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REVIEWING THE DRAFT R2986 FOOD LABELLING REGULATIONS of 2023 "KEY ISSUES"

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History of Food Labelling Regulations

- FCD Act – Section 15(1)(h), (k) and 15(2) - regulating powers
- Purpose of Regulations under FCD Act
  - Address deception of consumers and allow consumers to make informed choices about the food they consume
  - Generically promote health of South Africans
- History of FCD labelling regulations
  - Pre-1993 - Basic regulations under FCD Act
  - 1993 to 2010 – R2034 - Health claims, nutritional information – many gaps – **Effective date 1 May 1995**
  - 2010/2012 - R146 – In depth limitations on health claims etc
  - 2014 – R429 – close health claims – prohibit certain TM's
  - 2023 – R2986 – similarities with R429 – not a new draft as such

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Now, let's have a look at the key issues we have found in R2986…

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R2986 under FCD Act – Labelling and Advertising of Foodstuffs

- Permitted and Prohibited Claims - Tables
- Prohibited Trade Marks and Trade Names
- Marketing Restrictions on “Unhealthy” Foods
- Front of Pack Health Warnings
- “Artificial Sweeteners” and Sugar
- The Role of Guidelines
- Interpretation issues

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Health Claims

R2034 – Prohibition on Health Claims

"The following information or declarations shall not be reflected on a label or in an advertisement of a foodstuff:

(b) the words "health" or "healthy" or other words or symbols implying that the foodstuff has health-giving properties as part of the name or description of the foodstuff;

(c) subject to the provisions of the Medicines and Related Substances Control Act, 1965 (Act No. 101 of 1965), the words "heal" or "cure" or "restorative" or any other medicinal, therapeutic or prophylactic claim;"

Effective date: 1 May 1995

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Permitted Claims in R2986

- Several types of claims will be permitted:
  - **Low GI – ISO26642 testing - two labs**
  - **Low GL - Only GL information, not a claim**

  - **Function claims - Table 4 only**
  - **Reduction of Disease Claims – Table 5 only**
  - **Whole grain health claims – Tables 6 to 8 only**
  - **Oral Health**
  - **Weight Reduction – Table 10**

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Permitted Claims in R2986

- **Function claims**
  - Reg 68 – Table 4
  - No deviation from prescribed wording allowed, specific req's
  - Can't used is nutrient or vitamin not listed – and at least 30% NRV
- **Reduction of Disease Claims**
  - Reg 69 and Table 5
  - Cannot change wording, cannot attribute a degree of reduction
  - Must comply with specific characteristics e.g. quantity

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Permitted Claims in R2986

- **Whole grain health claims**
  - Reg 70, Tables 6, 7, and 8
  - 100% Intact Whole grain, Recombined whole grain, and Partially wholegrain claims
  - Specific claim for each type – cannot deviate
- **Oral Health claims**
  - No “sugar free” claims unless specified non-nutritive sweetener used
  - Reg 71– Table 9

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Permitted Claims in R2986

- Several types of claims are restricted:
  - **Slimming** – very strict conditions for these
    - "ONLY EFFECTIVE AS PART OF AN ENERGY-CONTROLLED PRUDENT DIET AND AN INCREASE IN MODERATE PHYSICAL ACTIVITY"
    - the meal must be an energy restricted meal
  - **Detoxification claims** are medicinal claims and banned

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Health Claims in Names

"health claim" means an effect on the human body, including an effect on one or more of the following –

(a) a biochemical process or outcome;

(b) a physiological process or outcome;

(c) a functional process or outcome;

(d) growth and development;

(e) physical performance;

(f) mental performance;

(g) a disease, disorder or condition; and

(h) oral hygiene

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Health Claims in Names

R2986 – Health Claims in Names

48. (1) A claim with a nutrition or health message—

(a) which is not addressed in these Regulations, is not permitted on the labels or in any advertisement thereof;

(b) is permitted for a single ingredient—

(i) if that ingredient is the end product intended for sale; and

(ii) if that ingredient is not further processed in the manufacturing process when used as an ingoing ingredient of a compound foodstuff.

(2) (a) These regulations apply to the generic names, brand names or trade-mark names.

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Health Claims in Names

R2986 – Health Claims in Names

2(b) The names contemplated in paragraph (a) may not be used to

mislead consumers with regard to the generic or specific nutritive properties or generic or specific health-giving properties, through a play with words or parts of words which could be interpreted as or related to an energy, nutrition, non-addition of sugar or salt, ingredient content or health claim.

(c) Notwithstanding paragraph (b), **generic names, brand names or trade-mark** names may be used if a foodstuff is eligible, according to the Nutrient Profiling Model for nutrition and food claims, to make a claim with a health or nutrition message and complies with the relevant criteria for the said claim.

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Health Claims in Names

R2986 – Health Claims in Names

(3) Where nutritional information about a particular nutrient or substance

is provided in the nutritional information table, but no claim with a nutrition or health message is made outside the table on the label, such information is not regarded as a claim: Provided that—

(a) should certain information be emphasised in any manner in the nutritional information table or the list of ingredients or anywhere else on the label, such as but not limited to colour differences of the letters or numbers, different background colour than the rest of the information, differences in font types, letter sizes or in any other manner, it must be considered that a claim is made for that particular nutrient; and

(b) the substance is not a scheduled substance, regulated under the Medicines Act.

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Health Claims in Names

R2986 – Health Claims in Names

(4) Foodstuffs which are produced for sale by a **small producer, or a street vendor may not** make or bear **any claim with a nutrition or health message**.

(5) **No** nutritional labels, label systems, panels or **simplified nutritional information are permitted** on the label of a foodstuff other than, where applicable, **the FOPL label required under regulation 51.**

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Health Claims in Names

R2986 – Health Claims and CAMS in Food

Regulation 2(10):

(10) A person may not—

(a) include a sample of complementary medicine in a foodstuff or its container;

(b) show a pictorial representation of a complementary medicine on the label, container or in an advertisement;

(c) make a claim on the label of the foodstuff that may relate to the health or therapeutic effect of a complementary medicine;

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Health Claims in Names

R2986 – Health Claims and CAMS in Food

(d) include as an ingredient in a foodstuff a complementary medicine which is sold independently, and use the brand name of the complementary medicine to indicate its presence in the list of ingredients or anywhere else on the label;

(e) subject to paragraph (h), add any herbal substance to a foodstuff, which is not, according to Annexure 7, considered a **culinary herb** or spice ordinarily used in **South Africa** (Table 1); or which other herbs and spices which are not ordinarily used as culinary herbs but which are permitted in foodstuffs (Table 2a); or which may **not be used in food according to the Medicines Act** (Table 2b);

(f) compare a foodstuff in any manner with a complementary medicine or vice versa;

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Health Claims in Names

R2986 – Health Claims and CAMS in Food

(g) include a vitamin, mineral, fatty acid, amino acid, prebiotic or probiotic defined in terms of the Medicines Act, in a food **at a level** which is considered a **complimentary medicine made in terms of the Medicines Act**;

(h) make any claim with a health or nutrition message about a vitamin, mineral, fatty acid, amino acid, prebiotic or probiotic defined in terms of the Medicines Act, unless specifically permitted for by these Regulations; and

(i) **include any other substance in a food which is considered a complementary medicine, or a medicine made in terms of the Medicines Act.**

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Health Claims in Names

R2986 – Health Claims – Artificially Sweetened or Fructose

55. (1) Notwithstanding regulation 36, a foodstuff which contains added crystalline fructose ($C_6H_{12}O_6$) or added artificial sweeteners including tabletop artificial sweeteners, may not make any claim with a nutrition or health message or carry any endorsement logo concerning health unless conclusive scientific proof can demonstrate—

(a) that according to Guideline 15, scientifically substantiated benefits to health in general, as well as a reduction of the risk of non-communicable disease, including obesity will result; and

(b) that any of these substances do not contribute to the risk of developing any disease in the long term of 20 years or more.

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Health Claims in Names

R2986 – Fake Foodstuffs

"fake food" means a foodstuff or beverage which consist mainly of a mixture of food additives not ordinarily consumed on its own in the same form as the ingoing additive in the formulation or receipe, and or ingredients such as water and or salt and or the flavouring or extract of a real ingredient but not the ingredient itself, and contains no or no significant amount of energy, protein, carbohydrates, or fat;

56. (1) A fake foodstuff of which examples are indicated in Guideline 10

(solid or liquid) may not—

(a) make any claim with an energy, health or nutrition message;

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Health Claims in Names

R2986 – Cosmetic Claims are Health Claims

57. A claim related to the use of the word beauty in any context related to physical beauty or any other cosmetic effect, in terms of any foodstuff, ingoing ingredient or substance must, unless specifically addressed by these regulations, is an **illegal health claim**.

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Health Claims in Names

- **Powers to Regulate like this?**
  - Section 15 of the FCD Act
  - Object of the regulations is to stop deception/misleading of consumers
  - Constitutional rights balanced against right to free speech and freedom of choice
  - Court Case on tobacco advertising made it clear that the health of the public is overriding factor and right to free speech e.g. advertise tobacco is not absolute – same in other democracies such as Australia

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Health Claims in Names

- **…but we have a registered Trade Mark**
  - Trade Mark is not an absolute right to use as you want
  - Can still use the trade mark, just not on products falling under these regulations
  - Reg 48(2) possibly saves some TM's – contradicts 9(3)
  - This is not "expropriation" – you get to keep your trade mark e.g. use of registered vitamins/meds
  - CPA also prohibits deceptive use of product names

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Health Claims in Names

- **…but we have a registered Trade Mark**
  - Section 15(2) of FCD saves pre-1973 TM's to some extent – Minister must apply his mind case by case basis – cannot prohibit generically
  - 1973 to 1 May 1995 – perhaps a legal argument that cannot be retrospective, but public health imperative remains – as per BAT v Min of Health case
  - 1 May 1995 onwards …….

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Health Claims in Names

- **So what now?**
  - They could implement with immediate effect – or short transition period
  - The wording of 9(2) and 9(3) may be subject to legal challenge as it must comply with Section 15(1)(h), 15(1)(k) and 15(2) of the FCD Act – seems it may not

"(2) No regulation shall be made under subsection (1) (h) which will have the effect of prohibiting the sale of any foodstuff, cosmetic or disinfectant under a trade mark or trade name under which it is sold at the date of the coming into operation of this Act, save in such cases where the Minister is satisfied that the trade mark or trade name falsely or misleadingly describes the foodstuff, cosmetic or disinfectant."

  - These are holding pattern actions and eventually the DoH will get this through – if they want to - Rebranding?

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The Legal Position of Guidelines

- **Section 15 (6) of the FCD Act provides that:**

The Minister shall, not less than three months before making any regulation under this Act, cause the text of the proposed regulation to be published in the *Gazette* ….

- **Section 16 of Interpretation Act 33 of 1957 provides (in summary):**

When any regulation is authorized by any law to be made by a Minister, such regulation shall, subject to the provisions relative to the force and effect thereof in any law, be published in the Gazette.

