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[24–15]

Approval Report – Proposal P1037

Amendments associated with Nutrition Content & Health Claims

Food Standards Australia New Zealand (FSANZ) has assessed a proposal prepared by FSANZ to address inconsistencies and lack of clarity associated with Standard 1.2.7 – Nutrition, Health and Related Claims and related standards, to ensure that Standard 1.2.7 operates as intended.

The Proposal also included consideration of an exemption for certain elements of the Health Star Rating system from the requirements for claims in the *Australia New Zealand Food Standards Code*.

On 25 May 2015, FSANZ sought submissions on a draft variation and published an associated report. FSANZ received 13 submissions.

FSANZ approved the draft variations on 17 September 2015. The Australia and New Zealand Ministerial Forum on Food Regulation¹ (Forum) was notified of FSANZ's decision on 1 October 2015.

This Report is provided pursuant to paragraph 63(1)(b) of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act).

¹ convening as the Australia and New Zealand Food Regulation Ministerial Council

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Supporting documents

The following documents which informed the assessment of this Proposal are available on the FSANZ website at

<http://www.foodstandards.gov.au/code/proposals/Pages/P1037NutritionAndHealthClaimsAmend.aspx>:

SD1	Trademarked elements of the Health Star Rating (HSR) system (at Approval)
SD2	Relevant Code requirements currently applying to the trademarked elements of the Health Star Rating (HSR) system

Executive summary

Standard 1.2.7 – Nutrition, Health and Related Claims, which regulates nutrition content claims and health claims, was included in the *Australia New Zealand Food Standards Code* (Code) in January 2013. At the same time, some amendments were made to the requirements in Standard 1.2.8 – Nutrition Information Requirements, for nutrition information when nutrition content claims or health claims are made. These amendments were developed under Proposal P293 – Nutrition, Health & Related Claims.

Some inconsistencies with current requirements in the Code and with the intent of Proposal P293, as well as lack of clarity in Standard 1.2.7 and associated amendments to the Code, have subsequently been identified. FSANZ prepared this Proposal to address these inconsistencies and lack of clarity.

A voluntary front-of-pack food labelling scheme, known as the Health Star Rating (HSR) system, was launched in June 2014 by the Australia and New Zealand Ministerial Forum on Food Regulation. The HSR system comprises a star rating either with or without nutrient icons. Displaying the HSR nutrient icons on food labels triggers mandatory claim requirements in the Code (including associated nutrition information labelling). This Proposal provides an exemption to the trademarked HSR label elements from the requirements for claims in the Code.

In May 2015, FSANZ released a call for submissions on proposed draft variations to the Code in relation to the matters outlined in Table 1 below. FSANZ has finalised its consideration of this Proposal, having considered submitter comments and all other relevant matters.

The issues being addressed by this Proposal, approved amendments to the Code and additional amendments after consideration of submitter comments, are summarised in Table 1. A transition period followed by a 12 month stock-in-trade exemption has been provided for the amendments (excluding those relating to exemption of the trademarked HSR label elements), due to submitter concerns that labels may need to change.

Table 1: Summary of main issues being addressed and approved amendments

Code reference ²	Issue	Approved amendment
Current: Standard 1.2.7, Schedule 1 Revised: Standard 1.2.7 and Schedule 4 Conditions for claims about lactose, salt or sodium and omega-3 fatty acids	Conditions for making these claims include a requirement to declare additional nutrients in the nutrition information panel (NIP). Schedule 1 of the current Code (Schedule 4 in the revised Code) does not indicate how to declare those nutrients, for example, where in the NIP, on what basis (e.g. per serving, per 100 g) or how much to declare (i.e. average quantity). For lactose and salt/sodium claims, before Standard 1.2.7 was gazetted, Standard 1.2.8 required the additional declarations to be 'in accordance with subclause 5(1)' of Standard 1.2.8 and therefore, in the prescribed format for a NIP.	The 'average quantity' of galactose (for lactose claims), potassium (for salt/sodium claims) and the specified omega-3 fatty acids will be required to be declared in accordance with the prescribed format for NIPs. This will ensure consistency with other prescribed nutrition information requirements, and with requirements in place before Standard 1.2.7 and associated amendments were gazetted.

² A revision of the Code through Proposal P1025 – Code Revision will replace the current Code on 1 March 2016. References are made to both the current and revised Codes in this table and throughout the report.

Code reference ²	Issue	Approved amendment
		<p>The requirements have been moved from Standard 1.2.7 to Standard 1.2.8 (both current and revised Codes), where other similar nutrition information requirements are located.</p> <p>Additional amendment since the call for submissions: <i>A note has been included in Standard 1.2.7 of both the current and revised Codes to alert users that there may be additional nutrition labelling requirements in Standard 1.2.8 if certain nutrition content or health claims are made.</i></p>
<p>Current: Standard 1.2.7, Schedule 5 Revised: Schedule 5</p> <p>Method for determining the nutrient profiling score</p>	<p>It was intended that the nutrient profiling score for a food could be determined using the information declared on its label (including in the NIP). However, the requirements in Schedule 5 do not clearly achieve this.</p> <p>For example, for protein and dietary fibre, the 'average' per 100 g or 100 mL of food is required, rather than the 'average quantity' (as is required to be declared in the NIP). Also, it is not specified that the amount is to be based on per 100 g or mL of food, depending on the units used in the NIP.</p>	<p>Schedule 5 (both current and revised Codes) has been amended to add that the 'average quantity' (rather than 'quantity') of nutrients is used in the nutrient profiling score calculation and that the average quantity of protein and dietary fibre is to be based on per 100 g or mL of food, depending on the units used in the NIP.</p>
<p>Current: Standard 1.2.8, clause 7B Revised: Section 1.2.8—10</p> <p>Percentage DI or RDI information presented outside the panel</p>	<p>The clause permits percentage Daily Intake (%DI) for energy to be declared outside the NIP alone, without providing %DI for other nutrients outside the NIP. However, this is not expressly stated in the clause.</p> <p>Another purpose of the clause was to permit %DI for dietary fibre to be declared outside the NIP, together with the %DI for the prescribed nutrients, if the information is also declared in the NIP. However, this is not expressly stated in the clause.</p>	<p>Additional amendment since the call for submissions: <i>FSANZ has decided not to proceed with the draft variation relating to %DI as part of this Proposal. This is based on the differing opinions on the clause's effect and submitter concerns that the proposed drafting created further regulation. If so, the proposed variation may result in a more significant change than the minor amendments within the scope of this Proposal.</i></p> <p>In terms of the clarification that was intended to be provided, FSANZ considers that the current clause does not explicitly prohibit %DI for energy alone (without %DI for the other nutrients) being provided outside the NIP. Likewise, there is no prohibition on providing %DI for dietary fibre alone outside the NIP.</p>

Code reference ²	Issue	Approved amendment
<p>Current: Standard 1.2.8, clause 8 Revised: Section 1.2.8—14 and Schedule 13</p> <p>Conditions for small packages</p>	<p>If certain claims about food in a small package are made, the 'minimum', 'maximum' or 'average quantity' of various nutrients must be declared.</p> <p>The intention was that these requirements were consistent with provisions for NIPs (on larger packages) for declaring the minimum or maximum amounts, as an alternative to an 'average quantity'. However, the permission to declare a minimum or maximum was inadvertently applied to a broader range of foods and claims on small packages compared to permissions for declaring minimum or maximum quantities in NIPs on larger packages.</p>	<p>The provisions for small packages have been amended to be consistent with current provisions for NIPs on larger packages, i.e. that the minimum or maximum amounts are only permitted to be declared in an NIP if the claim is about a food standardised in Standard 2.4.1 or 2.4.2 (edible oils or edible oil spreads) (current and revised Codes) and if the claim relates to polyunsaturated fatty acids or monounsaturated fatty acids.</p> <p>For all other declarations, the average quantity must be indicated.</p>
<p>Current: Standard 1.2.8, clause 8 Revised: Schedule 13</p> <p>Conditions for small packages</p>	<p>For claims about dietary fibre, sugars or any other carbohydrate, the 'average quantity of energy' is required to be declared rather than the 'average energy content' as is required for NIPs on larger packages.</p>	<p>For claims about dietary fibre, sugars or any other carbohydrates, the 'average energy content' will be required to be declared.</p> <p>Average energy content is to be calculated in accordance with the standardised method in subclause 1(3) of Standard 1.2.8 of the current Code (section S11—2 in Schedule 11 in the revised Code).</p>
<p>Current: Standard 1.2.8, clause 8A Revised: Section 1.2.8—14</p> <p>Conditions for small packages</p>	<p>For claims on small packages about dietary fibre, sugars or any other carbohydrate, 'declaration of' unavailable carbohydrate and other substances if present, e.g. erythritol, glycerol, is required. It is not clear that an amount must be declared, or what quantity of food the amount of each substance relates to.</p>	<p>The provisions have been amended to be consistent with current provisions for NIPs on larger packages and with other declarations on small packages, as was intended i.e. the 'average quantity' of these substances must be declared 'per serving'.</p>
<p>Current: Standard 2.9.2 – Food for Infants, clause 9 Revised: No amendment made</p>	<p>As a result of amendments to Standard 1.2.8 when Standard 1.2.7 was developed, some of the clauses in Standard 1.2.8 relating to food in small packages (subclause 4(4) and clause 8A) of the current Code were inadvertently applied to food for infants.</p> <p>This is not an issue in the revised Code.</p>	<p>Clause 9 of Standard 2.9.2 of the current Code has been amended to clarify that the clauses about food in small packages in Standard 1.2.8 do not apply to food for infants.</p>
<p>Current: Standard 1.2.7, clause 5 and Standard 1.2.8, clause 4 Revised: Section 1.2.7—6, Section 1.2.8—3</p>	<p>Use of certain elements of the HSR system triggers certain claim requirements, including additional nutrition information labelling requirements.</p>	<p>An exemption has been provided for the HSR graphics, as trademarked, from claim requirements in Standards 1.2.7 and 1.2.8 (both current and revised Code).</p> <p>Additional amendments since the call for submissions: <i>The New Zealand trademarks for the HSR system have been included in the exemption.</i> <i>It has been clarified that the HSR images do not cease to be Permitted HSR symbols if the image indicates energy or nutrient content on a per serving or per reference portion basis in addition to a 'per pack' basis.</i></p>

1 Introduction

1.1 The Proposal

FSANZ prepared this Proposal to address some inconsistencies and lack of clarity associated with the operation of Standard 1.2.7 – Nutrition, Health and Related Claims and other related standards in the current *Australia New Zealand Food Standards Code* (Code), (Standard 1.2.7 and Schedule 4 and other related standards in the revised Code) to enable Standard 1.2.7 to operate smoothly and as intended.

The Proposal also included consideration of an exemption for certain elements of the Health Star Rating (HSR) system from the requirements for claims in the Code (including additional nutrition information labelling).

1.2 The current Standard

Standard 1.2.7 in the current Code (Standard 1.2.7 and Schedule 4 in the revised Code) sets out the claims that can be made on labels or in advertisements about the nutritional content of food (described as nutrition content claims) or the relationship between a food or property of food and a health effect (described as health claims). The Standard describes the conditions under which such claims can be made. Standard 1.2.7 was developed under Proposal P293 – Nutrition, Health & Related Claims. It was gazetted in January 2013 and will take full effect when the transition period ends in January 2016.

Standard 1.2.8 – Nutrition Information Requirements in the current Code (Standard 1.2.8 and Schedules 11, 12 and 13 in the revised Code), includes requirements for the declaration of specified nutrition information when certain nutrition content claims and health claims are made. It includes the requirements for nutrition labelling of small packages³ when nutrition content claims or health claims are made about food in a small package.

1.3 Health Star Rating system

In June 2014, the Australia and New Zealand Ministerial Forum on Food Regulation (Forum) launched a voluntary front-of-pack labelling scheme known as the HSR system.

The HSR system was developed by the Australian, state and territory governments in collaboration with industry, public health and consumer groups. The HSR system provides an at-a-glance overall rating of the healthiness of the food (reflected as a star rating), as well as specific nutrient and energy information. Ten different star ratings are able to be displayed for foods, ranging from a half star (least healthy) to five stars (most healthy). The Health Star Rating Advisory Committee has published a HSR system Style Guide, which provides further detail about the principles of use for this voluntary system⁴.

In summary, the HSR system graphic comprises three labelling elements:

1. A star rating, which is an overall evaluation of the food based on its nutrient profile, presented as a star rating graphic and numeric.

³ Small package is defined in clause 1 of Standard 1.1.1 – Preliminary Provisions – Application, Interpretation and General Prohibitions of the current Code (Standard 1.1.2 – Definitions used throughout the Code, of the revised Code), as a package with a surface area of less than 100 cm².

⁴ <http://www.healthstarrating.gov.au/internet/healthstarrating/publishing.nsf/Content/style-guide>

2. An energy icon, in which the energy content of the food is declared per nominated reference measure.
3. Individual icons indicating the average quantity of the prescribed nutrients (as prescribed by the HSR system) sodium, saturated fat and total sugars (referred to as 'sugars') per nominated reference measure. A 'positive' nutrient icon may also be included, for example, a nutrient icon for dietary fibre, protein or certain vitamins and minerals.

Under the HSR system, the nominated reference measure is either:

- 'per 100 g or 100 mL'; or
- 'per pack' when the food is presented as a single portion; or
- 'per [reference portion]' when presented as a multipack with individual pre-portioned units intended for consumption in a single sitting; or
- 'per [serve size]' for products for which an industry agreed standardised serve size applies.

The use of the descriptors 'low' and 'high' may be used within the nutrient icons (except for the energy icon) to highlight the amount of individual nutrients in the food product⁵. The 'low' descriptor may be used for the nutrient icons saturated fat, sodium, and sugars and the 'high' descriptor may be used in relation to the 'positive' nutrient icon. Percentage daily intake (%DI) information about energy can also be included in some circumstances.

Certain elements of the HSR system have been trademarked. For further information about the trademarks, refer to SD1.

1.4 Procedure for assessment

The Proposal was assessed under the General Procedure.

1.5 Decision

The draft variation as proposed following assessment was approved with amendments. The variation takes effect on the date of gazettal. A transition period followed by a 12-month stock-in-trade exemption has been provided for the amendments (excluding those relating to exemption of the trademarked HSR label elements), due to submitter concerns that labels may need to change as a result of amendments made to the Code by this Proposal.

The approved draft variation to the current Code, as varied after consideration of submissions, and related explanatory statement are at Attachment A.

A revision of the Code via Proposal P1025 – Code Revision, will replace the current Code on 1 March 2016. The draft variation to the revised Code, as varied after consideration of submissions, and related explanatory statement are at Attachment B. The variation takes effect on 1 March 2016.

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

⁵ When used, the descriptors 'high' and 'low' would trigger the relevant claim requirements in Standard 1.2.7 – Nutrition, Health and Related Claims.

