

**2 October 2015**  
**[24–15]**

## **Call for submissions – Proposal P1040**

### **Code Revision – Consequential & Corrective Amendments II**

---

FSANZ has assessed a proposal to amend the version of the Code published following approval of Proposal P1025 to correct minor errors, 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 [information for submitters](#).

All submissions on applications and proposals will be published on our website. We will not publish material that is provided in-confidence, but will record that such information is held. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1991*. Submissions will be published as soon as possible after the end of the public comment period. Where large numbers of documents are involved, FSANZ will make these available on CD, rather than on the website.

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](#).

Submissions should be made in writing; be marked clearly with the word 'Submission' and quote the correct project number and name. While FSANZ accepts submissions in hard copy to our offices, it is more convenient and quicker to receive submissions electronically through the FSANZ website via the link on [documents for public comment](#). You can also email your submission directly to [submissions@foodstandards.gov.au](mailto:submissions@foodstandards.gov.au).

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) 30 October 2015**

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 submissions or the application process can be sent to [standards.management@foodstandards.gov.au](mailto:standards.management@foodstandards.gov.au).

Hard copy submissions may be sent to one of the following addresses:

Food Standards Australia New Zealand  
PO Box 7186  
CANBERRA BC ACT 2610  
AUSTRALIA  
Tel +61 2 6271 2222

Food Standards Australia New Zealand  
PO Box 10559  
The Terrace WELLINGTON 6143  
NEW ZEALAND  
Tel +64 4 978 5630

# Table of Contents

<b>EXECUTIVE SUMMARY</b> .....	<b>2</b>
<b>1 INTRODUCTION</b> .....	<b>3</b>
1.1 THE PROPOSAL .....	3
1.3 THE CURRENT STANDARD.....	3
1.4 REASONS FOR PREPARING THE PROPOSAL.....	3
1.5 PROCEDURE FOR ASSESSMENT .....	3
<b>2 SUMMARY OF THE ASSESSMENT</b> .....	<b>3</b>
2.1 COMMUNICATION.....	3
2.1.1 <i>Consultation</i> .....	3
2.4.2 <i>World Trade Organization (WTO)</i> .....	3
2.5 FSANZ ACT ASSESSMENT REQUIREMENTS .....	3
2.5.1 <i>Section 59</i> .....	4
2.5.2 <i>Subsection 18(1)</i> .....	4
2.5.3 <i>Subsection 18(2) considerations</i> .....	5
<b>3 DRAFT VARIATION</b> .....	<b>5</b>
<b>4 ATTACHMENTS</b> .....	<b>5</b>
ATTACHMENT A – DRAFT VARIATION TO THE <i>AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE</i> (TO COMMENCE ON 1 MARCH 2016) .....	6
ATTACHMENT B – DRAFT EXPLANATORY STATEMENT.....	12

## Executive summary

FSANZ has published a revision of the *Australia New Zealand Food Standards Code* (the P1025 Code). The revised Code will replace the current *Australia New Zealand Food Standards Code* (the existing Code) on 1 March 2016, when the existing Code will be repealed.

Some minor typographical and transcription errors have been identified in the revised Code. Consequently, the revised Code will remain inconsistent with the existing Code will not reflect existing law on 1 March 2016 unless a draft variation is prepared to amend any errors. Any inconsistency may result in regulatory uncertainty and increased compliance costs to industry.

P1040 will therefore amend the revised Code to correct the minor errors.

P1040 does not impose any new requirements and is being assessed under the minor procedure.

# **1 Introduction**

## **1.1 The Proposal**

The Board approved a revision of the *Australia New Zealand Food Standards Code* (the revised Code) which will replace the current *Australia New Zealand Food Standards Code* (the current Code) on 1 March 2016, when the current Code will be repealed.

The revised Code contains minor typographical and transcription errors. Proposal P1040 will amend the revised Code to correct these errors.

## **1.3 The current Standard**

The proposal amends various standards in the revised Code.

## **1.4 Reasons for preparing the Proposal**

The Proposal was prepared to ensure that the revised Code is consistent with the existing Code when the revised Code commences on 1 March 2016.

## **1.5 Procedure for assessment**

The Proposal is being assessed under the minor procedure.

# **2 Summary of the assessment**

## **2.1 Communication**

### **2.1.1 Consultation**

Consultation is a key part of FSANZ's standards development process. This Proposal is being assessed under the minor procedure, which only requires consultation with government agencies on the proposed draft variations. However, the call for submissions will also be notified in FSANZ's Notification Circular to ensure all stakeholders can be included in the call for submissions.

