

25 May 2015
[09–15]

Call for submissions – Proposal P1037

Amendments associated with Nutrition Content & Health Claims

FSANZ has assessed a proposal prepared 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 and has prepared a draft food regulatory measure. The proposal also includes exemptions for certain elements of the Health Star Rating system from the *Australia New Zealand Food Standards Code* requirements. Pursuant to section 61 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), FSANZ now calls for submissions to assist consideration of the draft food regulatory measure.

Submitters are encouraged to use the response template provided at Attachment C, which can be copied and filled in electronically.

For information about making a submission, visit the FSANZ website at [information for submitters](#).

All submissions on applications and proposals will be published on our website. We will not publish material that is provided in-confidence, but will record that such information is held. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1991*. Submissions will be published as soon as possible after the end of the public comment period. Where large numbers of documents are involved, FSANZ will make these available on CD, rather than on the website.

Under section 114 of the FSANZ Act, some information provided to FSANZ cannot be disclosed. More information about the disclosure of confidential commercial information is available on the FSANZ website at [information for submitters](#).

Submissions should be made in writing; be marked clearly with the word 'Submission' and quote the correct project number and name. While FSANZ accepts submissions in hard copy to our offices, it is more convenient and quicker to receive submissions electronically through the FSANZ website via the link on [documents for public comment](#). You can also email your submission directly to submissions@foodstandards.gov.au.

There is no need to send a hard copy of your submission if you have submitted it by email or via the FSANZ website. FSANZ endeavours to formally acknowledge receipt of submissions within 3 business days.

DEADLINE FOR SUBMISSIONS: 6pm (Canberra time) 6 July 2015

Submissions received after this date will not be considered unless an extension had been given before the closing date. Extensions will only be granted due to extraordinary circumstances during the submission period. Any agreed extension will be notified on the FSANZ website and will apply to all submitters.

Questions about making submissions or the application process can be sent to standards.management@foodstandards.gov.au.

Hard copy submissions may be sent to one of the following addresses:

Food Standards Australia New Zealand
PO Box 7186
CANBERRA BC ACT 2610
AUSTRALIA
Tel +61 2 6271 2222

Food Standards Australia New Zealand
PO Box 10559
The Terrace WELLINGTON 6143
NEW ZEALAND
Tel +64 4 978 5630

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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.asp>:

- SD1 Trademarked elements of the HSR system
- SD2 Relevant Code requirements applying to the trade-marked elements of the 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 existing requirements in the Code and with the intent of Proposal P293, as well as lack of clarity resulting from the gazettal of Standard 1.2.7 and associated amendments to the Code, have subsequently been identified. FSANZ has prepared this Proposal to address these inconsistencies and lack of clarity.

A voluntary front-of-pack food labelling system, 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. Display of the star rating and nutrient icons on food labels trigger mandatory claim requirements in the Code (including associated nutrition information labelling). This Proposal recommends an exemption of the trademarked HSR label elements from the requirements for claims in the Code.

FSANZ is calling for submissions to help with the assessment of this Proposal.

The specific issues being addressed by this Proposal and the proposed amendments are summarised in Table 1.

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

Code reference ¹	Issue	Proposed amendment
Standard 1.2.7, Schedule 1, conditions for claims about lactose, salt or sodium and omega-3 fatty acids	<p>Conditions for making these claims include a requirement to declare additional nutrients in the nutrition information panel (NIP). Schedule 1 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).</p> <p>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.</p>	<p>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.</p> <p>The requirements will be moved from Standard 1.2.7 to Standard 1.2.8, where other similar nutrition information requirements are located.</p>

¹ The Code references in this Table reflect the existing Code. A revision of the Code through Proposal P1025 – Code Revision will replace the existing Code on 1 March 2016. The requirements outlined in this Table are reflected in the revised Code; however the references to clauses in this Table are not applicable to the revised Code.

