

18 April 2017
[10–17]

Call for submissions – Proposal P1045

Code Revision (2017)

FSANZ has assessed a proposal prepared to make minor amendments, including the correction of typographical errors, formatting issues and updating of references, and has prepared a draft food regulatory measure. Pursuant to section 61 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), FSANZ now calls for submissions to assist consideration of the draft food regulatory measure.

For information about making a submission, visit the FSANZ website at [information for submitters](#).

All submissions on applications and proposals will be published on our website. We will not publish material that is provided in-confidence, but will record that such information is held. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1991*. Submissions will be published as soon as possible after the end of the public comment period. Where large numbers of documents are involved, FSANZ will make these available on CD, rather than on the website.

Under section 114 of the FSANZ Act, some information provided to FSANZ cannot be disclosed. More information about the disclosure of confidential commercial information is available on the FSANZ website at [information for submitters](#).

Submissions should be made in writing; be marked clearly with the word 'Submission' and quote the correct project number and name. While FSANZ accepts submissions in hard copy to our offices, it is more convenient and quicker to receive submissions electronically through the FSANZ website via the link on [documents for public comment](#). You can also email your submission directly to submissions@foodstandards.gov.au.

There is no need to send a hard copy of your submission if you have submitted it by email or via the FSANZ website. FSANZ endeavours to formally acknowledge receipt of submissions within 3 business days.

DEADLINE FOR SUBMISSIONS: 6pm (Canberra time) 16 May 2017

Submissions received after this date will not be considered unless an extension had been given before the closing date. Extensions will only be granted due to extraordinary circumstances during the submission period. Any agreed extension will be notified on the FSANZ website and will apply to all submitters.

Questions about making submissions or the application process can be sent to standards.management@foodstandards.gov.au.

Hard copy submissions may be sent to one of the following addresses:

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Table of Contents

EXECUTIVE SUMMARY	2
1 INTRODUCTION	3
1.1 THE PROPOSAL	3
1.2 THE CURRENT STANDARDS.....	3
1.3 REASONS FOR PREPARING THE PROPOSAL.....	3
1.4 PROCEDURE FOR ASSESSMENT	3
2 SUMMARY OF THE ASSESSMENT	3
2.1 RISK ASSESSMENT	3
2.2 RISK MANAGEMENT	5
2.3 RISK COMMUNICATION.....	5
2.3.1 <i>Consultation</i>	5
2.3.2 <i>World Trade Organization (WTO)</i>	5
2.4 FSANZ ACT ASSESSMENT REQUIREMENTS	5
2.4.1 <i>Section 59</i>	5
2.4.2 <i>Subsection 18(1)</i>	6
2.4.3 <i>Subsection 18(2) considerations</i>	6
3 DRAFT VARIATION	6
ATTACHMENT A – DRAFT VARIATION TO THE <i>AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE</i>	7
ATTACHMENT B – DRAFT EXPLANATORY STATEMENT.....	11

Executive summary

FSANZ has prepared Proposal P1045 to make a number of amendments to the *Australia New Zealand Food Standards Code* (the Code) including the correction of typographical errors, formatting issues, and updating of references.

The proposed amendments in the draft variation are all minor. No potential public health and safety concerns have been identified.

1 Introduction

1.1 The Proposal

Proposal P1045 was prepared to make a range of minor amendments to the Code including the correction of typographical errors, formatting issues, and updating of references.

1.2 The current Standards

Standards 1.1.1, 1.1.2, 1.2.1, 1.2.7, 2.6.2 and Schedules 3, 4, 5 and 29 are affected by the proposed amendments.

1.3 Reasons for preparing the Proposal

Minor typographical and grammatical errors and cross-reference issues are identified in the Code from time-to-time. References in the Code also become superseded as the documents they refer to are updated. This Proposal was prepared to resolve such issues.

1.4 Procedure for assessment

The Proposal is being assessed under the General Procedure.

2 Summary of the assessment

2.1 Risk assessment

All of the issues considered are relatively minor in nature. The reasons for the proposed variations are:

1. STANDARD 1.1.1

Location: Subsection 1.1.1—6(1)

Issue: A cross-reference for 'average quantity' is missing and the use of italics is inconsistent.

