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**Food Standards Australia New Zealand**

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27 September 2013

Dear Sir/Madam

**SUBMISSION - PROPOSAL P1025 CODE REVIEW**

Red Bull is a non-alcoholic energy drink that has enjoyed a successful history since its inception in Austria in 1987. It is available in over 165 countries and has been available in Australia for 13 years.

As a market leader in the non-alcoholic energy drink sector, Red Bull cooperates with scientific, regulatory and health bodies globally.

Additionally, Red Bull is an active industry participant being a member of the Australian Beverages Council, the New Zealand Juice and Beverage Association, the Australian Food and Grocery Council, and the New Zealand Food and Grocery Council.

As well as complying with all relevant laws and standards, Red Bull is also a party to the Australian Beverages Council's Energy Drink Industry Commitment pursuant to which Red Bull does not directly market their products to children or sell products in primary or high schools.

Red Bull supports the policies underlying Proposal P1025 Code Review (**P1025**), as published by Food Standards Australia New Zealand (**FSANZ**). As expressed by FSANZ, P1025 aims to modernise the presentation of the Code to better meet the needs of a broad range of stakeholders in industry, commerce and enforcement and proposes to achieve these by:

- presenting the Code as a single, unified instrument;
- clearer presentation of requirements that impose an obligation in relation to the conduct of a food business or the sale of food, or relating to the composition of food or labelling; and
- a greater reliance on definitions already present in the food acts of New Zealand and the states and the territories.

In particular, it is the intention that P1025 will not amend provisions in the Code that impose requirements or obligations. In that regard, Red Bull would like to provide the requested amendments to P1025 as the document relates to Formulated Caffeinated Beverages as enclosed with this letter. We believe that these suggested amendments provide clarity and achieve the desired objectives of the specific standard.

Should FSANZ have any questions or comments regarding the submissions, please contact Zac Rich (Regulatory Affairs Manager - Asia Pacific) on the contact details below.

Yours faithfully

  
Zac Rich  
Regulatory Affairs Manager – Asia Pacific

Comment	Code Reference	Current Code	Draft Revision	Concern
There should be consistency in the use of 'Definitions' and 'Interpretation' headings.	Interpretation	2.6.4 (Clause 1, Interpretation)	Subdivision 2.58	Change to 'Definitions'
Insert the words 'water-based' after the words 'non-alcoholic' and before the word 'beverage'.	Definition of 'formulated caffeinated beverage'	2.6.4 (Clause 1, Interpretation)	Subdivision 2.58(1)	This correctly describes the beverage. These words have been removed when compared to the current code for no apparent purpose.
Insert the words 'providing energy or' after the words 'for the purpose of' and before the word 'enhancing'.	Definition of 'formulated caffeinated beverage'	2.6.4 (Clause 1, Interpretation)	Subdivision 2.58(1)	This correctly describes the purpose of the beverages which are also known as 'energy drinks'.
Insert the words 'physical or' after the word 'enhancing' and before the word 'mental'.	Definition of 'formulated caffeinated beverage'	2.6.4 (Clause 1, Interpretation)	Subdivision 2.58(1)	This reflects the application for these drinks in sports and physical pursuits.
Insert the definition of 'one-day quantity' in the definitions section, rather than simply being a 'note' as proposed.	Interpretation	2.6.4 (Clause 1, Interpretation)	Subdivision 2.58(1)	Technically, this is a definition and should be correctly inserted as such. This was also the case for the current Code and should be maintained. Editorial notes are not strictly binding under the Code. For the avoidance of doubt as to the legality of the term, it has to be inserted into the definition section.
Insert the words 'as calculated under 2.59 below.' at the end of the definition of 'one-day quantity'.	Definition of 'one-day quantity'	2.6.4 (Clause 1, Interpretation)	Subdivision 2.58(2)	Insert for clarity and reference.
Insert words 'and calculation' after the word 'Meaning' in the heading.	Meaning of one-day quantity	2.6.4 (Clause 3, Labelling)	Subdivision 2.59	This section deals with both in that a formulated caffeinated beverage as a one day quantity it contains certain micronutrients and/or other specified ingredients.



