

Explanatory Statement – Consequential amendments

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 M1019 to consider amending the Code to address inconsistencies between the foods and classes of foods and crop groups listed in Schedule 22 of the Code and those adopted by the Australian Pesticides and Veterinary Medicines Authority (APVMA) and by the joint Food and Agriculture Organization and World Health Organization Codex Alimentarius Commission (Codex). The Authority considered the Proposal in accordance with Division 2 of Part 3 of the FSANZ Act and has approved a draft variation to the Code.

Following consideration by the Food Ministers' Meeting (formerly 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. Variation will be a legislative instrument

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

This instrument is not subject to the disallowance or sunseting 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 sunseting 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 sunseting 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 purpose of the *Food Standards (Proposal M1019 – Review of Schedule 22 – Foods and classes of foods – Consequential Amendments) Variation* is to make consequential amendments to the Code that will be required by the *Food Standards (Proposal M1019 – Review of Schedule 22 – Foods and classes of foods) Variation*. The latter approved draft variation will amend Schedule 22 of the Code to align closer the foods and classes of foods and crop groups listed in that Schedule with those adopted by the Codex Alimentarius and by the Australian Pesticides and Veterinary Medicines Authority. As Schedule 22 is also referenced by other sections of the Code, consequential amendments to other provisions of the Code are required to account for the amendments to Schedule 22.

4. Documents incorporated by reference

The variations in this instrument do not adopt any 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 M1019 included one round of public consultation following an assessment and the preparation of draft variations and associated reports. Submissions were called for nationally and internationally (via a World Trade Organisation notification) on 4 April 2022 for a four-week consultation period. The Authority has also undertaken earlier targeted consultation with stakeholders in 2017 and 2019 which informed its assessment and preparation of the draft variations.

A Regulation Impact Statement (RIS) was not required because the approved draft variation is likely to have a minor impact on business and individuals. The Office of Best Practice Regulation (OBPR) advised that a RIS was not required as the impacts of the Proposal were assessed to be below the required threshold (OBPR correspondence dated 19 May 2021, reference 44087).

6. Statement of compatibility with human rights

The instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 44 of the *Legislation Act 2003*.

7. Variation

Item [1] of the Schedule to the Variation amends Standard 1.4.1 by repealing and replacing subsection 1.4.1—2(2). The new subsection provides that, in Standard 1.4.1 and in Schedule 19, a reference to 'vegetables' is to: a vegetable described in Schedule 22; and to sweet corns as described in Schedule 22. The new subsection also provides that a reference to any other particular food is to that food as described in Schedule 22. The amendment takes account of the proposed changes to Schedule 22 in which sweet corns are no longer classified as 'vegetables'. Instead, sweet corns will fall in the group 'Cereal grains' within the class 'Grasses'. The amendment ensures that a limit currently prescribed by Standard 1.4.1 in relation to sweet corns (corn-on-the-cob, corn kernels and baby corn), as a 'vegetable' will continue to apply once the proposed changes to Schedule 22 take effect.

Item [2] of the Schedule to the Variation amends Standard 1.5.3 by replacing the definition of vegetables in subsection 1.5.3—3(2) (definition of vegetables) with a new definition that provides that, for the purposes of section 1.5.3—3, the term ‘vegetable’ includes but is not limited to: sweet corns as described in Schedule 22; and a vegetable described in Schedule 22. The amendment takes account of the above-mentioned changes to Schedule 22 in which sweet corns will no longer be classified as ‘Vegetables’ but will instead be classified ‘Cereals’ within the class ‘Grasses’. The amendment ensures that the permission currently provided by section 1.5.3—3 for irradiation of ‘vegetables’ will continue to apply to sweet corns once the changes to Schedule 22 take effect.