Response: Include asterisks and remove italics.

2. STANDARD 1.1.1

Location: Subsection 1.1.1—6(2)

Issue: Cross-references for 'average quantity' are missing.

Response: Include asterisks.

3. STANDARD 1.1.1

Location: Section 1.1.1—11

Issue: Cross-references for 'lot' are missing.

Response: Include asterisks.

4. STANDARD 1.1.2

Location: Paragraph 1.1.2—11(2)(a)

Issue: The note includes a superfluous word, 'foods'.

Response: Delete 'foods'.

5. STANDARD 1.2.1

Location: Subclause 1.2.1—9(6)

Issue: The words 'either accompany or' in the heading are superfluous.

Response: Remove the words from the heading.

6. STANDARD 1.2.7

Location: Section 1.2.7—17

Issue: The heading is missing the word 'section'.

Response: Include the word 'section' in the heading.

- 7. STANDARD 1.2.7**
Location: Subparagraph 1.2.7—18(1)(b)(i)
Issue: Cross-reference for ‘high level health claim’ is missing.
Response: Include asterisk.
- 8. STANDARD 1.2.7**
Location: Subparagraph 1.2.7—18(1)(b)(ii)
Issue: Cross-reference for ‘general level health claim’ is missing.
Response: Include asterisk.
- 9. STANDARD 1.2.7**
Location: Subsection 1.2.7—18(2)
Issue: A cross-reference for ‘high level health claims table’ is missing.
Response: Include asterisk.
- 10. STANDARD 1.2.7**
Location: Subsection 1.2.7—18(4)
Issue: A cross-reference for ‘special purpose food’ is missing.
Response: Include asterisk.
- 11. STANDARD 1.2.7**
Location: Paragraph 1.2.7—19(1)(d)
Issue: Cross-references for ‘relevant authority’ are incorrect.
Response: Correct placement of asterisk.
- 12. STANDARD 2.6.2**
Location: Subparagraph 2.6.2—3(3)(a)
Issue: The World Health Organisation has issued an addendum to the 4th edition of the Guidelines for Drinking Water Quality.
Response: Update the reference.
- 13. STANDARD S3**
Location: Paragraph S3—2(1)(b)
Issue: The Joint FAO/WHO Expert Committee on Food Additives has issued new monographs.
Response: Update the reference.
- 14. STANDARD S3**
Location: Paragraph S3—3(j)
Issue: The Organisation Internationale de la Vigne et du Vin (OIV) has issued a new edition of International Oenological Codex.
Response: Update the reference.
- 15. STANDARD S4**
Location: Section S4—3
Issue: A row referring to ‘omega fatty acids (any)’ was omitted when publishing this schedule.
Response: Include row referring to ‘omega fatty acids (any)’.
- 16. STANDARD S5**
Location: Section S5—3
Issue: The provision should be simplified consistently with other provisions in the Code. The reference to the nutrition information panel is implicit in the definition of unit quantity.
Response: Amend, to remove the reference to the units used in the nutrition information panel.
- 17. STANDARD S5**
Location: Section S5—5
Issue: The provision should be simplified to refer to unit quantity, consistently with other provisions in the Code.
Response: Amend, to refer to unit quantity.

18. STANDARD S5

- Location:** Section S5—6
Issue: The provision should be simplified to refer to unit quantity, consistently with other provisions in the Code.
Response: Amend, to refer to unit quantity.

19. STANDARD S29

- Location:** Section S29—7
Issue: The reference to 'phytylmenoquinone' is redundant.
Response: Delete the reference.

No public health and safety concerns have been identified.

2.2 Risk management

The proposed amendments will ensure that the Code remains current and that errors and inconsistencies are addressed.

2.3 Risk communication

2.3.1 Consultation

Consultation is a key part of FSANZ's standards development process. Stakeholders will be notified about this Proposal via the Notification Circular, Food Standard News and on the FSANZ website.

2.3.2 World Trade Organization (WTO)

As members of the World Trade Organization (WTO), Australia and New Zealand are obliged to notify WTO member nations when proposed mandatory regulatory measures are inconsistent with existing or imminent international standards and the proposed measure may have a significant effect on trade.

