

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.

The Authority accepted Application A1193 which seeks permission to use irradiation as a phytosanitary measure (pest disinfection) for all types of fresh fruit and vegetables. The Authority considered the application in accordance with Division 1 of Part 3 and has approved a draft variation to the Code.

Following consideration by the Food Ministers' Meeting (formerly 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 sunset under the *Legislation Act 2003*.

2. Purpose

The Authority has approved a draft variation amending section 1.5.3—3, replacing the existing permission for the irradiation of 26 fruits and vegetables, with a permission for the irradiation of all fresh fruit and vegetables for the purpose of pest disinfection for a phytosanitary objective. Excluded from scope are dried pulses, legumes, nuts and seeds. The approved draft variation also amends Note 1 of Schedule 22 to explain that a purpose of Schedule 22 is to describe foods and classes of foods for the purposes of subsection 1.5.3—3(2) of the Code.

3. Documents incorporated by reference

The variation does 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 A1193 included one round of public consultation following an assessment and the preparation of a draft variation and associated assessment summary.

The Office of Best Practice Regulation (OBPR) granted the Authority a standing exemption from the requirement to develop a Regulatory Impact Statement (RIS) for proposed variations to the Code permitting the irradiation of foods (OBPR correspondence dated 15 May 2012, reference 13845). This standing exemption was provided as such changes are considered minor, machinery and deregulatory in nature. The exemption applies to the introduction of a food to the food supply that has been determined to be safe.

The use of irradiation as a phytosanitary measure is not compulsory and individual growers/suppliers will make their own decision as to its use, based on a consideration of the costs and benefits to their business.

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

Item [1] amends Standard 1.5.3 by omitting section 1.5.3—3 and substituting a new section 1.5.3—3.

New subsection 1.5.3—3(1) will provide that fresh fruit and/or fresh vegetables may be irradiated for the purpose of pest disinfestation for a phytosanitary objective provided that in each case the absorbed dose is: no lower than 150 Gray (Gy) and a maximum dose is 1 kiloGray (kGy).

New subsection 1.5.3—3(2) will provide that, for the purposes of new subsection 1.5.3—3(1): the term ‘vegetable’ includes (but is not limited to) a vegetable described in Schedule 22; and the term ‘fruit’ includes (but is not limited to) a fruit described in Schedule 22. Both are an inclusive definition. The effect will be that:

- the term ‘fruit’ in subsection 1.5.3—3(1) includes (but is not limited to): plant material that meets the general description of a ‘fruit’ in Schedule 22; and/or plant material that is listed in the list of commodities provided in Schedule 22 for ‘fruit’; and
- the term ‘vegetable’ in subsection 1.5.3—3(1) includes (but is not limited to): plant material that meets the general description of a ‘vegetable’ in Schedule 22; and/or plant material that is listed in the list of commodities provided in Schedule 22 for ‘vegetables’.

The use of the phrase ‘includes (but is not limited to)’ makes clear that a ‘fruit’ or ‘vegetable’ for the purposes of subsection 1.5.3—3(1) also includes any plant derived material that is not covered by the latter description or list but which falls within the commonly accepted and ordinary meaning of ‘fruit’ and ‘vegetable’.

New subsection 1.5.3—3(3) provides that the permission granted by new subsection 1.5.3—3(1) does not apply to any of the following: dried pulses; legumes; nuts; seeds.

Item [2] amends Schedule 22 by omitting Note 1 and inserting a new Note 1.

New Note 1 will, among other things, explain that a purpose of Schedule 22 is to describe foods and classes of foods for the purposes of subsection 1.5.3—3(2) of the Code.