

Revision Codex Standard on Follow-up formula (CX/STAN 156-1987)

Infant Nutrition Council Australia New Zealand

Position on Circular Letter (2021/03/OCS-NFSDU) Section B: proposed draft scope, description and labelling

1. The Infant Nutrition Council (INC) welcomes the opportunity to contribute to the Government's response to *Circular Letter (2021/03/OCS-NFSDU) Section B: proposed draft scope, description and labelling* as part of the review of the Codex Standard for Follow-Up Formula (CX/STAN 156-1987).
2. INC is well aware of, and has contributed to, the progress made to develop the future Standard and recognises this *Circular Letter* as an important step in that process.

9.1.2 (In Name of the Product)

Current text (for reference)

9.1.2 The name of the product shall be "Drink/Product for Young Children with Added Nutrients" or "Drink for Young Children" as defined in Section 2.1, or any appropriate designation indicating the true nature of the product, in accordance with national or regional usage.

3. INC suggests that, for consistency for Section 9.1.2, NAME OF THE PRODUCT, where CCNFSDU41 proposed: "drink/product for young children with added nutrients", or "drink for young children" that 'product' wording also be added and apply to "drink for young children". The names would then read: "Drink/product for young children with added nutrients" or "Drink/product for young children".
4. The rationale for this is that according to the CODEX General Standard for the Labelling of Prepackaged Foods (CODEX STAN 1-1985), the name should be specific and not generic. The term 'Drink' is not appropriate for certain countries where the meaning is that a drink is a liquid to be given to relieve thirst. As well, it is normally a requirement in Codex texts that the name of the product reflects the true nature of the food (CSX 1-1985 sub-section 4.1.1). Finally, "drink for young children" is also presented in powder form and therefore such a presentation should refer to "product for young children".

9.6.5 (In Additional Labelling Requirements)

Current text (for reference)

9.6.5 The labelling of the product as defined in Section 2.1 shall not refer to infant formula, follow-up formula for older infants, or formula for special medical purposes intended for infants, including numbers, text, statements, or images of these products.

5. INC does not completely agree with the new section 9.6.5 in the ADDITIONAL LABELLING REQUIREMENTS. This is because, in our view, without further qualification, the section is open to a range of interpretations. Should differences in interpretation occur, this would be contrary to Codex principles.
6. INC is particularly concerned that section 9.6.5 could establish a prohibition or restriction that is contrary to international obligations governing intellectual property rights (for example, the term 'Images' could be understood to be a logo, a brand, or a trademark). [Consumers rely on brands and the ability to identify trusted products (icons, logos, images, colours, trademarks) to recognise safe, legitimate products that are not counterfeit, are suitable, and well-tolerated by young children, and to follow the advice of their paediatrician or healthcare provider.]

7. INC suggests that further guidance therefore be provided regarding the meaning of section 9.6.5 that might which more clearly articulate the intent of the member who introduced the provision. INC understands that it was clarified by this member that product labels should not include pictures or pack shots of other formula products in the range.
8. INC also recommends deletion of the term 'statements' since this is very similar to the term 'text' and it is not clear how or if these terms convey different meanings [in English let alone in translation]. INC therefore proposes that section 9.6.5 reads as follows:

'9.6.5 The labelling of the product as defined in Section 2.1 shall not refer to infant formula, follow-up formula for older infants, or formula for special medical purposes intended for infants, including numbers, text, ~~statements~~, or **pictures of containers** ~~images~~ of these products.

9. In support of this wording we note the following:
 - The FUF eWG Chair stated, "it is imperative that the provision be drafted in a way so as to ensure it is interpreted and implemented in a consistent way by Codex" (NFSDU/41 CRD 3).
 - Paragraph 50 of the CCNFSDU40 report states that the WHO representative specified that the purpose of this provision (9.6.5.) was: "to avoid messages on labels that a product for a particular age group was also suitable for another age group or that reference was made to a similar product for another group".
 - Paragraph 78 of the CCNFSDU41 report states that: "With respect to Section 9.6.5, a Member clarified their understanding that the intention of this provision is that the product labelling cannot include numbers that refer to the other listed products, statements or text that describe or refer to the other listed products, or pictures or pack-shots of the other listed products."
 - The term 'images' could be wrongly understood as a 'logo', 'brand name' or 'trademark' which are out of the scope based on the interpretation given and this should be acknowledged:
 - These optional labelling elements¹ are permitted providing they are not in conflict with the General principles established for the labelling of prepackaged foods (CXS 1-1985)².
 - They are examples of intellectual property that conform with related international obligations, therefore, cannot be in the scope.
 - These labelling elements help parents and caregivers to easily identify appropriate nutritional products based on the child's age and needs and to more readily identify specific products they are seeking.
 - Such restrictions may lead to the confusion of consumers and caregivers as well as deprive them of the ability to identify appropriate safe and nutritious Drink/Product for young children.

¹ GENERAL STANDARD FOR THE LABELLING OF PREPACKAGED FOODS CXS 1-1985, section 4: "4.1.1.4 A "coined", "fanciful", "brand" name or "trademark" may be used provided it accompanies one of the names provided in Subsections 4.1.1.1 to 4.1.1.3."

² GENERAL STANDARD FOR THE LABELLING OF PREPACKAGED FOODS CXS 1-1985, section 3: "3.1 Prepackaged food shall not be described or presented on any label or in any labelling in a manner that is false, misleading or deceptive or is likely to create an erroneous impression regarding its character in any respect. 3.2 Prepackaged food shall not be described or presented on any label or in any labelling by words, pictorial or other devices which refer to or are suggestive either directly or indirectly, of any other product with which such food might be confused, or in such a manner as to lead the purchaser or consumer to suppose that the food is connected with such other product."

- INC notes that the terms 'text' and 'statements' are very similar terms:
 - The use of both these terms within a provision of a Codex Standard without further clarification of the intended meanings of both terms appears to be a duplication.
10. INC looks forward to the continuing work on the draft of the revised Standard that contributes to the health and well-being of older infants and young children while ensuring fair practice in food trade according to the Codex mandate.