

19 June 2024

294-24

Approval report – Application A1282

Subtilisin from GM *Bacillus subtilis* as a processing aid

Food Standards Australia New Zealand (FSANZ) has assessed an application made by IFF Australia Pty Ltd (trading as Danisco Australia Pty Ltd) to amend the Australia New Zealand Food Standards Code to permit the use of a protein engineered variant of subtilisin from genetically modified *Bacillus subtilis* to be used as a processing aid to hydrolyse proteins in foods containing proteins.

On 30 January 2024, FSANZ sought submissions on a draft variation and published an associated report. FSANZ received two submissions.

FSANZ approved the draft variation on 4 June 2024. The Food Ministers' Meeting¹ was notified of FSANZ's decision on 19 June 2024.

This Report is provided pursuant to paragraph 33(1)(b) of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act).

¹ Formerly referred to as the Australia and New Zealand Ministerial Forum on Food Regulation

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Supporting document

The following documents which informed the assessment of this application are available on the [FSANZ website](#)²:

SD1 Risk and technical assessment (at Approval)

² <https://www.foodstandards.gov.au/food-standards-code/applications/a1282-subtilisin-gm-bacillus-subtilis-processing-aid>

Executive summary

Food Standards Australia New Zealand (FSANZ) received an application from IFF Australia Pty Ltd (trading as Danisco Australia Pty Ltd) to vary the Australia New Zealand Food Standards Code (the Code) to permit the use of a protein engineered variant of the enzyme subtilisin (EC 3.4.21.62) as a processing aid for hydrolysing proteins in foods containing proteins. The subtilisin is sourced from a genetically modified (GM) *Bacillus subtilis* containing the gene for subtilisin from *Bacillus clausii*.

The enzyme would be used at minimum levels necessary to achieve the desired effect, in accordance with Good Manufacturing Practice (GMP).

The proposed use of subtilisin as an enzyme processing aid in the quantity and form requested is consistent with its typical function of hydrolysing proteins. This enzyme performs its technological purpose during processing of proteins in food and does not perform its technological purpose in the food for sale, therefore functioning as a processing aid for the purposes of the Code. There are relevant identity and purity specifications for the enzyme in the Code.

There are no safety concerns from the use of subtilisin from a GM strain of *B. subtilis* containing the subtilisin gene from *B. clausii*. A microbiological assessment concluded that the host organism has a long history of safe use in food and is not pathogenic or toxigenic. A toxicological assessment combined with a dietary exposure assessment concluded the enzyme is safe according to the proposed use. In the absence of any identifiable hazard, an acceptable daily intake (ADI) of 'not specified' is appropriate.

Following assessment and the preparation of the draft variation, FSANZ called for submissions regarding the draft variation. FSANZ received two submissions, both of which supported the draft variation.

Based on the information above and on other relevant considerations set out in this report, FSANZ has approved a draft variation amending the table to subsection S18—9(3) of the Code. The effect of the approved draft variation will be to permit the use of the enzyme subtilisin (EC 3.4.21.62) sourced from *Bacillus subtilis* containing the gene for subtilisin from *Bacillus clausii* as a processing aid for hydrolysing proteins in foods containing proteins in accordance with the Code. The permission will be subject to the condition that the maximum permitted level or amount of the enzyme that may be present in the food must be an amount consistent with GMP.

1. Introduction

1.1. The applicant

The applicant is IFF Australia Pty Ltd (trading as Danisco Australia Pty Ltd). Information about the applicant is provided in the application.

1.2. The application

The purpose of the application was to modify Schedule 18 of the Australia New Zealand Food Standards Code (the Code) to permit the use of a protein engineered variant of the enzyme subtilisin from genetically modified (GM) *Bacillus subtilis* containing the gene for subtilisin from *Bacillus clausii* as a processing aid.

The intended use is for hydrolysing proteins in foods containing protein. Typical processes which may employ subtilisin from GM *B. subtilis* include baking and dairy, egg, meat and fish processing. Subtilisin from GM *B. subtilis* would be used at minimum levels necessary to achieve the desired effect and according to requirements for normal production following Good Manufacturing Process (GMP).

1.3. The current Standard

Australian and New Zealand food laws require food for sale to comply with relevant requirements in the Code. The requirements relevant to this application are summarised below.

1.3.1. Permitted use

Enzymes used to process and manufacture food are considered processing aids. Although they may be present in the final food, they no longer provide a technological purpose in that food.

