

5 August 2016

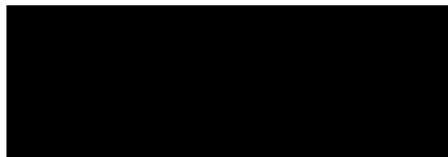
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Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the ***Call for submissions – Proposal P1034: Chemical Migration from Packaging into Food.***

Yours sincerely



Katherine Rich
Chief Executive



***Call for submissions – Proposal P1034:
Chemical Migration from Packaging into
Food***

**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 ***Call for submissions – Proposal P1034: Chemical Migration from Packaging into Food*** (the Call for Submissions).
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 considers the process undertaken by FSANZ in the course of reaching the current Call for Submissions has been excellent. It has been focussed, measured, inclusive and very well managed. We have appreciated being included throughout.
4. In developing this Call for Submissions, FSANZ considered a wide range of approaches from around the world and was persuaded by the risk profiling it has undertaken that a new approach was needed. The risk profiling indicated that most chemicals used to produce food packaging were unlikely to pose a public health and safety concern, predominantly because of their extremely low levels of migration into food. This conclusion was supported by information on hazard and dietary exposure for a large number of food packaging chemicals. It was also consistent with the findings of analytical surveys investigating the presence of specific packaging chemicals in Australian and New Zealand foods.
5. As a result of this process, FSANZ developed ‘Option 4’, a graduated approach based on risk which incorporates elements of Option 3 (a non-regulatory approach including information/ awareness programs and industry self-regulation). This approach is strongly supported by NZFGC.
6. The graduated approach will address not only chemicals with different risk profiles but also the concerns with clarity about current requirements and gaps in the awareness of chemical migration across the supply chain. The approach will capitalise on existing mitigation tools (codes of practice and related measures) whilst addressing the potential and prospective need that may be substantiated to more explicitly manage two chemicals, diethylhexyl phthalate (DEHP) and diisononyl phthalate (DINP). These are chemicals that FSANZ has identified as potentially presenting a higher health risk and which may be best regulated in the same way as tin, vinyl chloride and acrylonitrile are regulated now.
7. Even if the work underway on DEHP and DINP does not support a need for regulatory measures to be developed for these chemicals, Option 4 provides the framework to address such chemicals in the future. In our view, Option 4 delivers a good balance between regulatory and non-regulatory approaches. When coupled with an education programme, this Option presents as a comprehensive but practical approach to the multiplicity of packaging chemicals in use today and into the future
8. NZFGC remains available to assist in the development and implementation of Option 4 that reflects a graduated risk approach and that focuses scarce resources in areas where they will have the most efficacious and effective impact on protecting public health and on safety and managing risks from chemical migration from packaging to food.

SPECIFIC COMMENTS

Risk Assessment

9. NZFGC notes that in developing the risk profile of chemical migration from packaging to food, FSANZ used the 'threshold of toxicological concern' approach as a screening tool. As a result, the risk profile showed that analytical surveys by FSANZ of packaging materials identified two chemicals of concern: DEHP and DINP. Further monitoring and surveillance is one way of identifying emerging risks in the future especially from recycled products.

Question 1: Do you consider that an ongoing monitoring and surveillance strategy, possibly by jurisdictions responsible for enforcement and compliance of food laws would be a practical measure to identify and manage unknown risks associated with CMPF?

10. **NZFGC Response:** NZFGC believes that gathering evidence of 'unknown' risks associated with chemical migration from packaging into food through a monitoring and surveillance strategy is appropriate for gathering data from the food supply in Australia and New Zealand which in turn is important for evidence-based standards setting. Such a strategy that incorporates monitoring international research developments and reports, is a practical response that NZFGC supports.

Mitigation and control measures

11. FSANZ gathered considerable information about the control measures used by industry in place across the supply chain. While the large packaging suppliers showed "... good uptake of non-regulatory measures such as specific packaging industry standards, Codes of Practice and adherence to Good Manufacturing Practices (GMP)" (p8 Call for Submissions), FSANZ states this was not the case throughout the supply chain. Some food businesses showed negligible or poor awareness and there was a gap in data about the importation of empty packaging from countries where control measures may be poor or unknown (an 'unknown risk').

