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

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

| **PAGE**  **NO.** | **Regulation** | **STAKEHOLDER COMMENTS** | **JUSTIFICATION** | **DAFF COMMENTS** |
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| 1 | **Reg 1** | **Replace**  The Minister of Agriculture, Land reform and Rural Development has in terms of section 15 of the Agricultural Product Standards Act, 1990 (Act No. 119 of 1990) --  (a) made the regulations in the Schedule; and  (b) determined that the said regulations shall come into operation ~~12~~ **24** months after date of publication thereof | To allow for sufficient time for product label changes, particularly for imported products. | The 12 months will be retained, and companies requiring more time for their products with a longer shelf life should rather apply for a dispensation to the Executive Officer. Each case will then be evaluated and handled on its own merit. |
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| 1 | **General** | Replace   |  |  | | --- | --- | | **PART I: CATEGORIES OF AND STANDARDS FOR COFFEE, CHICORY AND RELATED PRODUCTS** |  | | Categories of coffee, chicory and related products | 3 | | Roasted coffee beans | 4 | | Coffee (ground coffee or ~~coffee powder~~ roasted whole bean) | 5 | | Instant coffee (soluble coffee extract) | 6 | | Refer to comments made under Reg 5 in this document. | Noted. However, this specific category refers to roasted coffee beans that have been ground, and does not include ‘roasted whole bean’ as suggested. (Please refer to the detailed description in regulation 5.) “Roasted whole bean” is provided for under the first category, namely “Roasted coffee beans”.  To prevent any further confusion, the category “Coffee (ground coffee or coffee powder)” will be changed to read “Ground coffee” only. |
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| 2 | **Definition** | **"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 23(2)(a) under the marking requirements the wording “best before” or “best quality before” only is prescribed, i.e. the word “date” does not form 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) – in terms of APS scope the product needs comply with the relevant quality requirements in order to be “marketable” – additions to the definition of BB will just cause confusion. | 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. | *This office abides by its previous response provided in the summary of comments on the first draft regulation, namely*:  “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 the newly numbered regulation 23.  The proposed definition will therefore be retained as is.” |
| 2 | **Definition: "cold brew coffee"** or **"cold brew"** | **Replace**  **"cold brew coffee"** or **"cold brew"** means that Coffee (ground coffee or ~~coffee powder~~ roasted whole bean) has been soaked/ steeped, usually for 12 to 24 hours, in cold water or water at room temperature and then strained, or any other suitable method that will deliver a similar product; | Refer to comments made under Reg 5 in this document. | Please refer to this office’s response under “General” on page 1 above. |
| 2 | **Definition:**  **“dark roast”** | **Delete** | The Department did not provide reference to an international standard with regard to this and other similar definitions.  Nestlé, therefore proposes that in the absence of internationally recognized definitions, the definition not be included.  We have noted that the final draft of the East Africa standard also does not provide for this and similar definitions.  Roasting eventually defines taste of product, which drives innovation to deliver consumer expectation. How roasting is defined thus differs from country to country and is driven by local preferences. It will thus be difficult to comply with one specific requirement based on this definition. | Notwithstanding this office’s decision during the first round of comments, and taking into consideration the latest East African Standard for Roasted coffee beans and Roasted ground coffee (EAS 105:2008) which is currently under review, it was decided that the definitions for “dark roast”, “light roast”, “medium roast” and “medium-dark roast” will be deleted. |
| 3 | Definitions | “Light roast”, “Medium roast” definition, should further give conditions in which coffee beans are classified as light roast, e.g. roasting time and temperature parameters | “Light roast” definition, should further give conditions in which coffee beans are classified as light roast, e.g. roasting time and temperature parameters | Please refer to this office’s response under “Definition: dark roast” on page 2 above. |
| 3 | **DEFINITION:**  **“Light roast”** | **Delete** | The Department did not provide reference to an international standard with regard to this and other similar definitions.  Nestlé, therefore proposes that in the absence of internationally recognized definitions, the definition not be included.  We have noted that the final draft of the East Africa standard also does not provide for this and similar definitions.  Roasting eventually defines taste of product, which drives innovation to deliver consumer expectation. How roasting is defined thus differs from country to country and is driven by local preferences. It will thus be difficult to comply with one specific requirement based on this definition. | Please refer to this office’s response under “Definition: dark roast” on page 2 above. |
| 3 | **Definition:**  **“medium-dark roast”** | Please insert “or without” to the definition below;    Amended definition to read as follows:  *"medium-dark roast" means the whole green (raw) coffee beans have been roasted to a rich, dark colour with or without some oil beginning to show on the surface of the beans;* | **NB.** The Department agreed to this proposal in the comments submitted on the first draft however the proposed change was incorrectly made to the “medium roast” definition. See below.  Darker roasts typically have oil visible on the surface of the bean however the amended definition also caters for scenarios where there is little to no oil visible on the surface of the bean after roasting.  Roast colour profiles differ from country to country with no internationally accepted standard or reference. Roast intensities that fall within the four categories of Light, Medium, Medium-dark and Dark roast may differ depending on the specific flavour profile required. | Please refer to this office’s response under “Definition: ‘dark roast’” on page 2 above. |