Item [3] of the Schedule to the Variation amends Standard 1.5.3 by replacing subsection 1.5.3—4(3) with a new subsection. The new subsection 1.5.3—4(3) provides that, for the purposes of section 1.5.3—4, the term ‘herbs and spices’ includes but is not limited to: chives; and a herb or spice described in Schedule 22. The amendment takes account of changes to Schedule 22 which classify chives as a vegetable and not as a herb. The amendment avoids any doubt that the permission currently provided by section 1.5.3—4 for irradiation of ‘herbs and spice’ will continue to apply to chives once the changes to Schedule 22 take effect.

Item [4] of the Schedule to the Variation amends Schedule 5 by inserting the words ‘other than sweet corns’ after the phrase “Schedule 22’ in subsection 5—4(2). Subsection 5—4(2) currently provides that ‘cereal grains mentioned as a class of food in Schedule 22’ cannot be used for scoring ‘Fruit and vegetable points’ (V points) for the purposes of Schedule 5. The amendment takes account of the changes to Schedule 22 in which sweet corns will be classified as a ‘Cereal’ instead of a ‘Vegetable’. The amendment ensures Sweet corns can continue to be used for scoring V points in accordance with subsection 5—4(2).

Item [5] of the Schedule to the Variation amends Schedule 19 by inserting the text ‘- except sweet corns’ after the words “Schedule 22’ in the table to subsection 19—4. The amendment takes account of the changes to Schedule 22 in which sweet corns is classified as a ‘Cereal’ instead of a ‘Vegetable’. The amendment ensures that the maximum limit imposed by Standard 1.4.1 and Schedule 19 for the presence of arsenic in ‘Cereal grains and milled cereal products (as specified in Schedule 22)’ will continue to not apply to sweet corns once the changes to Schedule 22 take effect.

Item [6] of the Schedule to the Variation amends Schedule 19 by adding two commodities to the entry for ‘cadmium’ in the table to subsection 19—4. The entry currently sets a maximum limit of 0.1 mg/kg for the presence of cadmium in ‘Leafy vegetables (as specified in Schedule 22)’. The commodities added by the amendment are ‘Amaranth, grain’ and ‘Chinese cabbage (Pe-tsai)’. Both commodities are currently classified by Schedule 22 as ‘vegetables’. The changes to Schedule 22 will move both commodities to different food groups. The amendment ensures that the limit currently prescribed by Standard 1.4.1 in relation to both commodities (ie, as a vegetable) continues to apply once the changes to Schedule 22 take effect.

Item [7] of the Schedule to the Variation amends Schedule 19 by adding the text ‘(except sweet corns)’ after the word ‘Cereals’ in the entry for ‘Lead’ in the table to subsection 19—4. The entry currently sets a maximum limit of 0.2 mg/kg for the presence of lead in ‘Cereals, pulses and legumes’. The amendment takes account of the changes to Schedule 22 in which sweet corns will be classified as a ‘Cereal’ instead of a ‘Vegetable’. The amendment ensures that the maximum limit imposed by Standard 1.4.1 and Schedule 19 on lead present in ‘Cereals’ will not apply to sweet corns once the changes to Schedule 22 take effect. The amendment made by Item [8] below will maintain the current maximum lead level for sweet corns.

Item [8] of the Schedule to the Variation amends Schedule 19 by adding a maximum limit for sweet corn to the entry for 'Lead' in the table to subsection 19—4. The entry currently sets a maximum limit of 0.1 mg/kg for the presence of lead in 'Vegetables (except brassicas)'. This limit currently applies to sweet corns as Schedule 22 currently classifies sweet corns as a Vegetable. The amendment ensures that that limit will continue to apply to sweet corns once the changes to Schedule 22 take effect and sweet corns are classified as 'cereals'.

Item [9] of the Schedule to the Variation amends section S20—3 of Schedule 20 by omitting the food commodities and associated Maximum Residue Limits for each of the chemicals listed. This amendment, together with the amendment made by Item [10] below, is to maintain existing commodity Maximum Residue Limits once the changes to Schedule 22 take effect and to align commodity names with those changes.