BUT – GUIDELINES WERE NOT PUBLISHED IN THE GAZETTE

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The Guidelines

- **Are Guidelines Enforceable in the same way as Regulations?**
  - Regulations are published for comment in terms of Section 15 of FCD Act
  - Guidelines were not published for comment in the Government Gazette
  - FCD Act does not consider the issue of Guidelines – there is no specific provision for the Director General or anyone else to simply publish Guidelines which then have the force of law
  - Some officials have stated that they are not enforceable and are intended to guide a person on how to comply
  - Guidelines thus are there to assist in compliance with stated criteria in the Act and Regulations!

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The Legal Position of Guidelines

- In the draft Regulations that were gazetted for comment, The Minister defines *"guideline" means guidance documents which are intended to provide detailed information, clarity and examples to enhance the interpretation of these Regulations as published on the website of the Department of Health*;

- The guidelines were not themselves gazetted and cannot be commented on;

- The guidelines are not available during the comment period on the regulations which include direct references to them;

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Interpretation Issues

- Overlap between various Acts and Regulations
  - Unless specifically stated, one regulation is not subordinate to another regulation, especially under different Acts
  - Operate in silos, each Ministry interprets own Act & Regs
  - If in conflict problem arises – inter-ministerial committee etc
- Interpretation of Regulations
  - Government officials cannot alter regulations - official amendment
  - APS allows officials in some instances to waive certain requirements
  - Beware of officials providing interpretations of Regulations!
    - **APS Inspector approves label**
    - **Another APS Inspector later orders removal from sale for non-compliance!**
  - Guidelines are not the same as Regulations

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Definitions (Reg 1)

- There are many definitions in Reg 1 but surprisingly, definitions appear elsewhere as well!
- "additive" – excludes a processing aid
- "processing aid" in Reg 36(4) – a substance …not consumed as a food ingredient by itself, intentionally used in the processing …..to fulfil a certain technological purpose during ….processing and which may result in the non-intentional but **unavoidable presence** of **residues or derivatives** in the final end product.

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Definitions (Reg 1)

"Colouring Foods" - are defined and limited in Reg 16 – differently from R1008 on colourants and "colourant" defn in Reg 1!

Only **single ingredient agricultural commodities** used in a compound foodstuff, which have the **natural ability to colour a food**, such as but not limited to red fruit palm oil, tomato paste or puree, cherry juice, blueberry or mulberry juice, may be called a **natural colouring food** in the list of ingredients in parenthesis **after the name of the ingoing ingredient**.

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Definitions (Reg 1)

- Various **date definitions** for manufacture and packaging
- "bulk stock" - …. " foodstuffs, ingredients, or additives which are sold in large quantities to other foodstuff manufacturers or catering establishments"
- "claim" - includes ….." a **trade name or brand name** and referring to the **characteristics of a product**, in particular to its nature, identity, nutritional properties, composition, quality, durability, origin or method of manufacture, production or storage;"

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Definitions (Reg 1)

"preservative" means an additive that prolongs the shelf life of a foodstuff; - what about R965 definition?

New definition for "processed" - e.g. juicing is processing

"raw processed meat ' – but what about R2410?

"street vendor" means a person who offers goods or services for sale to the public without having a permanently built structure but with a temporary static structure or mobile stall or with their goods laid out on the sidewalk;

"small producer" means a business defined as either a Qualifying Small Enterprise or Exempt Micro Enterprise in the BEE revised Codes of Good Practice;

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General (Reg 2):

- 2. (1) A **person** may not manufacture, import, sell, **donate** or offer for sale any pre-packaged foodstuff, unless the foodstuff container, or the bulk stock from which it is sold or taken, is **labelled in accordance with these Regulations**.
- (2) A person contemplated in subregulation (1) must provide **accurate information regarding the characteristics, origin, composition, quality, nutritive value, nature or other properties** of a foodstuff and the time and place of its manufacture to the consumer.

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General (Reg 2):

- Other sections of Reg 2 deal with prohibitions which are superfluous as that is the normal manner of interpreting law
- 2(5) to 2(7) - compulsory traceability, supplier information files per ingredient, and criminal act not to provide to inspector **within 48 hours of request**
- 2(8) and 2(9) – no reference to DoH - 2(9) uncertain???
- 2(10) deals with the prohibition on CAMS etc

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Presentation (Reg 3):

- English, optionally second local language
- indelible, clearly visible and easily legible with a significant contrast between font colour and background colour
- colours not **"dominate or overwhelm"** nor used in such a way that any information, warning or **FOPL logos**, when applicable, become poorly visible….
- (ii) **white lettering** on any background colour **except black is prohibited**.

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Letter sizes (Reg 4):

- Name of foodstuff - vertical height of font size is **not less than 4 mm**, bottle cap 0.9 mm
- the **information required to appear** …not name, warning and mandatory statements where applicable in terms of these Regulations, must be in letters of a font size of which the x-height according to Annexure 5, is not less than **1.2 mm vertical height**;
- Packs below 12000 m^2 is **minimum 0.9 mm**

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Letter sizes (Reg 4):

- words which **qualify name of foodstuffs**, or are part of the description or essential part thereof, must, where the **name does not reflect a complete description**
- (i) be reflected in the **immediate proximity** to the name;
- (ii) be in **prominent, distinctive letters of the same font, colour and prominence**; and
- (iii) be letters of the **same font size** of which the x-height according to Annexure 5, is **not less than 1.2 mm vertical height**: Provided that the **listing of ingredients** and **proportions** of ingredients is in a **letter type of uniform size, colour, font and prominence**

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Identification (Reg 5):

- On Main Panel!
- Name of a foodstuff as per APS Act otherwise, if not true description or self evident MUST be accompanied by appropriate description
- **Codex Alimentarius Standard names must be used (Probably)**
- Names must not be misleading or confusing !
- Include descriptive words of true nature such as dried, reconstituted etc
- Other requirements on address, instructions, storage conditions etc

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Country of Origin (Reg 6):

- Country of Origin does not seem contentious except 6(2) states:

"(2) (a) The use of a **national flag** is only permitted to indicate the country of origin when it is **accompanied by the wording** contemplated in subregulation (1).

(b) In the case of where the wording **"Proundly South African"** is used the South African Flag may be used, provided the product complies with the **criteria for "Products of (name of country)**.

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Batch Identification (Reg 7):

- Batch marking is required

- Traceability requirements would need this anyway

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Date Marking (Reg 8):

- This could be a workshop on its own!!
- **No more "Sell By" date**, No more "BB" - full wording
- (2) Date markings must be introduced by the words **"Use by date <insert date>" or "Best Quality Best Date <insert date>"** as applicable, or in case of where (sub) Regulation 11 **applies "Date of Manufacture <insert date>"** or the **"Date of Packaging <insert date>"**. – Annexure 9
- (8) The date marking **must**, irrespective of quality or safety, declare the **manufacturing day, month and year**. (Contradictory??)
- (10) After **"Best Quality before Date"** and food safety is not compromised in any way, the foodstuff **may be donated**.

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Date Marking (Reg 8):

"Best Quality Before Date" means the date which signifies the end of the period, under any stated storage conditions, during which the unopened product will remain **fully marketable** and will retain any specific qualities for which implied or express claims have been made;

So, **only donate** or still **sell**?

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Prohibited Statements (Reg 9):

- (1) On a label or advertisement of a foodstuff:

INCLUDES NAME AND TRADE NAME!

- (a) **Words, pictorial representations, marks, logos or descriptions** - a **health practitioner**(s), consumer advisory body sponsored directly or indirectly by a food business operator;
- food safety certification of foodstuff or ingredient must comply with all legislation
- **permitted endorsement** entities related to **non-communicable diseases**, independent and approved by the **Director-General** for **generic health promotion**, do **not contradict R2986**
- Meet Nutrient Profiling criteria and no FOPL requirement
- fruit or vegetable - **no added sugars**, and an **intrinsic dietary fibre 20%** of the dietary fibre content of 100 g of the same fresh fruit or veg

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Prohibited Statements (Reg 9):

- (b) endorsement logos representing a particular industry may include the wording of the **applicable Food Based Dietary Guideline**;
- (c) an endorsement or testimonial of **an individual** in the form of a picture, written or verbal statement or in any other form - **any type of ingredient content claim or claims with a health or nutrition message**;
- (d) the words **"health" or "healthy"** or any other words with a similar meaning, logos, pictorials or symbols with a similar meaning **except permitted function or disease risk claims**;
- (e) the **words "wholesome", "nutritious", "nutraceutical" or "super-food", "smart" or intelligent"** or any other words, logos ……..;
- (f) a claim that a foodstuff **provides complete or balanced nutrition** ……;
- (g) **"cure", "restore", "heal"** or any other **medicinal or therapeutic claim**, excluding those explicitly **permitted by certain health claims**.

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Health Claims in Names

R2986 – Health Claims in Names

9(2) A compound foodstuff, whether solid or liquid form, which claims certain beneficial nutrients or category of nutrients and/or ingredient(s) with health benefits in the **brand or trade name-**

(a) may, if the brand name was registered before **1 May 1995**, use the brand name or trade name for 6 months after the date of promulgation of these regulations; and

(b) (b) may not, if the brand or trade name was registered after **1 May 1995**, use the brand name or trade name after promulgation……..

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Health Claims in Names

R2986 – Health Claims in Names

9(3) A compound food, whether in solid or liquid form, which contains a **health claim** in the brand or trade name-

(a) may, if the brand name was **registered before 1 May 1995**, use the brand name or trade name for 6 months after the date of promulgation of these regulations; and

(b) may not, if the brand or trade name was **registered after 1 May 1995**, use the brand name or trade name after promulgation……..

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Prohibited Statements (Reg 9):

- Non-alcoholic versions of liquor products only allowed if provided for in liquor legislation **(below 0,5%)**
- A raft of terms defined in 9(5) – should be in the definitions section but …….
- Includes: **"medicinal or therapeutic claim"** means any words, graphics, pictorials or other representation that suggests or implies that a food or substance of a food has the ability to **cure, diagnose, treat, mitigate, modify, prevent, restore or correct any disease, abnormal physical or mental state or somatic, psychic or organic function in man, including the symptoms thereof**;
- Other definitions:
  - Generic Health Promotion
  - Health Practitioner
  - **Non-Addition Claim**
  - Evidence Based Nutrition

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Negative Claims (Reg 10):

- Subject to the conditions **for nutrient content claims in Table 2**, and referring to **Guideline 4**, a claim, declaration or implied claim may not be made on the label…..
- (4) For the purposes of this regulation, **"complementary medicine"** has the meaning assigned to it in regulation made in terms of the **Medicines Act**.

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Naming of ingredients (Reg 15)

- Engineered nanomaterials must be indicated in the list of ingredients as: (name of ingredient or additive) followed by the word nano in brackets, such as purple colourant: gold (nano).
- New definition of engineered nanomaterials

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Naming of Ingredients (Reg 15(4))

- (a) **Mechanically recovered meat**, or any words such as mechanically separated meat, mechanically deboned meat, mechanically deboned poultry or any other similar term … must always be **written out in full**
- (b) … is obtained from the stripped, skeletal remains under high pressure the product must comply with the latest versions of SANS 885 (Processed meat products) and SANS 1675 (The manufacture, production, processing and treatment of canned meat products) in all respects and it must be specified in the list of ingredients whether it is **low or high pressure mechanically deboned meat.**

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Naming of ingredients (Reg 15(4))

(c) An ingoing percentage of meat contemplated in paragraph (b) must be quantified as a quantitative Ingredient Declaration ("QUID") in the list of ingredients where in-going percentage is more than 25 percent, and on the main panel when the ingoing percentage is less than 25 percent, in bold upper-case letters of which the font size is at least 3 mm in height.

