

6 June 2019
[82-19]

Call for submissions – Application A1163

Food Irradiation definition of herbs and spices

FSANZ has assessed an application made by Sapro Australia to amend section 1.5.3—4 of the Australia New Zealand Food Standards Code (the Code). Sapro are requesting clarification of the meaning of the terms herbs and spices with respect to food irradiation, in order to ensure uniform interpretation and enforcement. FSANZ has prepared a draft food regulatory measure. Pursuant to section 31 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 we accept as confidential, 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.

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) 18 July 2019

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.

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Supporting document

The [following document](#)¹ which provides more detailed information on section 1.4 of this Call for Submissions document is available on the FSANZ website:

SD1 International approaches to irradiation of herbs and spices and definitions in Codex texts

¹ <http://www.foodstandards.gov.au/code/applications/Pages/A1163.aspx>

Executive summary

Sapro Australia applied to change the Australia New Zealand Food Standards Code (the Code). Sapro are requesting clarification of the meaning of the terms herbs and spices in Standard 1.5.3, in order to ensure uniform interpretation and enforcement. The applicant proposes that the current description of herbs and spices in Standard 1.5.3 be replaced either by the commonly understood meaning of herbs and spices or by including generic definitions of herbs and spices.

Section 1.5.3—4 of the Code permits the irradiation of herbs and spices. Subsection 1.5.3—4(3) of the Code defines what constitutes a herb or a spice for the purposes of this permission.

Section 1.5.3 was inserted into the Code in 2001 following FSANZ's assessment of Application A413 Irradiation of Herbs and Spices (ANZFA 2001). That assessment included a risk assessment that had regard to the best available scientific evidence. That risk assessment has been confirmed by assessments undertaken for subsequent applications to irradiate fruit and other foods. FSANZ is not aware of any evidence to suggest that risk assessment requires revision. On this basis, an assessment of public health and safety for Application A1163 was not considered necessary. Further, the purpose of the requested amendment is to confirm the intended scope of the 2001 permission. There are no new issues for FSANZ to consider in relation to the public health and safety of irradiated herbs and spices.

FSANZ's assessment was that the requested variation will have no effect on the current Code requirement to declare the use of ionising radiation on food labels.

After assessing A1163, FSANZ has prepared a draft variation to the Code to amend subsection 1.5.3—4(3) in order to remove any uncertainty as to which herbs or spices may be irradiated in accordance with section 1.5.3—4 of the Code. The amendment will provide that herbs and spices includes (but is not limited to) a herb or a spice described in Schedule 22 of the Code. The effect will be that any plant derived material within the commonly accepted and ordinary meaning of 'herb' or 'spice', regardless of its form (dried or fresh) may be irradiated in accordance with section 1.5.3—4 of the Code.

1 Introduction

1.1 The applicant

This application was made by Sapro Australia, an importer and distributor of food.

1.2 The application

The application seeks to amend the Australia New Zealand Food Standards Code (the Code), to clarify the meaning of the terms herbs and spices in Standard 1.5.3, in order to ensure uniform interpretation and enforcement. The relevant provisions of the Code are described below.

The applicant has requested that the Code is clarified to provide greater certainty regarding the permission to irradiate herbs and spices. The applicant's stated position is that the use of the phrase '*herbs and spices means the herbs and spices described in Schedule 22*' in subsection 1.5.3—4(3) refers to any herb or spice that could be described in Schedule 22 either in the description of the commodity or in the commodities list (i.e. any plant derived material that may be classified as a herb or a spice).

The applicant states that, as a result of the descriptions and lists of commodities in Schedule 22, the permission to irradiate specific herbs and spices can be interpreted as a reference to the descriptions of herbs and of spices only, and or only to the commodities listed after each description.

The applicant proposes that the current definition of herbs and spices in Standard 1.5.3 be replaced either by a commonly understood meaning of herbs and spices, or by including generic definitions of 'herbs' and 'spices' in Standard 1.5.3, to align with the Codex Alimentarius (Codex).

The applicant states the requested variation will have no effect on the current requirement to declare the use of ionising radiation on food labels.

1.3 The current standards

Australian and New Zealand food laws require food for sale to comply with the following Code requirements.

Permission to irradiate

Paragraphs 1.1.1—10(5)(d) and (6)(h) of Standard 1.1.1 require that, unless expressly permitted, a food for sale must not be irradiated, or have as an ingredient or component a food that has been irradiated.

