

5 August 2016

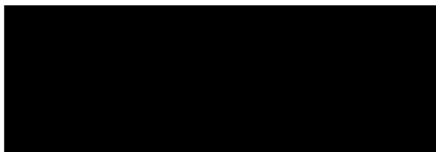
Project Manager
Food Standards Australia New Zealand
PO Box 10559
The Terrace
Wellington 6143
NEW ZEALAND

Email: submissions@foodstandards.gov.au

Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the ***Review Consultation Paper – Application A1090: Voluntary Addition of Vitamin D to Breakfast Cereal.***

Yours sincerely

A solid black rectangular box used to redact the signature of Katherine Rich.

Katherine Rich
Chief Executive



***Review Consultation Paper – Application
A1090: Voluntary Addition of Vitamin D to
Breakfast Cereal***

**Submission by the New Zealand Food & Grocery
Council**

5 August 2016

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on the ***Review Consultation Paper – Application A1090: Voluntary Addition of Vitamin D to Breakfast Cereal***.
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$34 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$31 billion in export revenue from exports to 195 countries – some 72% of total merchandise exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 44% of total manufacturing income. Our members directly or indirectly employ more than 400,000 people – one in five of the workforce.

OVERARCHING COMMENTS

3. NZFGC is strongly of the view that public health and safety is not protected by applying the NPSC to permission to fortify ready-to-eat breakfast cereal with vitamin D. There is no scientific evidence to support such an approach. The NPSC is not an appropriate tool to apply to fortification decisions. Disqualification based on the NPSC disregards the significance of breakfast cereal to deliver vitamins and minerals at a critical time of the daily dietary intake, and for vitamin D, with an unequivocal positive correlation with musculoskeletal diseases.
4. As we have stated, ANY decrease in supplementation through breakfast cereal must have a negative impact on this range of diseases that would outstrip unknown, prospective but potentially nil benefits of limiting the fortification of breakfast cereals with vitamin D. In light of this, we believe this regulatory change should be re-assessed by the Office of Best Practice Regulation.
5. NZFGC is very concerned at the future of fortification generally, the application of the NPSC more widely across the food supply to fortification decisions already made and to proposals in the future. We are very concerned at the significant and negative impact the application of the NPSC will have on food choices, innovation and development and ultimately on the economics of manufacturing for Australia and New Zealand. NZFGC believes that the fundamental issues are about the principle of skewing fortification based on single nutrients, using a tool that may not be appropriately assessing the ‘healthfulness’ of a food category when that same tool was rejected for applying the Health Star Rating (HSR), a system intended to reflect healthfulness.

SPECIFIC COMMENTS

Review request and policy clarification statement

6. NZFGC is extremely concerned at the potential perversion of the evidence based, standards setting system that can be amended at will by Ministers without consultation. We appreciate this is beyond the scope of FSANZ to address but it is an important precursor to our comments.

Nutrient profile tool

7. NZFGC has, on several occasions, supported the view that a profiling tool established for one purpose should not be used for another purpose unless it is thoroughly reviewed and tested for the alternate purpose. We see no evidence of this. Irrespective of expectations about tools in place from Ministers and officials, FSANZ must be cognisant of its reputation

and integrity in applying the NPSC for the purpose of determining a food's appropriateness for fortification. FSANZ's standing and credibility are essential in this process. There are known limitations to the application of the NPSC which is why it was not used without modification for the HSR system. We suspect the same limitations apply to this application.

8. We understand that the NPSC is not a tool suited to or designed for assessing relative healthfulness across the food system (that is, beyond its intended purpose). For this purpose, significant amendments were required: the underlying tables had to be substantially altered; the profiler scores had to be re-centred; and categories had to be utilised other than those found in the NPSC and tested against external criteria (the Australian Dietary Guidelines). We cannot accept that this was not also necessary for assessing the healthfulness of cereals and therefore their appropriateness for fortification.
9. We also understand that the NPSC scores are limited (capped) within the NPSC tables. However, NPSC scores beyond the range covered by the NPSC tables are where many nutrient content scenarios with healthiness implications are operating. These foods with scores beyond the caps of the NPSC cannot be assessed using the NPSC. When foods go outside the working range of the NPSC nutrient tables in one or more nutrients they become more and more difficult to assess. Assessment is exacerbated because there are a large number of foods with nutrient content beyond the range covered by the NPSC nutrient tables. For example, and most significantly for breakfast cereals, the standard NPSC fibre table does not extend above 4.7% (even if the full NPSC was used) nor protein above 8%. A very large percentage of foods have content beyond these levels and as noted, cereals in particular in relation to dietary fibre.
10. At the recent FSANZ symposium held to mark the 20th Anniversary of the Food Treaty between Australia and New Zealand, Professor Sir Gluckman stated that "...we do not just eat nutrients - ... we eat food" and it is in this context that the balance of our comments are made.