| 3 | **DEFINITION:**  **“medium-dark roast”** | **Delete** | The Department did not provide reference to an international standard with regard to this and other similar definitions.  Nestlé, therefore proposes that in the absence of internationally recognized definitions, the definition not be included.  We have noted that the final draft of the East Africa standard also does not provide for this and similar definitions.  Roasting eventually defines taste of product, which drives innovation to deliver consumer expectation. How roasting is defined thus differs from country to country and is driven by local preferences. It will thus be difficult to comply with one specific requirement based on this definition. | Please refer to this office’s response under “Definition: ‘dark roast’” on page 2 above. |
| 3 | **Definition:**  **“medium roast”** | Please replace “or without” with “no” as per the original definition in the first draft. | This definition was incorrectly amended. Please revert to the original definition as per the first draft. See comment above. | Please refer to this office’s response under “Definition: ‘dark roast’” on page 2 above. |
| 3 | **DEFINITION:**  **“medium roast”** | **Delete** | The Department did not provide reference to an international standard with regard to this and other similar definitions.  Nestlé, therefore proposes that in the absence of internationally recognized definitions, the definition not be included.  We have noted that the final draft of the East Africa standard also does not provide for this and similar definitions.  Roasting eventually defines taste of product, which drives innovation to deliver consumer expectation. How roasting is defined thus differs from country to country and is driven by local preferences. It will thus be difficult to comply with one specific requirement based on this definition. | Please refer to this office’s response under “Definition: ‘dark roast’” on page 2 above. |
| 3 | **Definition:**  **“roasting”** | Please correct error – change “produced” to “produces”. |  | Noted, thank you. The proposed change will be introduced. |
| 3 |  | "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. | This definition is more within the scope of DOH as it is influenced by the products’ safety determined by shelf life tests. They should rather be removed then they are clarified in R146. Same for the draft regulations for tea. | Please refer to this office’s response under the definition for "best before date" or "best quality before date" of page 2 above. |
| 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); | *This office abides by its previous response provided in the summary of comments on the first draft regulation, namely*:  “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. |
| 3 | **Reg 2 (3) (c) (ii)** | Reinstate the wording as per the 1st draft of these draft regulations  (c~~) products based on coffee, chicory and related products that are due to their composition presented for sale to the consumer under a specific designation or variant name such as, but not limited to “Cappuccino”, “Cafe latte”, “Mocha”, “Macchiato”, etc. as –~~  ~~(i) ready-to-drink beverage (hot or cold) at e.g. a restaurant, coffee shop, club, canteen, a fixed or mobile stall, etc.; or~~  ~~(ii) an instant powder at retail and other commercial outlets.~~  **Replace with this text:**  Products based on coffee, chicory and related products, either in the ready-to-drink (hot or cold) or a premix powder form, that are presented for sale to the consumer at e.g. a restaurant, coffee shop, retail outlet, etc. under a specific designation or variant name based on its composition such as, but not limited to “Cappuccino”, “Cafe latte”, “Mocha”, “Macchiato”, etc. | In the 1st draft, the exclusions included Ready To Drink (hot or cold)…..for sale to the consumer at e.g….**retail outlet**.  We are of the view that RTD should be excluded from the regulation regardless of where it is sold. | Regulation 2(3)(b) already excludes coffee, chicory and related products as defined in the proposed regulations served hot or cold in the ready-to-drink-form wherever it is sold.  Regulation 2(3)(c) on the other hand excludes products presented under a specific designation/ variant name, either in (i) the ready-to-drink form, or (ii) in the powder form, wherever it is sold.  This was done in order to make it clear to industry and the inspectors exactly which products are excluded from the scope of the proposed regulations.  Regulation 2(3)(c) will therefore be retained as is. |
| 3 | **General: Premix coffee** | Propose exclusion of this product category from the regulations and product types impacted by this category (e.g 3-in-1 and 2-in-1).  Should be included in the exclusion list under Reg 2 (3). | The compositional requirements for components that make up premixes (in the context of these draft regulations) are already covered in other legislation:   * Sugar – Sugar Act, 9 of 1978 * Creamers – Dairy and Imitation Dairy regulations (R260 now R1510) * Coffee – These Draft regulations (relating to coffee, chicory and related products).   Therefore, it is not clear what additional compositional requirements will be set for these products under the Draft Coffee, Chicory and related products. | In the first summary of comments received, this office requested stakeholders to indicate whether Premix coffee products should be retained in the proposed draft regulations or not.  In view of the justification provided this office agree with the proposal to rather remove this category from the proposed draft regulations. It will also be listed as one of the products that are exempted under regulation 2(3). |
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| 4 | **3** | Coffee capsules to be included |  | According to the information at this office’s disposal, coffee capsules are the plastic containers with an aluminium foil seal, with ground coffee contained therein.  Therefore “coffee capsules” cannot be added as a category under regulation 3. |