Paragraph 1.1.1—10(6)(c) provides that a food for sale must not have, as an ingredient or a component, a substance that is used as a processing aid unless that substance's use as a processing aid is expressly permitted by the Code.

Section 1.1.2—13 provides that a substance 'used as a processing aid' in relation to a food is a substance used during processing that meets all the following conditions:

- it is used to perform a technological purpose during processing
- it does not perform a technological purpose in the food for sale
- it is a substance listed in Schedule 18 or identified in section S16—2 as an additive permitted at GMP.

Standard 1.3.3 and Schedule 18 list the permitted processing aids. Enzymes of microbial origin permitted to be used as processing aids are listed in the table to subsection S18—4(5) or in the table to subsection S18—9(3), depending on whether a technological purpose has been specified.

An enzyme of microbial origin listed in the table to subsection S18—4(5) is permitted for use as a processing aid to perform *any* technological purpose if the enzyme is derived from the corresponding source specified in the table.

The table to subsection S18—9(3) lists those substances, including enzymes derived from sources, which are permitted to be used as processing aids for specific technological purposes in relation to:

- if a food is specified—that food; or
- if no food is specified—any food.

Additionally, paragraph 1.3.3—11(c) specifies that the substance may only be used as a processing aid if it is not present in the food at greater than the maximum permitted level for that substance indicated in the table to section S18.

Paragraph 1.1.1—10(6)(g) requires that the presence of a food produced using gene technology as an ingredient or component in a food for sale must be expressly permitted by the Code. Paragraph 1.5.2—3(b) provides that permission in the Code for use as a processing aid also constitutes the permission required by paragraph 1.1.1—10(6)(g).

The Code already permits the use of subtilisin from *B. licheniformis* as well as other enzymes (e.g., α -acetolactate decarboxylase, α -amylase, serine protease) from *B. subtilis*. This subtilisin enzyme is derived by submerged fermentation from *B. subtilis* containing the gene for subtilisin from *Bacillus clausii*.

1.3.2. Identity and purity requirements

Paragraph 1.1.1—15(1)(b) requires substances used as processing aids in food to comply with any relevant identity and purity specifications listed in Schedule 3 of the Code.

Subsection S3—2(1) incorporates by reference the specifications listed in the Joint FAO/WHO Expert Committee on Food Additives (JECFA) in its Compendium of Food Additive Specifications (FAO JECFA Monographs 26, 2021³), for enzyme preparations explicitly FAO/WHO (2006)⁴. S3—2(1) also references United States Pharmacopeial Convention (2022)⁵ Food chemicals codex, 13th edition.

These incorporated references include general specifications for enzyme preparations used in food processing for identity and purity parameters.

Subsection S3—4 sets out additional and supplementary requirements. It specifies that, if there is no relevant specification under section S3—2 or S3—3, or if the monographs referred to in those sections do not contain a specification for identity and purity of a substance relating to arsenic or heavy metals, the specification is that the substance must not contain on a dry weight basis more than:

- 2 mg/kg of lead
- 1 mg/kg of arsenic
- 1 mg/kg of cadmium
- 1 mg/kg of mercury.

1.3.3. Labelling requirements

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

Paragraphs 1.2.4—3(2)(d) and (e) exempt processing aids from the requirement to be declared in the statement of ingredients unless other requirements apply.

Section 1.5.2—4 of the Code requires a food for sale that consists of a *genetically modified*

³ FAO/WHO (2021) Evaluation of certain food additives: eighty-ninth report of the Joint FAO/WHO Expert Committee on Food Additives. WHO Technical Report Series, No. 1027.

⁴ FAO/WHO (2006) Compendium of Food Additive Specifications, FAO JECFA Monographs 3

⁵ FCC (2022) Food Chemicals Codex, 13th edition. Rockville (MD): United States Pharmacopeial Convention, <http://publications.usp.org/>

food⁶ (GM food) or has a GM food as an ingredient to be labelled as 'genetically modified' unless an exemption applies. The statement 'genetically modified' must be made in conjunction with the name of the GM food. If the GM food is used as a processing aid, this statement may be included in the statement of ingredients. The requirements imposed by section 1.5.2—4 apply to foods for retail sale and to foods sold to a caterer in accordance with Standard 1.2.1.

