

20th February 2020

To FSANZ: [submissions@foodstandards.gov.au](mailto:submissions@foodstandards.gov.au).

SUBMISSION

**FSANZ P1044 2nd Call for Submissions November 2019**

**Plain English Allergen Labelling**

**Submitter:**

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**Level at which submission authorised:** authorised by Regulatory and Technical Liaison Manager

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**Information regarding the submitter:**

Dairy Goat Co-operative (N.Z.) Ltd, (abbreviated as 'DGC'), is a New Zealand manufacturer, developer and exporter of premium consumer packaged nutritional powders primarily for infants and young children. It is a leading New Zealand exporter, and services over 25 international markets via its marketing partner and joint venture relationships. The markets are located primarily in Asia, Europe and Oceania.

**Introduction**

DGC supports the objective of P1044 to achieve greater consistency in terminology used and location of mandatory allergen labelling to make it easier for food allergic consumers to determine if products are suitable for their consumption.

We appreciate the opportunity provided by this 2<sup>nd</sup> Call for Submissions to make comments on the conclusions reached by FSANZ and the proposed drafting variation developed for implementation.

DGC is an associate member of the Infant Nutrition Council (INC) and has participated in the preparation of the INC submission which focuses exclusively on the impact of the proposals on

infant formula products as set out in Standard 2.9.1 and toddler milk drinks as set out in standard 2.9.3. The comments and suggestions offered in this submission from DGC are aimed at improving the clarity and consistency of the proposed drafting variations for ease of use by consumers and ease of interpretation by food manufacturers and enforcement agencies.

## Key points

1. **FSANZ's proposal to adopt option 3 of the options outlined:** DGC supports the adoption of this approach in principle but is concerned that there are some instances where this it is not practical to include both an ingredient list and a separate allergen summary.

It is noted that the FSC exempts labels of small packages from including an ingredient list (FSC 1.2.4-2(3)c) and that the proposed drafting variation reconfirms this in *new 1.2.3-6(4)*.

It is also noted that labels on 'individual portion packs' (packed within a labelled outer pack) which have a surface area of less than 30 cm<sup>2</sup> are not required to have an ingredient list but are required to include warning statements and declarations in accordance with sections 1.2.3—3 and 1.2.3—4 (FSC 1.2.1(3) b and 1.2.1—8(3)). This does not appear to be captured in the drafting variation and we suggest amending *new 1.2.3-6(4)* so this ingredient list exemption is also noted here.

In both these cases where an ingredient list is not required, the use of an allergen summary statement as proposed in new requirements, will only include 'tree nuts.' The individual tree nut allergen declarations proposed to be required in ingredient lists in future will therefore not be specified on these packs. For these packs exempt from stating an ingredient list, we suggest amending the proposed drafting variation to include a recommendation to specify individual tree nut allergens in their allergen summary statements if it is practically possible in the space available.

2. **Proposed transitional arrangements for implementation:** DGC is pleased that FSANZ has proposed a reasonable transition period of 2 years and a stock in trade provision for implementation. DGC recommends that the stock in trade provision is amended from 12 months as proposed to the shelf-life of the product concerned. This means that all product entering the market post the transition period must comply with the new labelling requirements and the need for compliance with these new requirements can be easily checked via date of manufacture. .

DGC also notes that P1028 is also likely to ultimately result in other label changes to infant formula labels. Depending on the timing of implementation of label changes from P1028 consideration should be given to amend the Plan English Allergen Labelling requirements for this product category if this could avoid two artwork updates due to FSANZ regulatory changes in relatively quick succession.

### 3. Suggested modifications to proposed drafting variation to improve clarity

- a. **Fish, crustacea and molluscs:** It is recommended that these are defined to provide greater clarity.

#### Suggested modification to proposed drafting variation

##### Amend:

#### S9—3 Mandatory declarations

- (1) For Division 3 of Standard 1.2.3, a reference to the table in section S9—3 is to the table to subsection (3).
- (2) For the purposes of the table to subsection (3):
  - (a) the definition of ***fish*** in subsection 1.1.2—3(2) does not apply; and
  - (b) ***fish*** excludes crustacea and molluscs.

##### To:

#### S9—3 Mandatory declarations

- (3) For Division 3 of Standard 1.2.3, a reference to the table in section S9—3 is to the table to subsection (3).
- (4) For the purposes of the table to subsection (3):
  - (c) the definition of ***fish*** in subsection 1.1.2—3(2) does not apply;
  - (d) ***fish means*** a limbless cold-blooded vertebrate animal with gills and fins living wholly in water and excludes crustacea and molluscs.
  - (e) ***Crustacea means*** aquatic animals that have jointed legs, a hard shell and no backbone, such as crab, crayfish, lobster, prawns and shrimp; and
  - (f) ***Molluscs means*** aquatic animals, most of which have a hinged two-part shell such as clams, mussels, oysters and scallops but also included various types of octopus, snail and squid.

The definitions included above are shown as examples to illustrate how definitions could assist with clarity but could well be improved.

- b. **Cheese, milk protein and milk solids:** on page 25 of the 2<sup>nd</sup> CFS it states, “The table to section S10—2 contains permissions to use the generic ingredient names ‘cheese’, ‘milk protein’ and ‘milk solids’. Under amendments in the draft variation prepared by FSANZ which mandate specified terms for allergen declarations, ‘milk’ would also need to be used in the ingredient list if the generic name ‘cheese’ is used (e.g. cheese (milk)). However, the generic ingredient names ‘milk protein’ and

'milk solids' already include the name 'milk', and so would not require any further clarification." These clarifications provided in the 2<sup>nd</sup> CFS document, for example showing how a 'required name' can be used in conjunction with a permitted generic name, is not evident in the proposed drafting variation.

### Suggested modification to proposed drafting variation

#### Amend:

#### 1.2.3—7      **Form of mandatory declarations on foods required to \*bear a label**

- (1) A \*required name in a Statement of ingredients of a food for sale must be printed:
  - (a) in a bold font that provides a distinct contrast with any other text in the Statement of ingredients which is not a required name; and
  - (b) in a \*size of type that is not less than the size of type of the other text in the Statement of ingredients that is not a required name.

#### By adding note below (or similar)

***Note** Table to section S10-2 contains permissions to use certain generic names. These can be used in conjunction with required names in ingredient list, for example: cheese (**milk**); **milk** protein.*

In addition, where 'cheese' is stated in Table to S10-2 it could be amended to 'cheese (**milk**)' as cheese is derived from milk according to the definition provided in 2.5.4—2.

4. On page 18 of the 2<sup>nd</sup> CFS document it states that, "FSANZ considers the terminology used for allergens should always reflect the source allergen, and synonyms which are not the name of the source allergen should not be used." This approach is captured in *new* 1.2.3-4(a) and (b):

- (3) This section applies to:
  - (a) a food that is listed in Column 1 of the table to section S9—3; or
  - (b) a derivative of such a food.

However, we think it would be helpful for the information in 1.2.3-4(b) to also be clearly evident in the relevant section of S9 and suggest that the heading for column 1 for the new table to be inserted in S9-3 be amended from, "food," to, "food (and derivatives thereof)," or other similar wording. As this table will be the primary 'go to' place for information on allergens to be declared this would reduce the risk of derivatives of the foods concerned being overlooked by any stakeholders and further emphasise that the terminology used for allergens reflects the source of allergen.