

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 A1180 which seeks to permit the use of long-chain glycolipids from *Dacryopinax spathularia* (sweet osmanthus ear glycolipids) to be used as a food additive in non-alcoholic beverages. 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 sunseting under the Legislation Act 2003.

2. Purpose

The Authority has approved a draft variation to the Code to permit sweet osmanthus ear glycolipids as a food additive in non-alcoholic beverages at a maximum permitted level specified in Schedule 15 (depending on the beverage category). The technological purpose of sweet osmanthus ear glycolipids is use as a preservative in non-alcoholic beverages.

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 A1180 included one round of public consultation following an assessment and the preparation of a draft Standard and associated assessment summary.

The Office of Best Practice Regulation (OBPR) granted FSANZ a standing exemption from the requirement to develop a Regulatory Impact Statement for permitting new food additives (OBPR correspondence dated 24 November 2010, reference 12065). This standing exemption was provided as permitting food additives is machinery in nature as they are part of implementing a regulatory framework where the use of the new additive is voluntary once the application has been approved. This standing exemption relates to the introduction of a food to the food supply that has been determined to be safe.

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 S2—2 in Schedule 2 by alphabetically inserting into the table:

- 'MPN' as a new unit of measurement; and
- 'most probable number' as the meaning of MPN.

'MPN' is a unit of measurement referred to in the new specification for sweet osmanthus ear glycolipids (see subitem [2.2] below).

Item [2] amends Schedule 3 by including a specification for sweet osmanthus ear glycolipids.

Subitem [2.1] inserts 'sweet osmanthus ear glycolipids' and 'section S3—43' in the table to subsection S3—2(2), in alphabetical order. This table sets out the relevant provisions where specifications for the listed substances are set out in Schedule 3.

Subitem [2.2] inserts the actual specification for sweet osmanthus ear glycolipids in Schedule 3.

Item [3] amends Schedule 8 by inserting 'sweet osmanthus ear glycolipids' into each of the following tables to section S8—2:

- the table to section S8—2 entitled 'Food additive names—alphabetical listing' (alphabetically) (see subitem [3.1]); and
- the table to section S8—2 entitled 'Food additive names—numerical listing' (above the entry for 'Sodium hydrosulphite') (see subitem [3.2]).

No INS number is prescribed as there is no current INS number for sweet osmanthus ear glycolipids.

The effect of this amendment is that, for the purposes of subsection 1.2.4—7(1) of the Code, 'Sweet osmanthus ear glycolipids' must be listed in the statement of ingredients for a food in which sweet osmanthus ear glycolipids is used as a food additive.

Item [4] amends the table to section S15—5 by inserting 'sweet osmanthus ear glycolipids' and specified maximum permitted levels into the table for the following categories of beverages:

- subitem [4.1] - 100 mg/kg for Fruit and vegetable juices and fruit and vegetable juice products;
- subitem [4.2] - 50 mg/kg for Water based flavoured drinks;
- subitem [4.3] - 20 mg/kg for Formulated Beverages;
- subitem [4.4] - 10 mg/kg for Coffee, coffee substitutes, tea, herbal infusions and similar products;
- subitem [4.5] - 100 mg/kg for beer where the alcohol has been removed.

The effect of this amendment is to permit, for the purposes of Standard 1.3.1, the use of sweet osmanthus ear glycolipids as a food additive in those categories of beverages at the specified maximum permitted levels.