

28 August 2014
[17–14]

Approval Report – Proposal P1033

Code Maintenance XII

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

On 6 June 2014, FSANZ sought submissions on a draft variation and published an associated report. FSANZ received six submissions.

FSANZ approved the draft variation on 13 August 2014. The Australia and New Zealand Ministerial Forum on Food Regulation¹ (Forum) was notified of FSANZ's decision on 27 August 2014.

This Report is provided pursuant to paragraph 69(4)(a) of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act).

¹ convening as the Australia and New Zealand Food Regulation Ministerial Council

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Supporting document

The following document which informed the assessment of this Proposal is available on the FSANZ website at

<http://www.foodstandards.gov.au/code/proposals/Pages/P1033CodeMaintenanceXII.aspx>

SD1 List of proposed amendments (at Approval)

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, inconsistencies and formatting issues, and updating of references.

The approved amendments are all relatively minor in nature. No potential public health and safety concerns have been identified.

Each amendment is explained in SD1.

1 Introduction

1.1 The Proposal

Proposal P1033 was prepared to make a range of relatively minor amendments to the Code including the correction of typographical errors, inconsistencies and formatting issues, and updating of references.

1.2 The current Standards

A number of standards are affected by the proposed amendments. The list of issues considered by this Proposal and the proposed corrections are listed in SD1.

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 References in the Code also become superseded as the documents they refer to are updated.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 was assessed under the general procedure.

1.5 Decision

The draft variations to a number of Standards as proposed following assessment were approved with minor amendments. The variations take effect on gazettal.

The approved draft variations, as varied after consideration of submissions, are at Attachment A. 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 Legislative Instruments.

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 covered by the Proposal, except for those listed in the Table below. FSANZ has addressed each issue raised and has made amendments to those matters as indicated.

One submitter suggested that FSANZ establish an annual process to progress Code maintenance issues. FSANZ has noted the suggestion and endeavours to achieve this aim. However, the ability to do so is dependent on the availability of internal resources.

Table 1: Summary of issues (the item numbers reference the drafting item number at Attachment A)

Issue	Raised by	FSANZ response (including any amendments to drafting)
<p>Item [1.1] (Standard 1.1.1) The definition of 'bulk cargo container' is over-specified – why not simply omit (i) and (iii)-(vi) and rephrase as a single sentence? The issue is better addressed as part of P1025.</p>	<p>Australian Food and Grocery Council (AFGC)</p>	<p>Comments noted .No change made. The reworded definition reflects the definition proposed by P1025.</p>
<p>Item [2] (Standard 1.1A.6) Paragraph (b) seems speculative and the need for, and content of, any transitional provisions for future standards would be better addressed at the time any such regulation is actually introduced.</p>	<p>AFGC</p>	<p>Comments noted. No change made. The wording for (b) reflects the current wording in the Standard (arising from Proposal P242 in Amendment No. 139).</p>
<p>Item [2] (Standard 1.1A.6) Agrees with the amendment, but considers the Purpose also needs amending to remove reference to "...medical foods and...".</p>	<p>New Zealand Food and Grocery Council (NZFGC)</p>	<p>New amendment included.</p>
<p>Item [3.3] (Standard 1.2.1) The amendment to clause 4 is to subclause 4(1).</p>	<p>NZFGC</p>	<p>The item has been recast using a different drafting style, given NZFGC's concern.</p>
<p>Item [3.4] (Standard 1.2.1) The amendment to paragraph 5(1)(e) results in a loss of clarity for NZ users as Standard 1.2.11 is Australia only.</p>	<p>NZFGC</p>	<p>Amendment made to reflect the fact that Standard 1.2.11 applies to Australia only.</p>
<p>Items [4.1] (Standard 1.2.4) Agree with the amendment, but the removal of the entry for 'tocopherols concentrate, mixed' in Part 2 of Schedule 2 should remain until 21 February 2015.</p>	<p>AFGC, NZFGC</p>	<p>Comments noted. Amendment removed from drafting</p> <p>FSANZ notes that P1021 updated the INS number for mixed tocopherol, concentrate in the Code from '306' to '307b'. A 2-year transitional period was provided (at the request of industry) in which industry could use either of these two numbers. This period will cease on 11 October 2014. At that time (before gazettal of any amendments from this Proposal), entries for 'tocopherols concentrate, mixed' with the code number '306' were supposed to be removed from the Code. The related Editorial notes indicate the October sunset date.</p> <p>However, due to a drafting error in P1023, which sought to correct a transpositional error, a single entry – in Part 2 of Schedule 2 for 'tocopherols concentrate, mixed'</p>

