

EXPLANATORY STATEMENT

Food Standards Australia New Zealand Act 1991

Food Standards (Proposal M1021 – Maximum Residue Limits (2022) – Schedule 20) 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 20) Variation* and the *Food Standards (Proposal M1021 – Maximum Residue Limits (2022) – Schedule 22) Variation*.

This Explanatory Statement relates to the *Food Standards (Proposal M1021 – Maximum Residue Limits (2022) – Schedule 20) 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 20 to vary maximum limits (MRLs) for residues of specific agvet chemicals that may occur in food commodities; and to correct certain typographical, formatting and transcription errors; as well as update commodity names and references to exceptions, and correct the alphabetical listing of commodities for certain chemical entries, in Schedule 20.

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 20) Variation*.

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.

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

Section S20—3 of the Code currently lists the MRLs for agvet chemicals which may occur in foods. If an MRL is not listed for a particular agvet chemical in that food, there must be no detectable residues of that chemical in that food. This general prohibition means that, in absence of the relevant MRL in the Code for a chemical, food may not be sold where there are detectable residues of that chemical.

MRLs in the draft variation are expressed as mg per kg. An asterisk (*) indicates that the maximum residue limit is set at the limit of determination for the relevant analytical method for the chemical and the symbol 'T' indicates that the MRL is a temporary MRL. This temporary categorisation enables further work to be carried out in Australia or overseas for reconsideration at some future date. It can also be used in Australia when an MRL is being phased out. Temporary MRLs are often established by the APVMA and their expiration periods can vary depending on the particular chemical.

Each item and subitem in the Schedule to the draft variation amends section S20—3 as follows. For further information about each amendment, see Table 3, Table 4 and Table 5 of SD1.

7.1 Removing chemicals and all entries for those chemicals

Item [1] omits all entries for each of the following chemicals: Bensulide; Bioresmethrin; Fenarimol; and Pebulate.

7.2 Adding new chemicals and associated entries

Item [2] inserts, in alphabetical order, table entries for chemicals that are not currently listed in section S20—3. The new chemicals are: Flutianil; Isoprothiolane; Pyraziflumid; and Spiropidion. The new table entries include the new chemical's name, residue definition, food commodities and associated MRLs.

7.3 Adding new food commodities and associated MRLs for listed chemicals

The following items add new food commodities and associated MRLs into the table entries for the chemicals listed: Items [3], [4], [5], [12], [18], [20], [22], [25], [30], [37], [39], [44], [45], [49], [51], [53], [56], [59], [61], [64], [66], [68], [72], [73], [78], [81], [84], [87], [89], [93], [95], [99], [106], [109], [113], [117], [124], [127], [131], [132], [136], [139], [140], [142], [144], [150], [152], [156], [157], [164], [166], [169], [174], [179], [184], [187], [193], [196], [199], [203], [206], [209], [210], [214], [220] and [226].

7.4 Removing food commodities and associated MRLs for listed chemicals

The following items remove food commodities and their associated MRLs from the table entry for the chemical listed: Items [11], [14], [16], [17], [33], [34], [35], [41], [46], [50], [60], [67], [79], [83], [88], [94], [105], [110], [116], [137], [141], [145], [147], [149], [151], [155], [160], [162], [163], [165], [168], [173], [178], [182], [186], [189], [192], [195], [198], [202], [205], [216], [217], [219] and [223].

7.5 Amending food commodities and associated MRLs for listed chemicals

The following items amend the table entries for the chemicals listed by changing: the amount of an MRL; the food commodity or commodities to which an MRL relates; or both: Items [8], [9], [10], [13], [15], [19], [21], [23], [24], [26], [27], [28], [31], [38], [40], [42], [43], [47], [48], [52], [54], [55], [57], [65], [69], [71], [74], [77], [80], [82], [85], [86], [90], [91], [96], [97], [98], [100], [102], [104], [107], [111], [112], [114], [115], [118], [119], [120], [122], [123], [125], [128], [129], [130], [133], [134], [135], [138], [143], [146], [148], [153], [154], [158], [159],

[161], [167], [170], [171], [172], [175], [176], [177], [180], [181], [183], [185], [188], [190], [191], [194], [197], [200], [201], [204], [207], [208], [211], [212], [215], [218], [221], [222], [224], [227] and [228].

The following items correct formatting, ordering and typographical errors: Items [6], [7], [32], [58], [62], [63], [70], [75] [76], [92], [101], [103], [121], [126], [213], [225] and [229].

The following items amend the table entries for the chemicals listed by changing a food commodity to which an MRL relates; and correct ordering of the food commodities: Items [29], [36] and [108].

Item [230] amends the table entry for each agvet chemical listed in that item by removing each reference in that entry to “Citrus fruits [except kumquats]” and replacing it with “Citrus fruits”.

Item [231] amends the table entry for each agvet chemical listed in that item by removing each reference in that entry to ‘Pome fruits [except Persimmon, Japanese]’ and replacing it with “Pome fruits”.

Item [232] amends the table entry for each agvet chemical listed in that item by removing each reference in that entry to “Stone fruits [except jujube, Chinese]” and replacing it with “Stone fruits”.

Item [233] amends the table entry for each agvet chemical listed in that item by removing each reference in that entry to “Stone fruits [except cherries; jujube, Chinese]” and replacing it with “Stone fruits [except cherries (subgroup)]”.