Code reference ¹	Issue	Proposed amendment
Standard 1.2.7, Schedule 5, method for determining the nutrient profiling score (NPS)	<p>It was intended that the NPS 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>	Schedule 5 will be amended to add that the 'average quantity' (rather than 'quantity') of nutrients is used in the NPS calculation and that the average quantity of protein and dietary fibre is to be based on per 100g or mL, depending on the units used in the NIP.
Standard 1.2.8, Clause 7B Percentage DI or RDI information presented outside the panel	<p>It was intended that the percentage Daily Intake (%DI) for energy alone could be provided without providing %DI for other nutrients, outside the NIP. This is not currently clear in the Standard.</p> <p>It is also not clear that the %DI for dietary fibre is permitted to be declared outside the NIP if it is also declared in the NIP, together with the %DI for the prescribed nutrients.</p>	<p>It will be clarified that the %DI for energy alone (without other %DI information) is permitted to be presented on a label outside the NIP.</p> <p>It will also be made clear that the %DI for dietary fibre is permitted to be declared outside the NIP if it is also declared in the NIP, together with the %DI for the prescribed nutrients.</p>
Standard 1.2.8, conditions for small packages, clause 8	<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 will be amended to be consistent with existing 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) 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>
Standard 1.2.8, conditions for small packages, clause 8	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.	For claims about dietary fibre, sugars or any other carbohydrates, the 'average energy content' will be required to be declared. Average energy content is to be calculated in accordance with the standardised method in clause 1 of Standard 1.2.8.
Standard 1.2.8, conditions for small packages, clause 8A	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.	The provisions will be amended to be consistent with existing 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'.

Code reference ¹	Issue	Proposed amendment
Standard 2.9.2 – Food for Infants, clause 9	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) were inadvertently applied to food for infants.	Clause 9 of Standard 2.9.2 will be amended to clarify that the clauses about food in small packages in Standard 1.2.8 do not apply to food for infants.
Standard 1.2.7, clause 5 and Standard 1.2.8, clause 4	Use of certain elements of the HSR system triggers certain claim requirements, including additional nutrition information labelling requirements.	An exemption will be provided for the star rating, the energy icon and the nutrient icons for sodium, saturated fat and sugars, as trademarked, from claim requirements in Standards 1.2.7 and 1.2.8.

1 Introduction

1.1 The Proposal

FSANZ has 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 *Australia New Zealand Food Standards Code (Code)*.

The Proposal also includes proposed exemptions for certain elements of the Health Star Rating (HSR) system from the requirements for claims in the Code.

1.2 The current Standards

Standard 1.2.7 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 a 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, 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 packages² when nutrition content claims or health claims are made about food in a small package.

The references to specific clauses and schedules in this report reflect the existing Code. A revision of the Code through Proposal P1025 – Code Revision, gazetted on 10 April 2015, will replace the existing Code on 1 March 2016. The references to specific clauses in the Code in this report are not applicable to the revised Code.

1.3 Health Star Rating system

In June 2014, the Australia and New Zealand Ministerial Forum on Food Regulation 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 system³.

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.

² Small package is defined in clause 1 of Standard 1.1.1 – Preliminary Provisions – Application, Interpretation and General Prohibitions, as a package with a surface area of less than 100 cm².

³ <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 on a 100 g or 100 mL basis, or per pack when the food is presented as a single serve package or packages with discrete portions.
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'), on a 100 g or 100 mL basis, or per pack when the food is presented as a single serve package or packages with discrete portions. A 'positive' nutrient icon may also be included, for example, a nutrient icon for dietary fibre, protein or certain vitamins and minerals.

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 product. 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 Supporting Document 1.

1.4 Reasons for preparing the Proposal

The Proposal is intended to address a number of inconsistencies and lack of clarity associated with Standard 1.2.7 and related standards, to enable Standard 1.2.7 to operate smoothly and as intended.

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

1.5 Procedure for assessment

The Proposal is being assessed under the General Procedure.

2 Summary of the assessment

2.1 Risk assessment

The changes proposed are minor in nature and include clarifying the Code so it more accurately reflects the intent of Proposal P293 – Nutrition, Health & Related Claims. They are not expected to have an impact on the protection of public health and safety. For this reason, a risk analysis relating to public health and safety has not been conducted for any of the proposed food regulatory measures.

The issues 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 (NPS) 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 if it is also declared in the NIP, together with the %DI for the prescribed nutrients.
- 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.
- Proposed exemption for certain elements of the HSR system from claim requirements in Standards 1.2.7 and 1.2.8.

The issues considered are detailed in section 2.2 below.