Issue	Raised by	FSANZ response (including any amendments to drafting)
		<p>with the code number '306' – will remain beyond 11 October 2014, instead lapsing on 21 February 2015.</p> <p>FSANZ had sought to correct this error by removing the one remaining entry as we were satisfied that the intention to sunset all entries in October 2014 was clear and understood by stakeholders.</p> <p>However, at the request of industry, FSANZ will allow the remaining entry (which relates to a labelling requirement only and has no health or safety impact), to remain until February 2015. FSANZ notes that the entry remaining in the numerical list will therefore be inconsistent with the entry in the alphabetical list.</p>
<p>Items [4.12], [4.13] (Standard 1.2.4), [5] (Standard 1.2.5), [9.7] (Standard 1.3.1). Support for retaining Editorial notes in the majority of cases.</p>	AFGC, NZFGC	<p>Comments noted. No change made.</p> <p>FSANZ policy is to limit the use of Editorial notes in accordance with a recommendation made in a 2010 review by the Office of Legislative drafting and Publishing. Editorial notes will also be deleted when no longer relevant. The Editorial notes relate to 11 October 2014 and are therefore no longer required.</p>
<p>Item [5] (Standard 1.2.5) It would be more helpful for the Editorial note to state that the definition of 'small package' is in Standard 1.1.1.</p>	NZFGC	Comments noted. FSANZ will retain the Editorial note, but amend the text.
<p>Item [8.1] (Standard 1.2.9) Notes that the time for the review commitment has passed and that the reminder of review is therefore no longer valid, but review at some stage is still a reasonable undertaking. However, there are higher priority areas of work.</p>	NZFGC	<p>Comments noted. As this review commitment has been overtaken by events (work in this area is being dealt with through Labelling Review work), the reference is being deleted.</p> <p>In addition, mentions of reviews are not appropriate for inclusion in editorial notes or Standards generally.</p>

Issue	Raised by	FSANZ response (including any amendments to drafting)
<p>Item [8.3] (Standard 1.2.9) Does not agree with the deletion of the last Editorial note. Reminders of where information is located is always helpful and suggests the note be amended rather than deleted.</p>	NZFGC	FSANZ has retained the Editorial note with updated cross-references.
<p>Item [9.6] (Standard 1.3.1) 14.1.13 should be 14.1.3</p>	Queensland Health	Amendment made.
<p>Item [16] (Standard 2.5.3) Subclause 2(4) of Standard 2.5.3 will need to be deleted from the Code because it is now replaced by subclause 2(3) of Standard 2.5.3.</p>	Queensland Health	<p>Comments noted. No change made.</p> <p>Subclause 2(4) was deleted from the Code by Amendment No. 124 (July 2011). This deletion was not initially reflected in the Code compilation published on ComLaw after that deletion. That oversight was rectified on in a new Code compilation published on ComLaw in October 2012. No amendment of the Code is necessary.</p>
<p>Item [21] (Standard 2.9.2) Agree in-principle with the rewording, but FSANZ should seek comment from infant food manufacturers to ensure the proposed amendment does not result in any reformulation issues. If it does, the amendment should be progressed separately and not in a CMP.</p>	AFGC, NZFGC	This amendment relates to a criterion for a labelling statement and not to composition. The amendment does not affect product formulation. Infant food manufacturers were advised of the call for submissions. No submissions were received.
<p>Item 23 (Standard 2.10.3) Does not agree with the deletion of the Editorial note with the location of the definition of 'small package'.</p>	NZFGC	FSANZ has retained the Editorial note with updated cross-references.
<p>Item [24.1] (Standard 3.2.2) Agree in-principle, but the amendment should also remove "that is" from the clause wording (so that there is no suggestion that paragraph (b) replaces the Standard 1.1.1 definition) and could then run as a single sentence.</p>	AFGC	Comment noted, although it is not clear how the first arm of the comment relates to the proposed provision. The draft provision has been revised.

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 references**
References to the names of Standards or cross-references within the Code or to relevant Australian legislation have been amended or updated.
- **updating material from international sources**
These changes include the replacement of references with more recent publications as well as the addition of new publications to give a further option for industry to utilise to comply with Code provisions. Also included are changes in nomenclature or INS numbering developed by international bodies. 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**
These amendments include the omission of provisions that have ceased to have effect and duplication of definitional text which is already located in Standard 1.1.1.
- **variations to Editorial notes**
Three editorial notes, which reflect information that will be sunsetted in October 2014 and will, therefore, no longer be required by the time gazettal of any approved amendments resulting from this Proposal occur are to be deleted.

Other changes amend or delete Editorial notes to remove information that is not suitable for inclusion in an Editorial note or update cross-references within the Code.