| 4 | **Reg 3** | **Replace**   1. Coffee (ground coffee or ~~coffee powder~~ roasted whole bean). | Refer to comments made under Reg 5 on page 3 of this document. | Please refer to this office’s response under “General” on page 1 above. |
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| 4 | **Reg 4 (1)** | **Add**   1. suitably roasted to the desired colour profile, i.e. light roast, medium roast, medium-dark roast or dark roast. | Include the word “profile” to summarise desired characteristics output for the end product in order to avoid technical barriers to trade.  To prevent unintended barriers to trade, the regulations should allow for commonly used words, such as “Blond Roast” | Please refer to this office’s response under “Definition: ‘dark roast’” on page 2 above.  The provision of regulation 4(1)(b) will be amended to read, “roasted to the desired intensity to achieve a certain flavour profile”.  Examples of the roasting intensity and/ or the particular name used to describe the degree of roast applied to the coffee beans to achieve a certain flavour profile, will be provided under the newly numbered regulation 19(2)(c). |
| 5 | **4(2)** | The moisture content of the roasted coffee beans shall not exceed 5.0 percent (m/m) at the time of packing.  What about the moisture content of the final product? | Would this require inspection during packing? | If the imported green coffee beans are roasted and packed in South Africa, the onus is on the owner to ensure that the proposed limit for moisture is not exceeded. However, inspectors may during inspection at the premises where the beans are packed locally draw random samples to confirm compliance. |
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| 5 | 5(a) | 1. consist of roasted coffee beans that have been ground so as to be suitable for making an infusion or decoction; | Infusion and decoction must be defined in the definition. | *This office abides by its previous response provided in the summary of comments on the first draft regulation, namely*:  “Both the words ‘infusion’ and ‘decoction’ are commonly used terms that are clearly defined in the Oxford English Dictionary. The inclusion of definitions for these words is therefore not necessary.” |
| 5 | **Reg 5** | **Reword**  Coffee (ground coffee or ~~coffee powder~~ Roasted whole bean) shall –  (b) ~~contain less than 1 percent (m/m) foreign matter, including coffee bean husks when present;~~ be free from foreign matter, including coffee bean husks when present  **Add**  (g)may contain added aromas recovered during the evaporation process | 1. It is not possible to have coffee powder during this stage of the process 2. A specific percentage of foreign matter should be allowed for green coffee beans intended for further processing. These undesired substance are removed before roasting during destoning or during classification (using classifiers), because if not removed, they will cause product sedimentation due to un-dissolving product, which will increase consumer dissatisfaction. 3. However, post processing the product should be free of any foreign matter.   It is normal practice that coffee extract is removed from the coffee during the roasting process and re-introduced at the end of the process in order to maintain the coffee flavour. | * + - 1. Please refer to this office’s response under “General” on page 1 above.       2. Green coffee beans will not be present in this category. The comment can therefore not be taken into consideration.   The “less than 1%” tolerance was added in view of the recommendation received during the first round of comments that cited that it is physically impossible to remove all foreign matter, including coffee bean husks, from Ground coffee. Hence, the provision will be retained as is.  Addition or aromas recovered:  This office has not been able to find any literature during a desktop study that supports the re-introduction of aromas recovered during the roasting process to ground coffee. Thus, the provision will not be incorporated under regulation 5.  It is also not clear to this office what the stakeholder means with “at the end of the process”.  Does it imply that the aromas are re-introduced at the end of the roasting process? The necessary guidance/ clarity will be appreciated. |
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| 5 | 6(e) | may contain permitted food additives. | The word permitted food additives must may be added as per R146. | *This office abides by its previous response provided in the summary of comments on the first draft regulation, namely*:  “The definition for ‘food additive’ has been revised and now includes the word ‘permitted’. It is therefore not necessary to repeat the word ‘permitted’ when the wording ‘food additives’ is used in the rest of the text.” |
| 5 | **Reg 6** | **Add**  (f)shallbe free from foreign matter, including coffee bean husks when present  **Replace**  may contain added aromas recovered during the ~~roasting~~ evaporation process | 1. To ensure product authenticity 2. Prevent product misrepresentation where 100% claim is made   Extraction of aromas is only possible during the evaporation process | The aromas evaporate from the beans due to the roasting process (i.e. when the heat is applied); hence, the provision will be retained as is. |
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| 5 | **Reg 7 (1)** | **Replace**   1. shall consist of freshly roasted decaffeinated green beans that have been ground to deliver a product similar to coffee (ground coffee or ~~coffee powder~~ roasted whole bean); | It is not possible to have coffee powder during this stage of the process | Please refer to this office’s response under “General” on page 1 above. |
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| 6 | **Reg 8** | **Replace**  Coffee essence shall –   1. consist of the concentrated essence or liquid extract obtained from Coffee (ground coffee or ~~coffee powder~~ Roasted whole bean), with or without the addition of glycerol and/ or sweeteners; and | It is not possible to have coffee powder during this stage of the process | Please refer to this office’s response under “General” on page 1 above. |
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| 6 | **Reg 9** | **Replace**   1. consist of a mixture of coffee (ground coffee or ~~coffee powder~~ roasted whole bean) and chicory only; and 2. contain at least 75 percent (m/m) coffee (ground coffee or ~~coffee powder~~ roasted whole bean). | It is not possible to have coffee powder during this stage of the process | Please refer to this office’s response under “General” on page 1 above. |
