

21 June 2018
[50-18]

Approval report – Application A1144

Re-categorising coconut milk for food additive permissions

Food Standards Australia New Zealand (FSANZ) has assessed an application made by the Food and Beverage Importers Association to consider whether the food category for food additive permissions for coconut milk products is more appropriate under fruits rather than beverages.

On 5 February 2018 FSANZ sought submissions on a draft variation and published an associated report. FSANZ received ten submissions.

FSANZ approved the draft variation on 7 June 2018. The Australia and New Zealand Ministerial Forum on Food Regulation was notified of FSANZ's decision on 18 June 2018.

This Report is provided pursuant to paragraph 33(1)(b) of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act).

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Executive summary

The Australian Food and Beverages Importers Association (FBIA) applied to change the *Australia New Zealand Food Standards Code* (the Code) to provide regulatory certainty about food additive permissions for coconut milk products. These products are listed as coconut milk, coconut cream and coconut syrup but are not foods sold as beverages such as coconut milk (alternative to bovine milk) or coconut water.

In this report unless explicitly stated the term 'coconut milk products' refers to 'coconut milk, coconut cream and coconut syrup' and not to products sold as beverages. The relevant products are used by consumers as ingredients in recipes including in Asian and tropical dishes such as curries. They are not manufactured or marketed as beverages, nor are they produced in Australia or New Zealand. Regulatory uncertainty about the relevant food additive category for these products has caused products to be held at the Australian border.

Coconut milk is made by heating water combined with coconut tissue or coconut meat. It is usually produced using food additives (e.g. emulsifiers, stabilisers and thickeners) to ensure the water and fat components are not separated (that is to form a homogenous thick liquid).

The Applicant advised there has been some confusion about which food additive permissions apply to food category coconut milk products i.e. they could be either listed in the table to section S15—5 under:

- subcategory 14.1.2.1.1 (Coconut milk, coconut cream and coconut syrup) under category 14.1 (Non-alcoholic beverages and brewed soft drinks), or
- category 4.3 (Processed fruits and vegetables).

The permission granted by subcategory 14.1.2.1.1 (Coconut milk, coconut cream and coconut syrup) does not permit the use of various emulsifiers, stabilisers and thickeners in juices separated by mechanical means. In contrast, these additives are permitted under category 4.3 (Processed fruits and vegetables).

The Codex Alimentarius food standards categorise coconut milk products as fruits and vegetables rather than as beverages and as such permit the use of several food additives as stabilisers/thickeners.

The draft amendments aligned the permissions in the Code with Codex standards by transferring the classification of coconut milk products from beverage subcategory 14.1.2.1.1 to a new subcategory under 4.3 (Processed fruits and vegetables). Food category 4.3 permits emulsifiers, stabilisers and thickeners required to produce coconut milk products at GMP (Good Manufacturing Practice).

Food additive permissions for other products categorised as coconut waters and bovine milk alternatives remain in the appropriate non-alcoholic beverage category under 14.1 within the table to section S15—5. The appropriate category will depend on the specific product and is a decision for food manufacturers and ultimately for enforcement authorities.

Benzoate and sulphite permissions were also transferred to the new food subcategory to be consistent with Codex. For the same reason, the maximum permitted level for sulphites in coconut milk products was reduced to 30 mg/kg from 115 mg/kg. This reduction was confirmed by the Applicant as not negatively affecting producers since the lower level could achieve the technological purpose. Sorbates were not transferred as the Applicant confirmed they were not required and no Codex provisions exist. The amendments ensured colours could not be added since there was no need to do so.

1 Introduction

1.1 The Applicant

The Food and Beverages Importers Association (FBIA) is an Australian industry association representing food and beverage importers especially in relation to biosecurity, quarantine and food standards issues.

1.2 The Application

The Application sought to change the Australia New Zealand Food Standards Code (the Code) to provide regulatory certainty for coconut milk producers and importers. It sought to align food additive permissions with the Codex Alimentarius standards by changing the food category name and number for coconut milk products. In this report unless explicitly stated the term 'coconut milk products' refers to 'coconut milk, coconut cream and coconut syrup' and not to products sold as beverages. Coconut milk products are ingredients used by consumers in cooking e.g. Asian curries and tropical cuisines. These products differ from beverages such as coconut milks used as alternatives to bovine milk and coconut water. All coconut milk products that are the subject of this Application are imported into Australia and New Zealand.