Editorial notes are not, by virtue of the definition of a 'standard' in the FSANZ Act, part of a draft standard and are therefore not subject to the standards development process under part 3 of the FSANZ Act. The Editorial notes have only been provided for completeness.

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. Due to the nature of the amendments, there are no risks to public health and safety through proceeding with the draft amendments.

2.4 Risk communication

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 6 June and 4 July 2014. The call for submissions was notified via the Notification Circular and Food Standards News. Subscribers and interested parties were also notified.

Six submissions were received, all of which generally supported the proposed variations – with some seeking further amendments.

All submissions were considered by the FSANZ Board. All comments are valued and contribute to the rigour of our assessment. Submitters and other interested parties will be kept informed of progress with the Proposal.

2.5 FSANZ Act assessment requirements

2.5.1 Section 59

2.5.1.1 Cost benefit analysis

As all the proposed variations are relatively minor in nature, and the direct and indirect benefits that would arise from a food regulatory measure developed or varied as a result of the Proposal outweigh the costs to the community, Government or industry that would arise from the development or variation of the food regulatory measure.

For example, the inclusion of new INS numbers for advantame and yeast mannoproteins is unlikely to have an effect on labelling costs as manufacturers can use either the name or number on their labels. The updating of references and the inclusion of new references provides a greater choice for industry.

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

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 varied as a result of the Proposal.

2.5.1.3 Any relevant New Zealand standards

All but two of the Standards affected are joint standards. One of these is a New Zealand only Standard and the other Australia only.

2.5.1.4 Any other relevant matters

There are no other relevant matters.

2.5.2 Subsection 18(1)

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 Ministerial Council².

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

² Now known as the Australia and New Zealand Ministerial Forum on Food Regulation (convening as the Australia and New Zealand Food Regulation Ministerial Council)

Attachment A – Approved draft variations to the *Australia New Zealand Food Standards Code*



Food Standards (Proposal P1033 – Code Maintenance XII) 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 P1033 – Code Maintenance XII) Variation*.

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

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

3 Commencement

The variation commences on gazettal.

SCHEDULE

[1] Standard 1.1.1 is varied by

[1.1] omitting the definition of **bulk cargo container** in clause 2 and substituting

“**bulk cargo container** means –

- (a) an article of transport equipment, being a lift van, movable tank, shipping container, aircraft cargo container or other similar structure –
 - (i) of a permanent character and accordingly strong enough to be suitable for repeated use; and
 - (ii) specifically designed to facilitate the carriage of goods by one or more modes of transport, without immediate repacking; and
 - (iii) fitted with devices permitting its ready handling and its transfer from one mode of transport to another; and
 - (iv) so designed as to be easy to fill and empty; and
 - (v) having an internal volume of one cubic metre or more; and
 - (vi) includes the normal accessories and equipment of the container, when imported with the container and used exclusively with it; and
- (b) does not include any vehicle, or any ordinary packing case, crate, box, or other similar article used for packing.”

[1.2] inserting “a” before “package” in subclause 11(1)

[2] Standard 1.1A.6 is varied by

[2.1] omitting from the Purpose “medical foods and”

[2.2] omitting subclause 2(3) and substituting

“(3) This Standard –

- (a) does not apply to food for special medical purposes; and
- (b) ceases to have effect in relation to other special purpose food, including food formulated and represented as being for the dietary management of obesity or overweight, two years from the commencement of any alternative applicable provisions in this Code.”

[3] Standard 1.2.1 is varied by

[3.1] omitting from paragraph 2(2)(da) “24(5)” and substituting “25(5)”

[3.2] omitting from paragraph 3(1)(f) “discernable” and substituting “discernible”

[3.3] omitting from subclause 4(1) “for”

[3.4] inserting “for” before “retail” in paragraph 4(1)(a)

[3.5] inserting “for” before “catering” in paragraph 4(1)(b)

[3.6] omitting paragraph 5(1)(e) and substituting

“(e) Standard 1.2.11 – Country of Origin Labelling (applies in Australia only); and”

[4] Standard 1.2.4 is varied by

[4.1] omitting from Schedule 2 (twice occurring)

“

Aluminium, calcium, sodium, magnesium, potassium and ammonium salts of fatty acids	470
--	-----

”

[4.2] inserting in Part 1 of Schedule 2 in alphabetical order

“

Fatty acid salts of aluminium, ammonia, calcium, magnesium, potassium and sodium	470
--	-----

”

[4.3] inserting in Part 2 of Schedule 2 in numerical order

“

Fatty acid salts of aluminium, ammonia, calcium, magnesium, potassium and sodium	470
--	-----

”

[4.4] omitting from Schedule 2 (twice occurring)

