

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 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.

FSANZ accepted Application A1069 which seeks to permit the irradiation of tomatoes and capsicums as a phytosanitary measure¹. The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft variation to Standard 1.5.3.

Following consideration by COAG Legislative and Governance Forum on Food Regulation², 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 and operation

Tomatoes and capsicums are currently not permitted to be irradiated in Standard 1.5.3. The Authority has approved a draft variation to Standard 1.5.3 to include tomatoes and capsicums in the Table to clause 4. The variation in Standard 1.5.3 will permit irradiation of tomatoes and capsicums for the purpose of pest disinfection for a phytosanitary objective in the Table to clause 4 of Standard 1.5.3.

3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference.

4. Consultation

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1069 has included one round of public consultation following an assessment and the preparation of a draft variation to the Standard. A report (which included the draft variation) was released on 26 September 2012 for a six-week consultation period.

A Regulation Impact Statement was not required because the proposed variation to Standard 1.5.3 is likely to have a minor impact on business and individuals and is deemed to be a de-regulation.

¹ A phytosanitary measure is any legislation, regulation or official procedure having the purpose to prevent the introduction and/or spread of quarantine pests, or to limit the economic impact of regulated non-quarantine pests.

² Previously known as the Australia and New Zealand Food Regulation Ministerial Council

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. Variations

The variation permits the irradiation of tomatoes and capsicums for the purpose of pest disinfection for a phytosanitary objective by adding tomatoes and capsicums to the Table to clause 4 in Standard 1.5.3 with a minimum dose of 150 Gy and a maximum dose of 1 kGy.