Delete the words 'subsection 1' and replace with 'column 1 of the table in Schedule 29'	Calculating one-day quantity.	2.6.4 (Clause 3, Labelling)	Subdivision 2.59(2)(a)	Ensure that the wording is directly referential and precise.
Insert the word 'may' after the word 'beverage' and before 'contain'.	Calculating one-day quantity.	2.6.4 (Clause 3, Labelling)	Subdivision 2.59(2)(a)	Makes it clear that all substances are not required.
Insert the words 'of this clause' at the end of the sentence.	Calculating one-day quantity	2.6.4 (Clause 3, Labelling)	Subdivision 2.59(2)(a)	Specificity.
Re-instate former wording from 2.6.4(2)(3) and inserted relevance reference.	Composition	2.6.4 (Clause 2, Composition)	Subdivision 2.60(3)	The inclusion of the reference to "food" under this Division (being specifically for FCB's) creates confusion – it is easier to comprehend the intention of the provision by stating that "a formulated caffeinated beverage must not be mixed with a non-alcoholic beverage".
After the word 'provision' and before the word 'the' insert "for formulated caffeinated beverages set out in Division 1 of Part 3 of Chapter 1"	Labelling requirements—formulated caffeinated beverages	2.6.4 (Clause 3(1), Labelling)	Subdivision 2.61(1) Required Declarations	The drafting as proposed was unnecessarily repetitive and confusing.
Replace the words 'required declarations of average quantities are' with "label must include".	Labelling requirements—formulated caffeinated beverages	2.6.4 (Clause 3(1), Labelling)	Subdivision 2.61(1) Required Declarations	The drafting as proposed was unnecessarily repetitive and confusing.
Delete editorial note.	Labelling requirements—formulated caffeinated beverages	2.6.4 (Clause 3(1), Labelling)	Subdivision 2.61(1) Required Declarations	Now incorporated into the proposed re-drafted wording as set out above.
After the word 'provision' and before the word 'the', insert "for formulated caffeinated beverages set out in Division 1 of Part 3 of Chapter 1".	Labelling requirements—formulated caffeinated beverages	2.6.4 (Clause 3, Labelling)	Subdivision 2.61(3) Required Declarations	Provides clarity and now also consistency with the rest of Subdivision 2.61.

Delete editorial note.	Labelling requirements— formulated caffeinated beverages	2.6.4 (Clause 3, Labelling)	Subdivision 2.61(3) Required Declarations	Now incorporated into the proposed re-drafted wording as set out above.
After the word 'provision' and before the word 'the', insert "for formulated caffeinated beverages set out in Division 1 of Part 3 of Chapter 1".	Labelling requirements— formulated caffeinated beverages	2.6.4 (Clause 3, Labelling)	Subdivision 2.61(4) Required Declarations	Provides clarity and now also consistency with the rest of Subdivision 2.61.
Delete editorial note.	Labelling requirements— formulated caffeinated beverages	2.6.4 (Clause 3, Labelling)	Subdivision 2.61(4) Required Declarations	Now incorporated into the proposed re-drafted wording as set out above.

## Division 4—Formulated caffeinated beverages

### 2.58 Interpretation Definitions

Comment [RZ1]: These are definitions, not 'interpretation'.

- (1) In this Code:

*formulated caffeinated beverage* means a flavoured non-alcoholic water-based beverage which contains caffeine and may contain carbohydrates, amino acids, vitamins and other substances, including other foods, for the purpose of providing energy or enhancing physical performance or mental performance.

Comment [RZ2]: Communicates the functional nature of the products

- (2) In this Division:

a reference to *caffeine* is a reference to the total quantity of caffeine, whatever its source; and:

- (3) *one-day quantity* is the maximum amount of the formulated caffeinated beverage that should be consumed in a day as calculated under 2.59 below.