### **2.4.2 World Trade Organization (WTO)**

As members of the World Trade Organization (WTO), Australia and New Zealand are obliged to notify WTO members where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

P1040 is unlikely to have a significant effect on international trade as it will not impose any new requirements. Therefore, a notification to the WTO under Australia's and New Zealand's obligations under the WTO Technical Barriers to Trade or Application of Sanitary and Phytosanitary Measures Agreement was not considered necessary.

## **2.5 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 FSANZ Act:

## **2.5.1 Section 59**

### **2.5.1.1 Cost benefit analysis**

Section 59 requires FSANZ to have regard to whether the direct and indirect benefits that would arise from a food regulatory measure developed as a result of this Proposal will outweigh the costs to the community, Government or industry that would arise from the development of that measure.

Proposal P1040 will not impose any new requirements. Its purpose is to correct typographical and other similar errors in the P1025 Code. None of the proposed amendments will impose any obligations on or vary the rights of any person. As such, the draft variation is not expected to impose costs on the community, industry or Government that are additional to those already generated by compliance with or enforcement of the existing Code.

Not proceeding with P1040 and the draft variation may result in regulatory uncertainty and increased compliance costs to industry. This is because, without the draft variation, the revised Code will remain inconsistent with the existing Code and not reflect existing law.

For this reason, one can reasonably conclude that the benefits to the community, Government or industry that will arise from the draft variation will outweigh the costs that would arise from the development of that measure.

### **2.5.1.2 Other measures**

For the reasons explained above, there are no other measures (whether available to FSANZ or not) that would be more cost-effective than a food regulatory measure developed or varied as a result of the Proposal.

### **2.5.1.3 Any relevant New Zealand standards**

All standards affected by this Proposal are joint standards.

### **2.5.1.4 Any other relevant matters**

Other relevant matters are considered below.

## **2.5.2. Subsection 18(1)**

FSANZ considered the three objectives in subsection 18(1) of the FSANZ Act during the assessment.

### **2.5.2.1 Protection of public health and safety**

The purpose of P1040 is to correct minor typographical and transcription errors in the P1025 Code. The correction of these errors does not make any substantive change to the P1025 Code and, consequently, the draft variation does not raise public health and safety issues for consideration.

### **2.5.2.2 The provision of adequate information relating to food to enable consumers to make informed choices**

By avoiding regulatory uncertainty and in ensuring that the P1025 Code will reflect the existing Code, the draft variation will enhance the provision of information and the ability of consumers to make informed choices.

### **2.5.2.3 The prevention of misleading or deceptive conduct**

No issues regarding the prevention of misleading and deceptive conduct have been identified in relation to P1040.

### **2.5.3 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 purpose of P1040 is to correct minor errors in the revised Code and to ensure that it reflects the current Code. The measures contained in the current Code and the revised Code were based on risk assessments that used the best available scientific evidence.

- **the promotion of consistency between domestic and international food standards**

The purpose of P1040 is to correct minor errors to ensure the revised Code reflects the current Code i.e. the intent is not changed. Therefore this consideration is not relevant.

- **the desirability of an efficient and internationally competitive food industry**

By avoiding regulatory uncertainty, the draft variation will contribute towards supporting an efficient and internationally competitive food industry.

- **the promotion of fair trading in food**

Again, by avoiding regulatory uncertainty, the draft variation would assist in promoting fair trading in food.

- **any written policy guidelines formulated by the Ministerial Council<sup>1</sup>**

No relevant guidelines issued by the Ministerial Council specifically apply to Proposal 1040.

## **3 Draft variation**

The draft variation is at Attachment A. The variation is intended to take effect on 1 March 2016.

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 Legislative Instruments.

## **4 Attachments**

- A. Draft variation to the *Australia New Zealand Food Standards Code* (to commence on 1 March 2016)
- B. Explanatory Statement

---

<sup>1</sup> Now known as the Australia and New Zealand Ministerial Forum on Food Regulation (convening as the Australia and New Zealand Food Regulation Ministerial Council)

## Attachment A – Draft variation to the *Australia New Zealand Food Standards Code*



### Food Standards (Proposal P1040 – Code Revision – Consequential & Corrective Amendments II) 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 Standard commences on the date specified in clause 3 of this variation.