2.2 Risk management

2.2.1 Nutrient declarations in nutrition information panel

Schedule 1 (column 2) of Standard 1.2.7 of the current 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.

The Schedule 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)) 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.

The Schedule 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' is prescribed to be declared. Standard 1.1.1 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, it is proposed that galactose, potassium and the specified omega-3 fatty acids, when required to be declared, are to be declared in accordance with the prescribed format for NIPs (subclause 5(7)).

In addition, the 'average quantity' should be declared. This will ensure that the requirements are consistent with the requirements for other prescribed nutrition information.

It is proposed that requirements for nutrient declarations in the NIP currently in Standard 1.2.7 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.

The requirement to declare lactose when a claim about lactose is made (as currently required in Schedule 1 of Standard 1.2.7 of the current Code) is also required by paragraph 5(1)(g) of Standard 1.2.8 of the current Code and therefore will not be repeated elsewhere in either Standard.

2.2.2 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 of the current 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 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 of Schedule 5 rather than 'average quantity' of sodium'.

It is proposed that the nutrient profiling scoring method in Schedule 5 is 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 is unnecessary, as the definition of 'sugars' captures monosaccharides and disaccharides.

This 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 and the NPS 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) of Schedule 5 refer to 'fvnl sources'. The word 'sources' is unnecessary and will be deleted.

2.2.3 Percentage daily intake declarations

There are conditions in Standard 1.2.8 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. It was intended that as an alternative to declaring the %DI of all 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. This is not currently clear in Standard 1.2.8.

Clarity of this approach is also required for the HSR system, as the HSR Style Guide states that a %DI value for energy alone, may be included within the energy icon for per pack values (i.e. when presented as a single serve pack intended for consumption in a single sitting).

Standard 1.2.8 permits the %DI for dietary fibre to be included in the NIP if the %DI for the prescribed nutrients is included in the NIP. It is not clear however, that the %DI for dietary fibre is permitted to be declared outside the NIP, together with the %DI for the prescribed nutrients.

Clarification that the %DI for energy alone (without other %DI information) is permitted to be presented on a label outside the NIP and that the %DI for dietary fibre is permitted to be declared outside the NIP, together with the %DI for the other prescribed nutrients, is therefore required.

2.2.4 Nutrition information requirements on small packages

Small packages⁴ 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 of the current 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) 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 of a fatty acid that is present because of the seasonal variability in the source of oils and fats used.

It is proposed that provisions for the declaration of fatty acids on small packages be amended to be consistent with existing 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 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 clause 1 of Standard 1.2.8 of the current Code. For claims about dietary fibre, sugars or any other carbohydrates, it is proposed that the 'average energy content' is 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 what quantity of food the amount of each substance must relate to.

⁴ Small package is defined in clause 1 of Standard 1.1.1 – Preliminary Provisions – Application, Interpretation and General Prohibitions in the current Code, as a package with a surface area of less than 100 cm².

The provisions for small packages making claims about dietary fibre, sugars or any other carbohydrates will be amended to be consistent with existing 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 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. Reference to 'metric cup' will be deleted.

Subclause 4(4) of Standard 1.2.8 of 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 will be added.

2.2.5 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 of the current Code relating to food in small packages (subclause 4(4) and clause 8A) were inadvertently applied to food for infants.

It is proposed that clause 9 of Standard 2.9.2 – Food for Infants of the current Code, is amended to clarify that the clauses about food in small packages do not apply to food for infants.

2.2.6 Proposed exemptions from claim requirements for trademarked HSR elements

Use of the HSR system is voluntary. As it currently stands, declaration of 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 is proposing that the use of the star rating, the energy icon and the icons for sodium, saturated fat and sugars, as trademarked, are exempt from nutrition content claim requirements, including certain nutrition information labelling requirements, in the Code (see Supporting Document 2 for these requirements). 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 would 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 HSR System Style Guide recommends that the individual values within each icon should be consistent with values declared in the NIP. Given this recommendation, the trademarked HSR icons for energy, saturated fat, sugars and sodium should be a duplication of mandatory nutrition information in the NIP about the energy, saturated fat, sugars and sodium content of the food. FSANZ is therefore of the view that this front-of-pack information should not be required to meet claim requirements. This is similar to the existing permission for %DI information to be presented outside the NIP without it constituting a nutrition content claim.

