

5 February 2018
[37-18]

Call for submissions – Application A1144

Re-categorising coconut milk for food additive permissions

FSANZ has assessed an Application made by the Food & 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 and has prepared a draft food regulatory measure. Pursuant to section 31 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), FSANZ now calls for submissions to assist consideration of the draft food regulatory measure.

For information about making a submission, visit the FSANZ website at [information for submitters](#).

All submissions on applications and proposals will be published on our website. We will not publish material that we accept as confidential, but will record that such information is held. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1991*. Submissions will be published as soon as possible after the end of the public comment period. Where large numbers of documents are involved, FSANZ will make these available on CD, rather than on the website.

Under section 114 of the FSANZ Act, some information provided to FSANZ cannot be disclosed. More information about the disclosure of confidential commercial information is available on the FSANZ website at [information for submitters](#).

Submissions should be made in writing; be marked clearly with the word 'Submission' and quote the correct project number and name. While FSANZ accepts submissions in hard copy to our offices, it is more convenient to receive submissions electronically through the FSANZ website via the link on [documents for public comment](#). You can also email your submission directly to submissions@foodstandards.gov.au.

There is no need to send a hard copy of your submission if you have submitted it by email or via the FSANZ website. FSANZ endeavours to formally acknowledge receipt of submissions within 3 business days.

DEADLINE FOR SUBMISSIONS: 6pm (Canberra time) 19 March 2018

Submissions received after this date will not be considered unless an extension had been given before the closing date. Extensions will only be granted due to extraordinary circumstances during the submission period. Any agreed extension will be notified on the FSANZ website and will apply to all submitters.

Questions about making submissions or the application process can be sent to standards.management@foodstandards.gov.au.

Hard copy submissions may be sent to one of the following addresses:

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Table of contents

EXECUTIVE SUMMARY	2
1 INTRODUCTION	3
1.1 THE APPLICANT	3
1.2 THE APPLICATION.....	3
1.3 THE CURRENT STANDARD	3
1.4 REASONS FOR ACCEPTING APPLICATION	4
1.5 PROCEDURE FOR ASSESSMENT	4
2 SUMMARY OF THE ASSESSMENT	4
2.1 RISK MANAGEMENT	4
2.2 RISK COMMUNICATION.....	5
2.2.1 <i>Consultation</i>	5
2.2.2 <i>World Trade Organization (WTO)</i>	6
2.3 FSANZ ACT ASSESSMENT REQUIREMENTS	6
2.3.1 <i>Section 29</i>	6
2.3.2 <i>Subsection 18(1)</i>	7
2.3.3 <i>Subsection 18(2) considerations</i>	7
3 DRAFT VARIATION	8
ATTACHMENT A – DRAFT VARIATION TO THE <i>AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE</i>	9
ATTACHMENT B – DRAFT EXPLANATORY STATEMENT.....	11

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 used as ingredients in many Asian and tropical dishes such as curries. They are not produced in Australia. Regulatory uncertainty relating to appropriate food additive categories has at times 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 produced using food additives (e.g. emulsifiers, stabilisers and thickeners) to ensure the water and fat components are not separated.

The Applicant has advised that there is some confusion about which food additive permissions apply to food category coconut milk products: 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 international food standards set by Codex Alimentarius categorise coconut milk products as fruits and vegetables rather than beverages. The relevant Codex Standard for these products permit the use of a number of food additives as stabilizers/thickeners.

This Application seeks to make the permissions in the Code more consistent with Codex Standards. The proposed draft amendments will clarify that coconut milk products are not beverages, but are processed fruit products. The amendments will also clarify that these products are permitted to contain certain food additives permitted at GMP (Good Manufacturing Practice).

FSANZ is proposing to move the food category 14.1.2.1.1 from the beverages category and add it as a new category under 4.3 (Processed fruits and vegetables). Food category 4.3 allows food additives permitted at GMP, which includes the emulsifiers, stabilisers and thickeners required to produce coconut milk products. The transfer of current food additive permissions (being sorbates, benzoates and sulphites) to this new food category is also required. The maximum permitted level for sulphites in coconut milk products will also be reduced to 30 mg/kg from 115 mg/kg to be consistent with Codex.

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 seeks to change the *Australia New Zealand Food Standards Code* (the Code) to provide regulatory certainty for coconut milk producers. It seeks to align food additive permissions with the Codex Alimentarius standards by changing the food category name and number for coconut milk products. Coconut milk products are ingredients used in cooking, e.g. Asian curries and tropical cuisines, as opposed to coconut water beverages. All coconut milk products 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 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 permitted 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 states that, as a result of the above, there is some confusion within industry about which food category applies to coconut milk products: subcategory 14.1.2.1.1 or category 4.3. The above has also led to interpretation concerns for enforcement agencies about whether 'additives permitted at GMP' (ie, substance that is 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 in the manufacture of these products are listed in section S16—2.

1.3.1 International Standards, Codex Alimentarius

The Codex Alimentarius has a Commodity Standard capturing coconut milk products. It is the 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 stabilizers/thickeners; being 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. However, this is not currently the case as some Codex Commodity 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 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 is being assessed under the General Procedure.

2 Summary of the assessment

2.1 Risk management

The problem detailed in this Application is that there is regulatory uncertainty about the food additive permissions for coconut milk products.

This uncertainty has caused import concerns at the border when companies have tried to import product into Australia, noting that 100% of coconut milk products are imported into Australia and New Zealand.

The regulatory uncertainty is the result of the food category allocated by the Code to coconut milk products and the food additive permissions that apply to or for that food category.

As explained in section 1.3, coconut milk products can be considered to be included in the food category 14.1.2.1.1, which has the most appropriate name and has permissions for GMP food additives in section S16—2. These additives are the thickeners, stabilisers and emulsifiers required to produce a homogenous product where the oil and aqueous layers in coconut milk products do not separate.