Dated [To be completed by Standards Management Officer]

Standards Management Officer  
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 P1040 – Code Revision – Consequential & Corrective Amendments II) 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

- (1) Subject to subsection (2), the variation commences on 1 March 2016 immediately after the commencement of Standard 5.1.1 – Revocation and transitional provisions – 2014 Revision.
- (2) Items 1 and 4 of the Schedule commence on 19 January 2017.

### Schedule

#### Standard 1.1.1—Structure of the Code and general provisions

##### [1] Subsection 1.1.1—2(2)

Omit ‘Standard 1.2.12 – Transitional standard for dietary fibre nutrition content claims’.

#### Standard 1.1.2—Definitions used throughout the Code

##### [2] Subsection 1.1.2—2(3) (definition of *individual portion pack*)

Omit ‘1.2.1—6(4)’, substitute ‘1.2.1—6(3)’.

##### [3] Section 1.1.2—12 (Note)

Omit ‘S28—2, 0, S29—18’, substitute ‘S28—2, S29—18’.

#### Standard 1.2.7 – Nutrition, health and related claims

##### [4] Section 1.2.7—12 (Note)

Omit the Note.

#### Standard 1.4.1 – Contaminants and natural toxicants

##### [5] Subsection 1.4.1—3(3)

Omit

$$ML = \frac{\sum_{j=1}^N (ML_j \times Total_j) + CF \times (Total - \sum_{j=1}^N Total_j)}{Total}$$

substitute

$$ML = \frac{\sum_{j=1}^N (ML_j \times Total_j) + CF \times (Total - \sum_{j=1}^N Total_j)}{Total}$$

#### Standard 1.4.2 – Agvet chemicals

##### [6] Note 3

Omit ‘2014’, substitute ‘2014’.

#### Standard 1.5.2 – Food produced using gene technology

##### [7] Section 1.5.2—2 (Note 3)

Omit ‘1.1.1—10(5)(c) and (6)(g)’, substitute ‘1.1.1—10(3)(c) and (4)(g)’.

#### Standard 2.4.2 – Edible oil spreads

##### [8] Section 2.4.2—2 (Note)

Omit ‘edible oil spread’, substitute ‘*edible oil spread*’.



### **Standard 2.7.1—Labelling of alcoholic beverages and food containing alcohol**

#### **[9] Section 2.7.1—1**

Omit 'Alcoholic beverages', substitute 'Labelling of alcoholic beverages and food containing alcohol'.

### **Standard 2.7.4—Wine and wine product**

#### **[10] Note 3**

Omit 'the *Wine Australia Corporation Act 1980* (Cth)', substitute 'the *Australian Grape and Wine Authority Act 2013* (Cth)'.

### **Standard 2.9.4 – Formulated supplementary sports foods**

#### **[11] Paragraph 2.9.4—6(2)(a)**

Omit 'of reconstitution', substitute 'or reconstitution'.

### **Standard 2.9.5 – Food for special medical purposes**

#### **[12] Paragraph 2.9.5—3(b)**

Omit 'Part 2', substitute 'Part 1.2'.

### **Standard 2.9.6 – Transitional standard for special purpose foods (including amino acid modified foods)**

#### **[13] Section 2.9.6—3 (Note)**

Omit 'published', substitute 'published'.

### **Standard 2.10.2 – Salt and salt products**

#### **[14] Section 2.10.2—3**

Omit all text after the words 'A food', substitute 'that is sold as 'salt' must be salt and contain no less than 970 g/kg sodium chloride on a dry basis, exclusive of permitted additives.'

### **Schedule 1 – RDIs and ESADDIs**

#### **[15] Section S1—2 (Notes)**

Omit:

**Note 1** See paragraph 1.1.2—14(a).

**Note 2** See paragraph 1.1.2—14(b).

**Note 3** See paragraph 1.1.2—14(c).

**Note 4** See paragraph 1.1.2—14(d).

substitute:

**Note 1** See paragraph 1.1.2—14(3)(a).

**Note 2** See paragraph 1.1.2—14(3)(b).

**Note 3** See paragraph 1.1.2—14(3)(c).

### **Schedule 2 – Units of measurement**

#### **[16] Section S2—2 (table)**

Omit 'mJ', substitute 'MJ'.

### **Schedule 4 – Nutrition, health and related claims**

#### **[17] Section S4—2 (Note - definition of *sugars*)**

Omit '(a)' (second occurring), substitute '(b)'.