1.4. International standards

In developing food regulatory measures, FSANZ must have regard to the promotion of consistency between domestic and international food standards. In terms of food safety, the relevant international standard setting body is the Codex Alimentarius Commission (Codex). In contrast to food additives, there is no Codex Alimentarius 'general standard' for enzymes, however as noted in section 1.3.2 above, there are internationally recognised specifications for enzyme preparations established by JECFA and Food Chemicals Codex.

In addition, there is a Codex guideline, Guidelines on Substances used as Processing Aids (CAC/GL 75-2010) which sets out general principles for the safe use of substances used as processing aids, including that substances used as processing aids shall be used under conditions of GMP.

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 *Food Standards Australia New Zealand Act 1991* (FSANZ Act), and
- it related to a matter that warranted the variation of a food regulatory measure.

1.6. Procedure for assessment

The application was assessed under the General Procedure in the FSANZ Act.

1.7. Decision

For the reasons outlined in this report, FSANZ decided to approve a draft variation amending the Code to permit subtilisin from GM *Bacillus subtilis* containing the gene for subtilisin from *Bacillus clausii* as a processing aid for hydrolysing proteins in foods containing proteins.

The draft variation as proposed following assessment was approved without change after FSANZ had regard to submissions. The approved variation takes effect on gazettal and is at Attachment A.

The related explanatory statement is in Attachment B. An explanatory statement is required to accompany an instrument if it is lodged on the Federal Register of Legislation.

⁶ Section 1.5.2—4(5) defines **genetically modified food** to mean a **food produced using gene technology that:

- a) contains novel DNA or novel protein; or
- b) is listed in Section S26—3 as subject to the condition that its labelling must comply with this section' (*that being section 1.5.2—4*).

2. Summary of the findings

2.1. Summary of issues raised in submissions

FSANZ called for submissions on the draft variation included in the call for submissions report between 30 January 2024 and 14 March 2024. Two submissions were received, one from New Zealand Food and Grocery Council (NZFGC) and one from New Zealand Food Safety (NZFS).

Both submissions supported the amendment to permit the enzyme subtilisin (EC 3.4.21.62) sourced from a GM strain of *B. subtilis* containing the subtilisin gene from *B. clausii*, to be used as a processing aid for protein hydrolysis in food containing proteins.

Table 1: Summary of issues

Issue	Raised by	FSANZ response
<ul style="list-style-type: none"> Support the amendment The Food Chemical Codex (2015) and the Joint FAO/WHO Expert Committee on Food Additives (2006) specifications do not contain a specification of the enzyme relating to lead, therefore the enzyme should meet the lead requirement under section S3—4 of the Code (<2 mg/kg). 	NZFS	<p>FSANZ notes that sections 1.1.1—15(2) and S3—2 of the Code requires subtilisin to comply with any relevant specification set out explicitly in FAO/WHO (2006) and the Chemicals Codex (2021).</p> <p>The relevant FAO JECFA Monograph sets a specification for lead of “Not more than 5 mg/kg (see page 64 under the subheading Purity). The Food Chemical Codex also contains an acceptance criterion for lead (≤ 5 mg/kg). Therefore, the enzyme must comply with this specification.</p> <p>The enzyme must also comply with the specifications for cadmium (≤ 1 mg/kg), mercury (≤ 1 mg/kg) and arsenic (≤ 1 mg/kg) set under section S3—4 of the Code.</p> <p>The data provided by the applicant confirmed that the enzyme complies with the above specifications, raising no food safety concerns.</p> <p>FSANZ also consulted with the applicant and verified that their products meet all required specifications. No changes to the draft variation proposed following assessment are required.</p>
Support the amendment to permit the this form of the enzyme subtilisin (EC 3.4.21.62) to be used as a processing aid for protein hydrolysis in food containing proteins	NZFGC	Noted

2.2. Food Technology assessment

FSANZ undertook a food technology assessment to determine whether the enzyme achieves its technological purpose in the quantity and form proposed (see SD1).

FSANZ concluded that the proposed use of this variant of the enzyme subtilisin as a processing aid is consistent with its typical function of hydrolysing proteins in foods.

Subtilisin performs its technological purpose during the production of food and is not performing the technological purpose in the food for sale. It is therefore functioning as a processing aid for the purposes of the Code.

The analysis provided by the applicant confirmed that the enzyme complies with relevant specifications.

2.3. Safety Assessment

No public health and safety concerns were identified in the assessment of this subtilisin under the proposed use conditions (see SD1). The host is neither pathogenic nor toxigenic. Analysis of the GM production strain confirmed the presence and stability of the inserted DNA.

