

Comments from the Victorian Departments of Health & Human Services and Economic Development, Jobs, Transport & Resources

Due date of submission – 16 October 2015

The Victorian Departments of Health & Human Services and Economic Development, Jobs, Transport & Resources (the departments) welcome the opportunity to provide comments on Application 1104 – Voluntary addition of vitamins and minerals to nut and seed-based beverages.

Application A1104 seeks to permit the voluntary addition of vitamins and minerals to nut and seed-based beverages at levels equivalent to those permitted for cereal and legume-based beverages.

The departments support in principle the progression of the application with the changes recommended by FSANZ, those being to set a minimum protein level no less than 0.3 per cent protein, consistent with that of cereal-based beverages, and to require that advisory statements apply to all nut and seed milks, not just fortified versions.

The departments would like FSANZ to consider the following issues:

Use of the term 'analogue'

The departments recommend not using the term 'analogue' for nut and seed-based beverages in Standard 1.3.2, and reconsidering the use of the term for cereal and legume beverages. By definition, an analogue is something which is seen as comparable to another. Permitting nut, seed, cereal and legume beverages to voluntarily fortify with one or more nutrients does not necessarily make these nutritionally comparable to dairy milk. It is important that the terminology in the Standard does not confer a misleading nutritional status to these products. While the permission to fortify these products is based on their use as a substitute to dairy, it is not necessary to describe them as an analogue or a substitute in the Code. The departments recommend referring to these products simply as nut and seed-based beverages (for the purpose of this application) and cereal and legume-based beverages for the existing analogues.

Advisory statements

The departments suggest an amendment to the drafting to ensure that the advisory statements are applicable to all cereal, nut, seed and legume-based beverages, as listed in Standard 1.3.2. The *Schedule 9 – Mandatory Advisory Statements* describes the levels of protein and fat in these beverages that require advisory statements to indicate that they are not suitable as complete milk replacements for children under 2 years or 5 years of age. Under this schedule, these beverages are currently broadly divided into cereal-based beverages (and their dried versions) and soy milk (and dried versions). Cereal beverages have fat and protein criteria that trigger advisory statements, whereas soy beverages have a sole criterion for fat. The departments assume that 'soy' rather than 'legume' was referenced because soy milk was the only legume-based beverage on the market at the time. We also assume a sole fat criterion was set because soy milk normally meets the protein criterion of 3 per cent.

The draft standard adds nut and seed-based beverages to *Schedule 9* but retains the separate reference to soy beverages. Legume beverages are the only group permitted to be fortified, for the purpose of being used as a milk substitute, and not listed in *Schedule 9*. Thus, any new legume-based beverage, other than soy, would not be covered by these advisory statements. From the point of view of enforcement, this 'regulatory gap' would not satisfy the principles of minimum effective regulation.

While this application is addressing nuts and seed-based beverages only, the conditions for these advisory statements are being amended and this provides an opportunity to address this loophole and bring the advisory statements for legume-based beverages in line with those for cereal and the proposed nut and seed-based beverages. Therefore, the departments suggest simplifying the advisory statements to apply the fat and protein criteria to all legume, cereal, nut or seed-based beverages and remove the specific references to soy. FSANZ should consider amending *Schedule 9* to:

<p>2 (a) A beverage made from legumes, cereals, nuts, seeds or a combination of those ingredients, and that contains less than 3% m/m protein.</p> <p>(b) An evaporated or dried product made from legumes, cereals, nuts, seeds or a combination of those ingredients.....etc.</p>	<p>The product is not suitable as a complete milk replacement for children under 5 years.</p>
<p>3 (a) A beverage made from legumes, cereals, nuts, seeds or a combination of those ingredients, and that contains:</p> <p style="padding-left: 40px;">(i) No less than 3% m/m protein; and</p> <p style="padding-left: 40px;">(ii) No more than 2.5% m/m fat</p> <p>(b) An evaporated or dried product made from <i>legumes</i>, cereals, nuts, seeds or a combination of those ingredients.....etc.</p>	<p>The product is not suitable as a complete milk replacement for children under 2 years.</p>