Coconut milk is the liquid extract obtained by grating coconut tissue or coconut meat. It is produced by heating the liquid coconut extract with water and sealing it in packages to prevent spoilage. Most coconut milk products are produced using food additives (e.g. emulsifiers, stabilisers and thickeners) to prevent separation of the two phases: the heavier aqueous layer and the lighter fat layer. This is because the product is relatively unstable as an oil-in-water emulsion and requires food additives to produce the homogenous product that consumers expect. There are some additive-free commercial products available in which the water and fat components may separate.

1.3 The current standard

Paragraph 1.1.1—3(6)(a) of the Code provides that food for sale cannot contain, as an ingredient or component, a substance used as a food additive unless that substance's use as a food additive is expressly permitted by the Code.

Section 1.3.1—3 and section S15—5 of the Code provide which substances are permitted to be used as a food additive for the purposes of the Code. The permitted food additives for different food categories are listed in the table to section S15—5 of the Code.

The permitted food additives for coconut milk, coconut cream and coconut syrup are listed in food category 14.1.2.1.1 in the table to section S15—5.

Section S15—2 of the Code provides that the food additive permissions in the table to section S15—5 are hierarchical. That is, permissions in a higher category also apply to foods in a lower subcategory. This means that the food additives permitted by the higher category 14.1.2.1 are also permitted for use in coconut milk, coconut cream and coconut syrup.

Category 14.1.2.1 permits the use of 'additives permitted at GMP'. That is, the use of a substance that is listed in section 16—2 of Schedule 16 of the Code (see section 1.1.2—2(3)).

Importantly, category 14.1.2.1 states that its permission for 'additives permitted at GMP' applies only to 'juice separated by other than mechanical means only'.

Food category 4.3 in the table to section S15—5 lists permits food additives for processed fruits and vegetables. That food category also permits the use of ‘additives permitted at GMP’ in processed fruits and vegetables. However, unlike Category 14.1.2.1, that permission is not restricted to specific types of juices.

The Applicant stated that, as a result of the above, there is uncertainty within industry about which food category applies to coconut milk products: subcategory 14.1.2.1.1 or category 4.3. This uncertainty has also led to interpretation concerns for enforcement agencies about whether ‘additives permitted at GMP’ (i.e. substances that are listed in section 16—2) are permitted for use in coconut milk products. A number of thickeners, stabilisers and emulsifiers that are used as food additives to manufacture these products are listed in section S16—2.

1.3.1 Codex Alimentarius

The Codex Alimentarius has a commodity standard capturing coconut milk products – Codex Standard for Aqueous Coconut Products – Coconut Milk and Coconut Cream (CODEX STAN 240-2003). This Codex Standard contains a number of food additives with the technological purpose of the following stabilisers/thickeners: guar gum (INS 412), xanthan gum (INS 415), gellan gum (INS 418) and sodium carboxymethyl cellulose (INS 466).

The Codex General Standard for Food Additives (GSFA, CODEX STAN 192-1995) provides food additive provisions for various food categories covered by Codex commodity standards. The intention is that the GSFA will be the single definitive authoritative reference point for food additives for Codex commodity standards. However, this is not currently the case as some of these standards include food additive provisions which have not yet been added and aligned with the GSFA. This situation exists with CODEX STAN 240-2003, where not all its food additive provisions have been aligned in the GSFA.

The GSFA includes coconut milk products in the fruits and vegetables categories rather than in beverages as listed in the Code. Specifically, coconut milk products are listed under the food category of 04.1.2 (Processed fruit), in the specific category of 04.1.2.8 titled ‘Fruit preparations, including pulp, purees, fruit toppings and coconut milk’ as detailed in Part II (Food Category Descriptions) of the GSFA.

1.4 Reasons for accepting Application

The Application was accepted for assessment because:

- it complied with the procedural requirements under subsection 22(2) of the FSANZ Act
- it related to a matter that warranted the variation of a food regulatory measure.

1.5 Procedure for assessment

The Application was assessed under the General Procedure.

1.6 Decision

The draft variation as proposed following assessment was approved with amendments. The variation takes effect on gazettal. The approved draft variation, as varied after consideration of submissions, is at Attachment A.

The related explanatory statement is at Attachment B. An explanatory statement is required to accompany an instrument if it is lodged on the Federal Register of Legislation. The draft variation on which submissions were sought is at Attachment C.

