



Nestlé Submission

2nd Call for Submissions - Proposal P1044

Plain English Allergen Labelling

February 2020

## **Acknowledgment**

Nestlé is pleased to be able to respond to the second Consultation Paper on plain English allergen labelling.

## **Related submissions**

Nestlé was involved with, and supports, the comments made in the submissions of the following parties:

- Australian Food and Grocery Council (AFGC)
- New Zealand Food and Grocery Council (NZFGC)
- The Allergen Bureau

# Submission to FSANZ 2<sup>nd</sup> CFS Proposal P1044

February 2020

## Overall Support of Proposal Objective

Nestlé agrees with initiatives outlined in this proposal to make allergen labelling clear and consistent for all consumers. For the past number of years, Nestlé has voluntarily implemented allergen bolding, allergen summary statements, and precautionary allergen labelling statements on product labels in alignment with Industry Best Practice. In addition, Nestlé has been labelling for lupin as an allergen well in advance of the mandatory requirement to do so under the Australian New Zealand Food Standards Code (ANZFSC) and has additionally implemented labelling for celery and mustard to align with the Nestlé global initiatives.

Nestlé has long supported the Allergen Bureau, an industry 'not for profit' organisation by being a member of the executive board, including the role of President for many years. We have been actively engaged in developing evidenced based Best Practice guidance in allergen management and labelling including allergen risk review programs and tools for the food industry. These industry programs and tools assist in the management of food safety and help build credible and trusted easy to understand allergen information for the allergic consumer. We also work in close collaboration with the AFGC and as a Member of the FSANZ Allergen Collaboration. The Allergen Collaboration strengthens engagement and collaboration amongst a range of key stakeholders and it facilitates with the sharing information and development of common approaches to enhance the effectiveness of risk management of food allergens, The objective is aligned with the Allergen Bureau and Nestlé by supporting consumers to make safer food choices. Nestlé considers food safety management is paramount and is at the core of our Business philosophy.

## Nestlé supports Option 3 – with some changes

*Declare allergens using mandatory specified terms in bold font, with additional requirements to declare in the statement of ingredients as well as in a separate allergen summary statement -.*

**Nestlé supports changes to the ANZFSC to introduce bolding of allergens, and bolded allergen summary statements on labels however with some modifications. We do not support application to Food for Medical Purposes. We also recommend that a degree of flexibility is introduced to remove some of the more restrictive provisions to introduce flexibility and practicality and to reduce the cost impact to industry, whilst still providing the appropriate transparent allergen information for the allergic consumers and their carers to enable safe and appropriate food choices.**

## Overarching comments

Nestlé **does not support** the application of P1044 to Foods for Special Medical Purposes (FSMP). Due to the specialized nature of these products, labels are shared between countries to meet minimum production volumes and efficiencies. These products are often manufactured in overseas factories. To maintain access to these products for consumers in Australia and New Zealand, their labels must continue to be shared with other countries. Applying the allergen labelling requirements in this Proposal to FSMP will potentially restrict the availability of these products to vulnerable population groups. Given the restrictions to selling channels already in place for these products, as well as the fact that they are recommended following the advice of a health care professional, Nestlé **does not support** the application of P1044 requirements to FSMP.

For all other products, **Nestlé supports** the proposal to declare allergens in bold format in the statement of ingredients.

For all other products, **Nestlé supports** the introduction of mandatory specified terms for allergens in the statement of ingredients.

For all other products, **Nestlé supports** the introduction of an allergen summary statement, in bold format, however recommends maintaining flexibility in some of the formatting proposals, to reduce costs for manufacturers by amending the following proposed elements which are detailed further in the body of this submission:

- Remove the prescriptive nature of the placement of the allergen summary statement directly below the statement of ingredients
- Make it clear that the allergen summary statement is not a 'standalone' requirement on the separate line (that is, allowing other information to be placed on the same line).
- Remove the restriction of not allowing the same bolding to be applied to other allergens recognised internationally such as celery and mustard in the ingredient list.
- Remove the restriction on only permitting the word 'gluten' in the allergen summary statement if more specified terms like oats, rye, barley have been applied.
- Remove the restriction on only permitting the word 'tree nut' in the allergen summary statement if more specified terms such as cashews, almonds etc have been applied.
- Allow the plural term of 'tree nuts' to be listed in the allergen summary statement where it makes sense to do so.
- Remove the restriction of only permitting the word 'crustacea' and 'mollusc' in the statement of ingredients if more specified terms such as 'prawn, oyster' etc. have been applied.

