

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 existing 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 has published a revision of the existing Code (the P1025 Code). The P1025 Code will replace the existing Code on 1 March 2016, when the existing Code will be repealed.

FSANZ prepared Proposal P1036 to amend the P1025 Code to incorporate variations to the existing Code arising from A1092, A1096, P1022 and P1029 (subject to their publication) and to correct minor errors in the published P1025 Code. The Authority has considered the Proposal in accordance with Division 2 of Part 3 and has approved a draft variation.

Following consideration by the Australia and New Zealand Ministerial 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 the draft variation to incorporate, into the P1025 Code, variations made to the existing Code that were previously approved by the Board in A1092, A1096, P1022 and P1029 and which have since been published; and to correct the following errors:

- minor typographical errors
- errors made in the previous incorporation, into the P1025 Code, of variations to the existing Code arising from Applications and Proposals other than those mentioned above.

3. Documents incorporated by reference

The variation to the P1025 Code does not incorporate any documents by reference not already incorporated into the existing Code.

4. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of P1036 included one round of consultation with appropriate government agencies following an assessment and the preparation of a draft variation and associated report.

¹ convening as the Australia and New Zealand Food Regulation Ministerial Council

Because the amendments affect a wide range of FSANZ's stakeholders, the call for submissions was also notified in FSANZ's Notification Circular to ensure all stakeholders were included in the call for submissions.

A Regulation Impact Statement was not required because the proposed variation to the P1025 Code is likely to have a minor impact on business and individuals. Proposal P1036 is considered to be an extension of the permission for the original code reform proposal P1025 (OBPR reference 14493).

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

Subsection 1.1.1—2(2)

Item [1] corrects references to the headings of the following Standards and Schedules, to correct transcription errors:

- Standard 1.2.6
- Standard 1.2.10
- Standard 1.2.11
- Standard 2.8.1
- Schedule 14
- Schedule 16
- Schedule 27
- Schedule 28.

Subsection 1.1.1—13(2) (Note 1)

Item [2] replaces '**Note 1**' with '**Note**', to correct a numbering error.

Subsection 1.1.1—13(3) (First example)

Item [3] replaces '**Example**' with '**Example 1**', to correct a numbering error.

Paragraph 1.1.2—7(2)(a) (definition of acute care hospital)

Item [4] replaces 'ailments,' with 'ailments', to correct a typographical error.

Subsection 1.2.1—6(3)

Item [5] replaces '*individual portion pack' with 'individual portion pack', to correct a typographical error.

Paragraph 1.2.1—16(3)(b)

Item [6] replaces 'paragraph 1.2.1—8(1)(k)' with 'paragraph 1.2.1—8(1)(j)', to correct a typographical error.

Section 1.2.1—17

Item [7] replaces ‘*caterer’ (second occurrence) with ‘caterer’, to correct a typographical error.

Subparagraph 1.2.5—3(1)(b)(i)

Item [8] replaces ‘best-before date’ with ‘*best-before date’, to correct a typographical error.

Sub-subparagraph 1.2.5—3(1)(b)(ii)(A)

Item [9] replaces ‘*best-before date’ with ‘best-before date’, to correct a typographical error.

Section 1.2.7—2 (Note 1 - definition of nutrient profiling score)

Item [10] replaces ‘section 1.2.7—26’ with ‘section 1.2.7—25, to correct a typographical error’.

Subsections 1.2.7—4(1) and (2)

Item [11] replaces ‘*nutrition content claim’ with ‘nutrition content claim’, to correct a typographical error.

Subsections 1.2.7—12(2) and (3)

Item [12] replaces ‘*claim’ with ‘claim’, to correct a typographical error.

Subsections 1.2.7—12(5), (6) and (7)

Item [13] replaces ‘*nutrition content claim’ with ‘nutrition content claim’, to correct a typographical error.

Subsection 1.2.7—13(1)

Item [14] replaces ‘*nutrition content claim’ with ‘nutrition content claim’, to correct a typographical error.

Subsection 1.2.7—14(1)

Item [15] replaces ‘*nutrition content claim’ with ‘nutrition content claim’, to correct a typographical error.

Section 1.2.7—15

Item [16] replaces ‘*nutrition content claim’ with ‘nutrition content claim’, to correct a typographical error.

Section 1.2.7—16 (first unnumbered subsection)

Item [17] inserts a number to the first unnumbered subsection, to correct a numbering error.

Paragraph 1.2.7—18(1)(a)

Item [18] replaces ‘meets the NPSC’ with ‘*meets the NPSC’, to correct a typographical error.

Section 1.2.8—2 (first note)

Item [19] replaces ‘**Note**’ with ‘**Note 1**’, to correct a numbering error.

