

7 July 2017
[17–17]

Approval report – Proposal P1045

Code Revision (2017)

Food Standards Australia New Zealand (FSANZ) has assessed a proposal to make minor amendments, including the correction of typographical errors, formatting issues and updating of references.

On 18 April 2017, FSANZ sought submissions on draft variations and published an associated report. FSANZ received 2 submissions.

FSANZ approved the draft variation on 22 June 2017. The Australia and New Zealand Ministerial Forum on Food Regulation (Forum) was notified of FSANZ's decision on 6 July 2017.

This Report is provided pursuant to paragraph 63(1)(b) of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act).

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Executive summary

FSANZ has approved 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 approved amendments 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 Standard

The proposal amends five Standards and four Schedules in the Code.

1.3 Reasons for preparing 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 References in the Code also become superseded as the documents they refer to are updated.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 was assessed under the General Procedure.

1.5 Decision

The approved draft variation, as amended after the consideration of submissions, is at Attachment A. The approved variation takes effect on the date of gazettal. The amendments made to the draft variation were:

- inclusion of an additional amendment at item [4] of the draft variation; and
- minor amendments to formatting and referencing in the draft variation.

The 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. The draft variations on which submissions were sought are at Attachment C.

2 Summary of the findings

2.1 Summary of issues raised in submissions

There was general support, or no objection, to the issues in the proposed draft variation.

Further information about amendments made to the draft that was circulated for the call for submissions is provided in the table below.

Table 1: Summary of issues raised by submitters

Issue	Raised by	FSANZ response (including any amendments to drafting)
Absence of correct cross-referencing of defined terms in paragraph 1.1.2—9(1)(a)	New Zealand Ministry For Primary Industries (NZ MPI)	Revise paragraph in new item [4].

Issue	Raised by	FSANZ response (including any amendments to drafting)
The proposed variation of tables in Schedule 6 may require additional cross-referencing of the defined term <i>unit quantity</i>	NZ MPI	FSANZ has not made additional variations as <i>unit quantity</i> is a defined term. Subsection 1.1.1—16(4) does not exclude the use of asterisks in tables.

2.2 Risk assessment

All of the issues considered are relatively minor in nature, and fall into the following broad categories:

- correcting minor errors and omissions, and improving clarity**
The amendments include the correction of typographical errors and incorrect spelling and punctuation, as well as re-wording of text to improve clarity.
- updating material from international sources**
These changes include the replacement of references to more recent international publications. The inclusion of these references, numbering and nomenclature alters the legal effect of the affected standards.

FSANZ has confidence in the specialist abilities of the internationally recognised scientific organisations or authorities producing these publications. FSANZ is satisfied that appropriate and rigorous assessments have been carried out by these bodies to ensure that there are no public health or safety issues and that these publications can be incorporated by reference in the Code.

- omitting material that is no longer required**
A variation removed a reference to ‘phytylmenochinone’ as a permitted form of Vitamin K. The name is an error and should not be used.

No potential public health and safety concerns have been identified.

2.3 Risk management

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

2.4 Risk communication

2.4 Consultation

Consultation is a key part of FSANZ’s standards development process. FSANZ acknowledges the time taken by individuals and organisations to make submissions on this Proposal.

Public submissions were invited on draft variations which were released for public comment between 18 April 2017 and 16 May 2017. The call for submissions was notified via the Notification Circular and Food Standards News. Subscribers and interested parties were also notified.

Two submissions were received. All submissions were considered by the FSANZ Board.

2.5 FSANZ Act assessment requirements

2.5.1 Section 59

2.5.1.1 Consideration of costs and benefits

Section 59 requires FSANZ to have regard to whether the direct and indirect benefits that would arise from a food regulatory measure developed as a result of this Proposal will outweigh the costs to the community, Government or industry that would arise from the development of that measure.

Proposal P1045 aims to correct typographical errors; resolve formatting issues; and update references.

As stated above, references in the Code become superseded as the documents they refer to are updated. The draft variation includes new and updated specifications for some permitted substances (such as food additives). This ensures the Code is updated with the latest internationally recognised specifications. Without the draft variation, the Code will remain out of date.

The draft variation is not expected to impose costs on the community, industry or Government that are additional to those already generated by compliance with or enforcement of the current Code.