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Comment [RZ3]: This is a definition and as such should be in the correct section

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### 2.59 Meaning and calculation of one-day quantity

- (1) A formulated caffeinated beverage has a *one-day quantity* if it contains a substance listed in column 1 of the table in Schedule 29.

Note: The *one-day quantity* is the maximum amount of the formulated caffeinated beverage that should be consumed in a day.

Comment [RZ4]: This is a definition and as such should be in the correct section

- (2) To calculate the *one-day quantity*, follow the following steps:

- for each substance listed in subsection (1) column 1 of the table in Schedule 29 that the beverage may contain, calculate the equivalent amount of the substance in accordance with the formula in subsection (3) of this clause;
- select the substance with the lowest equivalent amount;
- the *one-day quantity* is the corresponding lowest equivalent amount, in mL.

- (3) For paragraph (2)(a), the formula is:

$$\text{equivalent amount} = \frac{\text{permitted amount}}{\text{concentration}} \times 1000$$

where:

*concentration* is the concentration of the substance, in mg/L, in the beverage.

*permitted amount* is, for a substance listed in column 1 of the table in Schedule 29, the corresponding amount in column 2.



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Section 2.60 Composition of formulated caffeinated beverage

## 2.60 Composition of formulated caffeinated beverage

- (1) A formulated caffeinated beverage must contain no less than 145 mg/L and no more than 320 mg/L of caffeine.
- (2) If a formulated caffeinated beverage contains a substance listed in column 1 of the table in Schedule 29, a one-day quantity must not contain more than the amount specified in the corresponding row of column 2.
- (3) ~~A food must not consist of a mixture of a~~ formulated caffeinated beverage ~~must not be mixed with and~~ a non-alcoholic beverage as described under Part 6 Division 2 of Chapter 2.

**Comment [RZ5]:** Removed reference to 'food' and made the provision referential to FCBs as that is what this standard applies to.

## 2.61 Labelling requirements—formulated caffeinated beverage

### *Required declarations*

- (1) For the labelling provisions for formulated caffeinated beverages set out in Division 1 of Part 3 of Chapter 1, the label must include required declarations of average quantities are a declaration of the average quantity, per serving size and per 100 mL, of:
  - (a) caffeine, expressed in milligrams; and
  - (b) any of the substances listed in the table in Schedule 29 that are included in the food, expressed in the units included in column 2 of the table.

**Comment [RZ6]:** Proposed wording is clunky and repetitive, hence simplification.

~~[Note:—The labelling provisions are set out in Division 1 of Part 3 of Chapter 1.]~~

**Comment [RZ7]:** This has been included in the clause above, for simplicity.

- (2) The declarations under subsection (1):
  - (a) may be adjacent to or follow a nutrition information panel on the label; and
  - (b) may be set out in the format in section S12.04 of Schedule 12; and
  - (c) must be clearly distinguished from the nutrition information panel.

### *Required advisory statements*

- (3) For the labelling provisions for formulated caffeinated beverages set out in Division 1 of Part 3 of Chapter 1, the required advisory statements are statements to the effect that:
  - (a) the food contains caffeine; and
  - (b) the food is not recommended for:
    - (i) children; or
    - (ii) pregnant or lactating women; or
    - (iii) individuals sensitive to caffeine.

~~[Note:—The labelling provisions are set out in Division 1 of Part 3 of Chapter 1.]~~

**Comment [RZ8]:** This has been included in the clause above, for simplicity.

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Section 2.61 Labelling requirements—formulated caffeinated beverage

- (4) For the labelling provisions for formulated caffeinated beverages set out in Division 1 of Part 3 of Chapter 1, if the beverage has a one-day quantity, an advisory statement is required that is to the following effect: 'Consume no more than [amount of one-day quantity (as cans, bottles or mL)] per day'.

Note: ~~The labelling provisions are set out in Division 1 of Part 3 of Chapter 1.~~

**Comment [R29]:** This has been included in the clause above, for simplicity.