

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 P1026 to consider risk management options to mitigate the risk of allergic reactions in sensitive individuals to food containing lupin or lupin products. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft variation to Standard 1.2.3 and Schedule 10.

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 prepared a draft variation to amend Standard 1.2.3 and Schedule 10 to require declarations relating to the presence of lupin and/or lupin products in food; and declarations of the source name of any oil where the source of that oil is lupin. The purpose of the amendments is to mitigate the risk of allergic reactions in sensitive individuals to food containing lupin or lupin products due to the risk to public health and safety of unidentified lupin in food.

The draft variation also deals with an editorial correction to Note 1 to Schedule 10.

3. Documents incorporated by reference

The variations does 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 P1026 included one round of public consultation following an assessment and the preparation of a draft variation and associated assessment summary.

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 amends Standard 1.2.3.

Subitem [1.1] inserts section 1.2.3—1A into Standard 1.2.3 to provide transitional arrangements in relation to the amendment made to paragraph 1.2.3—4(1)(b). The effect of section 1.2.3—1A is that the usual stock-in-trade provision in section 1.1.1—9 of Standard 1.1.1 will not apply to that amendment. Instead, there will be a 12-month transitional period commencing on the Variation's date of commencement. During that transitional period, a food company will be able to comply with either:

- the Code as in force without the amendment to paragraph 1.2.3—4(1)(b); or
- the Code with the amendment to paragraph 1.2.3—4(1)(b),

but not a combination of both. When the transitional period expires, all products affected by the amendment to paragraph 1.2.3—4(1)(b), including stock-in-trade items, must comply with that amendment.

Subitem [1.2] inserts a new subparagraph into paragraph 1.2.3—4(1)(b) to include lupin in the list of foods or products of the foods, which if present in a food for sale, must have their presence declared.

The effect of this amendment is that any food for sale, which contains lupin or lupin products as an ingredient; an ingredient of a compound ingredient; a food additive or processing aid (or an ingredient or component of these), must have a declaration of the presence of lupin or lupin products on the label on a package of the food. Where the food is not required to bear a label (for example, when the food is unpackaged or is made and packed on the premises), the declaration of the presence of lupin or lupin products must be provided in labelling that either accompanies the food or is displayed in connection with the food; or provided to the purchaser on request.

The declaration will be required regardless of the amount of lupin or lupin products present in the food for sale.

Item 2 amends Schedule 10.

Subitem [2.1] corrects an editorial error in Note 1 of Schedule 10 by replacing the reference to "1.2.4—4(b)(i)" with a reference to "1.2.4—4(b)(iii)". This amendment commences on the date of gazettal of the variation.

Subitem [2.2] inserts section S10—1A into Schedule 10 to provide transitional arrangements in relation to the amendment to section S10—2. The effect of section S10—1A is that the usual stock-in-trade provision in section 1.1.1—9 of Standard 1.1.1 will not apply to that amendment. Instead, there will be a 12 month transitional period commencing on the Variation's date of commencement. During that transitional period, a food company will be able to comply with either:

- the Code as in force without the amendment to section S10—2; or
- the Code with the amendment to section S10—2,

but not a combination of both. When the transitional period expires, all products affected by the amendment to section S10—2, including stock-in-trade items, must comply with that amendment.

Subitem [2.3] amends the table to section S10—2 by including lupin in subparagraph (ii) in paragraph (a) under the entry