

22 January 2016
[02–16]

Call for submissions – Proposal P1041

Removal of Country of Origin Labelling Requirements

FSANZ has assessed a proposal prepared to remove country of origin labelling (CoOL) requirements from the *Australia New Zealand Food Standards Code* in response to proposed new arrangements where the requirements will fall under Australian Consumer Law, 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) 4 March 2016

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:

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Table of Contents

EXECUTIVE SUMMARY	2
1 INTRODUCTION	3
1.1 THE PROPOSAL	3
1.2 THE CURRENT STANDARD.....	3
1.3 REASONS FOR PREPARING THE PROPOSAL.....	3
1.4 PROCEDURE FOR ASSESSMENT	4
2 SUMMARY OF THE ASSESSMENT	4
2.1 RISK ASSESSMENT	4
2.2 RISK MANAGEMENT	4
2.2.1 <i>Replication of CoOL requirements in the ACL information standard</i>	4
2.2.2 <i>Timing of the removal of CoOL requirements from the Code</i>	4
2.3 RISK COMMUNICATION.....	4
2.3.1 <i>Consultation</i>	4
2.3.2 <i>World Trade Organization (WTO)</i>	5
2.4 FSANZ ACT ASSESSMENT REQUIREMENTS	5
2.4.1 <i>Section 59</i>	5
2.4.2 <i>Subsection 18(1)</i>	6
2.4.3 <i>Subsection 18(2) considerations</i>	7
3 DRAFT VARIATION	7
3.1 TRANSITIONAL ARRANGEMENTS.....	7
ATTACHMENT A – DRAFT VARIATION TO THE REVISED <i>AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE</i> (COMMENCING 1 MARCH 2016)	9
ATTACHMENT B – DRAFT EXPLANATORY STATEMENT.....	11

Executive summary

The Australian Government has proposed a new country of origin labelling (CoOL) system which will see CoOL requirements in the *Australia New Zealand Food Standards Code* (the Code) moved into the Australian Consumer Law (the ACL) through the introduction of a new information standard under the ACL (an ACL information standard).

The ACL information standard intends to replicate the requirements of Standard 1.2.11 – Information requirements – country of origin labelling of the Code. In addition, the new ACL information standard will require specified ‘priority’ foods to include extra labelling information, that is:

- a statement highlighting where the product was made, produced or grown
- the logo of a kangaroo in a triangle to identify the origin of a product as Australian
- a bar chart showing the proportion of ingredients (by ingoing weight) that were produced or grown in Australia
- text on the proportion of Australian ingredients that aligns with the bar chart.

The ACL information standard will provide transitional arrangements after which Standard 1.2.11 will be redundant. Therefore Standard 1.2.11 and associated references to CoOL in Standard 1.1.1 – Structure of the Code and general provisions and Standard 1.2.1 – Requirements to have labels or otherwise provide information, will need to be removed from the Code.

Standard 1.2.11 only applies in Australia.

FSANZ invites submissions on the proposed removal of Standard 1.2.11 and associated references to CoOL in other Standards from the Code. Please note that the scope of this consultation is restricted to the removal of CoOL requirements from the Code. The Australian Government Department of Industry, Innovation and Science is conducting a consultation on the proposed CoOL system. The consultation Regulation Impact Statement for the new system is available at the Department of Industry, Innovation and Science’s Consultation Hub¹. The submission period for that consultation closes on 29 January 2016².

¹ <https://consult.industry.gov.au/cool-taskforce/cool>

² Following the end of the DIIS consultation period (i.e. after 29 January 2016) the DIIS consultation Regulation Impact Statement will continue to be available on the Best Practice Regulation Updates website at <http://ris.dpmc.gov.au/2015/12/22/country-of-origin-labelling-for-food/>.

1 Introduction

1.1 The Proposal

This Proposal involves the removal of country of origin labelling (CoOL) requirements from the *Australia New Zealand Food Standards Code* (the Code). Under a separate process led by the Australian Government Department of Industry, Innovation and Science (DIIS) and the Australian Government Department of Agriculture and Water Resources, CoOL requirements from the Code will be replicated in a new information standard under the Australian Consumer Law (the ACL) that also has additional CoOL requirements.

1.2 The current Standard

All references to the Code in this report are to the revised Code which takes effect and replaces the current Code on 1 March 2016. This is because the gazettal of any draft variation, if approved by the FSANZ Board and if no review of that decision is requested by Ministers, is not expected until after this date. There is no need to amend the current Code.

