

Enforcement Delivery

Enforcement@fss.scot

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FSS/ENF/22/008

Dear Lead Food Officers

**LABELLING AND COMPOSITION CHANGES IN RESPONSE TO SUPPLY CHAIN
DISRUPTION – UPDATE 3**

FSS would like to update you following our previous correspondence of [22 March](#), [14 April](#) and [12 May](#) concerning the reformulation of products due to supply chain issues linked to the current conflict in Ukraine.

This letter provides an update on relevant products.

1. Following industry queries seeking further clarification, the attached industry guidance has been produced concerning the provisions within the existing legal framework for labelling where there is grouping of vegetable oils. This guidance provides further clarification on the application of labelling provisions in the Food Information to Consumers (FIC) Regulation.

The guidance (**Annex I**) describes the relevant labelling rules, including on grouping refined vegetable oils on the ingredients list when there is expected to be a variation in the use of one or more oils. It also provides guiding principles for how to provide compliant consumer information when the use of oils is expected to vary.

2. The addition in the table at Annex II of the potential for **fully refined corn oil/fully refined maize oil** to be used as a substitute for sunflower oil. Associated risk assessments will be published on [food.gov.uk](https://www.food.gov.uk)¹ when available.

¹ <https://www.food.gov.uk/research/food-allergy-and-intolerance-research>

It must be emphasised that this correspondence is only relevant in relation to substitutions involving the ingredients specified within Annex II of this letter. It is important that each request is considered on a case-by-case basis for each individual product where the FBO is considering a substitution. It is also important to stress that the UK has no control over how food labelling changes will be enforced outside the UK.

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.

FSS is monitoring the position in relation to ongoing supply chain disruptions and would like to, again, take this opportunity to express our gratitude for all the information and feedback being provided.

We will continue to monitor the position in relation to ongoing supply chain disruptions and notify you of any further developments.

Local Authority Next Steps

FSS is continuing to seek 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.

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

Yours sincerely

A handwritten signature in black ink, appearing to read 'A Morrison', written in a cursive style.

Andrew Morrison

Head of Enforcement Delivery Branch

Annex I

Providing consumer information on refined vegetable oils

This guidance for business covers the provision of consumer information on refined vegetable oils where there is an expectation of a variation in use between two or more different oils.

Legislative requirements

Information provided on packaging and on the ingredients list about vegetable oils should not be misleading and should be compliant with the law.

As a business, you are expected to provide clear and accurate labelling that enables consumer choice in relation to food. It is your responsibility to ensure that the information you provide about vegetable oils on packaging and in the ingredients list is not misleading and complies with the legislation.

[The Food Information to Consumers \(FIC\) Regulation No. 1169/2011](#) sets out mandatory labelling requirements and the rules on voluntary information.

Labelling legislation, including the FIC and any product specific rules, should be considered collectively when developing an approach to providing consumers with accurate information to inform choice.

If a business anticipates variation in use between two or more refined vegetable oils, particular consideration should be given to:

- [FIC Article 7 \(Fair Information Practices\)](#)
- [FIC Article 9 \(List of Mandatory Particulars\)](#)
- [FIC Article 18 \(List of ingredients\)](#) engaging [FIC Annex VII \(Part A\) provisions 7 and 8 in Annex VII \(Part A\)](#)

Labelling when there is variation in use of vegetable oils in products

It is for each business to determine its approach to labelling. This guidance supports the interpretation of two provisions that may be relevant when the use of vegetable oils is expected to vary:

- Grouping oils on an ingredients list in 'varying proportions'.
- Using 'and/or' when mutually substitutable oils make up less than 2% of the finished product.

Grouping refined vegetable oils in ‘varying proportions’

It is a requirement to set out an ingredients list in descending order of weight. Refined oils of vegetable origin are exempt from the usual requirement to list each oil separately by weight, when grouped together.

The ‘in varying proportions’ provision in the FIC Regulation means that:

- Refined vegetable oils may be grouped together as ‘*vegetable oils*’. The oils must then be specified to allow consumers to express their preferences e.g. ‘*vegetable oils (sunflower; rapeseed)*’.
- When the use of two or more refined vegetable oils is expected to vary, the phrase ‘*in varying proportions*’ may be used after the information about the vegetable origin. For example: ‘*vegetable oils (sunflower; rapeseed) in varying proportions*’.

When using the wording ‘*varying proportions*’ we would expect a percentage (more than 0%) of each specified oil remains included in the product. For example, if sunflower oil and rapeseed oil are specified, there must be an expectation that both oils will be in the product.