The draft variation to the current Code on which submissions were sought is at Attachment C. The draft variation to the revised Code on which submissions were sought is at Attachment D.

There are references to both the current and revised Codes in this report.

2 Summary of the findings

2.1 Risk assessment

The amendments are not expected to have an impact on the protection of public health and safety. For this reason, a scientific risk analysis relating to public health and safety was not considered necessary for any of the proposed food regulatory measures.

The issues considered primarily relate to:

- lack of consistency and detail about how to declare some nutrients in the nutrition information panel (NIP) when certain claims are made
- clarification that the nutrients used in the nutrient profiling scoring method should be consistent with the amount declared in the NIP, to enable the nutrient profiling score to be determined from the label
- clarification that the percentage Daily Intake (%DI) for energy does not have to be presented together with the %DI for other nutrients when presented on a label outside the NIP
- clarification that the %DI for dietary fibre is permitted to be declared outside the NIP, together with the %DI for energy, fat, saturated fat, protein, carbohydrate, sugars and sodium, if it is also declared in the NIP
- inconsistency of requirements for declaring nutrition information on small packages when certain claims are made, with applicable requirements for NIPs
- inadvertent application of clauses about food in small packages to food for infants
- minor formatting and editorial issues in Standards 1.2.7 and 1.2.8 in the current Code (Standard 1.2.7, Schedule 4, Standard 1.2.8 and Schedules 12, 13 in the revised Code)
- proposed exemption for certain elements of the HSR system from claim requirements in Standards 1.2.7 and 1.2.8 in the current Code (Standard 1.2.7, Schedule 4, Standard 1.2.8 and Schedule 13 in the revised Code).

The issues considered are detailed in section 2.3.

2.2 Summary of issues raised in submissions

FSANZ received 13 submissions. Most submitters supported the draft variations, but some concerns were raised. Two submitters did not support the proposed exemption of certain elements of the HSR system from claim requirements in the Code.

The main issues raised in submissions of relevance to the draft variations are listed below.

- There is inconsistency in the term 'saturated fatty acid' in clause 5 of Standard 1.2.8 in the current Code and the NIP format which uses the term 'saturated'.
- Requiring certain %DI declarations in NIPs as a pre-condition for stating %DI values outside the NIP is further regulation which is not supported and may render some existing labels illegal, meaning that a World Trade Organization notification, Regulation Impact Statement process, appropriate transition period and stock-in-trade exemption would all be required.
- With moving the additional labelling requirements when certain claims are made from Standard 1.2.7 into Standard 1.2.8 in the current Code, the Code is not as transparent. Suggestion to cross reference Standard 1.2.7 to the requirements in Standard 1.2.8.
- Suggest Standard 1.2.8 of the current and revised Codes is clarified to ensure %DI for energy may be presented with the HSR energy icons, either alone or together with the other nutrient icons, on a 'per pack'; 'per serve'; and 'per [reference] portion' (with respect to confectionery in multipacks); to avoid doubt.
- Concern that requirements for complying with the Code for elements of the HSR system will favour the use of %DI over the HSR system.
- The relevant New Zealand Trade Mark numbers for the HSR system were not included in the drafting.
- Concern about the exemption from the form of the food requirements for claims, for the trademarked elements of the HSR system.
- Front-of-pack labelling schemes that repeat information in the NIP should be exempt generally, in line with Government policies relating to contestability.
- Transition period and stock-in-trade exemption requested might result in label changes (no examples or evidence provided).

A summary of the issues raised and the FSANZ responses are provided in Table 2 below.

Table 2: Summary of issues

Issue	Raised by	FSANZ response (including any amendments to drafting)
Conditions for claims about lactose, salt or sodium and omega-3 fatty acids		
In amending paragraph 5(1)(e) of Standard 1.2.7, replacing 'saturated fat' with 'saturated fatty acids', creates inconsistency between the requirement and the NIP format, which uses the term 'saturated'.	New Zealand Food and Grocery Council (NZFGC)	FSANZ does not agree there is a legal inconsistency. In the current Code, the definition of 'saturated fatty acids' provides that 'saturated fatty acids' are to be declared or included in the NIP as 'saturated fats'. In the revised Code, subsection 128—6(2) and section S12—2 in Schedule 12 in effect provide for 'saturated fatty acids' to be included in the NIP as 'saturated'.
Omega-3 fatty acid terms are better known by their shortened versions: α-linolenic acid, DHA and EPA. It is not clear that these shortened names are permitted on the NIP and nutrition information required for small packages.	NZFGC	Noted and no amendment made to the Code at this stage. This is currently a matter of interpretation, including of section 1.1.1—8 (in the revised Code). To expressly permit the use of abbreviations as suggested is outside the scope of this proposal but could be considered as part of another suitable application or proposal, which would enable full consideration including consultation.
Cannot guarantee that no label change will be required as a result of this measure and so a 12 month transitional period followed by usual stock-in-trade provisions should apply unless FSANZ has evidence that no labels are affected.	Australia Food and Grocery Council (AFGC)	A transition period followed by a stock-in-trade exemption will be provided for the amendments. Refer to section 3 for further information.
<p>Do not support moving the requirements for additional nutrition labelling from Standard 1.2.7 to 1.2.8. The Code should be as transparent as possible. Standard 1.2.8 should not be cluttered with requirements that only apply in specific circumstances.</p> <p>Nutrition labelling requirements for small packages would be better in Standard 1.2.7, perhaps with an appropriate cross-reference note in Standard 1.2.8.</p> <p>A cross reference to the appropriate requirements in 1.2.8 which are triggered by the claim(s) would be useful.</p>	<p>AFGC</p> <p>AFGC</p> <p>Ministry for Primary Industries (MPI)</p>	<p>Requirements for additional labelling that is triggered by a nutrition content claim or health claim are currently specified in either Standard 1.2.7 or 1.2.8 in the current Code, depending on the requirement. FSANZ considers that as the requirements relate to declarations in the NIP (or similar, in the case of small packages) the appropriate standard for all such additional labelling requirements is Standard 1.2.8. In addition, the location in Standard 1.2.8 corresponds with current provisions in Standard 1.2.1 which set out the requirements for food for sale to bear a label or have other information provided (as these refer to Standard 1.2.8 not 1.2.7).</p> <p>A note to refer to additional nutrition labelling requirements in Standard 1.2.8 has been included in Standard 1.2.7 (of both the current and revised Codes).</p>

Issue	Raised by	FSANZ response (including any amendments to drafting)
Standard 1.2.8, Percentage DI or RDI information presented outside the panel		
Agree except concerning the comment that once a statement is shown 'outside the NIP' that statement is a 'claim' or a 'nutrition claim' and with consequential ramifications.	Food Technology Association of Australia (FTAA)	The provision in clause 7B Standard 1.2.8 in the current Code (section 1.2.8—10 in the revised Code), that the %DI and %RDI information presented in accordance with that clause does not constitute a nutrition content claim was determined as part of P293. This was to allow the option of providing nutrition information to consumers in a more visible format (than in the NIP) and not to restrict the information to only those products that meet claim conditions.
Not supportive of %DI labels for energy alone being permitted outside the NIP. To encourage the use of the HSR system, %DI for energy alone should only be permitted when used in conjunction with the HSR together with the energy content icon. An exemption may apply to small packs but that icon should be required to include kilojoule information. This would reflect the intention in the HSR system Style Guide.	Obesity Policy Coalition (OPC)	This issue relates to operation of the HSR system and is outside the scope of this proposal.
Note the potential impact of the outcome of FSANZ's current consideration of Labelling Review Recommendation 17. If average quantity per serve information will no longer be mandatory in the NIP, it will be vital that FSANZ proceed as proposed to require that this information be mandatory if a %DI claim is made outside the NIP.	OPC	Noted. It is anticipated that outcomes from the FSANZ work on recommendation 17 will be released late in 2015.
<p data-bbox="174 1013 698 1141">Does the drafting permit %DI for energy use across the reference measures permitted by HSR system generally and/or specifically for confectionery?</p> <p data-bbox="174 1141 698 1401">Recommend that Standard 1.2.8 is clarified to ensure %DI for energy may be presented with the HSR energy icons, either alone or together with the other nutrient icons, on a 'per pack'; 'per serve'; and 'per [reference] portion' (with respect to confectionery in multipacks); to avoid doubt.</p>	Ai Group	The Code requires the actual serving size to be declared, however the wording for presenting the serving size with the %DI declaration is not prescribed.

Issue	Raised by	FSANZ response (including any amendments to drafting)
<p>Requirement that if more than one piece of %DI information is presented outside the NIP, they are presented together, may have an unintended consequence of preventing %DI energy being presented with HSR and Daily Intake Guide (DIG) energy icons, on the same pack. Section 4 of the HSR Style Guide requires that if the HSR system graphic and the DIG are on the same pack, they should be placed so that they do not lead consumers to believe that they are linked or are two parts of a single system.</p>	<p>Ai Group</p>	<p>Colocation of two different %DI labelling systems outside of the NIP may be considered to be consistent with the Code but inconsistent with the HSR Style Guide. This is not an issue for P1037. There is no requirement in the Code or the HSR system however, to include %DI for energy as part of both the HSR scheme and the DIG on the same food label.</p>
<p>Do not support the proposal to further regulate the declaration of %DI information outside the NIP, in terms of requiring certain %DI declarations in NIPs as a pre-condition for stating %DI values outside the NIP. Nothing in the proposal indicates any regulatory failure of the existing provision or provides any basis for further regulation. Such a measure would render some existing labels illegal, meaning that a WTO notification, RIS process, appropriate transitional period and stock-in-trade would all be required. Especially concerned that such a measure is hidden inside a Proposal whose innocuous title and summary fails to identify that such a significant change is contemplated. This measure has the potential for significant impact on the food industry and is a much greater measure than 'to address inconsistencies and lack of clarity'. If it is to proceed then it should be separated from P1037 and progressed separately under a proposal with a more accurate and descriptive title.</p>	<p>AFGC</p>	<p>In response to submitter concerns, the draft variation relating to %DI declarations (clause 7B in the current Code and section 1.2.8—10 in the revised Code) has been omitted from this Proposal. The relevant provisions of the current and revised Codes and their effect remain unchanged. Refer to section 2.3.3 for further information.</p>

Issue	Raised by	FSANZ response (including any amendments to drafting)
OTHER COMMENTS		
<p>The Explanatory Notes are not that explanatory, but rather largely repeat the terms of the provision. Given that FSANZ is looking to discontinue user guides and similar documents, improvement in the clarity of the Explanatory notes to describe impacts rather than changes would be appropriate.</p>	AFGC	<p>The Explanatory Statement is to explain in general terms the purpose and operation of the instrument, the legal effect of the amendments and the changes made to the text.</p> <p>An Explanatory Statement can be worded in a way that provides information about the policy of the provision, as an aid to interpretation. However, it is not the vehicle for explanations and guidance on how labelling of regulated products is to occur.</p>
<p>There is potential that label changes will be required as a result of the measures proposed by P1037 and so a realistic transitional period, followed by a stock-in-trade provision is recommended.</p>	Ai Group	<p>A transition period followed by a 12 month stock-in-trade exemption will be provided for the amendments.</p>
<p>Recommend the addition of the percentage fvnl⁶ details to the ingredient list, to allow for verification of the nutrient profiling score.</p> <p>A consideration for the HSR system is to align with the requirements of the nutrient profiling scoring criterion (NPSC) so that the HSR could be calculated from label information. This would mean requiring the inclusion of fibre in the NIP and percentage of fvnl in the ingredient list when used in the nutrient profiling score calculation or in this case the HSR score calculation.</p> <p>Note it is not possible to determine the nutrient profiling score for many foods by using the information provided on the label as the fvnl content of the food cannot be determined.</p>	<p>Dietitians Association of Australia (DAA)</p> <p>Simplot</p> <p>Victorian Departments of Health and Human Services and Economic Development, Jobs, Transport and Resources</p>	<p>For foods that must meet the NPSC in order to make a claim, Standard 1.2.7 of both the current and revised Codes requires:</p> <ul style="list-style-type: none"> • the property of the food (e.g. dietary fibre) to be declared in the NIP if relied on to meet the NPSC • the calcium content to be declared in the NIP if the food is classified in Category 3 of the NPSC • the percentage of each fvnl relied on to meet the NPSC to be declared on the label if the food scores V points. <p>Neither the Guide for Industry to the Health Star Rating system, nor the HSR Style Guide require the information outlined above to be declared on a food label with a HSR to enable third parties to calculate the HSR. However, the Code requirements above would apply if the same food also carried a health claim.</p>

⁶ Fvnl means fruits, vegetables, nuts and legumes including coconut, spices, herbs, fungi, seeds and algae.

Issue	Raised by	FSANZ response (including any amendments to drafting)
HEALTH STAR RATING		
<p>Do not support exemption because:</p> <p>(i) The HSR is voluntary. Introduction of an exemption is unjustifiable when otherwise this type of labelling is mandatory.</p> <p>(ii) A NIP will still be required which essentially shows the same values.</p> <p>(iii) The star ratings are nutrition claims and subject to the relevant clauses.</p> <p>Do not support the exemption for the HSR. Such systems are useful marketing advice but because they are inherently simplistic and do not contain all the information, they are prone to be misinterpreted and may lead to adverse consequences.</p>	<p>FTAA</p> <p>NZ Nurses Organisation</p>	<p>Forum ministers agreed that the HSR system would be implemented on a voluntary basis over five years (from 27 June 2014). The exemption supports the uptake of this voluntary system by the food industry.</p>
<p>Note equivalent NZ HSR trademarks were not captured in proposed drafting.</p>	<p>MPI, NZFGC</p>	<p>The draft variation has been amended to include the New Zealand HSR trademark numbers.</p>
<p>Do not support exemption for HSR from the form of the food requirements.</p> <p>Creates an inconsistency between exempt trademarked HSR elements (which do not have to meet form of food requirements) and when an optional HSR nutrient icon is used (and therefore does have to meet form of food requirements).</p> <p>Suggest that when the HSR is calculated on a form of the food other than ‘as sold’ the form of the food used to calculate the HSR should be declared in conjunction with the HSR.</p>	<p>MPI</p>	<p>The Front-of-Pack Labelling Secretariat within the Australian Department of Health has advised FSANZ that the HSR Advisory Committee will be asked to consider the requirements in the Guide for Industry and/or the Style Guide relating to the declaration of the form of the food, for the HSR system (noting they would be voluntary rather than mandatory).</p> <p>Clause 11, Standard 1.2.8 in the current Code (subsection 1.2.8—13(2) in the revised Code) allows for the voluntary display of an additional column in the NIP for the food as made up / consumed.</p>