Question 2: Do you agree that FSANZ's analysis of control measures and market information accurately represents how CMPF is being controlled in Australia and New Zealand? If, not please state your reasons?

12. **NZFGC Response:** NZFGC agrees with FSANZ's analysis of control measures and market information about how chemical migration from packaging to food is being approached in Australia and New Zealand.

Question 3: For any industry stakeholders who have yet to respond to FSANZ's call for information: What control measures for CMPF does your business use?

13. N/A

Risk Management

14. NZFGC notes that FSANZ has presented four options for considering the risk management response to chemical migration from packaging to food.
15. **Option 1** is status quo, continue what we are doing even though, for example, some food businesses showed negligible or poor awareness and phthalates have been identified as problematic.

Question 4: What problems can you identify with the status quo option and therefore abandoning this proposal?

16. **NZFGC Response:** NZFGC considers that a status quo option does not address potential public health and safety issues (particularly in relation to phthalates), unknown risks and the other issues of lack of awareness and clarity in the Code. However, neither do all these matters require a regulatory solution.
17. **Option 2** is presented as a 'prescriptive approach' comprising the likes of a pre-market assessment or recognition of other countries regulations in the Food Standards Code.

Question 5: If you consider that a prescriptive approach is the most appropriate option as per either the US/and/or EU approach, FSANZ invites you to elaborate on those reasons. Specifically, please provide the pros and cons of this position in order to further identify costs and benefits for consumers, industry and government of taking a prescriptive approach?

18. **NZFGC Response:** NZFGC does not support Option 2, a prescriptive approach, on the basis that it is largely ineffective in that it diverts huge resources into areas of negligible risk for negligible benefit without a comprehensive result.
19. The Option 2 approach mirrors the USA and EU approaches which assess chemicals on a substance-by-substance basis irrespective of risk. It is likely that these 'approaches of the past' have built up out of tradition over many decades. None are succeeding in terms of coverage, comprehensiveness or currency. This is primarily due to not being able to accommodate the multitude of developments being undertaken in the packaging and related industries supply chain (not the least recycling), the extensive number of chemicals used at the various, sometimes quite remote, steps prior to the use of packaging by food manufacturers (an estimated 6,000 chemicals in printing inks alone) and the absence of data on human impacts.
20. Dealing with an issue that involves huge numbers of chemicals that may or may not migrate into food and even when they do migrate, may or may not have a human health impact, requires a smart, balanced and informed approach. In our view, a continued reliance on more general safety measures rather than attempting to address individual chemicals is a more practical approach. In a risk-based environment, it is important for FSANZ to consider the minimum effective regulation to address any gaps identified in the current regulatory provisions.
21. Where there are multiple unknowns as noted above, the importance of maintaining proportionality in any regulatory response cannot be overstated.
22. As well, New Zealand is not a technological market leader in packaging and overseas standards (particularly EU and US FDA standards) therefore play a significant role in the safety regime. The bulk of packaging materials are unlikely to be manufactured specifically for the New Zealand market and any New Zealand standards, if required, should interface seamlessly with relevant overseas standards.
23. **Option 3** is a non-regulatory approach. It envisages using education (via information/awareness programs) (Option 3a); and/or industry self-regulation by the available industry standards or codes of practice (Option 3b) and/or industry self-regulation by a co-regulatory approach (Option 3c).

Question 6: What do you see as the costs/benefits of this option [Option 3a] for consumers, industry and government? Do you consider it would ensure industry has adequate knowledge of the risks from CMPF and implemented available risk mitigation measures?

Question 7: Focusing on the three key areas outlined above, what information do you think would be the most suitable to include in an information/awareness program?