**Nestlé supports** the P1044 requirements aligning with the current small pack and inner portion pack ingredient/allergen labelling exemptions.

## Costs

Nestlé wishes to outline the cost impact of adopting all elements of this proposal

- Nestlé sells over 2,000 SKU's in Australia and New Zealand
- Over 70 % of these SKU's will require a label change to adopt all elements of this proposal.
- The cost to make changes to labelling is over \$1 Mio AUD.
- If flexibility is permitted as proposed above, the % of labels requiring a label change will drop significantly, depending on the extent of the flexibility permitted.

## Detailed Response

- Food for Special Medical Purposes (FSMP) Regulated Under Std 2.9.5
  - Nestlé sells a wide range of FSMP's. These products are available through pharmacy outlets or recommended by healthcare professionals in institutions, addressing a spectrum of ages and health conditions from paediatric allergy to malnutrition amongst the frail and elderly. We are investing and innovating rapidly in these areas. Due to the specialised nature and consumer base for these products, they are often produced in one factory and supplied globally, with shared labels.
  - In Australia and New Zealand, declaration of allergens in the statement of ingredients on FSMP's, where they are shared with the EU, are distinguished using underlining according to EU regulations as shown in the below FSMP example where the English translation is shared with an EU country.

**AU NZ MT** For the dietary management of patients with malnutrition or at risk of malnutrition that may have elevated protein needs. **Important notice:** Use under medical supervision. Suitable for use as a sole source of nutrition. Only suitable from 3 years onwards. Not for intravenous use. For oral or enteral use only. **Directions for use and Storage:** Best served chilled. Unopened, store in a cool dry place. Recap unused portion, refrigerate and use within 24 hours. If poured out of the pack, cover tightly and use within 6 hours. **Recommended dosage:** 1-3 servings per day as a supplement. Daily intake should not exceed 4 x200ml or max 80g protein. **Ingredients:** Water, milk protein, glucose syrup, sucrose, vegetable oil (rapeseed), minerals (potassium chloride, potassium citrate, sodium citrate, magnesium citrate, magnesium oxide, ferrous sulphate, zinc sulphate, manganese sulphate, copper sulphate, sodium fluoride, chromium chloride, sodium molybdate, potassium iodide, sodium selenate), emulsifier (E471), flavouring, starch, vitamins (C, E, nicotinamide, pantothenic acid, B6, A, B1, B2, folic acid, K, biotin, D), stabiliser (carrageenan). (MT: Gluten free). UHT sterilised. Packaged under a protective atmosphere.

- However, if it becomes mandatory to bold allergens, to use specific allergen terms, and to include an allergen summary statement distinctly separated from the statement of ingredients – this will create a large impact on labels currently shared with English-speaking EU markets.
- EU Legislation specifically prohibits an allergen summary statement. The impact of this proposal is such that any labels shared with English-speaking EU markets will become non-compliant and will render label sharing non-viable.
- In addition, when label space is limited on smaller pack sizes, or on labels shared by multiple countries – (particularly for Food for Special Medical Purposes where labels are shared by multiple markets and the ability to have a label just for Australia / New Zealand is not possible due to minimum label order quantities) the only way an allergen summary statement could be included is to locate the allergen summary statement directly following the ingredient list. Examples below
- Food for Special Medical Purposes Label examples – shared label with other countries (compliant to US) where allergen summary statement is otherwise

compliant with proposed regulation apart from allergen summary statement on separate line