2 Summary of the findings

2.1 Summary of issues raised in submissions

FSANZ sought public comments on the draft variation included in the Call for Submissions between 5 February 2018 and 19 March 2018.

Ten submissions were received:

- three from government agencies (two supported and one raised a number of issues)
- four from industry associations (all generally in support but three raised a number of issues)
- three from individual consumers (one supported, one opposed and one expressed no specific position).

The issues raised in submissions and FSANZ's responses are detailed in Table 1.

In summary the issues raised and addressed were:

- There is no requirement to use emulsifiers, stabiliser or thickeners to prevent phase separation, as this issue is easily dealt with by consumers mixing the product.
- To ensure better consistency and alignment with Codex standards, amendments to the permissions to other food additives should also be made. This includes permitting additional food additives, removing permissions and adding conditions to current permissions.
- FSANZ needs to ensure amendments to food additive permissions do not have an impact on currently imported products and products currently on the market.
- FSANZ should consider the categorisation of other food products obtained from coconuts as part of this Application, specifically including beverages such as coconut waters, and coconut milk beverages as alternatives to bovine milk.
- FSANZ needs to consider addressing the additional conditions that apply to the current food category which are not carried over to the new food category for these food products.
- FSANZ has not justified why changes are required to be made to the food category, as the Code is often not consistent with Codex food categories or food additive permissions.

Table 1: Summary of issues

Issue	Raised by	FSANZ response (including any amendments to drafting)
<p>Does not agree that food additives are required to be added to these products, as simple stirring fixes any problems with product separating out in a can. Therefore, does not support this Application as it is only benefiting commercial interests and not consumers.</p>	<p>An individual consumer</p>	<p>Consumers can make personal purchase choices over which packaged coconut milk products they purchase. Mandatory statement of ingredient labelling provides consumers with the information to make purchasing choices, i.e. to purchase products that do not use food additives.</p>
<p>To further ensure alignment of the Code with the Codex standard other food additives should also be permitted for this food category in Code. These additional food additives are: Polyoxyethylene sorbitan monolaurate (INS 432, also called polysorbate 20) and Polyoxyethylene sorbitan monopalmitate (INS 434, also called polysorbate 40)</p>	<p>New Zealand Food & Grocery Council (NZFGC) Australian Beverages Council Ltd (ABCL)</p>	<p>This request is outside the scope of the current Application. These two food additives are not permitted at all in the Code. Therefore permitting their use would require an assessment of two new food additives, not just an extension of use of two currently permitted food additives.</p>
<p>The submitter noted the reduction in sulphite permissions for this food category to be consistent with Codex provisions. While agreeing in principle with this approach, the submitter noted this is a significant reduction; from 115 to 30 mg/kg. The submitter was not able to provide any comments on whether such a proposed reduction would affect products currently on the shelf. But they cautioned that if it did then FSANZ would need to allow significant lead time to ensure compliance, noting that all these products are imported.</p>	<p>Australian Food & Grocery Council</p>	<p>FSANZ communicated with the Applicant before proposing this amendment, as indicated in the report (section 2.2), to ensure that the change would not cause compliance issues with manufacturers and suppliers of these products. The Applicant confirmed this change would not cause compliance problems. It is understood overseas producers and suppliers of these products ensure they comply with the Codex standard for their other markets so they already comply with the lower sulphite maximum permitted level (MPL). Therefore FSANZ has not proposed providing any stock-in-trade or transition period before gazettal of this Application as they are not required.</p>

Issue	Raised by	FSANZ response (including any amendments to drafting)
<p>The submitter noted that if the intent is to fully align the food additive permissions for this food category with those in Codex there are other food additive permissions (in addition to the two polysorbates noted in the earlier issue) that are not aligned.</p> <p>It notes that FSANZ proposed to reduce the maximum permitted level for sulphites when the food category is moved, from 115 to 30 mg/kg to be consistent with Codex. However permissions for sorbates and benzoates are also different between the Code and Codex. Codex does not permit the use of sorbates while the Code permits these additives at 1000 mg/kg. Codex permits sodium benzoate only for pasteurised coconut milk at 1000 mg/kg while the Code permits benzoates at 1000 mg/kg without any conditions.</p>	<p>ABCL</p>	<p>As the submitter has indicated, FSANZ had proposed transferring the current food additive permissions relevant for the food category 14.1.2.1.1 (coconut milk, coconut cream and coconut syrup) to the new food category. This included specific permissions for sorbates and benzoates, which vary from Codex provisions in CODEX STAN 240-2003. As an outcome of this submission FSANZ decided that sorbate permissions should be removed for this food category to be consistent with Codex, as sorbates are not required for these products to be compliant with Codex. The Applicant supported removing the sorbate permissions.</p> <p>The changes related to sulphite permissions were confirmed with the Applicant to ensure producers of these products would not be negatively impacted as the lower level was appropriate to achieve the technological purpose.</p> <p>FSANZ concluded there was no need to provide a pasteurisation condition for benzoate permissions, as it confirmed with the Applicant that all coconut milk products are heat treated.</p>