(d) Where the ingoing percentage of meat contemplated in paragraph (b) is less than 25 percent, the name or description of the end product **may not contain the word "meat".**

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Indication of type of meat species (Reg 17) & Raw processed meat (Reg 18)

17. (1) Subject to regulation 13, fresh, canned, frozen, raw-processed and processed fish, other marine food species, meat of birds and animals, pre-packed or offered for sale unpacked, must clearly indicate the **commonly used or known names (R2410 & R1283?)**, either in the direct vicinity of where the product is exhibited for sale or in the list of ingredients on the label.

(2) Only meat of animals and birds, referred to in the Meat Safety Act, or fish species referred to in **SANS 1647** (Approved market names for South African fish and related seafood) and other marine food species that are intended for human consumption in South Africa, must be used in foodstuffs.

(18) In the case of raw-processed meat, words such as basted, basting, self- basting, marinated or marinating, seasoned or seasoning or any other words with a similar meaning may not be used to hide the fact that additives or other ingredients were added into raw meat.

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QUID Reg 19 (2)

(2) Raw processed meat products, excluding biltong and dried sausage, must indicate the QUID for the meat and water content as percentages on the main panel, in the following manner:

(a) Meat as the total meat in the final product; and

(b) notwithstanding the requirements of SANS 458 or SANS 289

- water, which must include any water in glaze on the product and any water that has been added inside the products in the form of a formulated solution.

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QUID (Reg 19 (3))

For raw processed meat products, the meat and water QUID:

in bold upper- case letters and in the following letter sizes:

(a) for package sizes 500 g or less, at least 3 mm in height;

(b) for package sizes more than 500 g, at least 5 mm in height; or

(c) for packages of 5 kg or more, at least 10 mm in height.

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QUID Reg (19 (4))

(4) A QUID declaration is not a mandatory requirement for canned fish and marine products, frozen fish and sea-food products, agricultural fishery products and agricultural products for which compositional standards or regulations already exist under the Compulsory Specifications Act, the Agricultural Product Standards Act, and the Liquor Products Act, except for—

(a) processed meat products as per SANS 885 classification;

(b) raw-processed meat products, excluding biltong and dry sausage;

(c) blended fruit juices, fruit nectars, and fruit drinks, but not blended fresh fruit juices;

(d) dairy products with added ingredients;

(e) edible ices; and

(f) canned meat, fish and seafood products

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QUID Reg 19…

(5) Subject to regulation 2(6), in cases where the quantitative content of an emphasised ingredient **varies from batch to batch, an internal specification which stipulates a minimum and maximum amount,** is required as part of the product specification as per the supplier ingredient information files in Guideline 1, **and in which case the percentage declared on the label must always be the lower one.**

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Added water (Reg 21)

- **Must be declared** in the list of ingredients

- Water that is **added as an ingredient** or through **processing of a foodstuff**, must be declared in the list of ingredients of such a foodstuff, unless—

  (a) it is used in the manufacturing of the foodstuff solely for the purpose of wetting a dry additive or ingredient, excluding raw-processed meats; or

  (b) it is part of brine or syrup and declared as “brine” or “syrup” in the list of ingredients, excluding raw-processed meats; and

  (c) the water, which is added, does not exceed 5% of the finished product, excluding raw-processed meats.

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Added caffeine & alcohol containing foodstuff (Reg 22)

- Where caffeine is added to a **solid foodstuff (sachets/candy??)**—

  (a) the caffeine content, indicated in milligram (mg) per single portion or serving and per 100 g/ml must be indicated "Caffeine - (amount in mg/g/ml)"—

  (i) in or directly under the nutritional information table; or

  (ii) adjacent to or below the warning message.

- The warning **"Contains caffeine - Not recommended for children, pregnant or lactating women, or person sensitive to caffeine"** must be declared on the label in bold font not less than 3 mm vertical font size and must be declared on the main panel in the same field of vision as the name or description…

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Added caffeine & alcohol containing foodstuff (Reg 22)

(2) In the case where caffeine as such is added to any foodstuff (solids and beverages) **the word "energy" must not be used in the name and descriptor of the foodstuff to which caffeine as such is added as an ingredient.**

(3) Compound foodstuffs (Christmas cake etc) that contain a liquor product as one of the ingoing ingredients must declare the percentage alcohol on the main panel in bold font

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Fats & Oils (Reg 23)

Cold extraction and hydrogenated defined!

(3)(a) "cold extraction" means, with regard to edible vegetable fat and oil manufacturing, oil obtained by mechanical procedures, such as **expelling or pressing the crushed fruit or seeds, without the application of heat and without altering the essential nature of the oil**. The oil may have been purified by washing with water, settling, filtering and centrifuging and "cold pressed" and "mechanically pressed" have the same meaning;

(b) "hydrogenated" in relation to oil or fat means that all of the available carbon-carbon double bonds have been saturated by the addition of hydrogen atoms.

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Bulk Stock (Reg 24)

Foodstuff which is ordinarily sold in retail as individual units but in wholesale as multiple units per container, and label information becomes obscured and inaccessible to consumers as a result of the external packaging of the container in which it is transported and offered for sale, irrespective of whether clear shrink wrap is used or not, the following **minimum labelling information must appear on the bulk or multi pack:**

(a) Name of the product;

(b) name and address of the manufacturer;

(c) special storage conditions;

(d) allergen information;

(e) batch code; and

(f) an appropriate date marking

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Small packages (Reg 25)

- NB!! NB!!
- Small packages are not exempt from FOPL logo!

Subject to regulation 24(1) (which relates to bulk stock) an **FOPL logo (if applicable) must be present on the label unless sold from a bulk stock container.**

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Pictorial Representations (Reg 28)

(1) The pictorial representation on the label or any advertisement of a pre-packaged foodstuff may not be presented in a manner that is false, misleading, deceptive or is likely to create an erroneous impression regarding the contents of the container or its character, origin, living conditions in the case of animal-derived products, its composition, quality, nutritive value, nature or other properties in any respect: Provided that a foodstuff garnish, foodstuff or ingredient not present in the container, if used in the pictorial representation, may not dominate the pictorial representation.

(2) Pre-packaged foodstuffs may not be described or presented on any label or in any labelling by words, pictorial or other devices which refer to or are suggestive, either directly or indirectly, of any other product with which such foodstuff might be confused, or in such a manner as to lead the purchaser or consumer to assume that the foodstuff is connected to such other product.

Eg: **Vegan products!!**

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General labelling requirements regarding food additives (Reg 30(2))

- Additives may be indicated on a label by the name of the specific principal additive category, and if any additive is added to or used in a foodstuff to serve more than one such function, it must be indicated by the name of the category that represents the principal function performed in that foodstuff.

- In cases where it is **preferred to use a subcategory name**, it must appear in the list of ingredients as follows:

  (i) Name of principal food additive category such as emulsifier; and

  (ii) in parethesis directly behind it, the name of sub food additive category, such as clouding agent.

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General labelling requirements regarding food additives (Reg 30)

ANNEXURE 1 – Categories of food additives as well as their subcategory names.

For Example:

Principal category: Colour/colouring/colourant (except tartrazine)

A food additive, which adds or restores colour in a food.

Sub categories:

- decorative pigment
- surface colourant

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General labelling requirements regarding food additives (Reg 30(3))

Subject to the requirements of regulations 32 to 35, both the E/INS number and the technological function of the additive must be indicated in the list of ingredients in either of the following formats:

(a) Technological function: common chemical name or E/INS number; or

(b) Common chemical name or E/INS number of additive (technological function).

- ???

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More new Regulations!

- Flavourings - Reg 31
- Preservatives - Reg 33
- Antioxidants as additives - Reg 34
- Artificial sweeteners - Reg 35
- Modified starches, processing aids and carry-over of additives - Reg 36

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Flavourings (Reg 31)

- Additives used solely for flavouring purposes must be labelled as "flavouring" in the list of ingredients

- Where a foodstuff contains a flavouring which represents a particular ingredient, (but not the real ingredient) - "flavouring" or "flavoured" must be part of the **name or the descriptor of the product**

- Where a foodstuff contains a flavouring and the real ingredient itself, and both represent the same specific flavour - foodstuff doesn't need to be labelled as a flavoured foodstuff in the name or description thereof.

- Mixtures containing one or more flavourings, other ingredients such as salt, sugar, herbs, spices or other categories of food additives, intended for use in or on snack foods or in other foodstuffs = **compound ingredients**

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Preservatives (Reg 33)

(1) A preservative must be indicated in accordance with regulation 30(3) (General labelling req for food additives), i.e. Annexure 1

(2) (a) In the case where sodium or potassium nitrites and sodium or potassium nitrates are used or added as **curing agents, the curing agent, the technological function as well as the name of the additive must be indicated as follows:** E.g.: "Preservative or colour retention agent: Sodium or Potassium nitrite or Sodium or Potassium Nitrate"

(2) (b) In the case of sodium or potassium nitrite and sodium or potassium nitrate used as **curing agents, the curing agent must be indicated as follows:** "Curing agent(s): Sodium or Potassium nitrite or Sodium or Potassium Nitrate" whatever the case may be.

Typo??

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Preservatives (Reg 33)

- Where the added sulphur dioxide or other sulphites is more than 10 mg per kg – the added sulphur dioxide or other sulphites **must** be declared

- Where the added sulphur dioxide or other sulphites do not necessarily form part of the ingredients of a foodstuff, but are **transferred to the foodstuff** through contact with the packaging material, or where the skin of whole, unpeeled, fresh fruits and vegetables was treated with added sulphites, the presence of added sulphites, **irrespective of the level, must be declared on the container, package or label or in close proximity to any bulk sale of unlabeled produce**

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Anti-oxidants as additives (Reg 34)

The presence of any anti-oxidant as an additive or any abbreviation of its common chemical name must be indicated in the list of ingredients on a label as follows: **“anti-oxidant as an additive: common chemical name”** or vice versa.

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Artificial sweeteners (food additives) (Reg 35)

Definition as per Reg 1:

""artificial sweetener" for the purpose of these regulations means food additives that impart a sweet taste to a food, including artificial, non-nutiritive intense sweeteners (e.g. but not limited to aspartame, sucralose, saccharin and acesulfame potassium); steviaolglycosides; and providing lower energy sweeteners such as polyols (e.g., but not limited to sorbitol, mannitol, lactitol and isomalt), but excluding mono- and disaccharides from any food ingredient;"

- shall appear in brackets immediately following the name of the artificial sweetener; or the type of artificial sweetener followed by a semi-colon and the name of the artificial sweetener.

- Portions of the R733 Sweetener Regs have been incorporated in R2986 - NB

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Modified starches, processing aids and carry-over of additives (Reg 36)

(1) Modified starches must always specify the method of modification (dextrin/maltodextrin roasted starch, acid treated starch, alkaline treated starch or enzyme treated starch).

(2) Subject to regulations 32 to 35—

(a) a food additive carried over into a foodstuff in an amount **sufficient to perform a technological function** in that foodstuff as a result of the use of raw materials or other ingredients in which the food additive was used, must be indicated in the list of ingredients; and

(b) a foodstuff additive, except a preservative, carried over into foodstuffs at a level less than what is required to achieve a technological function, **as well as processing aids,** are **exempted** from declaration in the list of ingredients.

