

Project Officer Proposal P1044  
Food Standards Australia New Zealand  
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## P1044 – Plain English Allergen Labelling

Dear Sir/Madam

Thank you for the opportunity to comment on this proposal. New Zealand Food Safety (NZFS) supports the proposal to require mandatory food allergen declarations to be made clearer, more consistent and in plain English. NZFS considers this will be of benefit to consumers, food industry and regulators alike.

As a general comment NZFS considers there should be consistency in how allergen declarations are provided for food irrespective of the size of the package; the method of delivery of the food to consumers; and whether provided due to requirements in the Food Standards Code or voluntarily.

We also consider that providing definitions in the Food Standards Code for allergen declaration purposes is essential to provide clarity for manufacturers and importers in terms of what should be declared as an allergen. NZFS is of the opinion that alignment of definitions for terms throughout the Food Standards Code should be sought where possible and that definitions suitable for allergens declaration purposes should be provided. NZFS is strongly of the opinion that the terms used in allergen declarations should be such that they are commonly understood by consumers.

Additionally NZFS notes the drafting of this standard and the general move to cross-referencing across the Food Standards Code is quite complicated. At times a clause can refer to one or two other clauses which in turn refer to another clause(s) before the actual meaning can be determined. This could make it more difficult for stakeholders to follow. While FSANZ and ISFR will be providing guidance to assist industry in implementing the allergen declaration requirements, we consider that the drafting could be simplified.

NZFS has the following comments to make:

### **Terminology**

NZFS supports and agrees with FSANZ's assessment that allergens are declared using specified terms. NZFS is aware that the proposed specified terms do not always align with the terminology given to allergen sufferers when being given allergy test results in New Zealand. We consider that education of both health care professionals and food allergic consumers will be required to translate the results of allergy tests to what would be on the food label.

NZFS also supports mandating the prefix of the allergen summary statement to be 'Contains'. This reflects the most common approach currently used by industry.

### ***Location***

NZFS supports mandating the declaration of allergens in the statement of ingredients and also to require an allergen summary statement on food labels, directly below, and separated from the statement of ingredients.

NZFS considers that additionally mandating a summary statement gives further prominence to the allergen declaration and is particularly helpful when the statement of ingredients is long.

### ***Format***

NZFS supports the use of bold font for allergen declarations.

NZFS also supports FSANZ's proposal for the font size of allergens declared in the statement of ingredients to be no less than the other text in the statement of ingredients, and the font size of the allergen summary statement to be the same. The requirement to declare allergens using the same font size and in bold, in both the statement of ingredients and the summary statement, promotes consistency in how allergens are declared within the food label.

### ***Drafting issues***

NZFS is of the view that the drafting of the allergen declaration requirements throughout the Food Standards Code are difficult for stakeholders, including regulators, to follow and where possible should be simplified.

An example of complicated cross-referencing is Clause 1.2.3-8 which applies to foods not required to bear a label or sold to a caterer. NZFS notes that the relevant areas of 1.2.1 do not refer to this clause and considers this should be the case. Further 1.2.3-8 refers to 1.2.3-4(1), 1.2.1-9(3)(d), 1.2.1-9(7)(b), 1.2.1-15(c), which then refer on to further clauses before the intent of the clause is apparent.

However, despite significant cross-referencing, Standard 1.2.1 does not currently reference where to find the requirements for allergen declaration on foods not required to bear a label or sold to a caterer. This is inconsistent with other references included in Standard 1.2.1.

### ***Foods not required to display a statement of ingredients***

NZFS is of the view that FSANZ's proposal not to mandate the format of allergen declarations on foods exempt from a statement of ingredients or not required to bear a label is inconsistent with the aim of the proposal to make allergen information clearer and more consistent for consumers. The risk to the health and safety of consumers is the same, irrespective of the size of the package or the method of delivery of the food to consumers.