A toxicological assessment combined with a dietary exposure assessment concluded the enzyme is safe under the proposed conditions of use. Bioinformatics analysis confirmed that the enzyme has no significant similarity with known toxins or food allergens.

Based on the reviewed data, and in the absence of any identifiable hazard, FSANZ concluded that an Acceptable Daily Intake (ADI) of 'not specified' is appropriate.

2.4. Risk management

Following assessment, FSANZ prepared a draft variation and called for submissions on that draft variation from 30 January 2024 to 14 March 2024.

The risk management options available to FSANZ following the call for submissions were to either:

- approve the draft variation proposed following assessment, or
- approve the draft variation subject to such amendments as FSANZ considers necessary, or
- reject the draft variation.

Having regard to the submissions received, and for the reasons set out in this report, FSANZ approved the draft variation as proposed following assessment without change (Attachment A).

The conclusions from the risk and technical assessment were that the proposed use of the enzyme is technologically justified and there are no public health and safety concerns associated with its proposed use.

Risk management considerations for this application relating to the regulatory approval, the enzyme and source microorganism nomenclature, specifications and labelling are discussed below.

2.4.1. Regulatory approval for processing aids

As stated above, FSANZ approved the draft variation to permit the use of this enzyme as a processing aid.

The express permission for the enzyme to be used as a processing aid also provides the

permission for its potential presence in food for sale as a food produced using gene technology (see section 1.3.1 of this report above). The enzyme is a food produced using gene technology for Code purposes as it is derived from 'an organism which has been modified using gene technology' (see subsection 1.1.2—2(3) of the Code)⁷

2.4.2. Enzyme nomenclature, source microorganism nomenclature and specifications

2.4.2.1. Enzyme and microorganisms

The International Union of Biochemistry and Molecular Biology (IUBMB) uses the accepted name subtilisin. This is the name used in the approved draft variation and the name used in existing permissions for subtilisin in Schedule 18.

Nomenclature for the host and gene donor organisms – *Bacillus subtilis* and *Bacillus clausii* respectively – is in accordance with accepted international norms for taxonomy.

2.4.2.2. Specifications

There are relevant identity and purity specifications in primary sources of specifications listed in Schedule 3 for enzyme preparations used in food processing (refer to section 1.3.2 above).

2.4.3. Labelling

Relevant labelling provisions in the Code will apply to foods for sale that are manufactured using this processing aid. See section 1.3.3 above.

2.4.4. Risk management conclusion

The risk management conclusion is to permit the enzyme, a protein engineered variant of subtilisin (EC 3.4.21.62) sourced from a GM *B. subtilis* containing the gene for subtilisin from *B. clausii*, as a processing aid in hydrolysing proteins in foods containing protein.

The enzyme and its associated technological purpose will be listed in the table to subsection S18—9(3) of the Code, which includes enzymes permitted for a specific technological purpose.

The maximum permitted level or amount of the enzyme that may be present in the food would have to be an amount consistent with GMP. The express permission for the enzyme to be used as a processing aid in Schedule 18 of the Code would also provide the permission for the enzyme's potential presence in the food for sale as a food produced using gene technology.

2.5. Risk communication

2.5.1. Consultation

Consultation is a key part of FSANZ's standards development process. FSANZ developed and applied a standard communication strategy to this application. All calls for submissions are notified via the Food Standards Notification Circular, media release, FSANZ's social media channels and Food Standards News.

The process by which FSANZ considers standards development matters is open,

⁷ Food produced using gene technology' is defined in subsection 1.1.2—2(3) as meaning 'a food which has been derived or developed from an organism which has been modified by gene technology'.

accountable, consultative and transparent. Public submissions were called to assist consideration of the draft variation to the Code. FSANZ acknowledges the time taken by individuals and organisations to make submissions on this application.

The draft variation was considered for approval by the FSANZ Board having regard to all submissions made during the call for submissions period.

2.6. FSANZ Act assessment requirements

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

2.6.1. Section 29

2.6.1.1. *Consideration of costs and benefits*

Changes have been made to the Impact Analysis requirements by the Office of Impact Analysis (OIA)⁸. Impact analysis is no longer required to be finalised with the OIA. Prior to these changes, the OIA advised FSANZ that a Regulatory Impact Statement (RIS) was not needed for the applications relating to processing aids and GM food. This is because applications relating to permitting the use of processing aids and GM food that have been determined to be safe are minor and deregulatory in nature, as their use will be voluntary if the draft variation concerned is approved. Under this approach, FSANZ's assessment was that a RIS is not needed for this application.