“

Ammonium bicarbonate	503
----------------------	-----

”

[4.5] inserting in Part 1 of Schedule 2 in alphabetical order

“

Ammonium carbonate	503
--------------------	-----

”

[4.6] inserting in Part 2 of Schedule 2 in numerical order

“

Ammonium carbonate	503
--------------------	-----

”

[4.7] omitting from Schedule 2 (twice occurring)

“

Advantame	—
-----------	---

”

[4.8] inserting in Part 1 of Schedule 2 in alphabetical order

“

Advantame	969
-----------	-----

”

[4.9] inserting in Part 2 of Schedule 2 in numerical order

“

Advantame	969
-----------	-----

”

[4.10] inserting in Part 1 and in Part 2 of Schedule 2 in alphabetical and numerical order respectively

“

Yeast mannoproteins	455
---------------------	-----

”

[4.11] omitting the Editorial note following Part 1 of Schedule 2

[4.12] omitting the Editorial note following Part 2 of Schedule 2

[5] Standard 1.2.5 is varied by omitting the Editorial note following subclause 2(2) and substituting

“

<p>Editorial note:</p> <p>Standard 1.2.1 sets out the exemptions to the general labelling requirements in this Code. Standard 1.1.1 provides a definition of ‘small package’.</p>
--

”

[6] Standard 1.2.7 is varied by

[6.1] omitting from clause 18 “A person who gives the notice mentioned in paragraph 17(4)(b) is required to –” and substituting

“(1) A person who gives the notice mentioned in paragraph 17(4)(b) is required to –”

[6.2] omitting from Part 1 of Schedule 3 under the entry for Selenium “utilization” and substituting “utilisation”

[6.3] omitting from Schedule 6 where occurring “.” and substituting “–”

[7] Standard 1.2.8 is varied by

[7.1] inserting “.” at the end of the definition of **average energy content** in clause 1

[7.2] omitting paragraph 5(1)(h) and substituting

“(h) any other matter which this Code requires to be included;”

[8] Standard 1.2.9 is varied by

[8.1] omitting from the Editorial note following subclause 2(1)

“Within 24 months of the gazettal of this Editorial note, Standard 1.2.9 – Legibility Requirements will be reviewed.”

[8.2] inserting “of” before “type” in paragraph 3(b)

[8.3] omitting the Editorial note following clause 3 and substituting

Editorial note:

Standard 1.1.1 provides definitions of 'warning statement' and 'small package'.

[9] **Standard 1.3.1** is varied by

[9.1] omitting paragraph 11(a) and substituting

- “(a) Flavouring substances which are listed in at least one of the following publications –
- (i) Generally Recognised as Safe (GRAS) lists of flavouring substances published by the Flavour and Extract Manufacturers' Association of the United States from 1960 to 2013 (edition 26); or
 - (ii) Chemically-defined flavouring substances, Council of Europe, November 2000; or
 - (iii) Annex 1 of Council Regulation (EU) No 872/2012 of 1 October 2012 adopting the list of flavouring substances [2012] OJ L267/1; or
 - (iv) 21 CFR § 172.515; or”

[9.2] omitting from Schedule 1 the heading “**13.3 Formula meal replacements and formulated supplementary foods***” and substituting “**13.3 Formulated meal replacements and formulated supplementary foods***”

[9.3] omitting from item 14.2.2 in Schedule 1

“

-	Yeast mannoproteins	400	mg/kg	”
---	---------------------	-----	-------	---

[9.4] inserting in numerical order under the heading for **Wine, sparkling wine and fortified wine** in item 14.2.2 in Schedule 1

“

455	Yeast mannoproteins	400	mg/kg	”
-----	---------------------	-----	-------	---

[9.5] omitting from Schedule 1

“

-	Aspartame	150	mg/kg	”
---	-----------	-----	-------	---

[9.6] inserting in numerical order under the heading **electrolyte drink and electrolyte drink base** in Item 14.1.3 in Schedule 1

“

951	Aspartame	150	mg/kg	”
-----	-----------	-----	-------	---

[9.7] omitting the Editorial note following Schedule 1

[9.8] omitting from Schedule 2 (twice occurring)

“

-	Advantame	”
---	-----------	---

[9.9] inserting in Schedule 2 in alphabetical and numerical order respectively

“
969 Advantame

”

[10] **Standard 1.3.2** is varied by omitting from the Table to clause 3 “refer to clause 8” where occurring in Column 4 and substituting “refer to clause 5”

[11] **Standard 1.3.3** is varied by omitting from the entry for “Hydrogen peroxide” in the Table to clause 14

“ Control of lactic acid producing microorganisms to stabilise the pH during the manufacture of –

(a) fermented milk;
(b) fermented milk products;
(c) cheese made using lactic acid producing microorganisms; and
(d) cheese products made using lactic acid producing microorganisms.”

and substituting

“ Control of lactic acid producing microorganisms to stabilise the pH during the manufacture of –

(a) fermented milk; or
(b) fermented milk products; or
(c) cheese made using lactic acid producing microorganisms; or
(d) cheese products made using lactic acid producing microorganisms.”