Issue	Raised by	FSANZ response (including any amendments to drafting)
<p>Have consistently applied the rule that if product is low enough in sodium and SFA the word 'low' is included in the thumbnail. This would normally require potassium and fatty acid breakdown in the NIP. Consistent advice from Department of Health and HSR Advisory Committee has been that these descriptors would be exempt. Do not have data on potassium and fatty acids and would add costs to obtain from suppliers and expansion of NIP. If not exempt, request adequate time (36 months) to update artwork.</p>	<p>Coles</p>	<p>FSANZ notes that the HSR Style Guide indicates that nutrient icons will constitute nutrition content claims under Standard 1.2.7 of the Code and must comply with the requirements of the Standard. The HSR Style Guide includes that use of an optional positive nutrient, and/or use of the terms 'high' and/or 'low' must be at a level consistent with the requirements of Standard 1.2.7.</p>
<p>Highlight the need to ensure that compliance obligations should not have the effect of dissuading food manufacturers from using the HSR system in preference to %DI labels. Agree that the use of 'high' and 'low' descriptors should constitute nutrition claims, but to ensure consistency with the requirements of Standard 1.2.7, FSANZ should ensure that the use of these descriptors does not trigger obligations that would not be triggered by the use of %DI labels. In the interests of consistency in the long term, it may be appropriate that the use of any %DI label (outside the NIP) be considered a nutrition claim. At the very least, %DI labels should be included in the definition of 'claims requiring nutrition information' in Standard 1.2.8 to ensure that obligations such as those under clause 11 of Standard 1.2.8 are triggered by the use of %DI labels. Suggest amending Standard 1.2.8 to mandate the use of the HSR system if a nutrition claim is made, as they can be perceived by consumers to be the</p>	<p>OPC</p>	<p>Exemptions included in this Proposal provide an incentive for food companies to adopt the HSR system. It is possible that the recommended approach could have the potential for companies to be less likely to include the optional positive nutrient within the HSR system graphic. The HSR Style Guide includes that use of an optional positive nutrient, and/or use of the terms 'high' and/or 'low' must be at a level consistent with the requirements of Standard 1.2.7.</p> <p>The use of 'high' and 'low' descriptors would be subject to nutrition content claim requirements when used as part of the HSR system or as part of any other front of pack labelling system.</p> <p>Imposing additional requirements on other %DI labelling schemes and on other nutrition content claims would require a detailed assessment and public consultation and would significantly broaden the scope of this proposal. No changes to the approach proposed in the call for submissions have been made.</p> <p>Forum Ministers agreed that the HSR system would be implemented on a voluntary basis over five years (from 27 June 2014). Amending Standard 1.2.8 to mandate the use of the HSR system would be contrary to this Forum decision, and beyond the scope of this Proposal</p>

Issue	Raised by	FSANZ response (including any amendments to drafting)
<p>same/similar to health claims, and can confuse and mislead consumers about the overall nutrition quality of a food. There is evidence that nutrition claims produce a halo effect, whereby the presence of the claim can cause consumers to rate more highly other nutrition attributes of the food not included in the claim. HSRs on these products would enable consumers to correct any misapprehension of the overall quality of the food. Ideally, nutrition content claims would not be permitted unless the food meets NPSC.</p>		
<p>Front-of-pack nutrition labelling schemes that do no more than repeat some or all of the mandatory or %DI information from NIPs should be excluded from the definition of 'nutrition content claim'. If such declarations are accompanied by qualifiers such as high or low, or if declarations are made in respect of other nutrients, these should fall within the scope of nutrition content claim and be regulated according to the existing terms of Standard 1.2.7, whether made in the context of HSR, DIG or any other competing scheme.</p> <p>The proposal would confer special status on the HSR scheme compared to other schemes (such as the food industry's DIG).</p> <p>To give regulatory preference to the HSR over its alternatives offends the Government's policy of contestability. An HSR license is a service and the Government should not, through regulation, engage in anti-competitive discriminatory conduct that does not allow alternative services (like DIG) to operate on a comparable basis. The</p>	AFGC	<p>In January 2015, the Forum agreed that elements of the HSR system should be exempt from Code requirements. This Proposal implements the Forums' decision and is intended to support the voluntary uptake of the HSR system. FSANZ acknowledges that while some submitters wish to broaden the exemption to other front-of-pack labelling schemes (e.g. the DIG), other submitters have sought to impose additional requirements on those schemes. FSANZ is of the view that this would require further assessment and public consultation and would delay the gazettal of the draft variations recommended in the Proposal. This is not desirable as the draft variations were intended to ensure the smooth transition of Standard 1.2.7 when it becomes mandatory in January 2016, and that the exemptions for the trademarked elements of the HSR system take effect as soon as possible.</p> <p>Regarding the Department of Finance's Contestability Framework, FSANZ understands that this framework is not relevant to the issue of the conditions applying to front-of-pack labelling schemes. The Department of Finance's website states that:</p> <p><i>In the 2014-15 Federal Budget, the Government introduced a Commonwealth-wide Contestability Framework to be applied through the Contestability Programme led by the Department of Finance.</i></p> <p><i>The Contestability Programme will assess all current government functions to determine whether particular functions should be open to competition and how competition should occur. The purpose of the Contestability Programme is to encourage Commonwealth entities to adopt a more commercial mindset and to continually seek ways of improving the performance of existing or proposed government functions.</i></p> <p>The application of an exemption from claim conditions in the Code is not a government function.</p>

Issue	Raised by	FSANZ response (including any amendments to drafting)
<p>Department of Finance’s Contestability Framework should be applied to ensure that all equivalent schemes are regulatory in the same manner.</p>		
<p>Recommends that the same exemptions be extended, including to other front of pack labelling schemes such as the Daily Intake Guide and where the FOPL information does no more than repeat some or all the mandatory or %DI information from the NIP.</p> <p>This exemption should extend to HSR and DIG energy, with or without %DI, as it is simply repeating information from the NIP in a front of pack nutrient labelling system.</p> <p>However, if draft variation Standard 1.1.1, 2A (2) (a) is retained, the wording needs to incorporate ‘per serve’, ‘per 100g/100ml’, ‘per pack’ and ‘per [reference] portion’.</p>	<p>Ai Group</p>	<p>Response as above.</p> <p>The draft variations have been amended to add that HSR images also do not cease to be Permitted Health Star Rating symbols if the image indicates energy or nutrient content on a per serving or per reference portion basis (in addition to per pack).</p>
<p>Inclusion in Standard 1.2.8 of the HSR system elements that are considered nutrition content claims should be considered:</p> <ul style="list-style-type: none"> • Any additional positive nutrient • The words ‘high’ or ‘low’ used in conjunction with HSR system. 	<p>Simplot</p>	<p>The conditions in Standards 1.2.7 and 1.2.8 in the current Code (Standard 1.2.7, Schedule 4, Standard 1.2.8 and Schedule 13 in the revised Code) apply generally to any ‘nutrition content claim’ (as defined in the Code) and FSANZ does not consider it necessary to specifically identify in the Code which HSR elements those conditions apply to. The HSR Style Guide indicates when claim requirements in the Code must be met (section 2.5.2).</p>

2.3 Risk management

2.3.1 Nutrient declarations in nutrition information panel

Schedule 1 of Standard 1.2.7 in the current Code (table to section S4—3 in Schedule 4 in the revised Code) provides conditions for nutrition content claims about certain properties of food. For some claims, these conditions include a requirement to declare additional nutrients in the NIP if a nutrition content claim is made, as follows:

- For claims about lactose content, the *lactose and galactose content* must be declared.
- For claims about salt or sodium, the *potassium content* must be declared.
- For claims about omega-3 fatty acids, *the type and amount* of omega-3 fatty acids (i.e. alpha-linolenic acid, docosahexaenoic acid, or eicosapentaenoic acid) must be declared.

Schedule 1 of Standard 1.2.7 in the current Code (table to section S4—3 in Schedule 4 in the revised Code) does not indicate how to declare these nutrients, for example, where in the NIP, in what format, or what quantity of food the amount of each substance should relate to, e.g. per serving, per 100 g. This is inconsistent with requirements for NIPs in Standard 1.2.8, whereby the format for presenting the required information is prescribed (subclauses 5(1) and 5(7) in the current Code (sections S12—2 and S12—3 in Schedule 12 in the revised Code) and could result in inconsistent presentation of information in NIPs. For lactose and salt/sodium claims, before Standard 1.2.7 was gazetted, Standard 1.2.8 required the additional declarations to be ‘in accordance with subclause 5(1)’ of Standard 1.2.8 and therefore, in the prescribed format for a panel.

Schedule 1 of Standard 1.2.7 in the current Code (table to section S4—3 in Schedule 4 in the revised Code) requires the ‘content’ or ‘amount’ of the nutrients mentioned above to be declared in the NIP. However, for other nutrients (fat, protein etc), the ‘average quantity’ must be declared. The Code includes a definition of ‘average quantity’, which outlines the acceptable methods for determining the quantity of a substance.

To ensure that NIPs are presented in a consistent manner, galactose, potassium and the specified omega-3 fatty acids, will be required to be declared in accordance with the prescribed format for NIPs (subclause 5(7) in the current Code and section S12—3 in Schedule 12 in the revised Code). In addition, the ‘average quantity’ should be declared. This will ensure that the requirements are consistent with the requirements for other prescribed nutrition information.

Requirements for nutrient declarations in the NIP in Schedule 1 of Standard 1.2.7 in the current Code (section S4—2 in Schedule 4 in the revised Code) are more appropriately located in Standard 1.2.8, where other requirements for nutrition information are located. This would also clarify that the additional nutrient declarations (galactose etc) are to be declared when either nutrition content claims or health claims about the relevant property, are made. A note has been added to Standard 1.2.7 in both the current and revised Codes to indicate to users that there may be additional labelling requirements in Standard 1.2.8 for claims regulated in Standard 1.2.7.

The requirement to declare lactose when a claim about lactose is made (as currently required in Schedule 1 of Standard 1.2.7 in the current Code (section S4—3 in Schedule 4 in the revised Code) is also required by paragraph 5(1)(g) of Standard 1.2.8 in the current Code (subparagraph 1.2.8—6(1)(d)(iv) in the revised Code) and therefore will not be repeated elsewhere.

A transition period and stock-in-trade exemption will be provided for the amendments due to concerns that some food label changes may be required. Refer to section 3 for further information.

2.3.2 Quantity of nutrients used in the nutrient profiling scoring method

The method for determining the score of a food for the nutrient profiling scoring criterion (NPSC) is set out in Schedule 5 (Nutrient profiling scoring method) of Standard 1.2.7 in the current Code (Schedule 5 in the revised Code). The method takes into account the energy, saturated fat, sodium and sugar content of a food along with certain ingredients such as fruit and vegetables, and in some instances, dietary fibre and protein content. During development of the NPSC, it was intended that the score for a food could be determined using the information declared on its label, including the information in the NIP. However the requirements in Schedule 5 of Standard 1.2.7 in the current Code (Schedule 5 in the revised Code) do not clearly achieve this. For example, for protein and dietary fibre, the 'average' per 100 g or 100 mL of food is required, rather than the 'average quantity' (as required to be declared in the NIP) and it is not specified that the amount is to be based on per 100 g or mL of the food, depending on the units used in the NIP. Likewise, 'average sodium' is referred to in items 2 and 3 in Schedule 5 rather than 'average quantity' of sodium'.

The nutrient profiling scoring method in Schedule 5 of Standard 1.2.7 in the current Code (Schedule 5 in the revised Code) will be amended to add that the 'average quantity' (rather than 'quantity') of nutrients is used and that the average quantity of protein and dietary fibre is to be based on per 100 g or mL of the food, depending on the units used in the NIP. The reference to 'total' preceding sugars in Schedule 5 of Standard 1.2.7 in the current Code (Schedule 5 in the revised Code) is unnecessary, as the definition of 'sugars' captures monosaccharides and disaccharides.

These amendments will clarify that the quantity of energy and nutrients used in the nutrient profiling scoring method must be consistent with that declared in the NIP. The nutrient profiling score can therefore be determined using the information declared on the label of the food, as was intended.

In addition, subitems 4(6) and 4(8) in Schedule 5 of Standard 1.2.7 in the current Code (subsections S5—4(6) and (8) in Schedule 5 in the revised Code) refer to 'fvnl sources'. The word 'sources' is unnecessary and will be deleted.

Submitters were generally supportive of these amendments, however a transition period and stock-in-trade exemption will be provided due to concerns that some food label changes may be required. Refer to section 3 for further information.

2.3.3 Percentage daily intake declarations

There are conditions in Standard 1.2.8 of both the current and revised Codes for voluntary percentage daily intake (%DI) labelling. Percentage DI information presented in the NIP can also be presented on the food label outside the NIP, if certain conditions are met.

The intended approach for %DI labelling was determined under Proposal P293 and was as follows⁷:

⁷ Refer section 6, Attachment 5 of the P293 Final Assessment Report, at the following link: <http://www.foodstandards.gov.au/code/proposals/pages/proposalp293nutritionhealthandrelatedclaims/p293finalassessmentr3889.aspx>

- Continue to allow voluntary %DI labelling in the NIP with the additional permission of the abbreviated '8700 kJ' statements:
 - 'based on an average adult diet of 8700 kJ'; or
 - 'Percentage daily intakes are based on an average adult diet of 8700 kJ'.
- Permit %DI labelling information for energy alone or together with protein, fat, saturated fatty acids, carbohydrate, sugars and sodium outside the NIP, all in one place with serving size information (without the information being considered a claim), provided %DI information for energy and the prescribed nutrients are all presented in the NIP.
- Require the declaration of the percentage of the Recommended Dietary Intake (%RDI) in the NIP (for those nutrients for which there is a RDI specified in the Code) when nutrition content or health claims are made in relation to the presence of vitamins and minerals.
- Permit %RDI labelling outside the NIP together with serving size information, without the information being considered a claim.

The proposed variation sought to clarify that:

- As an alternative to declaring the %DI of energy, protein, fat, saturated fatty acids, carbohydrate, sugars, and sodium (and dietary fibre if declared) together outside the NIP, the %DI for energy alone could be provided without providing the %DI for other nutrients, outside the NIP.
- %DI for dietary fibre is permitted to be declared outside the NIP, together with the %DI for energy and the prescribed nutrients.

In making these amendments, the proposed variation restated the policy intent that %DI information could be declared outside the NIP if it was also declared inside the NIP. In response, the AFGC asserted that the current provision did not impose such a requirement and that to now require certain %DI declarations in NIPs as a pre-condition for stating %DI values outside the NIP, it would be additional or further regulation, be outside the stated scope of the Proposal, and would render some existing labels illegal.

In response to submitter concerns, FSANZ has reviewed the current provisions and has decided not to proceed with the draft variation relating to %DI (i.e. clause 7B (current Code) and section 1.2.8—10 (revised Code)). This is based on concerns that the amendment would result in more significant changes than the minor amendments within the scope of this Proposal and therefore require a more thorough assessment.

In terms of the clarification that was intended to be provided by the draft variation in the call for submissions (see Attachments C and D), FSANZ considers that the provisions currently in either version of the Code do not explicitly prohibit %DI for energy alone (without %DI for the other nutrients) from being provided outside the NIP. Likewise, there is no explicit prohibition on providing %DI for dietary fibre outside the NIP.

