

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 P1019 - Carbon Monoxide as a Processing Aid for Fish to ensure that carbon monoxide is not permitted to be used as a processing aid for fish. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft Standard.

Following consideration by the COAG Legislative and Governance Forum on Food Regulation¹, 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 a variation to the Code to clarify that Standard 1.3.3 does not permit the use of carbon monoxide as a processing aid for fish.

Clause 3 of Standard 1.3.3 provides that carbon monoxide may be used as a processing aid in any foods. However, this permission does not apply where carbon monoxide performs a technological function in the final food. That is, where it results in colouring or colour fixing in the final food. To avoid confusion, the Standard is varied to make it clear that carbon monoxide may not be used in the processing of fish of food to fix or alter the colour of the flesh of the fish. This reflects the current prohibition on this use of carbon monoxide set by Standard 1.3.1.

3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any 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 P1019 has included one round of public consultation following an assessment and the preparation of a draft Standard and associated report. Submissions were called for on 17 December 2012 for an eight-week consultation period.

¹ Previously known as the Australia and New Zealand Food Regulation Ministerial Council

A Regulatory Impact Statement (RIS) was not required because the proposed variations to Standard 1.3.3 are intended to clarify existing requirements.

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

Item [1.1] amends clause 3 to reflect the insertion of clause 3A into the Standard.

Item [1.2] inserts clause 3A into the Standard. Subclause 3A(1) provides that carbon monoxide must not be used in the processing of fish as a food where its use results in a change to or fixes the colour of the flesh of the fish. Subclause 3A(2) clarifies that the restriction imposed by subclause 3A(1) on the use of carbon dioxide during the processing of fish does not apply to the process of smoking. This recognises that carbon monoxide is a natural component of smoke. Subclause 3A(3) provides that the stock in trade exemption provided by subclause 1(2) of Standard 1.1.1 does not apply in relation to the variation made by this Item.

Item [1.3] updates the Standard's Table of Provisions to reflect the insertion of new clause 3A.