**Ingredients:** Water, maltodextrin, **milk** proteins (calcium caseinate, sodium caseinate), vegetable oils (rapeseed, sunflower), medium chain triglycerides, minerals (trisodium citrate, potassium chloride, potassium phosphate, magnesium citrate, tricalcium phosphate, potassium citrate, sodium chloride, ferrous lactate, zinc sulphate, copper gluconate, manganese sulphate, sodium fluoride, sodium selenite, chromium chloride, sodium molybdate, potassium iodide), emulsifiers (E472c, E471), stabilisers (E460, E466, E407), **fish** oil, choline bitartrate, vitamins (C, E, niacin, pantothenic acid, B6, B1, B2, beta-carotene, A, D, B12, K, folic acid, biotin), antioxidant (E304). **Contains milk and fish.** UHT sterilised. Packaged in a protective atmosphere.

#### INGREDIENTS

Soy Crisp (Soy Protein Isolate, Tapioca Starch, Salt), Soy Protein Isolate, Sorbitol, Soy Cores, Polydextrose, Oat Flakes (7%), Maltodextrin (Corn), Minerals (Potassium Citrate, Calcium Carbonate, Sodium Phosphate, Sodium Citrate, Magnesium Carbonate, Magnesium Phosphate, Calcium Phosphate, Copper Sulphate, Iron Pyrophosphate, Potassium Iodate, Sodium Selenate, Zinc Oxide, Manganese Sulphate), Glycerol, Fructose-Glucose Syrup, Cranberries in Syrup (Cranberries (2.4%), Sugar, Sunflower Oil), Rapeseed Oil, Water, Vitamins (Ascorbic Acid, Vitamin E Acetate, Niacinamide, Vitamin A Acetate, Calcium Pantothenate, Biotin, Cyanocobalamin, Folic Acid, Cholecalciferol, Pyridoxine Hydrochloride, Riboflavin, Phylloquinone, Thiamin Mononitrate), Sweeteners (Sucralose, Acesulfame Potassium), Flavour, Emulsifier (Soy Lecithin). **Contains Soy and Oats. May contain Peanuts, Milk and Tree Nuts.**

- Vitaflo: Since 2012, Nestlé Health Sciences has sold a very specialised range of FSMP products under the Vitaflo Branding <https://www.nestlehealthscience.com.au/vitaflo>.
  - These products are specialised clinical nutrition products for Inborn Errors of Metabolism (IEM), nutrition support and disease specific conditions such as renal disease.
  - Vitaflo's products are developed for infants, children and adults with genetic disorders that affect how food is processed by the body. These include phenylketonuria (PKU), maple syrup urine disease (MSUD) and homocystinuria (HCU).
  - Inborn errors of metabolism are infrequent at an estimated 1 in 2,500-50,000 births depending on the disorder but persist from birth to adulthood. They constitute a significant proportion of genetic disorders detected in new born babies.
  - In Australia and New Zealand, these products are all sold on prescription (after consulting with a relevant healthcare professional) direct to pharmacy, most of the products are on the Pharmaceutical Benefit Scheme and many patients are long term users, having relied on these products for the dietary management of their conditions.
  - There is a product range of 115 FSMP SKU's. All products are made overseas for global supply. The labelling is shared with the English text applying to all English-speaking markets. Therefore, the impacts of P1044 will mean that requirements introduced (such as an allergen summary statement) that are not acceptable in other English-speaking markets will become a major roadblock for these products.

- FSMP's have restrictions on how they can be sold according to Division 2 of Std 2.9.5-5, and Nestlé considers an **exemption for FSMP** to these allergen labelling requirements is appropriate as these products are being recommended by health care professionals, considering any allergen requirements. These products are not for sale in the standard retail channels.
- The labels are shared with 16 other countries. Labels do not currently have allergen summary statements as not required or permitted in other markets. EU legislation does not permit the voluntary use of an allergen summary statement "Contains: wheat' etc to repeat mandatory allergen information. Information about allergens as ingredients can only be presented in the mandatory format (i.e. emphasised within the ingredient list). This would mean that Australia and New Zealand would need their own label which would result in products no longer being viable and removed from Australian and New Zealand market. To ensure the continuity and future availability of these FSMP products for Australian and New Zealand consumers in need, an exemption is vital for these types of products
- Presentation of allergen declarations
  - Prescriptive Placement of Allergen Summary Statement