Item [10] of the Schedule to the Variation section S20—3 of Schedule 20 by inserting the food commodities and associated Maximum Residue Limits in alphabetical order for each of the chemicals listed. This amendment, together with the amendment made by Item [9] above, is to maintain existing commodity Maximum Residue Limits once the proposed changes to Schedule 22 take effect and to align commodity names with those changes.

Item [11] of the Schedule to the Variation amends Schedule 21 by adding the text '(except kumquats)' after the words 'Citrus fruits' wherever appearing in section S21—3. The changes to Schedule 22 will classify kumquats as a 'Citrus fruit'. The amendment maintains the existing limits set by section S21—3 for kumquats.

Item [12] of the Schedule to the Variation amends Schedule 21 by adding the text '(except sweetcorns)' after the words 'Cereal grains' wherever appearing in section S21—3. The changes to Schedule 22 will classify Sweet corns as a 'Cereal'. The amendment maintains the existing limits set by section S21—3 for Sweet corns.

Item [13] of the Schedule to the Variation amends Schedule 21 by replacing the words 'Brassica (cole or cabbage) vegetables, Head cabbages, Flowerhead brassicas' in section S21—3 with 'Brassica vegetables (except Brassica leafy vegetables)'. This to align with the changes to Schedule 22. All existing extraneous residue limits are maintained (see Item [14] below).

Item [14] of the Schedule to the Variation amends section S21—3 of Schedule 21 by inserting in that section's list of commodities and extraneous residue limits for the Agvet chemical Aldrin and Dieldrin an extraneous residue limit of E0.01 for 'Boccoli, Chinese'. This amendment maintains the existing extraneous residue limit for this agevt chemical in this commodity once the changes to Schedule 22 take effect.

Item [15] of the Schedule to the Variation amends section S21—3 of Schedule 21 by inserting in that section's list of commodities and extraneous residue limits for the Agvet chemical chlordane an extraneous residue limit of E0.02 for 'Sweet corns'. This amendment maintains the existing extraneous residue limit for this agevt chemical in this commodity once the changes to Schedule 22 take effect.

Item [16] of the Schedule to the Variation amends section S21—3 of Schedule 21 by inserting in that section's list of commodities and extraneous residue limits for the Agvet chemical DDT an extraneous residue limit of E1 for 'Sweet corns'. This amendment maintains the existing extraneous residue limit for this agevt chemical in this commodity once the changes to Schedule 22 take effect.

Item [17] of the Schedule to the Variation amends section S21—3 of Schedule 21 by inserting in that section's list of commodities and extraneous residue limits for the Agvet

chemical heptachlor an extraneous residue limit of E0.05 for 'Sweet corns'. This amendment maintains the existing extraneous residue limit for this agvet chemical in this commodity once the changes to Schedule 22 take effect.

Item [18] of the Schedule to the Variation amends section S21—3 of Schedule 21 to correct a typographical error in that section's list of commodities and extraneous residue limits for the Agvet chemical lindane. The amendment replaces references to Schedules '1 and 2' with references to Schedules '21 and 22'.

Item [19] of the Schedule to the Variation amends section S21—3 of Schedule 21 by inserting in that section's list of commodities and extraneous residue limits for the Agvet chemical lindane an extraneous residue limit of E2 for 'Sweet corns'. This amendment maintains the existing extraneous residue limit for this agvet chemical in this commodity once the changes to Schedule 22 take effect.

8. Commencement of the Variation

Clause 3 of the Variation provides that the instrument shall commence on the later of:

- (a) the day after the instrument is registered on the Federal Register of Legislation; and
- (b) the day the *Food Standards (Proposal M1019 – Review of Schedule 22 – Foods and classes of foods) Variation* commences.

However, clause 3 also provides that the instrument shall not commence at all if the event mentioned in paragraph (b) does not occur.

