

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 A1232 which seeks to permit the sale and use of food derived from a new food produced using gene technology (GM food) - wheat line IND-00412-7. Wheat line IND-00412-7 has been genetically modified for tolerance to drought and to the herbicide glufosinate. 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 (formerly the Australia and New Zealand Ministerial Forum on Food Regulation)¹, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the standard or draft variation of a standard.

2. Variation is a legislative instrument

The approved draft variation is a legislative instrument for the purposes of the *Legislation Act 2003* (see section 94 of the FSANZ Act) and is publicly available on the Federal Register of Legislation (www.legislation.gov.au).

This instrument is not subject to the disallowance or sunset provisions of the *Legislation Act 2003*. Subsections 44(1) and 54(1) of that Act provide that a legislative instrument is not disallowable or subject to sunset if the enabling legislation for the instrument (in this case, the FSANZ Act): (a) facilitates the establishment or operation of an intergovernmental scheme involving the Commonwealth and one or more States; and (b) authorises the instrument to be made for the purposes of the scheme. Regulation 11 of the *Legislation (Exemptions and other Matters) Regulation 2015* also exempts from sunset legislative instruments a primary purpose of which is to give effect to an international obligation of Australia.

The FSANZ Act gives effect to an intergovernmental agreement (the Food Regulation Agreement) and facilitates the establishment or operation of an intergovernmental scheme (national uniform food regulation). That Act also gives effect to Australia's obligations under an international agreement between Australia and New Zealand. For these purposes, the Act establishes the Authority to develop food standards for consideration and endorsement by the Food Ministers Meeting (FMM). The FMM is established under the Food Regulation Agreement and the international agreement between Australia and New Zealand, and consists of New Zealand, Commonwealth and State/Territory members. If endorsed by the FMM, the food standards on gazettal and registration are incorporated into and become part of Commonwealth, State and Territory and New Zealand food laws. These standards or instruments are then administered, applied and enforced by these jurisdictions' regulators as part of those food laws.

¹ The Forum name change took effect on 21 February 2021 following a decision by Ministers.

3. Purpose

The purpose of the approved draft variation is to permit the sale and use of food derived from a new GM food - wheat line IND-00412-7, in accordance with the Code. Wheat line IND-00412-7 has been genetically modified for tolerance to drought and to the herbicide glufosinate.

4. Documents incorporated by reference

The approved draft variation does not incorporate any documents by reference.

5. Consultation

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1232 included one round of public consultation following an assessment and the preparation of a draft variation.

The Office of Best Practice Regulation (OBPR) granted FSANZ a standing exemption from the requirement to develop a Regulatory Impact Statement for permitting new GM foods (OBPR correspondence dated 24 November 2010, reference 12065). This standing exemption was provided as varying Schedule 26 is a consequential change of maintaining a permitted schedule of GM foods. Additionally, permitting a new GM food is deregulatory as using the food will be voluntary if the Application concerned is approved. This standing exemption relates to the introduction of a food to the food supply that has been determined to be safe.

6. 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 44 of the *Legislation Act 2003*.

7. Variation

Item [1] amends Schedule 26 by inserting new item 10 into the table to subsection S26—3(4).

The table to subsection S26—3(4) lists permitted GM food of plant origin.

New item 10 consists of the following entries:

- column 1 – references to '10' as the new item number and 'Wheat' as the new commodity; and
- column 2 – a reference to '(a) drought-tolerant and herbicide-tolerant wheat line IND-00412-7' as a permitted GM food.

The effect of the variation is to permit the sale and use of food derived from wheat line IND-00412-7 in accordance with the Code.