[12] **Standard 1.3.4** is varied by

[12.1] omitting paragraph 2(c) and inserting

- “(c) United States Pharmacopeial Convention (2014) Food Chemicals Codex. 9th ed, United States Pharmacopeial Convention, Rockville, MD.; or
- (d) Commission Regulation (EU) No 231/2012 of 9 March 2012 laying down specifications for food additives.”

[12.2] omitting paragraph 3(i) and inserting

- “(i) the Specifications and Standards for Food Additives, 8th Edition (2007), Ministry of Health and Welfare (Japan); or”

[12.3] omitting from the Schedule the heading “**Specification selenium-enriched yeast**” and substituting “**Specification for selenium-enriched yeast**”

[13] **Standard 1.5.3** is varied by

[13.1] omitting from column 1 of the Table to clause 4

“Longan
Litchi”

and substituting

“Litchi
Longan”

[13.2] omitting from subclause 6(3) “clause” and substituting “subclause”

[14] **Standard 1.6.1** is varied by omitting from the Schedule “desiccated” and substituting “desiccated”

[15] **Standard 2.1.1** is varied by

[15.1] omitting from the Table of Provisions “Flour” and substituting “Wheat flour”

[15.2] inserting in the Table of Provisions in numerical order

“1A Definition of bread for certain purposes”
“5 Mandatory addition of iodised salt to bread”

[15.3] omitting from subclause 5(3) “.” and substituting “–”

[16] **Standard 2.5.3** is varied by inserting after the Table to subclause 2(2)

“(3) The protein requirements in the Table to subclause 2(2) apply exclusively to fermented milk made from cow’s milk.”

[17] **Standard 2.5.7** is varied by omitting from subclause 2(1) “dried milks” and substituting “dried milks, evaporated milks”

[18] **Standard 2.6.2** is varied by inserting in the Table of Provisions in numerical order

“2A Addition of fluoride to packaged water”
“2B Labelling of packaged water”

[19] **Standard 2.7.4** is varied by omitting from the Editorial note “*Australian Wine and Brandy Corporation Act 1980*” and substituting “*Wine Australia Corporation Act 1980*”

[20] **Standard 2.9.1** is varied by inserting in the Table of Provisions in numerical order

“9A Permitted inulin-type fructans and galacto-oligosaccharides”

[21] **Standard 2.9.2** is varied by omitting from subclause 6(2) “of 3 g/100 kJ of protein” and substituting “3 g of protein / 100 kJ”

[22] **Standard 2.9.5** is varied by omitting subclause 3(2) and substituting

“(2) Subclause 6(3) of Standard 1.5.3 applies to a food for special medical purposes as if such food were subject to Standard 1.2.1.”

[23] **Standard 2.10.3** is varied by omitting the Editorial note following clause 5 and substituting

“

Editorial note:

Standard 1.1.1 provides a definition of ‘small package’.

See clauses 8 and 8A of Standard 1.2.8 for labelling requirements when claims requiring nutrition information, other than calcium claims, are made on small packages of chewing gum suitable for added calcium.

”

[24] **Standard 3.2.2** is varied by

[24.1] omitting subclause 3(2) and substituting

“(2) Subclause (1) does not apply to a food business in relation to persons undertaking food handling operations for fundraising events at which only food that is not potentially hazardous or is to be consumed immediately after thorough cooking is sold.”

[24.2] omitting from paragraph 5(2)(b) “of the food of the food” and substituting “of the food”

[24.3] omitting from subclause 24(4) the definition of **outdoor dining area** and substituting

“**outdoor dining area** means an area that –

- (a) is used for dining, drinking or both drinking and dining; and
- (b) is not used for the preparation of food; and
- (c) is not an enclosed area; and
- (d) can be entered by the public without passing through an enclosed area.”

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.

FSANZ prepared Proposal P1033 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 approved draft variations to a number of Standards.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation³ (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. Purpose

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

- correcting minor errors and omissions, and improving clarity
- updating references
- updating material from international sources
- omitting material that is no longer required
- variations to Editorial notes.

