

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 A1144 which seeks to consider whether the food category for food additive permissions for coconut milk products is more appropriate under fruits rather than beverages. 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

Food additive permissions for coconut milk products used by consumers as ingredients in cooking are currently located within the beverages food category of Schedule 15 of the Code. The purpose of the draft variation is to clarify that such coconut milk products are not beverages, but are processed fruit products. It does this by relocating the food additive permissions for coconut milk products from within the food category for beverages to the food category for fruits and vegetables. Including these products in the fruits and vegetable food category will align how these products are characterised by the Code with relevant Codex Alimentarius standards. To achieve further consistency with Codex standards, the draft variation will also lower the maximum permitted level for sulphites in coconut milk products to 30 mg/kg from 115 mg/kg and remove sorbate permissions. The variation also clarifies that these products are permitted to contain certain food additives permitted at GMP. A statement that colours are not permitted for these products is also added to be further consistent with Codex.

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 A1144 included one round of public consultation following an assessment and the preparation of a draft Standard and associated assessment summary.

A Regulation Impact Statement was not required because the proposed variations to Schedule 15 were concluded 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 [1.1]

Item [1.1] makes a general change to how food additives are permitted in food categories (headings) in section S15—2. This relates to how the hierarchical approach to food additive permissions operate. The change makes it clear that the hierarchical approach as detailed in section S15—2 operates unless explicitly stated otherwise under the specific class (food category).

Item [1.2]

Item [1.2] of the draft variation amends the table to section S15—5 to include the relocated food category 4.3.0.5 (Coconut milk coconut cream and coconut syrup). This food category provides permission for benzoates (210-213) in coconut milk, coconut cream and coconut syrup, subject to a maximum permitted level of 1000 mg/kg. It also provides permission for sulphites (220-225, 228) in these foods subject to a maximum permitted level of 30 mg/kg. Colourings are not permitted to be added to these products.

Item [1.3]

Item [1.3] of the draft variation makes two consequential amendments to the table to section S15—5 that are required because of the amendment made by Item [1.2]. It removes food category 14.1.2.1.1 and the permissions contained in that category from the table. It also changes the food category number 14.1.2.1.2 (Tomato juices pH<4.5) to 14.1.2.1.1 to reflect that removal.