Breakfast cereal

11. Breakfast cereal falls within the one of the five food groups that are reflected in the nutrition guidelines of both Australia and New Zealand. As FSANZ notes, both guidelines provide additional advice about choosing cereals high in wholegrains and to limit intakes of foods containing certain nutrients. The variability of breakfast cereal is reported to be very wide by FSANZ but we suspect this will be outdated due to the significant reformulation that has been applied as a result of the burgeoning application of the HSR on the cereals category, a point we will return to.
12. Breakfast consumption is most significant and at its highest amongst children. Research (Williams 2014) associates breakfast cereal consumption with diets higher in vitamins and minerals and lower in fat but not with increased intakes of total energy or sodium. The research stated that "Regular breakfast cereal consumption is associated with a lower body mass index and less risk of being overweight or obese... Presweetened breakfast cereals do not increase the risk of overweight and obesity in children." The evidence relating to breakfast cereals and its impact was systematically assessed using the stringent Australian National Health and Medical Research criteria.
13. The impact on vitamin D, which FSANZ calculates for Australian population groups aged 12 and beyond as being less than 2% of the potential increase in mean total serum vitamin D status, does not address the impact on children to 12 years where arguably breakfast cereal consumption is at its highest.
14. Vitamin D plays a crucial role in the musculoskeletal system: "Vitamin D is well known to exert multiple functions in bone biology, autoimmune diseases, cell growth, inflammation

or neuromuscular and other immune functions” (Wintermeyer et al 2016). Wintermeyer’s research is only the most recent to identify a positive correlation between vitamin D status and rickets, osteomalacia, osteopenia, primary and secondary osteoporosis as well as sarcopenia and musculoskeletal pain. While these diseases all positively correlate with a vitamin D deficiency, we know there is controversy about levels of supplementation. However, ANY decrease in supplementation through breakfast cereal must have a negative impact on this range of diseases that would outstrip unknown, prospective but potentially nil benefits of limiting the fortification of breakfast cereals with vitamin D.

15. All breakfast cereals are significant drivers for milk consumption, thereby delivering increased calcium. This is particularly significant for children when the skeletal system is growing rapidly. The prospect of applying the NPSC to limit vitamin D fortification, signals limitations to the nutrient supplementation of cereals and other foods in the future.
16. NZFGC believes that irrespective of the consumption of breakfast cereal that does not meet the NSPC, the fundamental issues are about the principle of skewing fortification based on single nutrients. We are also concerned that this skewing is based on the use of a tool that may not be appropriately assessing the ‘healthfulness’ of a food category which is within a key food group and that comprises an essential part of the daily diet.

Question 1: The basis of voluntary vitamin D addition to breakfast cereal was public health need. In your view, is public health and safety protected by applying the NPSC to permission to fortify ready-to-eat breakfast cereal with vitamin D? Please provide evidence for your view

17. No, public health and safety is not protected by applying the NPSC to permission to fortify ready-to-eat breakfast cereal with vitamin D for reasons set out in paragraphs 7-16 above. NZFGC considers the tool applied is not appropriate, that the principle of disqualification disregards the significance of breakfast cereal to deliver vitamins and minerals at a critical time of the daily dietary intake. While vitamin D might be the subject of the current discussion it could easily be some other vitamin or mineral in the future to the point where a significant vehicle for delivering vitamin and mineral intake might be closed off in the future such as for iodine.
18. In relation to vitamin D in particular, its positive correlation with musculoskeletal diseases is unequivocal and its potential role in a range of other aspects of health such as certain cancers and autoimmune disease are still subject to research (Rockwell et al 2008). As noted above, ANY decrease in supplementation through breakfast cereal must have a negative impact on this range of diseases that would outstrip unknown, prospective but potentially nil benefits of limiting the fortification of breakfast cereals with vitamin D.

Impact of NPSC on vitamin D fortification on breakfast cereal manufacturers

19. The effect of applying the NPSC to voluntary permissions to add vitamin D as a driver for reformulation is unknown. NZFGC suggests that the NPSC has not been a driver for reformulation in relation to nutrient profile. If it had, the HSR would not have been as successful as it has been in effecting the extent of reformulation we have seen over the past 18 months. Applying the NPSC simply reduces manufacturer flexibility and consumer choice. It has no enduring positive effect and may well have a negative effect on the next application for the addition of a vitamin or mineral or it may simply stifle innovation and such applications will not, in the future, be made.
20. Costs involved in making applications where outcomes can be and are shown to be perverse will not be made. Ingredient suppliers will by-pass the region as unworthy of

investment. There may well be flow on effects as a result affecting a much broader range of applications.

