



2 October 2020

Front-of-Pack Labelling Secretariat

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Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Draft Health Star Rating Calculator and Style Guide*, September 2020, Version 1.

Yours sincerely

Katherine Rich
Chief Executive



***Draft Health Star Rating Calculator and
Style Guide, September 2020, Version 1***

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

2 October 2020

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on the *Draft Health Star Rating Calculator and Style Guide* September 2020, Version 1. This is a critical part of the ongoing uptake of the Health Star Rating (HSR) across the food and beverage sector.
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.

OVERARCHING COMMENTS

3. NZFGC is a strong supporter of the HSR system and has been actively promoting and supporting uptake since New Zealand joined the system over five years ago. HSR is one of a number of factors influencing reformulation within industry and informed food choices by consumers. While this revision of the *Draft Health Star Rating Calculator and Style Guide* (the *Calculator and Style Guide*) goes a long way to underpinning the revised system, there remain some key areas of concern, notably definitions.
4. We understand this consultation is limited to the *Calculator and Style Guide*, however, we continue to be very concerned at an uptake target that is impractical and quite probably unreachable in the time allocated especially as this relates to imports. The most disappointing factor is that neither industry nor consumers are getting support from Governments in terms of promotion or even awareness. Without Government visibility in promotion of the programme, it challenges the significance of HSR as a public health intervention contributing to reducing obesity through supporting healthy choices and incentivising reformulation.
5. As well, the immediate issue of changing the calculator and product HSR changes means that consumer confusion is imminent. A consistent and comprehensive trans-Tasman communications plan is essential for later in 2020 and throughout 2021 as ratings change on products ‘for no apparent reason’.
6. There are two other areas of concern that are linked to the application of the *Calculator and Style Guide* – imports and stock-in-trade.

Imports

7. It is particularly frustrating that in the past 5 years’ operation of HSR, no targeted promotion of the system or work directly with importers has been undertaken in either New Zealand or Australia as far as we are aware. This is of great concern for New Zealand since we import a much larger percentage of food than Australia.
8. To apply HSR to imported foods (other than the products traded between the two countries) would require the compositional data necessary for calculation of the HSR and the application of an HSR over-sticker on the front of a pack. Since many products imported from outside the region already require the panel containing the nutrition information to be over-stickered, adding another over-sticker is a resource intensive and costly addition. New Zealand would have a greater exposure to lower uptake across the food supply as a result of the level of imports as a percentage of eligible foods.

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9. While we agree in-principle to the inclusion of imported foods in the HSR system, in practice this requires a quite different approach and timeline to effect uptake.

Stock-in-Trade

10. We are strongly in favour of an enduring stock-in-trade arrangement. An enduring stock-in-trade facility features in TGA and ACCC arrangements and we believe its application to HSR to be a practical approach to take.

DETAILED COMMENTS

Glossary and Definition of Terms

11. A. The definition for 'Dairy beverages (including dairy beverage alternatives)' is problematic in several areas:

- a) The 'Term' in column 1 refers to 'dairy beverage alternatives' which are not defined
- b) The 'Definition' refers to a 'permitted alternative' for beverages made from milk which is not defined
- c) The 'Definition' refers to beverages that do not meet the compositional criteria for milk in Standard 2.5.1 of the Food Standards Code but goes on to state that they must contain "≥ 75% dairy or permitted dairy-alternative ingredients". The term 'permitted dairy-alternative ingredients' is not defined.

These 'embedded terms' are used in the *Calculator and Style Guide* but are not known. The reference to "≥ 75% dairy" is a misnomer as 'dairy' covers a significant range of products, is not defined in the Food Standards Code and creates confusion. This should refer to 'milk' which is defined in the Food Standards Code in Standard 2.5.1— 4.

- d) The last sentence in the definition reads "Must contain ≥75% dairy or permitted dairy-alternative ingredients and the required calcium content." This suggests that dairy beverages comprise either 'dairy' or 'dairy alternatives' of at least ≥75%. Presumably this means a combination of dairy and permitted dairy-alternative ingredient because it would be extremely difficult for these products to contain anywhere near 75% permitted dairy-alternative ingredients (such as almond milk) and contain the required calcium level. This sentence needs to be re-written for clarity.
- e) The 'Definition' requires the use of "the required calcium content".

The only place we could find reference to calcium levels is in the description of Dairy (D) foods under Section 4 of the *Calculator and Style Guide*, Steps to assess the HSR of a product on p 14 which reads:

"Category 2D includes:

- all dairy foods not included in HSR Categories 1D or 3D, including cheeses with a calcium level ≤320 mg/100 g (e.g. ricotta, cottage cheese, cream cheese), yoghurt, fermented milk products, cream, dairy desserts and other chilled (but not frozen) dairy products.
- cheese and yoghurt alternatives derived from legumes providing the cheeses have a calcium level of ≤320 mg/100 g.
- Dairy foods and alternatives must contain ≥75% dairy or permitted dairy-alternative ingredients.

