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228-23

Call for submissions – Proposal P1061

Code Maintenance Proposal 2023

Food Standards Australia New Zealand (FSANZ) has assessed a proposal prepared to make relatively minor amendments, including; the correction of typographical errors, omissions, inconsistencies and formatting issues; updating references; and amending editorial Notes to reflect the New Zealand Government’s decision to require mandatory addition of folic acid to all wheat flour sold as suitable for bread-making in New Zealand, 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) 3 March 2023

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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Supporting document

The following document which informed the assessment of this Proposal is available on the FSANZ website:

SD List of proposed amendments – Proposal P1061

Executive summary

Food Standards Australia New Zealand (FSANZ) has prepared Proposal P1061 to amend the *Australia New Zealand Food Standards Code* (the Code) to:

- correct typographical errors, omissions, inconsistencies and formatting issues;
- update references; and
- change editorial Notes to reflect the New Zealand Government's decision to require the mandatory addition of folic acid to all wheat flour that is sold as suitable for bread-making in New Zealand in accordance with Standard 2.1.1 of the Code.

The proposed amendments in the draft variation are relatively minor in nature. No potential public health and safety concerns have been identified.

1 Introduction

1.1 The Proposal

Proposal P1061 was prepared to make a range of relatively minor amendments to the *Australia New Zealand Food Standards Code* (the Code) including the correction of typographical errors, omissions, inconsistencies and formatting issues; updating references; and changing editorial Notes to reflect the New Zealand Government's decision to require the mandatory addition of folic acid to all wheat flour that is sold as suitable for bread-making in New Zealand in accordance with Standard 2.1.1 of the Code from 13 August 2023.

1.2 The current standard

Standards 1.1.1, 1.1.2, 1.3.3, 2.1.1, 2.2.3, 2.9.1, 3.2.1, 3.2.2, 4.1.1, 4.2.1, 4.2.2, 4.2.3, and 4.2.8; and Schedules 3, 14, 18, 20 and 25, of the Code would be affected by the proposed amendments.

1.3 Reasons for preparing the Proposal

Relatively minor errors and issues are identified in the Code from time-to-time. This Proposal was prepared to resolve them.

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. As explained below, all of the issues considered are relatively minor in nature.

The reasons for the proposed variations are outlined in the supporting document to this report (SD1).

2.2 Risk management

The proposed amendments will ensure that the Code remains current; and that typographical errors, omissions and inconsistencies are addressed. As mentioned above, the proposed amendments are relatively minor in nature and no potential public health and safety concerns have been identified.

As explained above, the New Zealand Government has taken action under New Zealand food laws to require that, from 13 August 2023, all wheat flour sold as suitable for bread making in New Zealand contain folic acid in accordance with section 2.1.1—5 of the Code. This will require amendment of Note 1 to section 1.1.1—3 of the Code and removal of the Note to section 2.1.1—5 of the Code to reflect that decision. The Notes currently explain that section 2.1.1—5 does not apply in New Zealand. A new Note would also be added at the end of paragraph 2.1.1—5(b) clarifying that fortification with thiamin in bread flour remains applicable in Australia only.

2.3 Risk communication

2.3.1 Consultation

Consultation is a key part of the standards development process for Food Standards Australia New Zealand (FSANZ).

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 relatively minor corrections and updates 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 the subsequent development of a food regulatory measure, FSANZ has 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

As all the proposed variations are relatively minor in nature, FSANZ considers it likely that there would be no or low cost benefit issues.

If the amendments are not made, errors, omissions, inconsistencies and out of date references would continue to exist, and the Code will retain provisions known to be inadequate.

The Australian Government's Office of Impact Analysis, formerly known as the Office of Best Practice Regulation (OBPR), in an email on 22.12.22 (reference ID OBPR22-03854) advised that, on the basis of information provided by FSANZ, Proposal P1061 is unlikely to have a more than minor regulatory impact. As such, the preparation of an Impact Analysis is not required for this Proposal.

2.4.1.2 Other measures

There are no other measures (whether available to FSANZ or not) that would be more cost-effective than a food regulatory measure varied as a result of the Proposal.

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.

