



12 November 2013

Project Officer Proposal P274
Food Standards Australia New Zealand
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FS350-115-274

Dear Sir/Madam

Proposal P274 – Proposal P274 – Minimum Age Labelling of Foods for Infants – Consultation Paper

Thank you for the opportunity to comment on the Consultation Paper for this proposal. The Ministry for Primary Industries (MPI) has consulted with the Ministry of Health (MoH) and this submission reflects the views of both organisations.

Please see our general comments below on the Consultation Paper for Proposal P274. These are followed by our responses to the specific questions for submitters as presented in Supporting Document 2.

General Comments:

MPI and the MoH continue to support the labelling change from 'from 4 months' to 'around 6 months', consistent with the *New Zealand Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0-2 years)*.

MPI and the MoH continue to support mandatory stage labelling for 'first foods'. Comments are provided in this submission on options for 'first food' labelling. We think that stage labelling of first foods is even more important now, given that any infant food (irrespective of whether it is a first food or not), is proposed to be permitted to use the number six on labels. In our view, foods labelled as suitable for 'around six months' should be clearly identified as a 'first food' so that parents and caregivers know to choose this option when their infant is ready to begin solids, and to allow this product to be clearly distinguishable from other infant foods.

In the absence of mandatory stage labelling, the proposed standard effectively removes the distinct labelling requirements applying to first food and non-first food. The result is that:

- Under the proposed standard, both those foods could be presented in identical packaging (there is no prohibition on a non-first food bearing a minimum age of around 6 months and the warning statement 'not before 4 months of age'). The consumer who wishes to purchase a first food will be required to guess that

“around 6 months” might indicate a first food (it might not), or take the time to read a statement about consistency, which may or may not be helpful.

- The potential confusion between the two food types undermines the rationale for imposing the 4 month warning statement only on first food, regardless of what age recommendation might be used on non-first food.

Transition period – we would support a shorter transition period, if this is an option FSANZ explores at the Approval Report stage. We want to encourage the move to the new labelling requirements, to be consistent with the *New Zealand Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0-2 years)* as soon as possible. If there needs to be the three year transition period for certain long shelf life foods (such as canned foods), this could be explored for these products only.

Questions for submitters:

Is the concept and definition of first food a useful way to apply certain labelling and formulation requirements?

Yes. MPI and the MoH support the concept and inclusion of a definition for ‘first food’ in Standard 2.9.2. However, we have identified a drafting issue which we think needs addressing, and is as follows;

The proposed changes to the standard have the appearance of making minor adjustments, but in fact they change the structure of the standard. Under the current standard, the categorisation as a food for the first stage of complementary feeding is triggered by the minimum age recommendation of 4-6 months. Thus the identification of something as a food for the first stage of complementary feeding directly relates to the labelling. Under the proposed standard, the categorisation is triggered by the inclusion of a definition for ‘first food’ which includes its intended use. This does not necessarily relate directly to the labelling, and results in potential overlap in the labelling requirements for the two categories (i.e. first food and non-first food) of food for infants. Instead of a particular recommended age applying uniquely to ‘first food’, it has become something which is imposed on first food but could also be used by non-first food.

As noted in our general comments, we are of the view that the term ‘first food’, or words/numbers of similar meaning (such as Stage 1) should be a mandatory requirement on infant foods that meet the definition of a first food, and are labelled with the ‘around 6 months’ statement. FSANZ notes (in section 4.1.1.3 of SD 2) that the statement ‘around 6 months’ could overlap with the next stage of food if phrases like ‘6-7 months’ or ‘6+ months’ were used on the label. We agree that this overlap is possible, and could lead to consumer confusion. A solution is needed to provide caregivers with clear information, to make an informed purchasing decision. In our view, this can be achieved by prescribing additional wording on first foods, as outlined above, as well as prohibiting the ‘around 6 month’ statement on non-first foods. This would also solve the drafting issue identified at the beginning of this question for submitters.

