

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 2 of Part 3 of the FSANZ Act specifies that the Authority may prepare a proposal for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering a proposal for the development or variation of food regulatory measures.

FSANZ prepared Proposal P1038 to address an inconsistency in the conditions for vitamin and mineral claims between Standards 1.2.7 and 1.3.2 and to permit nutrition content claims about salt and sodium in relation to foods (excluding beverages) containing more than 1.15% alcohol by volume. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft Standard.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation¹, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the 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 sunseting under the *Legislative Instruments Act 2003*.

2. Purpose

The Authority has approved a draft variation to rectify a discrepancy in the conditions required to make a nutrition content claim about a vitamin or mineral in food. The current conditions require a minimum of 10% of the RDI or ESADDI per serving of the food. The amended conditions will allow a minimum of 10% of the RDI or ESADDI per reference quantity of the food, if certain conditions are met.

The Authority has also approved a draft variation to permit nutrition content claims about salt and sodium in relation to food (not a beverage) containing more than 1.15% alcohol by volume.

3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference.

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1038 included one round of public consultation following an assessment and the preparation of a draft Standard and associated report.

¹ convening as the Australia and New Zealand Food Regulation Ministerial Council

A Regulation Impact Statement was not required because the recommended variations to Standard 1.2.7 are of a minor nature.

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. Variation

Item [1] amends subsections 1.2.7—4 (1) and (2), by inserting a reference to salt or sodium content about a food that is not a beverage. The effect of the amendment is to add permission for nutrition content claims about salt and sodium content to be made in relation to a food (not a beverage) that contains more than 1.15% alcohol by volume.

Any nutrition content claim made about the salt or sodium content of a food would have to be made in accordance with the conditions specified in sections 1.2.7—12 and S4—3.

Item [2.1] inserts definitions for maximum claimable amount and reference quantity at the beginning of section S4—2. These defined terms are then used in the amended entry for Vitamin or mineral (not including potassium or sodium) in Schedule 4. The maximum claimable amount is the maximum amount of a vitamin or mineral that can be claimed, as prescribed by section 1.3.2—4 or 1.3.2—5. The reference quantity is the reference quantity specified for the food in the Table to S17—4.

Item [2.2] amends Schedule 4 by varying the general claim conditions for making a nutrition content claim for a vitamin or mineral (not including potassium or sodium).

The effect of the amendment is to provide an exemption from the general claim condition at paragraph (b) that requires a serving of the food contains at least 10% of the RDI or ESADDI for that vitamin or mineral. The exemption applies if each of the following exists:

- A maximum claimable amount is prescribed by section 1.3.2—4 or 1.3.2—5 of Standard 1.3.2 for the claimed vitamin or mineral.
- The serving of the food (as specified by the supplier) is less than the reference quantity for the food as specified in the Table to S17—4.
- The maximum claimable amount (per reference quantity) for the claimed vitamin or mineral is less than 10% of the RDI or ESADDI per serving.
- The reference quantity contains at least 10% of the RDI or ESADDI for the vitamin or mineral.

In other words, if the maximum claimable amount is less than the required 10% of the RDI or ESADDI per serving, a nutrition content claim may still be made if the reference quantity of the same food contains 10% of the RDI or ESADDI.