Amending the Code to make minor corrections and updates is unlikely to have a significant effect on international trade. Therefore, a notification to the WTO under Australia's and New Zealand's obligations under the WTO Technical Barriers to Trade or Sanitary and Phytosanitary Measures Agreement was not considered necessary.

2.4 FSANZ Act assessment requirements

When assessing this Proposal and the subsequent development of a food regulatory measure, FSANZ has had regard to the following matters in section 59 of the FSANZ Act:

2.4.1 Section 59

2.4.1.1 *Consideration of costs and benefits*

As all the proposed variations are relatively minor in nature, FSANZ considers that there is likely that there would be no or low cost benefit issues. The updating of references provides greater utility for industry.

If the amendments are not made, errors, inconsistencies and outdated references would continue to exist.

The Office of Best Practice Regulation, in an email on 7 April 2017 (reference 22219) advised that, on the basis of information provided by FSANZ, the Proposal did not appear to have a regulatory impact on businesses or individuals.

Accordingly, the preparation of a COAG regulation impact statement is not required.

2.4.1.2 Other measures

There are no other measures (whether available to FSANZ or not) that would be more cost-effective than a food regulatory measure varied as a result of the Proposal.

2.4.1.3 Any relevant New Zealand standards

The standards affected by these amendments are joint food standards.

2.4.1.4 Any other relevant matters

Other relevant matters are considered below.

2.4.2 Subsection 18(1)

FSANZ has also considered the three objectives in subsection 18(1) of the FSANZ Act during the assessment and has concluded that due to the nature of the proposed variations, they do not have any impact on measures in place for:

- the protection of public health and safety
- the provision of adequate information relating to food to enable consumers to make informed choices
- the prevention of misleading or deceptive conduct.

2.4.3 Subsection 18(2) considerations

FSANZ has also had regard to:

- the need for standards to be based on risk analysis using the best available scientific evidence
- the desirability of an efficient and internationally competitive food industry
- the promotion of fair trading in food
- any written policy guidelines formulated by the Forum on Food Regulation.

All the proposed variations are minor and these considerations are not directly relevant.

In relation to the promotion of an efficient and competitive food industry and of consistency between domestic and international food standards, one amendment updates a reference to an internationally recognised publication.

3 Draft variation

The draft variations are at Attachment A. The draft variations are intended to take effect on the date of gazettal. A draft explanatory statement is at Attachment B. An explanatory statement is required to accompany an instrument if it is lodged on the Federal Register of Legislation.

Attachments

- A. Draft variation to the *Australia New Zealand Food Standards Code*
- B. Draft Explanatory Statement

Attachment A – Draft variation to the *Australia New Zealand Food Standards Code*



Food Standards (Proposal P1045 – Code Revision (2017)) Variation

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The Standard commences on the date specified in clause 3 of this variation.

Dated [To be completed by Standards Management Officer]

Standards Management Officer
Delegate of the Board of Food Standards Australia New Zealand

Note:

This variation will be published in the Commonwealth of Australia Gazette No. FSC **XX on XX Month 20XX**. This means that this date is the gazettal date for the purposes of clause 3 of the variation.

1 Name

This instrument is the *Food Standards (Proposal P1045 – Code Revision (2017)) Variation*.

2 Variation to standards in the *Australia New Zealand Food Standards Code*

The Schedule varies Standards in the *Australia New Zealand Food Standards Code*.

3 Commencement

The variation commences on gazettal.

SCHEDULE

Standard 1.1.1 – Structure of the Code and general provisions

[1] Section 1.1.1—6(1)

Omit '**average quantity**', substitute '*average quantity'

[2] Section 1.1.1—6(2)

Omit 'average quantity' (first appearing), substitute '*average quantity'

[3] Section 1.1.1—11

Omit 'lot', substitute '*lot'

Standard 1.1.2 – Definitions used throughout the Code

[4] Paragraph 1.1.2—11(2)(a) Note

Omit 'foods'

Standard 1.2.1 – Requirements to have labels or otherwise provide information

[5] Section 1.2.1—9(6)

Omit, from the heading, 'either accompany or'