Standard 1.2.11 – Information requirements – country of origin labelling requires most packaged foods to be labelled with a statement that identifies where the food was made, produced or grown, or a statement that identifies the country where the food was manufactured or packaged and to the effect that the food is constituted from ingredients imported into that country or from local and imported ingredients.

Some packaged foods are exempt from CoOL, namely:

- food made and packaged on the premises from which it is sold
- food delivered packaged and ready for consumption, at the express order of the purchaser
- packaged food sold at a fundraising event, and
- food packaged and displayed in an assisted service display cabinet.

Unpackaged fruit, vegetables, fish, pork, beef, sheep and chicken meat require a label on or in connection with the display of the food identifying the country or countries of origin, or a statement indicating that the foods are a mix of local and imported foods or a mix of imported foods.

Standard 1.2.11 does not apply to food sold to the public by restaurants, canteens, schools, caterers, self-catering institutions, prisons, hospitals or a medical institution where the food is offered for immediate consumption.

Standard 1.2.11 does not include conditions for the wording of CoOL statements such as 'Made in Australia from local and imported ingredients'. The ACL provisions in the *Competition and Consumer Act 2010* provide a framework for which products are considered to be 'made in', 'grown in' or 'produced in' for the purposes of deciding whether or not such statements are misleading.

References to CoOL also exist in Standard 1.1.1 – Structure of the Code and general provisions and Standard 1.2.1 – Requirements to have labels or otherwise provide information.

1.3 Reasons for preparing the Proposal

The Australian Government has proposed a new CoOL system. The system involves the introduction of a new ACL information standard intended to replicate the requirements of Standard 1.2.11 and require specified 'priority' foods to include additional labelling information.

Once the transitional arrangements for the new ACL information standard end, Standard 1.2.11 will be redundant.

To support the implementation of the new CoOL system, Standard 1.2.11, and associated references to CoOL in Standard 1.1.1 and Standard 1.2.1, need to be revoked from the Code.

1.4 Procedure for assessment

The Proposal is being assessed under the General Procedure.

2 Summary of the assessment

2.1 Risk assessment

FSANZ has concluded that a scientific risk assessment is not required for this Proposal, given the purpose and effect of the amendment. That is, that the Code's CoOL requirements will be replicated in the ACL information standard, and combined with additional CoOL requirements.

Two important issues for consideration are:

- replication of CoOL requirements in the ACL information standard
- timing of the proposed removal of CoOL requirements from the Code.

2.2 Risk management

2.2.1 Replication of CoOL requirements in the ACL information standard

It is intended that all CoOL requirements in the Code will be replicated in the new ACL information standard. FSANZ has reviewed the draft ACL information standard³ and considers that all the CoOL requirements in the Code have been included.

2.2.2 Timing of the removal of CoOL requirements from the Code

The proposed removal of CoOL requirements from the Code is closely linked with the introduction of the new CoOL framework into the ACL. Timing will be important to ensure that CoOL requirements remain in the Code for sufficient time to satisfy the ACL information standard transition arrangements. See in this regard section 3.1 below.

2.3 Risk communication

2.3.1 Consultation

Consultation is a key part of FSANZ's standards development process. 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 this Proposal and the effects of regulatory options.

³ The draft ACL information standard was published by DIIS in December 2015 with the CoOL Consultation Regulation Impact Statement and can be accessed at <https://consult.industry.gov.au/cool-taskforce/cool>. Following the end of the DIIS consultation period (i.e. after 29 January 2016) the DIIS consultation RIS will continue to be available on the Best Practice Regulation Updates website at <http://ris.dpmc.gov.au/2015/12/22/country-of-origin-labelling-for-food/>.

The Office of Best Practice Regulation (OBPR) assessment is that this proposed change is machinery in nature and a Regulation Impact Statement (RIS) for the proposed draft variation is therefore not required (OBPR reference 20087).

As mentioned above, the ACL information standard also contains CoOL requirements additional to those currently captured in the Code. These additional requirements are currently the subject of the ACL consultation process and the Consultation RIS submitted by DIIS for the ACL consultation process (OBPR reference 18710).

2.4.1.2 Other measures

There are no other measures (whether available to FSANZ or not) that would be more cost-effective means of achieving the same outcome as the proposed draft variation.

2.4.1.3 Any relevant New Zealand standards

There are no relevant New Zealand Standards. The existing Standard 1.2.11 only applies to Australia.

2.4.1.4 Any other relevant matters

Other relevant matters are considered below.