3. Documents incorporated by reference

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

- Generally Recognised as Safe (GRAS) lists of flavouring substances published by the Flavour and Extract Manufacturers' Association of the United States from 1960 to 2013 (edition 26)
- Chemically-defined flavouring substances, Council of Europe, November 2000
- Annex 1 of Council Regulation (EU) No 872/2012 of 1 October 2012 adopting the list of flavouring substances [2012] OJ L267/1
- 21 CFR § 172.515

³ convening as the Australia and New Zealand Food Regulation Ministerial Council

- United States Pharmacopeial Convention (2014) Food chemicals codex. 9th ed, United States Pharmacopeial Convention, Rockville, MD.
- Commission Regulation (EU) No 231/2012 of 9 March 2012 laying down specifications for food additives
- the Specifications and Standards for Food Additives, 8th Edition (2007), Ministry of Health and Welfare (Japan).

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1033 included one round of public consultation following an assessment and the preparation of draft variations to a number of Standards and associated assessment summary. Submissions were called for on 6 June 2014 for a four-week consultation period.

A Regulation Impact Statement was not required because of the nature of the proposed variations as described in section 2 above.

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, and improving clarity

Items [1], [3.1]–[3.5], [6], [7], [8.2], [9.2], [9.5]–[9.6], [11], [12.3], [13]–[18], [20], [21] and [24.2]–[24.3] include amendments to correct minor errors and omissions to text and punctuation, as well improving clarity of some text.

6.2 Updating references

Items [3.6], [10], [19] and [22] update references including changes to the names of Standards or cross-references within the Code or to relevant Australian legislation.

6.3 Updating material from international sources

Items [4.1]–[4.10], [9.1], [9.3]–[9.4], [9.8]–[9.9] and [12.1]–[12.2] reflect changes to documents incorporated by reference or changes in nomenclature or INS numbering developed by international bodies. Additional references are included in paragraphs 11(a) of Standard 1.3.1 and 2(c) of Standard 1.3.4.

6.4 Omitting material that is no longer required

Item [2] omits provisions that have ceased to have effect.

Item [24.1] removes duplication of definitional text which is already located in Standard 1.1.1.

6.5 Variations to Editorial notes

Items [4.11]–[4.12] and [9.7] delete three editorial notes that are out-of-date.

Items [5], [8.1], [8.3] and [23] amend or delete Editorial notes to remove information that is not suitable for inclusion in an Editorial note or update cross-references within the Code.

Editorial notes are not, by virtue of the definition of a 'standard' in the FSANZ Act, part of a draft standard and are therefore not subject to the standards development process under part 3 of the FSANZ Act. The Editorial notes have only been provided for completeness.

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



Food Standards (Proposal P1033 – Code Maintenance XII) 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 P1033 – Code Maintenance XII) Variation*.

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

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

3 Commencement

The variation commences on gazettal.

SCHEDULE

[1] Standard 1.1.1 is varied by

[1.1] omitting the definition of **bulk cargo container** in clause 2 and substituting

“**bulk cargo container** means –

- (a) an article of transport equipment, being a lift van, movable tank, shipping container, aircraft cargo container or other similar structure –
 - (i) of a permanent character and accordingly strong enough to be suitable for repeated use; and
 - (ii) specifically designed to facilitate the carriage of goods by one or more modes of transport, without immediate repacking; and
 - (iii) fitted with devices permitting its ready handling and its transfer from one mode of transport to another; and
 - (iv) so designed as to be easy to fill and empty; and
 - (v) having an internal volume of one cubic metre or more; and
 - (vi) includes the normal accessories and equipment of the container, when imported with the container and used exclusively with it; and
- (b) does not include any vehicle, or any ordinary packing case, crate, box, or other similar article used for packing.”

[1.2] inserting “a” before “package” in subclause 11(1)

[2] Standard 1.1A.6 is varied by omitting subclause 2(3) and substituting

“(3) This Standard –

- (a) does not apply to food for special medical purposes; and
- (b) ceases to have effect in relation to other special purposes food, including food formulated and represented as being for the dietary management of obesity or overweight, two years from the commencement of any alternative applicable provisions in this Code.”

