



15 May 2018
[46–18]

Call for submissions – Proposal P1048 Code Revision (2018)

FSANZ has assessed a proposal prepared to make minor amendments, including the correction of typographical errors and formatting issues, 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) 12 June 2018

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:

Food Standards Australia New Zealand
PO Box 5423
KINGSTON ACT 2604
AUSTRALIA

Food Standards Australia New Zealand
PO Box 10559
The Terrace WELLINGTON 6143
NEW ZEALAND

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Tel +61 2 6271 2222

Tel +64 4 978 5630

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Executive summary

FSANZ has prepared Proposal P1048 to make a number of amendments to the *Australia New Zealand Food Standards Code* (the Code) including the correction of typographical errors and formatting issues.

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

1 Introduction

1.1 The Proposal

Proposal P1048 was prepared to make a range of relatively minor amendments to the Code including the correction of typographical errors, inconsistencies and formatting issues.

1.2 The current Standards

Standards 1.1.1, 1.1.2, 1.2.7, 1.2.8, and Schedules 1, 11, 15, 18, 26 and 29 are affected by the proposed amendments.

1.3 Reasons for preparing the Proposal

Minor errors and issues are identified in the Code from time-to-time. This Proposal was prepared to resolve them.

1.4 Procedure for assessment

The Proposal is being assessed under the General Procedure.

2 Summary of the assessment

2.1 Risk assessment

No public health and safety concerns have been identified. As explained below, 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—2(2), reference to Schedule 22

Issue: The reference has a note which states incorrectly that Schedule 22 applies in Australia only. Schedule 22 is relied on by Standards that apply in New Zealand.

Response: Omit the Note.

2. STANDARD 1.1.2

Location: The definition of permitted flavouring substance in subsection 1.1.2—2(3)

Issue: The reference to the Generally Recognised as Safe (GRAS) lists of flavouring substances publication requires updating to edition 28.

Response: Update the reference to the 2017 (edition 28) publication.

3. STANDARD 1.1.2

Location: The definition of nutrition content claim in subsection 1.1.2—9(1)

Issue: The definition refers to '*fat'. The asterisk's use is incorrect as subsection 1.1.1—16(6) provides that 'fat' is a basic term used throughout the Code that is not identified with an asterisk.

Response: Omit the asterisk.

4. **STANDARD 1.2.7**

Location: Section 1.2.7—4

Issue: Incorrectly refers to '*nutrition content claim'. The asterisk's use is incorrect as subsection 1.1.1—16(6) provides that 'nutrition content claim' is a basic term used throughout the Code that is not identified with an asterisk.

Response: Omit the asterisk.

5. **STANDARD 1.2.8**

Location: Paragraph 1.2.8—5(2)(b)

Issue: The reference to 'small package' should be identified with an asterisk as it is a term defined in subsection 1.1.2—2(3).

Response: Include an asterisk.

6. **STANDARD 1.2.8**

Location: Paragraph 1.2.8—14(1)

Issue: The reference to 'small package' should be identified with an asterisk as it is a term defined in subsection 1.1.2—2(3).

Response: Include an asterisk.

7. **SCHEDULE 1**

Location: Section S1—4

Issue: The section contains a typographical error. The section should refer to paragraph 1.1.2—14(3)(a) instead of paragraph 1.1.2—14(a).

Response: Replace the reference to paragraph 1.1.2—14(a) with a reference to paragraph 1.1.2—14(3)(a).

8. **SCHEDULE 1**

Location: Section S1—5

Issue: The section contains a typographical error. The section should refer to paragraph 1.1.2—14(3)(c) instead of paragraph 1.1.2—14(d).

Response: Replace the reference to paragraph 1.1.2—14(d) with a reference to paragraph 1.1.2—14(3)(c).

9. **SCHEDULE 11**

Location: Subsections S11—4(2) and (3)

Issue: The subsections contain typographical errors: asterisks are used incorrectly in relation to the defined term 'dietary fibre'; and subsection S11—4(2) incorrectly refers to 'named fibre' instead of 'named dietary fibre'.

Response: Amend to correct these typographical errors.

10. **SCHEDULE 11**

Location: Subsection S11—4(2)

Issue: Paragraphs S11—4(2)(a) and (b) refer incorrectly to 'total dietary fibre'. The reference should be to 'dietary fibre' to be consistent with the Codex definition of dietary fibre (Guidelines on Nutrition Labelling (CAC/GL 2-1985)) and the related standard for recommended methods of analysis and sampling (Codex STAN 234-1999).

Response: Omit the word 'total' in each paragraph.

11. SCHEDULE 15

Location: Subsection S15—5

Issue: Paragraph 9.3.2 of the table is incorrectly numbered. It should be numbered as paragraph 9.3.1.

Response: Amend to correct this typographical error.

12. SCHEDULE 18

Location: Subsection S18—3

Issue: The table to the subsection contains a formatting error. It contains a duplication of the title 'Technological purpose - decolourants, clarifying, filtration and adsorbent agents'.

Response: Omit the second entry.

13. SCHEDULE 18

Location: Subsection S18—9(3)

Issue: The table to the subsection contains formatting errors. The words 'and food' have incorrectly been placed at the end of the title in column three. They should be at the end of the title in column two.

Response: Amend to correct this formatting error.

14. SCHEDULE 26

Location: Subsection S26—3(4)

Issue: Paragraphs 1(g) and 6(b) to the table to the subsection are missing references to their relevant additional labelling requirements.