2.4.2 Subsection 18(1)

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

2.4.2.1 Protection of public health and safety

The variation being proposed is not expected to have an impact on the protection of public health and safety. The Australia New Zealand Food Regulation Ministerial Council⁵ Policy Guideline *Country of Origin Labelling of Food* recognises that CoOL is not a public health and safety issue.

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

The variation being proposed removes CoOL requirements from the Code once they have been replicated in the ACL information standard. Because the CoOL requirements will continue to exist under a new framework, this Proposal is not expected to impact on the provision of adequate information relating to food to enable consumers to make informed choices.

2.4.2.3 The prevention of misleading or deceptive conduct

The variation being proposed removes CoOL requirements from the Code after the implementation of the new ACL information standard. Because the CoOL requirements will continue to exist under a new framework, this Proposal is not expected to impact on the prevention of misleading or deceptive conduct.

⁵ Now known as the Australia and New Zealand Ministerial Forum on Food Regulation (convening as the Australia and New Zealand Food Regulation Ministerial Council)

2.4.3 Subsection 18(2) considerations

FSANZ has also had regard to:

- **the need for standards to be based on risk analysis using the best available scientific evidence**

FSANZ has concluded that a scientific risk analysis was not considered necessary given the purpose and effect of the proposed variation. See above.

- **the promotion of consistency between domestic and international food standards**
- **the desirability of an efficient and internationally competitive food industry**
- **the promotion of fair trading in food**

As the variation being proposed removes CoOL requirements from the Code and replicates them in the ACL, it is not expected to impact on the three matters listed above.

- **any written policy guidelines formulated by the Ministerial Council⁶**

In 2003, the then Australia and New Zealand Food Regulation Ministerial Council notified FSANZ of its approval of a policy guideline on mandatory CoOL for food⁷. Ministers emphasised that this was not a public health and safety issue, as the safety of the food supply is assured through other means. The Ministerial Council's support for CoOL was on the grounds of enabling consumers to make informed choices.

3 Draft variation

The draft variation to the revised Code is at Attachment A and states that it will commence 24 months after the commencement of the ACL information standard. The ACL information standard is expected to be introduced in mid-2016. See section 3.1 below.

A draft explanatory statement is at Attachment B. An explanatory statement is required to accompany an instrument if it is lodged on the Federal Register of Legislative Instruments.

3.1 Transitional arrangements

The timing of the revocation of CoOL requirements from the Code cannot be determined until the transition arrangements for the new ACL information standard have been finalised.

The ACL consultation RIS outlines two options for transition arrangements. Draft provisions for each option have been included in the draft ACL information standard released for public comment.

The ACL option 1 is a flat transition arrangement and period where businesses would be given 24 months in which to update their labels to align with the ACL information standard. In this period, food that complied with the Code's CoOL requirements, as applied by Australian food laws, would be deemed by the ACL information standard to comply with its requirements.

⁶ Now known as the Australia and New Zealand Ministerial Forum on Food Regulation

⁷ <http://www.foodstandards.gov.au/code/fofr/fofrpolicy/pages/default.aspx>

The ACL option 2 is a phased transition where businesses would be required to transition to the ACL information standard in a gradual and staggered manner over six to 24 months, depending on the shelf-life of food. That is, updated labels would be required within:

- six months for food with a shelf-life of six months or less
- 12 months for food with a shelf-life of between six and 12 months
- 24 months for food with a shelf-life of more than 12 months.

A decision will not be made on the ACL transition arrangements until after the ACL consultation period closes and submissions are considered.

For the purposes of this call for submissions, FSANZ has prepared the proposed draft variation to reflect the ACL option 1 (flat transition). See section 3 of the draft variation at Attachment A. That is, the effect of the section is to revoke the Code's CoOL requirements 24 months after the commencement of the ACL information standard.

If a different transitional arrangement to option 1 is adopted in the ACL standard (such as option 2 above), that arrangement will need to be reflected in the related variation in the Code.

Submissions on the two ACL transition options are out of scope for this call for submissions and should be provided through the ACL consultation process⁸. Submissions on the timing of the revocation of CoOL from the Code are within scope of this call for submissions.

Attachments

- A. Draft variation to the revised *Australia New Zealand Food Standards Code* (commencing 1 March 2016)
- B. Draft Explanatory Statement

⁸ https://consult.industry.gov.au/cool-taskforce/cool/consult_view

Following the end of the DIIS consultation period (i.e. after 29 January 2016) the DIIS consultation RIS will continue to be available on the OBPR website at <http://ris.dpmc.gov.au/2015/12/22/country-of-origin-labelling-for-food/>.