We do not however support the inclusion of the term ‘weaning’ in the definition. In 2008 the MoH, in its updated *Food and Nutrition Guidelines for Healthy Infants and Toddlers (Aged 0-2): A background paper*, identified ‘complementary feeding’ as the preferred term to describe the gradual introduction of solid food and fluids along with the usual milk feed (breast milk or infant formula) to an infants’ diet. The term ‘weaning’ which had been previously used, had come to be associated with stopping breastfeeding, which is not the recommendation when complementary feeding is started. ‘Complementary feeding’ indicates that breastfeeding continues and other foods are introduced to

complement or add to the nutrition intake provided by breast milk or infant formula. In light of this statement in the Guidelines, MoH and MPI would like to suggest a modified definition for 'first foods':

"first food means a food for infants that is intended for use in the first stage of complementary feeding"

We also note that ESPGHAN and EFSA use the term 'complementary feeding' (as referenced in section 2.2 of SD1).

Is the definition of 'first food' enforceable?

We query the use of the term 'intended' in a definition. It needs to be clear whose intention the standard is talking about. Could a manufacturer or supplier of the food claim no such intention, even though a product is clearly designed for that use?

Should the use of the age/number 6 on labels of infant food be prohibited, other than in conjunction with the word 'around'? Please explain your view.

We are of the view that the proposed drafting, that does not mandate the term 'first food' on a product label and allows the use of the number 6 on any food, creates too much uncertainty for care givers. In our view, the term 'first food' (or words/numbers with similar effect) should be mandatory on the label of products also labelled with the statement 'around 6 months'. This approach allows a caregiver to clearly recognise 'first foods', as foods that are suitable to be offered to an infant when starting complementary feeding.

Currently on the NZ market there are foods for infants which are labelled as suitable for infants 6-7 months (by way of example). These products are currently labelled and presented as stage two products and consequently have a modified texture which differs to that of first foods which are required to be smooth and free of lumps. The proposed changes to the standard have in our opinion blurred the product categories as there is no clear distinction of 'first foods' and the potential for an overlap with non-first foods exists.

MPI and MoH are therefore of the view that a prohibition on the number 6 (other than for first foods which are required to be labelled with 'around 6 months') should be given further consideration by FSANZ. Otherwise, the potential for 'first foods' and non-first foods to look the same will exist.

Do the changes to the wording of the warning statements change the intent of these statements? If so, please explain why.

We have two distinct issues with regards to the warning statement provisions:

1. Potential conflict between the requirements of clause 5(2) and 5A (2)

We would like to draw attention to clause 5(2) which states that *'The label on a package of food for infants must not include a recommendation, whether expressed or implied, that the food is suitable for infants less than around 6 months of age'*, and we ask the question whether this requirement conflicts with clause 5A (2) requiring the *'not before 4 months of age'* warning statement. It could be interpreted that 'not before 4 months' "implies" that consumption of infant foods after this age is acceptable, creating the conflict with the requirement within clause 5(2).

2. Possibility for two conflicting warning statements to be required on a label of first foods

The proposed draft standard contains the hypothetical, but unlikely possibility that two warning statements could be required on the label of a first food. Firstly, there is the mandatory requirement for first foods to have the 'not before 4 months' warning statement. Secondly there may also be the mandatory requirement for the 'not before 6 months' warning statement should the product contain more than 3g/100kJ of protein. Whilst it is unlikely that a first food would contain this level of protein, it is not good drafting practice for the potential for two warning statements on the same label to exist.

We are of the view that it is not sufficient to rely either on the fact that the two warning statements are not new requirements, or that such a product (i.e. a first food with this level of protein) is unlikely. We would support an approach whereby the Code is explicit and prohibits a first food from containing this level of protein and consequently requiring a second conflicting warning statement on the label. Alternatively, the issue could be dealt with by linking the provisions so that for a first food a clause 5A (2) warning statement would not be required if there was a clause 6 (2) warning statement.

Should the 'not before 4 months of age' statement apply only to first food as represented for infants 'around 6 months' of age only? If not, please describe which foods should carry this warning statement, and the reasons why.

