

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 A1090, which sought to amend the Code to permit the voluntary addition of vitamin D to all breakfast cereals. The Authority considered the Application in accordance with Division 1 of Part 3 and approved a draft variation.

Division 3 of Part 3 of the FSANZ Act allows the Australia and New Zealand Ministerial Forum on Food Regulation (Forum) to request the Authority to review the Authority's decision to approve the draft variation.

In July 2015, the Forum asked FSANZ to review its decision to approve the draft variation. After completing a review of the draft variation in accordance with Division 3 of Part 3, the Authority decided to re-affirm its approval of the draft, subject to such amendments as the Authority considered necessary.

Following consideration by the Forum, 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. Commencement

The amended draft variation commences on the date of gazettal.

3. Purpose

The Authority has approved several amendments to the Code to:

- a. permit the voluntary addition of vitamin D as a nutritive substance to breakfast cereals, as purchased, in accordance with Standard 1.3.2
- b. require that the breakfast cereals, as purchased, meet the Nutrient Profiling Score Criterion (the NPSC) as a precondition of the addition of vitamin D to the breakfast cereals
- c. prevent claims being made that breakfast cereals, as purchased, contain an amount of vitamin D greater than 2.5 µg (25% regulatory Recommended Dietary Intake of 10 µg/day) per normal serving
- d. require additional labelling that relates to the addition of vitamin D to the breakfast cereals, as purchased.

4. Documents incorporated by reference

The variations to food regulatory measures do 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 A1090 included one round of public consultation following an assessment and the preparation of a draft variation and an associated report. Following the Forum's request that FSANZ to review its decision to approve the draft variation, FSANZ issued a consultation paper seeking submissions in relation to proposed amendments to that draft variation.

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.

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 94 of the FSANZ Act.

7. Variation

Item [1] varies Standard 1.1.2. The item amends the definition of *nutrient profiling score* in subsection 1.1.2—2(3) by replacing the incorrect reference in that definition to section 1.2.7—26 with a reference to section 1.2.7—25.

Item [2] varies Standard 1.2.1. Standard 1.2.1 requires food to comply with requirements related to the provision of certain information.

Subitem [2.1] inserts paragraph (ja) into subsection 1.2.1—8(1) in alphabetical order.

Paragraph (ja) requires that where the breakfast cereal is a food for retail sale and is in a package, it must bear a label with information relating to the addition of vitamin D as a nutritive substance to the breakfast cereal in accordance with Standard 1.3.2.

Under subsection 1.2.1—16(1), this amendment also has the effect that such information must be provided with breakfast cereals sold to a caterer.

Subitem [2.2] inserts paragraph (ea) into subsection 1.2.1—9(7) in alphabetical order.

Paragraph (ea) requires that where the breakfast cereal is a food for sale that does not have to bear a label, information relating to the addition of vitamin D as a nutritive substance to the breakfast cereal in accordance with Standard 1.3.2 must be stated in labelling that is:

- (a) displayed in connection with the display of the breakfast cereal; or
- (b) provided to the purchaser on request.

Item [3] varies Standard 1.3.2. Standard 1.3.2 permits the use of vitamins and minerals as nutritive substances in food under specific conditions; and restricts the claims that may be made in relation to certain types of vitamins and minerals that have been added to food.

Subitem [3.1] adds the following definitions to the list in the Note to 1.3.2—2:

- 'meet the NPSC';

- 'NPSC'
- 'nutrient profiling score'
 - 'property of food'.

These definitions are formally set out in Standard 1.1.2 and used throughout the Code.

Subitem [3.2] inserts new sections 1.3.2—6 and 1.3.2—7 into the Standard. New section 1.3.2—6 states that vitamin D must not be used as a nutritive substance in breakfast cereal unless the breakfast cereal as purchased meets the NPSC.

New section 1.3.2—7 imposes additional labelling requirements in relation to breakfast cereal to which vitamin D has been added in accordance with Standard 1.3.2. The new section requires the particulars of a property of food in relation to the breakfast cereal be declared in the nutrition information panel if the property of food, other than fvnl, is relied upon to meet the NPSC and the particulars are not otherwise required to be included in the nutrition information panel. If the breakfast cereal scores V points under section S5—4, the percentage of each element of fvnl that is relied on to meet the NPSC must also be declared.

Standard 1.2.1 has also been amended by **item [2]** to reflect these new labelling requirements (see above).

Item [4] varies Schedule 5 by inserting a new section subsection S5—4(4A) into the Schedule. Schedule 5 sets out the method of calculating a nutrient profiling score as part of determining whether a breakfast cereal, as purchased, meets the NPSC and can therefore contain vitamin D that has been used as a nutritive substance, in accordance with Standard 1.3.2.

New subsection S5—4(4A) requires that the percentage of fvnl in the food be calculated in accordance with the appropriate method listed in Standard 1.2.10.

Item [5] varies Schedule 17. This item replaces the entry for "*Breakfast cereals, as purchased*" in "Cereals and cereal products" in table to section S17—4 with a new entry. The new entry includes vitamin D in the list of vitamins and minerals permitted for the 'Breakfast cereals, as purchased' entry and with a maximum claim per reference quantity of 2.5 µg (25% regulatory Recommended Dietary Intake of 10 µg/day).

This amendment has the effect that:

- in accordance with section 1.3.2—3 in Standard 1.3.2, vitamin D may be used as a nutritive substance in a breakfast cereal, as purchased, that meets the NPSC; and
- in accordance with section 1.3.2—4 in Standard 1.3.2, a claim must not be made that the breakfast cereal contains an amount of vitamin D greater than 2.5 µg (25% regulatory Recommended Dietary Intake of 10 µg/day) per normal serving.