Making an amendment to the Code for the purposes of supporting the adoption of the voluntary HSR system is consistent with the Australian Government's deregulation agenda to reduce red tape and costs.

HSR elements not trademarked would not be exempt, and as indicated in the HSR System Style Guide, 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, sugar 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.

FSANZ considers that the HSR elements listed above should be subject to the same claim requirements (including additional nutrition information labelling) as other nutrition content claims. This is to 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.

2.3 Risk communication

2.3.1 Consultation

Consultation is a key part of FSANZ's standards development process. The process by which FSANZ considers standard development matters is open, accountable, consultative and transparent. Public submissions are called to obtain the views of interested parties on issues raised by this Proposal and the effects of regulatory options. Every submission is reviewed by FSANZ staff, who examine the issues identified and prepare a response to those issues. While not all comments may be taken on board during the process, they are valued and all contribute to the rigour of our assessment.

FSANZ develops communication plans to ensure stakeholders are aware of proposed changes to the Code. All calls for submissions are notified through the FSANZ Notification Circular, media release, FSANZ's social media tools and Food Standards News.

The draft variations will be considered for approval by the FSANZ Board taking into account comments received following this call for submissions. Anyone who is an interested party or who makes a submission will be notified at each stage of the assessment. Subscribers and interested parties are also notified by email about the availability of reports for public comment.

If the draft variations to the Code are approved by the FSANZ Board, that decision will be notified to the Australia and New Zealand Ministerial Forum on Food Regulation. If the decision is not subject to a request for a review, stakeholders will be notified of the gazettal of the variations to the Code in the national press and on the FSANZ website.

2.3.2 World Trade Organization (WTO)

As members of the World Trade Organization (WTO), Australia and New Zealand are obliged to notify WTO members where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

There are relevant international standards, however amending the Code as outlined in section 2.2 is unlikely to have a significant effect on international trade as the amendments are minor and machinery in nature. Therefore, a notification to the WTO under Australia's and New Zealand's obligations under the WTO Technical Barriers to Trade or Application of Sanitary and Phytosanitary Measures Agreement was not considered necessary.

2.4 FSANZ Act assessment requirements

2.4.1 Section 59

When assessing this Proposal and the subsequent development of a food regulatory measure, FSANZ has had regard to the following matters in section 59 of the FSANZ Act:

2.4.1.1 Cost benefit analysis

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

Affected parties include the following:

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 proposed 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.

Industry: Requirements in Standard 1.2.7 and associated standards 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 Standards 1.2.7 and 1.2.8 relating to nutrition labelling will not be applicable 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. Although it is not anticipated that these proposed amendments will result in additional costs of re-labelling, FSANZ is seeking information from food businesses about any impact and expected costs through this consultation (see Attachment C for questions for submitters).

Consumers: Exemptions for the trademarked elements of the HSR system would support voluntary adoption of the system. Provision of key information 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 proposed amendments in this Proposal 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.

2.4.1.2 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.

2.4.1.3 Any relevant New Zealand standards

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

2.4.1.4 Any other relevant matters

There are no other relevant matters.

2.4.2 Subsection 18(1)

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

2.4.2.1 Protection of public health and safety

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

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

A number of the proposed 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.

Exemptions for the trademarked elements of the HSR system support voluntary adoption of the system. Provision of key information on front-of-pack allows consumers to make at-a-glance comparisons of foods, which may assist consumers in making healthier food choices.

2.4.2.3 The prevention of misleading or deceptive conduct

A number of requirements currently in Standards 1.2.7 and 1.2.8 were developed to mitigate the possibility of consumers being misled by nutrition content claims and health claims. The proposed amendments provide clarity for some of these requirements and are therefore consistent with this objective.

FSANZ considers that the proposed 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 a duplication of the mandatory nutrition information in the NIP about the energy, saturated fat, sugars and sodium content of the food.

2.4.3 Subsection 18(2) considerations

FSANZ has also had regard to the following matters in subsection 18(2) of the FSANZ Act:

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

Since the Proposal does not propose any change to the criteria for making claims and the proposed changes are consistent with existing requirements for prescribed nutrition information, no scientific risk analysis has been undertaken by FSANZ.