FSANZ, however, gave consideration to the costs and benefits that may arise from the proposed measure for the purposes of meeting FSANZ Act considerations. 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 (paragraph 29(2)(a)).

The purpose of this consideration was to decide if the community, government, and industry is likely to benefit, on balance, from a move from the *status quo* (where the status quo is rejecting the application). This analysis considered permitting the proposed use of this protein engineered variant of subtilisin from *GM B. subtilis* as a processing aid for hydrolysing proteins in foods containing protein.

The consideration of the costs and benefits in this section was not an exhaustive, quantitative economic analysis of the proposed measure. In fact, most of the effects considered cannot easily be assigned a dollar value. Rather, the assessment highlights the likely positives and negatives of moving away from the status quo by approving the proposed variation to the Code.

FSANZ's conclusions regarding the costs and benefits of the proposed measure are set out below. No further information was received during the consultation process that changed that assessment.

Costs and benefits of permitting the proposed use of this enzyme

Industry may benefit from several improvements and efficiencies from the use of this enzyme. Due to the voluntary nature of the permission, industry will only use the enzyme as proposed where they believe a net benefit exists for them.

If industry were to experience cost savings because of using this enzyme, industry may pass on some of the cost savings to consumers.

⁸ [Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies | The Office of Impact Analysis \(pmc.gov.au\)](https://www.pmc.gov.au/regulatory-impact-analysis-guide-for-ministers-meetings-and-national-standard-setting-bodies)

Permitting the proposed use of this enzyme may result in a small, inconsequential cost to government in terms of an addition to the current range of processing aids that are already monitored for compliance.

Conclusions from cost benefit considerations

FSANZ's assessment was that the direct and indirect benefits that would arise from permitting the proposed use of this protein engineered variant of subtilisin from GM *B. subtilis* as a processing aid for protein processing most likely outweigh the associated costs.

2.6.1.2. 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 because of the application.

2.6.1.3. Any relevant New Zealand standards

There are no relevant New Zealand only Standards.

The standards in the Code relevant to the use of the enzyme processing aid in question apply in both Australia and New Zealand.

2.6.1.4. Any other relevant matters

Other relevant matters are considered below.

2.6.2. Subsection 18(1)

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

2.6.2.1. Protection of public health and safety

FSANZ undertook a safety assessment (SD1) and concluded there are no public health and safety concerns associated with permitting the proposed use of this protein engineered variant of subtilisin from a GM *B. subtilis* as a processing aid for hydrolysing proteins in foods containing protein.

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

The labelling requirements for this enzyme are discussed in sections 1.3.3 and 2.4.3 of this report.

2.6.2.3. The prevention of misleading or deceptive conduct

There were no issues for this application relevant to this objective.

2.6.3. 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**

FSANZ has used the best available scientific evidence to conduct the risk analysis. The risk assessment is provided in SD1. The applicant submitted a dossier of scientific studies as part of the application. This dossier, together with other technical information including scientific literature, was considered by FSANZ in assessing the application.

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

There are relevant international specifications for enzyme preparations as referred to in section 1.3.2 of this report, with which this enzyme would have to comply.

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

Subtilisin is used as processing aid in a range of countries where there are no restrictions on the use of enzyme processing aids or where the enzyme is covered by a country positive list or specific approval⁹.

Approval for its use would bring Australia and New Zealand into line with other jurisdictions where it is already able to be used. In this way, Australia and New Zealand will remain competitive with other international markets. This will also help foster continued innovation and improvements in food manufacturing techniques and processes.

The conclusion of the risk assessment is that there are no public health and safety concerns associated with the proposed use of this enzyme as a food processing aid. It is therefore appropriate that Australian and New Zealand food industries are given the opportunity to benefit from the use of this enzyme for the applications proposed by the applicant.

The domestic food industry will make their own economic decisions, considering the costs and benefits of using the new enzyme, to determine if it is of benefit to their business.

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

No issues were identified for this application relevant to this objective.

