



one voice - adding value

3 September 2014

[REDACTED]
Food Standards Australia New Zealand
PO Box 10559, The Terrace
Wellington 6036 New Zealand

Dear [REDACTED]

I refer to your email of 20 August 2014 in relation to an application by the Australian Food and Grocery Council (AFGC) to vary Standard 1.2.7 to delay the introduction of new thresholds for fibre nutrition content claims, and to our subsequent meeting with you and FSANZ staff to discuss the same.

[1] Use of CoPoNC claims as an interim measure.

The Application included indicative drafting regarding the delayed introduction of the fibre claim thresholds. This drafting included, as an interim measure, the use of fibre claim thresholds in FSANZ's Code of Practice on Nutrient Claims (CoPoNC).

I confirm that the application seeks only to delay the commencement of the new fibre claim thresholds. The drafting in the application is indicative only: as with all applications, it is for FSANZ to prepare the draft variation to the Code in such manner as it sees fit.

The suggestion to consider use of the CoPoNC claim thresholds as an interim measure arose from the AFGC's concern that the delayed introduction would mean that fibre content claims would be unregulated (except by CoPoNC which is not binding) in the extended period leading up to the revised commencement. AFGC was conscious that this void in the scheme of Standard 1.2.7 might attract criticism and confuse the intent of the Application. AFGC understands that its members comply with the CoPoNC thresholds and that no label change would flow from the use of those thresholds as an interim measure.

However, if FSANZ considers (as it seems to do so from our meeting) that the use of CoPoNC thresholds as an interim measure raises more problems than it solves, the AFGC would have no concerns if this element were omitted from any FSANZ draft variations and from further consideration in the assessment of the Application. Again, the only purpose of the Application is to delay the commencement of the Standard 1.2.7 fibre claim thresholds.

[2] Costs

You have requested information in relation to the impact of the Application if approved. The following information has been provided by AFGC members to help FSANZ assess the costs faced by industry if the Application is not progressed.



1. Previous cost impact information

Reference is made to the August 2013 submission by AFGC (attached) in response to the FSANZ call for submissions on fibre claim thresholds. Costs are addressed at section 3.5.

2. Compliance survey

A market survey was conducted in December 2013 and in July 2014 to evaluate the extent to which fibre claims currently in market would be rendered illegal by the new threshold requirements. In the table below, N is the number of products making fibre claims in the listed category, and NC is the subset of those products where the fibre claim would be illegal after January 2016. The 'Use By' column indicates the latest date marking in the category.

Category	NC	N	Date	Use By
Breads and bread products	16	150	Dec-13	
Breakfast cereals - all	48	176	Dec-13	Aug-15
Grains	9	47	Dec-13	Oct-14
Pasta	5	22	Dec-13	Nov-15
Soups with legumes	2	10	Jul-14	May-15
Liquid breakfast drinks	6	29	Jul-14	Jun-15
Legumes canned and dried	9	77	Jul-14	Jun-16
Muesli bars	14	71	Jul-14	May-15
Rice cakes	7	7	Jul-14	Nov-14
TOTAL	116	589		

(Grains & Legumes Nutrition Council. Australians Grains and Legumes Product Audit 2014. Unpublished.)

This survey demonstrates that the AFGC's fears have been realised, and that there exists product already in market (canned legumes) whose shelf life extends beyond January 2016 and which includes fibre claims on label that will be rendered illegal by the 'new' requirements in Standard 1.2.7. Nine products are potentially affected from this one survey. Potentially, all will need to be withdrawn from sale on or before January 2016. The cost of a market withdrawal is significant: between \$50,000 to \$75,000 per product is not unreasonable for withdrawal and relabelling or disposal. This cost for the canned legumes category alone could therefore exceed \$650,000 in a worst case scenario.

The survey also demonstrates that there are over 100 products that will need to be relabelled within a very short timeframe (Dec 2013 to Jan 2016 is 25 months, from which the shelf life of the food, typically 6-18 months, needs to be deducted). As a consequence the re-labelling may need to be expedited rather than take place as part of routine label refreshment. With label changes ranging in cost between \$15,000 to \$25,000, the worst case cost impact could be as much as \$2.5 million from relabelling.

A further consideration for imported products is that the effective compliance date is brought back even earlier by the shipping time and supply chain delays at ports. The impact is that imported goods are more likely than domestic goods to fall within the first category (i.e. already shipped from manufacturer with non-compliant claims and a shelf life past January 2016).



3. Reformulation

One AFGC Member noted that the late decision on fibre precludes product reformulation to meet the new thresholds. This arises in part due to the product development time and need to obtain appropriate in-company approvals, but the biggest issue is product shelf life trials for revised formulations. Food products must be labelled with a statement of their minimum durable life under Standard 1.2.5 of the ANZ Food Standards Code, and this minimum durable life statement, being open to regulatory challenge, must be capable of substantiation. Shelf life trials are the industry means to provide such substantiation.

The delay in finalising the position on fibre claim thresholds means that there is no practical time to conduct such trials, again bearing in mind the time squeeze imposed by the absence of "stock in trade" allowances. Companies who might have considered reformulating to maintain or enhance label claims are then faced with the option of abandoning reformulation plans (a perverse outcome for the Standard) or incurring the double costs of relabelling current product and subsequently launching a reformulated product – creating confusion in the minds of consumers where fibre claims seems to drop or disappear before being restored. Again, such confusion is a perverse outcome for the Standard.

The member company who raised this concern is faced with this dilemma, so it is not simply a theoretical exercise. The company advises that the additional time requested in the Application would allow it to complete shelf life trials and launch the reformulated product without requiring an additional labelling step. As identified above, the relabelling expense is a measure of the burden, estimated at \$15,000 to \$25,000 per product. To this must be added consumer communication costs in explaining the potentially confusing disappearing and reappearing fibre claims.

4. Packaging Write Off

The process of managing transition of products to the new claims (either through relabelling and/or reformulation) also incurs the expense of writing off existing label stocks. Again, this process is exacerbated by the short timeframe from FSANZ decision to implementation under the no 'stock in trade' allowance. One member company has costed its label write off as being in the order of \$50,000, much, if not all, of which could be saved by the delayed implementation sought in the Application.

5. Summary

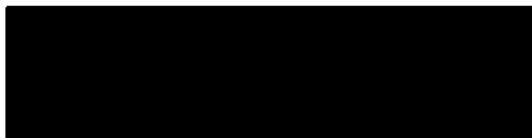
AFGC conservatively estimates the cost impact of not delaying the commencement of the new thresholds for fibre claims at –

- \$50,000 to \$75,000 for products currently on market with non-compliant claims whose shelf life extends beyond January 2016
- \$15,000 to \$25,000 for products currently on market with non-compliant claims with shorter shelf life
- \$15,000 to \$25,000 for products for which reformulation is proposed to meet the increased thresholds.
- \$50,000 per affected company in label write off costs.



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Kind Regards



Director, Health, Nutrition and Scientific Affairs