(3) any additive or carrier for an additive, which is derived from a common allergen, must indicate the presence of the common allergen as described in regulation 37.

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Allergens (Reg 37)

- Must be indicated—

  - in bold font if the allergen forms part of the name of the ingredient; or

  - in bold font in parenthesis after the name of such ingredient in the list of ingredients, regardless of whether it is self-evident from the name of the ingredient: Provided that cow's milk may be indicated as milk only, or

  - in close proximity to the ingredient list in a list or block with the words "Allergens: (list allergens)";

- In the case of significant cereals other than "gluten-free oats" as per criteria in regulation 40(2)—

  (i) the word "gluten" is indicated as described in paragraphs (a) and (b); and

  (ii) if the common allergen is wheat or a derivative of wheat, the word "wheat" must be indicated as described in paragraphs (a) and (b), in addition to the word "gluten"; and

- In the case of sulphites, **the presence thereof must be indicated when in an amount equal or more than 10ppm. (Contradicts Reg 33???)**

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Allergens (Reg 37)

(2) The following ingredients derived from common allergens are **exempted from the requirement to indicate appropriate allergen labelling**:

(a) Cereals containing gluten:

(i) Wheat based glucose syrups including dextrose;

(ii) wheat-based maltodextrins;

(iii) glucose syrups based on barley;

(iv) cereals used for making alcoholic distillates including ethyl alcohol of agricultural origin;

(b) Fish and products thereof:

(i) fish gelatine used as carrier for vitamin or carotenoid preparations;

(ii) fish gelatine or Isinglass used as fining agent in beer and wine;

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Allergens (Reg 37)

(c) Soybeans and products thereof:

(i) Fully refined soybean oil and fat;

(ii) natural mixed tocopherols (INS306), natural D-alpha tocopherol, natural D- alpha tocopherol acetate, and natural D-alpha tocopherol succinate from soybean sources;

(iii) vegetable oils derived phytosterols and phytosterol esters from soybean sources;

(iv) plant stanol ester produced from vegetable oil sterols from soybean sources;

(d) Milk and products thereof (including lactose):

(i) whey used for making alcoholic distillates including ethyl alcohol of agricultural origin;

(ii) lactitol; and

(e) Nuts used for making alcoholic distillates including ethyl alcohol of agricultural origin

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Uncommon allergens (Reg 38)

(2) The presence of goat's milk in a foodstuff must be indicated in the same manner as common allergens in terms of regulation 37.

(3) Notwithstanding the provisions of subregulation (2), a foodstuff that contains goat's milk must have the following statement in close proximity to the name of the foodstuff on the main panel: "Allerginicity: Cow's milk allergic individuals are at high risk to react to goat's milk."

(4) In the case of lupin and lupin-derived ingredients sold as such or as part of a foodstuff, the following statement must appear on the label: "Allergenicity: Peanut-allergic individuals are at high risk to react to lupin present in this product."

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Allergen-related claims regarding gluten-free and naturally gluten-free foodstuff (Reg 40)

(1) The claim “gluten-free” must not be permitted for a foodstuff that contains an ingredient that is or has been derived from any species of the significant cereals ***which contains equal to or more than 20mg/kg gluten in the end product*** where the level of gluten is determined by a protein-quantification method which meets the performance characteristics (as described in the Guidelines) and as recommended by Codex Standard 118-1979 (as described in Guideline 7).

(2) A pseudocereal (eg. Quinoa, Chia etc) or ingredient or flour that is not derived from a significant cereal, which, by its nature is suitable for use as part of a gluten-free diet, may not be designated "special dietary", "special dietetic" or any other equivalent term, but may bear a statement on the label that **"this product is by its nature gluten-free" or “naturally gluten free”**: Provided that—

(a) it contains less than 20mg/kg gluten, where the level of gluten is determined by a protein-quantification method which meets the performance characteristics (as described in the Guidelines) and as recommended by Codex Standard 118- 1979; and

(b) these claims are not being permitted for any other foodstuffs.

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Allergen-related claims regarding gluten-free and naturally gluten-free foodstuff (Reg 40)

(3) In the case of oats, the term "**gluten-free oats**", may be used only if—

(a) the oats consistently shows to contain less than 20mg/kg gluten, and the level of gluten is determined by a protein-quantification method which meets the performance characteristics (as described in the Guidelines) and as recommended by Codex Standard 118-1979 (described in Guideline 7); and

(b) due diligence is exercised to prevent cross-contamination with other significant cereals or gluten.

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Allergen-related claims regarding hypoallergenic, non-allergenic or allergen free foodstuff (Reg 41)

A claim may not be made that a foodstuff—

(a) whether a single ingredient foodstuff or a compound foodstuff, is **"hypoallergenic " or "non-allergenic"** or similar wording, unless the foodstuff is modified by chemical or genetic means so as to reduce the quantity of endogenous allergens in such a way that it is not possible to detect the presence of any possible allergen with testing suitable for the specific allergen; or

(b) **is free from any common or uncommon allergen** or a similar claim, unless the foodstuff has been tested to confirm the absence of the particular allergen, using suitable testing for the specific allergen.

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Misleading Descriptions (Reg 42(2))

(a) In the case of foodstuffs that are not regulated in terms of the Agricultural Product Standards Act, statements to the effect of being “fresh”, “natural”, “nature’s”, “pure”, “traditional”, “original”, “authentic”, “real”, “genuine”, “home-made”, “farmhouse”, “hand-made”, “selected”, “premium”, “finest”, “quality”, or “best” or words with a similar meaning are permitted: Provided the statement is compliant with the criteria stipulated in Guideline 12.

New paragraph:

(b) A statement that **presents a foodstuff** in a manner that is false, misleading or deceptive or is likely to create an erroneous impression **regarding the contents of the container or its character, origin, composition, quality, nutritive value, nature or other properties** in any respect that could mislead consumers, is not permitted.

- Section 5 of FCD Act & Section 6 of APS Act

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Irradiation (Reg 43)

(1) The label of a foodstuff which has been treated with ionizing radiation must carry a written statement indicating the treatment in close proximity to the name of the foodstuff.

(2) The use of the international recognised foodstuffs irradiation symbol is optional, but when used – must be on the main panel of the label.

(3) When an irradiated foodstuff is used as an ingredient in another foodstuff, it must be declared in the list of ingredients.

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Vegetarian claims (Reg 45)

- Claim “vegetarian” must have the suitable prefixes, i.e. lacto-, ovo- vegetarian etc.
- “the word “vegetarian”- means that all ingredients and additives (refer to Guideline 8) used in an end product are of multi-cellular plant, fungal, algal and bacterial origin.”
- **NB!! Removed Regulation 48(2) in R146 which dealt with “strict vegetarian” or “vegan” !!**
- **No more vegan claims permitted?? NB**

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Nutritional Information Facts (Reg 46)

"(1) Subject to regulation 73, a table with nutritional information or facts is mandatory on all foodstuff labels—

(a) except foodstuffs which are produced for sale by a small producer or a street vendor; no claims with a health or nutrition message is permitted on any food produced by a small business unless a table with nutrition information or facts is displayed on the foodstuff label and the requirements of regulation 50 are met;

(b) unless otherwise indicated by these Regulations; or

(c) unless the foodstuff is listed in Table 1 below."

- Items listed in Table 1 include: Baking powder; Beer; Bicarbonate of soda; Cream of tartar; Coffee Extracts and Chicory extracts, whole or milled coffee beans and whole or milled decaffeinated coffee beans; Culinary herbs & spices; Honey; Plain vinegars; Herbal and fruit infusions, teas (black, green, rooibos and honeybush), decaffeinated tea, instant or soluble tea or tea extract, which do not contain other added ingredients or additives other than flavourings and which do not modify the nutritional value of the tea; and spray and cook type products.
- 46(2) allows for fortified bread to contain a fortification logo and the claim "fortified for better health" without a chemical analysis EXCEPT for total sodium which MUST be analysed

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Annexure 2: Format for new Mandatory Nutritional Information Declaration

1. Where NO CLAIM is made (as packed/ready-to-consume)

(TYPICAL) NUTRITIONAL INFORMATION/FACTS

Quantified single portion/serving/portion size expressed in grams or millilitres, whatever is appropriate, and a household measurement unless the single portion/serving/portion is already quantified in the fourth column of the Table below:

	Unit of measurement	Per 100 g/ml	Per single portion/ serving / portion	NRV * per serving/portion (optional)
Energy	**kJ**			
Protein	**g**			
Total carbohydrates **of which carbohydrates#** **of which total sugars** glycaemic polyols## **Dietary fibre**	**g** **g** **g** **g** **g**			
Total fat###of which: **Saturated fatty acids###**	**g** **g**			
Total Sodium/salt	**mg/g**			

NB to note: No longer required to say "typical nutritional information" as was required in R146. May choose not to use the word "typical" and may simply say "nutritional information or nutritional facts. ALSO – can use the word portion or portion size as opposed to being limited to "serving". Single serving declaration does not need to be expressly referenced underneith the table heading and can simply appear in the heading of Column 3.

* Declaration of the Nutrient reference values (NRVs) column for individuals from the beginning of 37 months and older (see Annexure 3) expressed per single portion/serving/portion is optional.

#Available carbohydrates calculated by difference

Indicate if specific polyol(s) that contribute to total energy value

Total fat and Saturated fatty acids obtained from Food Composition tables or calculated

Footnotes: Place the statements required by regulation 46(4) as appropriate as footnotes below the Table.

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2. Where a CLAIM is made (as packed/ready-to-consume)

(TYPICAL) NUTRITIONAL INFORMATION/FACTS

Quantified single portion/serving/portion size expressed in grams or millilitres, whatever is appropriate, and a household measurement unless the single portion/serving/portion is already quantified in the fourth column of the Table below:

	Unit of measurement	Per 100 g/ml	Per single portion/serving/portion	NRV * per serving (optional)
Energy	**kJ**			
Protein	**g**			
Total carbohydrates	**g**			
of which carbohydrates#	**g**			
of which total sugars	**g**			
glycaemic	g			
polyols##	g			
Dietary fibre	mg			
Prebiotics				
Total fat###	**g**			
of which:				
Saturated fatty acids###	**g**			
Trans fatty acids	g			
Monounsaturated fatty acids	g			
Polyunsaturated fatty acids:	mg			
of which Omega-3 fatty acids:	mg			
of which DHA	mg			
EPA				
DPA				
ALA				
Total Sodium/salt	**mg/g**			
Any other nutrient or foodstuffs component to be declared in accordance with these Regulations shall be declared:	Indicated in milligrams (mg), micrograms (mcg/ µg), or IU (International Unit), as appropriate according to Annexure 3			
• in the order: vitamins, minerals, carotenoids and other bioactive substances, et cetera, each group in in alphabetical order.				
• GI		-	*(GI is indicated per single portion/serving/portion only, not per 100 g)*	-
• GL		-		-

*Declaration of the NRVs column for individuals from the beginning of 37 months and older (see Annexure 3) expresse-d per single portion/serving is optional.

#Glycaemic carbohydrates chemically analysed when any carbohydrate-related claim is made

Indicate if specific polyol(s) contribute to total energy value

Total fat and saturated fatty acids values obtained from chemical analyses

Footnotes: Place the statements required by regulation 46(4) as appropriate as footnotes below the Table.