As explained above, the New Zealand Government has already taken action under its foods law to require that, from 13 August 2023, all wheat flour sold as suitable for bread making in New Zealand must contain folic acid in accordance with section 2.1.1—5 of the Code. In order to reflect this change, amendment of Note 1 to section 1.1.1—3 of the Code and removal of the Note to section 2.1.1—5 of the Code are required. A new Note would be also added at the end of paragraph 2.1.1—5(b) clarifying that fortification with thiamin in bread flour remains applicable in Australia only.

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 the 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, the proposed amendments are relatively minor in nature and 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 Forum on Food Regulation.

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 P1061– Code Revision (2023)) 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 P1061 – Code Revision (2023)) 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 1.1.1 – Structure of the Code and general provisions

[1] Section 1.1.1—3 (Note 1, subparagraph (iii))

Repeal the subparagraph, substitute

(iii) section 2.1.1—5 (requirement for thiamin in bread);

[2] Paragraph 1.1.1—5(1)(b)

Omit “2019”, substitute “2022”

Standard 1.1.2 Definitions used throughout the Code

[3] Subsection 1.1.2—2(3) (subparagraph (a)(i) of the definition of *permitted flavouring substance*)

Repeal the subparagraph, substitute

(i) Generally Recognised as Safe (GRAS) lists of flavouring substances published by the Flavour and Extract Manufacturers' Association of the United States from 1960 to 2022 (edition 30);

Standard 1.3.3 Processing aids

[4] Section 1.3.3—13

Omit “anti-microbial” wherever occurring, substitute “antimicrobial”

Standard 2.1.1 Cereal and cereal products

[5] Section 2.1.1—5 (note)

Repeal the note.

[6] At the end of paragraph 2.1.1—5(b)

Add:

Note Paragraph 2.1.1—5(b) applies in Australia only.

Standard 2.2.3 Fish and fish products

[7] Note 3

Repeal the note, substitute:

This Code does not define specific names for fish. The Australian Fish Names Standard (AS 5300) provides guidance on standard fish names to be used in Australia.

1. Hard copies of the Standard are available at https://infostore.saiglobal.com/en-au/standards/as-5300-2019-111200_saig_as_as_2741382/.
2. A searchable database of Australian Standard Fish Names is available at <http://www.fishnames.com.au>.

3. New Zealand common, Maori, and scientific names for fish species are available at <https://www.mpi.govt.nz/food-business/seafood-processing-storage-testing/fish-names-labelling-requirements/>.

Standard 2.9.1 Infant formula products

[8] Paragraph 2.9.1—24(1)(cb)

Repeal the paragraph, substitute:

(cb) the abbreviations ‘HMO’ or ‘HiMO’ or any abbreviation having the same or similar effect; or

Standard 3.2.1 Food Safety Programs

[9] Contents

Repeal:

Division 2 – Food safety programs

3 General food safety program requirements

4 Auditing of food safety programs

Content of food safety programs

6 Fund raising events

substitute:

Division 2 – Food safety programs

3 General food safety program requirements

4 Auditing of food safety programs

5 Content of food safety programs

6 Fund raising events

Standard 3.2.2 Food Safety Practices and General Requirements

[10] Subclause 4(4)

Repeal the subclause.

Standard 4.1.1 Primary Production and Processing Standards – Preliminary Provisions

[11] Clause 5 (editorial note)

Omit “AQIS”, substitute “DAFF”.

Standard 4.2.1 Primary Production and Processing Standard for Seafood

[12] Paragraph 16(2)(b)

Omit:

Fish and Fish Products Orders (2005)

submit:

Export Control (Fish and Fish Products) Rules 2021

Standard 4.2.2 Production and Processing Standard for Poultry Meat

[13] Clause 14 (editorial note)

Omit:

Australian Drinking Water Guidelines 2004

substitute:

Australian Drinking Water Guidelines 2011

Standard 4.2.3 Production and Processing Standard for Meat

[14] Clause 4 (Table 2, editorial note)

Omit:

Export Control (Meat and Meat Products) Orders 2005

substitute:

Export Control (Meat and Meat Product) Rules 2021

Standard 4.2.8 Primary Production and Processing Standard for Leafy Vegetables

[15] Section 4.2.9—8 (section heading)

