**SUMMARY OF COMMENTS RECEIVED: PROPOSED SECOND DRAFT REGULATIONS FOR TEA AND RELATED PRODUCTS INTENDED FOR SALE IN THE REPUBLIC OF SOUTH AFRICA**

**[Request for comments on 11 November 2019; Due date: 26 November 2019]**

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| **PAGE**  **NO.** | **REGULATION** | **STAKEHOLDER COMMENTS** | **JUSTIFICATION** | **DAFF COMMENTS** |
| 2 |  | **"best before date"** or **"best quality before ~~date~~"** means the date which signifies the end of period under any stated storage conditions during which the unopened product will remain fully marketable and will retain any specific qualities for which implied or express claims have been made, however, beyond the date the food may still be acceptable for consumption; | The wording date must be removed as this can be misleading to the consumer. | *This office abides by its previous response provided in the summary of comments on the first draft regulation, namely*:  “This definition must be clear about what is meant and what it applies to. In the newly numbered regulation 15(2)(a) under the marking requirements the wording “best before” or “best quality before” only is prescribed, i.e. the word “date” is not part thereof. The definition will therefore be retained as is.” |
| 2 | 1 (BB) | **"best before date"** or **"best quality before date"** means the date which signifies the end of period under any stated storage conditions during which the unopened product will ~~remain fully marketable~~ and will retain any specific qualities for which implied or express claims have been made, ~~however, beyond the date the food may still be acceptable for consumption;~~  (we focus on the quality and not the safety | The however part should be removed since this will cause a challenge in enforcing regulations on quality. BB date is about quality not of safety. This may be the reason why DOH altered their definition in R146, since they focus on the safety of the product. Hence also “date of minimum durability” in R146.  If it stays, certain provision should be dictated, especially where the quality is concerned since the quality may have deteriorated. | All the date markings definitions have been aligned with the latest Codex General Standard for the Labelling of Pre-packaged Foods (CXS 1-1985, as last amended in 2018). Regulation R.146 dated 1 March 2010 of the Department of Health on the other hand, has unfortunately not been amended in line with the latest Codex standards.  **It must also be kept in mind that these definitions have only been added for the purpose of traceabili**ty – please refer to regulations 10(2)(e) and 15 in the draft.  The proposed definition will therefore be retained as is. |
| 2 | **Definition Freeze Dried – page 2** | “… with the dried particles typically having a granular appearance.” | Most of the freeze-dried materials indeed have a granular appearance. But we have seen other types as well (e.g flaky types). The appearance of the particles depend on the way the frozen undried extract is treated/shaped before the drying process. | Noted. The definition will be amended as proposed. |
| 2 |  | **"ground tea"** means that the tea leaves which are steamed, dried and then have been ground into a fine powder; | The completed process should be included for clarity. | Noted, thank you. The definition will be amended as proposed. |
| 2 | **Definition Herbal Tea – page 2** | “Herbal Infusion” | The more common English expression is “Herbal Infusion” | Agreed. “herbal tea” will be changed to “herbal infusion”. |
|  |  | **"main panel"** means that part of the container or label that bears the brand name or trade mark of the product in greatest prominence or any other part of the container ~~or~~ label that bears the brand name or trade mark in equal prominence; | Must be changed to AND; in line with other regulations and class name will be with trademark especially for containers that ends up the back-to-front on shelves. | This definition will be amended and the reference to label will be removed. |
| 3 | **Definition** | **"tea"** means the product derived solely and exclusively from the tender shoots and leaves of varieties of the species *Camellia sinensis* (*L.)* O. Kuntze and produced by acceptable processes (e.g. withering, leaf maceration, aeration, drying, etc.) intended for making a brew suitable for consumption as a beverage, and include Black tea, Oolong tea, Green tea, etc.; | The word leaves must be added to the definition. | This definition has been amended accordingly. |
| 3 | Definition | **"the Act"** means the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990); and | Please remove the word and or add Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972); | Do not agree. These proposed regulations will be published under the Agricultural Product Standards Act, 1990. The Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972) on the other hand is administered by the Department of Health.  Since the definition for “the Act” is the second last definition, and a semicolon appears after each definition, the use of the word “and” is grammatically correct. |
