

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.

The Authority accepted Application A1166 which sought a reduction in minimum alcohol content requirement for Tequila. The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft variation to a Standard.

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 approved a draft variation to amend section 2.7.5—3 of the Code. The amendment will lower the minimum alcohol content requirement for Tequila, from 37% to 35% alc/vol.

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 A1166 included one round of public consultation following an assessment and the preparation of a draft variation and associated report. Submissions were called for on 7 May 2019 for a six-week consultation period.

A Regulation Impact Statement was not required because the approved variation to Standard 2.7.5 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] amends Standard 2.7.5 of the Code by omitting subsection 2.7.5—3(3) and inserting a new subsection. The new subsection provides for a lower minimum alcohol content by volume (alc/vol) for Tequila.

The effect of this amendment will be to lower the minimum alcohol content by volume (alc/vol) for Tequila, specified in the Code, from 37% to 35%.

This amendment will ensure that all spirits legally entitled to use the Tequila geographical indication (GI) under the relevant laws of Mexico can be sold in New Zealand and Australia.