



17 June 2022

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Dear Dr [REDACTED]

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Call for Submissions – Proposal P1028 Infant Formula*.

Yours sincerely

[REDACTED]

[REDACTED]
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Call for Submissions – Proposal P1028 Infant Formula

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

17 June 2022

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on the *Call for Submissions – Proposal P1028 Infant Formula*.
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$40 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$34 billion in export revenue from exports to 195 countries – representing 65% of total good and services exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 45% of total manufacturing income. Our members directly or indirectly employ more than 493,000 people – one in five of the workforce.

COMMENTS

1. NZFGC congratulates Food Standards Australia New Zealand (“**FSANZ**”) on achieving its goal of delivering this first Call for Submissions – Proposal P1028 Infant Formula (the “**CFS**”) – in Q1/2 of 2022. We appreciate the huge effort of the team involved and want to make it clear that the areas of concern we identify below should not detract from our appreciation of the analysis and thought that has gone into this stage of the work.
2. NZFGC has had the opportunity to read and consider the submission made by the Infant Nutrition Council Australia and New Zealand (“**INC**”) and fully concurs with its comments – the extensive areas of support and agreement as well as the areas of concern. We have chosen only to comment in our submission on the key concerns but as noted, we are very appreciative of FSANZ’s efforts on the CFS.
3. It is important that NZFGC states at the outset that we believe breast feeding is the normal way to feed infants as it has numerous benefits for both mothers and babies. However, when an infant is not given breastmilk for any reason then the only suitable and safe alternative is a scientifically developed infant formula.
4. To ensure the best possible nutrition for non-breastfed infants, policy and regulatory instruments must ensure a balance between restrictions on use and formulation in order to protect public health and the flexibility and incentive necessary for innovation to be pursued for continuous improvement of infant formulas.
5. It is also instructional that in this area, research and development is a long, intense and very careful process. In twenty years, there have only been eight amendments to the composition and labelling of Standard 2.9.1 Infant Formula Products in the Australia New Zealand Food Standards Code (“Food Standards Code”).
6. Our key concerns are set out in the remainder of this submission.

Modified infant formula category

7. NZFGC does not support the modified infant formula category. We appreciate the idea of trying to find a way for these specialised products to be available to consumers from the supermarket but the few products identified for this category are in the main not in the market and the category would therefore be delivering very little benefit for consumers or industry.
8. There are a range of other products that would address other gastrointestinal conditions that it would be important for consumers to have supermarket access to and they should therefore be dealt with together.

Special Medical Purpose Products for Infants

9. NZFGC supports the Special Medical Purpose Products for Infants (“**SMPPi**”) proposal but **ONLY** for infant formula products and not for any other partial products, especially highly specialised products from Standard 2.9.5 or bovine human milk fortifiers.
10. The reasons for this are:
 - partial products are NOT infant formula products in so far as they are not complete nor principal sources of nutrition for infants – infant formula products that are complete or principal sources of nutrition for infants are the building blocks for Standard 2.9.1
 - partial products do not comply with the Policy Guideline for infant formula products
 - some of these products are beyond the scope of P1028.
11. The SMPPi category as a component of P1028 was only introduced at this CFS1 stage and has not been subject to previous consideration. The risk of getting this wrong is too high a public health risk for those very few infants that might need the products.
12. NZFGC believes these partial products must remain for the time being under Standard 2.9.5 and FSANZ should raise a separate proposal to allow for full and thorough consideration of impacts and consequences.
13. NZFGC believes the concept of collation has merit and we would be pleased to see this concept developed further in due course. Setting up the category to accommodate the Standard 2.9.5 products in the future is a step in this direction.

Pre-market approval of selected L(+) lactic acid producing microorganisms

14. NZFGC strongly opposes retrospective regulation and therefore opposes turning the clock back two decades in relation to pre-market approval of all L(+) lactic acid producing microorganisms except those for acidification.
15. In NZFGC’s view, this would take products off the shelf in Australia and New Zealand, could impact infant formula supply (potentially creating shortages similar to the current US situation). It would almost certainly impact New Zealand and Australian export markets since our customers offshore look to our domestic product/market for comfort on what they are putting on their shelves.
16. We cannot stress strongly enough the concerns we have for this particular proposal. The products have been safely on the market for over twenty years and a change such as proposed would be enormously damaging to consumers, industry and government.

Protein sources

17. NZFGC does not support prescribing a positive list of permitted protein sources. This is particularly important for New Zealand where sheep milk infant formula has been manufactured and exported for several years with support from the New Zealand Government. The proposal would have the impact of retrospectively changing the understanding of the Food Standards Code in relation to animal milks.
18. We understand buffalo products are being developed in Australia and we expect Australian camel milk infant formula products likely to be available in the future. Permitting mammalian milks that are safe and suitable to be brought to market without further pre-market assessment (unless there is GM components) is aligned with Codex, the EU and the US.

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19. We would particularly point to the significant cost of retrospectively changing this understanding of the Food Standards Code for the New Zealand and Australian markets and for New Zealand export markets.

Regularised Nutrition Information Statement

20. NZFGC is supportive of a more regularised Nutrition Information Statement (“**NIS**”) but not the extent of prescription proposed by FSANZ for the NIS and labelling generally. The labelling area is a key area of disappointment in the CFS particularly its apparent reliance on research that is outdated or from very small consumer groups.

Micronutrient and macronutrient proposals

21. NZFGC is broadly supportive of the majority of micronutrient and macronutrient proposals and defers to the technical expertise reflected in the INC submission where this is not the case.
22. We would particularly point to comments on components such as vitamin D and nucleotides by way of example. We are supportive of the inclusion of a definition of Guidance Upper Limit (“**GUL**”) as this area is regularly misinterpreted by verifiers, auditors and regulators.

Costs and benefits

23. NZFGC notes that INC identified major issues with the costs and benefits. Most significantly is the sources used for numbers of products and the belief that changes will always be one off for each of composition and labelling.
24. We understand some manufacturers are providing further data on this to FSANZ on a commercial-in-confidence. However, NZFGC concurs with the INC in recommending FSANZ conducts an industry survey of SKUs separate to the CFS1.
25. NZFGC is particularly concerned that the lack of ability to communicate the differences between products could ultimately distort consumer choice, as there could be very little that indicates to a consumer why one product is different to another, what scientific rigour has gone into the development of one over the other, and/or the effort that goes into improving one product over the other. We are concerned this would result in the use of other cues to differentiation such as packaging.
26. If there are no other ways for consumers to differentiate between them, price could be seen as a mark of a premium product. This would distort choice, and lead to a distorted market. Formula-fed babies and their caregivers become disadvantaged because of the lack of differentiating information.
27. Importantly, a lack of differentiation between brands is a significant disincentive to innovation, which is not in the best interest of a formula-fed infant and ongoing public health outcomes. Whether or not the caregiver has the choice to formula-feed their infant, the infant never has that choice. Infants who receive formula must not be disadvantaged more than they already are in not being breast-fed by disincentivising innovation and the substantial clinical research that goes into improving infant formula products. This could be seen as government discriminating against caregivers and penalising the infant.

Transition

28. Finally, transition will be a major factor in minimising cost as FSANZ has identified. NZFGC recommends a 5 year transition plus a 2 year stock-in-trade period. This is on the basis that companies with multiple SKUs will not be able to achieve parallel changes across the board and the sequence of change will need to be spread in order to minimise market disruption, both domestically and for export.

Conclusion

29. In conclusion, NZFGC repeats its sincere thanks to FSANZ for the work on the CFS and we look forward to the second call for submissions.