### ***Small package***

NZFS is of the view that an allergen summary statement should be required for packaged foods not required to display a statement of ingredients, such as foods in a small package and single ingredient foods. We note that this is the requirement in the EU for such foods. To ensure consistency in allergen declarations on a small package not displaying a statement of ingredients, with those on packaged foods in general (in that both the mandated specified terms are used and an allergen statement is provided), the allergen summary statement in this specific case could be required to list the mandated specified term(s) following the summary term required to be used in the allergen summary statement. This could be done, for example, by listing them in brackets after the summary term e.g.: ***Contains: tree nuts (cashew, walnut)*** or ***Contains: gluten (wheat, rye)***.

At minimum, the requirement to bold the mandated specified terms for allergens should apply to packaged food not required to bear a statement of ingredients for consistency with the formatting requirements for allergen declarations for packaged foods in general.

NZFS acknowledges that using 'Contains' as the prefix for the allergen summary statement on a small package could be mistaken by some consumers to be the full statement of ingredients. However while this may cause confusion, it does not pose a health and safety risk. NZFS considers that the need for consistency in the allergen declarations overrides the potential for confusion which can be at least partly mitigated by consumer education.

#### *Food sold to caterers*

We note that all food sold to caterers that is in a package is required to bear a label that includes an allergen declaration but not a statement of ingredients. NZFS is of the view that the same formatting requirements for an allergen summary statement that apply to packaged food for retail sale should apply to packaged foods sold to caterers.

NZFS is of the view that whenever a statement of ingredients is provided, whether due to requirements in the Food Standards Code or voluntarily, and either on a food label, in connection with the sale of a food or in documentation accompanying a food, the same formatting requirements for allergen declarations that apply to packaged food for retail sale should apply (i.e. bolding, font size, and the requirement for an allergen summary statement).

#### ***Foods not required to bear a label***

NZFS considers that where only an allergen summary statement (without a statement of ingredients) is required to be displayed in connection with an unpackaged food, (e.g. on food set out by caterers) that the formatting requirements for the allergen summary statement are not necessary. This allergen statement is likely to be provided as a separate statement, potentially with the name of the food being the only other information provided, therefore certain formatting requirements are not needed for it to be noticed.

#### **Allergen declarations for processing aids**

It is our understanding that while processing aids are not required to be listed in a statement of ingredients, if the processing aid contains an allergen, that allergen would be required to be listed only in the allergen summary statement. NZFS notes that with no corresponding ingredient listed in the statement of ingredients this could be confusing to consumers.

#### ***Specific allergens***

##### *Tree nuts*

NZFS supports the requirement for the specific name of the nine tree nuts implicated in food allergy (almond, Brazil nut, cashew, hazelnut, macadamia, pecan, pine nut, pistachio and walnut) to be listed in the statement of ingredients, which is in line with the general practice of clinicians to test for allergies to individual tree nuts rather than 'tree nuts' as a collective allergen.

NZFS is of the view that the use of the singular term 'tree nut' in the allergen summary statement implies that only one tree nut is present. This may present a safety risk to consumers who may not read the entire statement of ingredients after identifying the presence of one variety of tree nut. NZFS suggests that the plural term 'tree nuts' is required in the allergen summary statement in cases where more than one of the nine tree nuts are present, to prompt consumers to read the full statement of ingredients.

### Fish, crustacea, molluscs

NZFS supports the proposal to require fish, crustacea and molluscs to be separately declared when they are present in a food for sale.

However, NZFS is strongly of the opinion that the terms 'mollusc' and 'crustacean' are not terms that are commonly used or understood by consumers. Mandating them as the terms to be declared on the label is not in line with the aim of the proposal to provide allergen declarations in plain English. NZFS supports the condition for the specific species to be named in addition to the terms 'mollusc' and 'crustacean'. This would assist consumers in being able to detect the relevant allergen by either the specific common name or the class of allergen. An example of this would be prawn (**crustacean**). This approach would also align with requirements in the US and Canada.

Additionally NZFS does not support FSANZ's proposal to apply the 'ordinary dictionary definition' as to what is required to be declared under 'molluscs' and 'crustacea' and not to define these terms in the Food Standards Code for the purpose of allergen declarations.

