

Comments from the Victorian Departments of Health and Human Services and Economic Development, Jobs, Transport and Resources.

Due date of submission: 5 August 2016

The Victorian Departments of Health and Human Services and Economic Development, Jobs, Transport and Resources (the departments) welcome the opportunity to provide comments on Proposal P1034, to determine whether measures are required to manage the food safety risks in relation to chemical migration from packaging into food (CMPF).

General comments

The departments understand that there are three key elements in this proposal:

1. The investigation of the risks associated with the migration of chemicals from packaging into food;
2. A review of food businesses' awareness of their responsibilities regarding the use of safe and suitable packaging, and of the availability and adequacy of relevant information to assist them to comply with requirements; and
3. Determining the best approach to manage risks associated with CMPF.

The departments also understand that concerns raised by Victoria regarding potential health and safety risks arising from food produced using modified atmosphere packaging, active and intelligent packaging and nanomaterials were excluded from the scope of Proposal P1034 as these matters will be the subject of a subsequent examination.

The departments support Option 4: Graduated approach, subject to comments provided below.

Risk Assessment

The departments commend FSANZ on the hazard investigation of, and the estimated dietary exposure to, the more than 1300 food contact substances identified for assessment. We support FSANZ's conclusion that, with the exception of two phthalates, CMPF represents a low risk to public health and safety.

Further work on the two phthalates will determine whether or not a maximum level should be considered for inclusion in Schedule 19-5 of the Code. The potential creation of a Maximum Level (ML) would enable jurisdictions to take prompt action to remove foods posing a risk. However, measures would need to be developed to provide guidance to industry how to prevent those phthalates getting into food in the first place.

Availability and accessibility of information on suitable packaging

Victoria continues to receive queries from SMEs regarding requirements for 'food grade' packaging and where to source this information. This lack of knowledge by certain industry sectors appears to be supported by FSANZ's findings.

Currently there is not a suitable standard or document that can be referred to for guidance on food packaging materials. As a regulator, the Department of Health and Human Services notes that this is problematic, particularly if enforcement action relating to the inappropriate use of packaging were to be pursued.

The departments support the development of guidance materials for industry. This guidance material should be current, incorporate references to reputable international standards, consider the full range of food packaging materials, be relevant to the food

and packaging industries in Australia and New Zealand and should be flexible enough to facilitate the development of new packaging materials and technologies.

Risk management

FSANZ's risk assessment concludes that CMPF, with a few exceptions, poses a low risk. Where it is determined that there is a potential risk, the departments would support the inclusion of MLs in the Code, in addition to risk mitigation measures in relation to each 'risk' chemical being provided in guidance.

The current Standard 1.1.1-10 Packaging requirements needs amendment. The requirement relating to packaging and articles (1.1.1-10 clause 11), if taken into the mouth, should be removed from the Code as it is more appropriate that this be under the Australian Consumer Law.

Responses to Questions set out in the call for submissions

Question 1: Do you consider that an ongoing monitoring and surveillance strategy, possibly by jurisdictions responsible for enforcement and compliance of food laws would be a practical measure to identify and manage unknown risks associated with CMPF?

Ongoing monitoring and surveillance at a national level continues to be a practical measure to assist in the identification of unknown risks associated with CMPF.

The Australian Total Diet Surveys, informed by emerging issues, are the appropriate vehicle for this work. Jurisdictions do not have the expertise or resources to undertake this type of work. It is critical that FSANZ is adequately funded to maintain the expertise and resources required to perform monitoring and surveillance activities of national significance.

Question 2: Do you agree that FSANZ's analysis of control measures and market information accurately represents how CMPF is being controlled in Australia and New Zealand? If, not please state your reasons?

Yes, with the comments made earlier.

Q 3: N/A

Question 4: What problems can you identify with the status quo option and therefore abandoning this proposal?

The departments agree with FSANZ's statement, "There is a lack of clarity and certainty with the Code for food businesses, and gaps in the awareness and management of CMPF". The status quo option does not address this.

Q 5: N/A

Question 6: What do you see as the costs/benefits of this option for consumers, industry and government? Do you consider it would ensure industry has adequate knowledge of the risks from CMPF and implemented available risk mitigation measures?