Omit “4.2.9—8”, substitute “4.2.8—8”

Schedule 3 Identity and purity

[16] Subparagraph S3—2(1)(b)(xiv)

Repeal the subparagraph, substitute:

- (xiv) FAO JECFA Monographs 23 (2019);
- (xv) FAO JECFA Monographs 25 (2020);
- (xvi) FAO JECFA Monographs 26 (2021); or

[17] Paragraph S3—2(1)(c)

Repeal the paragraph, substitute:

- (c) United States Pharmacopeial Convention (2022) Food chemicals codex. 13th ed, United States Pharmacopeial Convention, Rockville, MD; or

[18] Paragraph S3—3(j)

Repeal the paragraph, substitute:

- (j) the International Oenological Codex (2022), Organisation Internationale de la Vigne et du Vin (OIV).

[19] Sections S3—13 (heading), S3—21 (heading), S3—22 (heading)

Omit “sp.”, substitute “sp.”

[20] Subparagraphs S3—14(2)(f)(iv) and S3—41(q)(v)

Omit “*listeria*”, substitute “*Listeria*”

[21] Subparagraphs S3—14(2)(f)(vi) and S3—41(q)(vi)

Omit “*bacillus cereus*”, substitute “*Bacillus cereus*”

[22] Subparagraphs S3—18(i)(iv), S3—26(l)(iii), S3—27(2)(d)(v) and S3—41(q)(i)

Omit “*salmonella*”, substitute “*Salmonella*”

[23] Subparagraphs S3—26(l)(i) and S3—44(2)(h)(i)

Omit “standard plate count”, substitute “*SPC”

[24] Subparagraphs S3—27(2)(d)(iv) and S3—39(A)(d)(ii)

Omit “*E. coli*”, substitute “*Escherichia coli*”

[25] Subparagraph S3—41(q)(iii)

Omit “enterobacteriaceae”, substitute “*Enterobacteriaceae*”

[26] Subparagraph S3—41(q)(iv)

Omit “*cronobacter*”, substitute “*Cronobacter*”

[27] Paragraph S3—42(n)

Repeal the paragraph, substitute:

- (n) microbiological:
 - (i) *Escherichia coli*—negative to test;
 - (ii) *Salmonella* spp.—negative to test;
 - (iii) *Listeria monocytogenes*—negative to test.

[28] Paragraph S3—43(a)

Repeal the paragraph, substitute:

- (a) CAS number—2205009-17-0;

[29] Subparagraph S3—44(2)(h)(iii)

Omit “*Escherichia coli*”, substitute “*Escherichia coli*”

Schedule 14 Technological purposes performed by substances used as food additives

[30] Section S14—2 (table entry “Preservative”, column 2)

Omit:

anti-microbial preservative, anti-mycotic agent,

substitute:

antimicrobial preservative, antimycotic agent,

Schedule 18 Processing aids

[31] Subsection S18—4(2) (note 3)

Repeal the note, substitute:

Note 3 Some enzyme sources identified in this section are protein engineered. If such an enzyme is used as a processing aid, the resulting food may have as an ingredient a food produced using gene technology, and the requirements relating to foods produced using gene technology will apply—see Standard 1.2.1 and Standard 1.5.2. The relevant enzymes are the following:

- Endo-1,4-beta-xylanase, protein engineered variant;
- Glycerophospholipid cholesterol acyltransferase, protein engineered variant;
- Lipase, triacylglycerol, protein engineered variant;
- Maltotetrahydrolase, protein engineered variant.

[32] Subsection S18—9(3) (table entry for “1-Hydroxyethylidene-1, 1-diphosphonic acid”, column 2)

Omit “anti-microbial”, substitute “antimicrobial”

[33] Subsection S18—9(3) (table, column 2)

Omit “Anti-microbial” wherever occurring, substitute “Antimicrobial”

[34] Section S18—11

Omit “anti-microbial” wherever occurring, substitute “antimicrobial”

Schedule 20 Maximum residue limits

[35] Section S20—3 (table entries for Agvet chemicals: Amisulbrom, Cyproconazole, Diafenthiuron, Dinotefuran, Metalaxyl and Tetraniliprole)