[This category does not include ice cream or alternatives derived from cereals, nuts or seeds. These products fall in Category 2.](#)"

We also examined the 340+ occurrences of 'calcium' in the Food Standards Code but discounted all as being specific to particular standards. If the reference is to the *Calculator and Style Guide*, then this should be stated.

See below for our suggestions for new definitions and further clarification.

12. B. The definition for 'Dairy foods (including dairy food alternatives)' is problematic in several areas:

- a) 'Dairy foods' is not a term that is defined in the *Calculator and Style Guide* or the Food Standards Code. Its scope is unclear and examples would assist this lack of clarity.
- b) The 'Term' in column 1 refers to 'dairy food alternatives' which are not defined
- c) The 'Definition' refers to 'permitted dairy alternatives' for cheese and dairy foods which is not defined
- d) The 'Definition' states that dairy foods must contain "≥ 75% dairy or permitted dairy-alternative ingredients". The term 'permitted dairy-alternative ingredients' is not defined.

These 'embedded terms' are used in the *Calculator and Style Guide* but are not known.

- e) The 'Definition' requires the use of "the required calcium content". As noted above, the only place we could find referring to calcium levels is in the description of Dairy (D) foods under Section 4 of the *Calculator and Style Guide*, Steps to assess the HSR of a product on p 14 (see extract above).

If the reference is to the *Calculator and Style Guide*, then this should be stated.

13. C. The definition for 'Derived from legumes' could be clarified:

- a) The 'Definition' refers to 'As per Schedule 17 of the Code. Analogues derived from legumes must meet required protein levels from legumes.' An example is given for cheese that must be met "to be considered a dairy food alternative". Without this phrase, it is not clear why the definition is included. The definition should make this clear at the outset. We suggest recasting to read:

"To be considered a dairy food alternative, analogues derived from legumes must meet the protein levels set out in Schedule 17 of the Code. These cover analogues from meat, yoghurt and dairy desserts, ice cream and cheese. For example: Cheese alternatives 'derived from legumes' must contain ≥15%*m/m* protein derived from legumes.

- b) Consideration should also be given to this definition being retitled 'Analogues derived from legumes (as dairy food alternative)'.

14. D. Minimally processed fruit and vegetables

- a) The 'Definition' is silent on an example of minted frozen peas. The *Calculator and Style Guide* refers in Section 2 (p9) Application of the Health Star Rating System, to products exempt from NIP requirements and not appropriate for HSR to be used because of their 'inherently low nutritional contribution'. Herbs are an example. The nutritional value of frozen peas and frozen minted frozen peas is exactly the same. Yet meeting consumer preferences for minted peas would impact the HSR as described further in this submission.
- b) We note 'drying' is not listed and a specific exclusion would be clearer
- c) We suggest the definition be amended to

"Minimally processed fruit and vegetables

Fruit (except coconut), vegetables, fungi and legumes (except peanuts) that:

- have only been peeled, cut and/or surface treated and/or blanched and/or frozen, or canned
- **have not been dried**
- have no added fat, sugars/sweeteners or salt
- **may have added herbs."**

15. E. Unsweetened flavoured water

NZFGC recognises that the revised definition is a positive step but notes there is still an anomaly present which has potential to confuse consumers as set out below.

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- a) Flavoured, unsweetened mineralised and soda waters do not fit under this revised definition, yet they are a category that is identified as water under in schedule 15 of the Food Standards Code (S15—5), ‘14.1.1 Waters’. They are similar in nutritional profile to water like other flavoured, unsweetened waters but may have mineral salts added for taste.

The water category is in growth and it is an area where a lot of innovation is happening. If flavoured, unsweetened mineralised and soda waters do not receive the automatic 4.5 stars, this would present a barrier to innovation and is confusing to the consumer. We suggest the definition read as follows:

“Unsweetened flavoured waters:

Packaged beverages similar in nutritional profile to water that may contain only:

- carbon dioxide, whether added or naturally occurring;
- permitted flavouring substances (Standard 1.1.2-2)
- additives that provide a specific safety or stability function at GMP (Schedule 16)
- **mineral salts at GMP (schedule 16) for mineralised and soda waters only (schedule 15)**

and must not contain:

added sugars, sweeteners, colours, sodium, caffeine or quinine

- b) Plain, unflavoured, unsweetened soda and mineralised waters are also omitted from the *Calculator and Style Guide*. NZFGC proposes that plain, unflavoured, unsweetened mineralised and soda waters, which also do not meet the above unsweetened, flavoured water definition, automatically receive an HSR of 5, in line with plain packaged water.

