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 1 of Part 3 of the FSANZ Act specifies that the Authority may accept applications for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering an application for the development or variation of food regulatory measures.

The Authority accepted Application A1215 which sought to amend the Code to permit the use of cetylpyridinium chloride as a processing aid, for use as an anti-microbial treatment for raw poultry. The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft variation.

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 sunsetting under the *Legislation Act 2003*.

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 sunsetting 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 sunsetting 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 sunsetting 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 the draft variation amending Standard 1.3.3 and Schedule 18 of the Code to permit the use of cetylpyridinium chloride as a processing aid, for use as an anti-microbial treatment for raw poultry meat in accordance with the Code.

The approved draft variation also amends Schedule 2 of the Code as a consequence of the above amendments.

4. Documents incorporated by reference

The approved draft variation itself does not incorporate any documents by reference.

However, section 1.1.1—15 of the Code requires certain substances (such as processing aids) to comply with any relevant identity and purity specifications listed in Schedule 3. Schedule 3 incorporates documents by reference to set specifications for various substances in the circumstances specified in that Schedule. The documents incorporated include: the Joint FAO/WHO Expert Committee on Food Additives (JECFA) Compendium of Food Additive Specifications (FAO/WHO 2019) and the United States Pharmacopeial Convention (2020) Food Chemicals Codex (12th edition).

5. Consultation

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1215 included one round of public consultation following an assessment and the preparation of a draft variation and associated report. Submissions were called for on 16 March 2022 for a four-week consultation period.

The Office of Best Practice Regulation (OBPR) granted FSANZ a standing exemption from the requirement to develop a Regulatory Impact Statement for applications relating to processing aids (OBPR correspondence dated 24 November 2010, reference 12065). This standing exemption was provided as permitting new processing aids is deregulatory as their use will be voluntary if the application concerned is approved. This standing exemption relates to the introduction of a food to the food supply that has been determined to be safe.

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

7.1 Item [1]

Item 1 of the of the Schedule to the variation will add a new provision, section 1.3.3—13, into Standard 1.3.3.

New section 1.3.3—13 will permit cetylpyridinium chloride to be used as a processing aid, to perform the technological purpose of an anti-microbial agent, during the processing of food for sale listed in the table to new section S18—11 (see *item [3]* below).

However, the new permission will be subject to compliance with the corresponding maximum permitted level and conditions for use for the food concerned listed in that table.

7.2 Item [2]

Item 2 of the of the Schedule to the variation will add the following new unit of measurement and its corresponding meaning into the table to section S2—2 in alphabetical order:

"w/v weight per volume".

This amendment is consequential to the amendment to Schedule 18 in *item [3]* (see below).

7.3 Item [3]

Item 3 of the of the Schedule to the variation will add a new provision, section S18—11, into Schedule 18.

New section S18—11 relates to the permitted use of cetylpyridinium chloride as an anti-microbial agent in food.

New subsection S18—11(1) provides that the food, maximum permitted levels and conditions, for new section 1.3.3—13 (see *item [1]* above), are set out in the table to subsection S18—11(3).

New subsection S18—11(3) includes a table listing the food for which cetylpyridinium chloride will be permitted to be used as an anti-microbial agent (Column 1); the maximum permitted level above which cetylpyridinium chloride must not present in the corresponding food (Column 2); and the conditions for the use of cetylpyridinium chloride in the corresponding food (Column 3).

Column 1 of the table to new section S18—11 lists 'Raw poultry meat'.

New subsection S18—11(2) defines the term 'poultry meat' for the purposes of new section S18—11 as meaning the whole or any part of a poultry carcass with the skin attached; that is intended for human consumption; and either is not or does not include offal.

A Note to the definition of 'poultry meat' explains that subsection 1.1.2—3(2) defines 'offal'.

Column 2 of the table to new section S18—11 specifies that the maximum permitted level of cetylpyridinium chloride that may be present in the skin of raw poultry meat is 13.4 mg per kg.

Column 3 of the table to new section S18—11 lists the following two conditions of use for the use of cetylpyridinium chloride as an anti-microbial agent for raw poultry meat:

- the concentration of cetylpyridinium chloride in the aqueous wash solution applied to the raw poultry meat must not be more than 1% w/v; and
- the raw poultry meat must be rinsed in potable water after treatment with cetylpyridinium chloride.

Requirement that raw poultry meat must be rinsed in potable water after treatment with cetylpyridinium chloride

The Authority notes that water immersion chilling is commonly used to chill poultry carcasses following evisceration and washing, with the carcass placed in counter-current flow of chlorinated (50-70 ppm total available chlorine, 0.4–4.0 ppm free available chlorine) cold water (FSANZ 2005).

Submersion of raw poultry meat in an immersion chiller, as described above, may satisfy this requirement. However, the onus would be on the poultry processor to ensure that the

immersion chiller step is a *potable water* rinse and the maximum permitted level of cetylpyridinium chloride that may be present in the skin of raw poultry meat is not exceeded following that step.

The unit of % weight per volume (w/v) is referred to in the variation as the cetylpyridinium chloride is in a solid/crystallised state before being dissolved to an aqueous form and then diluted with potable water for use.

The effect of these amendments is that cetylpyridinium chloride will be permitted to be used as a processing aid, i.e. an anti-microbial treatment, for raw poultry meat in accordance with the Code.