Issue	Raised by	FSANZ response (including any amendments to drafting)
<p>The submitters requested that FSANZ should consider the categorisation of other food products obtained from coconuts as part of this Application. In particular, the submitters requested that products called ‘coconut waters’ which are categorised as beverages be further categorised.</p>	<p>ABCL and New Zealand Beverage Council (NZBC)</p>	<p>FSANZ only evaluates an application in the context of the scope specified in an application. The request to consider other food categories obtained from coconuts, in particular coconut waters, which are beverages and so need to be captured within specific non-alcoholic food categories, is considered outside the scope of this Application.</p> <p>The Application is only related to coconut milk type products used in cooking and not products considered as beverages. Therefore the assessment did not consider, or make, changes to the Code for beverages derived from coconut, such as coconut waters.</p> <p>FSANZ has amended the report to clarify that the Application specifically considered the food category ‘coconut milk, coconut cream and coconut syrup’ which are products used in cooking and are not beverages.</p> <p>Food additive permissions for products categorised as ‘coconut waters’ and bovine milk alternatives are captured through the appropriate non-alcoholic beverage category under 14.1 within the table to section S15—5. The appropriate category will depend on the specific product and is a decision for food manufacturers and ultimately for enforcement authorities.</p> <p>NZBC considers the appropriate food category for coconut water to be 14.1.2.1 if the product is only coconut water or 14.1.2.2 if the product contains additional ingredients such as sugar. As indicated above, such a clarification is outside the scope of this Application.</p>

Issue	Raised by	FSANZ response (including any amendments to drafting)
<p>The submitter disagreed with the FSANZ statement in the Call for Submissions that coconut milk products are not considered beverages and are not positioned in the beverage section of the supermarket shelves or refrigerators.</p> <p>The submitter indicated that there are a number of milk-type products, as alternatives to bovine milk that are located in the chilled section in supermarkets near bovine milk. Coconut milk beverages are alternatives to bovine milk like soy and nut milks.</p> <p>The submitter therefore requested that FSANZ consider the need to further differentiate coconut milk products designed as beverages compared to those in this Application that are produced for use in cooking and are definitely not marketed as beverages. It suggested this could be done by applying definitions, such as the one provided in the submission taken from the CODEX STAN 240-2003. This definition states that coconut milk and coconut cream products [products of this Application marketed for cooking purposes and not beverages] are not sweetened or flavoured, while many coconut milk beverages are.</p>	<p>ABCL</p>	<p>The Application was confined to specific requirements directly related to coconut milk products that are produced and marketed for use in cooking and not as beverages.</p> <p>Based on additional information provided in the submission, FSANZ amended its assessment to clarify that products categorised and called 'coconut milk' are produced and marketed as beverages, such as bovine milk alternatives similar to soy and nut milks. It is clear these products are beverages and not the products relevant to this Application that are produced and marketed as ingredients for cooking.</p> <p>FSANZ does not consider any new definitions are required as the products are quite different. Making the changes to the Code as requested by the Application further clarified the situation by putting the appropriate products in the appropriate food categories.</p>
<p>The submitter indicated that no evidence has been provided to support the statement in the report that 'coconut milk products are not beverages'. It suggested that a consumer survey be conducted (either by the Applicant or FSANZ) on how these products are used by consumers.</p>	<p>South Australia Health</p>	<p>FSANZ considered that the products that are the subject of this Application are not beverages but are ingredients used in cooking. On this basis, a survey was not crucial for the Application.</p>

