

## 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 A1178 which sought an amendment to the Code to permit the use of a new method of analysis for determining total dietary fibre in food. The method is AOAC<sup>1</sup> Official Method 2017.16 (Rapid Integrated Total Dietary Fibre method of analysis) (AOAC 2017.16). The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft variation.

Following consideration by the Food Ministers' Meeting<sup>2</sup>, 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 the draft variation, which amends section S11—4 of the Code, to permit the use of AOAC 2017.16 when determining the total amount of dietary fibre in food in accordance with section S11—4 of the Code for the purposes of subsections 1.2.8—7(7) and S5—6(2) of the Code.

## 3. Documents incorporated by reference

The approved draft variation amends a provision of the Code that incorporates methods of analysis by reference to a specific document that is or will be in force or existing at the commencement of the variation; namely, a specified edition of the *Official Methods of Analysis of AOAC International*, published by AOAC International. The approved draft variation amends the provision to refer to a new edition of that publication.

This reference by incorporation is consistent with the current practice in the Code, particularly section S11—4 and Schedule 3.

## 4. Consultation

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1178 included one round of public consultation following an assessment and the preparation of a draft variation and associated report. Submissions were called for on 21 May 2021 for a four-week consultation period.

FSANZ received ten submissions and one late submission during the public consultation for A1178. Further consultation was undertaken after these were reviewed. FSANZ presented a paper to industry stakeholders at the July 2021 Retailers and Manufacturers Liaison Committee meeting and held a targeted consultation with key industry representatives and submitting jurisdictions in August 2021.

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<sup>1</sup> **AOAC** means the *Official Methods of Analysis of AOAC International*, twenty first edition, 2019, published by AOAC International, Maryland USA.

<sup>2</sup> Formerly the Australia and New Zealand Ministerial Forum on Food Regulation (the Forum). The Forum name change took effect on 21 February 2021 following a decision by Ministers.

A Standards Development Committee (SDC) was established with representatives from the industry sector, the relevant State and Territory government agencies and consumer organisations to provide ongoing advice to the Authority throughout the standard development process. The SDC contributed a broad spectrum of knowledge and expertise covering industry, government, research and consumers

A Regulation Impact Statement (RIS) was not required because the Office of Best Practice Regulation (OBPR) granted the Authority a standing exemption from the requirement to develop a RIS for applications requesting the use of optional methods of analysis (OBPR correspondence dated 16 April 2013, reference number 14943). This standing exemption was provided as permitting the optional method of analysis is voluntary and likely to not have more than a minor economic impact on businesses 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]** of the approved draft variation amends section S11—4 of the Code.

Section S11—4 requires the total dietary fibre (including the amount of any specifically named fibre) in a food to be determined in accordance with one or more methods contained in specified sections of the *Official Methods of Analysis of AOAC International*, eighteenth edition, 2005 (the previous AOAC), for the purposes of subsections 1.2.8—7(7) and S5—6(2) of the Code.

**Sub-item [1.1]** of the approved draft variation amends section S11—4 of the Code by omitting paragraph S11—4(2)(a) and substituting:

(a) for dietary fibre—sections 985.29, or 991.43, or 2017.16;'

Section 2017.16 is a section of the *Official Methods of Analysis of AOAC International*, twenty first edition, which describes this particular AOAC method of analysis for determining total dietary fibre in foods and food ingredients—AOAC 2017.16.

AOAC 2017.16 would be listed in the Code, in addition and as an alternative to the other abovementioned methods of analysis, which are currently listed in paragraph S11—4(2)(a) as permitted methods of analysis for determining total dietary fibre in food.

**Sub-item [1.2]** of the approved draft variation amends section S11—4 Code by omitting subsection S11—4(4) and substituting it with a new subsection S11—4(4), stating that in section S11—4:

'**AOAC** means the *Official Methods of Analysis of AOAC International*, twenty first edition, 2019, published by AOAC International, Maryland USA.'

Subsection S11—4(4) currently refers to the previous AOAC, which does not list AOAC 2017.16.

In the *Official Methods of Analysis of AOAC International*, twenty first edition, 2019 (the current print version of the AOAC), AOAC 2017.16 is listed as only having a 'First Action' status. However, AOAC 2017.16 was accorded a 'Final Action' status in 2020, which is reflected in the online version of the *Official Methods of Analysis of AOAC International*, twenty first edition. FSANZ understands that future revision of the current print version of the AOAC will reflect the AOAC 2017.16's 'Final Action' status.

The effects of both amendments would be to:

- for the purposes of subsections 1.2.8—7(7) and S5—6(2)—permit the use of the AOAC 2017.16 when determining the total amount of dietary fibre in food under section S11—4; and

- replace the current references in section S11—4 to the eighteenth edition of the AOAC with references to the twenty first edition of the AOAC, so that references in section S11—4 to methods of analysis contained in specified sections of the AOAC would be references to methods of analysis contained in specified sections of the twenty first edition of the AOAC.