

Jody Mason

Thank you for the opportunity to provide comments on CR-102 Rule Proposal, WAC 173-925. I am writing on behalf of Danone North America and our coffee creamers portfolio, including the International Delight® and Silk® brands.

At issue is the broadening of the definition of "beverage" to include coffee creamers, which are already included in the list of condiments in the definition of "condiment packaging".

Section 70A.245.010 (3): "'Condiment packaging' means packaging used to deliver single-serving condiments to customers. Condiment packaging includes, but is not limited to, single-serving packaging for ketchup, mustard, relish, mayonnaise, hot sauce, coffee creamer, salad dressing, jelly, jam, and soy sauce."

Coffee creamer is not included in the definition of a beverage in statute, which specifies a liquid "intended for human or animal consumption in a quantity more than or equal to two fluid ounces and less than or equal to one gallon". However, the recommended quantity for coffee creamers, across brands, is one tablespoon per serving; an example from our brands stating this on-pack is attached. The intended use is demonstrated in the FDA reference amounts customarily consumed (RACC) in 21 CFR 101.12(b), which states that the serving for "Cream or cream substitutes, fluid" is 15mL / 1 Tbsp.

The FDA's general principles for defining the RACCs states:

- 21 CFR 101.12(a)(1) FDA calculated the reference amounts for persons 4 years of age or older to reflect the amount of food customarily consumed per eating occasion by persons in this population group. These reference amounts are based on data set forth in appropriate national food consumption surveys.

and

- 21 CFR 101.12(a)(3) An appropriate national food consumption survey includes a large sample size representative of the demographic and socioeconomic characteristics of the relevant population group and must be based on consumption data under actual conditions of use.

Indeed, creamers are intended to be used as a condiment or a flavoring in a beverage, but not as a stand-alone beverage.

The law defines a "beverage" as the following:

Section 70A.245.010 (1): "Beverage" means beverages identified in (a) through (f) of this subsection, intended for human or animal consumption, and in a quantity more than or equal to two fluid ounces and less than or equal to one gallon:

(a) Water and flavored water;

(b) Beer or other malt beverages;

(c) Wine;

(d) Distilled spirits;

(e) Mineral water, soda water, and similar carbonated soft drinks; and

(f) Any beverage other than those specified in (a) through (e) of this subsection, except infant formula as defined in 21 U.S.C. Sec. 321(z), medical food as defined in 21 U.S.C. Sec. 360ee(b)(3), or fortified oral nutritional supplements used for persons who require supplemental or sole source nutritional needs due to special dietary needs directly related to cancer, chronic kidney disease, diabetes, or other medical conditions as determined by the department.

Based on these definitions, and the scope of intended quantity for human consumption, we believe coffee creamers would not be subject to the PCR mandate, and the packaging should not be included in annual volume reporting.

Please feel free to reach out with any questions. We appreciate this opportunity to discuss the scope of the law.



NUTRITIONAL INFORMATION

Nutrition

Serving Size: 1 Tbsp (15 mL)

Amount Per Serving

Calories: 35



PRODUCTS ▾



NUTRITIONAL FACTS

Serving Size: 1 Tbsp (15mL)

Calories: 25