

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 A1134 – Increased Concentration of Plant Sterols in Breakfast Cereals, which seeks to amend current novel food permissions for plant sterols added to breakfast cereals to allow increased concentrations. The Authority considered the Application in accordance with Division 1 of Part 3 and has prepared a draft variation.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation, 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 a variation to the Code is to permit an increased amount of phytosterols, phytosterols and their esters (referred to collectively as ‘plant sterols’) to be added to specified breakfast cereals that meet specified nutrient criteria.

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 1 of Part 3 of the FSANZ Act, the Authority’s consideration of Application A1134 included one round of public consultation following an assessment and the preparation of a draft variation and associated assessment summary.

A Regulation Impact Statement was not required because the proposed variation to Schedule 25 are unlikely to have a regulatory impact on business, community organisations, government, or 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] amends the table to section S25—2 by omitting existing condition 3 under the entry for ‘Phytosterols, phytostanols and their esters’ in the table; and substituting new conditions 3, 3A and 3B.

Condition 3 states that phytosterols, phytostanols and their esters may only be added to breakfast cereals, not including breakfast cereal bars, if:

- (a) the total fibre content of the breakfast cereal is no less than 3 g/50 g; and
- (b) the breakfast cereal contains no more than 30 g/100 g of total sugars; and
- (c) the total plant sterol equivalents content is the prescribed amount.

Condition 3A relates to paragraph (c) in Condition 3 and states the meaning of ‘prescribed amount’ as follows:

- (a) the prescribed amount during the exclusive use period is:
 - (i) for breakfast cereals sold under the brands *Sanitarium Health and Wellbeing* or *Weet-Bix* – an amount that is no less than 0.5 g per serving and no more than 2.2 g per serving; and
 - (ii) for all other breakfast cereals – an amount that is no less than 15 g/kg and no more than 19 g/kg; and
- (b) the prescribed amount after the end of the exclusive use period is an amount that is no less than 0.5 g per serving and no more than 2.2 g per serving.

Condition 3B defines ‘exclusive use period’ to be the period commencing on the date of gazettal of the variation and ending 15 months after that date. This means that the new permission will apply exclusively to breakfast cereals sold under the brands *Sanitarium Health and Wellbeing* or *Weet-Bix* during an exclusive use period of 15 months commencing on the date of gazettal of the variation (exclusive use permission).

Once this period ends, the exclusive use permission would revert to a general permission, replacing the existing permission relating to the addition of plant sterols in breakfast cereals. This means that the permission for the addition of the increased amount of plant sterols in breakfast cereals will then apply to *all* brands of breakfast cereals that meet specified nutrient criteria.