- **any written policy guidelines formulated by the Food Ministers' Meeting**

The Ministerial Policy Guideline *Addition to Food of Substances other than Vitamins and Minerals*¹⁰ includes specific order policy principles for substances added to achieve a solely technological function, such as processing aids. These specific order policy principles state that permission should be granted where:

- the purpose for adding the substance can be articulated clearly by the manufacturer as achieving a solely technological function (i.e. the 'stated purpose')
- the addition of the substance to food is safe for human consumption
- the amounts added are consistent with achieving the technological function
- the substance is added in a quantity and a form which is consistent with delivering the stated purpose
- no nutrition, health or related claims are to be made regarding the substance.

FSANZ determined that permitting the proposed use of this enzyme as a processing aid is consistent with the specific order policy principles for 'Technological Function.' All other relevant requirements of the policy guideline are similarly met.

Attachments

- A. Approved draft variation to the Australia New Zealand Food Standards Code
- B. Explanatory Statement

⁹ Pariza MW, Foster EM (1983) Determining the Safety of Enzymes Used in Food Processing. *Journal of Food Protection* 46(5):453-468.

Pariza MW, Johnson EA (2001) Evaluating the Safety of Microbial Enzyme Preparations Used in Food Processing: Update for a New Century. *Regulatory Toxicology and Pharmacology* 33:173-186.

¹⁰ Available on the [Food regulation website](#).

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



Food Standards (Application A1282 – Subtilisin from GM *Bacillus subtilis* as a processing aid) 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]

[Name and position of Delegate]

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 A1282 – Subtilisin from GM Bacillus subtilis as a processing aid) 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

Schedule 18—Processing aids

[1] Subsection S18—9(3) (table)

Insert:

Subtilisin, protein engineered variant, (EC 3.4.21.62) sourced from <i>Bacillus subtilis</i> containing the gene for subtilisin from <i>Bacillus clausii</i>	For use in hydrolysing proteins in foods containing proteins.	GMP
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[2] Subsection S18—9(3) (note after the table, dot point list of protein engineered variants of enzymes)

Omit:

Protein engineered enzymes used in the manufacture of various steviol glycosides.

substitute:

Protein engineered enzymes used in the manufacture of various steviol glycosides;
Subtilisin, protein engineered variant.

Attachment B – Explanatory Statement

EXPLANATORY STATEMENT

Food Standards Australia New Zealand Act 1991

Food Standards (Application A1282 – Subtilisin from GM *Bacillus subtilis* as a processing aid) Variation

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 A1282 which sought to amend the Code to permit the use of a protein engineered variant of the enzyme subtilisin from genetically modified (GM) *Bacillus subtilis* as a processing aid to hydrolyse proteins in foods containing proteins. The Authority considered the application in accordance with Division 1 of Part 3 and has approved a draft variation: the *Food Standards (Application A1282 – Subtilisin from GM *Bacillus subtilis* as a processing aid) Variation*.

Following consideration by the Food Ministers' Meeting (FMM), section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the draft Variation.

2. Variation is a legislative instrument

The approved draft variation is a legislative instrument for the purposes of the *Legislation Act 2003* (see section 94 of the FSANZ Act) and is publicly available on the Federal Register of Legislation (www.legislation.gov.au).

This instrument is not subject to the disallowance or sunset provisions of the *Legislation Act 2003*. Subsections 44(1) and 54(1) of that Act provide that a legislative instrument is not disallowable or subject to sunset if the enabling legislation for the instrument (in this case, the FSANZ Act): (a) facilitates the establishment or operation of an intergovernmental scheme involving the Commonwealth and one or more States; and (b) authorises the instrument to be made for the purposes of the scheme. Regulation 11 of the *Legislation (Exemptions and other Matters) Regulation 2015* also exempts from sunset legislative instruments a primary purpose of which is to give effect to an international obligation of Australia.

The FSANZ Act gives effect to an intergovernmental agreement (the Food Regulation Agreement) and facilitates the establishment or operation of an intergovernmental scheme (national uniform food regulation). That Act also gives effect to Australia's obligations under an international agreement between Australia and New Zealand. For these purposes, the Act establishes the Authority to develop food standards for consideration and endorsement by the FMM. The FMM is established under the Food Regulation Agreement and the international agreement between Australia and New Zealand, and consists of New Zealand, Commonwealth and State/Territory members. If endorsed by the FMM, the food standards on gazettal and registration are incorporated into and become part of Commonwealth, State and Territory and New Zealand food laws. These standards or instruments are then administered, applied, and enforced by these jurisdictions' regulators as part of those food laws.