We suggest that any products labelled as suitable for 'around 6 months' or state the number 6 on the label, carry the 'not before 4 months of age' warning statement. This is because in the current proposed approach there is the potential for both to be viewed as a 'first food' by consumers. No clear distinction between first foods and non-first foods exists.

If consultation does result in a change of approach, and the term 'first food' or similar is mandated on product labels, in conjunction with a prohibition on use of the number 6 (other than on foods represented for infants 'around 6 months') then it is not as important to require this warning statement on non-first foods as product differentiation will be clearer.

A further issue in relation to this warning statement has arisen, as a result in the shift from foods being labelled as 'from 4 months' to 'around 6 months'. The consumer may find the 'not before 4 month' warning statement contradictory and confusing, when a food is labelled as 'around 6 months'. In our view, further consideration needs to be given to the need for this warning statement to continue to be mandated. This may require consumer research, or the views of infant feeding experts.

Is it important for minimum age to be always displayed on the front of a product? Please give your reasons. If not, are there any other labelling measures that should be mandated?

Yes, as care givers need to be able easily identify which product they are purchasing.

As stated above, we also support a mandatory requirement for foods labelled with 'around 6 months' to be accompanied by wording or numbers to the effect that this product is intended as a first food for the infant.

Will the removal of the association between the relevant minimum age statement and the 4-month warning statement reduce the risk of caregiver confusion on the age of introducing solid foods?

We note the move to no longer require that the warning statement be placed 'in association with' the age statement. Whilst this approach may minimise consumer confusion, it also minimises the prominence of the warning statement.

However, without up-to-date consumer research that relates to the proposed labelling provisions, we are unable to comment on whether the proposed approach to infant food labelling will reduce caregiver confusion on the age of introducing complementary foods. Whilst the move to 'around 6 months' on labels of first foods supports advice not to start solids too early, there is the potential for ambiguity and different interpretation of labels which have the 'around 6 month' statement as well as 'not before 4 months of age' warning statement on the label.

Summary of MPI and MoH position:

- Mandate the term 'first food' or words/numbers of similar effect on a product label
- Give further consideration to a prohibition on the number 6 (other than on first foods represented as suitable for infants 'around 6 months').
- Clarify that a first food would not contain two conflicting warning statements (ie not before 4 months and not before 6 months)
- Amend the definition of 'first food'
- Consider the conflict that exists between the requirements of clause 5(2) and 5A (2) and how this might best be addressed.

Comments on the proposed draft variation - drafting issues

- If a prohibition on the use of the age/number 6 was to go ahead we suggest that the prohibition be linked to the category of food rather than linking it to the descriptor 'around'. This would ensure that the use of the number 6 is prohibited on foods for infants, unless it meets the definition of 'first food'. Otherwise, a non-first food could still use the number 6 as long as it states 'around 6'.
- Does the proposed change to cl 7(2), ie from "recommendation" to "claim", create inconsistency with cl 5(2)? Is there any reason why the Code sometimes talks about recommendations, and sometimes about claims? In relation to cl 7(2), we query whether "recommendation" is wider or narrower than "claim", and if it is in fact wise to change it?
- Clause 5(3)(b): We query whether "expressed in numbers" is the correct phrase. Do FSANZ mean numerals, or some such term? Would numbers *of months* be a more accurate term for this requirement? Could a manufacturer state $\frac{1}{2}$ a year?
- There is a typo in [2.14] of the variation. The word "a" should be either omitted and substituted, or not omitted and not substituted.
- Regarding food consistency: the previous editorial note to subclause 2(5) suggested that first foods could include rusks even though they wouldn't have a soft and smooth consistency. By removing this editorial note and stating in clause 4A that 'a first food must have a soft and smooth consistency' it is not clear that a rusk is considered a suitable first food for infants 'around 6 months'. We therefore recommend retaining the editorial note.
- There is a typo at the end of the draft explanatory statement (6.3), as it's clause 3, not clause 2, which provides for commencement.

Yours sincerely


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