- **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 proposed variations are relatively minor, for reasons of consistency with existing 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 Council⁵**

In December 2003, the Ministerial Council released the *Policy Guideline on Nutrition, Health and Related Claims*⁶. 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 proposed variations provide clarity about requirements in Standard 1.2.7 and associated amendments to Standard 1.2.8 that were developed with regard to this policy guideline.

3 Draft variations

The draft variations to the current Code and related draft explanatory statement are at Attachment A. The variation is intended to take effect on the date of gazettal. The draft variations to the revised Code (see section 3.1.1) and related draft explanatory statement are at Attachment B. The variation is intended to take 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 (FRLI).

3.1 Transitional arrangements

The transitional arrangements already in place for Standard 1.2.7 will apply. The transition period for Standard 1.2.7 ends in January 2016.

FSANZ considers that no additional transitional arrangements are required for this Proposal on the basis that the amendments are not expected to result in additional costs of re-labelling. However FSANZ is seeking to confirm the expected impacts on food businesses through this consultation and will consider providing additional transitional arrangements if deemed necessary.

No transition period or stock-in-trade provisions will be required in relation to the HSR system, given FSANZ is proposing a variation to the Code that is deregulatory in nature.

3.1.1 Transitional arrangements for Code Revision

FSANZ has completed a review of the Code undertaken under Proposal P1025⁷ in order to improve its clarity and legal efficacy. Following approval of the revision and Ministerial consideration, the new Code will commence on 1 March 2016 (following gazettal 10 April 2015 and registration on the Federal Register of Legislative Instruments).

⁵ Now known as the Australia and New Zealand Ministerial Forum on Food Regulation (convening as the Australia and New Zealand Food Regulation Ministerial Council)

⁶ The Policy Guideline is available at: <http://www.foodstandards.gov.au/code/fofr/fofrpolicy/pages/default.aspx>

⁷ <http://www.foodstandards.gov.au/code/proposals/Pages/proposalp1025coderev5755.aspx>

The current Code will also be repealed on this date. The draft 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 draft variation at Attachment A.

Attachments

- A. Draft variation to the *Australia New Zealand Food Standards Code* and related Explanatory Statement
- B. Draft variation to the revised *Australia New Zealand Food Standards Code* and related Explanatory Statement (commencing 1 March 2016)
- C. Consultation questions for P1037 – Amendments associated with Nutrition Content & Health Claims

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



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, 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), 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.”

Draft 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.

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 will include one round of public consultation following an assessment and the preparation of a draft Standard and associated report.

A call for Submissions (which includes the draft variation) will be released for a six-week consultation period.

A Regulation Impact Statement was not required because the proposed variations are likely to have 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 97 of the FSANZ Act.

6. Variations

Item [1] of the Schedule varies Standard 1.1.1.

Item [1.1] varies subclause 1(3) of Standard 1.1.1 to provide a transition period in relation to the variations made by the instrument. A food will be taken to comply with the variations during the transition period if the food otherwise complied with the Code before the instrument commenced. The transition period is from the date of the instrument's commencement until 18 January 2016. This period aligns with the current transition period for Standard 1.2.7.

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 Australian Trade Marks numbered 1641445, 1641446 or 1641447. 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 clause 2A.

Item [2] of the Schedule varies Standard 1.2.7.

Item [2.1] varies clause 5 of Standard 1.2.7 to provide that that Standard does not apply to a Permitted Health Star Rating symbol.

Item [2.2] corrects a typographical error in paragraph 18(1)(b). It replaces 'subparagraph' with 'paragraph'.

Item [2.3] replaces the entry for 'Lactose' in Schedule 1 to remove the condition that the nutrition information panel indicate the lactose and galactose content.

Item [2.4] replaces the entry for 'salt or sodium' in Schedule 1 to remove the condition that the nutrition information panel indicate the potassium content.

Item [2.5] 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 [2.6] varies subitems 2(1) and 3(1) of 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 [2.7] removes the word 'sources' from paragraph 4(6)(c) of Schedule 5.

Item [2.8] removes the word 'sources' from subitem 4(8) of Schedule 5.

Item [2.9] removes the word 'total' from Tables 1 and 2 of Schedule 5.

