	0.8 mg copper (ESADDI)
Iron	ferric ammonium citrate, brown or green ferric ammonium phosphate ferric citrate ferric hydroxide ferric phosphate ferric pyrophosphate ferric sulphate (iron III sulphate) ferrous carbonate ferrous citrate ferrous fumarate ferrous gluconate ferrous lactate ferrous succinate ferrous sulphate (iron II sulphate) ferrous sulphate, dried iron, reduced (ferrum reductum)	12 mg iron	6 mg iron



**Schedule (Continued)**

Column 1 Vitamin or Mineral	Column 2 Permitted Forms	Column 3 RDI (unless stated otherwise)	Column 4 RDI (unless stated otherwise) for children aged 1 – 3 years
<b>Minerals (Continued)</b>			
Iodine	potassium iodate potassium iodide sodium iodate sodium iodide	150 µg iodine	70 µg iodine
Magnesium	magnesium carbonate magnesium chloride magnesium gluconate magnesium oxide magnesium phosphate, dibasic magnesium phosphate, tribasic magnesium sulphate	320 mg magnesium	80 mg magnesium
Manganese	No permitted form specified	5.0 mg manganese (ESADDI)	1.5 mg manganese (ESADDI)
Molybdenum	No permitted form specified	250 µg molybdenum (ESADDI)	50 µg molybdenum (ESADDI)

Phosphorus	calcium phosphate, dibasic calcium phosphate, monobasic calcium phosphate, tribasic bone phosphate magnesium phosphate, dibasic magnesium phosphate, tribasic calcium glycerophosphate potassium glycerophosphate phosphoric acid potassium phosphate, dibasic potassium phosphate, monobasic sodium phosphate, dibasic	1000 mg phosphorus	500 mg phosphorus
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**Schedule (Continued)**

Column 1 Vitamin or Mineral	Column 2 Permitted Forms	Column 3 RDI (unless stated otherwise)	Column 4 RDI (unless stated otherwise) for children aged 1 – 3 years
<b>Minerals (Continued)</b>			
Selenium	No permitted forms specified	70 µg selenium	25 µg selenium
Zinc	zinc acetate zinc chloride zinc gluconate zinc lactate zinc oxide zinc sulphate	12 mg zinc	4.5 mg zinc

**FOOTNOTES TO SCHEDULE**

1 Calculation of retinol equivalents for carotenoid form of vitamin A.

Carotenoid Form	Conversion Factor (µg/1 µg retinol equivalents)
beta-apo-8'-carotenal	12
beta-carotene-synthetic	6
carotenes-natural	12
beta-apo-8'-carotenoic acid ethyl ester	12

2 This figure represents the proportion of the RDI provided by pre-formed niacin in foods and excludes the niacin provided from the conversion of the amino acid tryptophan.

3 Recommended daily oral intake as a supplement, for those Australians not exposed to sunlight. Because of the major role of sunlight in determining vitamin D status, a RDI for vitamin D was not developed for the Australian population.

4 Calculation of alpha-tocopherol equivalents for vitamin E.

Vitamin E Form	Conversion Factor (µg/1 µg alpha-tocopherol equivalents)
dl-alpha-tocopherol	1.36
d-alpha-tocopherol concentrate	*

tocopherols concentrate, mixed	*
d-alpha-tocopherol acetate	1.10
dl-alpha-tocopherol acetate	1.49
d-alpha-tocopherol acetate concentrate	*
d-alpha-tocopherol acid succinate	1.23

\*Conversion factor determined by composition of the form of Vitamin E.



# Standard 1.2.2

## Food Identification Requirements

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**Note – For the purposes of this Proposal only clause 2 of this Standard is included.**

### **Purpose**

This Standard requires that certain information must be included on the label on a food in order to be able to identify the food in question. The labels on a package of food for retail sale, other than in the circumstances listed in Standard 1.2.1 must include, in addition to the information prescribed in this Standard, the information prescribed elsewhere in Part 1.2 of this Code.

### **Table of Provisions**

2 Lot identification

### **Clauses**

#### **2 Lot identification**

The label on a package of food must include its lot identification, unless the food is -

- (a) an individual portion of ice cream or ice confection; or
- (b) in small packages, and the bulk packages and the bulk container in which the food is stored or displayed for sale includes lot identification.