

The Victorian Departments of Health and Human Services and Economic Development, Jobs, Transport and Resources (the Departments) welcome the opportunity to provide comments on Application 1090 – Voluntary addition of vitamin D to breakfast cereal.

Based on the Application, the Departments do not support the proposed variation to Standard 1.3.2 – Vitamins and Minerals in its current form, which is to:

- permit the voluntary fortification of breakfast cereal with vitamin D; and
- permit claims to be made that breakfast cereal contains vitamin D in amounts up to 2.5 µg (25% rRDIs) per normal serving.

The draft variation to Standard 1.3.2 is inconsistent with the *Policy Guideline on the Fortification of Food with Vitamins and Minerals* (Policy Guideline) endorsed by the then Australia and New Zealand Food Regulation Ministerial Council (now the Australia and New Zealand Ministerial Forum on Food Regulation), and relies on out-of-date regulatory Recommended Daily Intakes (rRDIs). The Departments recommend that Food Standards Australia New Zealand (FSANZ) consider the issues and potential solutions raised in this submission before progressing the Application. The Departments accordingly request a second round of public consultation.

#### *Inconsistency with Policy Guidelines*

The draft variation of Standard 1.3.2 permits the addition of vitamin D to any breakfast cereal, including those that are high in salt, sugar or fat. The Policy Guideline for the voluntary fortification of food states that:

- *Permission to fortify should not promote consumption patterns inconsistent with the nutrition policies and guidelines of Australia and New Zealand; and*
- *Permission to fortify should not promote increased consumption of foods high in salt, sugar or fat, or foods with little or no nutritional value that have no other demonstrated health benefit.*

There are currently breakfast cereals on the market that do not meet these principles and are permitted to add vitamins and minerals. The permissions to fortify these cereals were in place prior to the adoption of the Policy Guideline in 2004. The Policy Guideline states that the principles only apply to new applications and proposals and are not intended to be applied retrospectively. In accordance with this, it is the Departments' view that pre-existing permissions should not serve as a justification to allow new applications to be inconsistent with the Policy Guideline.

FSANZ states that, because vitamin D is the ninth permitted vitamin to be added to breakfast cereal, its addition will be unlikely to promote the consumption of cereals that are high in sugar, fat and salt. However, there is greater public awareness about vitamin D compared with many other vitamins (the Applicant refers to research that most consumers are aware of vitamin D), and food manufacturers would be unlikely to invest in vitamin D fortification and reformulation if it is unlikely to increase consumption of their products.

FSANZ suggests that the labelling strategies that exist in the Australia New Zealand Food Standards Code (the Code) ensure the consumer will not be misled with respect to the nutritional quality of fortified breakfast cereal. Standard 1.2.7 - Nutrition, Health and Related Claims requires any foods containing health claims to meet Nutrient Profile Scoring Criteria (NPSC). This is intended to prevent health claims being made on foods that are inconsistent with national nutrition policies, such as the Australian Dietary Guidelines. However, the Departments contend there are no such conditions for nutrient

content claims, such as, *contains vitamin D*. Consumer research has indicated that nutrition-related claims do increase perceived overall healthfulness of foods and that simple content claims imply a general improved nutritional quality and can be more persuasive than claims that indicate a specific health benefit<sup>1</sup>. Redrafting the variation to Standard 1.3.2 to require the NPSC to be applied to breakfast cereals whose manufacturers wish to add vitamin D could be a solution to this issue. Alternatively, restrictions around levels for fat, salt and sugar could be imposed within the Standard, similar to the approach taken with the sugar restrictions imposed on Formulated Beverages in Standard 2.6.2.