Section 1.5.3—4 permits herbs and spices to be irradiated for certain purposes and subject to certain conditions. Subsection 1.5.3—4(3) states that, for the purposes of this permission, '*herbs and spices means the herbs and spices described in Schedule 22*'.

The permission for the irradiation of herbs and spices has been part of the Code since 2001. It was inserted as a result of Application A413 Irradiation of Herbs and Spices (ANZFA 2001). In September 2001, under the Final Assessment Report for A413, the definitions for herbs and spices were finalised and subsequently contained in Amendment No. 56 to the Code, stating at that time '*herbs and spices as described in Schedule 4 to Standard 1.4.2*'. Schedule 4 was the precursor to Schedule 22 in the current Code.

Schedule 22 of the Code currently lists foods and classes of food (see section S22—2). That list includes a separate class each for herbs and for spices. The entry in Schedule 22 for herbs and for spices includes a general description of what constitutes a herb or a spice, as well as a list of food commodities for each class.

Schedule 22 of the Code lists foods and classes of food primarily for the purposes of Standard 1.4.2, which regulates maximum residue limits (MRLs) and extraneous residue limits for agricultural or veterinary chemicals that are permitted in foods for sale in Australia. The MRLs for particular foods are listed in Schedule 20 and the permitted extraneous residue limits for particular foods are listed in Schedule 21.

Similar to subsection 1.5.3—4(3), Standard 1.4.2 provides that, for MRLs, a reference to a particular food in Schedule 20 or 21 is to the food as described in Schedule 22. As explained in section 1.4.1 of this report, the food commodity descriptors in Schedule 22 were initially based on the Codex Committee on Pesticide Residues (CCPR) guidelines that were in place and commodities as traded at the time (but with flexibility, for example, to accommodate Australian specific foods and or capture a range of plant cultivars under one commodity name), and have not been updated.

Labelling requirements

Paragraph 1.1.1—10(8) requires that food for sale must comply with all relevant labelling requirements in the Code for that food.

For this purpose, section 1.5.3—9 sets out the labelling requirements for foods for sale that have been irradiated, or for foods for sale that have an ingredient or component that have been irradiated.

The Code generally requires food labels to include a statement of ingredients. Standard 1.2.4 sets out the requirements for statement of ingredients. Section 1.2.4—4 requires a statement of ingredients to identify each ingredient by a common or descriptive name, or a generic name if one is specified in Schedule 10. Schedule 10 includes the generic names 'herbs' and 'spices'.

1.4 International standards

Irradiation of herbs and spices is permitted in a number of countries. Other countries such as the European Union, Canada and the United States do not have specific and confined lists of herbs and spices permitted to be irradiated in their regulations, and Codex texts contain various definitions depending on the purpose of the Codex committee. A summary of these requirements are provided below while more detail is provided in Supporting Document 1.

1.4.1 Codex Alimentarius

Three Codex committees have standards, guidelines or Codes of Practice applicable to the definitions of herbs and spices. These are CCPR, the Codex Committee on Food Hygiene, and the Codex Committee on Spices and Culinary Herbs. There is no single Codex definition for herbs and spices that is consistent across all Codex texts, as the purpose of each Codex committee differs.

The descriptions and commodity lists in Schedule 22 were based on the CCPR guidelines in place and the foods listed in the Schedule to Standard 1.4.2 (e.g. commodities grown and or traded in Australia) at the time the Schedule was originally developed.

The General Standard for Irradiated Foods sets out the general requirements for food irradiation (CCFH 1983), but does not set requirements for individual foods.

1.4.2 European Union

Irradiation of herbs and spices is regulated under Directive 1999/3/EC (EC 1999). Dried aromatic herbs, spices and vegetable seasonings are permitted to be irradiated. Herbs and spices are not defined.

1.4.3 Canada

The Food and Drug Regulations Division 26 Food Irradiation (CFDR 2019) permits irradiation of whole and ground spices and dehydrated seasoning preparations. Spices and seasonings are not defined in the Canada Food and Drug Regulations.

1.4.4 United States

The United States Food and Drug Administration Code of Federal Regulations (USFDA 2018) permits the use of ionizing radiation for the treatment of food, including culinary herbs, seeds and spices. Spices are defined in separate guidance. While a number of herbs are described, there is no general definition of herbs.