Item [2.10] varies Tables 1 and 2 of Schedule 5. It replaces 'Average saturated fatty acids' with 'Average quantity of saturated fatty acids'.

Item [2.11] varies Tables 1 and 2 of Schedule 5. It replaces 'Average sodium' with 'Average quantity of sodium'.

Item [2.12] varies subitem 5(1) of Schedule 5 to replace 'the amount of protein' with 'the average quantity of protein'.

Item [2.13] varies subitem 6(1) of 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 1.2.8.

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 clause 7B with a new clause.

New subclause 7B(1) provides that certain information may also be presented outside the nutrition information panel if the panel includes the percentage daily intake of dietary fibre per serving in accordance with paragraph 7(2)(a). The information that may also be presented outside the panel is: the percentage daily intake of energy per serving; or the percentage daily intake of all of dietary fibre, energy, fat, saturated fatty acids, carbohydrate, sugars, protein and sodium per serving.

New subclause 7B(2) provides that certain information may be also presented outside the nutrition information panel if the panel includes the percentage daily intake information required by paragraph 7(2)(b). The information that may also be presented outside the panel is: the percentage daily intake of energy per serving; or the percentage daily intake of all of energy, fat, saturated fatty acids, carbohydrate, sugars, protein and sodium per serving.

New subclause 7B(3) provides that, where 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.

New subclause 7B(4) provides that information may only be presented outside the nutrition information panel in accordance with subclauses 7B(1), (2) and (3) if certain conditions are met. These are that the serving size is also presented outside the panel together with that information and that the food to which the information relates does not contain more than 1.1.5% alcohol by volume.

New subclause 7B(5) requires that, if two or more pieces of information are presented outside the nutrition information panel in accordance with clause 7B, all those pieces of information must be presented outside the panel together. This repeats the requirement previously in subclause 7(3).

New subclause 7B(6) provides that information presented outside the nutrition information panel in accordance with clause 7B does not constitute a nutrition content claim. This repeats what was previously in subclause 7(4).

Item [3.7] 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 [3.8] varies paragraph 8(5)(b) to remove the reference to 'metric cup'.

Item [3.9] varies subclause 8A(2). It replaces 'of unavailable carbohydrate' with 'of the average quantity of unavailable carbohydrate per serving of the food'.

Item [3.10] varies subclause 8A(4). It replaces 'presence of relevant substances' with 'the average quantity of the substances per serving of the food'.

Item 3.11 updates the Table of Provisions in Standard 1.2.8 to reflect the above variations to that Standard.

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).

Attachment B – 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 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	Increased	(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		(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, 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, 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, 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, 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, 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 .2.8—6(13)”

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

”

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 P1025⁸ 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 existing 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.

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 will include one round of public consultation following an assessment and the preparation of a draft Standard and associated report.

A call for Submissions (which includes the draft variation) will be released for a six-week consultation period.

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

⁸ <http://www.foodstandards.gov.au/code/proposals/Pages/proposalp1025coderev5755.aspx>

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. 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. 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 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] replaces section 1.2.8—10 with a new section.

New subsection 1.2.8—10(1) provides that certain information may also be presented outside the nutrition information panel if the panel includes the percentage daily intake of dietary fibre per serving in accordance with subsection 1.2.8—8(2). The information that may also be presented outside the panel is: the percentage daily intake of energy per serving; or the percentage daily intake of all of dietary fibre, energy, fat, saturated fatty acids, carbohydrate, sugars, protein and sodium per serving.

New subsection 1.2.8—10(2) provides that certain information may be also presented outside the nutrition information panel if the panel includes the percentage daily intake information required by subsection 1.2.8—8(3). The information that may also be presented outside the panel is: the percentage daily intake of energy per serving; or the percentage daily intake of all of energy, fat, saturated fatty acids, carbohydrate, sugars, protein and sodium per serving.

New subsection 1.2.8—10(3) provides that, where 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 panel.

New subsection 1.2.8—10(4) provides that information may only be presented outside the nutrition information panel in accordance with subsection 1.2.8—10 if certain conditions are met. These are that the serving size is also presented outside the panel together with that information and that the food to which the information relates does not contain more than 1.15% alcohol by volume.