An information/awareness program would more appropriately support option 4 rather than be used as a standalone measure. There is a need when dealing with known risks to be able to respond rapidly to detections to remove product from the market. Option 3 would not provide this certainty for enforcement agencies.

Question 7: Focusing on the three key areas outlined above, what information do you think would be the most suitable to include in an information/awareness program?

In addition to the review and possible consolidation of the range of 'industry standards' identified by FSANZ, there needs to be a tool provided to enquirers (for example, consumers, SMEs) to assist in navigating through that information. For example: what does food grade mean? Can I microwave food in X?

Question 8: Do you agree that FSANZ, the AFGC/NZFGC and packaging peak bodies are the most appropriate organisations to undertake this program? If not, can you identify other appropriate agencies, and peak bodies?

Yes.

Q 9, 10, : N/A

Question 11: Would the above information be appropriate for including in a guideline or can you identify others that should be included?

Yes it is appropriate.

Question 12: Should all the industry standards and CoPs identified in option 3b be included in a guideline under this current Proposal (versus a separate process) to maximise coverage of all requirements for packaging or only specific ones that include reference to food safety measures or prescribed limits in them? In your answer please be as specific as possible to identify the most-appropriate guideline that would address CMPF.

Only standards and Codes of Practice of relevance to the Australian and New Zealand context should be included. Care should be taken to ensure that contradictory or inconsistent information is not included in any guidance developed.

Question 13: What do you see as costs and benefits for government, consumers and industry of this measure? Would it be cost effective? Please detail any other options that you think are appropriate, or available, to strengthen or clarify existing Code requirements and the reasons why, including the costs and benefits of such a measure?

In the absence of evidence of regulatory failure in this area, the departments would anticipate that the costs to industry and regulators of including more prescriptive or onerous requirements in the Code would outweigh the benefits.

As previously stated, the departments advocate amendment to the current Standard for clarification and to remove the 'choking hazard' requirement, but not in the prescriptive manner suggested under Option 4.

Question 14: Do you consider that there is scope to improve the Food Acts provisions regulating the sale of food packaging in Australia and New Zealand?

Yes. There could be some clarification regarding the wording, "packaging or labelling material that if used for the purposes for which it was designed".

The offences that include the words "ought reasonably to know" would be supported by an information/awareness program of the kind discussed in this paper.

Question 15: Do you consider that the Code should include specific limits for DEHP and DINP for all foods similar to the limits set used for other packaging chemicals (tin, vinyl chloride and acrylonitrile). What do you see as the costs and benefits to industry, enforcement agencies and consumers of this approach?

Yes, if further investigations confirm that these substances pose a risk to health. As stated earlier, the introduction of MLs should be supported by risk mitigation measures in guidance material.

The introduction of MLs expedites the removal of product from the market by enforcement agencies.

Question 16: Which peak bodies should be involved in familiarising industry with any new provisions or raising awareness of CMPF?

Those bodies already identified under Q 8.

Question 17: How could post-market surveillance be conducted satisfactorily? Who would undertake such surveillance?

The Australian Total Diet Survey is the appropriate surveillance vehicle. See earlier comments.

Q 18: N/A

Question 19: Are there other affected parties that have not been identified by FSANZ that you feel should be included?

It is always difficult to reach the smaller businesses that often do not belong to associations. Some of the smaller importers may fall into this category.

Question 20: Are there specific costs or benefits to consumers, industry and/or government that you feel should be considered in a future Regulation Impact Statement? If you have any data or information to support your views on these questions, FSANZ would welcome the opportunity to consider it.

Our preferred option is 4: a graduated approach, subject to comments raised above. This is proportionate to the risk and provides for minimal effective regulation. However, this relies on FSANZ, jurisdictions and industry working together to provide assurances that the graduated approach is effective in managing the risks associated with CMPF.

Further information on proportion and manufacture of imported packaging may be useful to provide assurance that the proposed approach will manage risks comprehensively. For example, does FSANZ know what proportion of packaging is being sourced directly from overseas sources and what processes food businesses have in place to determine the safety and suitability of these packaging products?