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| 6 | **Reg 11** | **Replace**   1. consist of a mixture of coffee (ground coffee or ~~coffee powder~~ roasted whole bean) and chicory only; and 2. contain at least 50 percent (m/m) coffee (ground coffee or ~~coffee powder~~ roasted whole bean). | It is not possible to have coffee powder during this stage of the process | Please refer to this office’s response under “General” on page 1 above. |
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| 7 | **13** | Please amend 13 (a) as follows:  13. Instant coffee and chicory extract –  (a) shall consist of the dried soluble solids obtained by spray drying or freeze drying the water extraction of the Coffee and chicory mixture referred to in regulation 11, with or without the addition of added sugar and/or food additives.    Please delete 13 (c) as it now becomes redundant due to revised definition of 13 (a). | Added sugar and food additives are added to the water extraction of the coffee and chicory mixture prior to the spray drying or freeze-drying process. The amendment of 13 (a) makes this clear.  “Added sugar” needs to replace “added sweeteners” as there is a fundamental difference in how these two terms are defined in the regulations published under the FCD Act. “Added sugar” refers to any sugar added during processing whilst “sweetener” refers specifically to a food additive which is used or intended to be used to impart sweetness. See definitions below for further clarity.  **"added sugar"** means any sugar added to foodstuffs during processing and includes but is not limited to sugar as defined by Regulations Relating to the Use of Sweeteners in Foodstuffs under the Act, honey, molasses, sucrose with added molasses, coloured sugar, fruit juice concentrate, deflavoured and/or deionised fruit juice and concentrates thereof, high-fructose corn syrup and malt or any other syrup of various origins;  **"sweetener"** means any food additive which is used or intended to be used-  (a) To impart a sweet taste to foodstuffs; or  (b) To be added to a foodstuff as a table-top sweetener.  Deletion of 13 (c) is required as this requirement is already included in 13 (a). | The justification is noted. In an effort to clarify this provision, the indicated definition for sweetener will be removed and a definition for “sugar” will be incorporated. The proposed provisions of reg.13(c) will be retained, but the word “sweetener” will be replaced with “sugar”. |
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| 7 | **14** | Chicory and coffee mixture to include food additives. |  | Noted. The proposed change will be introduced. |
| 7 | **Reg 14** | **Replace**  ***Chicory and coffee mixture***  14. (1) Chicoryand coffee mixture shall consist of a mixture of chicory and coffee (ground coffee or ~~coffee powder~~ roasted whole bean) only. | It is not possible to have coffee powder during this stage of the process | Please refer to this office’s response under “General” on page 1 above. |
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| 7 | **15** | Please amend 15 (a) as follows:  13. Instant chicory and coffee extract –  (a) shall consist of the dried soluble solids obtained by spray drying or freeze drying the water extraction of the Chicory and coffee mixture referred to in regulation 14, with or without the addition of added sugar and/or food additives.    Please delete 15 (c) as it now becomes redundant due to revised definition of 15 (a). | Added sugar and food additives are added to the water extraction of the chicory and coffee mixture prior to the spray drying or freeze drying process. The amendment of 15 (a) makes this clear.  “Added sugar” needs to replace “added sweeteners” as there is a fundamental difference in how these two terms are defined in the regulations published under the FCD Act. “Added sugar” refers to any sugar added during processing whilst “sweetener” refers specifically to a food additive which is used or intended to be used to impart sweetness. See definitions below for further clarity.  **"added sugar"** means any sugar added to foodstuffs during processing and includes but is not limited to sugar as defined by Regulations Relating to the Use of Sweeteners in Foodstuffs under the Act, honey, molasses, sucrose with added molasses, coloured sugar, fruit juice concentrate, deflavoured and/or deionised fruit juice and concentrates thereof, high-fructose corn syrup and malt or any other syrup of various origins;  **"sweetener"** means any food additive which is used or intended to be used-  (a) To impart a sweet taste to foodstuffs; or  (b) To be added to a foodstuff as a table-top sweetener.  Deletion of 15 (c) is required as this requirement is already included in 15 (a). | The justification is noted. In an effort to clarify this provision, the indicated definition for sweetener will be removed and a definition for “sugar” will be incorporated under regulation 1. The proposed provisions of reg.15(c) will be retained, but the word “sweetener” will be replaced with “sugar”. |
| 7 & 9 | **Reg 15 and Table 1 (category L)** | ***Instant chicory and coffee extract***  15.Instant chicory and coffee extract –   1. shall consist of the dried soluble solids obtained by spray drying or freeze drying the water extraction of the Chicory and coffee mixture referred to in regulation 14; 2. shall be in the free flowing powder, agglomerated or granule form; and 3. may contain added sweeteners and food additives. | We propose that in Table 1, category L, different variations of the product description be used (e.g Chicory and Coffee granules; Chicory and Coffee Mixture; Blend of Chicory and Coffee, etc) | The product in regulation 14 and paragraph (k) of Table 1 is not the same as the product described in regulation 15 and paragraph (l) of Table 1.  The product in paragraph (l) of Table 1 can therefore not use the name/designation reserved for the product in paragraph (k) of Table 1.  Provision will be made under the newly numbered regulation 19(2)(a) to allow for the word “granules” or “powder” to be added to the product name in the case of all the “instant” categories. |