Omit:

All other foods except animal commodities

substitute:

All other foods except animal food commodities

[36] Section S20—3 (table entry for Agvet chemical: Bifenazate)

Omit:

Peach	2
Peppers, chili	3
Podded pea (young pods) (snow and sugar snap)	T1
Poultry, edible offal of	*0.01
Poultry meat	*0.01
Plums (including prunes)	0.5
Pome fruits [except Persimmon, Japanese]	2

substitute:

Peach	2
Peppers, chili	3
Plums (including prunes)	0.5
Podded pea (young pods) (snow and sugar snap)	T1
Poultry, edible offal of	*0.01
Poultry meat	*0.01
Pome fruits [except Persimmon, Japanese]	2

[37] Section S20—3 (table entry for Agvet chemical: Buprofezin)

Omit:

Oilseed (except cotton seed)

substitute:

Oilseeds [except cotton seed]

[38] Section S20—3 (table entries for Agvet chemicals: Cyflumetofen and Fenazaquin)

Omit:

Grapes (except dried)

substitute:

Grapes [except dried]

[39] Section S20—3 (table entry for Agvet chemical: Cyprodinil)

Omit:

Peppers, chili (except dried)

substitute:

Peppers, chili [except dried]

[40] Section S20—3 (table entry for Agvet chemical: Didecyldimethylammonium chloride)

Omit:

– inedible peel (except tamarillo (tree tomato))

substitute:

– inedible peel [except tamarillo (tree tomato)]

[41] Section S20—3 (table entry for Agvet chemical: Ethephon)

Omit:

All other foods except animal commodities	0.01
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substitute:

All other foods except animal food commodities	0.1
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[42] Section S20—3 (table entry for Agvet chemical: Fludioxonil)

[42.1] Omit:

Bulb onions (= garlic; onion, bulb; shallots)

substitute:

Bulb onions (garlic; onion, bulb; shallots)

[42.2] Omit:

Peppers, chili (except dried)

substitute:

Peppers, chili [except dried]

[43] Section S20—3 (table entry for Agvet chemical: Fluoxapiprolin)

[43.1] Omit the chemical listed and all entries for the chemical

[43.2] Insert in alphabetical order, the following chemical, its corresponding residue definition(s), food commodities and associated MRLs.

Agvet chemical: Fluoxapiprolin

Permitted residue: Fluoxapiprolin

Dried grapes (= currants, raisins and sultanas)	0.5
Edible offal (mammalian)	*0.01
Eggs	*0.01
Grapes	0.15
Meat (mammalian) [in the fat]	*0.01
Milks	*0.01
Poultry, edible offal of	*0.01
Poultry meat [in the fat]	*0.01

[44] Section S20—3 (table entry for Agvet chemical: Fluxapyroxad)

Omit:

Berries and other small fruit (except grapes)

substitute:

Berries and other small fruit [except grapes]

[45] Section S20—3 (table entry for Agvet chemical: Imazamox)

Omit:

All other foods except animal food commodities'

substitute:

All other foods except animal food commodities

[46] Section S20—3 (table entry for Agvet chemical: Kresoxim-methyl)

Omit:

Barley, similar grains, and pseudocereals with husks (=barley; buckwheat; oats)

substitute:

Barley, similar grains, and pseudocereals with husks (barley; buckwheat; oats)

[47] Section S20—3 (table entries for Agvet chemicals: Maldison and Trichlorfon)

Omit:

(except jujube, Chinese)

substitute:

[except jujube, Chinese]

[48] Section S20—3 (table entry for Agvet chemical: Niclosamide)

Omit:

eat (mammalian)

substitute:

Meat (mammalian)

[49] Section S20—3 (table entry for Agvet chemical: Phosphorous acid)

Omit:

Root and tuber vegetables (except potato)

substitute:

Root and tuber vegetables [except potato]

[50] Section S20—3 (table entry for Agvet chemical: Propyzamide)

Insert:

Pulses	*0.01
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[51] Section S20—3 (table entry for Agvet chemical: Prosulfocarb)

Insert:

Pulses	*0.01
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[52] Section S20—3 (table entry for Agvet chemical: Prothioconazole)