Nestlé **does not support** the proposal's requirement for the prescriptive placement of an allergen summary statement to be 'distinctly separated from the statement of ingredients'

Nestlé considers that (with the exemption of FSMPs) placement of a (bolded) allergen summary statement either directly above or below the statement of ingredients, or on the same line as the last line of the statement of ingredients, provides flexibility for manufacturers and meets the preference by food allergic consumers for some method of differentiating the allergen summary statement from other labelling information (e.g. the statement of ingredients) to assist allergen identification. Mandating this requirement introduces significant cost of re labelling for industry.

When label space is limited on smaller pack sizes, or on labels shared by multiple countries – the only way that the allergen summary statement can be accommodated is to locate it directly following the ingredient list. Examples below

Example 1: Label which is otherwise compliant with proposed regulation apart from allergen summary statement on a separate line



Example 2: 65g bar – small space limitations, allergen summary statement not on separate line

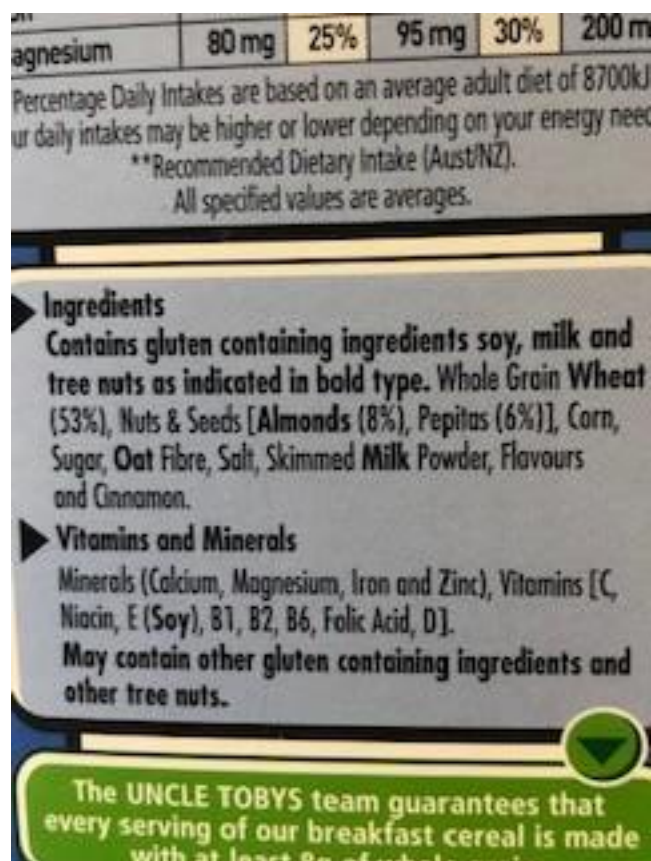


Nestlé would also like clarification on whether the requirement for the allergen summary statement to be 'distinctly separated' means that this is a 'stand-alone' requirement – meaning that no other information can be on the same line – for example, where the precautionary allergen statement (or other information) is also on the same line as the allergen summary statement.

- Font size and type
  - Nestlé **supports** the CFS proposal requiring allergen declarations to be made using bold font in a font size no less than the other text in the statement of ingredients, with the font size for text in the allergen summary statement to be the same as the declarations made in the statement of ingredients.
  - However, Nestlé would like clarification as to whether this prevents other ingredients from being bolded in the same way in the ingredient list. For example – in the labels shown below, the following elements are also bolded in the same manner as the prescribed allergen names in the statement of ingredient
    - Celery and mustard (allergens that Nestlé currently bolds to align with mandatory declarations in Europe). See below for example.
    - Sub headings in the ingredient list. See below example of a breakfast cereal label where the heading 'Ingredients' is bolded as well as the sub heading 'Vitamins and Minerals' is bolded in the same typeface, colour and format as the allergens.



