

31 May 2024
292–24

Call for submissions – Proposal P1063

Code Revision (2024) - Added Sugar(s) Claims

Food Standards Australia New Zealand (FSANZ) has assessed a proposal prepared to amend the Australia New Zealand Food Standards Code to correct a typographical error in and remove a redundant term from the conditions for *no added sugar(s)* claims that were gazetted under Proposal P1062 - Defining added sugars for claims, 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 [current calls for public comment and how to make a submission](#).

All submissions on applications and proposals will be published on our website. We will not publish material that we accept as confidential. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1982*. Submissions will be published as soon as possible after the end of the submission period.

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](#).

For information on how FSANZ manages personal information when you make a submission, see FSANZ's [Privacy Policy](#).

Submissions should be made in writing; be marked clearly with the word 'Submission'. You also need to include the correct application or proposal number and name. Electronic submissions can be made by emailing your submission to submissions@foodstandards.gov.au. FSANZ also accepts submissions in hard copy to our Australia and/or New Zealand offices.

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) 27 June 2024

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 a submission or application and proposal processes can be sent to standards.management@foodstandards.gov.au.

Submissions in hard copy may be sent to the following addresses:

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Executive summary

Food Standards Australia New Zealand (FSANZ) has prepared Proposal P1063 to correct a typographical error in section S4—3 of the *Australia New Zealand Food Standards Code* (the Code) and to remove a redundant term from the Code.

The Code's conditions for making *no added sugar(s)* claims were recently amended as a result of Proposal P1062 - Defining added sugars for claims. The amendments made by that proposal resulted in a typographical error in section S4—3 of the Code. That section sets conditions for making *no added sugar(s)* claims.

Proposal P1063's purpose is to:

- amend section S4—3 of the Code to correct the typographical error; and
- remove the term '*sugars*' from the Code as that term is now redundant as a result of the amendments made by Proposal P1062.

FSANZ assessed Proposal P1063 and has prepared a draft variation. FSANZ invites submissions on the draft variation.

1 Introduction

1.1 The Proposal

Food Standards Australia New Zealand (FSANZ) prepared Proposal P1063 to correct a typographical error in section S4—3 of the *Australia New Zealand Food Standards Code* (the Code) and to remove a redundant term from the Code.

1.2 The current standards

The relevant standards for this Proposal are:

- Schedule 4 of the Code which contains section S4—3; and
- Standards 1.1.2, 1.2.7, 1.2.8, 2.6.2 and Schedule 4 which contain the redundant term.

1.3 Reasons for preparing the Proposal

Errors and issues are identified in the Code from time-to-time. This Proposal was prepared to correct a typographical error in the Code and to remove a redundant term from the Code.

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 in relation to this Proposal or the draft variation that has been prepared.

The reasons for the amendments proposed by the draft variation are set out below.

Proposed amendment to section S4—3

The Code's conditions for making *no added sugar(s)* claims were recently amended as a result of Proposal P1062 - Defining added sugars for claims (P1062). The amendments made by P1062 are subject to a transitional period which ends 13 December 2027.

These amendments resulted in a typographical error in section S4—3 of the Code.

Section S4—3 sets conditions for making no added sugar claims. The table to that section states that a no added sugar claim may be made if, among other things, the food for sale does not contain: (i) an added sugar as an added ingredient; *and* (ii) more sugars than 10 g/100 g if a solid food or 7.5 g/100 mL if a liquid food (emphasis added). The use of the word 'and' is a typographical error. The provision should provide that a claim may be made if the food complies with either condition (i) or condition (ii), not both.

The draft variation prepared by FSANZ will replace the word 'and' with the word 'or'.

The rationale for section S4—3 and the above-mentioned conditions is detailed in the approval report for P1062, which is available on the FSANZ website.

Other proposed amendments

Standards 1.1.2, 1.2.7, 1.2.8, 2.6.2 and Schedule 4 contain definitions for and use the term *sugars**. That term was required by and used in conjunction with the provisions of the Code that were amended by Proposal P1062. The effect of those amendments is that the term *sugars** is no longer required. Its removal from the Code will avoid any potential confusion as to the Code's meaning of 'sugar' or 'sugars'.

The draft variation prepared by FSANZ will remove the term and its definition from Standards 1.1.2, 1.2.7, 1.2.8, 2.6.2 and Schedule 4.

2.2 Risk management

FSANZ's assessment is that amendment of the Code in the manner proposed is the appropriate risk management response. The proposed amendments will ensure that the Code remains correct and current.

2.3 Risk communication

2.3.1 Consultation

Consultation is a key part of the FSANZ standards development process.

All calls for submissions are notified via the Notification Circular, and through FSANZ's social media channels and Food Standard News. Subscribers and interested parties are notified about the availability of reports for public comment.

