2 September 2021

[redacted]

Email: submissions@foodstandards.gov.au

Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Proposal P1028 Review of Infant Formula: Consultation Paper No.2/2021.*

Yours sincerely

[redacted]

[redacted]

PROPOSAL P1028 REVIEW OF INFANT FORMULA: Consultation Paper No.2/2021

Submission by the New Zealand Food & Grocery Council

2 September 2021

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council ("NZFGC") welcomes the opportunity to comment on the *Proposal P1028 Review of Infant Formula: Consultation Paper No.2/2021.*

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

3. NZFGC's first comment is that we strongly support the Submission made by the Infant Nutrition Council on the *Proposal P1028 Review of Infant Formula: Consultation Paper No.2/2021 (*CP1). We want to highlight several aspects below that to us require particular attention.

4. While breast feeding is the normal way to feed infants, when an infant is not given breastmilk, the only suitable and safe alternative is a scientifically developed infant formula. Delivering the very best to these infants is critical in order to give them the best chance of matching their growth and development with that of breast-fed infants. Maintaining the currency of regulation is therefore a priority for this very vulnerable population group.

5. At the outset we would also like to state that we are broadly supportive of the proposals and options put forward by FSANZ in this second consultation paper. Aligning with Codex to the greatest extent possible is particularly important for a small export trading nation like New Zealand. However, there needs to be some flexibility where justified by science noting that the relevant Codex Standard, Codex STAN 72-1981 has not been updated for some years.

Protein

6. In summary we:
    - agree with the FSANZ proposal for a protein range of 0.43 – 0.72 g/100kJ for infant formula (based on the equivalence factor of 1 kcal = 4.18 kJ and with an expanded maximum from 0.7 to 0.72g/100kJ to reflect the use of at least 2 significant figures)
    - do not support this range being applied only to cows' milk-based formulas and recommend it apply to all milk-based infant formula
    - note the technical correction of the FSANZ minimum allows harmonisation with Codex and EU recipes, particularly for low protein products
    - recommend FSANZ consider adding a footnote similar to footnote 5 in Codex STAN 72-1981 which highlights that other minimum values may need to apply for formulas based on other non-milk proteins
        - NZFGC considers that future proofing the revised standard in this way accommodates increasing trends towards plant-based products.
    - do not support FSANZ's proposed approach to prescribe permitted protein sources.
        - such an this approach is not aligned with Codex.
        - new sources of protein are required to be approved through the pre-market assessment process and therefore have the opportunity to be risk assessed prior to use – only cost and delay otherwise result.

- note there are infant formula products in the market using protein sources which are not included in the sample of a prescribed list of permitted proteins proposed by FSANZ
- not it is unclear how the prescribed protein source list would relate to Infant Formula Products for Special Dietary Use.

- understand that the amount of protein source needed to achieve the prescribed protein minimum depends on the nitrogen conversion factor that is used and that Australian and New Zealand infant formula manufacturers have been managing the use of the two alternative nitrogen conversion factors of 6.38 and 6.25 for milk-based formulas, since the 2007 revision of the Codex STAN 72-1981 which adopted the use of the factor 6.25 for infant formula products
- support adoption of 6.25 to align with international standards
  - but do not support prescribing different nitrogen conversion factors for whey-based vs other dairy formula.

Fat and fatty acids

7. In this area we:
   - support the current linoleic acid (**LA**) levels at 90 mg/100kJ and docosahexaenoic acid (**DHA**) remaining optional
   - support the requirement for DHA to be no higher than arachidonic acid (**AA**) when added
   - support increasing the guidance upper limit (**GUL**) from 0.5 to 1.0% of fat to 14 mg/100kJ.
   - oppose setting a phospholipid maximum due to a lack of evidence of safety concerns and the absence of market failure with status quo provisions
   - support restricting the phospholipids content to 2 g/L (Option 1) to align with Codex with modification to reflect this as a GUL aligned with the units used by Codex (total phospholipids on a mg/100kcal basis)
   - note lecithin is a food additive
   - do not favour lowering the maximum permitted level in infant formula from 5 g/L to 1 g/L which is not aligned with Codex but more importantly in the absence of a FSANZ food additive assessment
   - oppose the current restriction on medium chain triglycerides (**MCT**) which is not aligned with Codex or the EU