Standard 1.2.7 – Nutrition, health and related claims

[6] Section 1.2.7—17

Omit the title, substitute

1.2.7—17 Application or proposal to vary the table to section S4—5 taken to be a high level health claims variation

[7] Subparagraph 1.2.7—18(1)(b)(i)

Omit 'high level health claim', substitute '*high level health claim'

[8] Subparagraph 1.2.7—18(1)(b)(ii)

Omit 'general level health claim', substitute '*general level health claim'

[9] Section 1.2.7—18(2)

Omit 'high level health claims table', substitute '*high level health claims table'

[10] Section 1.2.7—18(4)

Omit 'special purpose food', substitute '*special purpose food'

[11] Section 1.2.7—19(1)(d)

Omit 'if requested by a relevant authority, provide records to the *relevant authority', substitute 'if requested by a *relevant authority, provide records to the relevant authority'

Standard 2.6.2 – Non-alcoholic beverages and brewed soft drinks

[12] Standard 2.6.2—3(3)(a)

Omit '4th edition, 2011', substitute '4th edition incorporating the first addendum, 2017'

Schedule 3 Identity and purity

[13] Paragraph S3—2(1)(b)

Omit '(x) FAO JECFA Monographs 17 (2015); or', substitute

'(x) FAO JECFA Monographs 17 (2015);

(xi) FAO JECFA Monographs 19 (2016); or'

[14] Paragraph S3—3(j)

Omit '(2016)', substitute '(2017)'

Schedule 4 – Nutrition, health and related claims

[15] Section S4—3

Insert, after the entry for mono-unsaturated fatty acids

Omega fatty acids (any)	The type of omega fatty acid is specified immediately after the word 'omega'
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Schedule 5 – Nutrient profile scoring method

[16] Section S5—3

Omit '(based on the units used in the nutrition information panel)'

[17] Section S5—5

Omit the section, substitute

S5—5 Protein points (P points)

- (1) Use Table 4 to determine the 'P points' scored, depending on the *average quantity of protein in a *unit quantity of the food. A maximum of five points can be awarded.
- (2) Foods that score ≥ 13 baseline points are not permitted to score points for protein unless they score five or more V points.

Table 4—P Points

<i>Points</i>	<i>Protein (g) per *unit quantity</i>
0	≤ 1.6
1	> 1.6
2	≥ 3.2
3	> 4.8
4	> 6.4
5	> 8.0

[18] Section S5—6

Omit the section, substitute

S5—6**Fibre points (F points)**

- (1) Use Table 5 to determine the 'F points' scored, depending on the *average quantity of *dietary fibre in a *unit quantity of the food. A maximum of five points can be awarded.
- (2) The prescribed method of analysis to determine total *dietary fibre is outlined in S11—4.

Table 5—F Points

<i>Points</i>	<i>Dietary fibre (g) per *unit quantity</i>
0	≤0.9
1	>0.9
2	>1.9
3	>2.8
4	>3.7
5	>4.7

- (3) Category 1 foods do not score F points.

Schedule 29 – Special purpose foods**[19] Section S29—7 (table)**

Omit 'phytylmenquinone'

Attachment B – Draft 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 P1045 to make a number of relatively minor amendments to the Code. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has prepared a draft variation to a number of standards.

2. Purpose

The Authority has prepared draft variations. The issues considered are relatively minor in nature, and fall into the following broad categories:

- correcting minor errors and omissions;
- removing unnecessary content; and
- updating material from international sources.

3. Documents incorporated by reference

Some of the variations to food regulatory measures update documents incorporated by reference. The documents are:

- Food Chemicals Codex
- Guidelines for Drinking Water Quality, World Health Organisation
- FAO JECFA Monographs

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1045 includes one round of consultation following an assessment and the preparation of a draft variation and an assessment summary. A Regulation Impact Statement was not required.

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. Variations

6.1 Correcting minor errors and omissions

Items [1] to [11] and [15] to [18] of the draft variation include amendments to correct minor errors in text, punctuation or formatting.

6.2 *Updating material from international sources*

Items [12] to [14] of the draft variation include amendments to reflect changes to sources incorporated by reference.

6.4 *Omitting material that is no longer required*

Item [19] of the draft variation omits a reference to a substance that is not required.