#### **[18] Section S4—5 (table)**

(a) Omit

Iodine	Contributes to normal growth and development	Children	
substitute			
	Contributes to normal growth and development	Children	
(b)	Omit		
Selenium	Contributes to the maintenance of normal hair and nails		
substitute			
	Contributes to the maintenance of normal hair and nails		
(c)	Omit		
Energy	Contributes to weight loss or weight maintenance	Diet reduced in energy and including regular exercise	The food: (a) meets the conditions for making a 'diet' nutrition content claim; or (b) is a formulated meal replacement and contains no more than 1200 kJ per serving
substitute:			
	Contributes to weight loss or weight maintenance	Diet reduced in energy and including regular exercise	The food: (a) meets the conditions for making a 'diet' nutrition content claim; or (b) is a formulated meal replacement and contains no more than 1200 kJ per serving

**Schedule 12 – Nutrition information panels**

**[19] Section S12—4 (table)**

Omit 'Your daily intakes may be higher or lower depending on your energy needs.'

**Schedule 15 – Substances that may be used as food additives**

**[20] Section S15—5 (table)**

(a) Omit the following from item 1.4.2 (where second occurring):

234	Nisin	10	
475	Polyglycerol esters of fatty acids	5 000	Only whipped thickened light cream

(b) Insert in item 2.2.2 in numerical order:

200 201 202 203	Sorbic acid and sodium, potassium and calcium sorbates	2 000	
-----------------	--	-------	--

**Schedule 18 – Processing aids**

**[21] Section S18—3 (table)**

Omit

Diethylenetriamine, triethylene-tetramine, or tetraethylenepentamin cross-linked with epichlorohydrin GMP

Substitute

Diethylenetriamine, triethylene-tetramine, or tetraethylenepentamine cross-linked with epichlorohydrin GMP

**Schedule 26 – Food produced using gene technology**

**[22] Note 1**

Omit '1.1.1—10(3)(c) and (4)(g)', substitute '1.1.1—10(5)(c) and (6)(g)'.

**[23] Subsection S26—3(4) (table)**

(a) Omit

---

**4 Lucerne** (a) herbicide-tolerant lucerne lines J101 & J163 substitute

---

**4 Lucerne** (a) herbicide-tolerant lucerne lines J101 and J163 (b) Omit

---

(b) food derived from reduced lignin lucerne line KK179 substitute

---

(b) reduced lignin lucerne line KK179

**Schedule 29 – Special purpose foods**

**[24] Section S29—21 (Notes)**

Omit

**Note 1** See paragraph 1.1.2—14(3)(a)

**Note 2** For niacin, add niacin and any niacin provided from the conversion of the amino acid tryptophan, using the conversion factor 1:60.

**Note 3** See paragraph 1.1.2—14(3)(d)

substitute

**Note 1** See paragraph 1.1.2—14(3)(a).

- Note 2** For niacin, add niacin and any niacin provided from the conversion of the amino acid tryptophan, using the conversion factor 1:60.
- Note 3** See paragraph 1.1.2—14(3)(c).

## **Attachment B – Draft 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 current Code in April 2015 (the revised Code). The revised Code will replace the current Code on 1 March 2016, when the current Code will be repealed.

FSANZ prepared Proposal P1040 to correct minor errors in the published revised Code. The Authority has considered the Proposal in accordance with Division 2 of Part 3 and has prepared a draft variation.

### **2. Purpose**

The Authority has approved the draft variation to correct minor typographical and transcription errors.

### **3. Documents incorporated by reference**

The variation to the revised 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 P1040 will include one round of consultation with appropriate government agencies following an assessment and the preparation of a draft variation and associated report. The call for submissions will also be notified in FSANZ's Notification Circular to ensure all stakeholders are informed and have an opportunity to make a submission.

A Regulation Impact Statement was not required because the proposed variation to the revised Code is likely to have a minor regulatory impact on business and individuals.

### **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**

#### **Section 1.1.1—2**

Item [1] deletes the reference to Standard 1.2.12 – Transitional standard for dietary fibre nutrition content claims. That Standard will cease to have effect on 18 January 2017. Item [1] will take effect and remove the reference on 19 January 2017.

**Section 1.1.2—2(3) (definition of individual portion pack)**

Item [2] replaces '1.2.1—6(4)' with '1.2.1—6(3)', to correct a referencing error.

**Section 1.1.2—2 (Note)**

Item [3] deletes '0' to correct a transcription error.

**Section 1.2.7—12 (Note)**

Item [4] deletes the Note as it refers to to Standard 1.2.12 – Transitional standard for dietary fibre nutrition content claims. That Standard will cease to have effect on 18 January 2017.