2.3.4 Nutrition information requirements on small packages

Small packages⁸ are exempt from the requirement to be labelled with a NIP. If a nutrition content claim or health claim is made in relation to a food in a small package, certain nutrition information must be provided on the label. The requirements for nutrition labelling of small packages were reviewed and clarified during Proposal P293.

As a result of that review, Standard 1.2.8 requires that if claims about cholesterol or certain fatty acids are made, the label on a small package must indicate the 'minimum', 'maximum' or 'average quantity' of saturated, trans, polyunsaturated and monounsaturated fatty acids per serving of the food. Permission to declare the minimum or maximum amounts rather than the average quantity was provided for consistency with provisions for NIPs on larger packages (subclause 5(1A) of Standard 1.2.8 in the current Code; subsection 1.2.8—6(4) in the revised Code). However, the minimum or maximum amounts are only permitted to be declared in a NIP if the claim is about a food standardised in Standard 2.4.1 or 2.4.2 (edible oils or edible oil spreads) (current and revised Codes) and the claim relates to polyunsaturated fatty acids or monounsaturated fatty acids. Permission for a minimum or maximum amount to be declared was provided because it was considered not technically feasible to determine the average quantity of a fatty acid that is present because of the seasonal variability in the source of oils and fats used.

Provisions for the declaration of fatty acids on small packages will be amended to be consistent with current provisions for NIPs on larger packages.

Similarly, the drafting inadvertently permitted the minimum or maximum amounts of galactose, sodium and potassium to be declared when certain claims are made about food in a small package. This will be amended to require the 'average quantity' to be declared, consistent with requirements for NIPs on larger packages.

For claims on small packages about dietary fibre, sugars or any other carbohydrates, Standard 1.2.8 in the current Code (Schedule 13 in the revised Code) currently requires the 'average quantity of energy' to be declared rather than the 'average energy content' as is required for NIPs on larger packages. Average energy content is to be calculated in accordance with the standardised method in the Code. For claims about dietary fibre, sugars or any other carbohydrates, the 'average energy content' will be required to be declared on small packages where applicable, to ensure that the standardised method for calculation is used and for consistency with the approach for NIPs on larger packages.

In addition, a 'declaration of' unavailable carbohydrate and other substances if present (e.g. erythritol, glycerol), is required when claims about dietary fibre, sugars or any other carbohydrates are made, however it is not clear that an amount must be declared, or to what quantity of food the amount of each substance must relate. The provisions for small packages making claims about dietary fibre, sugars or any other carbohydrates will be amended to be consistent with current provisions for NIPs on larger packages and with other declarations on small packages, as was intended, i.e. the average quantity of these substances must be declared, per serving.

Standard 1.2.8 of both the current and revised Codes permits the word 'serving' to be replaced with 'metric cup' for a small package. However, given the dimensions of a small package, this is not appropriate and therefore the reference to 'metric cup' has been deleted.

⁸ Small package is defined in clause 1 of Standard 1.1.1 – Preliminary Provisions – Application, Interpretation and General Prohibitions of the current Code (Standard 1.1.2 – Definitions used throughout the Code, of the revised Code), as a package with a surface area of less than 100 cm².

Subclause 4(4) of Standard 1.2.8 in the current Code indicates that food in small packages must comply with clause 8 but does not mention clause 8A, which also applies to food in small packages. Reference to clause 8A has been added. No amendment is needed for the revised Code.

Submitters were generally supportive of these amendments. However, a transition period and stock-in-trade exemption will be provided for the amendments due to concerns that some food label changes may be required. Refer to section 3 for further information.

2.3.5 Application of clauses about food in small packages to food for infants

Food for infants sold in a small package must have a NIP in the prescribed format; there is no exemption as there is for other food in small packages.

As a result of amendments to Standard 1.2.8 when Standard 1.2.7 was developed, some of the clauses in Standard 1.2.8 in the current Code relating to food in small packages (subclause 4(4) and clause 8A) were inadvertently applied to food for infants.

Clause 9 of Standard 2.9.2 – Food for Infants in the current Code, will be amended to clarify that the clauses about food in small packages do not apply to food for infants. Submitters were supportive of this amendment. No amendment is needed for the revised Code.

2.3.6 Proposed exemptions from claim requirements for trademarked HSR elements

Use of the HSR system is voluntary. As it currently stands, certain elements of the HSR system on food labels and advertisements would constitute nutrition content claims as defined in the Code and therefore trigger claim requirements, including additional nutrition information labelling. Use of the HSR system therefore has the potential to result in additional labelling requirements and costs for food companies. These additional requirements may lead to reduced voluntary uptake by the food industry.

FSANZ has approved an exemption from nutrition content claim requirements, including certain nutrition information labelling requirements, in the Code (see SD2 for these requirements) for the energy icon and the icons for sodium, saturated fat and sugars, as trademarked. To avoid doubt, the use of these elements of the HSR system will also be exempt from health claim requirements.

An amendment to the Code to exempt the trademarked elements of the HSR system will remove the need to meet additional claim requirements (including additional nutrition information labelling) when companies voluntarily adopt the HSR system. For example, use of the trademarked sodium nutrient icon (without the 'low' descriptor), would not trigger the nutrition content claim requirement to declare potassium in the NIP (which might be costly and a disincentive for industry to adopt the voluntary HSR system). The exemption will not affect the current overarching requirement to label a food with a NIP.

The HSR system Style Guide recommends that the individual values within each icon should be consistent with values declared in the NIP. Therefore, these trademarked elements should not be required to meet claim requirements. This is similar to the current permission for %DI information to be presented outside the NIP without it constituting a nutrition content claim.

As indicated in the HSR system Style Guide, HSR elements not trademarked will not be exempt and therefore will need to comply with relevant claim requirements in the Code (if any). These elements are:

- 'low' descriptors used in conjunction with prescribed nutrient icons for saturated fat, sugars and sodium (energy is not permitted to carry a descriptor)
- 'positive' nutrient icons, for example dietary fibre, calcium
- 'high' descriptors used in conjunction with 'positive' nutrient icons
- the energy icon, when displayed without the star rating.

This approach will ensure that the intent of Standard 1.2.7 is maintained, claims in the form of HSR icons are not misleading and consistent information is provided to consumers, irrespective of whether the claim is part of the HSR system or separate to this.

Some submitters requested broadening the exemption to other front-of-pack labelling schemes (e.g. the Daily Intake Guide (DIG)), while other submitters sought to impose additional requirements on those schemes. FSANZ has decided to proceed with the draft variations proposed in the call for submissions, noting that further assessment and public consultation would be necessary if the scope of the exemption was to change. The Forum agreed that elements of the HSR system should be exempt from Code requirements. The exemption implements the Forum decision and is intended to support voluntary uptake of the HSR system.

2.4 Risk communication

Consultation is a key part of FSANZ's standards development process. The process by which FSANZ considers Standard matters is open, accountable, consultative and transparent.

Public submissions were sought to obtain the views on the proposed variation to the Code. The call for submissions period was from 25 May 2015 to 6 July 2015. Submissions were invited via the FSANZ Notification Circular, media release and through FSANZ's social media tools and Food Standards News. Subscribers and interested parties were also notified via email.

FSANZ acknowledges the time taken by individuals and organisations to make submissions on this Proposal.

A total of 13 submissions were received. Every submission was considered by the FSANZ Board. All comments are valued and contribute to the rigour of our assessment. A summary of the submissions and the responses to these are provided in Table 2 above.

2.5 FSANZ Act assessment requirements

2.5.1 Section 59

2.5.1.1 Cost benefit analysis

The Office of Best Practice Regulation (OBPR) advised FSANZ that the Proposal was likely to have a minor regulatory impact on business, community organisations or individuals and as such, a COAG Regulation Impact Statement was not required to be prepared (OBPR ID: 18893).

Affected parties include the following:

Industry: Requirements in Standard 1.2.7, associated standards and Schedules in both the current and revised Codes will be clearer, more consistent and reflect the policy intent. Food businesses making nutrition content claims and health claims will benefit.

In addition, those companies voluntarily adopting the trademarked elements of the HSR system will not be disadvantaged by additional compliance costs.

The amendments to Standard 1.2.7 and associated standards and Schedules of the current and revised Codes relating to nutrition labelling, will not apply to all businesses; only those who make certain nutrition content claims or health claims about a food and in some cases, only if that food is in a small package. It was not anticipated by FSANZ that the proposed amendments would result in additional costs of re-labelling. FSANZ sought information from food businesses about any impact and expected costs through the call for submissions. One food business indicated that there would be no impact to them from any of the proposed variations. Two submitters stated that the proposed draft variation might result in label changes and therefore a transition period and stock-in-trade exemption was requested. These submitters did not provide evidence or examples of the label changes that would be required. However, given these concerns, FSANZ has provided a transition period followed by a 12-month stock-in-trade exemption. See section 3 for further information.

The AFGC claimed that requiring certain %DI declarations in NIPs as a pre-condition for stating %DI values outside the NIP would constitute further regulation and render some existing labels illegal. FSANZ has therefore omitted the draft variations relating to %DI declarations. Clause 7B in the current Code (section 1.2.8—10 in the revised Code) will remain unchanged. Refer to section 2.3.3 for further information.

Government: Enforcement agencies will likely benefit from the Proposal. The increased clarity and consistency in the Code's requirements will make it easier to interpret the Code and ensure business compliance. The amendment making certain elements of the voluntary HSR system exempt from claim requirements reduces enforcement activity that would potentially have been needed. No additional costs to government have been identified. FSANZ has consulted with enforcement agencies about providing a transition period for the amendments and has concluded that this will not impact on enforcement activities.

Consumers: The exemption for the trademarked elements of the HSR system will support the voluntary adoption of the system. Provision of key information in a simple interpretive format on front-of-pack that allows at-a-glance comparisons of foods may assist consumers in making healthier food choices.

Any impact of the remainder of the approved amendments on consumers is likely to be beneficial, as nutrition labelling requirements will be more consistent across the various types of claims and with the requirements for NIPs in general.

2.5.1.2 Other measures

There are no other measures (whether available to FSANZ or not) that would be more cost-effective than a food regulatory measure developed or varied as a result of the Proposal.

2.5.1.3 Any relevant New Zealand standards

The draft variations amend joint Australia New Zealand standards. There are no relevant New Zealand-only standards.

2.5.1.4 Any other relevant matters

See sections 2.5.2 and 2.5.3 below.

2.5.2 Subsection 18(1)

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

2.5.2.1 Protection of public health and safety

The approved amendments are not expected to have an impact on the protection of public health and safety.

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

A number of the changes are to ensure consistency in the way that prescribed nutrition information is presented to consumers, which may assist with the provision of information to enable informed choice.

The exemption for the trademarked elements of the HSR system support voluntary adoption of the front-of-pack labelling system that has been agreed by the Forum. Provision of key information in a simple interpretive format on front-of-pack allows consumers to make at-a-glance comparisons of foods, which may assist consumers in making healthier food choices.

2.5.2.3 The prevention of misleading or deceptive conduct

A number of current requirements in Standards 1.2.7 and associated standards were developed to mitigate the possibility of consumers being misled by nutrition content claims and health claims. The approved amendments provide clarity for some of these requirements and are therefore consistent with this objective.

FSANZ considers that the exemption for the trademarked elements of the HSR system from claim requirements in the Code does not raise issues in terms of the prevention of misleading or deceptive conduct. This is because the information presented in the trademarked HSR elements on a food label is intended to be consistent with the mandatory nutrition information in the NIP for the energy, saturated fat, sugars and sodium content of the food, and would be accompanied by an interpretive element. Non-trademarked HSR elements including 'high' and 'low' descriptors will need to meet claim conditions. This ensures the information presented is consistent with Code requirements.

2.5.3 Subsection 18(2) considerations

FSANZ has also had regard to:

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

Since the Proposal does not make any change to the criteria for making claims and the proposed changes are consistent with current requirements for prescribed nutrition information, FSANZ has concluded that a scientific risk analysis was not necessary.

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

As the approved variations are relatively minor, for reasons of consistency with current requirements or for clarity, they are not considered to impact on the three matters listed above. The exemption of the trademarked elements of the HSR system from claim requirements in the Code is also not expected to impact on the matters listed above.

- **any written policy guidelines formulated by the Ministerial Council⁹**

In December 2003, the Ministerial Council released the Policy Guideline on Nutrition, Health and Related Claims. The Policy Guideline sets out the policy principles underpinning the regulation of nutrition content claims (and health claims) and aims to permit claims and encourage industry to innovate, whilst ensuring consumers are not misled. The variations provide clarity about requirements in Standard 1.2.7 and associated amendments to Standard 1.2.8 and related schedules developed with regard to this policy guideline.

3 Transitional arrangements

In its call for submissions, FSANZ proposed that no additional transitional arrangements were required for this Proposal because the amendments were not expected to result in additional costs of re-labelling. However, FSANZ sought to confirm the expected impacts on food businesses through the consultation and to reassess this approach if deemed necessary.

Some submitters indicated that label changes could be required as a result of the measures proposed. These submitters requested a realistic transition period, followed by a stock-in-trade exemption. FSANZ has subsequently provided a transition period for the amendments until 18 January 2017. This period aligns with the end of the current transition period for Standard 1.2.7. During this time, food can comply with either the Code as in force as if the variations had not taken effect or with the Code as amended by the variations, but not both. The transition period will be followed by a 12 month stock-in-trade exemption. In this period, food that does not comply with the Code as amended by the relevant variation will be deemed to be compliant with the Code if that food otherwise complied with the Code before the end of the transition period.

No transition period or stock-in-trade exemption will be provided in relation to the exemptions for elements of the HSR system, given the variation to the Code is deregulatory in nature.

3.1 Transitional arrangements for Code Revision

FSANZ has completed a review of the Code undertaken under Proposal P1025¹⁰ in order to improve its clarity and legal efficacy. The new Code will commence on 1 March 2016 (following gazettal on 10 April 2015 and registration on the Federal Register of Legislative Instruments). The current Code will also be repealed on this date. The approved variation at Attachment B varies the revised Code on 1 March 2016 to ensure that the revised Code is consistent with the current Code as amended by the variation at Attachment A.

⁹ Now known as the Australia and New Zealand Ministerial Forum on Food Regulation (convening as the Australia and New Zealand Food Regulation Ministerial Council)

¹⁰ <http://www.foodstandards.gov.au/code/proposals/Pages/proposalp1025coderev5755.aspx>

Attachments

- A. Approved draft variation to the *Australia New Zealand Food Standards Code* and related Explanatory Statement
- B. Approved draft variation to the revised *Australia New Zealand Food Standards Code* and related Explanatory Statement (commencing 1 March 2016)
- C. Draft variation to the *Australia New Zealand Food Standards Code* (call for submissions)
- D. Draft variation to the revised *Australia New Zealand Food Standards Code* (commencing 1 March 2016) (call for submissions)

Attachment A – Approved draft variation to the *Australia New Zealand Food Standards Code*



Food Standards (Proposal P1037– Amendments associated with Nutrition Content & Health Claims) Variation

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. This variation commences on the date specified in clause 3 of this variation.