Micronutrients

8. On micronutrients, our key point are that we:
   - *Iron* – recommend FSANZ widen the range for infant formula to include the Codex minimum (0.11 mg/100kJ) to give flexibility for recipe harmonisation and thereby remove a barrier to trade
   - *Iodine* – strongly recommend aligning the iodine minimum and upper level to the Codex STAN 72-1981 minimum of 2.5 µg/100kJ and GUL of 14 µg/100kJ
     - the proposed tighter range would be very difficult for manufacturers to meet.
   - *Selenium* – support increasing the selenium minimum to 0.48 µg/100kJ which aligns with the revised Codex Follow-up Formula (FuF) for Older Infants provision
     - Oppose aligning with the EU maximum of 2.0 µg/100kJ which is lower than the GUL in both Codex STAN 72-1981 and the new Codex Follow-up Formula for Older Infants of 2.2 µg/100kJ.
   - *Fluoride* – supports aligning with the Codex maximum of 24 µg/100kJ
     - do not support inclusion of the phrase “when reconstituted and prepared ready for consumption”, as manufacturers have no control over water and this is ambiguous to interpret and enforce.
   - *L-carnitine* – do not support a GUL for L-carnitine to align with Codex and the EU.

Other matters

9. We strongly recommend FSANZ addresses the significant inconsistency in conversion factors. Inconsistent conversion factors can result in international trade barriers, which are of particular concern to New Zealand.

10. NZFGC is generally opposed to positive lists. Such lists are difficult and costly to maintain, do not future proof standards and inhibit innovation. In an environment of rapid change and scientific research they serve to stifle developments.

11. NZFGC supports the INC recommendation for use of the term 'GUL' within the Australia New Zealand Food Standards Code (the **Food Standards Code**) for the guideline maximum amounts included.

12. Provisions around the voluntary addition of permitted nutrients are a continual frustration. Use of the term 'optional ingredients', as used in Codex, has clarity and international recognition than the phrase 'may be used as a nutritive substance' which is peculiar to Australia and New Zealand. Reconsideration of this term could greatly enhance the useability of Standard 2.9.1 and the Food Standards Code generally.

13. We recommend removing the current limit on potential renal solute load for follow-on formulas at the same time as changes are introduced in relation to infant formula implementing the outcomes of P1028.

Extent of change proposed

14. As the first Call for Submissions (most welcomely) draws closer, it is timely to consider the extent of change proposed by the Review which will need a clear focus at the end of the day.

15. The cumulative changes will require the reformulation of almost all infant formula products in the Australian and New Zealand market. This will take significant time and resources for all companies that sell and manufacture infant formula into this market. Assessment will be required of the manufacturing levels, as the target and range must consider variance from operations, testing, raw ingredients and degradation across shelf life. Any change, no matter how small, that increases the minimum or decreases the maximum or GUL may require some change in the formulation and manufacturing specification.

16. By way of example some of the changes just to composition are:
    - reduced energy maximum and total fat maximum
    - increased minimum for pantothenic acid, folic acid, selenium, iodine and L-carnitine
    - reduced maximum for sodium and potassium
    - reduced GULs for magnesium, copper, zinc, biotin and niacin
    - mandatory requirements introduced for choline, inositol and L-carnitine
    - changes to amino acids that could impact fortification of methionine
        - these are in addition to the proposed changes for additives, contaminants and labelling.

17. As a result, NZFGC recommends following the EU example of a 5 year transition period followed by a stock-in-trade period. We consider this would be appropriate given the significant number of changes proposed and the cost it will take companies to implement. This transition and stock-in-trade period will help ensure companies are able to plan to try and avoid unnecessary additional costs from labels and other food-related wastage It will be important for the proposed amendments and the current arrangements to operate in parallel during the transition period including during any stock-in-trade period.