|  |  | **~~"use by date"~~** ~~or~~ **~~"expiration date"~~** ~~means the date which signifies the end of the period under any stated storage conditions, after which the product should not be sold or consumed due to safety and quality reasons.~~ | The definition should not be in this regulations since exp date is more about the safety of the product and therefore under the scope of DOH. We should not be crossing lines. | Please refer to this office’s response under the definition for "best before date" or "best quality before date" of page 1 above. |
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| 3 | **2 (3)(a)** | Change “food outlet” to “catering establishment” or word with similar meaning. | Food outlet could be misconceived as any retail environment including supermarkets etc. | The expression ‘*or any other catering establishment;’* will be incorporated as proposed. |
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| 4 | **Table 1** | Oolong tea – “part-fermented”  Yellow tea – “light-fermented” | Oolong tea, owing to a number of different characteristics from green to nearly black is better defined as part-fermented. This corresponds to ISO definitions.  In consequence, yellow tea is better defined a light-fermented. | Noted, thank you. The wording will be amended as proposed. |
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| 4 | **6b** | Instant Tea - remove free-flowing | Instant Tea - They are very fine, even milled powders of Instant Tea and owing to the physical structure the powders would not be of a free flowing kind. Free flowing is best left out | Noted. The wording “free-flowing” will be removed. |
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| 5 | **7A** |  | Tea Essence (Liquid extract) - information about water extraction should be referred to in the same way as it is done with Instant Tea. | This office is of the view that the reference concerned is not in an effort to align this draft with the consulted international tea regulations. |
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| 6 | **10(2)(a)(i) TO (iii)** | The sizing requirements for product name and additions to the product name indicated below should be aligned to R146. Labelling of Foodstuffs | It is understood that the regulations under the APS Act take precedence over R146 Labelling regulations. Though in the essence of “alignment”, basic sizing requirements such as requirements for the product name and additions to the product name, it is recommended that R146 be used.  The stakeholder acknowledges the need for sizing requirements for other specific wording/text on labels such as the indication of “SWEETENED”.  Products currently on the market are compliant to R146 sizing requirements and should this recommendation be rejected then businesses will be required to redo artwork to be compliant within the timeframe stipulated. The current economic climate places significant strain on businesses therefore it is prudent that the department considers a holistic view of the implications of these sizing requirements. | The justification to the comment is duly noted. Although this office in principle abides by its comments provided during the first round, it was decided to reduce the minimum letter size prescribed to 2mm (instead of 3mm). |
| 7 | **Table 2** |  | Prepared Tea (RTD) - This does not refer to the important category of iced teas. For example “prepared X tea”, “Prepared X tea with sweetener” | Tea and related products in a ready-to-drink form which are sometimes presented for sale as Ice/ Iced teas are excluded from this regulation - see regulation 2(3)(b). |
| 7 | **Table 3** | Clarify why caffeine content needs to tested for all products as it is not specified in all classes of products. | This needs to be clearly stipulated which products needs to be tested for caffeine | Caffeine content (maximum) is only prescribed in the case of the category Decaffeinated tea (Refer to regulation 5).  Nowhere in the draft regulations is it stipulated that all products must be analysed for caffeine content.  It is therefore evident that the method in Table 2 will only apply to the category that does prescribe caffeine content. |
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| 7 | **12(1)** | There should not be a requirement to include the word “blend” as this is simply superfluous if the label has a proper description. | Indicating what the components are in the product description should be sufficient as it is then obvious that it is a blend eg: “Black tea with juniper berries” | Do not agree. The mandatory indication of the word “blend” as part of the product name only applies in the following two instances:   1. When two or more categories of tea are mixed/ blended and presented for sale as such (e.g. Black tea and Yellow tea is mixed). 2. When a category of tea is mixed/ blended with a herbal infusion. 3. When a specific category of tea is sourced from different countries, locations or geographical areas and is blended.   The proposed regulation will therefore be retained as is. |