1.5 Reasons for accepting application

The application was accepted for assessment because:

- it complied with the procedural requirements under subsection 22(2) of the FSANZ Act
- it related to a matter that warranted the variation of a food regulatory measure.

1.6 Procedure for assessment

The application is being assessed under the General Procedure.

2 Summary of the assessment

2.1 Risk assessment

FSANZ's assessment is that amending the Code to provide clarity and confirm the meaning of herbs and spices for the purposes of the permission provided by section 1.5.3—4 would not pose potential adverse health effects.

The safety of irradiated herbs and spices was considered in 2001 under A413 (ANZFA 2001). The Final Assessment Report for A413 concluded that there is no evidence that irradiated plant material in the diet leads to toxicological concerns.

In addition, and since approval of A413, FSANZ has assessed the technological need, safety and nutrient profile of various irradiated tropical fruits; persimmons; tomatoes and capsicums; apple, apricot, cherry, nectarine, peach, plum, honeydew, rock melon, scallopini, strawberry, table grape and zucchini (courgette); and raspberries and blueberries. These assessments were conducted under applications A443, A1038, A1069, A1092 and A1115 (FSANZ 2002, FSANZ 2011, FSANZ 2013, FSANZ 2014, FSANZ 2016 respectively). FSANZ concluded that there was an established need to irradiate these foods and that there were no public health and safety issues associated with their consumption when irradiated up to a maximum dose of 1 kGy.

In conclusion, as the toxicological and microbiological safety of and technological justification for the irradiation of herbs and spices was previously assessed in the context of A413, and as no recent application or other available information has highlighted any public health and safety concerns from irradiated foods, a risk assessment for this application was not undertaken by FSANZ.

FSANZ's assessment did, however, consider other issues relevant to Application A1163, as outlined in the following risk management section and in section 2.4.

2.2 Risk management

2.2.1 Regulatory problem

As explained in section 1.3, subsection 1.5.3—4(3) of the Code states that, for the purposes of irradiation permission, 'herbs and spices means the herbs and spices described in Schedule 22'. Schedule 22 of the Code lists foods and classes of food. That list includes a separate class each for herbs and for spices. The entry in Schedule 22 for herbs and spices includes a general description of what constitutes a herb or a spice as well as a list of food commodities for each class.

The applicant stated these general descriptions and accompanying commodity lists are ambiguous leading to difficulties for importers of processed foods containing irradiated herbs and spices. In some cases, irradiated herbs and spices are being stopped at the Australian import border due to the interpretation of subsection 1.5.3—4(3) of the Code by enforcement officials. In such cases the reference in subsection 1.5.3—4(3) to a 'herb and spice described in Schedule 22' has been interpreted to mean a herb or spice that is included in *both* the general description and in the list of food commodities. If, for example, a herb or a spice is not expressly mentioned in the list of food commodities for herbs or spices in Schedule 22, it may be considered not to be a herb or spice described in Schedule 22 and therefore not permitted by section 1.5.3—4 to be irradiated. Depending on this variable interpretation, imported foods may be unnecessarily detained and must either be destroyed or re-exported at significant cost.

In addition, A1163 proposes four different interpretations of section 1.5.3—4, each having different implications for food manufacturers and importers. These interpretations and implications are summarised in Table 1 on page 3 of the application. The four interpretations range from the most restrictive (the herb or spice must meet both the definition and be named expressly in the commodity list) to the least restrictive interpretation (the herb or spice can meet either the description or be named in the commodity list).

The least restrictive option was the outcome intended in 2001 following the assessment of A413. The intent was that a herb or spice that does not meet the commodity description, but in other respects is considered a herb or a spice (it may be listed in the commodities list, but not necessarily) can be irradiated. That is, the permission was intended to apply to products that met the commonly understood meaning of what is a herb or a spice. Examples are bay leaves and kaffir lime leaves (these are listed, but may be considered as herbs from woody plants not herbaceous plants), and cinnamon bark (bark is not listed in the description of spices). Furthermore, there may be other herbs and spices that are similar to those that are listed, but are not explicitly captured in the relevant description in Schedule 22.

2.2.2 Proposed regulatory solution

The options available to FSANZ, after assessment, were to reject the application or to prepare a draft variation to amend the Code.

The applicant suggested that the current definition of herbs and spices in Standard 1.5.3 is replaced either by the ordinary and commonly understood meaning of ‘herbs and spices’ or by inclusion of generic definitions of herbs and spices.