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| 7 | **Reg 16** | ***Premix coffee in powder***  Propose exclusion of this product category from the regulation | See comments made under **General: Premix coffee** on page 1 of this document | Please refer to this office’s response under “General: Premix coffee” on page 6 above. |
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| 8 | **18(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). |
| 8 | **Reg 18 (2) (a)** | Replace “name” with “description” as per the 1st draft of these draft regulations   1. The product ~~name~~ description , and if applicable the additions to the product ~~name~~ description, in letters of the same type, size, colour and font, prominently on at least one main panel in a letter size of at least 3 mm2 mm in height for lower case vowels, as set out in regulations 19 and 20 respectively: Provided that –    1. the name of the added foodstuff (e.g. ‘milk’, etc.) or the name of the added flavourant (e.g. ‘vanilla flavoured’, etc.) may be indicated in one different colour when used in the additions to the product ~~name~~ description;    2. the difference in letter size between the smallest letter in the product ~~name~~ description and smallest letter in the additions to the product ~~name~~  description indication shall not exceed 2 mm; and | 1. Changing product description to product name will result in undue restrictions regarding use of product names, impacting on innovation and renovation projects. 2. It would also not be possible to include all product names under Regulation 19. 3. Some product names are registered names or trademarks. 4. Maintaining the term “product name” instead of “product description” will be in conflict with Regulation 9 (a) of the Regulations relating to the labelling and advertising of foodstuffs, under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (R146), which states that   “where the name is not a proper description of the foodstuff, the name shall be accompanied by an appropriate description” e.g. Nescafe “Alta Rica”, where Nescafe is the registered brand name and “Alta Rica” is the product name. According to R146 “Alta Rica” does not properly describe the product and, in terms of Table 1 in these draft regulations, “Alta Rica” will be expected to be the term used to describe the product.   1. While we understand that these Draft Regulations, will take precedence over other regulations, we note the importance of alignment between different regulations regulating the same product. | The justification provided is the stakeholder’s own interpretation of regulation 9(a) in R.146 dated 1 March 2010 of the Department of Health.  In this office’s opinion, “Alta Rica” cannot be regarded as a product name or true description that will help the consumer understand exactly what product it is. The addition of the brand name “Nescafe” to “Alta Rica” will also not assist in clarifying what foodstuff is presented for sale.  It is only when one consults the ingredients list for this particular product that it becomes clear that it is actually a “Freeze dried soluble coffee” that will fall into the category “Instant coffee (soluble coffee extract)” in the draft regulations.  Since the Arabica beans used for this instant coffee originate from the coffee regions of Latin/ South America (as claimed on the container and Nestle website), this office can only assume that the wording “Alta Rica” is written in Spanish. The majority of South African consumers will therefore not know what the exact meaning in English is.  “Alta Rica” can therefore only be regarded as a variant name in the Nescafe Collection range (as per the Nestle website).  This office therefore does not agree that “product name” be replaced with “product description” as proposed. |
| 8 | **Reg 18 (2) (a)** | ***Letter size***  **Add**   1. **The product description , and if applicable the additions to the product description,** in letters of the same type, size, colour and font, prominently on at least one main panel in a letter size of at least 3 mm2 mm in height for lower case vowels, as set out in regulations 19 and 20 respectively: Provided that –   **Reword below to align to R260**  “addition to product description shall be minimum 50 percent of the size of product descriptor   * 1. ~~the difference in letter size between the smallest letter in the product name description and smallest letter in the additions to the product name description indication shall not exceed 2 mm; and~~ | This will ensure harmonization across local regulations | In an effort to harmonise regulations for the various processed products published in terms of the Agricultural Product Standards Act (No.119 of 1990), the proposed draft regulation has been aligned as far as possible with the latest dairy products and imitation dairy products regulations published on 22 November 2019.  The proposed amendment is therefore not supported. |
| 8 | **Reg 18(2) (f)** | **Reword as proposed**  **(f) The date marking (**i.e**. "best before"** or **"best quality before"** or **"use by"** or **"expiration date")** and the ~~or~~ **batch code** or **batch number**~~for the purpose~~~~traceability and batch identification, as set out in regulation~~ in the manner prescribed in the regulations published under the Foodstuffs, Cosmetics and Disinfectants Act, 1972 (Act No. 54 of 1972). | 1. The use of “or batch code” in the regulation is giving the manufacturer the option to use either the date marking or batch identification on their packs which will be violating other regulations 2. This will also restrict exportation to countries where date marking is mandatory (e.g. most SADAC Countries) | *This office abides by its previous response provided in the summary of comments on the first draft regulation, namely*:  “The requirement in this proposed regulation is for the sole purpose of traceability as indicated.  Regulation 11 (“Batch identification”) in R.146 dated 1 March 2010 of the Department of Health furthermore states “....*unless otherwise stipulated in terms of regulations published under the Agricultural products Standards Act, 1990 (Act No.119 of 1990) and*.....”  These proposed regulations may therefore prescribe either thedate marking or batch code or batch number for the purpose of traceability.  The provision will thus be retained as is.”  It has to be noted that, if so preferred by the manufacturer or packer, the indication of both the date marking and the batch code/ batch number will not result in any contravention of the proposed provision concerned. |
