

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 A1056 which sought approval to use dimethyl ether as an extraction solvent processing aid for dairy ingredients and dairy products. The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft Standard.

Following consideration by the COAG Legislative and Governance Forum on Food Regulation, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the draft standard or draft variation of a standard.

Section 94 of the FSANZ Act specifies that a standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but is not subject to parliamentary disallowance or sunsetting under the *Legislative Instruments Act 2003*.

2. Purpose and operation

Currently, there is no permission for using dimethyl ether as an extraction solvent processing aid to treat any food. The variation approves the use of dimethyl ether as an extraction solvent processing aid to treat all dairy ingredients and dairy products with a maximum permitted level of 2 mg/kg in the final treated food.

There is currently no specification for dimethyl ether in the Code. Therefore, a specification for dimethyl ether has been incorporated into the Schedule of Standard 1.3.4.

3. Documents incorporated by reference

The variation does 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 A1056 included one round of public consultation following an assessment and the preparation of draft variation. An Assessment Report (which included the draft Standard) was released for consultation on 25 October 2011 for a six-week consultation period.

A Regulation Impact Statement was not required because the proposed variations to Standards 1.3.3 and 1.3.4 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. Variations

Item [1] provides a permission in the Table to clause 13 of Standard 1.3.3 to permit the use of dimethyl ether to treat all dairy ingredients and dairy products as an extraction solvent processing aid. This item also provides a definition for dairy ingredient.

Item [2] inserts a specification for dimethyl ether in the Schedule to Standard 1.3.4.