Section 1.2.8—4 (first note)

Item [20] replaces ‘**Note**’ with ‘**Note 1**’, to correct a numbering error.

Paragraph 1.2.8—6(5)(b)

Item [21] replaces ‘*sugars’ with ‘sugars’, to correct a typographical error.

Subparagraph 1.2.8—6(9)(b)(ii)

Item [22] replaces ‘nutrition information panel’ with ‘*nutrition information panel’, to correct a typographical error.

Subsection 1.2.10—3(2)

Item [23] replaces ‘characterising ingredient’ with ‘*characterising ingredient’, to correct a typographical error.

Paragraph 1.2.11—3(1)(a)

Item [24] replaces ‘*fruit’ with ‘fruit’, to correct a typographical error.

Paragraph 1.3.3—3(a)

Item [25] replaces ‘processing aid’ with ‘a processing aid’, to correct a typographical error.

New section 1.4.1—4

Item [26] inserts section 1.4.1—4 after section 1.4.1—3, to include in the Proposal P1025 Code the variations made in P1029.

Section 1.4.1—4 provides the following exceptions relating to honey and comb honey:

- (i) section 1.1.1—9 effect of variations to Code does not apply to honey and comb honey for the purposes of section 1.4.1—3 (levels of contaminants and natural toxicants in food); and
- (ii) despite section 1.4.1—3, honey and comb honey that was packaged for retail sale before the commencement of the *Food Standards (Proposal P1029 – Maximum Level for Tutin in Honey) Variation* is taken to comply with the level of Tutin listed in the table to section S19—6 if the product otherwise complied with the Code before that variation commenced.

Section 1.5.2—2 (first note)

Item [27] replaces ‘**Note**’ with ‘**Note 1**’, to correct a numbering error.

Table to subsection 1.5.3—3(2)

Item [28] inserts apple; apricot, cherry, honeydew, nectarine, peach, plum, rockmelon, scallopini, strawberry, table grape and zucchini (courgette) into the table in alphabetical order, to include in the P1025 Code the variation made in A1092.

Section 1.6.1—1

Item [29] replaces ‘Microbiological limits for foods’ with ‘Microbiological limits in food’, to include in the P1025 Code the variation made in P1017.

Paragraph 1.6.1—2(a)

Item [30] replaces ‘S27—3’ with ‘S27—4’, to correct a referencing error.

Subsection 1.6.1—3(5)

Item [31] replaces ‘the Schedule’ with ‘the table to section S27—4’, to correct a referencing error.

Subsection 1.6.1—4(1)

Item [32] replaces ‘the Schedule’ with ‘the table to section S27—4’, to correct a referencing error.

Subsection 1.6.1—4(2)

Item [33] replaces ‘the Schedule’ with ‘the table to section S27—4’, to correct a referencing error.

Section 2.2.1—1

Item [34] replaces the heading to section 2.2.1—1 with ‘**Name**’, to correct a transcription error.

Section 2.6.2—3

Item [35] repeals the Note at the end of section 2.6.2—3, to delete an unnecessary Note.

Section 2.8.1—1

Item [36] replaces ‘— Sugars and honey’ with ‘— Sugar and sugar products’, to correct a transcription error.

Paragraph 2.9.2—8(1)(b)

Item [37] replaces ‘more than of 3 g’ with ‘more than 3 g’, to include in the P1025 Code the variation made in P1033.

Section 2.9.3—2

Item [38] deletes a note that had been retained in the P1025 Code in error.

Subparagraph 2.9.3—8(3)(a)

Item [39] corrects a reference, using the terminology of the P1025 Code.

Paragraph 2.9.4—5(2)(a)

Item [40] inserts 'as' after '(expressed', to correct a typographical error.

Paragraph 2.9.4—6(2)(a)

Item [41] inserts 'or *ESADDI' after '*RDI', to correct an omission.

Paragraph 2.9.5—3(a)

Item [42] deletes 'or Standard 1.1A.2 (transitional standard for health claims)', to delete an unnecessary reference.

Schedule 3

Subparagraph S3—27(2)(b)(ii)

Item [43] replaces 'campsteranol' with 'campestanol', to correct a typographical error.

Schedule 14

Table to section S14—2

i. (definition of *firming agent*)

Item [44] replaces 'interact' with 'interacts', to correct a typographical error.

ii. (definition of raising agent)

Item [45] replaces 'increase' with 'increases', to correct a typographical error.

Schedule 15

Table to section S15—5

i. Item [46] inserts the following item heading after item 5.2.2, to correct a transcription error:

'.... 5.3 Not assigned'.

ii. Item [47] inserts the following food additive and its MPL into item 9.4.1 (Canned abalone (paua)), in alphabetical order, to include in the P1025 Code the variation made in A1088:

'Sodium hydrosulphite 1 000'.

iii. Item [48] replaces the heading for item 13.3 with the following, to include in the P1025 Code the variation made in P1033:

'.... 13.3 Formulated meal replacements and formulated supplementary foods'.

