

Discussion paper for face to face consultation September/October 2017

The form of the food ('as prepared') rules for the Health Star Rating (HSR) system

Introduction

The Health Star Rating (HSR) Advisory Committee (HSRAC), responsible for overseeing the implementation, monitoring and evaluation of the HSR system, is the form of the food ('as prepared') rules in The Guide for Industry to the HSR Calculator ([Attachment 1](#)). The HSR system aims to:

- Enable direct comparison between individual foods that, within the overall diet, may contribute to the risk factors of various diet related chronic diseases;
- Be readily understandable and meaningful across socio-economic groups, culturally and linguistically diverse groups and low literacy/low numeracy groups; and
- Increase awareness of foods that, within the overall diet, may contribute positively or negatively to the risk factors of diet related chronic diseases.

The design and implementation principles used to guide the development of the HSR system are outlined in the *Objectives and principles for the development of a front-of-pack labelling (FoPL) system* at [Attachment 2](#).

The 'as prepared' rules

The Guide for Industry to the HSR Calculator includes provisions for products that may be inappropriately compared to other products when based on the form of the food as presented for sale. This covers items such as powdered soup, sauce mixes or drink flavourings, which are not intended to be consumed as sold and are intended to be prepared in some way prior to consumption, and which once prepared can reasonably be compared with similar products.

Current guidance allows these products to display a HSR based on the product 'as prepared' according to the instructions on the product packaging. This effectively means that the HSR of these products when 'prepared' can be substantially altered by the nutritional components of the suggested added ingredient(s). For example, the HSR can be improved when calculated on the meal as prepared with meat and vegetables as per the instructions on the pack.

Some products may be prepared in multiple ways despite specific directions or instructions for preparation. As a consequence the HSR, calculated according to current guidance, may not be representative of the way that the product is being prepared and consumed and may be misleading.

This issue has been raised by public health and consumer organisations and at stakeholder workshops, and the Australia and New Zealand Ministerial Forum on Food Regulation (Forum) has asked the HSRAC to address these concerns as a matter of priority. Negative media attention has also been drawn to this matter. There is some concern that consumer confidence in the HSR system as a whole may be undermined by the negative media commentary, particularly if consumer understanding of the 'as prepared' rules is lacking.

Reappraising the ‘as prepared’ rules

The reappraisal will determine:

- how potential modifications to the rules will change HSR values for ‘as prepared’ items and categories; and
- the effect this will have on:
 - consumer behaviour, particularly amongst people with low health literacy or who may be more likely to consume these products and/or less likely to follow the stated instructions, e.g. culturally and linguistically diverse groups or people of lower socioeconomic status;
 - overall alignment with dietary guidelines; and
 - industry, both in terms of additional burden and propensity to voluntarily commit to the HSR system.

Extensive consultation with industry, public health and consumer groups and the public will be key to understanding current issues with ‘as prepared’ products under the HSR system. Consultation will also assist with the identification of barriers and facilitators to effective and efficient implementation procedures.

Scope

The reappraisal will consider all products covered by the form of the food rules that must be prepared prior to consumption, including but not limited to:

- Cake mixes/pancake mixes
- Canned soups
- Coffee powder mixes
- Cordial (made with water)
- Dehydrated powdered pasta and rice products
- Dehydrated vegetables
- Gravy (usually mixed with water)
- Hot chocolate mixes
- Milk powders
- Other milk flavourings
- Powdered custard
- Powdered soups
- Recipe bases
- Sauce mixes, including powdered and liquid sauce packs for casseroles/slow cookers
- Spice mixes
- Stock, powdered
- Syrups
- Yoghurt mixes

Food manufacturers have identified those products to which the ‘as prepared’ rules apply, and provided product data and clarification of the methods used to calculate ratings.

Submission process

The 'as prepared' public submission process opened on 19 May 2017 on the Department of Health's Consultation Hub and closed on 30 June 2017. A total of 74 submissions were received from various stakeholders.