Insert:

Pulses	T0.7
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[53] Section S20—3 (table entry for Agvet chemical: Pydiflumetofen)

[53.1] Omit:

Leafy vegetables (except brassica leafy vegetables) [except witloof chicory]

substitute:

Leafy vegetables [except brassica leafy vegetables; witloof chicory]

[53.2] Omit the following food commodities and their associated MRLs:

Aquatic root and tuber vegetable	T0.05
Root vegetables	0.1
Tuberous and corm vegetables	0.1

[54] Section S20—3 (table entry for Agvet chemical: Pyraflufen-ethyl)

Insert:

Pulses *0.02

[55] Section S20—3 (table entry for Agvet chemical: Pyroxasulfone)

Insert:

Pulses *0.01

[56] Section S20—3 (table entry for Agvet chemical: Sethoxydim)

Insert:

Pulses [except beans (dry); lupin (dry)] *0.1

[57] Section S20—3 (table entry for Agvet chemical: Triticonazole)

Omit:

Cereal grains (except sweet corns)

substitute:

Cereal grains [except sweet corns]

Schedule 25 Permitted novel foods

[58] Section S25—2 (table entry for “Rapeseed protein isolate”)

Omit “section S3—40”, substitute “section S3—39A”

Attachment B – Draft Explanatory Statement

EXPLANATORY STATEMENT

Food Standards Australia New Zealand Act 1991

Food Standards (Proposal P1061 – Code Revision (2023)) 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 P1061 to make a number of relatively 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 P1061 – Code Revision (2023)) 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 has prepared a draft variation amending various provisions in the Code to correct typographical errors, omissions, inconsistencies and formatting issues; update references; and to change editorial Notes to reflect the New Zealand Government's decision to require the mandatory addition of folic acid to all wheat flour sold as suitable for breadmaking in New Zealand in accordance with Standard 2.1.1. of the Code. The proposed amendments are relatively minor in nature.

4. Documents incorporated by reference

Section 14 of the *Legislation Act 2003* provides that a legislative instrument may:

- apply, adopt or incorporate provisions of a Commonwealth disallowable legislative instrument, with or without modification, as in force at a particular time or as in force from time to time; and
- incorporate any other document in writing which exists at the time the legislative instrument commences or a time before its commencement.

The Code currently contains provisions that incorporate other legislative instruments and other written documents by reference in accordance with the above section. The draft variation prepared by the Authority would amend those provisions in the following standards of the Code to update certain references to an incorporated instrument or document. This reference by incorporation is consistent with the current practice in the Code.

Standard 1.1.1

A number of Code provisions currently refer to and incorporate by reference the United States Code of Federal Regulation (CFR). For this purpose, paragraph 1.1.1—5(1)(b) of the Code states that a reference in the Code to the Code of Federal Regulations, or CFR, is a reference to the 2019 compilation of the United States Code of Federal Regulations. This provision is outdated. The latest compilation was published by the United States Government in 2022. The draft variation would amend paragraph 1.1.1—5(1)(b) to refer instead to the 2022 compilation.

A copy of the 2022 compilation of United States Code of Federal Regulations is freely and publicly available online at <https://www.govinfo.gov/app/collection/cfr>

Standard 1.1.2

The definition of 'permitted flavouring substance' in subsection 1.1.2—2(3) of the Code incorporates certain publications by reference. These include Edition 29 (2019) of the Generally Recognised as Safe (GRAS) lists of flavouring substances published by the Flavour and Extract Manufacturers' Association of the United States (FEMA). This reference is now outdated as FEMA has published Edition 30 (2022) of its GRAS lists of flavouring substances. The draft variation would amend the definition of 'permitted flavouring substance' to refer instead to the 2022 Edition.

A copy of Edition 30 (2022) of FEMA's GRAS lists of flavouring substances is freely and publicly available online at <https://www.femaflavor.org/publications/gras-publications/gras-30>

Standard 2.2.3

Standard 2.2.3 contains several editorial Notes. Note 3 provides links to websites that provide guidance on fish names. These include a link to the 2015 edition of the Australian Fish Names Standard published by Standards Australia. Standards Australia has published a 2019 edition of that Standard. The draft variation would amend Note 3 in Standard 2.2.3 to refer instead to the 2019 edition of the Australian Fish Names Standard.