NZFS is of the view that in the absence of definitions for allergen declaration purposes, it is likely that definitions elsewhere in the Food Standards Code will be used by manufacturers and regulators alike whether intended for allergen declaration purposes or not. Not providing definitions for allergen declaration purposes does not help with providing clarity for consumers, importers and manufacturers in terms of what should be declared. NZFS is of the opinion that alignment of definitions throughout the Food Standards Code should be sought where possible.

NZFS is also of the view that FSANZ's proposal not to apply the existing definition for 'fish' in Standard 1.1.2 for the purpose of declaring allergens but that the 'ordinary meaning' of 'fish' should apply for that purpose, is problematic for the reasons outlined above. Whilst it would be our preference to have a single definition, if the current definition in Standard 1.1.2 cannot be altered to suit allergen declarations, a separate definition of 'fish' for allergen declaration purposes is needed. We note that there are currently two definitions for 'sugars' in the Food Standards Code, thus a precedence has been set for different definitions for the same term but for different applications.

NZFS notes that in Supporting document 3: Safety risk assessment the following is stated: *Molluscs are classified into eight classes, of which three are important as food and therefore considered relevant in the context of food allergy. These are 1) gastropods such as abalone and land and marine snails, 2) bivalves such as oyster, mussel, scallop and clam, and 3) cephalopods such as squid and octopus.* NZFS considers that 'molluscs' should be defined in the Food Standards Code for allergen declaration purposes to be the three classes that are relevant in the context of food allergy according to Supporting Document 3.

NZFS is of the view that relying on the 'ordinary dictionary definition' of the terms is problematic in particular when it comes to imported food. The absence of a definition in the Food Standards Code may result in manufacturers relying on definitions in other jurisdictions which may or may not be the same as 'ordinary dictionary definitions'. The lack of a clear definition may also result in inconsistencies in declarations between manufacturers which is not in line with the aim of this proposal.

#### Wheat and cereals containing gluten

NZFS supports the requirement that wheat and its hybrids must be declared using the required name 'wheat', irrespective of the gluten content in a food based on the allergenicity of wheat itself.

Currently, if a food or an ingredient contains wheat, oats, rye, barley or spelt, an allergen declaration is required for the presence of that cereal. It is our understanding that FSANZ's proposal requires declaration of these cereals in the statement of ingredients as per requirements in 1.2.4.- 4. However an allergen declaration within the statement of ingredients (to **bold** the cereal name) and to list '**gluten**' in the summary statement are only required if these cereals contain gluten.

To-date, an application to FSANZ has been required to assess whether any of the ingredients listed could be exempt from an allergen declaration where gluten is not present due to processing, with the outcome of a successful application being an entry in Column 2 of the table in section S9-3. NZFS supports this approach but does not consider that this is clear in the current drafting.

NZFS considers the requirements for a 'gluten free' claim and an allergen declaration for gluten should align and be mutually exclusive. It appears that in this proposal the requirement for an allergen declaration for gluten is less stringent than the requirements for a 'gluten free' claim. Under this proposal, foods that contain oats or oat products **or** cereals containing gluten that have been malted are not permitted to make a 'gluten free' claim, however they are also not required to provide an allergen declaration for gluten. Is this the intention?

NZFS considers that the use of the term 'gluten' on the label in addition to (not instead of) the specific name of the cereal can be helpful for people preparing food for those with gluten intolerance conditions such as Coeliac disease or dermatitis herpetiformis. NZFS therefore supports the use of the term gluten in the allergen summary statement. The proposal sets out that for foods not required to display a statement of ingredients or not required to bear a label, a declaration of the individual cereal names will be required (somewhere on the label (small packages) or if requested by the purchaser/displayed in connection with the food, respectively) but 'gluten' would not be required to be declared in these situations as no summary statement is required. NZFS considers that the lack of the word 'gluten' poses a risk for gluten intolerant consumers and in particular when other people are preparing/choosing food for such consumers. This could be particularly problematic given that under this proposal 'gluten' will generally be declared on packaged foods and therefore its absence in these situations may incorrectly be taken to mean that gluten is not present. We note there is currently no requirement to identify 'gluten' and consider that this proposal should rectify this.

