**EXPLANATORY STATEMENT**

*Food Standards Australia New Zealand Act 1991*

***Food Standards (Application A1264 – Food derived from drought-tolerant and herbicide-tolerant soybean line IND-00410-5) Variation***

**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 A1264 which sought to amend the Code to permit the sale and use of food derived from a new food produced using gene technology (GM food) - soybean line IND-00410-5. Soybean line IND-00410-5 has been genetically modified for tolerance to drought and the herbicide glufosinate.The Authority considered the application in accordance with Division 1 of Part 3 and has approved a draft variation - the *Food Standards (Application A1264 – Food derived from drought-tolerant and herbicide-tolerant soybean line IND-00410-5*) *Variation.*

Following consideration by the Food Ministers’ Meeting (FMM), section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the draft variation.

**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](http://www.legislation.gov.au)).

This instrument is not subject to the disallowance or sunsetting provisions of the *Legislation Act 2003.* Subsections44(1) and 54(1) of that Actprovide that a legislative instrument is not disallowable or subject to sunsetting 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 sunsetting legislative instruments a primary purpose of which is to give effect to an international obligation of Australia.

The FSANZ Actgives 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 alsogives 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 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.

**3. Purpose**

The Authority has approved a draft variation amending the table to subsection S26—3(4) in Schedule 26 of the Code to permit the sale and use of food derived from a new GM food - soybean line IND-00410-5, in accordance with the Code. Soybean line IND-00410-5 has been genetically modified for tolerance to drought and 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 A1264 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 April 2023 for a 6-week consultation period.

The Office of Impact Analysis[[1]](#footnote-1) granted the Authority 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 permitting new GM foods is deregulatory as their use 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**

Clause 1 provides that the name of the variation is the *Food Standards (Application A1264 – Food derived from drought-tolerant and herbicide-tolerant soybean line IND-00410-5) Variation*.

Clause 2 provides that the Code is amended by the Schedule to the variation.

Clause 3 provides that the variation will commence on the date of gazettal of the instrument.

**Item [1]** of the Schedule to the variation amends Schedule 26 of the Code by inserting new paragraph (r) into the column headed ‘***Food derived from:***’ for item 7 of the table to subsection S26—3(4) in alphabetical order.

Item 7 of the table refers to ‘Soybean’.

The new paragraph (r) refers to ‘drought-tolerant and herbicide-tolerant soybean line IND-00410-5’.

The effect of the variation is to permit the sale and use of food derived from that soybean line in accordance with the Code.

1. Formerly known as the Office of Best Practice Regulation (OBPR). [↑](#footnote-ref-1)