| 7 | **12(1)** | Add requirement (c):  *(c) two or more origins are blended and packed in the same container.* | Regulation 12(7)(a) uses the word blend when blending 2 or more origins however this scenario is not represented in regulation 12(1)(a) and (b) | Regulation 12(7)(a) stipulates the requirements for when the name of a specific country, location or geographical area from which the tea originates can be indicated.  In the context of regulation 12(7)(a), the word “blend” means that the same category of tea (e.g. Black tea) was sourced from different countries, locations or geographical areas and then mixed/ blended. To avoid confusion with regulation 12(1), the word “blend” will be replaced and the sentence reviewed. |
| 7 | **12(2)** | Should not have to include every foodstuff in the **name** of the product, only if it is an actual characterizing ingredient.  Suggest change “shall” to “may” to make this less prescriptive. | Some foodstuffs, herbs or spices are added in very small quantities to contribute to an overall flavor profile. Eg: “Tropical infusion with pineapple and ginger” may also have ingredients such as lemon and coconut. As long as these are listed in the ingredient list this should be sufficient. | Regulation 12(2) relates to the additions to the product name. In this office’s considered opinion, it remains important that the product name is a true description of the product concerned. It cannot be expected of a consumer to first have to refer to the ingredients list to understand the true nature of the product he/she intends to buy. |
| 7 | **12(2)** | Clarity is required:   1. When tea is flavoured with a flavouring, can the name of the flavouring form part of the product name? e.g. Mint Black Tea 2. Does herb refer to herbals as indicated in the definitions? There is no definition for herb. 3. Does the below mean a foodstuff “such as” herb and/or spice? | “Foodstuff” according to the FCD Act reads:  *means any article or substance (except a medicine as defined in the*  *Medicines and Related Suibstances Act, 1965 (Act No. 101 of 1965)) ordinarily eaten*  *or drunk by a person or purporting to be suitable, or manufactured or sold, for human consumption, and includes any part or ingredient of any such article or substance, or*  *any substance used or intended or destined to be used as a part or ingredient of any*  *such article or substance;*  The FCD definition of “foodstuff” is inclusive of all ingredients and substances used as part of an ingredient. Flavouring would thus be classified as a foodstuff.  It will be misleading to label mint flavoured tea as mint black tea. | 1. Regulation 12(6) addresses the addition of flavourings and how it should be declared as part of the product name.  2. A definition for “herbs” will be added to provide clarity.  3. No, there is a comma after the word “foodstuff”. Culinary herbs and spices are used in small amounts to provide flavour rather than substance to food. Herbs and spices are also not intended to be consumed as a foodstuff on their own.  If for example actual mint is added to Black Tea the product name shall read as “Black Tea with Mint”. However, if mint flavouring only is added to Black Tea, the product name shall read “Mint flavoured Black Tea”. |
| 7 | **12(5)(a) to (b)** | Earl Grey and Chai Teas are not governed by regulations both locally and internationally. These “flavoured” teas are based on historical adaptations of teas and are not protected by cultural or traditional rights. Please provide the motive for the special requirements laid out in the regulations for these 2 specific tea variations. | These types of teas are not regulated and thus should not be covered by these regulations. | The two specific flavoured tea variants are mentioned since the proposed marking requirements do not currently provide for them. These two variants are also well established in the South African market and local consumers are familiar with them. It also allows for the designation “Chai” or “Earl Grey” only to be indicated as part of the product designation instead of having a complete description of all the added spices and/or flavourings [Please see the revised regulation 11(6).] |
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| 8 | **13(3)** | Sensory descriptions about the flavour and aroma of a particular tea or a related product may be indicated on the container: Provided that it does not form part of the product name and that the sensory descriptions is associable with the actual tea fragrance | To eliminate any misleading claims | Noted. This office is in agreement with the proposal and justification provided. |
