

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.

FSANZ accepted application A1161 which seeks to permit the use of potassium polyaspartate as a food additive - stabiliser in wine. The Authority considered the application in accordance with Division 1 of Part 3 and has prepared 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 prepared a draft variation to the Code to permit potassium polyaspartate as a food additive – stabiliser in wine at a maximum permitted level of 100 mg/L.

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 A1161 included one round of public consultation following an assessment and the preparation of a draft variation and associated assessment summary. Submissions were called for on 13 September 2018 for a six-week consultation period.

A Regulation Impact Statement was not required because the proposed variation to Schedule 15 and Standard 4.5.1 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]

Item [1.1] of the draft variation amends Standard 4.5.1 by inserting a reference to 'Potassium polyaspartate' into the table to clause 3 in alphabetical order. The effect of this amendment will be to permit the use of this substance in the production of wine, sparkling wine and fortified wine in Australia.

Item [1.2]

Item [1.2] of the draft variation amends subclause 5(5) of Standard 4.5.1 by adding paragraph(i). The new paragraph sets a maximum permitted level for potassium polyaspartate of 100 mg/L. The effect of this amendment will be to impose a requirement that wine, sparkling wine and fortified wine produced in Australia must contain no more than 100 mg/L of potassium polyaspartate.

Item [2.1]

Item [2.1] of the draft variation amends the alphabetical listing in the table to section S8—2 by inserting the food additive name 'Potassium polyaspartate' and code number '456' into that listing in alphabetical order.

Item [2.2]

Item [2.2] of the draft variation amends the numerical listing in the table to section S8—2 by inserting the food additive code number '456 and name 'Potassium polyaspartate' into that listing in numerical order.

Item [3]

Item [3] of the draft variation amends item 14.2.2 of the table to section S15—5. Item 14.2.2 relates to wine, sparkling wine and fortified wine. The amendment inserts into item 14.2.2 an entry for potassium polyaspartate (INS number 456), with a maximum permitted level of 100 mg/L. The effect of this amendment will be to permit, for the purposes of Standard 1.3.1, that substance's use as a food additive in that category of food products subject to that maximum permitted level.