Dated [To be completed by Standards Management Officer]

Standards Management Officer
Delegate of the Board of Food Standards Australia New Zealand

Note:

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

1 Name

This instrument is the *Food Standards (Proposal P1037 – Amendments associated with Nutrition Content & Health Claims) Variation*.

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

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

3 Commencement

The variation commences on the date of gazettal.

SCHEDULE

[1] **Standard 1.1.1** is varied by –

[1.1] inserting after clause 1 –

“1A Application of the Code to prescribed variations

(1) For the purposes of this clause –

prescribed variations means the variations to the Code made by the Variation other than the variations made by items 1.2, 2.3 and 3.1 of the Schedule to the Variation.

transitional period means the period of time that commences on the date that the Variation commenced and ends on 18 January 2017.

the Variation means the *Food Standards (Proposal P1037 – Amendments associated with Nutrition Content & Health Claims) Variation*.

(2) Subclause 1(2) of this Standard does not apply to the prescribed variations.

(3) During the transition period, a food product may comply with either –

- (a) the Code as in force without the prescribed variations; or
- (b) the Code as amended by the prescribed variations,

but not a combination of both.

(4) A food product is taken to comply with the Code as amended by the prescribed variations for a period of 12 months commencing on 18 January 2017 if the food product otherwise complied with this Code before that date.”

[1.2] inserting after clause 2 –

“2A Permitted Health Star Rating symbols

(1) In this Code, a **Permitted Health Star Rating symbol** means an image subject to any of the following –

- (a) an Australian Trade Mark numbered 1641445, 1641446 or 1641447;
- (b) a New Zealand Trade Mark numbered 1018807, 1018808 or 1018809.

(2) To avoid doubt, an image mentioned in subclause (1) does not cease to be a Permitted Health Star Rating symbol by reason only of the image indicating –

- (a) energy or nutrient content on a per 100 g, per 100 ml or per pack basis; or
- (b) energy or nutrient content on a per serving or per reference portion basis; or

- (c) energy or nutrient content at zero or amounts greater than zero; or
- (d) energy content on a percentage daily intake basis in addition to an amount shown in kilojoules.”

[1.3] updating the Table of Provisions to reflect these variations.

[2] **Standard 1.2.7** is varied by –

[2.1] inserting after clause 1 –

“

Editorial note:
Standard 1.2.8 may prescribe additional labelling requirements for claims regulated in Standard 1.2.7.

[2.2] omitting paragraph 5(c) and substituting –

- “(c) a declaration that is required by the Act; or
- (d) a Permitted Health Star Rating symbol.”

[2.3] omitting “subparagraph” from paragraph 18(1)(b) and substituting “paragraph”

[2.4] omitting from the entry for Lactose in Schedule 1 “The nutrition information panel indicates the lactose and galactose content.”

[2.5] omitting from the entry for Salt or sodium in Schedule 1 “The nutrition information panel indicates the potassium content.”

[2.6] omitting from Schedule 1

“

Omega-3 fatty acids	(a) the food meets the conditions for a nutrition content claim about omega fatty acids; and	Good Source	(a) the food contains no less than 60 mg total eicosapentaenoic acid and docosahexaenoic acid per serving; and
	(b) the food contains no less than –	Increased	(b) the food may contain less than 200 mg alpha-linolenic acid per serving.
	(i) 200 mg alpha-linolenic acid per serving; or		(a) the food contains at least 25% more omega-3 fatty acids than in the same quantity of reference food; and
	(ii) 30 mg total eicosapentaenoic acid and docosahexaenoic acid per serving; and		(b) the reference food meets the general claim conditions for a nutrition content claim about omega-3 fatty acids.
	(c) other than for fish or fish products with no added saturated fatty acids, the food contains –		
	(i) as a proportion of the total fatty acid content, no more than 28% saturated fatty acids and trans fatty acids; or		

	<ul style="list-style-type: none"> (ii) no more saturated fatty acids and trans fatty acids than 5 g per 100 g; and (d) the nutrition information panel indicates the type and amount of omega-3 fatty acids, that is, alpha-linolenic acid, docosahexaenoic acid or eicosapentaenoic acid, or a combination of the above. 		
--	--	--	--

and substituting –

“

Omega-3 fatty acids	<ul style="list-style-type: none"> (a) the food meets the conditions for a nutrition content claim about omega fatty acids; and (b) the food contains no less than – <ul style="list-style-type: none"> (i) 200 mg alpha-linolenic acid per serving; or (ii) 30 mg total eicosapentaenoic acid and docosahexaenoic acid per serving; and (c) other than for fish or fish products with no added saturated fatty acids, the food contains – <ul style="list-style-type: none"> (i) as a proportion of the total fatty acid content, no more than 28% saturated fatty acids and trans fatty acids; or (ii) no more saturated fatty acids and trans fatty acids than 5 g per 100 g. 	Good Source	<ul style="list-style-type: none"> (a) the food contains no less than 60 mg total eicosapentaenoic acid and docosahexaenoic acid per serving; and (b) the food may contain less than 200 mg alpha-linolenic acid per serving.
		Increased	<ul style="list-style-type: none"> (a) the food contains at least 25% more omega-3 fatty acids than in the same quantity of reference food; and (b) the reference food meets the general claim conditions for a nutrition content claim about omega-3 fatty acids.

[2.7] omitting “the content of energy and each nutrient” from subitems 2(1) and 3(1) of Schedule 5 and substituting “the average energy content and the average quantity of each nutrient listed in that Table that is”

[2.8] omitting “sources” from paragraph 4(6)(c) of Schedule 5

- [2.9] omitting “sources” from subitem 4(8) of Schedule 5
- [2.10] omitting “total” wherever appearing in Tables 1 and 2 of Schedule 5
- [2.11] omitting “Average saturated fatty acids” wherever appearing in Tables 1 and 2 of Schedule 5 and substituting “Average quantity of saturated fatty acids”
- [2.12] omitting “Average sodium” wherever appearing in Tables 1 and 2 of Schedule 5 and substituting “Average quantity of sodium”
- [2.13] omitting subitem 5(1) of Schedule 5 and substituting –
- “(1) Use Table 4 to determine the ‘P points’ scored, depending on the average quantity of protein in 100 g or 100 mL of the food product (based on the units used in the nutrition information panel). A maximum of five points can be awarded.”
- [2.14] omitting subitem 6(1) of Schedule 5 and substituting –
- “(1) Use Table 5 to determine the ‘F points’ scored, depending on the average quantity of dietary fibre in 100 g or 100 mL of the food product (based on the units used in the nutrition information panel). A maximum of five points can be awarded.”
- [3] Standard 1.2.8** is varied by
- [3.1] omitting paragraph 4(1)(d) and substituting –
- “(d) an endorsement; or
(e) a permitted Health Star Rating symbol.”
- [3.2] omitting “clause 8” from subclause 4(4) and substituting “clauses 8 and 8A”
- [3.3] omitting “saturated fat” from paragraph 5(1)(e) and substituting “saturated fatty acids”
- [3.4] inserting after subclause 5(4) –
- “(4A) The nutrition information panel must include a declaration of the average quantity of galactose in accordance with subclause (7), where a claim requiring nutrition information is made about or based on lactose.
- (4B) The nutrition information panel must include a declaration of the average quantity of potassium in accordance with subclause (7), where a claim requiring nutrition information is made about or based on salt or sodium.
- (4C) The nutrition information panel must include a declaration of the following in accordance with subclause (7), where a claim requiring nutrition information is made about or based on omega-3 fatty acids –
- (a) the average quantity of each type of omega-3 fatty acids (that is, alpha-linolenic acid, docosahexaenoic acid, eicosapentaenoic acid or a combination of these); and
- (b) the average quantity of the total of omega-3 fatty acids.”
- [3.5] omitting “subclause (4) and subclause (5)” from subclause 5(7) and substituting “subclauses (4), (4A), (4B), (4C) and (5)”
- [3.6] omitting the Table to subclause 8(3) and substituting –

“Table to subclause 8(3)

Column 1	Column 2
Claim is about	Label must include
Any nutrient or biologically active substance (other than a vitamin or mineral with a RDI)	Average quantity of the nutrient or biologically active substance present per serving of the food
Any vitamin or mineral with a RDI	(a) Average quantity of the vitamin or mineral present per serving of the food; and (b) Percentage of the RDI for the vitamin or mineral contributed by one serving of the food, and calculated in accordance with clause 7A
Polyunsaturated fatty acids or monounsaturated fatty acids in a food standardised in Standard 2.4.1 or 2.4.2	Minimum, maximum or average quantity of saturated fatty acids, trans fatty acids, polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food
Polyunsaturated fatty acids or monounsaturated fatty acids in a food that is not a food standardised in Standard 2.4.1 or 2.4.2	Average quantity of saturated fatty acids, trans fatty acids, polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food
Cholesterol, saturated fatty acids, trans fatty acids, omega-6 or omega-9 fatty acids	Average quantity of saturated fatty acids, trans fatty acids, polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food
Dietary fibre, sugars or any other carbohydrate	Average energy content per serving of the food and average quantity of carbohydrate, sugars and dietary fibre (calculated in accordance with clause 18) present per serving of the food
Energy	Average energy content per serving of the food
Fat-free	Average energy content per serving of the food
Omega-3 fatty acids	(a) Average quantity of saturated fatty acids, trans fatty acids, polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food; and (b) the average quantity of each type of omega-3 fatty acids per serving of the food (that is, alpha-linolenic acid, docosahexaenoic acid, eicosapentaenoic acid or a combination of these); and (c) the average quantity of the total of omega-3 fatty acids per serving of the food
Lactose	Average quantity of galactose content per serving of the food
Potassium	Average quantity of sodium content per serving of the food
Sodium or salt	Average quantity of sodium and potassium content per serving of the food

[3.7] omitting “‘metric cup’ or” from paragraph 8(5)(b)

[3.8] omitting “of unavailable carbohydrate” from subclause 8A(2) and substituting “of the average quantity of unavailable carbohydrate per serving of the food”

[3.9] omitting “presence of relevant substances” from subclause 8A(4) and substituting “the average quantity of the substances per serving of the food”

[4] Standard 2.9.2 is varied by omitting subclause 9(1) and substituting –

“(1) The following provisions of Standard 1.2.8 do not apply to a food standardised by this Standard –

- (a) paragraph 3(j); and
- (b) subclause 4(4); and
- (c) paragraph 5(1)(e) as it relates to saturated fat; and

- (d) subclauses 5(2), 5(4) and 5(5); and
- (e) clause 7; and
- (f) clause 8; and
- (g) clause 8A; and
- (h) clause 9.”

Explanatory Statement

1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 2 of Part 3 of the FSANZ Act specifies that the Authority may prepare a proposal for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering a proposal for the development or variation of food regulatory measures.

FSANZ prepared Proposal P1037 to improve the clarity of provisions of Standard 1.2.7 – Nutrition, Health and Related Claims and related standards and to ensure that Standard 1.2.7 operates as intended. Proposal P1037 was also prepared to exempt certain elements of the Health Star Rating (HSR) system from the Code's requirements.

The Authority considered the Proposal in accordance with Division 2 of Part 3 and has prepared a draft Standard.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation¹¹, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the standard or draft variation of a standard.

Section 94 of the FSANZ Act specifies that a standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but is not subject to parliamentary disallowance or sunseting under the *Legislative Instruments Act 2003*.

2. Purpose and operation

The Authority has prepared a draft variation to amend the Code to clarify the operation of Standard 1.2.7 and related standards and to exempt certain elements of the HSR system from the Code's requirements for claims.

3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference.

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1037 included one round of public consultation following an assessment and the preparation of a draft Standard and associated report.

A call for submissions (which included the draft variation) was released for a six-week consultation period.

A Regulation Impact Statement was not required because the proposed variations are likely to have only a minor regulatory impact on business, community organisations or individuals.

¹¹ convening as the Australia and New Zealand Food Regulation Ministerial Council

5. Statement of compatibility with human rights

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 97 of the FSANZ Act.

6. Variations

Item [1] of the Schedule varies Standard 1.1.1.

Item [1.1] inserts new clause 1A into Standard 1.1.1.

The new clause provides a transition period and a stock-in-trade exemption for prescribed variations made by the instrument. The prescribed variations are all the variations made by Schedule with the exception of the variations made by items 1.2, 2.3 and 3.1.

During the transition period, food can comply with either the Code as in force as if the prescribed variations had not taken effect or with the Code as amended by those variations, but not both. The transition period is from the date that the instrument commences to 18 January 2017. This period aligns with the end of the current transition period for Standard 1.2.7.

The exemption for stock-in-trade will operate from 18 January 2017 for a period of 12 months. In this period, food that does not comply with the Code as amended by the prescribed variations will be deemed to be compliant with the Code if that food otherwise complied with the Code before 18 January 2017.

Item [1.2] inserts new clause 2A into Standard 1.1.1 to provide a definition of the term 'Permitted Health Star Rating symbol'. Subclause 2A(1) provides that a Permitted Health Star Rating symbol means an image subject to an Australian Trade Marks numbered 1641445, 1641446 or 1641447 or a New Zealand Trade Mark numbered 1018807, 1018808 or 1018809. Subclause 2A(2) recognises the fact that the Health Star Rating system and the relevant trademarks provide for the trademarked images to be used to indicate varying levels of energy or nutrient content. The subclause makes clear that any such variations do not affect an image's status as a Permitted Health Star Rating symbol for the purposes of the Code.

Item [1.3] updates the Table of Provisions to refer to new clauses 1A and 2A.

Item [2] of the Schedule varies Standard 1.2.7.

Item [2.1] inserts an Editorial Note after clause 1. The Editorial Note draws attention to the fact that Standard 1.2.8 may impose additional labelling requirements for claims regulated by Standard 1.2.7.

Item [2.2] varies clause 5 of Standard 1.2.7 to provide that that Standard does not apply to a Permitted Health Star Rating symbol.

Item [2.3] corrects a typographical error in paragraph 18(1)(b). It replaces 'subparagraph' with 'paragraph'.

Item [2.4] amends the entry for 'Lactose' in Schedule 1 to remove the condition that the nutrition information panel indicate the lactose and galactose content.

Item [2.5] amends the entry for 'Salt or sodium' in Schedule 1 to remove the condition that the nutrition information panel indicate the potassium content.

Item [2.6] replaces the entry for 'Omega-3 fatty acids' in Schedule 1 to remove the condition that the nutrition information panel indicate the type and amount of omega-3 fatty acids.

Item [2.7] varies subitems 2(1) and 3(1) in Schedule 5. It replaces references to 'the content of energy and each nutrient' with 'the average energy content and the average quantity of each nutrient' listed in Table 1.

Item [2.8] removes the word 'sources' from paragraph 4(6)(c) in Schedule 5.

