

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.

The Authority accepted Application A1173 which seeks to lower the minimum protein requirement in all regular follow-on formula. The Authority considered the Application in accordance with Division 1 of Part 3 and has prepared a draft Standard.

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 draft amendment to paragraph 2.9.1—9(2)(b) in Standard 2.9.1 to: permit a lower protein minimum in milk-based follow-on formula; and retain the current minimum for all other follow-on formulas with the exception of follow-on formula for special dietary use based on a protein substitute. The protein compositional requirements for an infant formula product for special dietary use based on a protein substitute are imposed by section 2.9.1—15 and not by paragraph 2.9.1—9(2)(b).

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 A1173 included one round of public consultation following an assessment and the preparation of a draft variation Standard and associated assessment summary and report. Submissions were called for on Thursday 16 May 2019 for a four-week consultation period.

A Regulation Impact Statement was not required because the proposed variations to Standard 2.9.1 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 [1.1] varies paragraph 2.9.1—9(2)(b) of Standard 2.9.1 by omitting the existing paragraph and substituting a new paragraph.

The new paragraph will require: a milk-based follow-on formula to have a protein content of no less than 0.38 g/100 kJ and no more than 1.3 g/100 kJ; and all other follow-on formulas – with the exception of follow-on formula for special dietary use based on a protein substitute – to have a protein content of no less than 0.45 g/100 kJ and no more than 1.3 g/100 kJ.

The new paragraph will not prescribe the protein content for follow-on formula for special dietary use based on a protein substitute. This is because section 2.9.1—9(2) does not set the protein content for the latter. Instead, section 2.9.1—15 currently sets the compositional requirements for infant formula products, including follow-on formula, that are for special dietary use based on a protein substitute. Paragraph 2.9.1—15(2)(c) currently requires these products to have a protein content of no less than 0.45g/100kJ and no more than 1.4g/100kJ.

Item [1.2] inserts a note after section 2.9.1—9(2) of Standard 2.9.1. This note is to assist the reader and advises that section 2.9.1—15 – as opposed to section 2.9.1—9(2) – sets the protein content for infant formula and follow-on formula that are for special dietary use based on a *protein substitute.