

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 2 of Part 3 of the FSANZ Act specifies that the Authority may prepare a proposal for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering a proposal for the development or variation of food regulatory measures.

FSANZ prepared Proposal P1025 to revise the Code. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft revised Code.

Following consideration by the Legislative and Governance Forum on Food Regulation¹, 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 *Legislative Instruments Act 2003*.

2. Purpose

The Authority has approved variations of Chapters 1 and 2 of the Code.

3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference. The variations update some references to documents that are incorporated by reference.

4. Consultation

In accordance with the procedure in Subdivision F of Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1025 included two rounds of public comment following an assessment and the preparation of a draft Standard and associated reports. Submissions were called for on 23 May 2013 for a 12-week period, and on 10 July 2014 for an eight-week period.

A Regulation Impact Statement was not required, because the proposed variations to the Code 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 (Chapter 1—Introduction and standards that apply to all foods, Part 3—Substances added to food)

Standard 1.3.1 – Food additives

This Standard repeats substantially the current content of Standard 1.3.1.

The current content of clause 9 of Standard 1.3.1 relating to the addition of garnish is repeated in subsection S15—4(2).

¹ Previously known as the Australia and New Zealand Food Regulation Ministerial Council

New section 1.3.1—1 Name

This section establishes that the instrument is the *Australia New Zealand Food Standards Code* – Standard 1.3.1 – Food additives.

New section 1.3.1—2 Definitions

This section has no operative part. It provides note references to definitions of ‘used as a food additive’, ‘additive permitted at GMP’, ‘colouring permitted at GMP’ and ‘colouring permitted to a maximum limit’ that are in section 1.1.2—11.

A substance is used as a food additive if it is added to perform one or more of the technological purposes described in Schedule 14 and is a substance of a type described in subsection 1.1.2—11(2). The described substances are all those substances that are recognised in the schedules as food additives and a category of substances that is described so as to ensure that substances that might require a safety assessment before being used as a food additive have that assessment. The category is substances that are non-traditional foods that have been concentrated, refined or synthesised. The purpose of the definition is to exclude from consideration substances that are generally available as foodstuffs even though concentrated, refined or synthesised.

The terms ‘additive permitted at GMP’, ‘colouring permitted at GMP’ and ‘colouring permitted to a maximum limit’ are used as descriptive terms to describe the food additives that are currently listed in Schedules 2, 3 and 4 of Standard 1.3.1.

New section 1.3.1—3 When food additives may be used as ingredients in foods

New section 1.3.1—3 sets out the conditions for substances to be used as food additives.

The term technological purpose is adopted instead of technological function, consistent with current international usage.

A technological purpose can be performed by a food additive or a processing aid. The distinction lies, essentially, in whether that technological purpose is performed in the food that is sold. In addition, the range of technological purposes that might be achieved by a processing aid is not limited to those mentioned in Schedule 14, although there is some correspondence.

Listed food additives may be ingredients of a food

New subsection (1) restates the current content of subclause 3(1) of Standard 1.3.1 – permitting the use of listed food additives. The provision permits the addition of substances listed in Schedule 15 as ingredients of food if the addition is permitted in Schedule 15 for the type of food; the use complies with any restriction that is imposed in Schedule 15; and, when appropriate, no more of the substance is used than is necessary to achieve that purpose under GMP. The provision provides the permission for adding substances for use as food additives that is required to negate the prohibition that is in paragraph 1.1.1—10(6)(a).

Carry-over of food additive

New section (2) repeats the content of current clause 7, which provides that if a substance used as a food additive is in a food for sale as a result of carry-over from use in a raw material or an ingredient the level of the substance must be no greater than would be introduced by the use of the raw material or ingredient under proper technological conditions and GMP.

New section 1.3.1—4 Maximum permitted levels of food additives in foods

New section 1.3.1—4 sets out the basic requirements for maximum levels of food additives in food for sale.

New subsection (1) repeats the requirement in subclause 3(2) of Standard 1.3.1.

New subsection (2) repeats the requirement currently in subclause 3(1)(a) of Standard 1.3.1 that the use of a food additive in a food must comply with any limitation that is set out in the schedule of food additive permissions—Schedule 15.

New subsection (3) repeats the requirement, currently in subclause 3(4) of Standard 1.3.1, that colours may not exceed a combined maximum limit in food for sale.

New subsection (4) repeats the content of subclause 5(1), which requires that if a food is sold with the expectation that it will be prepared according to instructions before consumption the maximum level of food additives is to be determined after preparation.

New subsection (5) repeats the content of clause 8 of Standard 1.3.1, which permits the use of a food additive in an ingredient of a food if the food additive is permitted in the food and the level of the food additive in the food does not exceed the maximum limit specified in Schedule 12.

New subsection (6) repeats the content of subclause 5(2) of Standard 1.3.1, which sets out how certain additives are to be calculated. The provision also includes some conditions that are currently set out as qualifications in column 5 of Schedule 1 in Standard 1.3.1.

New subsection (7) repeats the content of subclause 5(3) of Standard 1.3.1, which sets out a method for calculating steviol equivalent levels.

New section 1.3.1—5 Limitation on use of intense sweeteners

New section 1.3.1—5 repeats the limitation on the use of intense sweeteners that is currently in clause 4 of Standard 1.3.1.

New section 1.3.1—6 Food additives performing the same purpose

This new section repeats the content of clause 6 of Standard 1.3.1, which provides a method for calculating the proportion of food additives that can be used when more than one is used to perform the same technological purpose.