

Enforcement Delivery
Enforcement@fss.scot

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Dear Lead Food Officers

LABELLING AND COMPOSITION CHANGES IN RESPONSE TO SUPPLY CHAIN DISRUPTION – UPDATE – Sunflower Lecithin’s

Further to our letter dated 22 March 2022, I am writing to provide an update on reformulation of products due to supply chain issues linked to the current conflict in Ukraine.

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

Guidance

As indicated in our previous letter, we have now reviewed the general guidance in relation to supply chain disruption that was issued during the COVID-19 pandemic and have determined that **it is not appropriate** to issue general guidance in the current circumstances.

This decision has been taken in consideration of the specific nature of the supply chain disruptions being reported and reflects the need to consider these on a case-by-case basis; taking into account the nature of the substitution, the impact on ongoing supply, any associated risks and; the proposed mitigations put in place by food business to inform consumers.

FSS will continue to monitor the situation and will undertake risk assessments of other oils that may need to be used as a substitute for sunflower oil as and when required. We will provide further updates to support local authorities (LAs) discussions with food business operators (FBOs) on this subject.

We continue to encourage LAs to consider the unforeseen circumstances which may lead to supply chain disruption, and recognise the vital role you 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 whilst 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.

Supply Chain Issues – refined vegetable oils other than rapeseed and sunflower lecithins

FSS and the FSA have received queries via local authorities and industry concerning the substitution of sunflower oil with refined vegetable oils other than rapeseed oil, and also in relation to the substitution of sunflower lecithin with other lecithins.

With regard for the substitution of sunflower oil with refined vegetable oils other than rapeseed, FSS continues to work closely with colleagues in the FSA, Defra and across governments to obtain evidence of the extent and exact nature of the supply chain disruption arising from the conflict and agree guidance on alternative oils where appropriate.

Where an FBO is experiencing supply disruption of sunflower lecithin, please note the relevant legislation, Retained EU Regulation 1169/2011, does not require the origin of lecithins to be specified on food labels unless they are derived from any of the 14 allergens which must be declared.

Where a FBO uses lecithins that are not derived from any of the 14 allergens and labels products with the general additive description of 'lecithin' or 'E322', they may be safely and legally substituted for each other without the need for any labelling changes.

However, where a FBO has voluntarily stated the use of sunflower lecithin, substitution of this with lecithin from another source without amending the label would mean incorrect information being provided to consumers, in breach of Regulation 1169/2011 and presents a food safety issue if the substituted lecithin is derived from any of the 14 allergens.

The enforcement approach in relation to the substitution of sunflower lecithin with lecithin of a different origin, where voluntary labelling currently indicates sunflower as the source (provided the substituted lecithin is not derived from any of the 14 allergens) should remain consistent in terms of proportionality and pragmatism.

It should be noted that our **current guidance only relates to substitution of sunflower oil and sunflower lecithin** as ingredients and we will write to you again when a position on the other oils has been determined.

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.

As businesses update packaging 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, overstickering)
- Details of the intended end date for the reformulation;
- Intended market/s for the product/s concerned.

Please explain the reasons for collating this information to the food business operator, and confirm that the information will be submitted to Food Standards Scotland and may be published and made available to all UK local authorities.

A notification template has been developed for this purpose, a copy of which is attached to this email. Please ensure that all information requested in the template is provided where possible, including the intended date by which labelling is expected to be compliant, as this has been missing from some notifications already received. Where information such as batch codes is not known at the time of notifying us please update us when you have obtained the information from the business.

Enforcement Considerations

We have reviewed the notifications received to date from across the UK in respect of substitutions where a pragmatic approach to enforcement has been agreed by the LA and noted that in some cases the period of time proposed for returning to compliance is being determined by the time that existing stocks of labels will last rather than by how quickly new labels that reflect the reformulation of the product can be obtained. This approach **does not constitute reasonable** steps to comply with the legislative requirements as a matter of urgency.

We have also been made aware that some businesses are providing notices in store e.g. at customer service kiosks and entrances that make general statements about substitution of sunflower oil and do not provide information on the specific products affected in proximity to the products in question. This approach is not considered to be a suitable to ensure that the general requirements relating to the provision of food information to consumers are maintained.

It must be emphasised that advice relating to a proportionate and pragmatic approach is only relevant to substitutions involving the ingredients specified within this update. It is important that each request is considered on a case-by-case basis for each individual product where the manufacturer is considering substitution due to supply chain disruption.

We have revised the list of factors that we suggest should be explored when considering whether enforcement action should be taken on a case-by-case basis. The revised list is as follows:

- 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 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?
- **Is the ingredient being substituted likely to be a factor in a consumer's decision to purchase the food, for example a 'sunflower spread' that does not contain sunflower oil?**
- 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.
- **Has the business put in place mechanisms to respond to individual customer enquiries about individual products and batches of these where substitution may have taken place, for example, by publishing these details on its website or putting a system in place to make it available through its customer services mechanisms?**
- 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?

We would request that LAs contact us at the above e-mail address if they receive a query from a business regarding urgent substitution queries arising as a result of the conflict in Ukraine for ingredients other than those for which we have already issued guidance, or are currently considering i.e. palm oil, soyabean oil and coconut oil, as these may necessitate further risk assessment being carried out prior to 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 ongoing supply chain disruptions and will notify LAs of any further developments.

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

Yours sincerely



Andrew Morrison