Note 3 to Standard 2.2.3 does not incorporate the Australian Fish Names Standard by reference. The Note has no legal effect. Nor does it impose or set any requirement. Editorial Notes such as Note 3 do not form part of the Code (see the definition of the term 'standard' in subsection 4(1) of the FSANZ Act).

The 2019 edition of the Australian Fish Names Standard is not available for free. Copies can be purchased online through the SAI Global Infostore. However -

- As is explained in Note 3 itself, an online searchable Fish Names Database, which is understood to have the most up-to-date information on all approved group and individual species names, is publicly available at <http://www.fishnames.com.au>.
- Copies of the Standard are also available through public libraries in Australia. The National Library's Trove online system (www.trove.nla.gov.au/) allows users to identify libraries in Australia that are open to the public where editions of the Standard may be viewed. Members of the public may also approach any library that participates in inter-library loans with those university libraries to request an inter-library loan, or to obtain a photocopy of a particular part or monograph for personal study or research (but not for commercial purposes). Fees apply in relation to the making of such a request. Enquiries can be made through local libraries, State libraries and the National Library. For example, Trove indicates that access to the 2019 edition of the Australian Fish Names Standard is available at the National Library of Australia, which is open to the public.
- The Australian Fish Names Standard may also be viewed without charge at the Authority's Wellington and Canberra Offices by prior written arrangement with the Authority.

Standard 4.2.1

Section 4.2.1—16 sets out a requirement related to implementing a documented food safety management system that effectively control the hazards, with which food businesses engaged in the primary production or processing of, or manufacturing activities concerning, bivalve molluscs must comply. This provision incorporates by reference certain publications documenting food safety management systems which relevant food businesses may implement, thereby complying with the requirement. These publications include the *Export Control (Fish and Fish Products) Orders 2005* made under the *Export Control (Orders) Regulations 1982* (Cth).

The 2005 Orders have been replaced by the *Export Control (Fish and Fish Products) Rules 2021*. The draft variation would amend section 4.2.1—16 to refer instead to the 2021 Rules.

A copy of the 2021 Rules is freely and publicly available online at <https://www.legislation.gov.au/Details/F2021L00317>.

Standard 4.2.2

Standard 4.2.2 contains an editorial Note to clause 14 of that Standard. The Note refers readers to the 2004 edition of the *Australian Drinking Water Guidelines* issued by the National Health and Medical Research Council of Australia (NHMRC). The Guidelines provide guidance on what can constitute acceptable drinking water. The NMHRC has published a 2011 edition of the Guidelines. The draft variation would amend the editorial

Note to clause 14 of Standard 4.2.2 to refer instead to the 2011 edition of the *Australian Drinking Water Guidelines*.

The Note does not incorporate *Australian Drinking Water Guidelines* by reference. The Note has no legal effect. Nor does it impose or set any requirement. Editorial Notes do not form part of the Code (see the definition of the term 'standard' in subsection 4(1) of the FSANZ Act).

The 2011 edition of the *Australian Drinking Water Guidelines* is freely and publicly available at: <https://www.nhmrc.gov.au/about-us/publications/australian-drinking-water-guidelines>.

Standard 4.2.3

Standard 4.2.3 contains an editorial Note to the table to clause 4 of that Standard. The Note refers readers to the *Commonwealth Export Control (Meat and Meat Products) Orders 2005* (Cth) as one example of a food safety management system that a 'relevant authority' may recognise for the purposes of Standard 4.2.3. The *Commonwealth Export Control (Meat and Meat Products) Orders 2005* (Cth) have been replaced by the *Export Control (Meat and Meat Product) Rules 2021* (Cth). The draft variation would amend the editorial Note to the table to clause 4 of Standard 4.2.3 to refer instead to the 2021 Rules.

The Note does not incorporate the 2021 Rules by reference. The note has no legal effect. Editorial Notes and examples do not form part of the Code (see the definition of the term 'standard' in subsection 4(1) of the FSANZ Act).