Item [4] will take effect and remove the reference on 19 January 2017.

**Section 1.4.1—3(3)**

Item [5] replaces the formula to correct a typographical error.

**Section 1.4.2 (Note 3)**

Item [6] replaces '2014' with '2014.', to correct a typographical error.

**Section 1.5.2—2 (Note 3)**

Item [7] replaces '1.1.1—10(5)(c) and (6)(g)' with '1.1.1—10(3)(c) and (4)(g)', to correct a referencing error.

**Section 2.4.2—2 (Note)**

Item [8] replaces '**edible oil spread**' with '**edible oil spread**', to correct a typographical error'.

**Section 2.7.1—1**

Item [9] replaces 'Alcoholic beverages' with 'Labelling of alcoholic beverages and food containing alcohol', to correct a transcription error.

**Section 2.7.4 (Note 3)**

Item [10] replaces 'the Wine Australia Corporation Act 1980 (Cth)' with 'the Australian Grape and Wine Authority Act 2013 (Cth)', as the former Act has been repealed and replaced by the latter.

**Section 2.9.4—6(2)(a)**

Item [11] replaces 'of reconstitution' with 'or reconstitution', to correct a typographical error.

**Section 2.9.5—3(b)**

Item [12] replaces 'Part 2' with 'Part 1.2', to correct a typographical error.

**Section 2.9.6—3 (Note)**

Item [13] replaces 'published' with 'published.', to correct a typographical error.

### **Section 2.10.2—3**

Item [14] amends the text of the section so that it reads ‘A food that is sold as ‘salt’ must be salt and contain no less than 970 g/kg sodium chloride on a dry basis, exclusive of permitted additives.’ This is to correct a typographical error.

#### **Schedule 1**

##### *Section S1—2 (Notes)*

Item [15] omits the Notes and replaces them with the following, to correct a referencing error:

- ‘Note 1      See paragraph 1.1.2—14(3)(a).
- Note 2      See paragraph 1.1.2—14(3)(b).
- Note 3      See paragraph 1.1.2—14(3)(c).’

#### **Schedule 2**

##### *Section S2—2 (table)*

Item [16] replaces ‘mJ’ with ‘MJ’, to correct a typographical error.

#### **Schedule 4**

##### *Section S4—2 (definition of sugars)*

Item [17] replaces ‘(a)’ (second occurrence) with ‘(b)’, to correct a numbering error.

##### *Section S4—5 (table)*

- (a) Item [18] corrects a typographical error by removing the duplicate reference in column 1 of the table to ‘Iodine’ (second occurrence).
- (b) Item [18] corrects a typographical error by removing the duplicate reference in column 1 of the table to ‘Selenium’ (second occurrence) and by correcting the formatting of the row for that entry.
- (c) Item [18] corrects a typographical error by removing the duplicate reference in column 1 of the table to ‘Energy’ (second occurrence) and by correcting the formatting of the row for that entry.

#### **Schedule 12**

##### *Section S12—4 (table)*

Item [19] deletes the following unnecessary sentence from the table: ‘Your daily intakes may be higher or lower depending on your energy needs.’

#### **Schedule 15**

##### *Section S15—5 (table)*

- (a) Item [20] inserts the following into the item 2.2.2 of the table, in numerical order, to correct a transcription error.

- (b) Item [20] removes the duplicate entries in item 1.4.2 of the table for 'Nisin' (second occurrence) and 'Polyglycerol esters of fatty acids' (second occurrence), to correct a typographical error.

### **Schedule 18**

#### *Section S18—3 (table)*

Item [21] replaces 'tetraethylenepentamin' with 'tetraethylenepentamine', to correct a typographical error.

### **Schedule 26**

#### *Note 1*

Item [22] replaces '1.1.1—10(3)(c) and (4)(g)' with '1.1.1—10(5)(c) and (6)(g)', to correct a referencing error.

#### **Section S26—3(4) (table)**

- (a) Item [23] replaces '&' with 'and' in entry 4(a), to correct a typographical error.
- (b) Item [23] deletes 'food derived from' in entry 4(b), to correct a typographical error.

### **Schedule 29**

#### *Section S29—21 (Notes)*

Item [24] replaces the Notes with new Notes to correct typographical errors. That is, by inserting a full stop at the end of Note 1; replacing '1.1.2—14(3)(d)' with '1.1.2—14(3)(c)' in Note 3; and inserting a full stop at the end of Note 3.