BACKGROUND/INTEREST GROUP	% OF TOTAL SUBMISSIONS
Consumer group	8.5
General Public	34.1
Government	11.0
Industry	18.3
Public health	25.6
Other	2.4

Outcomes of the submission process

The submissions received in relation to the 'as prepared' issue have been collated into a summary table at [Attachment 3](#). The submissions identified a number of key themes.

Key themes

Not representative of the way in which the product is prepared and consumed

Some stakeholders believe that the 'as prepared' ruling is misleading as it allows manufacturers to represent a rating that takes into account the nutritional profile of the product once combined with other products, for example when mixed with milk.

Some stakeholders have indicated that consumers do not always use the product as instructed or follow instructions precisely. A consumer may buy a high HSR rated product, but not prepare the product according to the packaging, yet still believe they are consuming a healthy product. Their view is that the HSR should therefore be based on the product 'as sold' not 'as prepared', to provide transparent information to consumers about the healthiness of the ingredients in the pack.

Alignment with dietary guidelines

A number of stakeholders believe that the 'as prepared' rulings are not promoting food choices in line with the dietary guidelines. Many foods eligible to display 'as prepared' are discretionary and given recommendation to eat these foods only occasionally and in small amounts due to their poor nutritional quality, they should not receive a disproportionate benefit potentially conferred by current 'as prepared' guidelines.

Other stakeholders consider that the 'as prepared' rules are consistent with the dietary guidelines and that HSR labelling which reflects the nutritional profiling of the product 'as prepared' can be a powerful driver to industry to encourage consumption of products in a manner which promotes good dietary habits.

Impacts on the credibility of the system

Some stakeholders have also suggested that current interpretation and application of the HSR system 'as prepared' rule is confusing to consumers and undermines the credibility of the HSR system. It is suggested that 'as prepared' can be useful when included alongside 'as sold' on the Nutrition Information Panel (NIP), but positioning it on the front of the pack is misleading as the HSR dominates as the indication of health on the pack. Some stakeholders believe that allowing products to inflate their HSR with the addition of a healthier core food does not provide consumers with information that assists them to make healthier choices. The negative media attention that the system has attracted due to the 'as prepared' ruling has caused consumers to lose trust in the system.

Resolution should occur before five year review

Public health and consumer groups called for improvements to the 'as prepared' rules to be made as a matter of priority to restore consumer confidence in the HSR system.

Some industry stakeholder's preference was that if any changes are made to the 'as prepared' rules that they be implemented in line with the five year review of the system. This would reduce the costs to industry as labelling changes resulting from the main review could be made at one time, rather than in two separate tranches.

Consistency with other labelling

The current 'as prepared' rules are in line with the Food Standards Code (FSC). Some respondents believed that any changes to the ruling need to be consistent with regulatory requirements such as the NIP and with the provisions of the FSC.

Alignment with HSR system objectives

A further concern is that a key aim of a front-of-pack labelling system is to 'guide consumer's choice by being readily understandable and meaningful across socio-economic groups, culturally and linguistically diverse groups and low literacy/low numeracy groups'. Some stakeholders believe that allowing some products to apply the 'as prepared' rule and others not to is confusing for consumers. Respondents believed that the literacy and numeracy skills required to comprehend that the HSR may be based on a recipe on the pack and to then follow these instructions goes against this key principle.

Lack of understanding of how the HSR is calculated

A number of stakeholders claimed that the majority of consumers do not understand how HSRs are calculated using the 'as prepared' rulings. It has been suggested that consumers believe the ratings pertain solely to the product, rather than based on the product as consumed following the recipe directions.

Clarification of Industry guide required

Concerns have been expressed with the current guidance as benefits of the rules are not enjoyed equally by all manufacturers, e.g. guidance materials state that breadcrumbs and breakfast cereals (which traditionally have displayed a variety of 'as prepared' values in the NIP) must display HSR 'as sold'.

Some stakeholders have suggested that the existing 'as prepared' rules should be clarified specifically in the category of cooking sauces (as it is for breakfast cereals) in the Guide for Industry. Current guidance indicates the HSR should be determined

‘as sold’ for foods that can be consumed ‘as sold’ or prepared with other ingredients. Most manufacturers interpret this guidance to apply to cooking sauces and are determining the NIP and HSR ‘as sold’. However, some manufacturers of cooking sauces have chosen to follow the ‘as prepared’ rules and this may make it difficult for consumers to make reasonable comparisons within this category.