However, there is a separate condition linked to the GMP food additives for food category 14.1.2.1. It stipulates that these food additives are only permitted for juice separated by other than mechanical means. It is understood that coconut milk is produced by mechanical means by grating the coconut endosperm or coconut meat. Therefore, some may argue that the permission provided by food category 14.1.2.1 for the use of food additives listed in section S16—2 does not apply to coconut milk products. The food additives listed in section S16—2 includes a number of important thickeners, stabilisers and emulsifiers which are added to produce coconut milk products.

Coconut milk products are produced and sold to be used as ingredients for use in the preparation of a number of meal types, particularly Asian and tropical cuisine. They are not sold or marketed as beverages. The food category for these products in the GSFA is within the processed fruit category, not beverages. FSANZ has therefore determined that the processed fruit category is the appropriate food category.

To ensure consistency with Codex Standards (which are very commonly referenced in relation to international traded commodities, especially for Asian countries), FSANZ considers it appropriate to move the current food category from 14.1.2.1 (Fruit and vegetable juices) to a new subcategory in 4.3 (Processed fruits and vegetables). The new subcategory would be 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 (being sorbates, benzoates with the maximum permitted level at 1000 mg/kg, and sulphites) to this new food category is also required. The maximum permitted level (MPL) for sulphites is proposed to be 30 mg/kg to be consistent with Codex provisions, rather than 115 mg/kg currently listed under food category 14.1.2. The lower MPL proposed has been deemed appropriate for these products in correspondence with the Applicant. It is noted that higher permissions for sulphites for category 14.1.2 captures a range of other food categories than just coconut milk products. Other food additive permissions listed under food categories 14.1.2 and 14.1.2.1 are not required to be carried over to the new food category as they are not required, or are already GMP food additives.

The proposed variation to the Code will 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).

2.2 Risk communication

2.2.1 Consultation

Consultation is a key part of FSANZ's standards development process. FSANZ developed and applied a basic communication strategy to this Application. All calls for submissions are 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. Public submissions are called to obtain the views

of interested parties on issues raised by the Application and the impacts of regulatory options.

2.2.2 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.

2.3 FSANZ Act assessment requirements

When assessing this Application and the subsequent development of a food regulatory measure, FSANZ has had regard to the following matters in section 29 of the FSANZ Act.

2.3.1 Section 29

2.3.1.1 Consideration of costs and benefits

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 is commensurate with the nature of the Application and significance of the impacts.

FSANZ’s assessment is that the direct and indirect benefits that would arise from a food regulatory measure developed or varied as a result of the Application outweigh the costs to the community, government or industry that would arise from developing or varying that food regulatory measure.

FSANZ has not identified significant costs to consumers, governments, or industry that might arise from approving this application.

Approving this application will provide clarity and certainty for government food regulation enforcement agencies and industry. This will support trade of this commodity.

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.

2.3.1.2 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.

2.3.1.3 Any relevant New Zealand standards

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

2.3.1.4 Any other relevant matters

Other relevant matters are considered below.

2.3.2 Subsection 18(1)

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

2.3.2.1 Protection of public health and safety

The Application does 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). Therefore, no safety assessment was conducted.

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

No issues have been 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 impacted by the proposed variation to the Code.

2.3.2.3 The prevention of misleading or deceptive conduct

There are no issues identified with this Application relevant to this objective.

2.3.3 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 relocates a set of existing Code provisions from one part of the Code to another (with a subsequent reduction in sulphite permission). 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 but are imported. It would not

be efficient or competitive to require different products using different food additives to be imported into Australia and New Zealand due to 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 that are 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” is not relevant since no changes to food additive permissions are requested, just regulatory certainty.

3 Draft variation

The draft variation to the Code is at Attachment A and is intended to take effect on gazettal.

A draft 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.

Attachments

- A. Draft variation to the *Australia New Zealand Food Standards Code*
- B. Draft Explanatory Statement

Attachment A – 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] inserting in the table to section S15—5, in numerical order

4.3.0.5	<i>Coconut milk coconut cream and coconut syrup</i>	
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	<i>Coconut milk coconut cream and coconut syrup</i>	
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	<i>Tomato juices pH < 4.5</i>	
234	Nisin	GMP

substituting

14.1.2.1.1	<i>Tomato juices pH < 4.5</i>	
234	Nisin	GMP

Attachment B – Draft 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.

2. Purpose

The purpose of the draft variation is to amend the table to section S15—5 to relocate food additive permissions for coconut milk products from within the food category for beverages to the food category for fruits and vegetables. Coconut milk products are not beverages. Including these products in the fruits and vegetable food category will also align with how these products are characterised by relevant Codex standards. The draft variation will also lower the maximum permitted level for sulphites in coconut milk products to 30 mg/kg to be consistent with the Codex standards.

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 will include 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 are likely 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] of the draft variation will amend the table to section S15—5 to include new food category 4.3.0.5 (Coconut milk coconut cream and coconut syrup). The new food category will provide permission for sorbates (200-203) and benzoates (210-213) in coconut milk coconut cream and coconut syrup, subject to a maximum permitted level of 1000 mg/kg. It will also provide permission for sulphites (220-225, 228) in these foods subject to a maximum

permitted level of 30 mg/kg.

Item [1.2]

Item [1.2] of the draft variation will make two consequential amendments to the table to section S15—5 that are required because of the amendment made by Item [1.1]. It will remove food category 14.1.2.1.1 and the permissions contained in that category from the table. It will also change to 14.1.2.1.1 the number of food category 14.1.2.1.2 (Tomato juices pH<4.5) to reflect that removal.