Nestlé considers that not permitting these elements to be also bolded is overly restrictive and introduces an unnecessary regulation.



- Nestlé **supports** the CFS proposal to use the prefix 'Contains' followed by a list of the allergens present in the food for the allergen summary statement.

- Use of PEAL Terms

- The proposal requires allergens be declared using mandatory specified terms in both the statement of ingredients and the allergen summary statement.
- Nestlé **supports in part** the introduction of specified terms but **does not support** mandating different terms in the allergen summary statement for some allergens. This introduces unnecessary regulatory prescription and imposes costs of changing labels which may otherwise be compliant with the new proposal. Nestlé considers that if manufacturer's wish to use the specific specified terms in both the statement of ingredients as well as the allergen summary statement then they should be permitted to do so.

As an example, in the below label - the allergen summary statement which currently reads 'Contains soy, oats and fish' would need to change to 'Contains soy, gluten and fish' – a costly exercise when the current labelling provides allergic consumers specific information on the allergens present which is also bolded.

**Ingredients:** Water, maltodextrin, **soy** protein, vegetable oils (rape-seed, sunflower), fibres (inulin, **soy** fibre, **oat** fibre), medium chain triglycerides, minerals (sodium citrate, potassium chloride, potassium citrate, sodium chloride, magnesium oxide, potassium phosphate, zinc sulphate, manganese sulphate, ferrous lactate, copper gluconate, sodium fluoride, potassium iodide, sodium selenite, chromium chloride, sodium molybdate), **fish** oil, choline bitartrate, vitamins (C, E, niacin, pantothenic acid, B1, B6, B2, A, beta-carotene, folic acid, K1, biotin, D3, B12), antioxidant (E304). **Contains soy, oats and fish.** UHT sterilised. Packaged in a protective atmosphere.

- Fish & Mollusc: Nestlé **does not support** the labelling of only crustacea and only mollusc in the statement of ingredients – effectively not permitting the labelling of specific crustacea or mollusc names in the ingredient list.

To illustrate this point – please see the below statement of ingredients for Maggi Oyster Sauce. In this case, oyster, a mollusc is also a characterising ingredient. Therefore, the requirement under Std 1.2.10 is to declare the % of characterising ingredient – oyster (which is also bolded).

Under P1044 the intention is that only the name 'mollusc' can be used in both the statement of ingredients and the allergen summary statement. Both the requirement to label oyster as a characterising ingredient as well as a mollusc in the statement of ingredients cannot be satisfied.

Maggi Oyster Sauce



In this next label – Maggi Fish Sauce, the fish extract contains shrimp – which is a crustacean. Under P1044, the intention is that only the name ‘crustacean’ can be used in both the statement of ingredients and the allergen summary statement. However, in this case, the actual type of crustacean has been labelled (and bolded).

If this were a ‘seafood sauce’ where both fish and shrimp were characterising ingredients, then both would need to be % labelled (and bolded) under Std 1.2.10 and including flexibility as described above would allow both requirements to be met.

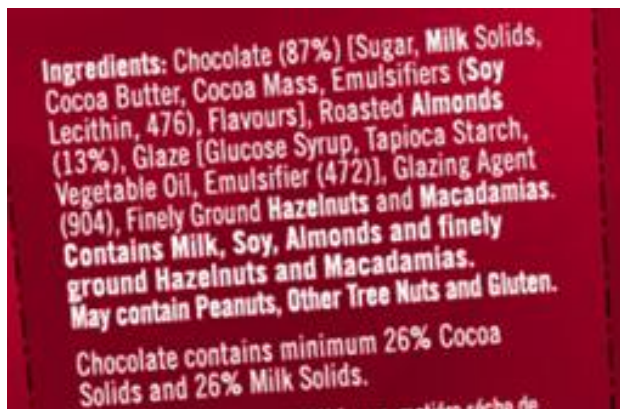
#### Maggi Fish Sauce



Nestlé recommends that both the specific type of crustacea / mollusc OR the generic name ‘crustacea’ or ‘mollusc’ be permitted to be used (and bolded) in the statement of ingredients to provide both flexibility for manufacturers, as well as the ability to % label characterising ingredients. Both options provide appropriate information for allergic consumers.