Comparability with like products

One of the key purposes of the HSR system is to provide ‘a quick standardised way to compare similar packaged foods at retail level’. Some stakeholders believe it is important that if a product is sold in two versions (for example powdered form and liquid form) the ‘as prepared’ ruling should be applied in order to allow a comparison of the products. Any amendment to the ‘as prepared’ rules should uphold the objectives of allowing consumers to compare like products.

Other stakeholders thought the current ‘as prepared’ rulings allow product categories to change depending on the foods added, which results in unfair product comparison.

Targeted consumer education

Stakeholders noted that the existing ‘as prepared’ rules could be clarified for consumers through targeted education. Future social marketing campaigns should indicate that on some food products the HSR applies to the food ‘as prepared’ and consumed according to the manufacturer’s instructions.

Incorrect assumptions about the application of the ‘as prepared’ rules

It has been argued that there is limited opportunity for industry to game the system using the ‘as prepared’ ruling. Page 11 of the Guide for Industry provides clear exception to the ‘as prepared’ rules when determining the fruit and vegetable points (v points). Addition of small amounts of fvnl through preparation instructions would do little to affect the HSR. Some stakeholders have suggested that there is no evidence that the current approach is misleading to consumers when the HSR is considered in the context of the whole of pack labelling, which is how consumers select their purchases.

Changes to ‘as prepared’ rules will be a cost to industry and consumers

It has been noted that any changes to the ‘as prepared’ rules will result in a cost to industry and while many companies will seek to contain those costs there will be some costs passed on to consumers. To reduce costs and provide for greater flexibility for incorporating new labelling within normal business cycles some stakeholders have recommended that any changes that may follow the review of the ‘as prepared’ rules be implemented in line with the broader five year review.

Extended labelling options could be used to clarify ratings

Stakeholders have pointed out that the current review on ‘as prepared’ and the wider five year review of the HSR system should recognise the opportunity provided by extended labelling through smart phones and the internet for disseminating virtually unlimited information to consumers about food products including advice on the use of HSR labelling in all its iterations.

Inconsistencies with Australian Consumer Law

Some stakeholders have indicated that there is also potential inconsistency with Australian Consumer Law and the HSR Guidance in its current form - with packaging that may be false or misleading to consumers.

Reduction in industry uptake

Some stakeholders consider the current 'as prepared' rulings have the potential to hinder industry uptake. It was felt that some manufacturers are being disadvantaged by the current exemptions and 'as prepared' calculations, which can inflate star ratings. Stakeholders believed that consistent application of star ratings would provide a level playing field and encourage continued voluntary uptake and industry support for the HSR system.

Options

The submissions outlined four options to address the 'as prepared' rules. A summary of stakeholder's views on each of the options is outlined below:

Option 1 - Status quo:

The 'as prepared' rules remain unchanged - products may display a HSR based on the product 'as prepared' according to the instructions on the product packaging.

FOR: Some submissions were supportive of status quo as it enables consistency with other pack labelling (FSC, NIP, HSR, serving suggestion, recipe). Respondents believed that manufacturers could clearly indicate on the front of the pack that the HSR has been based on the 'as prepared' values. It was felt that labelling consistency with the FSC and dietary guidelines are imperative to avoid consumer confusion.

Other submissions indicated that maintaining the status quo was important as it relates to the product as consumed. The on-pack preparation instructions are very specific and representative of how the consumer will prepare and consume the product. Many foods that are required to be made up prior to consumption are not able to be consumed 'as sold'.

It was also suggested that the status quo allows comparability with like products and that continued communication about comparing like products is required.

Clarification of the HSR guidance documents was also supported by some respondents.

AGAINST: Some submitters did not support the status quo as they felt that status quo increases consumer confusion and unfair comparisons and is not being interpreted consistently across industry and consumer/health groups.

Option 2 – 'As sold' only:

The HSR is calculated on the product 'as sold'. The 'as prepared' rules would cease to exist.