Item [2.9] removes the word 'sources' from subitem 4(8) in Schedule 5.

Item [2.10] removes the word 'total' from Tables 1 and 2 in Schedule 5.

Item [2.11] varies Tables 1 and 2 in Schedule 5. It replaces 'Average saturated fatty acids' with 'Average quantity of saturated fatty acids'.

Item [2.12] varies Tables 1 and 2 in Schedule 5. It replaces 'Average sodium' with 'Average quantity of sodium'.

Item [2.13] varies subitem 5(1) in Schedule 5 to replace 'the amount of protein' with 'the average quantity of protein'.

Item [2.14] varies subitem 6(1) in Schedule 5 to replace 'the amount of protein' with 'the average quantity of protein'.

Item [3] varies Standard 1.2.8.

Item [3.1] varies subclause 4(1) of Standard 1.2.8 to provide that a claim requiring nutrition information does not include a Permitted Health Star Rating symbol.

Item [3.2] varies subclause 4(4). It replaces 'clause 8' with 'clauses 8 and 8A'.

Item [3.3] varies paragraph 5(1)(e). It replaces 'saturated fat' with 'saturated fatty acids'.

Item [3.4] inserts new subclauses (4A), (4B) and (4C) into clause 5.

New subclause (4A) requires that the nutrition information panel must include a declaration of the average amount of galactose where a claim requiring nutrition information is made in relation to lactose. That declaration must be made in accordance with subclause 5(7) of Standard 1.2.8. This moves and amends a requirement that was in Schedule 1 of Standard 1.2.7.

New subclause (4B) requires that the nutrition information panel must include a declaration of the average amount of potassium where a claim requiring nutrition information is made in relation to salt or sodium. That declaration must be made in accordance with subclause 5(7) of Standard 1.2.8. This moves and amends a requirement that was in Schedule 1 of Standard 1.2.7.

New subclause (4C) requires that, where a claim requiring nutrition information is made in relation to omega-3 fatty acids, the nutrition information panel must include a declaration of the average quantity of each type of omega-3 fatty acids and a declaration of the average quantity of the total of omega-3 fatty acids. Those declarations must be made in accordance with subclause 5(7) of Standard 1.2.8. This moves and amends a requirement that was in Schedule 1 of Standard 1.2.7.

Item [3.5] varies subclause 5(7) to include references to new subclauses (4A), (4B) and (4C).

Item [3.6] replaces the Table to subclause 8(3) with a new Table. The new Table changes the requirements for some particulars that must be included on the label for certain claims requiring additional nutrition information.

Item [3.7] varies paragraph 8(5)(b) to remove the reference to 'metric cup'.

Item [3.8] varies subclause 8A(2). It replaces 'of unavailable carbohydrate' with 'of the average quantity of unavailable carbohydrate per serving of the food'.

Item [3.9] varies subclause 8A(4). It replaces 'presence of relevant substances' with 'the average quantity of the substances per serving of the food'.

Item [4] varies subclause 9(1) of Standard 2.9.2 to insert references to subclause 4(4) and clause 8A of Standard 1.2.8 and to clarify the operation of subclause 9(1) of Standard 2.9.2.

Attachment B – Approved draft variation to the revised *Australia New Zealand Food Standards Code* (commencing 1 March 2016)



***Australia New Zealand Food Standards Code* – Transitional Variation 2015 (Proposal P1037 – Amendments associated with Nutrition Content & Health Claims)**

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. This variation commences on the date specified in clause 2 of the variation.

Dated [To be completed by Standards Management Officer]

Standards Management Officer
Delegate of the Board of Food Standards Australia New Zealand

Note:

This variation will be published in the Commonwealth of Australia Gazette No. FSC XX on XX Month 20XX.

1 Name of instrument

This instrument is the *Australia New Zealand Food Standards Code – Transitional Variation 2015 (Proposal P1037 – Amendments associated with Nutrition Content & Health Claims)*.

2 Commencement

This instrument commences on 1 March 2016 immediately after the commencement of Standard 5.1.1 – Revocation and transitional provisions — 2014 Revision.

3 Variation to Standards in the *Australia New Zealand Food Standards Code*

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

4 Effect of prescribed variations

(1) In this section:

the Code means the *Australia New Zealand Food Standards Code*.

prescribed variations means the variations to the Code made by this instrument other than the variations made by items 1, 2 and 3.1 of the Schedule.

transitional period means the period of time that commences on 1 March 2016 and ends on 18 January 2017.

(2) Section 1.1.1—9 of the Code does not apply to the prescribed variations.

(3) During the transition period, a food may comply with either:

- (a) the Code as in force without the prescribed amendments; or
- (b) the Code as amended by the prescribed variations.

but not a combination of both.

(4) A food is taken to comply with the Code as amended by the prescribed variations for a period of 12 months commencing on 18 January 2017 if the food otherwise complied with the Code before that date.

SCHEDULE

[1] **Standard 1.1.2** is varied by

[1.1] inserting after section 1.1.2—14

“1.1.2—15 Definition of Permitted Health Star Rating symbol

- (1) In this Code, **Permitted Health Star Rating symbol** means an image subject to any of the following:
 - (a) an Australian Trade Mark numbered 1641445, 1641446 or 1641447;
 - (b) a New Zealand Trade Mark numbered 1018807, 1018808 or 1018809.
- (2) To avoid doubt, an image mentioned in subsection (1) does not cease to be a Permitted Health Star Rating symbol by reason only of the image indicating:
 - (a) energy or nutrient content on a per 100 g, per 100 ml or per pack basis; or
 - (b) energy or nutrient content on a per serving or per reference portion basis; or
 - (c) energy or nutrient content at zero or amounts greater than zero; or
 - (d) energy content on a percentage daily intake basis in addition to an amount shown in kilojoules.”

[2] **Standard 1.2.7** is varied by

- [2.1] inserting after section 1.2.7—3
 “**Note** Standard 1.2.8 may prescribe additional labelling requirements for claims regulated by this Standard.”
- [2.2] omitting paragraph 1.2.7—6(c) and substituting
 “(c) a declaration that is required by an application Act; or
 (d) a permitted Health Star Rating symbol.”
- [3] Standard 1.2.8** is varied by
- [3.1] omitting “infant formula products” from section 1.2.8—3 and substituting “infant formula products or a Permitted Health Star Rating symbol.”
- [3.2] inserting after subsection 1.2.8—6(10)
 “*Claims about lactose*
- (11) If a *claim requiring nutrition information is made in relation to lactose, a nutrition information panel must include a declaration of the average quantity of galactose in accordance with section S12—3.
- Claims about salt or sodium*
- (12) If a *claim requiring nutrition information is made in relation to salt or sodium, the nutrition information panel must include a declaration of the average quantity of potassium in accordance with section S12—3.
- Claims about omega-3 fatty acids*
- (13) If a *claim requiring nutrition information is made in relation to omega-3 fatty acids, the nutrition information panel must include declarations of each of the following in accordance with section S12—3:
- (a) the average quantity of each type of omega-3 fatty acids (that is, alpha-linolenic acid, docosahexaenoic acid, eicosapentaenoic acid or a combination of these); and
- (b) the average quantity of the total of omega-3 fatty acids.”
- [3.3] omitting from paragraph 1.2.8—14(1)(c) “a declaration of unavailable carbohydrate (not including dietary fibre)” and substituting “a declaration of the average quantity of unavailable carbohydrate (not including dietary fibre) per serving of the food”
- [3.4] omitting from paragraph 1.2.8—14(1)(c) “the presence in the food” and substituting “the average quantity per serving of the food”
- [3.5] omitting “metric cup,” from subsection 1.2.8—14(2)
- [4] Schedule 4** is varied by
- [4.1] omitting from the entry for lactose in the table to section S4—3 “The nutrition information panel indicates the lactose and galactose content.”
- [4.2] omitting from the entry for Salt or sodium in the table to section S4—3 “The nutrition information panel indicates the potassium content.”
- [4.3] omitting from the table to section S4—3

“

Omega-3 fatty acids	(a) The food meets the conditions for a nutrition content claim about omega fatty acids; and	Good Source	(a) The food contains no less than 60 mg total eicosapentaenoic acid and docosahexaenoic acid/serving; and
	(b) the food contains no less than: (i) 200 mg alpha-linolenic acid per serving; or (ii) 30 mg total eicosapentaenoic acid and docosahexaenoic acid per serving; and		(b) the food may contain less than 200 mg alpha-linolenic acid/serving.
	(c) other than for fish or fish products with no added *saturated fatty acids, the food contains: (i) as a proportion of the total fatty acid content, no more than 28% saturated fatty acids and trans fatty acids; or (ii) no more saturated fatty acids and *trans fatty acids than 5 g per 100 g; and	Increased	(a) The food contains at least 25% more omega-3 fatty acids than in the same amount of *reference food; and
	(d) the nutrition information panel indicates the type and amount of omega-3 fatty acids, that is, alpha-linolenic acid, docosahexaenoic acid or eicosapentaenoic acid, or a combination of the above.		(b) the reference food meets the general claim conditions for a nutrition content claim about omega-3 fatty acids.

”

and substituting

“

Omega-3 fatty acids	(a) The food meets the conditions for a nutrition content claim about omega fatty acids; and	Good Source	(a) The food contains no less than 60 mg total eicosapentaenoic acid and docosahexaenoic acid/serving; and
	(b) the food contains no less than: (i) 200 mg alpha-linolenic acid per serving; or (ii) 30 mg total eicosapentaenoic acid and docosahexaenoic acid per serving; and		(b) the food may contain less than 200 mg alpha-linolenic acid/serving.
	(c) other than for fish or fish products with no added *saturated fatty acids, the food contains: (i) as a proportion of the total fatty acid content, no more than 28% saturated fatty acids and trans fatty acids; or (ii) no more saturated fatty acids and *trans fatty acids than 5 g per 100 g	Increased	(a) The food contains at least 25% more omega-3 fatty acids than in the same amount of *reference food; and (b) the reference food meets the general claim conditions for a nutrition content claim about omega-3 fatty acids.

”

[5] Schedule 5 is varied by

[5.1] omitting “the content of energy and each nutrient” from section S5—3 and substituting “the average energy content and the average quantity of each nutrient”

[5.2] omitting “**AEC** is the number of points for average energy content” from section S5—3 and substituting “**AEC** is the number of points for the average energy content in the unit quantity of the food”

[5.3] omitting “**ASFA** is the number of points for average saturated fatty acids” from section S5—3 and substituting “**ASFA** is the number of points for the average quantity of saturated fatty acids in the unit quantity of the food”

[5.4] omitting “**ATS** is the number of points for average total sugars” from section S5—3 and substituting “**ATS** is the number of points for the average quantity of sugars in the unit quantity of the food”

[5.5] omitting “**AS** is the number of points for average sodium” from section S5—3 and substituting “**AS** is the number of points for the average quantity of sodium in the unit quantity of the food”

[5.6] omitting “total” from Table 1 to S5—3

[5.7] omitting “total” from Table 2 to S5—3

[5.8] omitting “sources” wherever occurring in section S5—4

[5.9] omitting subsection S5—5(1) and substituting

“(1) Use Table 4 to determine the ‘P points’ scored, depending on the average quantity of protein in 100 g or 100 mL of the food product (based on the units used in the nutrition information panel). A maximum of five points can be awarded.”

[5.10] omitting subsection S5—6(1) and substituting

“(1) Use Table 5 to determine the ‘F points’ scored, depending on the average quantity of *dietary fibre in 100 g or 100 mL of the food product (based on the units used in the nutrition information panel). A maximum of five points can be awarded.”

[6] **Schedule 12** is varied by omitting “1.2.8—6(3) and 1.2.8—6(5)” from section S12—3 and substituting “1.2.8—6(3), 1.2.8—6(5), 1.2.8—6(11), 1.2.8—6(12) and .2.8—6(13)”

[7] **Schedule 13** is varied by omitting the table to section S13—2, and substituting

“Nutrition information for food in small packages

<i>Column 1</i>	<i>Column 2</i>
<i>Claim is about</i>	<i>Label must include</i>
Any nutrient or biologically active substance (other than a vitamin or mineral with a RDI)	Average quantity of the nutrient or biologically active substance present per serving of the food
Any vitamin or mineral with a RDI	(a) *Average quantity of the vitamin or mineral present per serving of the food; and (b) Percentage of the RDI for the vitamin or mineral contributed by one serving of the food, and calculated in accordance with section 1.2.8—9.
Polyunsaturated fatty acids or monounsaturated fatty acids in a food standardised in Standard 2.4.1 or 2.4.2	Saturated fatty acids, trans fatty acids, *polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food
Polyunsaturated fatty acids or monounsaturated fatty acids in a food that is not a food standardised in Standard 2.4.1 or 2.4.2	Average quantity of saturated fatty acids, trans fatty acids, *polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food
Cholesterol, saturated fatty acids, trans fatty acids, omega-6 or omega-9 fatty acids	Average quantity of saturated fatty acids, trans fatty acids, *polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food
Dietary fibre, sugars or any other *carbohydrate	Average energy content per serving of the food and average quantity of carbohydrate, sugars and dietary (calculated in accordance with section S11—4) present per serving of the food
Energy	Average energy content per serving of the food
Fat-free	Average energy content per serving of the food
Omega-3 fatty acids	(a) Average quantity of *saturated fatty acids, *trans fatty acids, *polyunsaturated fatty acids and *monounsaturated fatty acids content per serving of the food; and (b) Average quantity of each type of omega-3 fatty acids per serving of the food (that is, alpha-linolenic acid, docosahexaenoic acid, eicosapentaenoic acid or a combination of these); and (c) Average quantity of the total of omega-3 fatty acids per serving of the food
Lactose	Average quantity of galactose content per serving of the food
Potassium	Average quantity of sodium content per serving of the food
Sodium or salt	Average quantity of sodium and potassium content per serving of the food

Explanatory Statement

1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

FSANZ had completed a review of the Code undertaken under Proposal P1025 in order to improve the Code's clarity and legal efficacy. A revised Code has been approved and will commence on 1 March 2016. It will replace the current Code, which will be repealed on that date.

Division 2 of Part 3 of the FSANZ Act specifies that the Authority may prepare a proposal for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering a proposal for the development or variation of food regulatory measures.

FSANZ prepared Proposal P1037 to improve the clarity of provisions of Standard 1.2.7 – Nutrition, Health and Related Claims and related standards and schedules to commence on 1 March 2016 and to ensure that Standard 1.2.7 operates as intended. Proposal P1037 was also prepared to exempt certain elements of the Health Star Rating (HSR) system from the Code's requirements.

The Authority considered the Proposal in accordance with Division 2 of Part 3 and has prepared draft variations to the revised Code.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation¹², section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the standard or draft variation of a standard.

Section 94 of the FSANZ Act specifies that a standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but is not subject to parliamentary disallowance or sunseting under the *Legislative Instruments Act 2003*.

