

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 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 P1016 to consider the risks posed by cyanogenic glycosides in plant-based foods. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has approved draft variations to Standards 1.1.1, 1.1.2 and 1.4.4.

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 draft variations to Standard 1.1.1, 1.1.2 and 1.4.4 to impose a prohibition on the retail sale of raw apricot kernels and to restrict the use of raw apricot kernels as an ingredient. This is due to the risk to public health and safety of raw apricot kernels as a food for sale.

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 2 of Part 3 of the FSANZ Act, the Authority's consideration of Proposal P1016 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 December 2014 for an eight-week consultation period.

A Regulation Impact Statement was required because the proposed variations to Standard 1.4.4 were likely to have an 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.

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

6. Variation

Item [1] of the Schedule to the Variation amends Standard 1.1.1

Item [1.1] varies subsection 1.1.1—10(5) by inserting paragraph (f) into that subsection. The effect of paragraph 1.1.1—10(5)(f) is to prohibit the retail sale of raw apricots kernels.

Item [1.2] of the Schedule varies subsection 1.1.1—10(6) by inserting paragraph (j) into that subsection. The effect of paragraph 1.1.1—10(5)(j) is to prohibit raw apricots kernels from being an ingredient in or component of a food for sale unless expressly permitted by the Code. Subsection 1.1.1—10(6) provides that this prohibition does not extend to raw apricot kernels that are in a food for sale by natural occurrence, such as apricots containing their kernels.

Item [2] of the Schedule amends Standard 1.1.2. It varies subsection 1.1.2—3(2) by inserting into that subsection a definition of a raw apricot kernel. A raw apricot kernel is defined to mean the nut found within the hard shell or stone of *Prunus armeniaca*. The term is defined to include hulled, dehulled, blanched, ground, milled, cracked, chopped or whole kernel or kernels.

Item [3] of the Schedule amends Standard 1.4.4 by inserting section 1.4.4—5. The new section permits raw apricot kernels to be used as an ingredient in a food for sale if the kernels have been or will be subject to processing or a treatment that renders them safe for human consumption. The exemption applies in relation to kernels that processing or treatment renders safe before or after the kernels use or addition to a food as an ingredient.