Attachment A – Draft variation to the revised *Australia New Zealand Food Standards Code* (commencing 1 March 2016)



Food Standards (Proposal P1041– Removal of Country of Origin Labelling Requirements) 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 variation 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

Note:

This variation will be published in the Commonwealth of Australia Gazette No. FSC XX on XX Month 20XX. This means that this date is the gazettal date for the purposes of clause 3 of the variation.

1 Name

This instrument is the *Food Standards (Proposal P1041– Removal of Country of Origin Labelling Requirements) Variation*.

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

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

3 Commencement

The variation commences on the day that is 24 months after the commencement of the *Country of Origin Food Labelling Information Standard 2016*.

Schedule

[1] Standard 1.1.1 is varied by

[1.1] omitting from subsection 1.1.1—2(2)

Standard 1.2.11 Information requirements – country of origin labelling

Note Applies in Australia only

[1.2] omitting Note 1 to subclause 1.1.1—3(1), substituting

Note 1 The following provisions have not been incorporated by reference into a food standard under the *Food Act 2014* (NZ):

- (i) Standard 1.4.2 (agvet chemicals);
- (ii) Standard 1.6.2 (processing requirements for meat);
- (iii) section 2.1.1—5 (requirement for folic acid and thiamin in bread);
- (iv) section 2.2.1—12 (bovine must be free from bovine spongiform encephalopathy);
- (v) Standard 2.2.2 (eggs);
- (vi) subsection 2.4.2—3(2) and subsection 2.4.2—3(4) (requirement for food sold as table edible oil spreads and table margarine);
- (vii) Chapter 3 (food safety standards) and Chapter 4 (primary production and processing standards).

[2] Standard 1.2.1 is varied by

[2.1] omitting paragraph 1.2.1—5(b)

[2.2] renumbering paragraphs 1.2.1—5(c) and (d) respectively as paragraphs 1.2.1—5(b) and (c)

[2.3] omitting the notes at the end of subsection 1.2.1—6(1), substituting

Note See section 1.2.1—9 for information requirements for food for sale that does not need to bear a label.

[2.4] omitting section 1.2.1—7

[2.5] omitting paragraph 1.2.1—11(c)

[2.6] renumbering paragraphs 1.2.1—11(d) and (e) respectively as paragraphs 1.2.1—11(c) and (d)

[2.7] omitting section 1.2.1—14

[3] Standard 1.2.11 is repealed.

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 P1041 to remove country of origin labelling (CoOL) requirements from the Code in response to proposed new arrangements where the requirements will fall under the Australian Consumer Law (the ACL). The Authority considered the Proposal in accordance with Division 2 of Part 3 and has prepared a draft Standard.

2. Purpose

The Authority has a draft variation to remove CoOL requirements from the Code because the Australian Government has proposed a new CoOL system. The system involves the introduction into a new information standard under the Australian Consumer Law (the ACL information standard) which is expected to replicate the requirements of Standard 1.2.11 – Information requirements - country of origin labelling, of the Code. Additionally, the new ACL information standard will require specified ‘priority’ foods to include extra labelling information, that is:

- a statement highlighting where the product was made, produced or grown
- the logo of a kangaroo in a triangle to identify the origin of a product as Australian
- a bar chart showing the proportion of ingredients (by ingoing weight) that were produced in Australia
- text on the proportion of Australian ingredients that aligns with the bar chart.

The new ACL information standard will provide a transitional arrangement and period to enable industry to transition to the new regulatory framework. In this period, food that complies with the Code’s CoOL requirements will be deemed by the ACL information standard to comply with that standards requirements. For this reason, the draft variation will commence on the expiration of the transition period provided for in the ACL standard. At that point, Standard 1.2.11, and references to that Standard in Standard 1.1.1 and Standard 1.2.1, will be removed from the Code.

3. Documents incorporated by reference

The variations to food regulatory measures do 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 P1041 will include one round of public consultation following an assessment and the preparation of a draft variation and associated report.

A RIS was not required because the proposed variation to Standard 1.2.11 is based on Code requirements being inserted into the ACL which is considered to be machinery in nature.

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. Variation

Items [1] and [2]

Items [1] and [2] of the Schedule to the variation remove references to Standard 1.2.11 where they appear in the Code other than in Standard 1.2.11 itself.

Item [3]

Item [3] of the Schedule repeals Standard 1.2.11, which in effect removes all CoOL requirements from the Code.