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 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 in the subsequent development of the draft variation, FSANZ had regard to the following matters in section 59 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act):

2.4.1 Section 59

2.4.1.1 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 proposal.

FSANZ does not expect the amendments to impose any additional costs on the community, government or industry, compared to the status quo. This is because all amendments within

this proposal are relatively minor in nature, and are designed to maintain the Code.

All sectors (the community, government and industry) are likely to benefit from the Code being maintained, as it will be easier to interpret and enforce and therefore more likely to result in the outcomes intended.

Therefore, FSANZ expects that the likely benefit identified above outweighs any potential costs that may arise from this proposal.

FSANZ has not prepared a regulation impact statement (RIS) for this proposal. This is due to the minor impact of the proposal (as described above). This is in line with previous advice from the Office of Impact Analysis (OIA) on similar Code maintenance proposals (for example P1061 – Code Maintenance Proposal 2023, OIA reference 22-03854). Under changes to impact analysis requirements, FSANZ is not required to seek confirmation from the OIA that a RIS 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 the amendments proposed by the draft variation.

2.4.1.3 Any relevant New Zealand standards

The standards affected by the proposed amendments apply either in Australia only; or in both Australia and New Zealand. The proposed amendments do not amend any New Zealand only standards.

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 this 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, 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 Food Ministers Meeting (FMM).

3 Draft variation

The draft variation to the Code is at Attachment A and is intended to take effect on 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 P1063 – Code Revision (2024) - Added Sugar(s) Claims) 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 variation commences on the date specified in clause 3 of this variation.

Dated [To be completed by 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 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 P1063 – Code Revision (2024) – Added Sugar(s) Claims) 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 1.1.2 Definitions used throughout the Code

[1] Subsection 1.1.2—2(3) (paragraph (a) of the definition of *sugars*)

Repeal the paragraph, substitute:

- (a) in Standard 1.2.7, Standard 1.2.8 and Schedule 4—means monosaccharides and disaccharides; and

Standard 1.2.7

[2] Section 1.2.7—2 (Note 1, the definition of *sugars*)

Repeal the definition, substitute:

sugars, in Standard 1.2.7, Standard 1.2.8 and Schedule 4—means monosaccharides and disaccharides. (Elsewhere in the Code it has a different definition).

Standard 1.2.8

[3] Section 1.2.8—4 (Note 1, the definition of *sugars*)

Repeal the definition, substitute:

sugars, in Standard 1.2.7, Standard 1.2.8 and Schedule 4—means monosaccharides and disaccharides. (Elsewhere in the Code it has a different definition).

Standard 2.6.2

[4] Section 2.6.2—2 (Note 1, paragraph (a) of the definition of *sugars*)

Repeal the paragraph, substitute:

- (a) in Standard 1.2.7, Standard 1.2.8 and Schedule 4—means monosaccharides and disaccharides; and

Schedule 4

[5] Section S4—2 (Note, the definition of *sugars*)

Repeal the Note, substitute:

Note In this Code (see section 1.1.2—2):

***sugars*:**

- (a) in Standard 1.2.7, Standard 1.2.8 and Schedule 4—means monosaccharides and disaccharides; and
- (b) otherwise—means any of the following products, derived from any source:
 - (i) hexose monosaccharides and disaccharides, including dextrose, fructose, sucrose and lactose;
 - (ii) starch hydrolysate;
 - (iii) glucose syrups, maltodextrin and similar products;
 - (iv) products derived at a sugar refinery, including brown sugar and molasses;
 - (v) icing sugar;
 - (vi) invert sugar;
 - (vii) fruit sugar syrup;but does not include:

- (i) malt or malt extracts; or
- (ii) sorbitol, mannitol, glycerol, xylitol, polydextrose, isomalt, maltitol, maltitol syrup, erythritol or lactitol.

Note *Sugar* is defined differently—see section 1.1.2—3.

[6] Section S4—3 (table entry dealing with “Sugar or sugars”, descriptor of ‘No added’ in column 3, subparagraph (b)(i) in column 4)

Omit “an added sugar as an added ingredient; and”, substitute “an added sugar as an added ingredient; or”

Attachment B – Draft Explanatory Statement

EXPLANATORY STATEMENT

Food Standards Australia New Zealand Act 1991

Food Standards (Proposal P1063 – Code Revision (2024) – Added Sugar(s) Claims) Variation

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 P1063 to make minor amendments to the Code. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has prepared a draft variation – the *Food Standards (Proposal P1063 – Code Revision (2024) – Added Sugar(s) Claims) Variation*.

2. Variation will be a legislative instrument

If approved, the draft variation would be a legislative instrument for the purposes of the *Legislation Act 2003* (see section 94 of the FSANZ Act) and be publicly available on the Federal Register of Legislation (www.legislation.gov.au).