Response: Amend to include the references.

15. SCHEDULE 29

Location: Subsection S29—14(1)

Issue: The subsection contains a typographical error. It should contain a reference to subsection 2.9.3—6.

Response: Amend to correct this typographical error.

16. SCHEDULE 29

Location: Subsection S29—20

Issue: The table to the subsection contains a formatting error. It contains a blank line between the entries for 'L-cystine' and 'L-glutamic acid'.

Response: Reformat these entries.

2.2 Risk management

The proposed amendments will ensure that the Code remains current and that errors and inconsistencies are addressed. As mentioned above, the proposed amendments are minor in nature and no potential public health and safety concerns have been identified.

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 and are welcome to make submissions.

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 where 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 it likely that there would be no or low cost benefit issues.

If the amendments are not made, errors and inconsistencies would continue to exist and the Code will retain provisions known to be inadequate.

Preparation of a COAG regulation impact statement is not required for this Proposal. The Office of Best Practice Regulation, in an email on 30 April 2018 (reference ID 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.

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 the proposed amendments apply in both Australia and New Zealand.

2.4.1.4 Any other relevant matters

Other relevant matters are considered below.

2.4.2 Subsection 18(1)

FSANZ had regard to the three objectives in subsection 18(1) of the FSANZ Act during the assessment of the proposal: that is -

- 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.

FSANZ concluded that the proposed variations will have little or no direct impact in terms of these objectives. As mentioned above, the proposed amendments are minor in nature and no potential public health and safety concerns have been identified.

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.

These considerations are not directly relevant given the nature of the proposed amendments.

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 P1048 – Code Revision (2018)) 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 the Delegate]

Insert name of Delegate
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 2018. 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 P1048 – Code Revision (2018)) 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—2(2)

Omit

Schedule 22 Foods and classes of foods

Note Applies in Australia only

substitute

Schedule 22 Foods and classes of foods

Standard 1.1.2 – Definitions used throughout the Code

[2] Subsection 1.1.2—2(3)

Omit '2015 (edition 27)', substitute '2017 (edition 28)'

[3] Subsection 1.1.2—9(1)(a)(i)

Omit '*fat', substitute 'fat'

Standard 1.2.7 – Nutrition, health and related claims

[4] Section 1.2.7—4

Omit '*nutrition content claim', substitute 'nutrition content claim'

Standard 1.2.8 – Nutrition information requirements

[5] Paragraph 1.2.8—5(2)(b)

Omit 'small package', substitute '*small package'

[6] Subsection 1.2.8—14(1)

Omit 'small package', substitute '*small package'

Schedule 1 – RDIs and ESADDIs

[7] Section S1—4

Omit '1.1.2—14(a)', substitute '1.1.2—14(3)(a)'

[8] Section S1—5

Omit '1.1.2—14(d)', substitute '1.1.2—14(3)(c)'

Schedule 11 – Calculation of values for nutrition information panel

[9] Section 11—4

Omit subsections (2) and (3), substitute

(2) The total *dietary fibre, and amount of any specifically named fibre, in a food must

be determined in accordance with any one or more of the methods contained in following sections of the AOAC:

- (a) for dietary fibre—sections 985.29 or 991.43;
 - (b) for dietary fibre (including all resistant maltodextrins)—section 2001.03;
 - (c) for inulin and fructooligosaccharide—section 997.08;
 - (d) for inulin—section 999.03;
 - (e) for polydextrose—section 2000.11.
- (3) If the dietary fibre content of a food has been determined by more than 1 method of analysis, the total dietary fibre content is calculated by:
- (a) adding together the results from each method of analysis; and
 - (b) subtracting any portion of dietary fibre which has been included in the results of more than one method of analysis.

Schedule 15 – Substances that may be used as food additives

[10] Section 15—5

Omit '9.3.2', substitute '9.3.1'

Schedule 18 – Processing aids

[11] Subsection S18—3

Omit the second 'Technological purpose—decolourants, clarifying, filtration and adsorbent agents'.

[12] Subsection S18—9(3)

Omit

<i>Substance</i>	<i>Technological purpose</i>	<i>Maximum permitted and food level (mg/kg)</i>
Substitute		
<i>Substance</i>	<i>Technological purpose and food</i>	<i>Maximum permitted level (mg/kg)</i>

Schedule 26 – Food produced using gene technology

[13] Subsection S26—3(4) paragraph 1(g)

Omit 'products', substitute 'products (see subsection (2A))'

[14] Subsection S26—3(4) paragraph 6(b)

Omit 'GR2E', substitute 'GR2E (see subsection (2A))'

Schedule 29 – Special purpose foods

[15] Subsection S29—14(1)

Omit 'section 2.9.3—5', substitute 'sections 2.9.3—5 and 2.9.3—6'

[16] The table to Section S29—20

Omit

L-cystine

L-glutamic acid

Substitute

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L-cystine

L-glutamic acid

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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 P1048 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 to correct minor errors, omissions and to improve clarity. The issues considered are relatively minor in nature.

3. Documents incorporated by reference

None of the variations incorporate documents by reference.

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1048 includes one round of consultation following an assessment and the preparation of draft variations to a number of Standards and an associated assessment summary. A

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

Items [1], [3] to [6], [9] to [12] and [16] of the draft variation include amendments to correct minor errors and omissions to format, text and punctuation, as well to improve the clarity of some text.

6.2 Updating references

Items [2], [7], [8], [13] to [15] of the draft variation include amendments to correct cross

references.