For this reason, one can reasonably conclude that the benefits to the community, Government or industry that will arise from the draft variation will outweigh the costs that would arise from the development of that measure.

2.5.1.2 Other measures

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

2.5.1.3 Any relevant New Zealand standards

There are no relevant New Zealand standards. All standards are joint standards.

2.5.1.4 Any other relevant matters

Other relevant matters are considered below.

2.5.2. Subsection 18(1)

FSANZ has also considered the three objectives in subsection 18(1) of the FSANZ Act during the assessment. FSANZ is satisfied that the proposed variations 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

2.5.3 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 promotion of consistency between domestic and international food standards
- the desirability of an efficient and internationally competitive food industry
- the promotion of fair trading in food
- any written policy guidelines formulated by the Australia and New Zealand Ministerial Forum on Food Regulation.

In relation to the promotion of consistency between domestic and international food standards, several amendments update or include references to internationally recognised publications. The other issues are not relevant to this Proposal.

Attachments

- A. Approved draft variation to the *Australia New Zealand Food Standards Code*
- B. Explanatory Statement
- C. Draft variation to the *Australia New Zealand Food Standards Code* (call for submissions)

Attachment A – Approved 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 the date of gazettal.

SCHEDULE

Standard 1.1.1 – Structure of the Code and general provisions

[1] Subsection 1.1.1—6(1)

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

[2] Subsection 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] Subsection 1.1.2—9(1)

Omit the subsection, substitute

(1) In this Code:

nutrition content claim means a claim that:

(a) is about:

(i) the presence or absence of any of the following:

(A) *biologically active substance;

(B) *dietary fibre;

(C) energy;

(D) minerals;

(E) potassium;

(F) protein;

(G) *carbohydrate;

(H) *fat;

(I) the components of any one of protein, carbohydrate or fat;

(J) *salt;

(K) sodium;

(L) vitamins; or

(ii) *glycaemic index or glycaemic load; and

(b) does not refer to the presence or absence of alcohol; and

(c) is not a *health claim.

[5] Paragraph 1.1.2—11(2)(a) Note

Omit 'foods'

Standard 1.2.1 – Requirements to have labels or otherwise provide information

[6] Subsection 1.2.1—9(6) (heading)

Omit 'either accompany or'

Standard 1.2.7 – Nutrition, health and related claims

[7] Section 1.2.7—17 (heading)

Omit the heading, 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

[8] Subparagraph 1.2.7—18(1)(b)(i)

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

[9] Subparagraph 1.2.7—18(1)(b)(ii)

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

[10] Subsection 1.2.7—18(2)

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

[11] Subsection 1.2.7—18(4)

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

[12] Paragraph 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

[13] Paragraph 2.6.2—3(3)(a)

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

Schedule 3 Identity and purity

[14] 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

[15] Paragraph S3—3(j)

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

Schedule 4 – Nutrition, health and related claims

[16] Section S4—3 (table)

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

[17] Section S5—3

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

[18] 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

[19] 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

[20] Section S29—7 (table)

Omit 'phytylmenoquinone'

Attachment B – 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.

The Authority prepared Proposal P1045 to make a range of minor amendments to the Code including the correction of typographical errors, formatting issues, and updating of references. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft 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 the variation because 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.

3. Documents incorporated by reference

The variations do not incorporate any new documents by reference, although the following existing references are updated (see para 6.2 below):

- Guidelines for Drinking Water Quality, World Health Organisation
- Combined Compendium of Food Additive Specifications, 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 included one round of public consultation following an assessment and the preparation of a draft Standard and associated report. Submissions were called for on 26 April 2017 for a four-week consultation period.

A Regulation Impact Statement was not required because the variation is 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

6.1 Correcting minor errors and omissions

Items [1] to [12] and [16] to [19] include amendments to correct minor errors and omissions to text and punctuation, including correction of cross-referencing.

6.2 Updating material from international sources

Items [13] to [15] reflect changes to documents incorporated by reference.

6.3 Omitting material that is no longer required

Item [20] omits an erroneous reference to 'phytylmenquinone'.

Attachment C – Draft variation to the *Australia New Zealand Food Standards Code* (call for submissions)



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

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3 Commencement

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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'

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[13] Paragraph S3—2(1)(b)

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

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[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.
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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'