24. **NZFGC Response:** NZFGC considers that non-regulatory measures are not mutually exclusive of other measures and that elements of Options 3a, 3b and 3c could be variously applied.
25. In relation to Option 3a, we understand from FSANZ's work that some food businesses showed negligible or poor awareness of the need for food grade packaging to meet internationally recognised standards. Awareness and education are vital tools for communicating requirements and expectations with or without regulatory interventions. Such tools can assist with alerting the consumer (the manufacturer in this instance) to the need for specifying requirements to their packaging supplier that refer to internationally accepted standards and identifying unacceptable packaging materials.
26. The information appropriate to include in an awareness and education approach needs to be developed in liaison with a range of agencies to ensure appropriateness and clarity for each business in the supply chain. This may involve a range of products and processes tailored to the differing supply chain points. In our view this requires a separate project.
27. In relation to Option 3b, industry self-regulation by industry standards or codes of practice, there are already codes of practice in place which explains the very good uptake of non-regulatory measures including specific packaging industry standards and adherence to GMP. FSANZ lists nine standards/codes of practice that are available and which are used variously throughout the supply chain. Often a number of these work together for comprehensiveness or work within specific markets supplying packaging to or in the Australasian region.
28. There is already a strong level of awareness in the industry for the tools available and this could only be enhanced by education and awareness raising as set out in Option 3a.
29. In relation to Option 3c, industry self-regulation by a co-regulatory approach, New Zealand does not generally employ co-regulation and we therefore believe a combination of existing arrangements (Option 3b) and new arrangements (Option 3a and Option 4) are the preferred approaches to pursue. However, we acknowledge the Australian Packaging Covenant (APC) is a co-regulatory tool currently in use that may present as a mechanism for managing chemical migration.

Question 8: Do you agree that FSANZ, the AFGC/NZFGC and packaging peak bodies are the most appropriate organisations to undertake this program? If not, can you identify other appropriate agencies, and peak bodies?

30. **NZFGC Response:** We agree that FSANZ, the AFGC/NZFGC and packaging peak bodies are the most appropriate organisations to undertake a program of education and awareness and application of non-regulatory standards and codes of practice. All these organisations have a broad reach across the food manufacturing industry and various

expertise within or available to them for developing new tools and promoting existing ones. However, this should not be to the exclusion of other bodies such as those described in paragraph 55 below.

Question 9: What are the perceived cost and benefits for industry, consumers and industry of a non-regulatory approach? Do you think either option 3a, 3b or 3c would be cost effective?

31. **NZFGC Response:** As FSANZ notes, the NZ Packaging Council's Code of Practice for Packaging Design, Education and Procurement assists stakeholders in several areas and has recently been amended to take account of recent legislative changes concerning claims in New Zealand. Further amendments may well be possible if deemed necessary and relevant, to address perceived gaps relating to chemical migration from packaging to food.
32. We also understand the origins of the APC involved a range of community stakeholders and is used relevant government agencies for compliance purposes. Whilst the APC is based on prioritising the avoidance of packaging waste, it appears to have wide support and uptake and may lend itself to broadening to deal with chemical migration issues.
33. We consider that revising the NZ Packaging Council Code of Practice for Packaging Design, Education and Procurement and the APC to include information on the safety of chemical migration could be effective strategies in terms of Option 3. They have currency across the industry, they are widely used and there is an existing level of respect and familiarity with them. They are backed by both industry peak bodies and government alike.
34. **Option 4** is a graduated approach based on risk. FSANZ presents this option as having the most efficacy of the four options presented. NZFGC agrees that it is an option worth pursuing but not to the exclusion of elements in Option 3 necessarily. We see the possibility of synergies between the two Options that could usefully and beneficially result. Some Option 3 elements already appear to be built into the Option 4 approach, for example in relation to 'chemicals of low risk' through recognition of risk mitigation measures.
35. Option 4 provides a framework for assessing the risk presented by chemicals and then channelling them into streams that are of high interest and those that are of low interest. Further options are then available for addressing chemicals in both streams. For low interest, low risk chemicals this comprises guidelines, management through other risk mitigation measures, record keeping and audit, strengthening requirements in the Food Standards Code and education. For chemicals of high interest and that raise heightened safety concerns, more intense research, substantiation and evidence gathering and regulation.
36. While we have reservations about what 'strengthening requirements in the Food Standards Code' for the low interest stream might entail as set out in paragraphs 41-43 below, we are open to further discussing this element of Option 4 with FSANZ. Overall Option 4 delivers a good balance between regulatory and non-regulatory approaches. When coupled with an education programme, this Option presents as a comprehensive but practical approach to the multiplicity of packaging chemicals in use today and into the future.