- Tree Nuts:
  - Nestlé **supports** the proposal to require the individual declaration of the nine tree nuts mentioned in the CFS in the statement of ingredients of packaged foods.
  - Nestlé **does not support** the intention to restrict the labelling of tree nuts in the allergen summary statement to the term 'tree nut'. Notwithstanding the term is grammatically incorrect should there be more than one type of tree nut in the product, the lack of flexibility in preventing manufacturer's from using the specific name of one of the nine tree nuts in the allergen summary statement is unnecessarily prescriptive, imposes cost where the specific tree nut is currently labelled in the allergen summary statement, and does not take information away from consumers.
  - An example to illustrate this point is 'Nestlé Scorched Almonds' (see below example). The product contains almonds with some finely ground hazelnuts and macadamias. Under P1044 the allergen summary statement would need to say, 'contains tree nut'.

#### Nestlé Scorched Almonds



- If we need to state only 'tree nut' in the summary statement consumers may expect there to be a (singular) tree nut labelled in the statement of ingredients. There is potential for confusion when they see three different types of tree nuts specifically declared
- Wheat: Nestlé **supports** the proposal requiring the declaration of 'wheat' in all instances where wheat or wheat hybrid cereals are present in a food (unless there is an existing exemption from declaring wheat, for example certain glucose syrups made from wheat starch).
- Specific Cereal Names:
  - Nestlé **supports** the use of specific cereal names 'barley', 'rye', 'oats', and 'spelt' in the statement of ingredients (along with 'wheat').
  - Nestlé **does not support** the declaration of the term gluten only in the allergen summary statement for barley, rye, oats and spelt (when present). Manufacturer's

should have the flexibility of using either the specific cereal names OR the term gluten in the allergen summary statement. Mandating otherwise is overly prescriptive and imposes significant cost to change.

- **Generic Names:**
  - Fish: Nestlé **supports** retaining the existing generic name 'fish' as a suitable allergen declaration for fish;
  - Nuts: Nestlé **supports** the proposal to remove the generic name 'nuts' and its condition of use should be removed from the table to section S10—2.
  - Cereals, starch and fats/oils: Nestlé **supports** the retention of permissions to use 'cereals', 'starch', and fats/oils as generic ingredient names as not all of these ingredients are derived from listed allergens and those that are required to be labelled in the statement of ingredients.
  - Cheese, milk protein and milk solids: Nestlé **supports** no changes to the permissions to use the generic ingredient names 'cheese', 'milk protein' and 'milk solids' as 'milk' would also need to be labelled in the ingredient list if the generic name 'cheese' is used. The generic ingredient names 'milk protein' and 'milk solids' already include the name 'milk'.

## Response to the Specific Questions Raised in the Call for Submissions

Option 1: Maintain the status quo (i.e. no change to allergen declaration requirements).

Option 2: Declare allergens using mandatory specified terms in bold font.

Option 3: Declare allergens using mandatory specified terms in bold font, with additional requirements to declare in the statement of ingredients as well as in a separate allergen summary statement.

### 1. What proportion of foods are likely to be affected by the change?

Over 70% of labels for products that Nestlé sells in Australia and New Zealand will need a label change if the proposed changes (Option 3) are regulated.

Changes to implement Option 3 will range from

- making FSMP products non-viable for sale
- introducing an allergen summary statement
- changing the placement of the current allergen summary statement on existing labels so that it is positioned directly under the ingredient list
- changing the name of 'gluten containing ingredients' to 'gluten' in existing allergen summary statements.
- including the word 'wheat' in wheat containing SKU's in addition to the word 'gluten' in existing allergen summary statement for relevant labels
- changing specific names of tree nuts to the generic term 'tree nut' in existing allergen summary statements.