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| 8 | **14(1)c** | Recommend aligning totally to R146 wording: | A comment was made on the 1st Draft regarding indication of the country of origin for single ingredient agricultural commodities. The reason given for not changing this is that there is already this requirement in R146. In the case of tea, there is an expert that assesses the various teas that are received in bulk and then blend these to reach a particular profile specific to the brand under which the tea is sold. It is simply not practical to indicate every possible country the tea blend is sourced from on a label as this potentially changes each time the blend is made. We would question the value this actually adds to the consumer. We would also argue that in the blending process we produce a product with a unique profile and as such should be able to state “Manufactured in South Africa”. Perhaps include – “tea of various country origin” or wording to that effect. | Regulation 14 is already fully aligned with the requirements in regulation R.146 of 1 March 2010 of the Department of Health. Please take note that regulation R.146 was amended on 19 November 2010 (No.R.1091/2010), and one of the amendments included the addition of paragraph 14(1)(c) as per this draft regulation. |
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| 9 | |  | | --- | | 15. (2) b | | |  | | --- | | If tea or a relate product is packed in an outer container, which will during normal usage be discarded by the consumer, the date marking shall, if indicated, appear on each individual container that will be retained by the consumer until consumption. – remove this requirement | | |  | | --- | | Once the tea box is discarded, the foil pouches and teabags have no date marking. It is presently not practical nor are suppliers equipped to put a date marking on the foil pouch or the teabag. | | The justification provided regarding the current practice is noted. The requirement was taken from regulation 12(4) in R.146 dated 1 March 2010 of the Department of Health. It is, however, important to note that paragraph (2)(b) refers to a scenario where the tea or related product is packed in an outer container only, which will be the exception rather than the rule. The newly numbered regulation 9(4) and (5) also exempt tea bags and foil bags/ pouches from any of the prescribed marking requirements. Paragraph (2)(b) will therefore be retained as is. |
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| 10 | **16(8)** | Clarity is required:  This regulation requires QUID when depictions, illustrations or expressions provide emphasis of an added foodstuff however under regulations for the “Additions to the product name” (12 (2)), where the added foodstuff has to be incorporated into the product name, there is no requirement for QUID.  NB. Pictorial representations used to denote an added flavour i.e. picture of an orange slice to denote Orange flavoured tea would be exempt from QUID requirements.  **Additions to the product name**  Is it the intention that QUID applies only when there is pictorial representation of an added foodstuff and that it does not apply when the added foodstuff is emphasized through text such as the product name or descriptor?  “(2) When a foodstuff, herb and/ or spice have been added to tea or related products, the actual name of the added foodstuff, herb and/ or spice shall form part of the product name: Provided that where a mixture of two or more kinds of herbs or spices have been added, the expression “mixed herbs” or “mixed spices”, as the case may be, may be used.” | The requirements of R146 dictate that QUID applies when the label places special emphasis on the presence of one or more valuable or characterizing ingredients.  Special emphasis through both pictorial representation and text (product name and product descriptor) would apply. | The restrictions in regulation 16(8) means that one is only allowed to depict, illustrate or repeat the name of an added foodstuff, herbal infusion, herb or spice (i.e. emphasise its presence in the tea product concerned) if it can be QUID’ed.  Since added flavourings cannot be QUID’ed, such flavourings cannot be depicted or illustrated. (In the case of the example provided, orange may not be depicted.) It will also be regarded as misleading in terms of regulation 16(3) if any depiction or illustration of an orange or part of an orange appears on the packaging. Furthermore, the word “orange” may also not be repeated on its own, unless it is followed by the word “flavour’ or “flavouring”. As an addition to the class name, the use of an orange flavouring will anyway be subject to the requirements in regulation 12(6), hence the afore-mentioned restriction when the word “orange” is repeated outside of the product name.  Packers should make use of for example colours to communicate the addition of a specific flavouring to the tea product concerned. |
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| 10 | **18** | To include sensory evaluation in Table 3 for method of analyses | To confirm flavour profiles claimed by industry | Sensory evaluation is very subjective and a trained panel is required. From an enforcement point of view it will not be practical to include this as a requirement. |