[3] Standard 1.2.1 is varied by

[3.1] omitting from paragraph 2(2)(da) “24(5)” and substituting “25(5)”

[3.2] omitting from paragraph 3(1)(f) “discernable” and substituting “discernible”

[3.3] omitting from clause 4

“(1) Where a purchaser or relevant authority has so requested, a package of food, other than food for –

- (a) retail sale; or
- (b) catering purposes; or”

and substituting

“(1) Where a purchaser or relevant authority has so requested, a package of food, other than food –

- (a) for retail sale; or
- (b) for catering purposes; or”

[3.4] omitting paragraph 5(1)(e) and substituting

“(e) Standard 1.2.11 – Country of Origin Labelling; and”

[4] Standard 1.2.4 is varied by

[4.1] omitting from Schedule 2, Part 2

“

Tocopherols concentrate, mixed	306
--------------------------------	-----

”

[4.2] omitting from Schedule 2 (twice occurring)

“

Aluminium, calcium, sodium, magnesium, potassium and ammonium salts of fatty acids	470
--	-----

”

[4.3] inserting in Part 1 of Schedule 2 in alphabetical order

“

Fatty acid salts of aluminium, ammonia, calcium, magnesium, potassium and sodium	470
--	-----

”

[4.4] inserting in Part 2 of Schedule 2 in numerical order

“

Fatty acid salts of aluminium, ammonia, calcium, magnesium, potassium and sodium	470
--	-----

”

[4.5] omitting from Schedule 2 (twice occurring)

“

Ammonium bicarbonate	503
----------------------	-----

”

[4.6] inserting in Part 1 of Schedule 2 in alphabetical order

“

Ammonium carbonate	503
--------------------	-----

”

[4.7] inserting in Part 2 of Schedule 2 in numerical order

“

Ammonium carbonate	503
--------------------	-----

”

[4.8] omitting from Schedule 2 (twice occurring)

“

Advantame	–
-----------	---

”

[4.9] inserting in Part 1 of Schedule 2 in alphabetical order

“

Advantame	969
-----------	-----

”

[4.10] inserting in Part 2 of Schedule 2 in numerical order

“

Advantame	969
-----------	-----

”

[4.11] inserting in Part 1 and in Part 2 of Schedule 2 in alphabetical and numerical order respectively

“

Yeast mannoproteins	455
---------------------	-----

”

[4.12] omitting the Editorial note following Part 1 of Schedule 2

[4.13] omitting the Editorial note following Part 2 of Schedule 2

[5] **Standard 1.2.5** is varied by omitting the Editorial note following subclause 2(2) and substituting

“

Editorial note: Standard 1.2.1 sets out the exemptions to the general labelling requirements in this Code.
--

”

[6] **Standard 1.2.7** is varied by

[6.1] omitting from clause 18 “A person who gives the notice mentioned in paragraph 17(4)(b) is required to –” and substituting

“(1) A person who gives the notice mentioned in paragraph 17(4)(b) is required to –”

[6.2] omitting from Part 1 of Schedule 3 under the entry for Selenium “utilization” and substituting “utilisation”

[6.3] omitting from Schedule 6 where occurring “.” and substituting “–”

[7] **Standard 1.2.8** is varied by

[7.1] inserting “.” at the end of the definition of **average energy content** in clause 1

[7.2] omitting paragraph 5(1)(h) and substituting

“(h) any other matter which this Code requires to be included;”

[8] **Standard 1.2.9** is varied by

[8.1] omitting from the Editorial note following subclause 2(1)

“Within 24 months of the gazettal of this Editorial note, Standard 1.2.9 – Legibility Requirements will be reviewed.”

[8.2] inserting “of” before “type” in paragraph 3(b)

[8.3] omitting the Editorial note following clause 3

[9] **Standard 1.3.1** is varied by

[9.1] omitting paragraph 11(a) and substituting

“(a) Flavouring substances which are listed in at least one of the following publications –

- (i) Generally Recognised as Safe (GRAS) lists of flavouring substances published by the Flavour and Extract Manufacturers’ Association of the United States from 1960 to 2013 (edition 26); or
- (ii) Chemically-defined flavouring substances, Council of Europe, November 2000; or
- (iii) Annex 1 of Council Regulation (EU) No 872/2012 of 1 October 2012 adopting the list of flavouring substances [2012] OJ L267/1; or
- (iv) 21 CFR § 172.515; or ”

[9.2] omitting from Schedule 1 the heading “**13.3 Formula meal replacements and formulated supplementary foods***” and substituting “**13.3 Formulated meal replacements and formulated supplementary foods***”

[9.3] omitting from Schedule 1

“
- Yeast mannoproteins 400 mg/kg
”

[9.4] inserting in numerical order under the heading for **Wine, sparkling wine and fortified wine** in Item 14.2.2 in Schedule 1

“
455 Yeast mannoproteins 400 mg/kg
”

[9.5] omitting from Schedule 1

“
- Aspartame 150 mg/kg
”

[9.6] inserting in numerical order under the heading **electrolyte drink and electrolyte drink base** in Item 14.1.13 in Schedule 1

“
951 Aspartame 150 mg/kg
”

[9.7] omitting the Editorial note following Schedule 1

[9.8] omitting from Schedule 2 (twice occurring)

“
– Advantame ”