FSANZ has assessed A1163 and concluded that the definition of herbs and spices in Standard 1.5.3 should be amended to provide greater certainty. FSANZ’s assessment is that amendment of the Code is the only option available that can provide the required certainty, and that there are no non-regulatory options that can appropriately address the regulatory problem. In making its assessment, FSANZ had regard to the criteria prescribed in the FSANZ Act (see section 2.4).

FSANZ therefore prepared a proposed draft variation which is described below in section 2.2.2.1.

2.2.2.1 Standard 1.5.3 amendment

Section 1.5.3—4 of the Code contains the current definition of herbs and spices for food irradiation, as explained in section 1.3.

The proposed draft variation will amend subsection 1.5.3—4(3) to provide that, for the purposes of section 1.5.3—4, herbs and spices includes (but is not limited to) a herb or a spice described in Schedule 22. This will be an inclusive definition. That is, the terms ‘herb’ and ‘spice’ are to be given their ordinary and commonly understood meaning. Plant material which falls within that meaning may be irradiated in accordance with section 1.5.3—4. For the purposes of the irradiation permission, a herb may also fall within either the general description in Schedule 22 of what is a herb or be listed as a commodity in the commodity list provided for herbs in that Schedule (and similarly for a spice).

In effect, section 1.5.3—4 will remain unchanged but will be re-written to make clear that the commodity lists in Schedule 22 are not exhaustive.

In its assessment, FSANZ had regard to the various definitions for herbs and spices contained in Codex texts, and, as noted in section 1.4.1, the descriptions and commodity lists in Schedule 22 were based on the CCPR guidelines in place at the time the Schedule was originally developed. Also noted in section 1.4.1, there is no single Codex definition for herbs and spices that is consistent across all Codex texts.

Our drafting approach is consistent with the intent of the permission granted and provided for in the Code as a result of the original variation in 2001, that is, approval to irradiate any herb and spice in accordance with a recognised technological need.

2.2.3 Labelling of irradiated food

The applicant has not requested a variation to the labelling requirements for irradiated herbs and spices. Existing labelling requirements for irradiated herbs and spices will continue to apply.

Section 1.5.3—9 of the Code requires foods that have been irradiated, or contain an ingredient or component that has been irradiated, to be labelled with a statement to the effect that the food, ingredient or component has been treated with ionising radiation. This statement may be in the statement of ingredients or elsewhere on the label. This requirement applies to foods available for retail sale and foods sold to caterers in Australia or New Zealand.

If an irradiated food or food containing irradiated ingredients or components is exempt from bearing a label (e.g. unpackaged fruits or vegetables, or ready-to-eat foods), then section 1.2.1—9 of the Code requires the statement to accompany the food or be displayed in connection with the display of the food.

Standard 1.2.4 of the Code requires ingredients to be listed by their common or descriptive names, or by a generic name if one is listed in Schedule 10. Schedule 10 lists 'herbs' and 'spices' as separate generic names that can be used on food labels.

2.3 Risk communication

2.3.1 Consultation

Consultation is a key part of FSANZ's standards development process.

FSANZ has developed and applied a basic communication strategy to this application. All calls for submissions are notified via the FSANZ Notification Circular, media release, FSANZ's social media tools and Food Standards News.

The process by which FSANZ considers standard development matters is open, accountable, consultative and transparent. Public submissions are called to obtain the views of interested parties on issues raised by the application and the impacts of regulatory options. The draft variation will be considered for approval by the FSANZ Board taking into account public comments received from this call for submissions.

The applicant, individuals and organisations that make submissions on the draft variation will be notified at each stage of the assessment. Subscribers and interested parties are also notified via email about the availability of reports for public comment.

If the draft variation to the Code is approved by the FSANZ Board, that decision will be notified to the Forum. If the decision is not subject to a request for a review, the applicant and stakeholders including the public, will be notified of the gazettal of the variation to the Code.

Every submission on an application is considered by the FSANZ Board. While not all comments may be taken on board during the process, they are valued and all contribute to the rigour of our assessment.

2.3.2 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.

There are relevant international standards and amending the Code to clarify permissions to irradiate herbs and spices would maintain consistency with international standards as it would permit irradiation, where there has been some uncertainty, to be sold in or imported into Australia and New Zealand. Therefore, a notification under Australia's and New Zealand's obligations under the WTO Technical Barriers to Trade Agreement or Application of Sanitary and Phytosanitary Measures Agreement was not considered necessary.