2. Purpose

The Authority has prepared a draft variation to amend the Code to clarify the operation of Standard 1.2.7 and related standards and schedules and to exempt certain elements of the HSR system from the Code's requirements for claims.

3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference.

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1037 included one round of public consultation following an assessment and the preparation of a draft Standard and associated report.

¹² convening as the Australia and New Zealand Food Regulation Ministerial Council

A call for submissions (which included the draft variation) was released for a six-week consultation period.

A Regulation Impact Statement was not required because the proposed variations are likely to have only a minor regulatory impact on business, community organisations or individuals.

5. Statement of compatibility with human rights

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

6. Effect of the Variations

Section 1.1.1—9 of Standard 1.1.1 provides that stock-in-trade that does not comply with a variation to the Code may be sold for a period of 12 months if it otherwise complied with the Code before that variation commenced. The section also provides that instruments varying the Code may provide for an alternate arrangement in relation to stock-in-trade.

Clause 4 of the instrument provides that section 1.1.1—9 of Standard 1.1.1 does not apply to the variations made by the instrument other than the variations made by items 1, 2 and 3.1 of the Schedule to the instrument (see below).

The clause provides for a transition period and for a different stock-in-trade exemption in relation to those variations.

During the transition period, food can comply with either the Code as in force as if those variations had not taken effect or with the Code as amended by those variations, but not both. The transition period is from 1 March 2016 to 18 January 2017. This period aligns with the current transition period for Standard 1.2.7.

The exemption for stock-in-trade will operate from 18 January 2017 for a period of 12 months. In this period, food that does not comply with the Code as amended by the relevant amendments will be deemed to be compliant with the Code if that food otherwise complied with the Code before 18 January 2017.

7. Variations

Item [1] of the Schedule varies Standard 1.1.2.

Item [1.1] inserts new section 1.1.2—15 into Standard 1.1.2 to provide a definition of the term 'Permitted Health Star Rating symbol'. Section 1.1.2—15 provides that a Permitted Health Star Rating symbol means an image subject to Australian Trade Marks numbered 1641445, 1641446 or 1641447 or to a New Zealand Trade Mark numbered 1018807, 1018808 or 1018809. Section 1.1.2—15 recognises the fact that the Health Star Rating system and the relevant trademarks provide for the trademarked images to be used to indicate varying levels of energy or nutrient content. The section makes clear that any such variations do not affect an image's status as a Permitted Health Star Rating symbol for the purposes of the Code.

Item [2] of the Schedule varies Standard 1.2.7

Item [2.2] inserts a Note after section 1.2.7—3. The Note draws attention to the fact that Standard 1.2.8 may impose additional labelling requirements for claims regulated by Standard 1.2.7.

Item [2.2] varies subsection 1.2.7—6 of Standard 1.2.7 to provide that Standard 1.2.7 does not apply to a Permitted Health Star Rating symbol.

Item [3] varies Standard 1.2.8.

Item [3.1] varies section 1.2.8—3 to provide that Standard 1.2.8 does not apply to a Permitted Health Star Rating symbol.

Item [3.2] inserts new subsections 1.2.8—6(11), (12) and (13) into section 1.2.8—6.

New subsection 1.2.8—6(11) requires that the nutrition information panel must include a declaration of the average amount of galactose where a claim requiring nutrition information is made in relation to lactose. That declaration must be made in accordance with section S12—3.

New subsection 1.2.8—6(12) requires that the nutrition information panel must include a declaration of the average amount of potassium where a claim requiring nutrition information is made in relation to salt or sodium. That declaration must be made in accordance with section S12—3.

New subsection 1.2.8—6(13) requires that, where a claim requiring nutrition information is made in relation to omega-3 fatty acids, the nutrition information panel must include a declaration of the average quantity of each type of omega-3 fatty acids and a declaration of the average quantity of the total of omega-3 fatty acids. Those declarations must be made in accordance with section S12—3.

Item [3.3] varies paragraph 1.2.8—14(1)(c). It replaces 'of unavailable carbohydrate (not including dietary fibre)' with 'of the average quantity of unavailable carbohydrate (not including dietary fibre) per serving of the food'.

Item [3.4] varies paragraph 1.2.8—14(1)(c). It replaces 'presence in the food' with 'the average quantity per serving of the food'.

Item [3.5] varies subsection 1.2.8—14(2) to remove the reference to 'metric cup'.

Item [4] varies Schedule 4.

Item [4.1] amends the entry for Lactose in the table to section S4—3 by removing the condition that the nutrition information panel indicate the lactose and galactose content.

Item [4.2] amends the entry for Salt or sodium in the table to section S4—3 by removing the condition that the nutrition information panel indicate the potassium content.

Item [4.3] replaces the entry for 'Omega-3 fatty acids' in the table to section S4—3 to remove the condition that the nutrition information panel indicate the type and amount of omega-3 fatty acids.

Item [5] varies Schedule 5.

Item [5.1] varies section S5—3 to replace 'the content of energy and each nutrient' with 'the average energy content and the average quantity of each nutrient'.

Item [5.2] varies section S5—3 to replace 'AEC is the number of points for average energy content' with 'AEC is the number of points for the average energy content in the unit quantity of the food'.

Item [5.3] varies section S5—3 to replace ‘ASFA is the number of points for average saturated fatty acids with ‘ASFA is the number of points for the average quantity of saturated fatty acids in the unit quantity of the food’.

Item [5.4] varies section S5—3 to replace ‘ATS is the number of points for average total sugars’ with ‘ATS is the number of points for the average quantity of sugars in the unit quantity of the food’.

Item [5.5] varies section S5—3 to replace ‘AS is the number of points for average sodium’ with ‘AS is the number of points for the average quantity of sodium in the unit quantity of the food’.

Item [5.6] removes the word ‘total’ from Table 1 of section S5—3.

Item [5.7] removes the word ‘total’ from Table 2 of section S5—3.

Item [5.8] removes the word ‘sources’ from section S5—4.

Item [5.9] amends subsection S5—5(1) to require that the ‘P points’ scored depend on the ‘average quantity’ of protein in 100 g or 100 mL of the food product, based on the units used in the nutrition information panel.

Item [5.10] amends subsection S5—6(1) to require that the ‘F points’ scored depend on the ‘average quantity’ of dietary fibre in 100 g or 100 mL of the food product, based on the units used in the nutrition information panel.

Item [6] varies Schedule 12. It amends section S12—3 to add references to subsections 1.2.8—6(11), 6(12) and 6(13).

Item [7] varies Schedule 13. It replaces the table to section S13—2 with a new table. The new table changes the requirements for some particulars that must be included on the label for certain claims requiring additional nutritional information claims.

Attachment C – Draft variation to the *Australia New Zealand Food Standards Code* (call for submissions)



Food Standards (Proposal P1037– Amendments associated with Health and Nutrition Claims) Variation

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The Standard commences on the date specified in clause 3 of this variation.

Dated [To be completed by Standards Management Officer]

Standards Management Officer
Delegate of the Board of Food Standards Australia New Zealand

Note:

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

1 Name

This instrument is the *Food Standards (Proposal P1037 – Amendments associated with Health and Nutrition Claims) Variation*.

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

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

3 Commencement

The variation commences on the date of gazettal.

SCHEDULE

[1] Standard 1.1.1 is varied by

[1.1] omitting “Deleted” from subclause 1(3) and substituting “After the commencement of the *Food Standards (Proposal P1037 – Amendments associated with Health and Nutrition Claims) Variation*, a food product is taken to comply with the variations made to this Code by that food regulatory measure for a period ending on 18 January 2016 if the food product otherwise complied with this Code before that measure commenced.”

[1.2] inserting after clause 2

“2A Permitted Health Star Rating symbols

(1) In this Code, a **Permitted Health Star Rating symbol** means an image subject to Australian Trade Marks numbered 1641445, 1641446 or 1641447.

(2) To avoid doubt, an image mentioned in subclause (1) does not cease to be a Permitted Health Star Rating symbol by reason only of the image indicating -

- (a) energy or nutrient content on a per 100 g, per 100 ml or per pack basis; or
- (b) energy or nutrient content at zero or amounts greater than zero; or
- (c) energy content on a percentage daily intake basis in addition to an amount shown in kilojoules.”

[1.3] updating the Table of Provisions to reflect these variations.

[2] Standard 1.2.7 is varied by

[2.1] omitting paragraph 5(c) and substituting

- “(c) a declaration that is required by the Act; or
- (d) a Permitted Health Star Rating symbol.”

[2.2] omitting “subparagraph” from paragraph 18(1)(b) and substituting “paragraph”

[2.3] omitting from Schedule 1

“

Lactose	The nutrition information panel indicates the lactose and galactose content.	Free	The food contains no detectable lactose.
		Low	The food contains no more than 2 g of lactose per 100 g of the food.

”

and substituting

“

Lactose		Free	The food contains no detectable lactose.
		Low	The food contains no more than 2 g of lactose per 100 g of the food.

”

[2.4] omitting from Schedule 1

“

Salt or sodium	The nutrition information panel indicates the potassium content.	Low	The food contains no more sodium than – (a) 120 mg per 100 mL for liquid food; or (b) 120 mg per 100 g for solid food.
		Reduced or Light/Lite	The food contains at least 25% less sodium than in the same quantity of reference food.
		No added	(a) the food contains no added sodium compound including no added salt; and (b) the ingredients of the food contain no added sodium compound including no added salt.
		Unsalted	The food meets the conditions for a nutrition content claim about no added salt or sodium.

”

and substituting

“

Salt or sodium		Low	The food contains no more sodium than – (a) 120 mg per 100 mL for liquid food; or (b) 120 mg per 100 g for solid food.
		Reduced or Light/Lite	The food contains at least 25% less sodium than in the same quantity of reference food.
		No added	(a) the food contains no added sodium compound including no added salt; and (b) the ingredients of the food contain no added sodium compound including no added salt.
		Unsalted	The food meets the conditions for a nutrition content claim about no added salt or sodium.

”

[2.5] omitting from Schedule 1

“

Omega-3 fatty acids	<p>(a) the food meets the conditions for a nutrition content claim about omega fatty acids; and</p> <p>(b) the food contains no less than –</p> <p>(i) 200 mg alpha-linolenic acid per serving; or</p> <p>(ii) 30 mg total eicosapentaenoic acid and docosahexaenoic acid per serving; and</p> <p>(c) other than for fish or fish products with no added saturated fatty acids, the food contains –</p> <p>(i) as a proportion of the total fatty acid content, no more than 28% saturated fatty acids and trans fatty acids; or</p> <p>(ii) no more saturated fatty acids and trans fatty acids than 5 g per 100 g; and</p> <p>(d) the nutrition information panel indicates the type and amount of omega-3 fatty acids, that is, alpha-linolenic acid, docosahexaenoic acid or eicosapentaenoic acid, or a combination of the above.</p>	Good Source	<p>(a) the food contains no less than 60 mg total eicosapentaenoic acid and docosahexaenoic acid per serving; and</p> <p>(b) the food may contain less than 200 mg alpha-linolenic acid per serving.</p>
		Increased	<p>(a) the food contains at least 25% more omega-3 fatty acids than in the same quantity of reference food; and</p> <p>(b) the reference food meets the general claim conditions for a nutrition content claim about omega-3 fatty acids.</p>

”

and substituting

“

Omega-3 fatty acids	(a) the food meets the conditions for a nutrition content claim about omega fatty acids; and (b) the food contains no less than –	Good Source	(a) the food contains no less than 60 mg total eicosapentaenoic acid and docosahexaenoic acid per serving; and (b) the food may contain less than 200 mg alpha-linolenic acid per serving.
	(i) 200 mg alpha-linolenic acid per serving; or (ii) 30 mg total eicosapentaenoic acid and docosahexaenoic acid per serving; and (c) other than for fish or fish products with no added saturated fatty acids, the food contains – (i) as a proportion of the total fatty acid content, no more than 28% saturated fatty acids and trans fatty acids; or (ii) no more saturated fatty acids and trans fatty acids than 5 g per 100 g.	Increased	(a) the food contains at least 25% more omega-3 fatty acids than in the same quantity of reference food; and (b) the reference food meets the general claim conditions for a nutrition content claim about omega-3 fatty acids.

”

[2.6] omitting “the content of energy and each nutrient” from subitems 2(1) and 3(1) of Schedule 5 and substituting “the average energy content and the average quantity of each nutrient listed in that Table that is”

[2.7] omitting “sources” from paragraph 4(6)(c) of Schedule 5

[2.8] omitting “sources” from subitem 4(8) of Schedule 5

[2.9] omitting “total” wherever appearing in Tables 1 and 2 of Schedule 5

[2.10] omitting “Average saturated fatty acids” wherever appearing in Tables 1 and 2 of Schedule 5 and substituting “Average quantity of saturated fatty acids”

[2.11] omitting “Average sodium” wherever appearing in Tables 1 and 2 of Schedule 5 and substituting “Average quantity of sodium”.

[2.12] omitting subitem 5(1) of Schedule 5 and substituting

“(1) Use Table 4 to determine the ‘P points’ scored, depending on the average quantity of protein in 100 g or 100 mL of the food product (based on the units used in the nutrition information panel). A maximum of five points can be awarded.”

[2.13] omitting subitem 6(1) of Schedule 5 and substituting

“(1) Use Table 5 to determine the ‘F points’ scored, depending on the average quantity of dietary fibre in 100 g or 100 mL of the food product (based on the units used in the nutrition information panel). A maximum of five points can be awarded.”

[3] Standard 1.2.8 is varied by

[3.1] omitting paragraph 4(1)(d) and substituting

- “(d) an endorsement; or
- (e) a permitted Health Star Rating symbol.”

[3.2] omitting “clause 8” from subclause 4(4) and substituting “clauses 8 and 8A”

[3.3] omitting “saturated fat” from paragraph 5(1)(e) and substituting “saturated fatty acids”.

[3.4] inserting after subclause 5(4)

“(4A) The nutrition information panel must include a declaration of the average quantity of galactose in accordance with subclause (7), where a claim requiring nutrition information is made about or based on lactose.

(4B) The nutrition information panel must include a declaration of the average quantity of potassium in accordance with subclause (7), where a claim requiring nutrition information is made about or based on salt or sodium.

(4C) The nutrition information panel must include a declaration of the following in accordance with subclause (7), where a claim requiring nutrition information is made about or based on omega-3 fatty acids –

- (a) the average quantity of each type of omega-3 fatty acids (that is, alpha-linolenic acid, docosahexaenoic acid, eicosapentaenoic acid or a combination of these); and
- (b) the average quantity of the total of omega-3 fatty acids.”

[3.5] omitting “subclause (4) and subclause (5)” from subclause 5(7) and substituting “subclauses (4), (4A), (4B), (4C) and (5)”

[3.6] omitting clause 7B and substituting –

“7B Daily intake information presented outside the panel

(1) If a nutrition information panel includes the percentage daily intake of dietary fibre per serving in accordance with paragraph 7(2)(a), the following information may also be presented outside the panel –

- (a) the percentage daily intake of energy per serving; or
- (b) the percentage daily intake of all of dietary fibre, energy, fat, saturated fatty acids, carbohydrate, sugars, protein and sodium per serving.