Issue	Raised by	FSANZ response (including any amendments to drafting)
<p>The submitter noted that many of the Code food categories and food additive permissions do not align with Codex and that this situation is not crucial on its own.</p> <p>It is understood many changes may have occurred to both the Code and Codex standards since they were first established but the A1144 report has not explained why changes to the food additive permissions are required now.</p>	<p>South Australia Health</p>	<p>FSANZ agreed that food standards do not have to align explicitly with Codex standards for the reasons articulated.</p> <p>However, it was appropriate to make certain changes to the Code to address the lack of clarity for enforcement agencies which has affected product imports. The regulatory problem that was the basis of the Application had been adequately expressed and FSANZ's assessment was that amendments to the Code were warranted.</p>

Issue	Raised by	FSANZ response (including any amendments to drafting)
<p>The submission recognises that there is no increase in the permissions for sorbates, benzoates and sulphites from the proposed change of food category from the current 14.1.2.1.1 to the proposed new food sub category of 4.3.0.5 (within the processed fruits and vegetables category). However, there is a condition for food category 14.1.2.1 that only allows food additives permitted at GMP [section S16—2], colourings permitted at GMP [section S16—3] and colourings permitted to a maximum level [section S16—4] for juice not separated by mechanical means. The rationale for this condition is that there is no technological justification for the use of these food additives in this food category, which includes the products relevant to this Application. This condition requirement has not been carried over to the new food category and food additive permissions. Food category 4.3 provides permissions for food additives in sections S16—2, S16—3 and S16—4 for the new sub-category 4.3.0.5 which are new permissions. Therefore colourings are permitted to be added to coconut milk products, including colourings permitted to a maximum level. The submitter requests that before such colours are permitted that FSANZ conducts dietary modelling and risk assessments to permit these colours in such products to establish there are no safety concerns.</p>	<p>South Australia Health</p>	<p>The issue expressed by the submitter here was the crux of the Application and one of the main causes of regulatory uncertainty, as articulated in sections 1.3 and 2.2 of this report.</p> <p>Coconut milk products that are the focus of this Application are produced by mechanical means, as noted in section 2.2. Food additives listed in sections S16—2, S16—3 and S16—4 are not appropriate to be added to fruit and vegetable juices separated by mechanical means. However, it was not clear that there needed to be an exclusion of such food additive permissions for the additional food category for coconut milk products, added as an additional subcategory underneath 14.1.2.1, or that this was considered when the Code was initially established. Specifically the various emulsifiers, stabilisers and thickeners required to be added to these products to ensure a homogeneous product is produced where the aqueous and oil layers do not separate out are listed within section S16—2. These same food additives are permitted in Codex’s standards for these products.</p> <p>Making the current changes to the Code ensures regulatory certainty. That is, these specific food additives are permitted to be added to the relevant coconut milk products.</p> <p>Whether sections S16—3 and S16—4 colours are required to be permitted to be added to these products is a separate question. It is understood that such colours were not requested or sought to be added to these products, which was confirmed in correspondence with the Applicant. Again this is consistent with Codex provisions for these products. Changes to the drafting had been made to reflect this, such that only section S16—2 food additives are permitted for these products. Therefore no dietary modelling or risk assessment was required to be conducted.</p>

Issue	Raised by	FSANZ response (including any amendments to drafting)
<p>The submitter notes another condition linked to products captured under the current food category 14.1.2 that states the “GMP principle precludes the use of preservatives in juices represented as not preserved by chemical or heat treatment”.</p> <p>Therefore, if the coconut milk products are represented as not being preserved by chemical or heat treatment then the specific food additive preservatives (in particular benzoates and sulphites for the coconut milk products) are not permitted to be used.</p>	<p>South Australia Health</p>	<p>This was not an issue for these products as they are not represented as not being preserved by chemical or heat treatment. As previously stated, coconut milk products are different to fruit and vegetable juices where this condition is important, e.g. freshly squeezed orange juice without added preservatives.</p>

2.2 Risk management

To ensure consistency with Codex standards (which are very commonly referenced in relation to international traded commodities, especially for Asian countries), FSANZ transferred the current food subcategory from 14.1.2.1 (Fruit and vegetable juices) to a new subcategory in 4.3 (Processed fruits and vegetables). The new subcategory is numbered 4.3.0.5, to be listed below 4.3.0.4 (Tomato products pH<4.5). Food additives in section S16—2 are permitted to be used in category 4.3.