Businesses are expected to consider how listing vegetable oils in ‘varying proportions’ impacts on other requirements. The packaging and list of ingredients should be considered as a whole when assessing compliance.

Other requirements continue to apply when grouping refined vegetable oils in ‘varying proportions’, including:

- nutritional labelling
- order of ingredient listing
- claims (e.g. nutrition and health claims and pictorial representations emphasising ingredients or particular attributes)
- product specific rules (e.g. compositional requirements for infant and follow on formula, foods for special medical purposes, total diet replacement, processed cereal-based foods and other baby foods and supplements)

You may need to update the nutritional labelling when substituting oils with different nutritional profiles.

Signalling the absence of a refined vegetable oil using “and/or”

Generally all ingredients, including specific oils listed should be present in the product. Including an ingredient that is not present in the final product is likely to be misleading.

An exception is when two similar or mutually substitutable ingredients (for example similar refined vegetable oils) make up less than 2% of the finished product. In this case, using ‘and/or’ is acceptable in the ingredients lists when at least one of the oils is present in the finished product. For example, “*contains sunflower oil and/or rapeseed oil*”.

The use of “*and/or*” should not be used for vegetable oils that are listed in FIC Annex II as known to cause allergies or intolerances.

Guiding principles

Businesses have an obligation to comply with the relevant labelling rules and not mislead consumers. There is no set threshold for what constitutes misleading labelling. This is a judgement call for each business to make considering the packaging and labelling as a whole.

When there is expected to be variation in use between vegetable oils, packaging and labelling choices should be guided by the availability of vegetable oils alongside what each business can reasonably foresee being in its products.

It is not appropriate to include vegetable oils a business does not use, or does not intend to use in a product, in an ingredients list.

When a vegetable oil declared on the label becomes unavailable

Businesses must prioritise compliance with the labelling legislation. This includes considering alternative approaches to compliant labelling that reflect new product compositions such as grouping oils in ‘varying proportions’.

Businesses may make use of the ‘varying proportions’ derogation based on the intended product composition. Should unforeseen supply chain disruption render the ‘varying proportions’ list inaccurate then [proportionate enforcement may be applicable](#).

Appropriate mitigating actions such as overstickering, consumer messaging and/or point-of-sale notices should also be considered until the packaging and label can be updated.

Annex II

The table below specifies substitutions which have been subject to the risk assessment process.

Ingredient to be Substituted	Substituted with	FSA Risk Assessment Outcome			Other consumer interest considerations
		Frequency of allergic reactions	Severity of illness in relation to allergic reactions	Level of uncertainty	
Sunflower Oil	Refined Rapeseed Oil	Very Low	Negligible	Medium	The presence of GM refined rapeseed oil should be labelled in line with existing requirements.
Sunflower Oil	Fully Refined Soybean Oil	Negligible	Negligible	Low	Potential for sustainability concerns depending on source of soybean oil. The presence of GM refined soybean oil should be labelled in line with existing requirements.
Sunflower Oil	Fully Refined Palm Oil	Very Low	Negligible	Medium	Potential concerns around sustainability depending on source of palm oil and other ethical issues associated with the use/consumption of palm oil. Nutritional content and wider health profile of palm oil is inferior to that of sunflower oil which may affect the accuracy of nutrition labelling depending on quantities involved.
Sunflower Oil	Fully Refined Coconut Oil	Very Low	Negligible	Medium	Nutritional content and wider health profile of coconut oil is inferior to that of sunflower oil which may affect the accuracy of nutrition labelling depending on quantities involved.
Sunflower Oil	Fully Refined Corn/Maize Oil	Very Low	Negligible	Medium	The nutritional content of corn/maize oil in comparison to sunflower oil is similar in terms of saturated fat. In terms of sustainability, the growing of corn for corn oil production depletes nitrogen and other nutrients from soil and fertilizer and pesticide run-off has the potential to cause water pollution.
Sunflower Lecithin	Alternative lecithins not derived from any of	Not required due to existing	Not required due to existing	Not required due to existing	The terms 'lecithin' and/or 'E322' may be used without any reference to the origin of the lecithin (with the exception of lecithins derived from allergens listed in Annex II of REUL

	the 14 allergens	flexibilities in legislation	flexibilities in legislation	flexibilities in legislation	1169/2011). This relates to products where 'sunflower lecithin' is specifically stated in the ingredients list on a voluntary basis.
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Annex III

Factors to explore when determining enforcement action on a case-by-case basis:

Factors to consider	Yes/No?	Comments
Can the business re-label immediately to reflect the change in ingredient?		
If they can't re-label, is the reformulation/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 and informed 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?		