Products like plain, unflavoured, unsweetened mineralised and soda waters are simply water with the addition of mineral salts (which are additives permitted at GMP) added for taste.

It is important to note that the mineral content of water, whether it be town water or spring water, is inherently different and highly variable depending on where it is sourced from and how it is treated. Therefore, plain, unflavoured, unsweetened mineralised and soda waters are ‘water’ and have the same nutritional profile as any other water whether it is tap water, spring water or packaged water. The nutritional information panel (NIP) for plain, unflavoured, unsweetened mineralised and soda waters is exactly the same as the NIP for plain water defined in the Food Standards Code. The mineral salts in soda waters and mineralised waters are added at very small amounts to allow packaged water to vary in taste from product to product (to meet consumers likes) and essentially reflect the variability in mineral content in water generally.

16. F. New Definitions

We suggest separate definitions for dairy beverages and dairy beverage alternatives in the ‘Glossary and Definition of Terms’ section. This will make the criteria much clearer and easier to follow. There are related issues that need clarification:

If a beverage contains <75% dairy content, then we assume the product is then assessed under Category 1, Beverages (non-dairy). However, dairy beverage alternatives need only to meet the minimum protein requirements derived from the plant-based material (under Schedule 17) for permission to fortify with calcium to the required level and be categorised and assessed under 1D Milk and Dairy Beverages. This is inequitable when a beverage with <75% dairy content (but meeting the calcium threshold) cannot be assessed under Category 1D but rather Category 1. This change of designation is in contrast to what is

currently permitted under the Food Standards Code. In the Food Standards Code, there are no compositional requirements for dairy beverages like flavoured milks.. The 75% cut off is stricter than the Food Standards Code. If a dairy beverage meets the calcium threshold then it should stay in Category 1D. There is still incentive to ensure the milk content is high as this keeps the protein high and ensures a higher health star rating.

The bottom line is that the compositional requirement for dairy beverages should not be any stricter than that for dairy beverage alternatives. In addition, there is no rationale for the 75% cut off.

If a product containing <75% dairy content is calculated under Category 1, then its descriptor as being 'non-dairy' (used throughout the guide for this category) is misleading and potentially confusing as it assumes no dairy content which is not the case. This reinforces the need to add a definition for Category 1 beverages.

NZFGC suggests including additional case studies under Category 1 and 1D, for dairy alternatives (with and without fortification) and a dairy beverage containing <75% dairy content.

17. G. Fresh Fruit and Vegetables

NZFGC notes that fresh fruit and vegetables are not defined in the Glossary. According to the *Calculator and Style Guide*, they require the determination of their HSR via the HSR calculator.

We find it inconsistent with the Nutrition Guidelines for the highly recommended fresh fruit and vegetables to receive lower HSR scores because they are fresh when their minimally processed counterparts receive an automatic 5 stars. For example, some fruits inherently with a higher sugar content such as grapes, apples and bananas will receive less than 5 stars. This will create significant confusion for consumers. We expand on this at paragraph 22.

Section 2. Application of the Health Star Rating System

Sub-Section 2a Products that must not use the Health Star Rating System

18. The title is incorrect. The sub-section actually includes reference to products that must not use the HSR System or that should not use the HSR system or that are eligible to use the HSR system. We consider the title should more accurately read:

"2a Products that must not or should not use the Health Star Rating System".

The note in this sub-section concerns "Foods that fall under Division 2 and Division 3 of standard 2.9.3 are eligible to use the HSR system." This is a useful clarification to include in this sub-section. However, since the note relates to only Standard 2.9.3 rather than all the Standards in Part 9 of the Food Standards Code that are listed, it should be appear under the reference to Formulated Supplementary Foods for Young Children – Standard 2.9.3.

Sub-Section 2b Products intended to use the Health Star Rating System

19. Point 3) in this sub-section refers to products "that can vary in nutrient composition" and examples are "single ingredient foods such as flours, milks, edible oils and canned fruit and vegetables".

In the current Style Guide the only similar reference to 'vary' is in relation to calculating the HSR rating:

"The energy and nutrient composition of food product ingredients can vary significantly. Food companies need to be aware of this variation, and its potential magnitude, when estimating average values. Energy and nutrient values should reflect

those stated in the NIP (i.e. if values in the NIP change, the energy and nutrient values displayed as part of the HSR system graphic should be updated to match).” (p8 Version 5)

It is not clear if the inclusion of point 3) is for the purposes of ingredients in foods or the foods themselves since it does refer to ‘single ingredient foods’. This should be clarified.