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Additional requirements relating to the nutritional information table (Reg 47): NB New additions

"(5) (a) An indication of the mass, volume or number, whatever is applicable, of a single portion or serving must be an appropriate serving or portion size which is consistent with single serving or portion sizes typically recommended by health professionals for maintenance or achievance of a healthy weight and good health.

(b) Single portion or serving sizes must not be manipulated—

(i) to sell supersize single portion or servings for the purpose of increasing sales, whether prepacked, non-prepacked or transparently packed as ready-to-eat foodstuffs; or

(ii) to qualify for a nutrient or health claim.

(c) Single portion or serving sizes must also be expressed in descriptive household measurements.

(6) When the recipe of a foodstuff is altered in any way in terms of changes to ingoing ingredients that may affect the nutritional properties of an end product, the nutritional information of the end product as well as the list of ingredients must be corrected without delay.

(7) A claim may not be made on the label of a foodstuff that the foodstuff has acquired nutritive value from nutrients used as additives when added for a technical function."

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NB to note with respect to nutritional information (Reg 47 continued)

"(8) (a) A claim may not be made—

(i) that a foodstuff has a particular value or benefit if the value or benefit is derived fully or partly from another foodstuff that is intended to be consumed with the foodstuffs in relation to which the claim is made, but is not in the container;

(ii) regarding any nutrient content, energy value or health benefit of a foodstuff or ingredient or substance not included in the container; and

(iii) regarding any nutrient content, energy value or health benefit of an ingoing, unprocessed, single ingredient agricultural product if the same ingredient is being processed during the manufacturing process. (NB NB NB definition of processed)

(b) Subject to paragraph (a), in the case where the product as sold requires further processing (preparation, baking or cooking) after addition of ingredients not included in the foodstuff as sold, the nutritional information and facts of the foodstuff prepared according to the manufacturers instructions and ready to use or eat must be added in an additional column to the right of the column indicating the nutritional information per 100 ml/ 100g of prepared product in the applicable table with nutritional information."

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Enrichment of foodstuffs (Reg 49)

"(a) Nutrients may only be added to a foodstuff which—

(i) requires a list of ingredients but which is not a fake food as determined in regulation 56;

(ii) passed the Profiling Model for FOPL and is not required to bear FOPL under regulation 51;

(b) Nutrients which are added to improve the nutritional properties of a foodstuff, in the case of vitamins or minerals, added for both enrichment or fortication as per the Regulations Relating to the Fortification of Foodstuffs—

(i) may not exceed 100% NRV levels per single portion/serving;

(ii) must be one of the approved compounds according to the most recent Codex document "Advisory Lists of Nutrient Compounds for Use in Foodstuffs for Special Dietary Uses intended for Infants and Young Children": Provided that the addition of fluoride and aluminium in any form is prohibited in all foodstuffs;

(c) enrichment with any nutrient or common allergen is not permitted for raw-processed meat and raw-processed poultry;

(d) enrichment with any nutrient is not permitted for fake foods, beer and products under the Liquor Products Act; and

(e) foodstuffs required to carry a FOPL in terms of regulation 51 may not carry any claims relating to the enrichment of the foodstuff under this regulation and regulation 50."

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Nutrient Profiling Model for purpose of screening foodstuffs for their eligibility to make any claim with a nutrition or health message (Reg 50)

"(1) A foodstuff may not make a claim with a nutrition or health message or use any endorsement logo in terms of regulation 9(1)(a)(iii):-

(a) if the foodstuff is required to bear a FOPL on the main panel or, if not prepackaged, exceeds the cut-offs for key nutrients under the profiling model contemplated in regulation 51; and

(b) may not make a claim with a nutrition or health message, unless—

(i) the label displays a nutritional information table under regulation 46;

(ii) the foodstuff successfully qualifies with the screening criteria of the Nutrient Profiling Model for health and nutritional claims as outlined in Annexure 8, using the electronic calculator which is available on the website of the Department;

(iii) the foodstuff complies with the criteria particular to the specific claim, as addressed and permitted by these Regulations; and

(iv) the foodstuff complies with the requirements of regulation 55 where applicable.

(2) Any food that is produced by a small business may not carry a claim with a nutrition or health message unless the requirements of this regulation are complied with."

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Profiling model for the purpose of FOPL and for foodstuffs that may not be advertised to children (Reg 51)

"(1) Pre-packaged foodstuffs are required to bear a mandatory Front-of pack label (FOPL) if the foodstuff-

(a) contains added saturated fat, added sugar, added sodium; and

(b) which exceed the nutrient cut-off values for total sugar, total sodium or total saturated fatty acids outlined below; or

(c) subject to regulation 55(1), contain any artificial sweeteners;"

Nutrient cut-off values	
Nutrient	**Value indicated in nutritional information table**
Total sugar(s) in g	Solids: ≥10.0g per 100 g
	Liquids: ≥5.0g per 100 ml
Total Saturated fatty acids in g	Solids: ≥4.0g per 100 g
	Liquids: ≥3.0g per 100 ml
Total Sodium in mg	Solids: ≥400mg per 100 g
	Liquids: ≥100mg per 100 ml
Artificial sweeteners	
Contain any added artificial sweetener	Bear the applicable logo warning as per Annexure 10

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FOPL's continued…

"(d) In the case of foodstuffs that require further processing (preparation, baking, cooking or mixing) after addition of ingredients **not included in the foodstuff as sold**, the values for purposes of assessing compliance with the nutrient cut-offs above is the column of the nutritional information and facts containing values of the **prepared product** as required in regulation 47(8)(b)…."

"(2) Any foodstuff required to bear any FOPL logo, as described in Annexure 10, must: -

(a) display such logos on the front of the package;

(b) shall cover 25% of the front of the package - Annexure 1; and

(c) the size shall be calculated using the following formula based on the shape of the package:

…"

Formulas for calculation of principal display panel	
Rectangle	Height x Width of largest side
Cylindrical shape	40% of height x circumference
Special Cylindrical shape	40% of Heigh x circumference OR Area of the Lid (whichever is greatest)
Tapered Tube	40% of the height x average of the top and bottom circumference
Other Shapes	40% of total surface

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FOPL's continued…

"(e) the FOPL logos on the front of the package must:

(i) correspond to those nutrients which exceed the FOPL cut-offs

(iii) be prominently visible to a consumer when product is displayed and may not be obscured, removed or damaged;

(iv) placed on the front of the package and anchored to the top right-hand corner of the front of the package in the configurations and to the specifications outlined in Annexure 10;

(v) together with the white background prescribed in Annexure 10, cover 25 per cent of the front of the package as calculated in terms of paragraph (d).

(vi) be integrated into the packaging of the foodstuff insofar as practicable and the use of stickers must be permitted where the size of the package or existing label cannot accommodate the size of the label; and

(vii) the order of the logos shall use the exclamation mark as the first, anchoring logo and be followed by sugar, saturated fat, sodium and then where applicable, artificial sweeteners."

….

(4) Foods for special medical purposes (FSMPs) are exempted from bearing any FOPL

[NB to note for FSMP manufacturers/importers]

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FOPL's continued…

NB NB NB

"(5) FOPL must comply with the following conditions:

*(a) may **not be used to replace the mandatory (typical) nutritional information table** in Annexure 2.*

*(b) may **not be used for any other nutrient that improve the overall nutritional status** of the foodstuff.*

*(c) may **not be marketed to children**. [NB for Regulation 58 to be discussed later…]*

*(d) may **not make any claim with an energy, health or nutrition message irrespective of whether the foodstuff's nutritional profile passes the Nutrient Profiling Model** referred to in regulation 50.*

*(e) may **not be enriched**.*

*(f) may **not bear any endorsement logo related to reducing the risk of any noncommunicable disease** referred to in regulation 9(1)(a)(iii)."*

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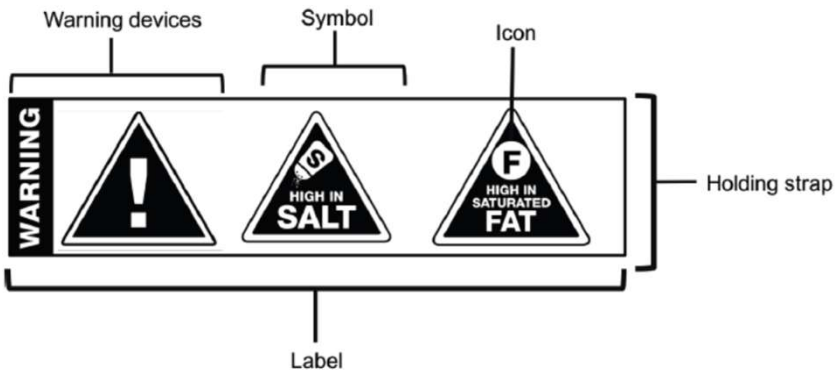
FOPL's



Exclamation mark triangle

Symbol for foodstuffs that exceed the threshold set for total sugar.

Symbol for foodstuffs that exceed the threshold set for total saturated fat.

Symbol for foodstuffs that exceed the threshold set for total sodium.

Symbol for foodstuffs that contain artificial sweetener

Size of the Logos

- The FOPL shall be placed on the **top right-hand side of the front of the package**.
- The front of the package shall be calculated utilising the formulas for calculating the principal display panel outlined in table 3.1
- Irrespective of the size of the package, **the FOPL shall not have a height smaller than 1.5 cm.**
- The FOPL shall be placed at the top right-hand corner of the front-of-pack and shall **not be obscured, distorted.**
- The FOPL shall cover no less than the prescribed percentage of the front of package as follows:

- An **FOPL bearing one symbol** with the warning triangle shall take up **no less than 10% of the front of the package.**
- An **FOPL bearing two symbols** with the warning triangle shall take **up no less than 15% of the front of the package.**
- An **FOPL bearing three symbols** with the warning triangle shall take up **no less than 20% of the front of the package.**
- The **FOPL bearing four symbols** shall cover **no less than 25% of the front of the package.**

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FOPL's & how they will appear

Horizontal Configuration

The **exclamation triangle must appear on the left side of the holding strap**. Additional logos must appear next to the exclamation triangle **from left to right** as detailed below. **The order of additional logos is not prescribed**. Figures below demonstrate the configurations for two, three and four logos.

Vertical Configuration

Clustered Configuration

Manufacturers may use an alternative configuration of the FOPL should the package not allow for the horizontal line. **Manufacturers may opt for a vertical configuration on the right-hand side of the front-of-pack configured**. Alternatively, a manufacturer **may utilise the clustered configuration**.

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Marketing Restrictions (Reg 52) (PS missing from index…)

"(1) (a) Applies to **any packaged food item that carries a FOPL** as described in regulation 51…

(b) The **package or label or advertisement** of foods carrying the FOPL shall not–

(i) **depict or contain** reference to-

(aa) any **celebrities, sport stars, cartoon-type character, puppet, computer animation** or similar strategy; or

(bb) a **competition or a token, gift, or collectable items which appeal to children**, in order to **encourage the use of such unhealthy foodstuffs**.

