

Enforcement Delivery Branch

enforcement@fss.scot

Date: 22/03/2022

FSS/ENF/22/005

Dear Lead Food Officer

LABELLING AND COMPOSITION CHANGES IN RESPONSE TO SUPPLY CHAIN DISRUPTION

We are aware of a number of queries from industry relating to supply chain disruption due to the current conflict in Ukraine. In particular, the need to reformulate products at short notice in response to supply chain issues with sunflower oil, which it may not be possible to reflect on the current product labelling.

In instances where changes in food supply chains occur at short notice, our overriding concern is to ensure that consumer safety is protected.

Guidance

We are in the process of reviewing general guidance in relation to supply chain disruption. We will provide a further update to you on this in due course.

In the meantime, we would encourage local authorities (LAs) to consider the unforeseen circumstances which may lead to supply chain disruption. We recognise the vital role LAs play in supporting business compliance, whilst adopting an enforcement approach that is reasonable, proportionate, risk based and considered on a case-by-case basis.

In these circumstances, we recognise the importance of reasonable and proportionate enforcement of food information requirements and protecting consumer interests and overall consumer confidence in the food industry, as well as the need to ensure the ongoing provision of food throughout the supply

chain.

Food Business Operators (FBOs) may need to alter the composition of their foods to respond to sudden changes to supply. If the composition of a food is changed, the information on pre-printed packaging and labels that are attached to the food will no longer accurately describe the food as it can take time to implement new packaging for a single product.

Sunflower Oil

We are aware that in these exceptional circumstances FBOs have indicated a need to substitute sunflower oil in their products with refined rapeseed oil, leading to an urgent need to assess the risk to consumers of doing so and other consumer interests arising from the shortage of sunflower oil due to the conflict in Ukraine and an extended lead time for sourcing new labelling. In the short to medium term, it is recognised that it may be challenging to reflect this substitution on the existing packaging of products that currently specify the presence of sunflower oil as an ingredient.

Whilst rapeseed/refined rapeseed oils are not in the list of 14 allergens specified in Retained Regulation (EU) 1169/2011 on the Provision of Food Information to Consumers, we cannot rule out the possibility that some hypersensitive consumers may experience a reaction when consuming food containing these ingredients.

As this could result in the presence of an undeclared ingredient (refined rapeseed oil) in some products, we have considered this practice against two tests to assess the immediate risk of the identified substitution and understand the supply chain position based on analysis of the evidence available. In respect of the substitution of sunflower oil with refined rapeseed oil, we have concluded that:

- the frequency of allergic reactions to refined rapeseed oil to be very low (i.e. very rare but cannot be excluded), the severity of illness in relation to allergic reactions to refined rapeseed oil to be negligible (i.e. no effects or so mild they do not merit to be considered)
- appropriate mitigating actions such as consumer messaging and point-of-sale notices would reduce the risk further
- there is evidence of significant supply chain disruption and there are wider consumer interests in maintaining food supply in respect of the specific substitution outlined above.

The rapid risk assessment commissioned by the FSA and FSS in relation to the substitution of sunflower oil with undeclared refined rapeseed oil will be published on the website shortly. The risk assessment may be followed up with further work subject to data availability.

As businesses update packaging and labelling to reflect the substitution, it should be noted that refined oils of vegetable origin may be grouped together in the list of ingredients under the designation 'vegetable oils' followed immediately by a list of indications of specific vegetable origin, and may be followed by the phrase 'in varying proportions'.

Local Authority Next Steps

FSS is seeking to gather information on instances where an LA becomes aware of any FBO product reformulations in response to supply chain disruption, which are not reflected on existing packaging, as part of our statutory function of obtaining and reviewing information on food safety and consumer interests.

Therefore, we request that LAs notify us of these instances via email to enforcement@fss.scot, providing the following information:

- Details of the reformulation;
- Products/batches affected;
- Reason/s for and scope of the reformulation;
- Any associated mitigations (e.g. the provision of additional information through the use of a point of sale notice, overstickerering)
- Details of the intended end date for the reformulation;
- Intended market/s for the product/s concerned.

A notification template has been developed for this purpose, a copy of which is attached to this email.

FBO obligations under food law remain unchanged, and it is the FBO's responsibility to ensure the food it places on the market is safe and that food labelling is accurate and not misleading to the consumer.

In considering this issue, we suggest that the following factors are explored to determine whether enforcement action should be taken on a case-by-case basis:

- Can the business re-label immediately to reflect the change in ingredient?
- If they can't re-label, is the reformulation or substitution of the ingredient necessary as a result of exceptional circumstances, and does the need to ensure the supply of food justify the need to reformulate?
- Does the reformulation negatively impact the consumer's ability to make safe food choices,

taking into account the risk assessment provided?

- Can the traceability of the final food be assured to enable products to be effectively removed from the market if a food safety issue is identified?
- Could the reformulation mislead the consumer as to the nature, substance or quality of the food, or be used to mask fraudulent activity or achieve unfair commercial gain by unscrupulous businesses?
- Has the FBO taken sufficient steps to mitigate the potential risk to consumers as a result of the amendment to the product's composition?
- Has the business taken reasonable steps to ensure that the general requirements relating to the provision of food information to consumers are maintained as far as possible? This includes applying alternative compliant labelling information that reflects the substitution of ingredient(s) as soon as practicable, for example by over-stickering or ink jetting.
- Is the FBO taking all reasonable steps to re-align labelling of the affected products with the legislative requirements in as short a period as possible?

It must be emphasised that this advice is only relevant in relation to the replacement of sunflower oil with refined rapeseed oil, as unrefined ('cold-pressed' or 'virgin') oils have a higher level of residual protein and hence carry a greater risk to hypersensitive consumers.

We would request that LAs contact us at the above email address if they receive a query from a business regarding the substitution of sunflower oil with a vegetable oil other than refined rapeseed, as this will require a further risk assessment to be carried out prior to any additional advice being provided.

Please note, the UK has no control over how food labelling changes will be enforced outside the UK. We will continue to monitor the position in relation to sunflower oil supply and will notify LAs of any further developments in relation to sunflower oil or any other significant food supply chain disruption.

Please contact enforcement@fss.scot if you have any questions.

Yours sincerely,



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Food Standards Scotland