The Policy Guideline also states that:

- *The permitted [voluntary] fortification has the potential to address the deficit or deliver the benefit to a population group that consumes the fortified food according to its reasonable intended use.*

The Application has not addressed whether breakfast cereal is a suitable vehicle to provide vitamin D to those populations at high risk of deficiency, for example, those who are institutionalised, have very dark skin or wear covering clothing for cultural reasons. Those with moderate and severe deficiencies are less likely to move between deficient and adequate states across seasons and perhaps are the most relevant targets for food fortification. It is unknown from the assessment report whether or not those at high risk of vitamin D deficiency are regular consumers of breakfast cereal. The Departments would like to see further analysis of this issue.

#### *The use of out-dated nutrient reference values*

Nutrient reference values outline the amounts of specific nutrients required by the population on a daily basis (these were previously known as the Australian Recommended Daily Intakes (RDIs) 1991). The recommended levels for nutrients can change over time as new evidence emerges; the most recent Australian and New Zealand Nutrient Reference Values (NRVs) were released in 2006<sup>2</sup>. The rRDIs in the Code are based on the rescinded 1991 Australian RDIs. The Code uses the rRDIs to guide permissions around the addition of vitamins and minerals as the basis for label declarations of the nutrient content as a percentage of daily intake, and as criteria for minimum content claims of vitamins and minerals. To ensure regulation for vitamins and minerals is based on up-to-date evidence, it is imperative that there is alignment between the rRDIs of the Code and the more up-to-date NRVs. Although FSANZ is working towards this alignment, work is progressing slowly, with the last consultation paper released for public comment in 2010.

The current NRV for vitamin D is 5 µg for those aged 1 to 50 years and 10 µg for those aged 50-70 years. This replaced the 1991 RDI of 10 µg for all adults. The current rRDI in the Code is set at 10 µg, and all permissions to fortify are set based on this level. This Application is proposing adding 2.5 µg of vitamin D per serve (with extra to be added to allow for losses over the products' shelf life) to enable claims of 25% of the rRDI per serve to be made. Based on the latest NRVs (5 µg for most of the population), breakfast

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<sup>1</sup> Harris JL, Thompson JM, Schwartz MB and Brownell KD (2011) Nutrition-related claims on children's cereals: what do they mean to parents and do they influence willingness to buy? *Public Health Nutrition*: 14(12), 2207–2212

<sup>2</sup> National Health and Medical Research Council, Australian Government Department of Health and Ageing, New Zealand Ministry of Health. Nutrient reference values for Australia and New Zealand including recommended dietary intakes. Canberra: Commonwealth of Australia; 2006

cereals with 2.5 µg vitamin D per serve will therefore be providing a minimum of 50% of the recommended daily intake.

While there may not be any expected adverse health effects from consuming this quantity of vitamin D from breakfast cereal, it is misleading for a product to claim this amount is only 25% of the daily requirements for vitamin D. It also raises questions about the proportion of a nutrient requirement that a fortified food should be permitted to provide, and where the line is drawn between general foods and more specialised foods such as formulated supplementary foods.

Basing new regulation on out-dated evidence is poor practice. Allowing vitamin D to be added at the proposed levels may ultimately cause a cost burden on industry when the rRDIs are eventually updated and breakfast cereals will need to be reformulated to maintain levels at 25% of the new RDI. A number of solutions are suggested:

- new permissions to fortify foods with vitamins and minerals should not be progressed until all the rRDIs have been updated; or
- the percentage of the rRDI permitted for vitamin D could be altered to be equivalent to 25% of the current NRV for vitamin D; or
- update the rRDI for vitamin D with the intention to continue to update the rRDIs on a case by case basis; prioritising those that are being considered in current applications or proposals, where a discrepancy between the 1991 rRDIs and 2006 NRVs exists.

In conclusion, the Departments recommend:

- Redrafting the proposed variations to Standard 1.3.2 that permit the fortification of breakfast cereal with vitamin D to ensure consistency with the Policy Guideline on the *Fortification of Food with Vitamins and Minerals*, and alignment between out-of-date rRDIs and newer NRVs; and
- A second round of public consultation to allow for the assessment of the revised application before it is submitted to the FSANZ Board.