(ii) **abuse positive family values** such as portraying any happy, caring family scenario, on a label or package in order to **encourage the purchase of consumption**;

(c) **encourage or condone excess consumption** or excessive portion sizes;

(d) **undermine** the promotion of **healthy, balanced diets**;

(e) **encourage or promote an inactive lifestyle**; encourage or promote **unhealthy eating or drinking habits**;

(f) **omit undesirable aspects of a food's nutritional profile**, contain any misleading or incorrect information about the nutritional value of the product;

(g) be represented as a **substitute for meals**;

(h) be **misleading about the potential benefits** from **consumption of the unhealthy food**; or

(i) create a **sense of urgency designed to encourage purchase** or consumption."

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Advertising, Health Messages & how they must appear (Reg 52(3))

"(2) Any advertising of depicting products carrying the FOPL must include the logos of the FOPL the product is required to carry in terms of regulation 51…

(2) **In addition**, such advertisements should carry a health message on visual or multimedia advertisements or at the end of audio advertisement. **[Yes, (2) appears twice]**

(3) A health message contemplated in subregulation (2), must-

(a) be visible or audible in the case of an audio advertisement, legible and indelible and the legibility thereof shall not be affected by any other matter, printed or otherwise;

(b) be on a space specifically devoted for it which must be **at least one eighth** of the total size or length of the advertisement as the case maybe; and

(c) be in black on a white background as follows: -"

Health Message:
This product is high in [insert key nutrients]/contains artificial sweeteners.
Excessive consumption may be detrimental to your health.

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Use of South African Food Based Dietary Guidelines (Reg 53):

- Relies on Guideline 9
- We do not have access to the Guidelines….

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Claims on packaged water (Reg 54)

"An energy, nutrition, ingredient content, health claim, any other claim with a nutrition or health related message is not permitted for packaged water, except the following Food Based Dietary Guideline message for water:"

"**Drink lots of clean safe water**".

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Claims represented through pictures (Reg 58)

"Claims related to energy, nutrition, ingredient content or health may **not** be made through pictures, logos or any other visual, non-textual marketing to promote the sale of a foodstuff to children, young children and infants **if the**—

(a) foodstuff may not be commercially marketed to children;

[i.e. foodstuffs that exceed the nutrient cut-off values and must contain FOPLs]

(b) picture, logo or any other visual, non-textual marketing implies an unauthorized claim according to these regulations; and

(c) picture, logo or any other visual, non-textual marketing is misleading."

NB – A Child, as per the Definition is the Children's Act, is a person under the age of 18.

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Let's move onto the different types of Nutrition Claims…

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Nutrient Claims (Reg 59)

- Previously called “nutrient content claims” in R146
- Additional wording for the claims are now permissible.

NRV for vitamins and minerals	May a claim be made?	May it be listed in the nutritional information table?
0 - <5%	No	No
5% - <15%	No	Yes
15% - < 30%	Yes – “source of” or “contains” or “with added”	Yes
30% or more	Yes – “high in”	Yes
60% or more	Yes – “ very high in” or “excellent source”	Yes

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Table 2: Conditions for Content Claims

R146

COMPONENT A	CLAIM	CONDITIONS NOT MORE THAN
Energy	Low	170kJ per 100g (solids*) 80kJ per 100ml (liquids*)
	Virtually free or free from	17kJ per 100ml (liquids*)
Total fat	Low	3 g per 100g (solids*) 1.5g per 100 ml (liquids*)
	Virtually free or free from	0.5g per100g/ml
Saturated fat	Low	1,5g per 100g (solids*) 0,75g per 100ml (liquids*) and not more than 10% of energy
	Virtually free or free	0,1g per 100g (solids*) 0,1g per 100ml (liquids*)
Cholesterol	Low	20mg per 100g (solids*) 10mg per 100ml (liquids*)
	Virtually free or free	5mg per 100g (solids*) 5mg per 100ml (liquids*) and for both claims, low and free of, less than: 1.5g saturated fat and trans fat combined per 100g (solids) or 0,75g saturated fat per 100 ml (liquids) and 10% ** of energy from saturated fat

VERSUS

R2986

NUTRIENT AND ENERGY *Part A*	CLAIM	CONDITIONS *NOT MORE THAN*
1	2	3
Energy	Low	170kJ per 100g (solids*)80kJ per 100ml (liquids*)
	Virtually free or free from	8 kJ per 100ml (liquids*)
Fat	Low	3 g per 100g (solids*) 1.5g per 100 ml (liquids*)
	Virtually free or free from	0.5g per 100g/ml
Saturated fatty acids	Low	1,5g per 100g (solids*) 0,75g per 100ml (liquids*) and for both solids and liquids, not more than 10% of energy
	Virtually free or free from	0,1g per 100g (solids*) 0,1g per 100ml (liquids*)
Cholesterol	Low	20mg per 100g (solids*) 10mg per 100ml (liquids*)
	Virtually free or free from	5mg per 100g (solids*) 5mg per 100ml (liquids*)

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R146

Mono – and disaccharides	Virtually free or free	0,5g per 100g/ml
Sodium	Low	120mg Na per 100g (equals 305mg NaCl)
	Very low	40mg Na per 100g (equals 102mg NaCl)
	Virtually free or free	5mg Na per 100g (equals 13mg NaCl)
Alcohol	Non-alcoholic	0.5% by volume
	Virtually free or free	0.05% by volume

VERSUS

R2986

NUTRIENT AND ENERGY *Part A*	CLAIM	CONDITIONS *NOT MORE THAN*
1	2	3
		and for both claims, low and free of, less than: 1.5g saturated fat and trans fat combined per 100g (solids) or 0,75g saturated fat per 100 ml (liquids) and 10% ** of energy from saturated fat
Sugars (any mono – and disaccharides)	Virtually free or free from This claim shall only be permitted when total sugar content of end product is ≤ 0,5 g per 100 g/ml	0,5g per 100g/ml*
Sodium	Low	120mg Na per 100g* (equals 300mg NaCl)
	Very low	40mg Na per 100g* (equals 100mg NaCl)
	Virtually free or free from	5mg Na per 100g* (equals 13mg NaCl)

NB to note:

Alcohol removed from Part A in Table 2 in R2986

- Alcohol and Caffeine placed in separate Table in Part C

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R146

COMPONENT B	CLAIM	CONDITIONS NOT LESS THAN
Energy	Source of	80kJ per 100ml
	High in	950kJ per 1 00g or
		250kJ per 100ml
Carbohydrate	High in	13g per 100g or 6,5g per 100ml
1. Dietary Fibre (as measured by the latest update of the Englyst method as stipulated in the table in Guideline 1)	Source of	2.4 g per 100g (solids)
	High in	4.8 g per 100g (solids)
2. Dietary Fibre (as measured by the latest update of the specific general AOAC method used which are listed in the table in Guideline 1)	Source of	3 g per 100g (solids)
	High in	6 g per 100g (solids)

Interesting – Carbohydrate on it's own has been removed from Part B of Table 2

VERSUS

R2986

NUTRIENT *Part B*	CLAIM	CONDITIONS *NOT LESS THAN**
1	2	3
Energy: claim only permitted for energy obtained from a carbohydrate, or fat or protein source and excludes any central nervous system stimulation effect obtained from caffeine or other stimulants	"Source of"	80kJ per 100ml
	"High in"	950kJ per 100g or 250kJ per 100ml
1. Dietary Fibre as measured by the latest update of the Englyst method as stipulated in the table in Guideline 1)	"Source of" or "contains" or "with added"	2.4 g per 100g (solids)
	"High in"	4.8 g per 100g (solids)
	"Very high in" or "excellent source"	9.6 g per 100 g (solids)
2. Dietary Fibre as measured by the latest update of the specific general AOAC method used which are listed in the table in Guideline 1)	"Source of" or "contains" or "with added"	3 g per 100g (solids)
	"High in"	g per 100g (solids)
	"Very high in" or "excellent source"	12 g per 100g (solids)

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R146

Protein	Source of	5g per 100g (solids*) 2,5g per 100ml (liquids*) and 2,5g per 418kJ
	High in	10g per 100g (solids*) 5g per 100ml (liquids*) and 5g per 418kJ
Polyunsaturated fatty acids (PUFA's)	Source of	≥ 40% ****PUFA's and ≤ 20% ****Saturated fatty acids and < 1 g Trans fatty acids
	High in	≥ 60% ****PUFA's and ≤ 20% **** Saturated fatty acids and < 1 g Trans fatty acids
Monounsaturated fatty acids (MUFA's)	Source of	>35% **** MUFA's and ≤ 20% ****Saturated fatty acids and < 1 g Trans fatty acids
	High in	≥ 60% ****MUFA's and ≤ 20% ****Saturated fatty acids and < 1 g Trans fatty acids
Omega-3 fatty acids	Source of	75 mg per single serving
	High in	150 mg per single serving
	Very high in	300 mg per single serving

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R2986

NUTRIENT *Part B*	CLAIM	CONDITIONS *NOT LESS THAN**
1	2	3
Protein	"Source of" or "contains" or "with added"	10g per 100g (solids*) 5g per 100ml (liquids*)
	"High in"	10g per 100g (solids*) 5g per 100ml (liquids*) and for both solids and liquids,5g per 418kJ
Polyunsaturated fatty acids (PUFA's)	"Source of" or "contains" or "with added"	≥ 45% ***PUFA's and Polyunsaturated fatty acids provide more than 20 % of energy of the end product 0g *Trans* fatty acids
	"High in"	≥ 60% ***PUFA's andPolyunsaturated fatty acids provides more than 20 % of energy of the end product 0.g *Trans* fatty acids
Monounsaturated fatty acids (MUFA's)	"Source of" or "contains" or "with added"	≥45% *** MUFA's and Monounsaturated fatty acids provide more than 20 % of energy of the end product 0.g *Trans* fatty acids
	"High in"	≥60%*** MUFA's and Monounsaturated fatty acids provide more than 20 % of energy of the end product 0.g *Trans* fatty acids
Omega-3 fatty acids	"Source of" or "contains" or "with added"	0.3g (300 mg) alpha-linolenic acid per 100g and per 418 kJ, or 40mg of the sum of Eicosapentanoic

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R146

Vitamins and minerals excluding potassium# and sodium	Source of	15% of NRV** per serving
	High in	30% of NRV ** per serving
	Very high in	60% of NRV** per serving
Carotenoids: Betacarotene	Source of	0.5 mg per 100g
	High in	2 mg per 100g
Lycopene	Source of	0.5 mg-per 100g**
	High in	2 mg per 100g***
Lutein	Source of	0.5 mg per 100g
	High in	2 mg per 100g
Zeaxanthin	Source of	0.1 mg per 100g
	High in	0.5 mg per 100g

VERSUS

R2986

		acid (EPA) and Docosahexaenoic acid (DHA) per 100g and per 418 kJ
	"High in"	0,6g (600 mg) alpha-linolenic acid per 100g and per 100kJ, or 80mg of the sum of Eicosapentanoic acid (EPA) and Docosahexaenoic acid (DHA) per 100g and per 100kJ
	"Very high in" or "excellent source"	1,2g (1200 mg) alpha-linolenic acid per 100g and per 100kJ, or 160mg of the sum of Eicosapentanoic acid (EPA) and Docosahexaenoic acid (DHA) per 100g and per 100kJ
Vitamins and minerals, excluding Sodium	"Source of" or "contains" or "with added"	15% of NRV** per serving
	"High in"	30% of NRV** per serving
	"Very high in" or "excellent source"	60% of NRV** per serving
Carotenoids:		
Beta-carotene	"Source of" or "contains" or "with added"	0.5 mg per 100g
	"High in"	2 mg per 100g
Lycopene	"Source of" or "contains" or "with added"	0.5 mg per 100g
	"High in"	2 mg per 100g
Lutein	"Source of" or "contains" or "with added"	0.5mg per 100g
	"High in"	2 mg per 100g
Zeaxanthin	"Source of" or "contains" or "with added"	0.1mgper 100g
	"High in"	0.5mgper 100g

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R2986 now also contains a Table 2: Part C dealing with Alcohol and Caffeine

TABLE 2:

CONDITIONS FOR CONTENT CLAIMS, PART C

COMPONENT *Part C*	CLAIM	CONDITIONS *NOT MORE THAN*
Alcohol	Non-alcoholic or de-alcholised*	0.5 % by volume*
	Virtually free or free from	0.05 % by volume*
Caffeine	Free from or in the case of pure coffee	3 mg per kg

*Subject to regulation 9(4) de-alcholised liquor products means any liquor product as definied under the Liquor Products Act, where the alcohol has been removed from.

