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 A1100 which sought to increase the maximum permitted level (MPL) of acesulphame potassium (Ace K) in chewing gum to align with the international regulations and so standardise formulations. The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft variation.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation[1], 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 sunsetting under the *Legislative Instruments Act 2003*.

2. Purpose

The Authority has approved a draft variation to Schedule S15—5 which would allow a higher than currently permitted MPL for Ace K, a food additive (sweetener and flavour enhancer) in chewing gum. Permitting this higher level in chewing gum would enable manufacturers and importers to sell chewing gum in Australia and New Zealand with taste profiles which are matched with those currently available in overseas markets.

The approved draft variation would provide consistency with international regulations and trading partners, and facilitate the production and importation of currently prohibited chewing gum products in Australia and New Zealand.

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 A1100 included one round of public consultation following an assessment and the preparation of a draft variation and associated report. A call for submissions (including the draft variation) occurred for a six-week consultation period.

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

A Regulation Impact Statement was not required because the proposed variation to section S15—5 is likely to have a minor 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

Item [1] amends the table to section S15—5 in Schedule 15 Food Additives.

Item [1.1] amends the existing entry for Acesulphame potassium in item 5 of the table. The amendment provides that entry does not apply to bubble gum or to chewing gum. This is to reflect the amendment made by item [1.3] of the draft variation.

Item [1.2] omits the reference “950,” from the Note to item 5 in the table. This is to reflect the amendments made by items [1.1] and [1.3] of the draft variation.

Item [1.3] amends subitem 5.2.1 of the table. It inserts a permission after the entry in that subitem for additive 321 for the use of Acesulphame potassium (INS number 950) as a food additive in bubble gum and chewing gum subject to a maximum permitted level of 5000 mg/kg.