Question 10: A guideline would involve a degree of prescription (*although it would not be mandated in the Code*). FSANZ invites stakeholders to identify the costs and benefits to industry, consumers and government of this approach in assisting industry (specifically SMEs) with identifying, characterising and managing risks arising from CMPF.

Question 11: Would the above information be appropriate for including in a guideline or can you identify others that should be included?

37. **NZFGC Response:** NZFGC supports a guideline approach that would systematically cover the risk mitigation arrangements available and to raise awareness about risk mitigation options. While there may be a level of prescription involved (as suggested by the Australian Office of Best Practice Regulation), costs of a guideline could be shared by industry and government in preparation (drafting, contributing to input, reviewing, circulating for comment etc) and in utilisation (industry in terms of uptake, ensuring familiarisation, training etc and government and industry on surveying uptake and compliance with guidance provisions).

38. Effectiveness criteria could be developed and would likely reflect the criteria applying to codes of practice – level of uptake, extent of awareness, measures in place, recognition across businesses (a culture of awareness) and across the industry (regular, ongoing support for the guidelines from industry bodies and government alike).

Question 12: Should all the industry standards and CoPs identified in option 3b be included in a guideline under this current Proposal (versus a separate process) to maximise coverage of all requirements for packaging or only specific ones that include reference to food safety measures or prescribed limits in them? In your answer please be as specific as possible to identify the most-appropriate guideline that would address CMPF.

39. **NZFGC Response:** NZFGC believes that an industry guideline should cover all mitigation options listed in Option 3b but primacy should be given to the NZ Packaging Council Code of Practice for Packaging Design, Education and Procurement (for New Zealand) and the APC (for Australia) if chemical migration matters can be included in these tools. This will provide for some level of consistency across the board but also flexibility for manufacturers where particular features of their business (technical, operational, business ownership and supply etc) may result in preferences for alternate mitigation measures to be employed.

Strengthening the requirements in the Code (regulatory)

40. FSANZ suggests that two regulatory options might form part of Option 4, a standard applying to food businesses that would require that they only use packaging materials that are safe or amendment to the relevant Food Acts.

Question 13: What do you see as costs and benefits for government, consumers and industry of this measure? Would it be cost effective? Please detail any other options that you think are appropriate, or available, to strengthen or clarify existing Code requirements and the reasons why, including the costs and benefits of such a measure?

Question 14: Do you consider that there is scope to improve the Food Acts provisions regulating the sale of food packaging in Australia and New Zealand?

41. **NZFGC Response:** NZFGC does not support either of these options on the basis of duplication, ineffectiveness and inconsistency. Although it might raise awareness, a standard in the Food Standards Code would likely duplicate 'duties of care' already placed on food manufacturers under the food acts and would not provide the coverage necessary to packaging suppliers. Awareness can be achieved in many other ways already canvassed in this submission more effectively and at less cost. To this extent, the provisions would be ineffective, as would explicit amendments to food acts on the basis

that scope of application may also limit extension to packaging manufacturers where action and adherence should take place rather than at the point of end use.

42. Inconsistency refers to the time taken to amend food acts and the inconsistency that exists during that period. We understand, for example, that some States took almost a decade to implement the Model Food Act provisions. New Zealand took over a decade to initiate, develop, draft and implement its new food legislation (the *Food Act 2014*). These processes do not lend themselves well to timely amendment for what would be only partial coverage of the packaging supply chain.

Chemicals of concern or high risk (regulatory approach)

43. Chemicals of concern are considered by FSANZ to be chemicals that meet all or one of criteria identified by FSANZ: they pose a higher inherent risk (adverse effects established from animal studies) and exceed health-based guidance limits; there are insufficient risk mitigation measures in place to control the resultant chemical migration from packaging to food or inadequate knowledge of the risks associated in some businesses both of which increase the residual risk; and there is a need for further monitoring, surveillance and characterisation of the risk.
44. From the risk profiling work has FSANZ undertaken, two chemicals have been identified (DEHP and DINP) that meet the above criteria. FSANZ advises that further survey work is under way to help characterise the risks of DEHP and DINP.