The transfer of current food additive permissions (i.e. sorbates, benzoates both at a maximum permitted level of 1000 mg/kg, and sulphites) to this new food subcategory was initially considered. The MPL for sulphites was reduced to 30 mg/kg from 115 mg/kg as currently listed under food subcategory 14.1.2 to be consistent with Codex provisions. The lower MPL was appropriate for these products to achieve the technological purpose. The changes related to sulphite permissions were confirmed with the Applicant to ensure producers of these products would not be negatively affected. Higher permissions for sulphites for category 14.1.2 applies to a range of food categories other than coconut milk products. Permissions for sorbates were not carried over also to be consistent with Codex, since there are no provisions for sorbates for this food category and there was no requirement for permissions. The permissions for colours (sections S16—3 and S16—4) under food category 14.1.2.1 were not required or appropriate for coconut milk products so these permissions were not carried over to the new food subcategory. Other food additive permissions listed under food categories 14.1.2 and 14.1.2.1 were not required so were not carried over to the new food subcategory, or are already GMP food additives.

Food additive permissions for other products categorised as coconut waters and bovine milk alternatives are captured through the appropriate non-alcoholic beverage category under 14.1 within the table to section S15—5. The appropriate category will depend on the specific product and is a decision for food manufacturers and ultimately for enforcement authorities.

The proposed variation to the Code does not affect the labelling requirements for coconut milk products, including: the requirement in Standard 1.2.4 to declare food additives in the statement of ingredients; and the requirement to declare added sulphites when present in food at concentrations of 10 mg per kg or more (refer to section 1.2.3—4 of Standard 1.2.3).

2.3 Risk communication

2.3.1 Consultation

Consultation is a key part of FSANZ's standards development process. FSANZ acknowledges the time taken by individuals and organisations to make submissions on this Application. Every submission was considered by the FSANZ Board. All comments are valued and contribute to the rigour of our assessment.

FSANZ developed and applied a basic communication strategy to this Application. The call for submissions was notified via the Food Standards Notification Circular, media release, FSANZ's social media tools and Food Standards News.

The process by which FSANZ considers standard development matters is open, accountable, consultative and transparent.

The Applicant, individuals and organisations that made submissions on this Application will be notified at each stage of the assessment.

2.3.2 World Trade Organization (WTO)

As members of the World Trade Organization (WTO), Australia and New Zealand are obliged to notify WTO members where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

There are relevant international standards—the Codex Standard for Aqueous Coconut Products – Coconut Milk and Coconut Cream (CODEX STAN 240-2003) and the food category for such products in the Codex General Standard for Food Additives (CODEX STAN 192-1995). Amending the Code to align food categories and food additive permissions for coconut milk products with these Codex standards is unlikely to have a significant effect on international trade since the intent is to align with Codex. Therefore, a notification to the WTO under Australia’s and New Zealand’s obligations under the WTO Technical Barriers to Trade or Application of Sanitary and Phytosanitary Measures Agreement was not considered necessary.

2.4 FSANZ Act assessment requirements

2.4.1 Section 29

2.4.1.1 Consideration of costs and benefits

The Office of Best Practice Regulation (in correspondence dated 13 October 2017, reference number ID 22906) advised that the proposed measures appear to have minor regulatory impacts on business, community organisations or individuals. Consequently, a Regulation Impact Statement (RIS) is not required to be prepared.

However, notwithstanding that exemption, the FSANZ Act requires FSANZ to have regard to whether costs that would arise from the proposed measure outweigh the direct and indirect benefits to the community, government or industry that would arise from the proposed measure (S.29 (2)(a)). The purpose of this consideration is to determine if the community, government, and industry as a whole is likely to benefit, on balance, from a move from the status quo. Approving the Application is the only proposed measure that has been considered against the status quo (i.e. rejecting the Application).

The consideration of the costs and benefits in this section was not intended to be an exhaustive, quantitative economic analysis of the proposed measures. Rather, the consideration sought to highlight the likely positives and negatives of moving away from the status quo by approving the Application.

FSANZ is required to consider the impact of various regulatory and non-regulatory options on all sectors of the community, especially relevant stakeholders who may be affected by this Application. The level of analysis was commensurate with the nature of the Application and significance of the impacts.

FSANZ’s assessment was that the direct and indirect benefits that would arise from a food regulatory measure developed or varied as a result of the Application outweighed the costs to the community, government or industry that would arise from developing or varying that food regulatory measure. This is because approving this Application would provide clarity and certainty for government food regulation enforcement agencies and industry. It would also support trade of this commodity. FSANZ had not identified significant costs to consumers, governments, or industry that might arise from approving this application.

2.4.1.2 Other measures

There are no other measures (whether available to FSANZ or not) that would be more cost-effective than a food regulatory measure developed or varied as a result of the Application.