NB to note:

- **Addition of Caffeine in Table is new**
- **Alcohol conditions same as R146**

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HOWEVER, some of the NRV's have changed…

R146: Annexure 3

NUTRIENT	unit of measurement	INDIVIDUALS AND 4 YEARS AND OLDER
Protein	g	56
Vitamin A	µg [a]	900
Vitamin B_1 or thiamine	mg	1,2
Vitamin B_2 or riboflavin	mg	1,3
Nicotinic acid, nicotinamide or niacin	mg	16
Vitamin B_6 or pyridoxine	mg	1,7
Folic acid or folate	µg	400
Vitamin B_{12} or cyanocobalamin	µg	2,4
Biotin	µg	30
Pantothenic acid	mg	5
Vitamin C or ascorbic acid	mg	100
Vitamin D	mg [b]	15
Vitamin E	mg te [c]	15
Vitamin K	µg	120
Calcium	mg	1300
Chromium	µg	35
Copper	mg	0.9
Iodine	µg	150
Iron	mg	18
Magnesium	mg	420
Manganese	mg	2.3
Molybdenum	µg	45
Phosphorus	mg	1250
Selenium	µg	55
Zinc	mg	11
Choline	mg	550

R2986: Annexure 3

NUTRIENT	UNIT OF MEASUREMENT	INDIVIDUALS FROM THE BEGINNING OF 37 MONTHS AND OLDER**	
		Nutrient Reference ValuesRequirements (NRVs-R)	Nutrient Reference Values Noncommunicable Disease (NRVs-NCD)
MACRO NUTRIENTS			
Protein	g	50	-
Saturated fat	g	-	Daily intake level not to exceed is 20
MICRONUTRIENTS			
(ELEMENTAL) VITAMINS			
Vitamin A	µg or mcg RAE or RE	800	-
Vitamin B_1 or thiamine	mg	1,2	-
Vitamin B_2 or riboflavin	mg	1,2	-
Nicotinic acid, nicotinamide or niacin[e]	mg ne	15	-
Vitamin B_6 or pyridoxine	mg	1,3	-

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NRV's continued…

R2986: Annexure 3 continued…

NUTRIENT	UNIT OF MEASUREMENT	INDIVIDUALS FROM THE BEGINNING OF 37 MONTHS AND OLDER**	
		Nutrient Reference ValuesRequirements (NRVs-R)	Nutrient Reference Values Noncommunicable Disease (NRVs-NCD)
Folate(naturally occurring in foodstuffs)	µg or mcg DFE	400	-
Vitamin B_{12} or cyanocobalamin	µg or mcg	2,4	-
Biotin	µg or mcg	30	-
Pantothenic acid	mg	5	-
Vitamin C or ascorbic acid	mg	100	-
Vitamin D	µg or mcg	15	-
Vitamin E	mg TE or the applicable forms of vitamin E isomers	9	-
Vitamin K (Vitamin K_1 and K_2 ,when naturally present in foodstuffs and does not included added	µg/mcg	60	-

NUTRIENT	UNIT OF MEASUREMENT	INDIVIDUALS FROM THE BEGINNING OF 37 MONTHS AND OLDER**	
		Nutrient Reference ValuesRequirements (NRVs-R)	Nutrient Reference Values Noncommunicable Disease (NRVs-NCD)
Vitamin K_1 and $K_{2.}$)			
(ELEMENTAL) MINERALS			
Boron***	mg	1.5***	-
Calcium	mg	1000	-
Chromium	µg/mcg	50	-
Copper	mg	1.5	-
Iodine	µg/mcg	150	-
Iron	mg	22	-
Magnesium	mg	310	-
Manganese	mg	3	-
Molybdenum	µg/mcg	45	-
Phosphorus	mg	550	-
Potassium	mg	-	Daily intake level to achieve is 3 500
Sodium	mg	-	Daily intake level not to exceed is 2000
Selenium	µg/mcg	60	
Vanadium****	mg	0.9****	
Zinc	mg	14	
Choline	mg	550	

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Dietary fibre content claims (Reg 60)

"(1) Subject to applicable conditions in Table 1—

(a) the analytical values for dietary fibre content must be indicated in the table with nutritional information as required per Annexure 2 and the method of analysis used to measure the dietary fibre content must be indicated beneath the nutritional information or facts table as a footnote, or in parenthesis after the word dietary fibre in the aforementioned table: Provided that—

(i) the method of analysis used to measure dietary fibre corresponds with the applicable criteria in Table 2, Part B;

(ii) where the analytical method also measures non-carbohydrate components such as lignin which is naturally associated with the polysaccharides in plant cell walls or where lignin and other associated non-carbohydrate components were extracted and reintroduced into the foodstuffs at any stage, these non-carbohydrate components must be considered part of dietary fibre; and

(iii) any Maillard reaction products must, if present, be quantified and subtracted from the total to obtain the correct value for dietary fibre.

(b) and subject to regulation 59(10), any suitable method as indicated in the Guideline 2 to measure dietary fibre, may be used; and

(c) synthetic edible carbohydrate polymers or purified non-starch polysaccharides such as powdered cellulose (INS 460ii) and cellulose gum (INS 466) require pre-market approval, if used to make a content claim." **(We do not have pre-market approval???)**

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Dietary fibre claims continued…

"(2) A dossier must be prepared and submitted to the Directorate: Food Control that demonstrates whether INS 460ii and INS 466 have the same health benefits as non-starch polysaccharides from fruits, vegetables and wholegrains, using Guideline 15 "Guidance document for preparing a submission of food health claims"."

- New process

Protein Content Claims (Reg 61)

"A claim may not be made on the label of a foodstuff regarding the protein content of that foodstuff, unless the following requirements are complied with:

(a) the conditions, as applicable, specified in Table 2, Part B must be met; and

(b) the foodstuff must provide protein quality of which the analysed amino acids of the foodstuffs, must contain at least 100% of each of the amino acids as per the reference amino acids pattern listed in Annexure 4."

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Fatty acid content claims (Reg 62)

"In addition to the conditions of Table 2, Parts A and B, where a nutrient content claim is made regarding the amount of total fat or the amount or type of any fatty acid or cholesterol, excluding omega-3 fatty acids, the real analytical values of all the following fatty acid components and cholesterol must be indicated in the table with nutritional information, immediately after the declaration of total fat:"

Total Fat	…g
of which saturated fatty acids	…g
of which *trans* fat as defined in the latest version of Regulations Relating to *Trans*-fat, R127 of 17 February 2011	...g
monounsaturated fatty acids	…g
polyunsaturated fatty acids	…g
Cholesterol	…mg

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Omega-3 fatty acid content claims (Reg 63)

"For claims, particularly on omega-3 fatty acids, all the omega-3 fatty acids must be specified, and the real analytical values of all the following fatty acid components must be indicated in the table with nutritional information, immediately after the declaration of fat:"

Total Fat	…g
of which saturated fatty acids	…g
monounsaturated fatty acids	…g
polyunsaturated fatty acids	…g
of which omega-3 fatty acids	…mg
of which ALA	…mg
EPA	…mg
DHA	…mg
DPA	…mg

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Content claim for antioxidant nutrient (Reg 64)

"(1) Subject to the requirements of these regulations, no content claim for an **antioxidant as nutrient** may be made other than for the antioxidants listed in Table 2. **(Separate to R965 Regs on Preservatives & Antioxidants)**

(2) A generic claim, generic reference on a label or in advertising about the presence of an "antioxidant" in a foodstuff may not be made unless the antioxidant as a nutrient is identified by the specific name of the substance with antioxidant properties, followed by the word "antioxidant" (e.g. "Vitamin C (Antioxidant)"): Provided that the minimum amount of the particular antioxidant present in a single portion or serving is not less than 30% of the NRV for the particular antioxidant, and in the case of the carotenoids: beta-carotene, lycopene, lutein and zeaxanthin, for which an NRV does not yet exist, the value consistent with "high in" in Table 2, must be considered the minimum amount per single portion or serving.

(3) Reference to the ORAC score **may not be made** about an "antioxidant" naturally present in or added to a foodstuff.

(4) For the purposes of this regulation: -

(a) "ORAC" means Oxygen Radical Absorption Capacity assay which measures the degree of inhibition of peroxy-radical-induced oxidation by the compounds of interest in a chemical milieu and measures the value as Trolox equivalents and includes both inhibition time and the extent of inhibition of oxidation;

and

(b) "antioxidant as nutrient" for the purpose of nutrient content claims, means vitamins A, C or E, riboflavin, copper, selenium, zinc, polyphenols in olive oil, beta carotene, lycopene, lutein, or zeaxanthin;"

NB NB NB

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Ingredient content claims (Reg 65)

- Falls under nutrient content claims section in Regulation 52 of R146

  "(1) The statements in subregulations (2) to (7) are considered nutrient content claims and are subject to the same conditions that are applicable to nutrient claims unless otherwise indicated."

- Lean meat = the same as R146
- Addition regarding polyols claims:

  "(3) Statements that foodstuff contains polyols:

  (a) When a polyol is used as a sweetener in a foodstuff—

  (i) the relevant nutritional information must be indicated in the space provided for it in the nutritional information or facts table as per point 1.2 of Annexure 2; and

  (ii) if the foodstuff qualifies for a claim "sugar-free", the statement "Not an energy-free foodstuff" must appear directly beneath the claim.

  (b) A foodstuff containing polyols in excess of 50g/kg of the end product must be labelled with the expression "excessive consumption may have a laxative effect": Provided that for sugar-free chewing gum the statement is required if the polyol content of the product exceeds 250g/kg."

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Ingredient content claims continued…

- Addition regarding wholegrain claims:

"(4) Statements that foodstuff contains wholegrain, recombined wholegrain flour or meal or is "partially wholegrain":

(a) An ingredient content claim which refers to "wholegrains" in any manner is permitted if—

(i) in the case where recombined or wholegrain flour or meal is used in a foodstuff, the claim "wholegrain" must be preceded by word "recombined", and in the case of wholegrain flour or meal followed by the word "flour" or "meal";

(ii) the percentage QUID as well as the GI category for wholegrain, recombined wholegrain flour or meal, partially wholegrain or partially wholegrain foodstuff, whatever the case may be, must be indicated as part of the content claim as follows:

"A (QUID) % wholegrain [name of grain] or partially wholegrain [name of grain] or recombined wholegrain (name of the grain) flour or meal foodstuff": Provided that a logo for the wholegrain concept may only be used if not less than 97% of the product consists of wholegrains.