2.4 FSANZ Act assessment requirements

When assessing this application and the subsequent development of a food regulatory measure, FSANZ has had regard to the following matters in section 29 of the FSANZ Act:

2.4.1 Section 29

2.4.1.1 Cost benefit analysis

The OBPR exempted FSANZ from the need to undertake a formal Regulation Impact Statement in relation to the regulatory change proposed in response to this application (OBPR reference number: 25085). This was due to OPBR being satisfied that this appears likely to have only a minor regulatory impact.

FSANZ, however, has had regard to the costs and benefits that may arise from the proposed measure for the purposes of meeting FSANZ Act considerations. Section 29(2)(a) of the FSANZ Act requires FSANZ to have regard to whether costs that would arise from the proposed measure outweigh the direct and indirect benefits to the community, government or industry that would arise from the proposed measure.

The purpose of this analysis is to determine if the community, government and industry as a whole is likely to benefit, on balance, from a move from the status quo. This analysis considers the option to clarify the meaning of the terms herbs and spices specified in Standard 1.5.3 of the Code to ensure uniform interpretation and enforcement. FSANZ is of the view that no other realistic food regulatory measures exist, however information received may result in FSANZ arriving at a different outcome.

The analysis of the costs and benefits in this section is not intended to be an exhaustive, quantitative economic analysis of the proposed measures. In fact, most of the effects that FSANZ had regard to cannot easily be assigned a dollar value. Rather, the analysis seeks to highlight the likely positives and negatives of moving away from the status quo to the option described above.

Costs and benefits of amending the Code to clarify the definition of herbs and spices

Consumers - There may be some increase in the range of food products containing irradiated herbs and spices available to consumers, particularly from imported sources.

Whilst irradiated herbs and spices have been assessed as being safe, mandatory labelling of food containing any irradiated ingredients will allow consumers wishing to avoid such foods to do so.

Industry and business in general - Food businesses, particularly importers, are likely to benefit from more certain and consistent access to a greater range of food products containing irradiated herbs and spices. That is particularly where irradiation is more effective and or efficient at controlling bacterial contamination of foods than other techniques.

Government - Government enforcement agencies are likely to benefit from:

- greater certainty regarding the definitions of herbs and spices in Standard 1.5.3 (potentially reducing administration and enforcement costs).
- consistency with definitions used by Codex Alimentarius and by the United States, Canada and Europe is clarified.

International Trade - The proposed change would ensure greater regulatory consistency with trading partners.

Conclusions from cost benefit considerations

FSANZ's analysis is that the direct and indirect benefits that would arise from a food regulatory measure, developed or varied as a result of the application, outweigh the costs to

the community, government or industry that would arise from the development or variation of the food regulatory measure.

2.4.1.2 Other measures

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 application.

2.4.1.3 Any relevant New Zealand standards

The standards in question apply in both Australia and New Zealand. There are no relevant New Zealand only standards.

2.4.1.4 Any other relevant matters

Other relevant matters are considered below.

2.4.2 Subsection 18(1)

FSANZ has also had regard to the three objectives in subsection 18(1) of the FSANZ Act during the assessment.

2.4.2.1 Protection of public health and safety

FSANZ considers that there are no public health and safety risks related to the proposed amendment.

2.4.2.2 The provision of adequate information relating to food to enable consumers to make informed choices

The mandatory requirements under Standard 1.5.3 to label irradiated foods will provide information to enable consumers to make informed purchase decisions.

2.4.2.3 The prevention of misleading or deceptive conduct

There are no issues identified with this application relevant to this objective.

2.4.3 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**

See section 2.1 of this report. As explained, FSANZ has previously assessed and characterised the risk from consumption of irradiated foods, and for herbs and spices this was conducted under A413. Those assessments were based on and had regard to the best available scientific evidence. FSANZ is not aware of any new scientific evidence to suggest that these previous risk assessments require revision.

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

Regulatory certainty that there is approval to irradiate any herb or spice will promote consistency with other countries that permit the irradiation of herbs and spices.

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

Ensuring regulatory clarity relating to food irradiation permissions for herbs and spices helps enable an efficient and internationally competitive food industry.

