

Comments from the Victorian Departments of Health and Human Services and Economic Development, Jobs, Transport and Resources

Due date of submission – 6 July 2015

The Victorian Departments of Health and Human Services and Economic Development, Jobs, Transport and Resources (the Departments) welcome the opportunity to provide comments on Proposal P1037 which addresses inconsistencies and a lack of clarity in Standard 1.2.7 and related standards, including the use of the Health Star Rating (HSR) system.

The Departments recognise that the adoption of the Health Star Rating (HSR) system on packaged food labels is voluntary. The Departments also recognise that use of some trademarked elements of the HSR system on food labels may constitute nutrition content claims as defined in Standard 1.2.7, and therefore must comply with any associated requirements, particularly within Standards 1.2.7 and 1.2.8.

Table 1 (attached) provides responses from the Departments in relation to the proposed amendments.

Proposal P1037– Amendments associated with Nutrition Content & Health Claims

Table 1. Proposed amendments within Proposal P1037 and the Departments' comments.

Code reference	Issue	Proposed amendment	Comments
Standard 1.2.7, Schedule 1, conditions for claims about lactose, salt or sodium and omega-3 fatty acids	<p>Conditions for making these claims include a requirement to declare additional nutrients in the nutrition information panel (NIP). Schedule 1 does not indicate how to declare those nutrients, for example: where in the NIP, on what basis (e.g. per serving, per 100 g) or how much to declare (i.e. average quantity).</p> <p>For lactose and salt/sodium claims (before Standard 1.2.7 was gazetted) Standard 1.2.8 required the additional declarations to be 'in accordance with subclause 5(1)' of Standard 1.2.8 and therefore, in the prescribed format for a NIP.</p>	<p>The 'average quantity' of galactose (for lactose claims), potassium (for salt/sodium claims) and the specified omega-3 fatty acids will be required to be declared in accordance with the prescribed format for NIPs. This will ensure consistency with other prescribed nutrition information requirements, and with requirements in place before Standard 1.2.7 and associated amendments were gazetted.</p> <p>The requirements will be moved from Standard 1.2.7 to Standard 1.2.8, where other similar nutrition information requirements are located.</p>	The Departments support this proposed amendment.
Standard 1.2.7, Schedule 5, method for determining the nutrient profiling score (NPS)	<p>It was intended that the nutrient profile score (NPS) for a food could be determined using the information declared on its label (including in the NIP). However the requirements in Schedule 5 do not clearly achieve this.</p> <p>For example, for protein and dietary fibre, the 'average' per 100 g or 100 mL of food is required, rather than the 'average quantity' (as is required to be declared in the NIP). Also, it is not specified that the amount is to be based on per 100 g or mL of food, depending on the units used in the NIP.</p>	Schedule 5 will be amended to add that the 'average quantity' (rather than 'quantity') of nutrients is used in the NPS calculation and that the average quantity of protein and dietary fibre is to be based on per 100g or mL, depending on the units used in the NIP.	The Departments support this amendment. However, it is noted that it is not possible to determine the NPS for many foods by using the information provided on the label as the FVNL ¹ content of the food cannot necessarily be determined.

¹ FVNL - fruits, vegetables, nuts and legumes including coconut, spices, herbs, fungi, seeds and algae
(Guide for industry to the Health Star Rating Calculator (HSRC) Version 3, 3 March 2015)

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Standard 1.2.8, Clause 7B Percentage DI or RDI information presented outside the panel	<p>It was intended that the percentage Daily Intake (%DI) for energy alone could be provided without providing %DI for other nutrients, outside the NIP. This is not currently clear in the Standard.</p> <p>It is also not clear that the %DI for dietary fibre is permitted to be declared outside the NIP if it is also declared in the NIP, together with the %DI for the prescribed nutrients.</p>	<p>It will be clarified that the %DI for energy alone (without other %DI information) is permitted to be presented on a label outside the NIP.</p> <p>It will also be made clear that the %DI for dietary fibre is permitted to be declared outside the NIP if it is also declared in the NIP, together with the %DI for the prescribed nutrients.</p>	The Departments support this proposed amendment.
Standard 1.2.8, conditions for small packages, clause 8	<p>If certain claims about food in a small package are made, the 'minimum', 'maximum' or 'average quantity' of various nutrients must be declared.</p> <p>The intention was that these requirements were consistent with provisions for NIPs (on larger packages) for declaring the minimum or maximum amounts, as an alternative to an 'average quantity'. However the permission to declare a minimum or maximum was inadvertently applied to a broader range of foods and claims on small packages compared to permissions for declaring minimum or maximum quantities in NIPs on larger packages.</p>	<p>The provisions for small packages will be amended to be consistent with existing provisions for NIPs on larger packages, i.e. that the minimum or maximum amounts are only permitted to be declared in an NIP if the claim is about a food standardised in Standard 2.4.1 or 2.4.2 (edible oils or edible oil spreads) and if the claim relates to polyunsaturated fatty acids or monounsaturated fatty acids.</p> <p>For all other declarations, the average quantity must be indicated.</p>	The Departments support this proposed amendment.

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Standard 1.2.8, conditions for small packages, clause 8	For claims about dietary fibre, sugars or any other carbohydrate, the 'average quantity of energy' is required to be declared rather than the 'average energy content' as is required for NIPs on larger packages.	For claims about dietary fibre, sugars or any other carbohydrates, the 'average energy content' will be required to be declared. Average energy content is to be calculated in accordance with the standardised method in clause 1 of Standard 1.2.8.	The Departments support this proposed amendment.
Standard 1.2.8, conditions for small packages, clause 8A	For claims on small packages about dietary fibre, sugars or any other carbohydrate, 'declaration of' unavailable carbohydrate and other substances if present, e.g. erythritol, glycerol, is required. It is not clear that an amount must be declared, or what quantity of food the amount of each substance relates to.	The provisions will be amended to be consistent with existing provisions for NIPs on larger packages and with other declarations on small packages, as was intended i.e. the 'average quantity' of these substances must be declared, 'per serving'.	The Departments support this proposed amendment.
Standard 2.9.2 – Food for Infants, clause 9	As a result of amendments to Standard 1.2.8 when Standard 1.2.7 was developed, some of the clauses in Standard 1.2.8 relating to food in small packages (subclause 4(4) and clause 8A) were inadvertently applied to food for infants.	Clause 9 of Standard 2.9.2 will be amended to clarify that the clauses about food in small packages in Standard 1.2.8 do not apply to food for infants.	The Departments support this proposed amendment.

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Standard 1.2.7, clause 5 and Standard 1.2.8, clause 4	Use of certain elements of the HSR system triggers certain claim requirements, including additional nutrition information labelling requirements.	An exemption will be provided for the star rating, the energy icon and the nutrient icons for sodium, saturated fat and sugars, as trademarked, from claim requirements in Standards 1.2.7 and 1.2.8.	<p>The Departments support the exemption of trademarked elements of the Health Star Rating system from being required to meet the requirements pertaining to nutrition content claims.</p> <p>These trademarked elements are: the star rating (trademark 1641447), star rating together with the energy icon (trademark 1641445) and star rating together with the energy icon and prescribed saturated fat, sugar and sodium nutrient icons (trademark 1641446).</p> <p>We understand that the declaration of any other nutrient icons (such as protein, fibre, cholesterol, some vitamins and minerals), percentage daily intake (%DI) information or 'low' or 'high' nutrient descriptors would constitute a nutrition content claim, requiring the label to meet any relevant conditions within Standard 1.2.7.</p>