## 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 A1123 which sought to permit isomalto-oligosaccharide as a novel food, to be used as an alternative sweetener and bulk filler in a range of foods. The Authority considered the Application in accordance with Division 1 of Part 3, and has approved 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 sunsetting under the *Legislation Act 2003*.

**2. Purpose**

Isomalto-oligosaccharide is currently not permitted under the Code. The Authority has approved a draft variation that will amend the table to section S25—2 to permit IMO to be used in in food offered for retail sale other than infant formula products, infant food and formulated supplementary foods for young children. The variation will also amend Schedule 3 to provide specifications for IMO’s identity and purity.

**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 A1123 included one round of public consultation following an assessment and the preparation of a draft variation and associated reports. Submissions were called for on 13 December 2016 for an eight-week consultation period.

A Regulation Impact Statement was not required because the variations to Schedules 3 and 25 are deemed to be deregulatory in nature (see OBPR ID 20966) and 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**

**6.1 Schedule 3**

Subitem [1.1] amends the table to subsection S3—2(2) by inserting references to isomalto-oligosaccharide and section S3—37.

Subitem [1.2] inserts new section S3—37. The proposed subsection sets specifications for isomalto-oligosaccharide’s identity and purity for the purposes of section 1.1.1—15 of the Code.

**6.2 Schedule 25**

Item 2 inserts a reference to and conditions of use for isomalto-oligosaccharide into the table to section S25—2. The effect of the amendment is to provide a permission for isomalto-oligosaccharide as a novel food in food offered for retail sale for the purposes of section 1.1.1—10 of the Code. The permission is for food (other than infant formula products, food for infants and formulated supplementary food for young children) to consist of isomalto-oligosaccharide or have isomalto-oligosaccharide as an ingredient. The conditions prohibit the addition of isomalto-oligosaccharide to infant formula products (Standard 2.9.1), food for infants (Standard 2.9.2) and formulated supplementary food for young children (Standard 2.9.3, Division 4).