FOR: Some submitters indicated that by calculating the HSR 'as sold' there would be incentive for manufacturer's to decrease risk nutrients such as sodium and/or sugar to improve the HSR of their product. Consumers would therefore be in a better position to choose between similar products and make the healthier choice based on the product 'as sold' rather than the recipe on the pack.

Others believed that where there are too many variables or multiple ingredients can be added using 'as prepared' is misleading. Some respondents felt that the 'as sold' option would maintain the simplicity of the system.

AGAINST: Others, however, felt that allowing the HSR to only reflect products 'as sold' would severely curtail the utility of the HSR to consumers by diminishing its discrimination between like products, by falsely indicating differences between different forms of the same product, and by misalignment with other on pack labelling (including the NIP).

Option 3 - Multiple Health Star Ratings on pack:

The HSR is calculated on the product 'as sold' and 'as prepared'. Multiple ratings are displayed on the pack with the 'as sold' rating being the most prominent on the pack.

FOR: Several submissions indicated that displaying multiple ratings on pack could be considered. The 'as sold' rating should be the default rating and the most prominent on the pack and 'as prepared' rating/s could also be displayed.

Others suggested that the 'as sold' rating could be put on the front of pack and the 'as prepared' rating could be displayed on the back beside the recipe directions and/or the NIP.

AGAINST: Some submitters indicated that this option could be confusing for consumers and may reduce the simplicity of the scheme. Some suggested consumer research to determine whether this would aid understanding or add to confusion.

Option 4 – 'As sold' with exemptions:

The HSR is calculated on the product 'as sold' but certain exemptions would apply and these would need to be clearly outlined in the guidance material. Exemptions that could be considered under this option include but are not limited to:

- **Exemptions for specific products;**
- **Rehydrated with water only;**
- **Rehydrated with water only and drained.**

FOR: Some submitters indicated that this option has merit and warranted further consideration.

The preference is that the food 'as sold' should be the default option to determine HSR and this works well for most foods. However, for certain categories such as cake mixes, soups, drink flavourings, some submitters supported the continuation of the 'as prepared', 'rehydrated' and 'drained' rules to determine the HSR. Respondents believed this would be more useful and meaningful to consumers than 'as sold' ratings (particularly for products which are never consumed 'as sold') whilst still allowing fair and reasonable comparisons to be made.

Some submitters indicated that rehydrating with water should be the only circumstance where 'as prepared' should be allowed as the rating is not able to be improved by the nutritional value of added foods but allows dilution to be taken into account. They claim this option would help the HSR to better align with the dietary guidelines.

Other submitters suggested 'as sold' with no exemptions to the rule other than the addition of water or draining. They claim this would be the simplest option for consumers and would not be open to manipulation by industry.

AGAINST: Others felt that it may be difficult to develop exemptions that are not confusing for industry or consumers.

Next steps

This discussion paper will be made available to industry, consumer and public health groups and the public and will be used for further stakeholder consultation in the form of workshops to be held in Sydney (28 September), Auckland (5 October) and Melbourne (12 October). The themes raised through these workshops will be analysed to inform the development of an options paper.

The HSR Technical Advisory Group (TAG), with responsibility for assisting in the review of the technical aspects of the HSR Calculator, will model and analyse the prospective changes to HSR values for specific products and categories to highlight the impact of the proposed options outlined in the paper.

The options paper will then be released to industry, public health and consumer groups and individuals for a second round of consultation. Focus groups will be held to consider and compare options and will help in assessing their overall effectiveness in meeting the aims of the HSR system.

The HSRAC will consider the results from these stakeholder consultations and the advantages and disadvantages of possible options for the 'as prepared' rules. It is envisaged that any amendments to the HSR system in relation to 'as prepared' would require approval from the Forum via the Food Regulation Standing Committee. Should the Forum agree that a change to the 'as prepared' rules is required, industry will be notified of the update to the guidelines. Furthermore, following any changes, the HSRAC will need to consider an appropriate communications strategy and recommend to the Forum a transition phase for industry implementation.

Outcomes will also be provided to the independent consultant engaged to complete the five year review of the HSR system for consideration.