2.4.1.3 Any relevant New Zealand standards

Schedule 15 applies in both Australia and New Zealand. There are no relevant New Zealand only standards.

2.4.1.4 Any other relevant matters

Other relevant matters are considered below.

2.4.2 Subsection 18(1)

FSANZ has also considered the three objectives in subsection 18(1) of the FSANZ Act during the assessment.

2.4.2.1 Protection of public health and safety

The Application did not raise any issues relating to public health and safety. The variation in effect relocates a set of existing Code provisions from one part of the Code to another (with a subsequent reduction in sulphite permission and removal of sorbate permissions). Therefore, no safety assessment was conducted.

2.4.2.2 The provision of adequate information relating to food to enable consumers to make informed choices

No issues were identified with this application relevant to this objective. The requirements for the labelling of coconut milk products, including the requirements for declaring food additives in the statement of ingredients on food labels, are not affected by the proposed variation to the Code.

2.4.2.3 The prevention of misleading or deceptive conduct

No issues were identified with this Application relevant to this objective.

2.5.3 Subsection 18(2) considerations

FSANZ has also had regard to:

- **the need for standards to be based on risk analysis using the best available scientific evidence**

No safety assessment was required for this Application. The proposed draft variation in effect relocated a set of existing Code provisions from one part of the Code to another (with a subsequent reduction in sulphite permission and the removal of sorbate and colouring permissions). As such, there was no need to consider the best available scientific evidence for risk assessment purposes.

- **the promotion of consistency between domestic and international food standards**

The justification and purpose for the Application was to ensure consistency between the Code and Codex standards.

- **the desirability of an efficient and internationally competitive food industry**

Ensuring regulatory clarity relating to food additive permissions for imported coconut milk products ensures an efficient and internationally competitive food import industry noting that such products are not produced in Australia or New Zealand. It would not be efficient or competitive to require manufacturers to produce different products using different food additives just for the Australian and New Zealand markets because of regulatory uncertainty.

- **the promotion of fair trading in food**

Part of the justification and purpose of the Application was to ensure the promotion of fair trading in food, in particular the importation of coconut milk products consistent with products traded throughout the world.

- **any written policy guidelines formulated by the Forum on Food Regulation**

There are no policy guidelines relevant to this Application. The Ministerial Policy Guideline “Addition to Food of Substances other than Vitamins and Minerals” was not considered relevant since no changes to food additive permissions were requested including for new food additives, nor to extensions of use.

Attachments

- A. Approved draft variation to the *Australia New Zealand Food Standards Code*
- B. Explanatory Statement
- C. Draft variation to the *Australia New Zealand Food Standards Code* (call for submissions)

Attachment A – Approved draft variation to the *Australia New Zealand Food Standards Code*



Food Standards (Application A1144 – Re-categorising Coconut Milk for Food Additive Permissions) Variation

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The variation commences on the date specified in clause 3 of this variation.

Dated [To be completed by the Delegate]

Glen Neal
General Manager, Risk Management & Intelligence
Delegate of the Board of Food Standards Australia New Zealand

Note:

This variation will be published in the Commonwealth of Australia Gazette No. FSC XX on XX Month 20XX. This means that this date is the gazettal date for the purposes of clause 3 of the variation.

1 Name

This instrument is the *Food Standards (Application A1144 – Re-categorising Coconut Milk for Food Additive Permissions) Variation*.

2 Variation to a standard in the *Australia New Zealand Food Standards Code*

The Schedule varies a Standard in the *Australia New Zealand Food Standards Code*.

3 Commencement

The variation commences on the date of gazettal.

Schedule

[1] **Schedule 15** is varied by

[1.1] omitting from section S15—2, the words ‘For each class’, substituting “Unless the table to section S15—5 expressly provides otherwise, for each class”.

[1.2] inserting in the table to section S15—5, in numerical order

4.3.0.5 Coconut milk coconut cream and coconut syrup
No Colourings permitted

210 211 212 213	Benzoic acid and sodium, potassium and calcium benzoates	1 000
220 221 222 223 224 225 228	Sulphur dioxide and sodium and potassium sulphites	30

[1.3] omitting items 14.1.2.1.1 and 14.1.2.1.2 from the table to section S15—5, substituting

14.1.2.1.1 234	<i>Tomato juices pH < 4.5</i> Nisin	GMP
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Attachment B – Explanatory Statement

1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 1 of Part 3 of the FSANZ Act specifies that the Authority may accept applications for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering an application for the development or variation of food regulatory measures.

