

EXPLANATORY STATEMENT

Food Standards Australia New Zealand Act 1991

Food Standards (Proposal M1021 – Maximum Residue Limits (2022) – Schedule 22) 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 M1021 to consider making certain amendments in Schedules 20 and 22 of the Code, which are related to maximum residue limits (MRLs) for residues of specific agricultural and veterinary (agvet) chemicals that may occur in food. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved two draft variations – the *Food Standards (Proposal M1021 – Maximum Residue Limits (2022) – Schedule 22) Variation* and the *Food Standards (Proposal M1021 – Maximum Residue Limits (2022) – Schedule 20) Variation*.

This Explanatory Statement relates to the *Food Standards (Proposal M1021 – Maximum Residue Limits (2022) – Schedule 22) Variation* (the approved draft variation).

Following consideration by the Food Ministers' Meeting (FMM), section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the approved draft variation.

2. Variation is 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 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 has approved a draft variation to Schedule 22 of the Code to correct spelling and typographical errors; and reduce any ambiguity for some food commodities, groups or subgroups referred to in that Schedule.

The amendments proposed to Schedule 22 are related to Schedule 20 as follows.

Paragraphs 1.4.2—3(2)(a) provides that, when calculating the amount of a permitted residue in a food, the amount to calculate is the amount of that residue that is in the portion of the commodity that is specified in Schedule 22. Subsection 1.4.2—3(4) provides that in Standard 1.4.2, and Schedule 20 and Schedule 21, a reference to a particular food is to the food as described in Schedule 22.

4. Documents incorporated by reference

The approved draft variation does not incorporate 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 M1021 included one round of public consultation following an assessment, and the preparation of two draft variations and associated assessment summary. A call for submissions (including the draft variations) was open for a six-week period in Australia, with a coinciding 60 day notification period to the WTO.

Changes have been made to the Impact Analysis requirements by the Office of Impact Analysis (OIA)^[1]. Impact analysis is no longer required to be finalised with the OIA. Prior to these changes, the OIA provided FSANZ with a standing exemption (ID 12065) from preparing a regulation impact statement for MRL proposals and applications, due to them being machinery in nature. Additionally, in 2021, the then OBPR advised FSANZ that the impacts of updating Schedule 22 to align with newer Codex food classifications and increasing the clarity around what specific MRLs in Schedule 20 apply to each food, as being below the threshold for a RIS (ID 44087). Under the new approach, FSANZ's assessment is that a regulatory impact statement is not required for this proposal.

6. 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 44 of the *Legislation Act 2003*.

7. Variation

Clause 1 of the variation provides that the name of the variation is the *Food Standards (Proposal M1021 – Maximum Residue Limits (2022) – Schedule 22) Variation*.

^[1]. Formerly known as the Office of Best Practice Regulation (OBPR)

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

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

Item [1] of the Schedule to the variation would amend Schedule 22 by making the following amendments to the table to subsection S22—5(7).

Sub-item [1.1] of the Schedule to the variation would repeal the entry for item 1 of the table, and substitute it with a new entry for that item.

Item 1 of the table relates to the class of food ‘Fruit’. The new entry for ‘Fruit’ contains the following amendments:

- the spelling of ‘Grapefuits’ is changed to ‘Grapefruit’ in the subgroup ‘Pummelos and Grapefuits’ of the group ‘Citrus’;
- ‘large size cultivars’ is added to the commodity ‘Tangelos’ for the subgroup ‘Pummelos and Grapefruit’ of the group ‘Citrus’;
- ‘Tangelos, small and medium cultivar sizes’ is added, in alphabetical order, as a commodity for the ‘Mandarins’ subgroup of the group ‘Citrus’;
- the ‘s’ is removed from the commodity ‘Mandarins’ for the subgroup ‘Mandarins’ of the group ‘Citrus’;
- the bottom border line under the group ‘Stone fruits’ is removed;
- the top border line above the subgroup ‘Assorted tropical and sub-tropical fruits – edible peel – medium to large’ in the group ‘Assorted Tropical and sub-tropical fruit—edible peel’ is removed;
- ‘fruit’ is removed from the commodity ‘Elephant fruit apple’ for the ‘Assorted tropical and sub-tropical fruits - inedible rough or hairy peel – large’ subgroup of the group ‘Assorted tropical and sub-tropical fruits - inedible peel’.

Sub-item [1.2] of the Schedule to the variation would repeal the entry for item 2 of the table, and substitute it with a new entry for that item.

Item 2 of the table relates to the class of food ‘Vegetables’. The new entry for ‘Vegetables’ contains the following amendments:

- ‘Radish leaves’ is added, in alphabetical order, as a commodity for the subgroup ‘Brassica Leafy vegetables’ of the group ‘Leafy vegetables’;
- the top border line in columns 1 and 2, above the group ‘Fruiting vegetables, other than Cucurbits’ is removed;
- ‘Radish leaves (including radish tops)’ is removed as a commodity for the subgroup ‘Leaves of root and tuber vegetables’ of the group ‘Leafy vegetables’;
- ‘Beans (dry)’ is added, in alphabetical order, as a commodity for the subgroup ‘Dry Beans’ of the group ‘Pulses’;
- ‘Ivy gourd’ is added, in alphabetical order, as a commodity for the subgroup ‘Fruiting vegetables, Cucurbits – Cucumbers and Summer squashes’ of the group ‘Fruiting vegetables, Cucurbits’;
- ‘Ivy gourd’ is removed as the commodity for the subgroup ‘Leaves of trees, shrubs and vines’ of the group ‘Leafy vegetables’;
- the commodity ‘Ivy gourd’ is replaced with the commodity ‘Ivy gourd leaves’ for the subgroup ‘Leaves of Cucurbitaceae’ of the group ‘Leafy vegetables’;
- a top border line from column 3 to 5 is inserted above the group ‘Stalk and stem vegetables’;

- the subgroup 'Pepper and pepper-like commodities' is replaced with the subgroup 'Peppers' in the group 'Fruiting vegetables, other than Cucurbits';
- the subgroup 'Eggplant and eggplant-like commodities' is replaced with the subgroup 'Eggplants' in the group 'Fruiting vegetables, other than Cucurbits'.

Sub-item [1.3] of the Schedule to the variation would repeal the entry for item 4 of the table to subsection S22—5(7), and substitute it with a new entry for that item.

Item 4 of the table relates to the class of food 'Nuts, seeds and saps'. The new entry for 'Nuts, seeds and saps' contains the following amendments:

- the commodity 'All commodities from the groups small seed oilseeds, sunflower seeds, cottonseed' is replaced with the commodity 'All commodities from the subgroups small seed oilseeds, sunflower seeds, cotton seed' for the 'Oilseeds' subgroup of the group 'Oilseeds and oilfruits';
- the word 'Cottonseed', wherever occurring, is replaced with 'Cotton seed'.
- The strikethrough on the 's' is removed from the commodity 'Beech nuts' for the Tree nuts group.