| 8 | **Reg 18 (4)** | **Replace**  (4) In the case where Coffee (ground coffee or ~~coffee powder~~ roasted whole bean) is presented for sale in pods/ capsules or coffee filter bags packed in a container, the individual pods/ capsules or coffee filter bags shall be exempted from any of the marking requirements prescribed in sub-regulation (2): Provided that – | It is not possible to have coffee powder during this stage of the process | Please refer to this office’s response under “General” on page 1 above. |
|  |  |  |  |  |
| 9 | **Reg 19** | Retain product “description” as per the 1st draft of these regulations  ***Indication of the product ~~name~~ description***  19. (1) The product ~~names~~ descriptions for the categories of coffee, chicory and related products shall be as follows:  **TABLE 1**  **PRODUCT ~~NAMES~~ DESCRIPTIONS FOR THE CATEGORIES OF COFFEE, CHICORY AND RELATED PRODUCTS**   | **Category** | **Product ~~name~~ description** | | --- | --- |   (2) The word “mixture” in the product ~~name~~description may be substituted by the word “mix” or “blend” or “granules”.  (3) The product ~~name~~description in Table 1 may be marked in altered word sequence: | This will ensure harmonization across local regulations  Allow for variations within the different categories. | Use of “product name” is in line with regulation 9(a) in R.146 dated 1 March 2010 of the Department of Health.  “Product description” is the wording used in addition to the “product name” in instances where the “product name” on its own does not a clearly describes the foodstuff concerned.  For Example:  “Cake” is the name of a foodstuff, but “Chocolate cake with caramel topping” is a proper description to help the consumer understand exactly what the foodstuff is he/she intends to purchase.  “Product name” will therefore be retained as is.  The word ‘mixture’ and ‘granules’ cannot be used interchangeable since they have different meanings. Additionally, please refer to the last paragraph of this office’s response under “Reg 15 and Table 1 (category L)” on page 11 above. |
| 9 | **TABLE 1** | See below page 21 – 23 for proposed changes |  | The proposed changes have been responded to above. |
| 9 | **19 (3)** | Please remove regulation 19 (3).  (3) The product name in Table 1 may be marked in altered word sequence: Provided that the altered word sequence does not constitute a misrepresentation, or does not directly or by implication create a misleading impression regarding the quality, nature, origin, category or composition of the particular coffee, chicory or related product concerned. | Regulation 19 (3) needs to be removed as it creates ambiguity. The altered word sequence may result in the use of the incorrect product names i.e. “coffee and chicory mixture” versus “chicory and coffee mixture”. | Noted. The regulation will be deleted as proposed. |
|  |  |  |  |  |
| 10 | **Reg 20 (1) & (2)** | Retain product “description” as per the 1st draft of these regulations  ***Additions to the product*** ~~name~~ description  20. (1) When a flavouring has been added to a category of coffee, chicory or related products in order to render a distinctive specific flavour thereto, the product ~~name~~ description concerned shall be preceded by the descriptive name for the distinctive flavour concerned and the expression “X Flavoured”, or followed by the expression “with X Flavour” or “with X Flavouring”, where “X” indicates the name(s) of the flavouring(s) used.  (2) The following information may be indicated as part of the product ~~name~~ description and/or be indicated on its own: | This will ensure harmonization across local regulations | Please refer to this office’s response under “Reg 19” above. |
| 10 | **Reg 20 (b)** | **Reword**   1. The intensity of the roast of the coffee beans, ~~i.e.~~ such as but not limited to light roast, medium roast, medium-dark roast or dark roast or any other words provided that it is not misleading, in the case of Roasted coffee beans and Coffee (ground coffee or ~~coffee powder~~ roasted whole bean).   **Replace**   1. The claims “100%”, “100% pure” “100% coffee”, “100% pure coffee”, “pure coffee” or “pure”, or any other word or words having a similar meaning, in the case of Roasted coffee beans, Coffee (ground coffee or ~~coffee powder~~ roasted whole bean) and Instant coffee (soluble coffee extract) only: Provided that if a foodstuff and/or a food additive has been added to the afore-mentioned categories, these claims shall not be marked on the container of such products. | To avoid technical barriers to trade, particularly to imports, these regulations should not exclude other commonly used words that describe roasting intensity such as but not limited to e.g. “Blond Roast”; “American Roast”; etc.  It is not possible to have coffee powder during this stage of the process | Noted. Please refer to this office’s response under “Reg 4(1)” on page 7 above.  Please refer to this office’s response under “General” on page 1 above. |
|  |  |  |  |  |
| 10 | **Reg 21 (1)** | **Delete**  ~~Requirements for labelling of “sweetened” must be align to R260 (now called R1510)~~   1. ~~When Premix coffee in powder form contains added sweeteners, the expression "sweetened" shall be indicated on the main panel in a letter size of at least 1.5 mm 2 mm in height for lower case vowels.~~ | The compositional requirements for components that make up premixes (in the context of these draft regulations) are already covered in other legislation:   * Sugar – Sugar Act, 9 of 1978 * Creamers – Dairy and Imitation Dairy regulations (R260 now R1510) * Coffee – These Draft regulations (relating to coffee, chicory and related products).   Therefore, it is not clear what additional compositional requirements will be set for these products under the Draft Coffee, Chicory and related products. | Please refer to this office’s response under “General: Premix coffee” on page 6 above. |