Attachment 1: Extract from Guide for industry to the Health Star Rating Calculator (Version 5, June 2016) - Page 7

Step 2: Determine the form of the food for the HSR

The HSR and hence nutrient content values used to determine it should apply to the form of the food as determined in accordance with the following:

- the food as sold if the food can be either prepared with other foods or consumed as sold
- the food as prepared if the food is required to be prepared and consumed according to directions on the label
- the food after it is reconstituted with water and ready for consumption if the food requires reconstituting with water
- the food after it is drained and ready for consumption if the food requires draining before consuming.

In all cases the HSR should be based on the form of food for which the NIP information has been displayed¹. If the HSR is based on food ‘as consumed’, the label should clearly specify elsewhere on the pack the directions for preparation or cooking.

Standard 1.2.7-7 provides information on requirements on the form of food if a nutrition content claim or health claim is made in addition to displaying a HSR.

For breakfast cereals, the NIP and HSR should be for the cereal *as sold*. For products that can be used in a number of ways by the purchaser, such as breadcrumbs, the HSR should apply to the product as sold.

Standard 1.2.8-13 (3) provides additional NIP requirements where nutrient content is based on food that is intended to be prepared or consumed with another food.

¹ In some cases the NIP information for the form of the food may be displayed per serve, whilst the information in the HSR label for the same form of the food, may be displayed per 100g. E.g. A condensed soup is intended to be prepared (and consumed) in accordance with specific directions. Information in the NIP and the HSR label should reflect the nutritional values in the prepared product. In the NIP, information is presented per serve and per 100g as sold and per serve as prepared. In the HSR system label, the information is presented per 100g as prepared.

Attachment 2: Front of Pack labelling Project Committee - Objectives and principles for the development of a front-of-pack labelling (FoPL) system

Context:

In December 2011, the Legislative and Governance Forum on Food Regulation (FoFR) agreed to support Recommendation 50 of *Labelling Logic: Review of Food Labelling Law and Policy* (the Blewett Review), namely that an interpretive Front-of-Pack Labelling (FoPL) system should be developed. In its response, FoFR was careful to emphasise its view that the divergence of stakeholder views regarding FoPL means that *government is best placed to lead a collaborative process* to deliver on this task. However, FoFR was also careful to point out that the *food labelling regulatory framework must strike a balance between seeking to ensure good public health outcomes (both short and longer term) and ensuring a strong and profitable food industry.*²

FoFR therefore proposed *to undertake a collaborative design process with industry, public health and consumer stakeholders, with a view to reaching a broad consensus on a possible approach to interpretive FoPL.*³ The stated aims and objectives of the process were to:

- move away from the current divisive debate and polarised views by building on the common ground among stakeholders;
- focus on addressing issues of concern, exploring new approaches and exploring possibilities for building on existing schemes;
- help avoid the proliferation of different FoPL systems and the potential for consumer confusion from conflicting or inconsistent nutrition messages.⁴

The FoFR response also stated that “[i]t is important that consensus is on the basis that the approach adopted achieves the aims and objectives set out in the [Australia and New Zealand Food Regulation Ministerial Council] *Policy Statement*.” A copy of the Policy Statement is attached for reference, but key elements are extracted below to assist in discussion.

To give effect to the FoFR wishes the Department of Health and Ageing has convened a FOPL Project Committee of stakeholders to develop Front of Pack Labelling System.

To provide a foundation for the Project Committee’s task of developing a front-of-pack labelling system, this paper focuses upon three key elements of any system design process – namely objectives, scope and system design principles.

Objectives of a FoPL System:

According to the FOFR Policy Statement:

A FOPL scheme is a scheme that can guide consumer choice towards healthier food options and aims to:

Guide consumer choice by:

1. Enabling direct comparison between individual foods that, within the overall diet, may contribute to the risk factors of various diet related chronic diseases.
2. Being readily understandable and meaningful across socio-economic groups, culturally and linguistically diverse groups and low literacy/low numeracy groups.
3. Increasing awareness of foods that, within the overall diet, may contribute positively or negatively to the risk factors of diet related chronic diseases.