3. Purpose

The Authority has approved a draft variation amending the table to subsection S18—9(3) of the Code to permit the use of a protein engineered variant of the enzyme subtilisin (EC 3.4.21.62) sourced from *Bacillus subtilis* containing the gene for subtilisin from *Bacillus clausii* as a processing aid for use in hydrolysing proteins in foods containing proteins.

This permission is subject to the condition that the maximum permitted level or amount of the enzyme that may be present in the food must be consistent with good manufacturing practice (GMP).

4. Documents incorporated by reference

The approved variation does not incorporate any documents by reference.

However, existing provisions of the Code incorporate documents by reference that would prescribe identity and purity specifications for the processing aid to be permitted by the approved draft variation. Section 1.1.1—15 of the Code requires substances used as processing aids to comply with any relevant identity and purity specifications listed in Schedule 3 of the Code. Section S3—2 of Schedule 3 incorporates by reference the specifications listed in the Joint FAO/WHO Expert Committee on Food Additives (JECFA) Compendium of Food Additive Specifications (FAO/WHO 2021) and the United States Pharmacopeial Convention (2022) Food Chemicals Codex (13th edition). These include general specifications for the identity and purity parameters of enzyme preparations used in food processing.

5. Consultation

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1282 included one round of public consultation following an assessment and the preparation of a draft variation and associated assessment summary. FSANZ called for submissions on a draft variation to the Code from 30 January to 14 March 2024.

Changes have been made to the Impact Analysis requirements by the Office of Impact Analysis (OIA)¹¹. Impact analysis is no longer required to be finalised with the OIA. Prior to these changes, the OIA advised FSANZ that a Regulatory Impact Statement (RIS) was not needed for the applications relating to processing aids and GM food. This is because applications relating to permitting the use of processing aids and GM food that have been determined to be safe are minor and deregulatory in nature, as their use will be voluntary if the draft variation concerned is approved.

Under this approach, FSANZ's assessment is that a RIS is not needed for this application.

6. 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 44 of the *Legislation Act 2003*.

7. Variation

Clause 1 provides that the name of the variation is the *Food Standards (Application A1282 — Subtilisin from GM Bacillus subtilis as a processing aid) Variation*.

Clause 2 provides that the Code is amended by the Schedule to the variation.

Clause 3 provides that the variation commences on the date of gazettal of the instrument.

¹¹ [Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies | The Office of Impact Analysis \(pmc.gov.au\)](https://www.pmc.gov.au/regulatory-impact-analysis-guide-for-ministers-meetings-and-national-standard-setting-bodies)

Item [1] of the Schedule to the draft variation inserts a new entry, in alphabetical order, into column 1 of the table to subsection S18—9(3) of the Code.

The new entry consists of the following enzyme:

‘Subtilisin, protein engineered variant, (EC 3.4.21.62) sourced from *Bacillus subtilis* containing the gene for subtilisin from *Bacillus clausii*.’

The permitted technological purpose for this enzyme is prescribed in column 2 of the table.

The permission is subject to the condition, as prescribed in column 3 of the table, that the maximum permitted level or amount of this enzyme that may be present in the food must be consistent with GMP.

The effect of item [1] of the draft variation is to permit the proposed use of the protein engineered variant of the enzyme subtilisin (EC 3.4.21.62) sourced from genetically modified *Bacillus subtilis* containing the gene for subtilisin from *Bacillus clausii* as a processing aid in accordance with the Code.

Item [2] of the Schedule to the draft variation amends the dot point list of protein engineered variants of enzymes in the note after the table to subsection S18—9(3).

That note relates to protein engineered variants of enzymes, which are listed in the table to subsection S18—9(3) as processing aids permitted to be used for specific technological purposes. The note explains that if such an enzyme is used as a processing aid, the resulting food may have as an ingredient a food produced using gene technology, and the requirements relating to foods produced using gene technology in the Code will apply (see Standard 1.2.1 and Standard 1.5.2). The note then lists the relevant substances.

Item [2] omits the last entry in the dot point list of protein engineered variants of enzymes in the note after the table to subsection S18—9(3) i.e.:

- Protein engineered enzymes used in the manufacture of various steviol glycosides.

and replace that entry with:

- Protein engineered enzymes used in the manufacture of various steviol glycosides;
- Subtilisin, protein engineered variant.

The effect of the amendment in item [2] is to include this protein engineered variant of subtilisin in that list, in alphabetical order.