

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 P1037 to improve the clarity of provisions of Standard 1.2.7 – Nutrition, Health and Related Claims and related standards and to ensure that Standard 1.2.7 operates as intended. Proposal P1037 was also prepared to exempt certain elements of the Health Star Rating (HSR) system from the Code's requirements.

The Authority considered the Proposal in accordance with Division 2 of Part 3 and has prepared 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 and operation

The Authority has prepared a draft variation to amend the Code to clarify the operation of Standard 1.2.7 and related standards and to exempt certain elements of the HSR system from the Code's requirements for claims.

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 P1037 included one round of public consultation following an assessment and the preparation of a draft Standard and associated report.

A call for submissions (which included the draft variation) was released for a six-week consultation period.

A Regulation Impact Statement was not required because the proposed variations are likely to have only a minor regulatory impact on business, community organisations or individuals.

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

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 97 of the FSANZ Act.

6. Variations

Item [1] of the Schedule varies Standard 1.1.1.

Item [1.1] inserts new clause 1A into Standard 1.1.1.

The new clause provides a transition period and a stock-in-trade exemption for prescribed variations made by the instrument. The prescribed variations are all the variations made by Schedule with the exception of the variations made by items 1.2, 2.3 and 3.1.

During the transition period, food can comply with either the Code as in force as if the prescribed variations had not taken effect or with the Code as amended by those variations, but not both. The transition period is from the date that the instrument commences to 18 January 2017. This period aligns with the end of the current transition period for Standard 1.2.7.

The exemption for stock-in-trade will operate from 18 January 2017 for a period of 12 months. In this period, food that does not comply with the Code as amended by the prescribed variations will be deemed to be compliant with the Code if that food otherwise complied with the Code before 18 January 2017.

Item [1.2] inserts new clause 2A into Standard 1.1.1 to provide a definition of the term 'Permitted Health Star Rating symbol'. Subclause 2A(1) provides that a Permitted Health Star Rating symbol means an image subject to an Australian Trade Marks numbered 1641445, 1641446 or 1641447 or a New Zealand Trade Mark numbered 1018807, 1018808 or 1018809. Subclause 2A(2) recognises the fact that the Health Star Rating system and the relevant trademarks provide for the trademarked images to be used to indicate varying levels of energy or nutrient content. The subclause makes clear that any such variations do not affect an image's status as a Permitted Health Star Rating symbol for the purposes of the Code.

Item [1.3] updates the Table of Provisions to refer to new clauses 1A and 2A.

Item [2] of the Schedule varies Standard 1.2.7.

Item [2.1] inserts an Editorial Note after clause 1. The Editorial Note draws attention to the fact that Standard 1.2.8 may impose additional labelling requirements for claims regulated by Standard 1.2.7.

Item [2.2] varies clause 5 of Standard 1.2.7 to provide that that Standard does not apply to a Permitted Health Star Rating symbol.

Item [2.3] corrects a typographical error in paragraph 18(1)(b). It replaces 'subparagraph' with 'paragraph'.

Item [2.4] amends the entry for 'Lactose' in Schedule 1 to remove the condition that the nutrition information panel indicate the lactose and galactose content.

Item [2.5] amends the entry for 'Salt or sodium' in Schedule 1 to remove the condition that the nutrition information panel indicate the potassium content.

Item [2.6] replaces the entry for 'Omega-3 fatty acids' in Schedule 1 to remove the condition that the nutrition information panel indicate the type and amount of omega-3 fatty acids.

Item [2.7] varies subitems 2(1) and 3(1) in Schedule 5. It replaces references to 'the content of energy and each nutrient' with 'the average energy content and the average quantity of each nutrient' listed in Table 1.

Item [2.8] removes the word 'sources' from paragraph 4(6)(c) in Schedule 5.

Item [2.9] removes the word 'sources' from subitem 4(8) in Schedule 5.

Item [2.10] removes the word 'total' from Tables 1 and 2 in Schedule 5.

Item [2.11] varies Tables 1 and 2 in Schedule 5. It replaces 'Average saturated fatty acids' with 'Average quantity of saturated fatty acids'.

Item [2.12] varies Tables 1 and 2 in Schedule 5. It replaces 'Average sodium' with 'Average quantity of sodium'.

Item [2.13] varies subitem 5(1) in Schedule 5 to replace 'the amount of protein' with 'the average quantity of protein'.

Item [2.14] varies subitem 6(1) in Schedule 5 to replace 'the amount of protein' with 'the average quantity of protein'.

Item [3] varies Standard 1.2.8.

Item [3.1] varies subclause 4(1) of Standard 1.2.8 to provide that a claim requiring nutrition information does not include a Permitted Health Star Rating symbol.

Item [3.2] varies subclause 4(4). It replaces 'clause 8' with 'clauses 8 and 8A'.

Item [3.3] varies paragraph 5(1)(e). It replaces 'saturated fat' with 'saturated fatty acids'.

Item [3.4] inserts new subclauses (4A), (4B) and (4C) into clause 5.

New subclause (4A) requires that the nutrition information panel must include a declaration of the average amount of galactose where a claim requiring nutrition information is made in relation to lactose. That declaration must be made in accordance with subclause 5(7) of Standard 1.2.8. This moves and amends a requirement that was in Schedule 1 of Standard 1.2.7.

New subclause (4B) requires that the nutrition information panel must include a declaration of the average amount of potassium where a claim requiring nutrition information is made in relation to salt or sodium. That declaration must be made in accordance with subclause 5(7) of Standard 1.2.8. This moves and amends a requirement that was in Schedule 1 of Standard 1.2.7.

New subclause (4C) requires that, where a claim requiring nutrition information is made in relation to omega-3 fatty acids, the nutrition information panel must include a declaration of the average quantity of each type of omega-3 fatty acids and a declaration of the average quantity of the total of omega-3 fatty acids. Those declarations must be made in accordance with subclause 5(7) of Standard 1.2.8. This moves and amends a requirement that was in Schedule 1 of Standard 1.2.7.

Item [3.5] varies subclause 5(7) to include references to new subclauses (4A), (4B) and (4C).

Item [3.6] replaces the Table to subclause 8(3) with a new Table. The new Table changes the requirements for some particulars that must be included on the label for certain claims requiring additional nutrition information.

Item [3.7] varies paragraph 8(5)(b) to remove the reference to 'metric cup'.

Item [3.8] varies subclause 8A(2). It replaces 'of unavailable carbohydrate' with 'of the average quantity of unavailable carbohydrate per serving of the food'.

Item [3.9] varies subclause 8A(4). It replaces 'presence of relevant substances' with 'the average quantity of the substances per serving of the food'.

Item [4] varies subclause 9(1) of Standard 2.9.2 to insert references to subclause 4(4) and clause 8A of Standard 1.2.8 and to clarify the operation of subclause 9(1) of Standard 2.9.2.