² Legislative and Governance Forum on Food Regulation (convening as the Australia and New Zealand Food Regulation Ministerial Council)
Response to the Recommendations of *Labelling Logic: Review of Food Labelling Law and Policy* (2011); Page 8

³ Above, n1; Page 52

⁴ Above, n1; Page 52

For the purposes of the Project Committee's work, this objective can more succinctly be expressed as:

'To provide convenient, relevant and readily understood nutrition information and/or guidance on food packs to assist consumers to make informed food purchases and healthier eating choices.'

Scope:

The Project Committee will develop a FoPL system combining both interpretive and informative elements within the following parameters:

1. One system will be developed that is widespread, simple and interpretive
2. The priority focus will be packaged, manufactured or processed foods presented ready for sale to the consumer in the retail sector.

Design and Implementation Principles:

In its response, FoFR explicitly stated that the collaborative approach should include consideration of the possibilities for building on existing schemes. It is therefore critical that a set of criteria be developed against which both new and existing schemes can be considered. In the context of this paper, these criteria are referred to as design and implementation principles, which are as follows:

Design

1. The FoPL system should synthesize, simplify and translate substantiated nutritional information and present it to inform food choice and support healthy eating.
2. The system should be widely understood including by those most at risk from poor nutrition and associated health risks.
3. The system may be based on symbols, numbers, words, colours and/or quantifiable attributes of the food products, or combinations of these elements.
4. The system should enable appropriate comparisons between foods based on agreed and consistent measures.
5. The system should be aligned with other food regulation, public health policies, and authoritative sources of dietary advice including:
 - a. Australian Dietary guidelines
 - b. Ministerial Guidelines and Statements
 - c. Nutrition, Health and Related claims regulations and industry codes.
6. The system should be based on elements that inform choice on balance by assessing both health-benefit and health-risk associated food components.
7. The system should comprise both the FoPL scheme and consumer education elements.

Implementation

8. Implementation must be practical, widespread, properly resourced and consistent with the agreed system.
9. The system must include stakeholders in a formal and agreed ongoing process of engagement.
10. The system should be fully and effectively monitored and evaluated both at a fixed time and on an ongoing basis, based on evidence, and against agreed performance indicators.
11. Implementation should include a well-resourced, on-going social marketing program led by Government and supported by industry and the wider public health sector.

Attachment 2.A: Australia and New Zealand Food Regulation Ministerial Council Front of Pack Labelling Policy Statement (Endorsed by Ministerial Council on 23 October 2009)

Australia and New Zealand's health strategies stress the importance of a preventive population-based approach to promoting health and reducing the prevalence of diet related chronic disease.

In addition to individual behavioural approaches, the strategies recommend changing the environment to make healthier choices easier choices for people and addressing the needs of diverse population groups.

FOPL provides nutrition information to consumers on the front of packaged foods. FOPL is not a stand alone strategy but can fit within the context of broader health strategies.

There are indications that FOPL can contribute to consumer understanding of the nutritional content of foods and make it easier for consumers to make healthy choices. FOPL can additionally be used as a marketing incentive to drive the market towards the development of healthier products.

A FOPL scheme is a scheme that can guide consumer choice towards healthier food options and aims to:

Guide consumer choice by:

1. Enabling direct comparison between individual foods that, within the overall diet, may contribute to the risk factors of various diet related chronic diseases.
2. Being readily understandable and meaningful across socio-economic groups, culturally and linguistically diverse groups and low literacy/low numeracy groups.
3. Increasing awareness of foods that, within the overall diet, may contribute positively or negatively to the risk factors of diet related chronic diseases.

Be consistent with other health strategies and guidelines by:

4. Supporting and being consistent with the objectives of programs and strategies designed to reduce the risk of diet related chronic diseases.
5. Guiding consumers to the selection of foods consistent with the Australia and New Zealand dietary guidelines
6. Supporting and being consistent with the Australia and New Zealand dietary guidelines and Nutrient Reference Values

Affect the environment in which consumers make choices by:

7. Contributing to the creation of a supportive environment that can guide consumer choice towards healthier foods within the overall diet.
8. Providing incentive for improvements to the healthiness of the food supply.