If approved, this instrument would not be subject to the disallowance or sunset provisions of the *Legislation Act 2003*. Subsections 44(1) and 54(1) of that Act provide that a legislative instrument is not disallowable or subject to sunset if the enabling legislation for the instrument (in this case, the FSANZ Act): (a) facilitates the establishment or operation of an intergovernmental scheme involving the Commonwealth and one or more States; and (b) authorises the instrument to be made for the purposes of the scheme. Regulation 11 of the *Legislation (Exemptions and other Matters) Regulation 2015* also exempts from sunset legislative instruments a primary purpose of which is to give effect to an international obligation of Australia.

The FSANZ Act gives effect to an intergovernmental agreement (the Food Regulation Agreement) and facilitates the establishment or operation of an intergovernmental scheme (national uniform food regulation). That Act also gives effect to Australia's obligations under an international agreement between Australia and New Zealand. For these purposes, the Act establishes the Authority to develop food standards for consideration and endorsement by the Food Ministers Meeting (FMM). The FMM is established under the Food Regulation Agreement and the international agreement between Australia and New Zealand, and consists of New Zealand, Commonwealth and State/Territory members. If endorsed by the FMM, the food standards on gazettal and registration are incorporated into and become part of Commonwealth, State and Territory and New Zealand food laws. These standards or instruments are then administered, applied and enforced by these jurisdictions' regulators as part of those food laws.

3. Purpose

The Authority prepared the draft variation to correct a typographical error in section S4—3 of the Code and to remove a redundant term from the Code.

4. Documents incorporated by reference

None of the variations incorporate documents by reference.

5. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1063 will include one round of public consultation following an assessment and the preparation of a draft variation and associated assessment summary.

A regulation impact statement (RIS) has not been prepared for this proposal. Under changes to impact analysis requirements, the Authority is not required to seek confirmation from the Office of Impact Analysis (OIA) that a RIS is not required. This is due to the amendments proposed in the draft variation are considered unlikely to have more than a minor regulatory impact. This is in line with previous advice from the OIA on similar proposals (for example Proposal P1061 – Code Maintenance Proposal 2023, OIA reference 22-03854).

6. Statement of compatibility with human rights

If approved, this instrument would be exempt from the requirements for a statement of compatibility with human rights as it would be a non-disallowable instrument under section 44 of the *Legislation Act 2003*.

7. Variation

Clause 1 of the draft variation provides that the name of the variation is the *Food Standards (Proposal P1063 – Code Revision (2024) – Added Sugar(s) Claims) Variation*.

Clause 2 of the draft variation provides that the Code is amended by the Schedule to the variation.

Clause 3 of the draft variation provides that the variation will commence on the date of gazettal of the instrument.

Items [1] to [6] of the Schedule to the draft variation will amend Standards and Schedules in the Code.

Item [1] of the Schedule will amend the definition of *sugars* in subsection 1.1.2—2(2) of the Code. The Item will remove the following words from paragraph (a) of that definition '(except where it appears with an asterisk as 'sugars*')'. These words and the term 'sugars*' were made redundant by amendments to the Code made by Proposal P1062 - Defining added sugars for claims. Those amendments in effect removed the provisions of the Code that used and relied on that term.

Item [2] of the Schedule will amend Note 1 to section 1.2.7—2 to remove the following words from the definition of *sugars* in that Note '(except where it appears with an asterisk as 'sugars*')'. The reason for this amendment is explained above.

Item [3] of the Schedule will amend Note 1 to section 1.2.8—4 to remove the following words from the definition of *sugars* in that Note '(except where it appears with an asterisk as 'sugars*')'. The reason for this amendment is explained above.

Item [4] of the Schedule will amend paragraph (a) of the definition of *sugars* in Note 1 to section 2.6.2—2 to remove the following words from that paragraph ‘(except where it appears with an asterisk as ‘sugars*’). The reason for this amendment is explained above.

Item [5] of the Schedule will repeal and replace the Note to section S4—2. The amendment made by the Item will replace the current definition of *sugars* in that Note with a new definition of *sugars*. The effect of the amendment will be to remove the words ‘(except where it appears with an asterisk as ‘sugars*’)’ from the definition. The amendment will also remove the Note to the definition of sugars which states ‘*Sugars** is relevant for claims about no added sugar.’

Item [6] of the Schedule will amend the table to section S4—3 of the Code to correct a typographical error in that table. The table to section S4—3 currently provides that a no added sugar claim may be made if, among other things, the food for sale does not contain: (i) an added sugar as an added ingredient; and (ii) more sugars than 10 g/100 g for solid food or 7.5 g/100 mL for liquid food (emphasis added). The use of the word ‘and’ is a typographical error. The provision should provide that a claim may be made if the food complies with either condition (i) or condition (ii), not both. The Item will therefore omit from that table the words “an added sugar as an added ingredient; and”, and replace them with the words “an added sugar as an added ingredient; or”.