Promotion of consistency between domestic and international food standards, efficient and internationally competitive food industry and promotion of fair trading in food

21. NZFGC is aware that vitamin D is permitted to be added to breakfast cereal in the US, UK and a number of EU countries, Canada and a number of Asian countries. Prohibiting the addition in Australasia creates a trade barrier that reduces consumer choice and potentially costs to consumers and retailers through reduced competition.

Question 2. What are the positive and negative impacts on the breakfast cereal industry of permitting vitamin D in all breakfast cereal?

22. As set out in paragraphs 18 to 21 above:

- increases manufacturer flexibility
- increases consumer choice
- encourages innovation
- ensures greater consistency with permissions to add vitamin D in other countries commonly traded with.
- encourages competition.

23. NZFGC has not identified any negative impacts on the breakfast cereal industry of permitting vitamin D in breakfast cereals.

Question 3. How (if at all) would these impacts differ if the permission were to be restricted to breakfast cereal that meets the NPSC? Please provide data or evidence to support your response.

24. As set out in paragraphs 18 to 21 above, if the permission was restricted to breakfast cereals that meet the NPSC, this:

- reduces manufacturer flexibility
- reduces consumer choice
- may well have a negative effect on the next application for the addition of a vitamin or mineral
- may stifle innovation
- affects applications for fortification. They will not be made where the investment required to research the prospect of technological success and to prepare an application has an unknown likelihood of regulatory success
- ingredient suppliers will by-pass the region as unworthy of investment
- flow on effects could result affecting a much broader range of applications for fortification for a much wider range of products and categories
- creates a trade barrier and reduces competition.

25. NZFGC considers that restricting the addition of vitamin D to cereals that meet the NPSC has no immediate or enduring positive effect.

Consumers' understanding and response to vitamin and mineral fortification

26. As FSANZ's research reveals, almost a quarter of respondents to its 2011 survey purchased a particular breakfast cereal because of the added vitamins and minerals in the product. A decision on vitamin D requiring the application of NPSC could also apply to the other 12 fortification permissions thereby creating an impact far beyond the permission for

vitamin D. Extending it further to all fortification approvals would bring the system into disrepute and create significant unintended consequences.

Question 4. What evidence do you have on the effects of added vitamins and minerals on consumers' perceptions of or choice of breakfast cereal product?

Question 5. What, if any, is the difference in consumer's response to the presence or absence of vitamin D in food compared to their response to the presence or absence of other vitamins? Please provide the evidence used to inform your response

27. NZFGC has no evidence to provide on the effects of added vitamins and minerals on consumers' perceptions of or choice of breakfast cereal product other than to point to FSANZ's own research which suggests that consumers' purchase intents are not generally impacted by nutrition content claims. This suggests the regulatory response would not have any impact on the consumption of sugar, sodium or saturated fat. In such circumstances we are of the view that the Office of Best Practice Regulation should re-assess the regulatory decision-making.
28. Similarly, NZFGC has no evidence concerning consumer response to the addition or absence of vitamin D. Vitamin D deficiency, however, is intermittently in the news especially in Australia where the 'sunlight vitamin' is deficient in the population generally and in particular population groups, a situation that always attracts attention when Australia is colloquially known as the 'sun burnt country'. The incongruence of the two situations is not lost on consumers and it is possible that the value of vitamin D are widely appreciated.

Conclusion

29. NZFGC is strongly of the view that public health and safety is not protected by applying the NPSC to permission to fortify ready-to-eat breakfast cereal with vitamin D. There is no scientific evidence to support such an approach. The NPSC is not an appropriate tool to apply to fortification decisions. Disqualification based on the NPSC disregards the significance of breakfast cereal to deliver vitamins and minerals at a critical time of the daily dietary intake, and to deliver vitamin D, with its unequivocal positive correlation with musculoskeletal diseases.
30. As we have stated, ANY decrease in supplementation through breakfast cereal must have a negative impact on this range of diseases that would outstrip unknown, prospective but potentially nil benefits of limiting the fortification of breakfast cereals with vitamin D. In light of this, we believe this regulatory change should be re-assessed by the Office of Best Practice Regulation.
31. NZFGC is very concerned at the future of fortification generally, the application of the NPSC more widely across the food supply to fortification decisions of the past and fortification proposals in the future. We are also very concerned at the significant and negative impact on food choices, innovation and development and ultimately on the economics of manufacturing for Australia and New Zealand.

References

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Wintermeyer E, Ihle C, Ehnert S, Stöckle U, Ochs G, de Zwart P, Flesch I, Bahrs C, Nussler AK. (2016) Crucial Role of Vitamin D in the Musculoskeletal System. *Nutrients*, 2016, 8:319; doi:10.3390/nu8060319.