A copy of the 2021 Rules is freely and publicly available online at <https://www.legislation.gov.au/Details/F2021L00317>

Schedule 3

Section 1.1.1—15 of the Code requires certain substances to comply with any relevant identity and purity specifications listed in Schedule 3 of the Code.

Schedule 3 incorporates certain publications by reference to set specifications for various substances in the circumstances specified in that Schedule. The publications listed include the following:

- the Compendium of Food Additive Specifications published by the Food and Agriculture Organisation of the United Nations /World Health Organisation Expert Committee on Food Additives (JECFA) in the Monographs listed in Schedule 3;
- the 12 edition (2020) of the Food chemicals codex published by the United States Pharmacopeial Convention; and
- the 2018 edition of the International Oenological Codex published by the Organisation Internationale de la Vigne et du Vin (OIV).

The draft variation would amend relevant provisions in Schedule 3 to update these references to refer to the following.

- JECFA has added new Monographs 25 (2020) and 26 (2021) to its Compendium of Food Additive Specifications. Copies are freely and publicly available online at <https://www.fao.org/food/food-safety-quality/scientific-advice/jecfa/jecfa-additives/en/>.
- The OIV has published a new edition (2022) of the International Oenological Codex. A copy is freely and publicly available online at <https://www.oiv.int/standards/international-oenological-codex>.

- The United States Pharmacopeial Convention has published a new 2022 (13th edition) of the Food chemicals codex (FCC). A copy is available online at <https://www.foodchemicalscodex.org/>

The FCC is not available for free. However, it is anticipated that the persons most affected by its adoption in the Code (food manufacturers), would be in possession of the document in order to manufacture food products. As important international benchmark for the safety and quality of food ingredients, it would be infeasible from a regulatory perspective to not adopt such benchmarks on the basis that the publications are not available for free.

However, by prior written arrangement with the Authority, members of the public may arrange to view the FCC without charge at the Authority's Wellington and Canberra Offices.

The National Library's Trove online system (www.trove.nla.gov.au/) allows users to identify libraries in Australia that are open to the public where editions (in most cases, earlier editions) of the FCC may be viewed. Members of the public may also approach any library that participates in inter-library loans with those university libraries to request an inter-library loan, or to obtain a photocopy of a particular part or monograph for personal study or research (but not for commercial purposes). Fees apply in relation to the making of such a request. Enquiries can be made through local libraries, State libraries and the National Library. For example, Trove indicates that access to the 1996 edition of the FCC is available at the University of Melbourne Library and the Hawksbury Campus Library of the Western Sydney University, which are both open to the public.

5. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1061 will include one round of public consultation following an assessment and the preparation of a draft variation and associated assessment summary.

An Impact Analysis was not required by the Office of Impact Analysis (OIA), formerly known as the Office of Best Practice Regulation (OBPR), because the OIA considered that amendments proposed in the draft variation are considered unlikely to have a more than minor regulatory impact (OBPR22-03854).

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

7.1 Reflecting the New Zealand decision re-mandatory fortification of folic acid

Items [1], [5], and [6] of the draft variation include amendments to reflect the action taken by the New Zealand Government under New Zealand food laws to require that, from 13 August 2023, all wheat flour sold as suitable for bread making in New Zealand, contain folic acid in accordance with section 2.1.1—5 of the Code. In order to reflect this change, amendment of Note 1 to section 1.1.1—3 of the Code and removal of the Note to section 2.1.1—5 of the Code are required. A new Note would be also added at the end of paragraph 2.1.1—5(b). This paragraph contains the requirement related to thiamin and the new Note would clarify

that fortification with thiamin in bread flour remains applicable in Australia only.

7.2 Correcting typographical errors, omissions, inconsistencies and formatting

Items [4], [8], [9], [11], [15], and [19] – [58] of the draft variation include amendments to correct typographical errors, omissions, and formatting issues; and to improve consistency across the Code.

7.3 Removing outdated clause

Item [10] of the draft variation includes an amendment to remove an outdated clause, which only applied to food businesses that existed at the time of the commencement of the clause. Due to the passage of time, the clause is no longer operative.

7.4 Updating references

Items [2], [3], [7], [12] - [14], and [16] – [18] of the draft variation include amendments to update references in the Code.