The last sentence in the last paragraph of Section 2b reads:

“Only those foods listed in this section (2) are not permitted to use the HSR system.”

It is not clear what ‘section (2)’ refers to since the notation does not match that used in Section 2 or sub-section 2a. We believe it refers to subsection 2a and the sentence should read:

“Only those foods listed in ~~this section (2)~~ 2a of this Section 2 are not permitted to use the HSR system.”

Sub-Section 2c Imported Food Products

20. We note that the text in this sub-section is the same as that used in the current Style Guide. However, there has been no attempt made in the past 5 years to work with importers on the logistics of calculating and sticking an HSR icon on a product. This is particularly concerning when products that are manufactured out of the Australian – New Zealand region frequently need the NIP on the back or side panel of a product to have an over-sticker in order to meet the form of the Australasian NIP. The direct and indirect (requesting data necessary for calculation and calculating the HSR) cost of applying stickers to front and back of pack would be substantial. This needs to be the subject of further discussion especially in relation to the targets set for uptake.

Section 3 The Health Star Rating Calculator

21. No comments.

Section 4 Steps to assess the HSR of a product

Step 1: Determine whether the product is eligible for an automatic HSR

22. We note that there are three items under this Step 1: Plain water, Unsweetened flavoured water, and minimally processed fruit and vegetables. There is no item for fresh fruit and vegetables but rather a note that reads:

“Note: Fresh fruit and vegetables are not captured under this definition. Determining the star rating of these products would require use of the HSR calculator.”

In the Five-Year Review Report, Recommendation 4A, agreed to in principle, read:

4A. *fruits and vegetables that are fresh, frozen or canned (with no additions of sugar, salt or fat) should automatically receive an HSR of 5.*

It seems inconsistent for fresh fruit and vegetables, which are the basis or key ingredient for ‘minimally processed fruit and vegetables’, to have HSR calculated when minimally processed fruit and vegetables automatically receive an HSR of 5. We believe consumers are expecting at least equivalence of HSR and that without an automatic rating of 5, the whole system will be brought into disrepute. We anticipate this will be a key media focus going forward.

Step 2: Determine the HSR category of the product

23. Under the heading Dairy (D) foods are descriptions of Category 1D, 2D and 3D. The comments raised under the definitions relating to ‘relevant calcium content, permitted dairy alternatives apply here.

Steps 3-4

24. No comment.

Step 5

25. Sub steps use the notation 5.1, 5.2 etc. So does Section 5. Suggest the notation is Step 5.1, Step 5.2 etc.

Steps 6-7

26. No comment.

Section 5 On Pack presentation of the HSR System

Sub-Section 5.7 Industry agreed serve sizes

27. It is not clear what the 'HSR development process' was to agree the industry serve sizes. Assume this is HSRAC. Reference to Table 6 is to the HSR Protein (P) and Fibre (F) Points. rather than to any categories. In any case, any table reference would be helped with the addition of the section reference eg 'Table 6 in Section 5.2'.

Section 6 Hierarchy of Health Star Rating system presentation

28. No comment.

Section 7 Display of further HSR Information

29. No comment.

Section 8 The Daily Intake Guide, Health Logos and Certification Schemes

30. No comment.

Appendices

Appendix 3

31. Example 5 – Raspberry soft drink. The final star rating is incorrect as the product should only receive 0.5 stars not 1 star.

Layout

32. The Section headings need to be in larger font size to stand out.

Grammatical

33. The six categories of products for the purposes of assessing and calculating HSR are named in Section 3a. NZFGC recommends that these terms are used for the relevant categories consistently throughout the *Calculator and Style Guide*. By way of example, sometimes category 1 Beverages (non-dairy) is termed 'beverages (non-dairy)', or simply 'beverages' or sometimes 'Non-Dairy Beverages'. This is confusing. The terms for the categories should be added to the 'Glossary and Definition of Terms' section at the beginning and then used consistently throughout the *Calculator and Style Guide*.

References to the Food Standards Code (p7)

34. Standard 1.2.1 is referred to as 'Application of Labelling and Other Information Requirements'. This is incorrect. The title of the Standard is 'Requirements to have labels or otherwise provide information'.

Purpose of this Guide (p8)

35. The first bolded paragraph is missing a word:

"This Guide is intended to provide clarity on the full and correct use of the Health Star Rating (HSR) system and has been designed for use by those within the food industry."

Step 5.1 (p19)

36. In the paragraph commencing "The percentage of FVNL...", the second sentence should more correctly read: "The exception is Except when determining ..."