| 10 | **Reg 21 (2)** | **Reword**  When coffee, chicory or a related product is packed in individual pods or capsules or coffee filter bags, this shall be communicated on the main panel of each container containing such pods or capsules or coffee filter bags (e.g. “10 pods”, “~~contains~~ 20 filter bags”): ~~Provided that~~ – in accordance with the regulations promulgated under the Trade Metrology Act, 1973 (Act No. 77 of 1973).   1. ~~such wording may also be indicated as part of the product name description only (e.g. “Instant coffee pods”, “Ground coffee filter bags”.; and~~ 2. ~~if the contents of the container is clearly visible and identifiable from the outside, the wording communicating that the outer container contains pods or capsules or coffee filter bags may be omitted.~~ | In order to ensure harmonization across regulations | Noted. The newly numbered regulation 20 has been reworded so that its intention is clear and that it cannot be confused with what is regulated in terms of the Legal Metrology Act, 2014 (Act No.9 of 2014). |
|  |  |  |  |  |
| 10-11 | **Reg 22** | **Replace**   1. In the case of Roasted coffee beans and Coffee (ground coffee or ~~coffee powder~~ roasted whole bean) only, the names or descriptions used to describe the style of roast of the coffee beans may be indicated on the container (e.g*. French roast, Brazilian roast, Italian roast, Cinnamon roast, Continental roast*).   (4) Sensory descriptions about the flavour and aroma of a particular coffee, chicory or a related product may be indicated on the container: Provided that it does not form part of the product ~~name~~ description  (6) The word “Espresso” to describe a specific style of coffee or the intended use may be indicated on the container of Coffee (ground coffee or ~~coffee powder~~ whole coffee bean) or Instant coffee (soluble coffee extract): Provided that the particles shall be in a fine powder form.  **Delete**  (7) Every container containing Coffee essence (liquid coffee extract/ concentrate), Coffee and chicory essence (liquid coffee and chicory extract/ concentrate) ~~or Premix coffee in powder form~~ shall be labelled with clear directions for use.  “Note request for exclusion premix coffee powders | It is not possible to have coffee powder during this stage of the process  This will ensure harmonization across local regulations | Please refer to this office’s response under “General” on page 1 above.  Please refer to this office’s response under “General” on page 1 above. |
|  |  |  |  |  |
| 11 | **Reg 24** | **Replace**  **Indication of the date marking ~~or~~ and the batch code or batch** number  (1) For the purpose of batch identification and traceability, each container containing coffee, chicory and related products shall be clearly marked with the date marking ~~or~~ and the batch code or batch number in such a way that the specific batch is easily identifiable and traceable. | The use of “or batch code” in the regulation is giving the manufacturer the option to use either the date marking or batch identification on their packs which will be violating other regulations  This will also restrict exportation to countries where date marking is mandatory (e.g. most SADAC Countries) | Please refer to this office’s response under “Reg 18(2)(f)” on page 14 above. |
|  |  |  |  |  |
| 12 | **Reg 25** | **Replace**  **Restricted particulars**  (1) Subject to the provisions of regulation 19(3) and sub-regulation (2) --  (a) no product ~~name~~ description other than the applicable product ~~name~~ description in Table 1 for the coffee, chicory or related product concerned shall be marked on a container thereof: Provided that product ~~name~~ description of other categories of coffee, chicory and/or related products from the same manufacturer indicated for the sole purpose of promotion and/or comparative claims shall be allowed on the side panel or back panel of a container and shall be accompanied by wording such as but not limited to for example “also try these products in our range”, etc.; and  (b) no word or expression which so nearly resembles the product ~~name~~ description for coffee, chicory or a related product concerned that it could be misleading with regard to the composition of the product presented for sale shall be marked on the container of such product.  (2) When the product ~~name~~ description or a word or expression referred to in sub-regulation (1)(b) forms part of a registered trade mark that has been in use before the date of publication of this regulation, such trade mark may continue to be marked on a container if an abbreviation of the trade mark symbol that is prescribed under the Trade Marks Act, 1993 (Act No. 194 of 1993), is marked in close proximity thereto.  **Remove**   1. Subject to the provisions of regulation 20(2)(d), the claims “100%”, “100% pure” “100% coffee”, “100% pure coffee”, “pure coffee” or “pure”, shall not be marked on the container of Decaffeinated coffee, Decaffeinated instant coffee, Coffee essence (liquid coffee extract/ concentrate), Mixed coffee (coffee mixture), Chicory, Chicory extracts, Coffee and chicory mixture, Coffee and chicory essence (liquid coffee and chicory extract/ concentrate), Instant coffee and chicory extract, Chicory and coffee mixture, Instant chicory and coffee extract ~~or Premix coffee in powder form.~~ 2. The word “instant” may only be marked on the container containing Instant coffee (soluble coffee extract), Decaffeinated instant coffee, Instant coffee and chicory extract, Instant chicory and coffee extract. ~~as well as Premix coffee in powder form.~~ | This will ensure harmonization across local regulations  Refer to comments made under **General: Premix coffee** on page 1 of this document | Please refer to this office’s response under “Reg 19” on page 15 above.  The “Premix coffee” category has been removed. |
| 12 | **25 (9)** | Clarity is required:    This regulation requires QUID when depictions, illustrations or expressions provide emphasis of an added foodstuff.  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.  Would the use of a “serving suggestion” i.e. depiction of milk or creamer added to or already mixed in a cup of coffee be allowed when the milk or creamer are not present in the final formulation. | 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. | Sub-regulation 24(9) includes the word “expressions” which, among others, means wording. (Depictions and illustrations are already mentioned, and therefore “expressions” can only refer to words or wording.)  To avoid any misinterpretation or grey areas, the phrase “words or wording” will replace the word “expressions”.  Please also take note that the use of the expression “serving suggestion” is no longer provided for under the Department of Health’s labelling regulations for foodstuffs (R.146 dated 1 March 2010). The use of the expression “serving suggestion” also does not mean that misleading depictions will be allowed.  On the question posed: Depiction of a cup of coffee with milk or creamer added to it will be regarded as misleading and thus not permissible. However, the depiction of milk or creamer standing next to a cup of black coffee will be permissible. |