FSANZ accepted Application A1144 which seeks to consider whether the food category for food additive permissions for coconut milk products is more appropriate under fruits rather than beverages. The Authority considered the Application in accordance with Division 1 of Part 3 and has prepared a draft variation.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the standard or draft variation of a standard.

Section 94 of the FSANZ Act specifies that a standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but is not subject to parliamentary disallowance or sunseting under the *Legislation Act 2003*.

2. Purpose

Food additive permissions for coconut milk products used by consumers as ingredients in cooking are currently located within the beverages food category of Schedule 15 of the Code. The purpose of the draft variation is to clarify that such coconut milk products are not beverages, but are processed fruit products. It does this by relocating the food additive permissions for coconut milk products from within the food category for beverages to the food category for fruits and vegetables. Including these products in the fruits and vegetable food category will align how these products are characterised by the Code with relevant Codex Alimentarius standards. To achieve further consistency with Codex standards, the draft variation will also lower the maximum permitted level for sulphites in coconut milk products to 30 mg/kg from 115 mg/kg and remove sorbate permissions. The variation also clarifies that these products are permitted to contain certain food additives permitted at GMP. A statement that colours are not permitted for these products is also added to be further consistent with Codex.

3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference.

4. Consultation

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1144 included one round of public consultation following an assessment and the preparation of a draft Standard and associated assessment summary.

A Regulation Impact Statement was not required because the proposed variations to Schedule 15 were concluded to have a minor impact on business and individuals.

5. Statement of compatibility with human rights

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

6. Variation

Item [1.1]

Item [1.1] makes a general change to how food additives are permitted in food categories (headings) in section S15—2. This relates to how the hierarchical approach to food additive permissions operate. The change makes it clear that the hierarchical approach as detailed in section S15—2 operates unless explicitly stated otherwise under the specific class (food category).

Item [1.2]

Item [1.2] of the draft variation amends the table to section S15—5 to include the relocated food category 4.3.0.5 (Coconut milk coconut cream and coconut syrup). This food category provides permission for benzoates (210-213) in coconut milk, coconut cream and coconut syrup, subject to a maximum permitted level of 1000 mg/kg. It also provides permission for sulphites (220-225, 228) in these foods subject to a maximum permitted level of 30 mg/kg. Colourings are not permitted to be added to these products.

Item [1.3]

Item [1.3] of the draft variation makes two consequential amendments to the table to section S15—5 that are required because of the amendment made by Item [1.2]. It removes food category 14.1.2.1.1 and the permissions contained in that category from the table. It also changes the food category number 14.1.2.1.2 (Tomato juices pH<4.5) to 14.1.2.1.1 to reflect that removal.

Attachment C – Draft variation to the *Australia New Zealand Food Standards Code* (call for submissions)



Food Standards (Application A1144 – Re-categorising Coconut Milk for Food Additive Permissions) Variation

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The variation commences on the date specified in clause 3 of this variation.

Dated [To be completed by the Delegate]

Glen Neal
General Manager, Risk Management & Intelligence
Delegate of the Board of Food Standards Australia New Zealand

Note:

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2 Variation to a standard in the *Australia New Zealand Food Standards Code*

The Schedule varies a Standard in the *Australia New Zealand Food Standards Code*.

3 Commencement

The variation commences on the date of gazettal.

Schedule

[1] Schedule 15 is varied by

[1.1] inserting in the table to section S15—5, in numerical order

4.3.0.5	Coconut milk coconut cream and coconut syrup	
200 201 202 203	Sorbic acid and sodium, potassium and calcium sorbates	1 000
210 211 212 213	Benzoic acid and sodium, potassium and calcium benzoates	1 000
220 221 222 223 224 225 228	Sulphur dioxide and sodium and potassium sulphites	30

[1.2] omitting from the table to section S15—5,

14.1.2.1.1	Coconut milk coconut cream and coconut syrup	
200 201 202 203	Sorbic acid and sodium, potassium and calcium sorbates	1 000
210 211 212 213	Benzoic acid and sodium, potassium and calcium benzoates	1 000
14.1.2.1.2	Tomato juices pH < 4.5	
234	Nisin	GMP
substituting		
14.1.2.1.1	Tomato juices pH < 4.5	
234	Nisin	GMP