<p>Question 15: Do you consider that the Code should include specific limits for DEHP and DINP for all foods similar to the limits set used for other packaging chemicals (tin, vinyl chloride and acrylonitrile). What do you see as the costs and benefits to industry, enforcement agencies and consumers of this approach?</p>

45. **NZFGC Response:** Tin, vinyl chloride and acrylonitrile, all have an extensive and long history of use, study and characterisation. They are particularly hazardous within the facilities manufacturing them which has served to highlight the risks to the general population from their use in packaging. We have not stopped using them but have devised mechanisms to mitigate the risks they pose.
46. While DEHP and DINP have a long history of use, they have more commonly been used in the medical devices and construction areas. In the EU, DEHP cannot be used in toys or childcare articles or in cosmetics, and it is subject to restrictions in food contact applications. However, the research is continuing because even though DEHP is readily absorbed and distributed in the body, it is rapidly excreted and thereby accumulation does not occur.
47. FSANZ advises that it is currently conducting a study to acquire data on DEHP and DINP levels in a wider range of foods across Australia and New Zealand (SD3). The European experience is that there can be a large range of estimated dietary exposures to DEHP and clearly exposures for Australia and New Zealand cannot be assumed in light of this variability. The range of responses, continuing research and uncertainty about impact and the uncertainty at this time about exposure in Australia and New Zealand suggest that deferring regulatory measures until at least the FSANZ exposure research is complete would be sensible.
48. NZFGC would support a regulatory measure for DEHP and DNIP if the exposure assessment FSANZ is currently conducting demonstrates a high exposure that needs to be addressed.

Question 16: Which peak bodies should be involved in familiarising industry with any new provisions or raising awareness of CMPF?

49. **NZFGC Response:** As noted above in response to Question 8, we consider that FSANZ, AFGC/NZFGC and the packaging peak bodies are the most appropriate organisations to undertake a program of familiarisation on any new provisions or raising awareness with industry. However, it need not be exclusive. To the extent that other government agencies and industry groups have contact with the suppliers and users of packaging, a broad, inclusive approach is supported.

Post-market surveillance

50. FSANZ advises that post-market surveillance may be a key issue for Options 3 and 4 and that it can be addressed in consultation with food regulatory agencies and in a further call for submissions.

Question 17: How could post-market surveillance be conducted satisfactorily? Who would undertake such surveillance?

51. **NZFGC Response:** There are already a number of post-market surveillance tools available to government and industry such as the total diet studies and the businesses' consumer contact centres. These and other approaches such as in-country event monitoring, specific survey undertakings, and monitoring overseas developments and responses both in other countries and at the international standards setting level are all supported. All the data sources can combine to generate a satisfactory post-market surveillance environment. Oversight should rest with government.

Future regulatory impact statement

52. In order to help prepare a future regulatory impact statement (RIS) (if required), FSANZ has sought response to the following general questions.

Question 18: How will the options listed affect you; such as the choices available to your business and current process practices, consumption choices or regulatory activities?

53. **NZFGC Response:** The options all affect NZFGC insofar as we represent the voice of the food manufacturing sector in New Zealand. We would envisage the affects being accommodated within existing resources and arrangements rather than involving additional and new resources and facilities.

Question 19: Are there other affected parties that have not been identified by FSANZ that you feel should be included?

54. **NZFGC Response:** In New Zealand, primary producers across certain sectors have specific peak industry bodies such as meat, seafood and horticulture. These peak bodies may represent both producers and primary processors. It would be important to ensure they were all included in the implementation of measures going forward.

Question 20: Are there specific costs or benefits to consumers, industry and/or government that you feel should be considered in a future Regulation Impact Statement? If you have any data or information to support your views on these questions, FSANZ would welcome the opportunity to consider it.

55. **NZFGC Response:** NZFGC has not identified specific costs or benefits to consumers, industry and/or government that might be included in a future Regulation Impact Statement other than those FSANZ has already explored.