#### Change to Standard 1.2.4

NZFS requests clarity as to whether the change in drafting requires the mandatory specified term for the allergen declaration instead of the name of the ingredient, or in addition to the name of the ingredient? NZFS would support the mandatory specified term being used in addition to the name of the ingredient, where the name of the ingredient more clearly describes the true nature of the ingredient e.g. prawn (**crustacean**), caseinate (**milk**), not just **crustacean, milk**.

#### **Transition period**

NZFS considers that there will be an increased degree of uncertainty during the transition period for allergic consumers compared to the status quo. Given that the proposed changes will impact the labelling of a wide range of foods, it is likely to be a visible change to consumers. People might

start to rely on the declaration of allergens in bold font in the statement of ingredients and an allergen summary statement in bold when these elements will not yet be consistently used. NZFS note that the addition of the 12-month post-transition period to the two-year transition period will extend this risk.

### **Education**

NZFS would like to be involved with FSANZ in preparing communication and education materials related to the introduction of the new allergen labelling requirements for all organisations listed in the consultation document.

### **Additional comments**

NZFS also notes that in Schedule 10 7.2 FSANZ is proposing to omit paragraph (a) from the table to section S10-2 and to substitute it with:

- (a) The statement of ingredients must declare:*
  - (i) whether the source is animal or vegetable; and*
  - (ii) if the food is a dairy product, including ice cream—the specific source of animal fats or oils*

NZFS asks FSANZ to clarify what is meant by ‘animal fats or oils’ in (a) (ii)? Is this intended to read ‘animal fats and (animal) oils’ or ‘animal fats and (animal and vegetable) oils’?

NZFS is of the view that consumers’ confidence and trust in allergen labelling could be further enhanced by having “may contain” statements regulated in the Food Standards Code. We note that precautionary allergen labelling was out of scope for this proposal and would welcome FSANZ giving consideration to this matter.

### **Questions for submitters (p.30 of the Call for submissions)**

1. What proportion of foods are likely to be affected by the change?
  - NZFS has no information to provide
2. Is there likely to be a material difference in costs between Options 2 and 3? If yes, why?
  - NZFS has no information to provide
3. Is there likely to be a material difference in the benefit to consumers between Options 2 and 3?
  - NZFS has no information to provide
4. Is Option 2 or 3 sufficient for consumers to make quick and reliable assessments of foods?
  - NZFS is of the view that Option 3 allows for a quicker and simpler check of the presence of allergens for consumers and carers but we have no consumer data to provide.
5. What would be an appropriate duration of time for stock in trade provisions?
  - NZFS considers FSANZ proposal for a 12 month stock-in trade provision following a two-year transition period adequately takes into account the shelf-life of most foods.



6. Do you expect to have any notification, education, permission, purchasing, record keeping, enforcement, publication and documentation, procedural, delay, labelling or any other costs associated with the proposed changes to the Food Standards Code?

- NZFS considers that any implementation/enforcement costs or costs related to education of manufacturers and consumers will be covered as part of business as usual.

7. Any views in relation to unintended consequences associated with Option 2 or 3.

- NZFS notes that this proposal (either Option) does not change the status quo that allergen declaration requirements (1.2.3 – 4) apply also to foods for special medical purposes (FSMP) covered by Standard 2.9.5. NZFS is concerned about the potential implications for these foods, given the new more prescriptive proposed requirements for allergen declarations. The majority of FSMP are imported to New Zealand and they may be the sole source of nutrients for some patients.

NZFS considers that the purpose of Standard 2.9.5 is to protect the health and safety of FSMP consumers. It would not be in the interests of those people who need FSMP for allergen declaration requirements to become a barrier to the supply of these products. Given the relatively small size of the New Zealand market, manufacturers of these highly specialised products would be unlikely to change their labels for New Zealand (and Australia) specifically.

In our view, it is important that consumers that require FSMP are provided with a product suitable for their medical condition, and that product availability is not unnecessarily restricted. Therefore we ask FSANZ to consider the need to ensure the continued importation and supply of these specialised products to those consumers who need them without the new proposed allergen declaration requirements creating an unintended barrier for imports.

We are happy to discuss any of the above comments with you further.



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