[9.9] inserting in Part 1 and in Part 2 of Schedule 2 in alphabetical and numerical order respectively

“
969 Advantame ”

[10] **Standard 1.3.2** is varied by omitting from the Table to clause 3 “refer to clause 8” where occurring in Column 4 and substituting “refer to clause 5”

[11] **Standard 1.3.3** is varied by omitting from the entry for “Hydrogen peroxide” in the Table to clause 14

“ Control of lactic acid producing microorganisms to stabilise the pH during the manufacture of –

(a) fermented milk;
(b) fermented milk products;
(c) cheese made using lactic acid producing microorganisms; and
(d) cheese products made using lactic acid producing microorganisms. ”

and substituting

“ Control of lactic acid producing microorganisms to stabilise the pH during the manufacture of –

(a) fermented milk; or
(b) fermented milk products; or
(c) cheese made using lactic acid producing microorganisms; or
(d) cheese products made using lactic acid producing microorganisms. ”

[12] **Standard 1.3.4** is varied by

[12.1] omitting paragraph 2(c) and inserting

- “(c) United States Pharmacopeial Convention (2014) Food chemicals codex. 9th ed, United States Pharmacopeial Convention, Rockville, MD.; or
- (d) Commission Regulation (EU) No 231/2012 of 9 March 2012 laying down specifications for food additives.”

[12.2] omitting paragraph 3(i) and inserting

- “(i) the Specifications and Standards for Food Additives, 8th Edition (2007), Ministry of Health and Welfare (Japan); or”

[12.3] omitting from the Schedule the heading “**Specification selenium-enriched yeast**” and substituting “**Specification for selenium-enriched yeast**”

[13] **Standard 1.5.3** is varied by

[13.1] omitting from column 1 of the Table to clause 4

“Longan
Litchi”

and substituting

“Litchi
Longan”

[13.2] omitting from subclause 6(3) “clause” and substituting “subclause”

[14] **Standard 1.6.1** is varied by omitting from the Schedule “dessicated” and substituting “desiccated”

[15] **Standard 2.1.1** is varied by

[15.1] omitting from the Table of Provisions “Flour” and substituting “Wheat flour”

[15.2] inserting in the Table of Provisions in numerical order

“1A Definition of bread for certain purposes”
“5 Mandatory addition of iodised salt to bread”

[15.3] omitting from subclause 5(3) “:” and substituting “-”

[16] **Standard 2.5.3** is varied by inserting after the Table to subclause 2(2)

“(3) The protein requirements in the Table to subclause 2(2) apply exclusively to fermented milk made from cow’s milk.”

[17] **Standard 2.5.7** is varied by omitting from subclause 2(1) “dried milks” and substituting “dried milks, evaporated milks”

[18] **Standard 2.6.2** is varied by inserting in the Table of Provisions in numerical order

“2A Addition of fluoride to packaged water”
“2B Labelling of packaged water”

[19] **Standard 2.7.4** is varied by omitting from the Editorial note “*Australian Wine and Brandy Corporation Act 1980*” and substituting “*Wine Australia Corporation Act 1980*”

[20] **Standard 2.9.1** is varied by inserting in the Table of Provisions in numerical order

“9A Permitted inulin-type fructans and galacto-oligosaccharides”

[21] **Standard 2.9.2** is varied by omitting from subclause (6(2) “of 3 g/100 kJ of protein” and substituting “3 g of protein / 100 kJ”

[22] **Standard 2.9.5** is varied by omitting subclause 3(2) and substituting

“(2) Subclause 6(3) of Standard 1.5.3 applies to a food for special medical purposes as if such food were subject to Standard 1.2.1.”

[23] **Standard 2.10.3** is varied by omitting the Editorial note following clause 5 and substituting

“

Editorial note:

See clauses 8 and 8A of Standard 1.2.8 for labelling requirements when claims requiring nutrition information, other than calcium claims, are made on small packages of chewing gum suitable for added calcium.

”

[24] **Standard 3.2.2** is varied by

[24.1] omitting subclause 3(2) and substituting

“(2) Subclause (1) does not apply to a food business in relation to persons undertaking food handling operations for fundraising events at which only food is sold that is not potentially hazardous or which is to be consumed immediately after thorough cooking.”

[24.2] omitting from paragraph 5(2)(b) “of the food of the food” and substituting “of the food”

[24.3] omitting from subclause 24(4) the definition of **outdoor dining area** and substituting

“**outdoor dining area** means an area that –

- (a) is used for dining, drinking or both drinking and dining; and
- (b) is not used for the preparation of food; and
- (c) is not an enclosed area; and
- (d) can be entered by the public without passing through an enclosed area.”