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

As explained above, in terms of fair trading and consumer protection, the mandatory requirements under Standard 1.5.3 of the Code to label irradiated foods will provide information to enable consumers to make informed purchase decisions.

- **any written policy guidelines formulated by the Forum on Food Regulation**

The Policy Guideline on the Labelling of Food Produced using New Technologies² includes specific order policy principles. Labelling of irradiated foods is already a requirement in the Code. FSANZ has determined that clarifying the Code in respect of the definitions of herbs and spices is consistent with the Ministerial Policy Guideline and the specific order principles.

3 Draft variation

The draft variation to Standard 1.5.3 of the Code is at Attachment A, and is intended to take effect on the date of gazettal.

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 Legislation.

4 References

ANZFA (2001) Application A413 [Irradiation of Herbs and Spices](#). Australia New Zealand Food Authority, Canberra.

CFDR 2019 [Government of Canada Food and Drug Regulations C.R.C.,c 870](#) Division 26 Food Irradiation. Accessed 9 April 2019.

CCFH (1983) Codex Standard for Irradiated Food. [Codex STAN 106-1983-REV.1-2003](#). Accessed 9 April 2019.

EC (1999) [Commission Implementing Directive \(EC\) 1999/3/EC](#) of 22 February 1999 on the establishment of a Community list of foods and food ingredients treated with ionising radiation. Accessed 9 April 2019.

FSANZ (2002) Application A443 [Irradiation of Tropical Fruits](#). Food Standards Australia New Zealand, Canberra.

FSANZ (2011) Application A1038 [Irradiation of Persimmons](#). Food Standards Australia New Zealand, Canberra.

FSANZ (2013) Application A1069 [Irradiation of Tomatoes and Capsicums](#). Food Standards Australia New Zealand, Canberra.

FSANZ (2014) Application A1092 [Irradiation of Specific Fruits and Vegetables](#). Food Standards Australia New Zealand, Canberra.

FSANZ (2016) Application A1115 [Irradiation of Blueberries and Raspberries](#). Food

² [Policy Guideline on the labelling of food produced using new technologies](#)

Standards Australia New Zealand, Canberra.

USFDA 2018 [United States Code of Federal Regulations Title 21](#) Part 179 Irradiation in the Production, Processing and Handling of Food. Accessed 9 April 2019.

Attachments

- A. Draft variation to the *Australia New Zealand Food Standards Code*
- B. Draft Explanatory Statement

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



Food Standards (Application A1163 – Food Irradiation definition of herbs and spices) 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 variation commences on the date specified in clause 3 of this variation.

Dated [To be completed by the Delegate]

[Insert Delegate's details]

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 (Application A1163 – Food Irradiation definition of herbs and spices) Variation*.

2 Variation to a standard in the *Australia New Zealand Food Standards Code*

The Schedule varies a Standard in the *Australia New Zealand Food Standards Code*.

3 Commencement

The variation commences on the date of gazettal.

Schedule

[1] Standard 1.5.3 is varied by omitting subsection 1.5.3—4(3) and substituting

(3) In this section:

herbs and spices includes (but is not limited to) a herb or a spice described in Schedule 22.

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 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 A1163 which sought an amendment to the definitions in of herbs and spices in subsection 1.5.3—4(3) of the Code. The Authority considered the application in accordance with Division 1 of Part 3 and has prepared a draft variation.

2. Purpose

FSANZ has prepared a draft variation to amend subsection 1.5.3—4(3) of the Code to clarify the meaning of the terms herbs and spices for the purposes of food irradiation and to ensure consistent interpretation and enforcement.

3. Documents incorporated by reference

The variation to a food regulatory measure 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 A1163 will include one round of public consultation following an assessment and the preparation of a draft variation.

A Regulation Impact Statement (RIS) 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 deregulatory in nature (see OBPR reference number: 25085).

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 subsection 1.5.3—4(3) and substituting a new subsection 1.5.3—4(3). The new subsection will provide that, in section 1.5.3—4, a reference to herbs and spices includes (but is not limited to) a herb or a spice described in Schedule 22. The new subsection provides an inclusive definition, in other words, the terms 'herb' and 'spice' mean any plant derived material within the commonly accepted and ordinary meaning of 'herb' or 'spice'. The latter include (but are not limited to):

- plant material that meets the general description of a 'herb' or 'spice' in Schedule 22; and/or
- is expressly included in the relevant list of commodities provided in Schedule 22 for 'herbs and spices'.