New subsection 1.2.8—10(5) requires that, if two or more pieces of information are presented outside the nutrition information panel in accordance with section 1.2.8—10, all those pieces of information must be presented outside the panel together.

New subsection 1.2.8—10(6) provides that information presented outside the nutrition information panel in accordance with section 1.2.8—10 does not constitute a nutrition content claim.

Item [3.4] 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 [3.5] varies paragraph 1.2.8—14(1)(c). It replaces 'presence in the food' with 'the average quantity per serving of the food'.

Item [3.6] varies subsection 1.2.8—14(2) to remove the reference to 'metric cup'.

Item [4] varies Schedule 4.

Item [4.1] removes the condition that the nutrition information panel indicate the lactose and galactose content.

Item [4.2] removes 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] removes the word 'total' from Table 1 of Schedule 5.

Item [5.2] removes the word 'total' from Table 2 of Schedule 5.

Item [5.3] 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 [5.4] 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 [5.5] 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 [5.6] 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 [5.7] 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 [5.8] 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.

Item [6.1] varies section S12—3 to add references to subsections 1.2.8—6(11), 6(12) and 6(13).

Item [7] 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 – Consultation questions for P1037 – Amendments associated with Nutrition Content & Health Claims

To assist us in compiling submissions, please copy and complete the table below electronically, indicating your answers to the following questions:

1. For all submitters: Do you support the proposed amendments? Why/why not?
2. For the food industry: What is the expected impact on your food business? For example, will a change to existing food label(s) be required, or will there be no impact? If labelling changes are expected, please indicate the expected costs.

Submitter name and company name:

Code reference	Proposed amendment	1. Do you support the proposed amendments? Why/why not?	2. Expected impact and costs (including no impact)
Standard 1.2.7, Schedule 1, conditions for claims about lactose, salt or sodium and omega-3 fatty acids	<p>The 'average quantity' of additional nutrients for lactose, salt/sodium and omega-3 fatty acid claims will be required to be declared in accordance with the prescribed format for NIPs.</p> <p>The requirements will be moved from Standard 1.2.7 to Standard 1.2.8, where other similar nutrition information requirements are located.</p>		
Standard 1.2.7, Schedule 5, method for determining the nutrient profiling score (NPS).	Schedule 5 will be amended to add that the average quantity (rather than quantity) of nutrients is used in the NPS calculation and that the average quantity of protein and dietary fibre is to be based on per 100g or mL, depending on the units used in the NIP.		

Code reference	Proposed amendment	1. Do you support the proposed amendments? Why/why not?	2. Expected impact and costs (including no impact)
Standard 1.2.8, Clause 7B Percentage DI or RDI information presented outside the panel	<p>It will be clarified that the %DI for energy alone (without other %DI information) is permitted to be presented on a label outside the NIP.</p> <p>It will also be made clear that the %DI for dietary fibre is permitted to be declared outside the NIP if it is also declared in the NIP, together with the %DI for the prescribed nutrients.</p>		
Standard 1.2.8, conditions for small packages, clause 8	<p>The provisions for small packages will be amended to be consistent with existing provisions for NIPs, 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) and if the claim relates to polyunsaturated fatty acids or monounsaturated fatty.</p> <p>For all other declarations, the <i>average quantity</i> must be indicated.</p>		
Standard 1.2.8, conditions for small packages, clause 8	<p>For claims about dietary fibre, sugars or any other carbohydrates, the 'average energy content' will be required to be declared. Average energy content is to be calculated in accordance with the standardised method in clause 1 of Standard 1.2.8.</p>		

Code reference	Proposed amendment	1. Do you support the proposed amendments? Why/why not?	2. Expected impact and costs (including no impact)
Standard 1.2.8, conditions for small packages, clause 8A	The provisions for small packages making claims about dietary fibre, sugars or any other carbohydrates will be amended to be consistent with existing 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 2.9.2 – Food for Infants, clause 9	Clause 9 of Standard 2.9.2 is amended to clarify that the clauses about food in small packages in Standard 1.2.8 do not apply to food for infants.		
Claim requirements in Standards 1.2.7 and 1.2.8	An exemption will be provided for the star rating, the energy icon and the nutrient icons for sodium, saturated fat and sugars, as trademarked, from claim requirements in Standards 1.2.7 and 1.2.8.		
Additional comments:			