Schedule 17

Item [49] amends Note 1 to update a reference to certain vitamins and minerals, using the terminology of the P1025 Code.

Schedule 18

Table to subsection S18—4(5)

- i. Item [50] replaces the enzyme 'Aspergillopepsin I (EC 3.4.23.6)' with 'Aspergillopepsin I (EC 3.4.23.18)', to include in the P1025 Code the variation made in A1091.
- ii. Item [51] inserts two enzymes and their approved sources, in alphabetical order in the table, to include in the P1025 Code the variation made in A1096,
- iii. Item [52] deletes the enzyme '*Hemicellulase endo-1,4-β-xylanase (EC 3.2.1.8)*' and its sources, to include in the P1025 Code the variation made in A1096.

Schedule 19

Section S19—2

- i. Item [53] inserts the following definition into the section, to include in the P1025 Code the variation made in P1029:

'honey includes comb honey'.

- ii. Item [54] inserts the following Note at the end of the section, to include in the P1025 Code the variation made in P1029:

'Note In this Code (see section 1.1.2—3):

honey means the natural sweet substance produced by honey bees from the nectar of blossoms or from secretions of living parts of plants or excretions of plant sucking insects on the living parts of plants, which honey bees collect, transform and combine with specific substances of their own, store and leave in the honey comb to ripen and mature.'

Table to subsection S19—6(2)

- i. Item [55] inserts the following entry, in alphabetical order, to include in the P1025 Code the variation made in P1029:

'Tutin Honey 0.7'

- ii. Item [56] inserts a note about the table, to include in the P1025 Code the variation made in P1029:

'Note The New Zealand *Food (Tutin in Honey) Standard 2010* also regulates beekeepers, packers and exporters of honey in New Zealand. It provides options for demonstrating compliance with the maximum level for tutin in honey set by section 1.4.1—3.'

Schedule 27

Heading to Schedule 27

Item [57] replaces '**for foods**' with '**in food**', to include in the P1025 Code the variation made in P1017.

Heading to Schedule 27 – Note 1

Item [58] replaces '*for foods*' with '*in food*', to include in the P1025 Code the variation made in P1017.

Section S27—1

Item [59] replaces '*for foods*' with '*in food*', to include in the P1025 Code the variation made in P1017.

Heading to section S27—4

Item [60] replaces '**for foods**' with '**in food**', to include in the P1025 Code the variation made in P1017.

Heading to the table to section S27—4

Item [61] replaces '**for foods**' whenever occurring in the repeated table heading with '**in food**', to include in the P1025 Code the variation made in P1017.

Table to section S27—4

To include in the P1025 Code the variations made in P1022 (i and ii) and P1017 (iii – vii), item [62]:

- i. deletes the entire entries for the following foods in the table:
 - '*Butter made from unpasteurised milk and/or unpasteurised milk products*'
 - '*All raw milk cheese (cheese made from milk not pasteurised or thermised)*'
 - '*Raw milk unripened cheeses (moisture content > 50% with pH > 5.0) mixed tart*':
- ii. inserts a new entry for 'Raw milk cheese':
- iii. replaces the entry for the food '*Unpasteurised milk for retail sale*' with:

Unpasteurised milk for retail sale

<i>Campylobacter</i>	5	0	not detected in 25 mL	
Coliforms	5	1	10^2 /mL	10^3 /mL
<i>Escherichia coli</i>	5	1	3/mL	9/mL
<i>Salmonella</i>	5	0	not detected in 25 mL	
SPC	5	1	2.5×10^4 /mL	2.5×10^5 /mL

- iv. replaces 'SPC/g' with 'SPC' for the food '*Cooked crustacea*'

- v. replaces '10²cfu/g' with 'not detected in 25 g' for the food '*Ready-to-eat food in which the growth of Listeria monocytogenes can occur*'
- vi. replaces 'not detected in 25 g' with '10²cfu/g' for the food '*Ready-to-eat food in which the growth of Listeria monocytogenes will not occur*'
- vii. replaces the entry for the food '*Powdered infant formula products*' with:

Powdered infant formula products

<i>Bacillus cereus</i>	5	0	10 ² /g	
Coagulase-positive staphylococci	5	1	not detected in 1 g	10/g
Coliforms	5	2	less than 3/g	10/g
<i>Salmonella</i>	10	0	not detected in 25 g	
SPC	5	2	10 ³ /g	10 ⁴ /g

Schedule 29

Item [63] replaces the table in subsection S29—10(3) to correct typographical errors relating to units of measurement. The word, 'PANEL' is also removed from the table heading.