| 12 | **25(10)** | In the coffee regulations, reg 25(10) it is stated that the regulations will apply to …..  *The provisions of this regulation shall also apply to particulars that are marked on --*   1. *an outer container in which one or more separate containers of coffee, chicory or related products is packed;* 2. *a notice board displayed at or in the immediate vicinity of coffee, chicory or a related product that is kept or displayed for sale; and* 3. *all advertisements for coffee, chicory and related products.*   Which means that it would apply to coffee outlets and advertisements;  However, in the tea regulations the same principle does not apply according to regulation 2(3) ….  *The restrictions in sub-regulation (1) shall not apply to the sale of –*   1. *tea and related products that are in the course of a business prepared and served on the premises in the ready-to-drink form to the consumer at a restaurant, coffee shop, club, canteen, a fixed or mobile stall, or any other food outlet;* | It seems bias to have it for one industry and not the other, they are both hot / cold beverages that may be consumed on the same premises. | Noted. This office will ensure that in principle the draft coffee and tea regulations are aligned where possible/ applicable.  The expression ‘*or any other food outlet;’* will be incorporated as proposed. |
|  |  |  |  |  |
| 13 | 27 Methods of analysis | Why should the methods only be limited to ISO/AOAC? Can the test methods not be open for any method that has been validated and where there’s Proficiency Testing has been done in-house. | Therefore, allow provision to be made for validated test methods that fall outside the scope of ISO/AOAC test methods. | Analysis results can only be used in a court of law if (a) samples were drawn independently by inspectors, (b) internationally recognised methods were used for the analysis, (c) the methods of analysis have been validated, and (d) the laboratories performing the analysis are independent and have the necessary accreditation.  In-house analysis results can therefore form part of the manufacturer or packer’s own quality assurance measures only.  Stakeholders are requested to please share any other internationally accepted methods of analysis they are aware of with this office for consideration. |
| 13 | **27** | Sensory evaluation to be added to Table 2 | This is a form of testing in the industry if I am not mistaken. This is the final phase of quality assessment and quality assurance. | 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. |
| 13 | **Table 2** | 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 categories Decaffeinated coffee and Decaffeinated instant coffee (Refer to regulation 7).  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 those categories that do prescribe caffeine content. |
| 13 | **TABLE 2** | Moisture and dry matter content – purpose of this being tested |  | Moisture content is prescribed for the category Roasted coffee beans only. This is in line with the latest East African Standard (EAS 105: 2008) on Roasted coffee beans and roasted ground coffee.  Dry matter content is prescribed for chicory extracts only. This was taken from the latest EU Directive for coffee extracts and chicory extracts (Directive 1999/4/EC of 22 February 1999). |

Refer to comments above on page 15 highlighted in yellow

**TABLE 1**

**PRODUCT ~~NAMES~~ DESCRIPTOR FOR THE CATEGORIES OF COFFEE, CHICORY AND RELATED PRODUCTS**

| **Category** | **Product ~~name~~ descriptor** |
| --- | --- |
| **1** | **2** |
| 1. Roasted coffee beans | “Roasted coffee beans” or “Coffee beans” |
| 1. Coffee (ground coffee or ~~coffee powder~~ roasted whole bean) | “Ground coffee”/ “Roasted ground coffee” or “~~Coffee powder~~ Roasted whole bean”/ “Roasted coffee powder” |
| 1. Instant coffee (soluble coffee extract) | "Instant coffee" or "Soluble coffee" |
| 1. Decaffeinated coffee and Decaffeinated instant coffee | “Decaffeinated coffee”/ “Decaf coffee” or “Decaffeinated instant coffee”/ “Decaf instant coffee”, as the case may be |
| 1. Coffee essence (liquid coffee extract/ concentrate) | "Coffee essence" or "Liquid coffee extract" or “Liquid coffee concentrate” |
| 1. Mixed coffee (coffee mixture) | “Coffee mixture” or “Mixed coffee” |
| 1. Chicory and chicory extracts | (i) “Chicory powder”;  (ii) “Instant chicory” or “Soluble chicory”;  (iii) “Chicory extract paste”/ “Chicory paste”; or  (iv) “Liquid chicory extract”, as the case may be. |
| 1. Coffee and chicory mixture | “Coffee and chicory” or “Coffee and chicory mixture” |
| 1. Coffee and chicory essence (liquid coffee and chicory extract/ concentrate) | “Coffee and chicory essence” or “Liquid coffee and chicory extract” or “Liquid coffee and chicory concentrate” |
| 1. Instant coffee and chicory extract | "Instant coffee and chicory" or "Soluble coffee and chicory" |
| 1. Chicory and coffee mixture | “ chicory and coffee” or “chicory and coffee mixture” |
| 1. Instant chicory and coffee extract | "Instant chicory and coffee" or "Soluble chicory and coffee” or “Chicory and Coffee granules” |
| 1. ~~Premix coffee in powder form~~ | ~~(i) “Instant coffee with milk powder”/ “Soluble coffee with milk powder”/ “Instant coffee with creamer”/ “Soluble coffee with creamer”;~~  ~~(ii) “Instant coffee and chicory with milk powder”/ “Soluble coffee and chicory with milk powder”, “Instant coffee and chicory with creamer”/ “Soluble coffee and chicory with creamer”/; or~~  ~~(iii) “Instant chicory and coffee with milk powder”/ “Soluble chicory and coffee with milk powder”, “Instant chicory and coffee with creamer”/ “Soluble chicory and coffee with creamer”, as the case may be.~~ |