



13 June 2019

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Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the *Call for Submissions for Application A1173 – Minimum protein in follow-on formula*.

Yours sincerely

Katherine Rich
Chief Executive



***Call for submissions – Application A1173 –
Minimum protein in follow-on formula***

**Submission by the New Zealand Food & Grocery
Council**

13 June 2019

NEW ZEALAND FOOD & GROCERY COUNCIL

1. The New Zealand Food & Grocery Council (“NZFGC”) welcomes the opportunity to comment on the ***Call for Submissions – Application A1173 – Minimum protein in follow-on formula.***
2. NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. This sector generates over \$34 billion in the New Zealand domestic retail food, beverage and grocery products market, and over \$31 billion in export revenue from exports to 195 countries – some 72% of total merchandise exports. Food and beverage manufacturing is the largest manufacturing sector in New Zealand, representing 44% of total manufacturing income. Our members directly or indirectly employ more than 400,000 people – one in five of the workforce.

The Application

3. Nestlé applied to have the Australia New Zealand Food Standards Code (the Food Standards Code) amended to reduce the minimum level of protein in follow-on formula from 0.45g/100kJ to 0.38 g/100kJ This is consistent with reductions to such minimums elsewhere in the world (notably the EU and Codex).

COMMENTS

4. NZFGC strongly supports a reduction to the minimum level of protein in follow-on formula in Standard 2.9.1 of the Food Standards Code. We do not, however, support the drafting of the amendment to the Food Standards Code as presented in Attachment A – Draft variation to the *Australia New Zealand Food Standards Code* to the Call for Submissions document.
5. While protein is a vital component for growth and development and is in every cell in the body, internationally, the protein level in follow-on formula for 6-12 month-old infants is being proposed for reduction to better align with the levels of protein occurring in breast milk. EU regulations (in 2018) and drafted Codex requirements for Follow up Formula (at Step 5) are both examples of a reduced protein minimum. The reduced minimum level proposed by the applicant is within the range of protein levels in human milk.
6. FSANZ conducted a nutritional safety assessment drawing on the applicant supplied infant growth and tolerance trials of milk-based formulas with reduced protein levels, the estimated dietary protein intakes of older infants, and on breast milk protein levels. The outcome was a FSANZ view that normal growth and development of infants consuming follow-on formula could still be achieved with the reduced protein level when compared to the growth and development of full-term breastfed infants.
7. As noted above, FSANZ’s conclusion mirrors the position taken by the EU where a reduced minimum level of protein in follow-up formula to 0.38/100kJ for the milk protein sources was made in 2018. It also accords with the position in the drafted Codex requirements covering follow-up formulas for this age group, where the protein minimum has been reduced.
8. Trade barriers can be created where Australian and New Zealand regulations get too far out of step with regulatory changes overseas. Amending the Food Standards Code to reduce the minimum protein level in follow-on formula is intended to remove the prospect of trade barriers relating to protein levels in the future.

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9. NZFGC therefore supports amending the Food Standards Code to reduce the minimum protein level in follow-on formula products from 0.45g/100kJ to 0.38 g/100kJ. However we do not agree with it being limited to milk-based formulas. The drafting proposed by FSANZ for Standard 2.9.1—9(2)(b) is provided in Attachment A to the Call for Submissions. We do not support the proposed drafting because it
- creates a regulatory gap for formulas based on non-milk edible food constituents of plant or animal origin other than soy
 - creates uncertainty
 - is not future proofing the Food Standards Code, and
 - introduces an internal inconsistency to the Food Standards Code where this does not currently exist.
10. The following discusses each of these concerns and provides suggestions that might be considered for drafting.
11. **Creating a regulatory gap:** Currently the protein provision in the Food Standards Code for both infant formula and follow-on formula covers protein from all sources with relevant checks for soy-based formulas. The proposed drafting covers only milk-based formulas and calls out soy-based formulas. It is silent on any other non-milk edible food constituents of plant or animal origin other than soy creating a regulatory gap that might need consideration in the future.
12. **Creating uncertainty:** Any regulatory gap in legislation creates uncertainty. FSANZ should not be creating uncertainty but rather addressing uncertainty where it exists today (as it is in Proposal P1024). We do not believe a regulator should knowingly create uncertainty for those being regulated.
13. **Internal inconsistency:** FSANZ determined that the lower minimum protein level should not apply to soy-based follow-on formula. We agree this should be the case, but we believe the drafting inadvertently creates an inconsistency and inefficiency and does not future proof the Food Standards Code. As noted above, a single protein level currently covers all protein sources with particular checks in place for soy protein. The same could be achieved by setting an across-the-board minimum protein level at the reduced level of 0.38 g/100 kJ and specifying conditions that must be met by non-milk-based protein sources before this could be utilised. This would have the effect of avoiding the need to amend the Food Standards Code in this area in future but would ensure appropriate evidence was a necessary pre-requisite for any non-milk-based protein source to utilise the reduced minimum protein level.
14. **Future-proofing the Food Standards Code:** FSANZ promotes the importance of developing standards that will future proof the Food Standards Code and endure over time. By consciously excluding non-milk-based protein sources other than soy protein from coverage in Standard 2.9.1, this objective is purposely ignored. It would unnecessarily increase the resource requirements of Government (including FSANZ) and industry over time.

Alternative Amendment

15. NZFGC is of the view that an amendment should reflect a reduced minimum protein level of 0.38 g/100 kJ for all protein sources. This could then include a condition that a minimum protein level of no less than 0.45 g/100 kJ [the current minimum for all protein sources] apply unless there is appropriate evidence to support the use of the lower minimum. This would be a consistent and efficient way of future proofing the Food Standards Code and would avoid the need to process similar applications for the lower protein minimum for each

specific low risk protein source in the future. More importantly, it continues to protect the health and safety of a vulnerable population group in an efficient and consistent way.

16. If consistency and resourcing are set aside, then regulatory coverage and certainty could still be achieved by providing that a minimum protein level of 0.38 g/100 kJ apply to milk-based formulas and the current minimum protein of no less than 0.45 g/100 kJ continue apply to formulas based on other edible food constituents of animal or plant origin (including soy).