(b) A logo depicting the wholegrain concept is permitted if the end product contains at least 75% whole grains."

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Ingredient content claims continued…

- Addition regarding prebiotics claims:

"(5) Statements that foodstuff contains prebiotics: In order to make a content claim about any prebiotic—

(a) the foodstuff must have at least 2g pure prebiotic per single portion or serving (solids and liquids);

(b) the prebiotic must be one or more or a combination of the following prebiotics:

(i) trans-galactooligosaccharide;

(ii) inulin;

(iii) oligofructose;

(iv) fructooligosaccharides (FOS); or

(v) galactooligosaccharides (GOS);

(c) the type of prebiotic and the source thereof in brackets must be declared in the list of ingredients and the amount thereof must be declared in the nutritional information/facts table in the designated place according to point 1.2 of Annexure 2; and

(d) where the criteria mentioned in regulation 63 for a content claim for prebiotics are complied with, the following generic health claim may be used on the label:

"Prebiotics beneficially affects the intestinal flora by selectively stimulating the growth of the good or beneficial gut floraor micro-organisms or positively affects intestinal health.""

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Ingredient content claims continued…

- Amendment regarding no added sugar claims:

"(6) Claims regarding the non-addition of any mono- and disaccharides to a foodstuff such as no sugar or free sugar or "no sugar added" or "no added sugar" or other words with a similar meaning, may not be made for an end product foodstuff unless—

(a) the end product is a single ingredient agricultural product;

(b) the end product is a fresh, single fruit juice or a single, fresh vegetable juice as defined by these or relevant regulations under the Agricultural Product Standards Act;

(c) the end product is not a fruit or vegetable juice or concentrate thereof, which is blended with another fruit juice or concentrate thereof in order to comply with a certain sweetness (brix) requirement provided for in the relevant regulations under the Agricultural Product Standards Act;

(d) the foodstuff contains no compound ingredients of which any sugar is an ingoing ingredient or intrinsic sugar (such as but not limited to jams, jellies, sweet confectionary and chocolate, sweetened fruit pieces);

(e) no sugars or source thereof have been added to the foodstuff, irrespective of the technological purpose thereof, (such as but not limited to sucrose, glucose, fructose, lactose, honey, molasses, corn and other syrups, malt, isomaltulose, whey powder, milk solids) and irrespective of whether the added sugar or source is an intrinsic or an added sugar); or

(f) the sugar content of the foodstuff itself has not been increased above the amount contributed by the ingredients, by some other means such as the use of enzymes to hydrolyse starches to release sugars."

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Ingredient content claims continued…

- Addition regarding **no added salt claims**:

  "(7) Claims regarding the non-addition of sodium salts to a foodstuff, including "no added salt", may be made if—

  (a) the foodstuff contains no added sodium salts;

  (b) the foodstuff contains no ingredients that contain added sodium salts;

  (c) the foodstuff contains no ingredients that contain sodium salts that are used to substitute for added salt;

- NB addition:

  "(8) Nutrient content claims may only be used for ready-to-eat foodstuffs."

- Applicable definitions to this regulation:

  "(10) For the purposed of this regulation,

  (a) "added or free sugar" means any food containing monosaccharides and disaccharides, added to foods and beverages during processing and production;

  (b) "Instrinsic sugar" means means sugars which form an inherent part of certain unprocessed single ingredient agricultural foodstuffs which are naturally occurring and are always accompanied by other nutrients;"

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Comparative Claims (Reg 66)

- **There are important new additions in R2986 when compared to Regulation 53 in R146 including:**

- "(c) the comparison is based on a relative difference of—

  (i) at least 25% in the macronutrient,

  (ii) a minimum absolute difference of not less than 15% of the NRV for micronutrients

- (5) … "Reduced Sodium or salt according to national goals of (year) in the public's interest to lower blood pressure".

- (6) Subject to the Regulations Relating to the Labelling of Foodstuffs Obtained through certain techniques of genetic modification (Government Notice No. R. 25 of 16 January 2004), made under the Act and regulation 59(8) and notwithstanding the requirements of subregulation (1)(c), in the case of single ingredient agricultural food crops or produce, where improved nutritional quantity that was obtained through intervention in agricultural practice, excluding the addition of nutrients through enrichment or fortification as defined, the percentage increase of the particular nutrient in the nutritionally single ingredient agricultural food crop or produce, compared to the conventional crop or produce, **must be clearly indicated on the label in a mandatory statement that must accompany the comparative claim** to the effect that "The (percentage) higher level of (name of specific nutrient)" is the result of (statement explaining the source of the higher nutrient content)." **> NB (Example, Canola eggs???)**

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Glycaemic Index (GI) Category and Glycaemic Load (GL) nutritional information claim (Reg 67)

"(1) The GI category nutritional information claim must, if or when used, be indicated as either category "Low", "Intermediate" or "High", whatever is applicable, as determined in accordance with the international standard method for GI testing, ISO 26642 and must not include any method whereby a GI value is calculated to determine its category.

(2) The declaration of the GI category is valid only when the results of **two independent laboratories** correspond in likewise manner.

(3) The GI category and GL nutritional information claim-

(a) is only applicable for a foodstuff with—

(i) a glycaemic carbohydrate content of 40% or more of the total energy value of the foodstuff;

(ii) a fat content less than or equal to 30% of the total energy value of the foodstuff; and

(iii) a total protein content less than or equal to 42% of the total energy value of the foodstuff;

(b) is not valid for foodstuffs containing less than 10g glycaemic carbohydrates per single portion or serving."

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GI & GL Claims continued…

"(4) A GI category nutritional information claim must not be indicated by a specific numerical value but must, if used, be indicated or ranked as low, intermediate or high GI on the last line of the table with nutritional information: Provided the GI category corresponds with the conditions described in Table 3 below:"

Table 3:

CONDITIONS FOR GI CATEGORY

GI CATEGORY	CONDITION (Values indicated to indicate GI categories; not for labelling purposes)
Low GI	GI Value: 0 to 55
Intermediate GI	GI value: 56 to 69
High GI	GI value: ≥70

"(5) The GI, if or when used, must always be indicated together with the GL and never shall either be indicated in isolation.

(6) The GL is calculated according to the formula as defined in regulation 1.

- Regulation 1 formula:

> *""GL" means Glycaemic Load which is a numerical expression of how much impact a specific carbohydrate foodstuff serving will have in affecting blood glucose levels and which is calculated according to the formula:"* $GL = \frac{\text{Carbohydrate content (in grams) per serving x GI}}{100}$

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GI & GL Claims continued…

"(7) (a) The GL information must be expressed per single portion or serving, in numerical form, directly underneath the GI category on the bottom 2 lines of the nutritional information or facts table in Annexure 2; and

(b) the following statement must appear below the Nutritional Information table, boxed and in bold font:"

The GI and GL values are applicable only to the product concerned. The GI and/or GL may change depending on what accompanies the product in the meal or snack that it forms part of.

"(8) Subject to subregulation (7), when the formulation of a foodstuff carrying a GI category is changed, the **reformulated foodstuff shall be retested** to ensure that the category displayed on the label is correct."

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Function Claims (Reg 68):

(1) A function claim may be made for the nutrients or substances listed in Table 4 below, by using the approved, appropriate wording in column 2 of Table 4: Provided that—

(a) no deviation from the approved wording listed in column 2 of Table 4 for a claim is permitted; and

(b) where applicable, not all the claims listed per nutrient or substance need necessarily be used at all times, but additional information that needs to appear on a label where specifically indicated for a specific claim, must appear with the claim in the same place on the label.

(2) A function claim is not permitted—

(a) for vitamins and minerals for which a NRV value is not provided in Annexure 3;

(b) for any other substance not listed in Part B of Table 2, unless specifically provided for in Table 4.

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Functions Claims continued…

(3) In both cases of subregulation (2)(a) and (b), the foodstuffs must contain, per single portion or serving—

(i) at least 30% of the NRV as indicated in Annexure 3; or

(ii) in the case of carotenoids, at least the amount specified in column 3 of Part B of Table 2; or

(iii) the amount indicated in column 3 of Table 4, whatever the case may be.

(4) For the purposes of this regulation, **"function claim" means a claim that describes the physiological role and function of a nutrient or substance in growth, development and normal physiological functioning of the body.**

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Table 4: Approved function claims

- This table continues for 40 PAGES in R2986…
- However, please see an example of how it appears below:

NUTRIENT OR SUBSTANCE FOR WHICH A FUNCTION CLAIM IS MADE	SELECT ONE OR MORE OPTION OF THE PERMITTED WORDING FOR A FUNCTION CLAIM	ADDITIONAL CONDITIONS OR RESTRICTIONS OR ADDITIONAL STATEMENTS OR WARNINGS TO APPEAR ON THE LABEL AND IN COMMERCIAL MARKETING
1	2	3
Alpha-linolenic acid (ALA)	ALA contributes to the maintenance of normal cholesterol levels	The claim may be used only for a foodstuff which contains at least 300mg alpha-linolenic acid per 100g and per 418 kJ simultaneously. Information shall be given to consumers that the beneficial effect is obtained with a daily intake of 2 g ALA

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Permitted claims in Regulation 68 - 72

- Regulation 68 – 72 were introduced briefly at the beginning of this presentation.
- A full analysis and discussion will require several hours and the SAAFoST workshops to be held in March 2023 will deal with these and are highly recommended.

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Detoxification (Reg 73):

"A health claim that implies that a foodstuff is a tonic or may have detoxification or similar effects or benefits must be considered a medicinal claim and is prohibited for foodstuffs."

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Exemptions (Reg 74):

"street vendor" means a person who offers goods or services for sale to the public without having a permanently built structure but with a temporary static structure or mobile stall or with their goods laid out on the sidewalk;

Street vendor foods are **exempted** from labelling requirements.

a table with **nutritional information** or facts is mandatory …

(a) except foodstuffs which are **produced for sale by a small producer or a street vendor**;

(4) Foodstuffs which are produced for sale by a small producer, or a street vendor may not make or bear any claim with a nutrition or health message.

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Commencement (Reg 76):

76. (1) Subject to subregulations (2), (3) and (4), these regulations enter in to force 24 months after the date of publication thereof.

(2) Regulation 9(2) and (3) enters into force on the date of publication of these Regulations.

Prohibition on health claims and nutrients in product names and branding!

(3) Regulations 49 to 73 enters into force 12 months after the date of publication of these Regulations.

FOPL and Claims , Nutrient Profiling, etc

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Commencement (Reg 76):

(4) Regulation 8 on **date marking** enters into force **6 months** after the date of publication of these Regulations.

Realistic timelines?

"Immediate" - brands may be in place for some years, packaging redesign, use up existing packaging, loss of goodwill

"Date Marking" - 6 months is not long enough as some product have shelf life of 2 years or longer

"12 months" -many SKU's not enough resources/lab capacity for this

- **Open to legal challenge unless these timelines adjusted.**

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Questions?

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