- Changing specific names of oats, rye, barley, spelt in existing allergen summary statements to 'gluten'
- Option 3 introduces a much higher level of detail and regulatory burden to Nestlé, and industry. It introduces very restrictive mandatory requirements on placement of the allergen summary statement, which may not be required if the summary statement can be read near the ingredient list (directly preceding the ingredient list for example). Option 3 appears to not allow other information to be placed on the same line as the allergen summary statement. This requires clarification. Option 3 mandates that only prescribed (generic) allergen names for gluten containing ingredients and tree nut are to be used in the allergen summary statement – and more specific names are not permitted. So, where we currently list 'Contains gluten containing ingredients' this would need to change to 'Contains gluten'. We also cannot say 'contains oats and rye' for example.
- In addition, if wheat is present this cannot be covered off by labelling 'contains gluten' in the allergen summary statement as we now have the flexibility to do. This will also impact on a large number of labels.
- We consider not being permitted to list specific tree nuts in the allergen summary statement to be overly prescriptive. If a manufacturer wishes to repeat in the allergen summary statement the specific names of the tree nuts that are listed and bolded in the ingredient list, they should be permitted to do so as this is providing more not less information to consumers.
- Restricting the labelling of crustacea and molluscs in the statement of ingredients will also require a change to the current labels.

## **2. Is there likely to be a material difference in costs between Options 2 and 3? If yes, why?**

Under Option 2 far less label changes would be required.

At present Nestlé already bolds allergens for most labels. There would be a much lower percentage of labels that would need to introduce bolding of allergens. (< 50 labels)

If FSMP labels were not exempted, the impact would be greater.

Under Option 2 - Declare allergens using mandatory specified terms in bold font, the following changes would be required

Elements of current ingredient statement that are also bolded in the same manner as the prescribed allergen names for ingredient statements would need to be changed

- celery and mustard (allergens that Nestlé currently bolds to align with mandatory declarations in Europe).

Nestlé considers that not permitting these elements to be also bolded is overly restrictive and introduces an unnecessary regulation.

### **3. Is there likely to be a material difference in the benefit to consumers between Options 2 and 3?**

Since Nestlé is already bolding allergens in the statement of ingredients and is already displaying an allergen summary statement on the vast majority of our product labels (with some exceptions like FSMP products) we do not believe there would be a material difference in the benefit to our consumers between Options 2 and 3.

Clearly the current way that Nestlé is labelling allergens is providing the relevant information on allergens for our consumers. Looking at our consumer contacts regarding allergens, it does not seem that the additional proposed changes of Option 3 will provide the information that consumers are asking for more clarity on with regards to allergens. In 2018-2019 we received 2493 contacts regarding allergens. Questions related to gluten make up 50% of these allergen related contacts from consumers.

In general, most of the allergen related contacts we receive fall into one of the following categories:

- asking if a new product is “gluten free/vegetarian/nut free?
- Asking why a “gluten-free” product, contains “wheat” in the ingredients list- consumers who purchase the product and are confused about the supposed contradiction.
- Asking if a product is ‘allergen free’ even when there is nothing listed on the ingredient list. Consumers often look for call outs that confirm that a product is “allergen-free” as it gives them an extra reassurance that this product is safe for consumption.
- Asking if a product is made in a nut free/egg free/dairy free/etc facility?” – consumers sometimes assume that for a product to be free from an allergen, it needs to be made in a facility that is completely free of their particular allergen.
- Asking about the allergen status on products in different packaging formats – e.g. Smarties Easter Egg vs fun packs vs normal sized Smarties box. Even more so when there are parallel import products in the market.
- Clarifying precautionary labelling statements - consumers or caregivers sometimes try to do a risk assessment about purchasing/using products with a “may contains” statement.
- Asking about allergens that are not required to be labelled (such as garlic)

Considering the type of contacts we currently receive for allergens we don’t believe that Nestlé’s consumers will see a material difference in benefits between Options 2 and 3.

