

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.

The Authority prepared Proposal P1031 to allow for specific exemptions from mandatory allergen declarations. 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 *Legislation Act 2003*.

2. Purpose

The Authority has approved the variation to Standard 1.2.3 to exempt certain foods and ingredients derived from allergenic foods from mandatory declaration of allergens where available evidence indicates the production methods used remove or reduce allergenic proteins to levels that are of negligible risk to allergic consumers. These foods and ingredients are glucose syrups from wheat starch, fully refined soy oil, soy derivatives (tocopherols and phytosterols), and distilled alcohol from wheat or whey.

The Authority has also approved the variation to Schedule 10 to remove the requirement to declare in the statement of ingredients the specific source name for soybean oil that has been appropriately refined.

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 P1031 included one round of public consultation following an assessment and the preparation of a draft Standard and associated report. Submissions were called for on 12 August 2015 for a six-week consultation period.

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

Further targeted consultation was undertaken with key stakeholders including industry and consumer representatives. Advice on the risk assessment was sought from the Food Allergy and Intolerance Scientific Advisory Group.

A Regulation Impact Statement was not required because the proposed variations to Standard 1.2.3 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. Variation

Item [1] of Schedule 1 of the variation amends Standard 1.2.3

Item [1.1] inserts sub-subparagraphs (A), (B) and (C) into subparagraph 1.2.3—(4)(1)(b)(i). Each sub-paragraph provides an exemption from the mandatory allergen declaration for cereals containing gluten. Sub-subparagraph (A) maintains the subparagraph's existing exemption for substances present in beer and spirits. Sub-subparagraph (B) provides a new exemption for glucose syrups derived from wheat that contain the lowest levels of gluten protein reasonably achievable and contain no more than 20 mg gluten/kg glucose syrup. Sub-subparagraph (C) provides a new exemption for alcohol distillates derived from wheat.

Item [1.2] amends subparagraph 1.2.3—(4)(1)(b)(v) by inserting the words 'other than alcohol distilled from whey'. The effect of this amendment is to exempt alcohol distillates derived from whey from the mandatory allergen declaration requirements for milk or products of milk.

Item [1.3] inserts sub-subparagraphs (A) and (B) into subparagraph 1.2.3—(4)(1)(b)(vii). Each sub-subparagraph provides an exemption from the mandatory allergen declaration requirements for soybeans. Sub-subparagraph (A) provides an exemption for oils derived from soybeans provided that the oils have been degummed, neutralised, bleached and deodorised. Sub-subparagraph (B) provides an exemption for tocopherols and phytosterols derived from soybeans.

Item [1.4] inserts new subsection 1.2.3—(4)(3) into the Standard. The new subsection makes clear that subsection 1.2.3—(4)(1) does not require the declaration of the presence of a food or substance derived from a food or product exempted from declaration under paragraph 1.2.3—(4)(1)(b). For example, the declaration of the presence of a product of vinegar derived from alcohol distilled from whey is not required as subsection 1.2.3—(4)(2) exempts alcohol distilled from wheat or from whey from declaration.

Item [2] of Schedule 2 of the variation amends the entry for 'fats or oils' in the Table to section S10—2 in Schedule 10. The effect of this amendment is to remove the requirement to declare in the statement of ingredients the specific source name for soybean oil that has been degummed, neutralised, bleached and deodorised.