(2) If a nutrition information panel includes the percentage daily intake information required by paragraph 7(2)(b), the following information may also be presented outside the panel –

- (a) the percentage daily intake of energy per serving; or
- (b) the percentage daily intake of all of energy, fat, saturated fatty acids, carbohydrate, sugars, protein and sodium per serving.

(3) If a nutrition information panel includes the percentage recommended daily intake of a vitamin or mineral in accordance with clause 7A, that information may also be presented outside the panel.

(4) Information may only be presented outside the nutrition information panel in accordance with this clause if –

- (a) the serving size is presented together with that information; and
- (b) the food to which that information relates does not contain more than 1.15% alcohol by volume.

(5) If more than one piece of information is presented outside the panel in accordance with this clause, those pieces of information must be presented together.

(6) Information presented outside the nutrition information panel in accordance with this clause does not constitute a nutrition content claim.”

[3.7] omitting the Table to subclause 8(3) and substituting

“Table to subclause 8(3)

Column 1	Column 2
Claim is about	Label must include
Any nutrient or biologically active substance (other than a vitamin or mineral with a RDI)	Average quantity of the nutrient or biologically active substance present per serving of the food
Any vitamin or mineral with a RDI	(a) Average quantity of the vitamin or mineral present per serving of the food; and (b) Percentage of the RDI for the vitamin or mineral contributed by one serving of the food, and calculated in accordance with clause 7A
Polyunsaturated fatty acids or monounsaturated fatty acids in a food standardised in Standard 2.4.1 or 2.4.2	Minimum, maximum or average quantity of saturated fatty acids, trans fatty acids, polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food
Polyunsaturated fatty acids or monounsaturated fatty acids in a food that is not a food standardised in Standard 2.4.1 or 2.4.2	Average quantity of saturated fatty acids, trans fatty acids, polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food
Cholesterol, saturated fatty acids, trans fatty acids, omega-6 or omega-9 fatty acids	Average quantity of saturated fatty acids, trans fatty acids, polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food
Dietary fibre, sugars or any other carbohydrate	Average energy content per serving of the food and average quantity of carbohydrate, sugars and dietary fibre (calculated in accordance with clause 18) present per serving of the food
Energy	Average energy content per serving of the food
Fat-free	Average energy content per serving of the food
Omega-3 fatty acids	(a) Average quantity of saturated fatty acids, trans fatty acids, polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food; and (b) the average quantity of each type of omega-3 fatty acids per serving of the food (that is, alpha-linolenic acid, docosahexaenoic acid, eicosapentaenoic acid or a combination of these); and (c) the average quantity of the total of omega-3 fatty acids per serving of the food
Lactose	Average quantity of galactose content per serving of the food
Potassium	Average quantity of sodium content per serving of the food
Sodium or salt	Average quantity of sodium and potassium content per serving of the food

[3.8] omitting “‘metric cup’ or” from paragraph 8(5)(b)

[3.9] omitting “of unavailable carbohydrate” from subclause 8A(2) and substituting “of the average quantity of unavailable carbohydrate per serving of the food”

[3.10] omitting “presence of relevant substances” from subclause 8A(4) and substituting “the average quantity of the substances per serving of the food”

[3.11] updating the Table of Provisions to reflect these variations.

[4] **Standard 2.9.2** is varied by omitting subclause 9(1) and substituting

“(1) The following provisions of Standard 1.2.8 do not apply to a food standardised by this Standard –

- (a) paragraph 3(j); and
- (b) subclause 4(4); and
- (c) paragraph 5(1)(e) as it relates to saturated fat; and
- (d) subclauses 5(2), 5(4) and 5(5); and
- (e) clause 7; and
- (f) clause 8; and
- (g) clause 8A; and
- (h) clause 9.”

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



***Australia New Zealand Food Standards Code* – Transitional Variation 2015 (Proposal P1037 – Amendments associated with Health and Nutrition Claims)**

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The Standard commences on the date specified in clause 2 of the variation.

Dated [To be completed by Standards Management Officer]

Standards Management Officer
Delegate of the Board of Food Standards Australia New Zealand

Note:

This variation will be published in the Commonwealth of Australia Gazette No. FSC **XX on XX Month 20XX**.

1 Name of instrument

This instrument is the *Australia New Zealand Food Standards Code – Transitional Variation 2015 (Proposal P1037 – Amendments associated with Health and Nutrition Claims)*.

2 Commencement

This instrument commences on 1 March 2016 immediately after the commencement of Standard 5.1.1 – Revocation and transitional provisions — 2014 Revision.

3 Variation to Standards in the *Australia New Zealand Food Standards Code*

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

SCHEDULE

[1] Standard 1.1.2 is varied by

[1.1] inserting after section 1.1.2—14

“1.1.2—15 Definition of Permitted Health Star Rating symbol

- (1) In this Code, **Permitted Health Star Rating symbol** means an image subject to Australian Trade Marks numbered 1641445, 1641446 or 1641447.
- (2) To avoid doubt, an image mentioned in subsection (1) does not cease to be a Permitted Health Star Rating symbol by reason only of the image indicating:
 - (a) energy or nutrient content on a per 100 g, per 100 ml or per pack basis; or
 - (b) energy or nutrient content at zero or amounts greater than zero; or
 - (c) energy content on a percentage daily intake basis in addition to an amount shown in kilojoules.”

[2] Standard 1.2.7 is varied by omitting paragraph 1.2.7—6 (c) and substituting

- “(c) a declaration that is required by an application Act; or
- (d) a permitted Health Star Rating symbol.”

[3] Standard 1.2.8 is varied by

[3.1] omitting “infant formula products” from section 1.2.8—3 and substituting “infant formula products or a Permitted Health Star Rating symbol.”

[3.2] inserting after section 1.2.8—6(10)

“Claims about lactose

- (11) If a *claim requiring nutrition information is made in relation to lactose, a nutrition information panel must include a declaration of the average quantity of galactose in accordance with section S12—3.

Claims about salt or sodium

- (12) If a *claim requiring nutrition information is made in relation to salt or sodium, the nutrition information panel must include a declaration of the average quantity of potassium in accordance with section S12—3.

Claims about omega-3 fatty acids

- (13) If a *claim requiring nutrition information is made in relation to omega-3 fatty acids, the nutrition information panel must include declarations of each of the following in accordance with section S12—3:

- (a) the average quantity of each type of omega-3 fatty acids (that is, alpha-linolenic acid, docosahexaenoic acid, eicosapentaenoic acid or a combination of these); and
- (b) the average quantity of the total of omega-3 fatty acids.”

[3.3] omitting section 1.2.8—10 and substituting

“1.2.8—10 Information referred to in sections 1.2.8—8 and 1.2.8—9 may be presented outside nutrition information panel

- (1) If a nutrition information panel includes the percentage daily intake of dietary fibre per serving in accordance with subsection 1.2.8—8(2), the following information may also be presented outside the nutrition information panel:
 - (a) the percentage daily intake of energy per serving; or
 - (b) the percentage daily intake of all of dietary fibre, energy, fat, saturated fatty acids, carbohydrate, sugars, protein and sodium per serving.
- (2) If a nutrition information panel includes the percentage daily intake information required by subsection 1.2.8—8(3), the following information may also be presented outside the nutrition information panel:
 - (a) the percentage daily intake of energy per serving; or
 - (b) the percentage daily intake of all of energy, fat, saturated fatty acids, carbohydrate, sugars, protein and sodium per serving.
- (3) If a nutrition information panel includes the percentage recommended daily intake of a vitamin or mineral in accordance with section 1.2.8—9, that information may also be presented outside the nutrition information panel.
- (4) Information may only be presented outside the nutrition information panel in accordance with this section if –
 - (a) the serving size is presented together with the information; and
 - (b) the food to which that information relates does not contain more than 1.15% alcohol by volume.
- (5) If more than 1 piece of information is presented outside the panel in accordance with this section, those pieces of information must be presented together.
- (6) Information presented in accordance with this section does not constitute a nutrition content claim.”

[3.4] omit from paragraph 1.2.8—14(1)(c) “a declaration of unavailable carbohydrate (not including dietary fibre)” and substituting “a declaration of the average quantity of unavailable carbohydrate (not including dietary fibre) per serving of the food”

[3.5] omit from paragraph 1.2.8—14(1)(c) “the presence in the food” and substituting “the average quantity per serving of the food”

[3.6] omitting “‘metric cup’,” from subsection 1.2.8—14(2)

[4] Schedule 4 is varied by

[4.1] omitting from the table to section S4—3 “The nutrition information panel indicates the lactose and galactose content.”

[4.2] omitting from the table to section S4—3 “The nutrition information panel indicates the potassium content.”

[4.3] omitting from the table to section S4—3

“

Omega-3 fatty acids	(a) The food meets the conditions for a nutrition content claim about omega fatty acids; and	Good Source	(a) The food contains no less than 60 mg total eicosapentaenoic acid and docosahexaenoic acid/serving; and
	(b) the food contains no less than: (i) 200 mg alpha-linolenic acid per serving; or (ii) 30 mg total eicosapentaenoic acid and docosahexaenoic acid per serving; and		(b) the food may contain less than 200 mg alpha-linolenic acid/serving.
	(c) other than for fish or fish products with no added *saturated fatty acids, the food contains: (i) as a proportion of the total fatty acid content, no more than 28% saturated fatty acids and trans fatty acids; or (ii) no more saturated fatty acids and *trans fatty acids than 5 g per 100 g; and	Increased	(a) The food contains at least 25% more omega-3 fatty acids than in the same amount of *reference food; and (b) the reference food meets the general claim conditions for a nutrition content claim about omega-3 fatty acids.
	(d) the nutrition information panel indicates the type and amount of omega-3 fatty acids, that is, alpha-linolenic acid, docosahexaenoic acid or eicosapentaenoic acid, or a combination of the above.		

”

and substituting

“

Omega-3 fatty acids	(a) The food meets the conditions for a nutrition content claim about omega fatty acids; and	Good Source	(a) The food contains no less than 60 mg total eicosapentaenoic acid and docosahexaenoic acid/serving; and
	(b) the food contains no less than: (i) 200 mg alpha-linolenic acid per serving; or (ii) 30 mg total eicosapentaenoic acid and docosahexaenoic acid per serving; and		(b) the food may contain less than 200 mg alpha-linolenic acid/serving.
	(c) other than for fish or fish products with no added *saturated fatty acids, the food contains: (i) as a proportion of the total fatty acid content, no more than 28% saturated fatty acids and trans fatty acids; or (ii) no more saturated fatty acids and *trans fatty acids than 5 g per 100 g	Increased	(a) The food contains at least 25% more omega-3 fatty acids than in the same amount of *reference food; and (b) the reference food meets the general claim conditions for a nutrition content claim about omega-3 fatty acids.

”

[5] Schedule 5 is varied by

[5.1] omitting “total” from Table 1 of Schedule 5

[5.2] omitting “total” from Table 2 of Schedule 5

[5.3] omitting “the content of energy and each nutrient” from section S5—3 and substituting “the average energy content and the average quantity of each nutrient”

[5.4] omitting “**AEC** is the number of points for average energy content” from section S5—3 and substituting “**AEC** is the number of points for the average energy content in the unit quantity of the food”

[5.5] omitting “**ASFA** is the number of points for average saturated fatty acids” from section S5—3 and substituting “**ASFA** is the number of points for the average quantity of saturated fatty acids in the unit quantity of the food”

[5.6] omitting “**ATS** is the number of points for average total sugars” from section S5—3 and substituting “**ATS** is the number of points for the average quantity of sugars in the unit quantity of the food”

[5.7] omitting “**AS** is the number of points for average sodium” from section S5—3 and substituting “**AS** is the number of points for the average quantity of sodium in the unit quantity of the food”

[5.8] omitting “sources” wherever occurring in section S5—4

[5.9] omitting subsection S5—5(1) and substituting

“(1) Use Table 4 to determine the ‘P points’ scored, depending on the average quantity of protein in 100 g or 100 mL of the food product (based on the units used in the nutrition information panel). A maximum of five points can be awarded.”

[5.10] omitting subsection S5—6(1) and substituting

“(1) Use Table 5 to determine the ‘F points’ scored, depending on the average quantity of *dietary fibre in 100 g or 100 mL of the food product (based on the units used in the nutrition information panel). A maximum of five points can be awarded.”

[6] **Schedule 12** is varied by omitting “1.2.8—6(3) and 1.2.8—6(5)” from section S12—3 and substituting “1.2.8—6(3), 1.2.8—6(5), 1.2.8—6(11), 1.2.8—6(12) and 1.2.8—6(13)”

[7] **Schedule 13** is varied by omitting the table to section S13—2 and substituting

“**Nutrition information for food in small packages**

Column 1	Column 2
<i>Claim is about</i>	<i>Label must include</i>
Any nutrient or biologically active substance (other than a vitamin or mineral with a RDI)	Average quantity of the nutrient or biologically active substance present per serving of the food
Any vitamin or mineral with a RDI	(a) *Average quantity of the vitamin or mineral present per serving of the food; and (b) Percentage of the RDI for the vitamin or mineral contributed by one serving of the food, and calculated in accordance with section 1.2.8—9.
Polyunsaturated fatty acids or monounsaturated fatty acids in a food standardised in Standard 2.4.1 or 2.4.2	Saturated fatty acids, trans fatty acids, *polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food
Polyunsaturated fatty acids or monounsaturated fatty acids in a food that is not a food standardised in Standard 2.4.1 or 2.4.2	Average quantity of saturated fatty acids, trans fatty acids, *polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food
Cholesterol, saturated fatty acids, trans fatty acids, omega-6 or omega-9 fatty acids	Average quantity of saturated fatty acids, trans fatty acids, *polyunsaturated fatty acids and monounsaturated fatty acids content per serving of the food
Dietary fibre, sugars or any other *carbohydrate	Average energy content per serving of the food and average quantity of carbohydrate, sugars and dietary (calculated in accordance with section S11—4) present per serving of the food
Energy	Average energy content per serving of the food
Fat-free	Average energy content per serving of the food
Omega-3 fatty acids	(a) Average quantity of *saturated fatty acids, *trans fatty acids, *polyunsaturated fatty acids and *monounsaturated fatty acids content per serving of the food; and (b) Average quantity of each type of omega-3 fatty acids per serving of the food (that is, alpha-linolenic acid, docosahexaenoic acid, eicosapentaenoic acid or a combination of these); and (c) Average quantity of the total of omega-3 fatty acids per serving of the food
Lactose	Average quantity of galactose content per serving of the food
Potassium	Average quantity of sodium content per serving of the food

Column 1	Column 2
<i>Claim is about</i>	<i>Label must include</i>
Sodium or salt	Average quantity of sodium and potassium content per serving of the food

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