It is also unlikely that the proposed changes will lead to any decrease in the amount of contacts we receive from consumers currently regarding allergies as the changes proposed (which are in addition to the practises we already employ for labelling allergens) don’t address the key reasons consumers contact us about – in particular precautionary allergen labelling which make up 10% of our consumer contacts.

### **4. Is Option 2 or 3 sufficient for consumers to make quick and reliable assessments of foods?**

We don’t have specific information relating to this question.

### **5. What would be an appropriate duration of time for stock in trade provisions?**

Infant formula in cans typically have a 3-year shelf life. The current stock in trade provision does not allow any time for the labels to be changed and still comply with the 12-month stock in trade



provision. Infant formula is manufactured overseas and supply chain timings including shipping time, time to change label artwork etc does not allow for these products to be changed under the current stock in trade timings proposed. We recommend an 18 – 24 month stock in trade provision be applied which would provide a reasonable timeframe to make these changes (given this is not an urgent food safety need).

It is also preferable to combine any changes mandated via this proposal with other potential impending label change initiatives such as the upcoming Added sugar Labelling proposal and the Health Star Rating changes required as part of the Five-Year review. There are so many regulatory and non-regulatory initiatives and programs of importance all coming to fruition at similar times. We encourage any initiatives to align implementation as it will mean less packaging waste, less complexity and unnecessary Business costs being imposed through several reworkings of our many labels. We do however remain supportive of clear transparent food safety allergen information being provided and consider it paramount to enabling safe consumer choice.

**6. Do you expect to have any notification <sup>6</sup>, education <sup>7</sup>, permission <sup>8</sup>, purchasing<sup>9</sup>, record keeping<sup>10</sup>, enforcement <sup>11</sup>, publication and documentation <sup>12</sup>, procedural <sup>13</sup>, delay <sup>14</sup>, labelling <sup>15</sup> or any other costs associated with the proposed changes to the Food Standards Code?**

Nestlé considers that the full suite of changes involved with Option 3 significantly increases the risk of error on labels – due to the sheer number of changes being proposed.

If oats, rye, barley or spelt are declared in the allergen summary statement as ‘Contains gluten containing ingredients’ instead of ‘contains gluten’ or should the allergen summary statement state ‘contains oats, rye, barley’ instead of ‘contains gluten’ - these ‘mistakes’ could be viewed as non-compliant by the jurisdictions under the current proposal and because they are related to declaration of allergens – will these ‘mistakes’ be considered severe enough to recall or withdraw a product from shelves? What if an allergen is correctly declared and bolded in the statement of ingredients, but inadvertently omitted from the allergen summary statement? Would the jurisdictions view that as requiring a recall? Obviously, this would not be a risk proportionate response, since the allergens present are declared, however it is unclear whether this could be the case, or whether the decision could be different depending on the jurisdiction.

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

**Alignment with other systems**

- Most food companies use GS1 as the system of providing product information via barcodes on retail products.
- The GS1 Standard requires a new barcode to be generated where there is any change in allergen declaration information. This could raise some very impactful consequences with manufacturers and retailers. Where a new barcode could be required to be issued to change a label.



6 Notification - businesses face costs when they have to report certain events to a regulatory authority, either before or after the event has taken place. 7 Education - businesses face costs when keeping up to date with regulatory requirements. 8 Permission - businesses face costs when applying for and maintaining permission to conduct an activity. 9 Purchasing - businesses face costs when having to purchase a service (advice) or a product (materials or equipment) to comply with a regulation. 10 Record keeping - businesses face costs to keep statutory documents up to date. 11 Enforcement - business costs when cooperating with audits, inspections and regulatory enforcement activities. 12 Publication and documentation - businesses face costs when having to produce documents for third parties. 13 Procedural - businesses face non-administrative costs imposed by some regulations. 14 Delay - businesses face costs when administrative delays result in expenses and loss of income. 15 Labelling - declaring the presence of allergens on labels or displaying or providing information to consumers about the presence of allergens where a label is not required.