

**28 September 2022**  
**215-22**

Approval report – Application A1241

## Pectinesterase from GM *Aspergillus oryzae* as a processing aid

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Food Standards Australia New Zealand (FSANZ) has assessed an application made by AB Enzymes GmbH to amend the Australia New Zealand Food Standards Code to permit pectinesterase from a genetically modified strain of *Aspergillus oryzae* containing the pectinesterase gene from *Aspergillus tubingensis*, as a processing aid.

On 20 May 2022, FSANZ sought submissions on a draft variation and published an associated report. FSANZ received two submissions.

FSANZ approved the draft variation on 14 September 2022. The Food Ministers' Meeting<sup>1</sup> was notified of FSANZ's decision on 28 September 2022.

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

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<sup>1</sup> Formerly referred to as the Australia and New Zealand Ministerial Forum on Food Regulation

# Table of contents

<b>EXECUTIVE SUMMARY</b> .....	<b>2</b>
<b>1 INTRODUCTION</b> .....	<b>3</b>
1.1 THE APPLICANT .....	3
1.2 THE APPLICATION .....	3
1.3 THE CURRENT STANDARD .....	3
1.3.1 <i>Permitted use</i> .....	3
1.3.2 <i>Identity and purity requirements</i> .....	4
1.3.3 <i>Labelling requirements</i> .....	4
1.3.4 <i>International standards</i> .....	5
1.4 REASONS FOR ACCEPTING APPLICATION .....	5
1.5 PROCEDURE FOR ASSESSMENT .....	5
1.6 DECISION .....	5
<b>2 SUMMARY OF THE FINDINGS</b> .....	<b>5</b>
2.1 SUMMARY OF ISSUES RAISED IN SUBMISSIONS .....	5
2.2 RISK ASSESSMENT .....	6
2.3 RISK MANAGEMENT .....	6
2.3.1 <i>Regulatory approval for enzymes</i> .....	6
2.3.2 <i>Enzyme nomenclature, source microorganism nomenclature, and specifications</i> .....	7
2.3.3 <i>Labelling requirements</i> .....	7
2.3.4 <i>Risk management conclusion</i> .....	7
2.4 RISK COMMUNICATION .....	8
2.5 FSANZ ACT ASSESSMENT REQUIREMENTS .....	8
2.5.1 <i>Section 29</i> .....	8
2.5.2 <i>Subsection 18(1)</i> .....	9
ATTACHMENT A – APPROVED DRAFT VARIATION TO THE AUSTRALIA NEW ZEALAND FOOD STANDARDS CODE .....	12
ATTACHMENT B – EXPLANATORY STATEMENT .....	14

## Supporting document

The following document which informed the assessment of this application are available on the FSANZ website:

SD1      [A1241 - Risk and Technical Assessment](#)

# Executive summary

AB Enzymes applied to Food Standards Australia New Zealand (FSANZ) to amend the Australia New Zealand Food Standards Code (the Code) to permit the use of the enzyme pectinesterase (EC 3.1.1.11), as a processing aid for certain foods. The proposed use of pectinesterase is in the manufacture and/or processing of fruit and vegetable juices/products and in the production of coffee, flavouring substances and wine. The enzyme is produced from a genetically modified (GM) strain of *Aspergillus oryzae* (*A. oryzae*) containing the pectinesterase gene from *Aspergillus tubingensis* (*A. tubingensis*).

FSANZ undertook an assessment to determine whether the enzyme achieves its technological purpose in the quantity and form proposed to be used, and to evaluate public health and safety concerns associated with its use.

FSANZ concluded that the proposed use of this pectinesterase in the manufacture and/or processing of fruit and vegetable juices/products and in the production of coffee, flavouring substances and wine, is consistent with its typical function of breaking down pectin in those foods. Analysis of the evidence provides adequate assurance that the use of the enzyme, in the form and requested amount (i.e. at a level not higher than necessary to achieve the desired enzyme reaction according to Good Manufacturing Practice (GMP) levels), is technologically justified and has been demonstrated to be effective in achieving its stated purpose.

Pectinesterase performs its technological purpose during the manufacture, processing and/or production of the nominated foods and is not performing a technological purpose in the final food, therefore functioning as a processing aid for the purposes of the Code. Relevant identity and purity specifications for the enzyme are included in the Code.

A microbiological assessment concluded that the GM strain of *A. oryzae* is neither pathogenic nor toxigenic. A biotechnology assessment confirmed the genetic modification is as described and that the inserted gene has been stably introduced. A toxicological assessment combined with a dietary exposure assessment concluded the enzyme is safe under the proposed conditions of use. In the absence of any identifiable hazard, an acceptable daily intake (ADI) 'not specified' is appropriate.

Following assessment and the preparation of a draft variation, FSANZ called for submissions regarding the draft variation on 20 May 2022 for a six-week consultation period. FSANZ received two submissions, both from government agencies supporting the draft variation.

Based on the information above and on other relevant considerations set out in this report, FSANZ has approved a draft variation to the table to subsection S18—9(3) of the Code, to permit the use of the enzyme pectinesterase (EC 3.1.1.11) sourced from *A. oryzae* containing the pectinesterase gene from *A. tubingensis*, as a processing aid during the manufacture and/or processing of fruit and vegetable juices/products and in the production of coffee, flavouring substances and wine. This permission will be subject to the condition 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 the approved draft variation will be to permit the proposed use of this enzyme as a processing aid in accordance with the Code.

# 1 Introduction

## 1.1 The Applicant

The applicant is AB Enzymes GmbH, an industrial biotechnology company that develops enzyme products for food, animal feed and technical applications.

## 1.2 The Application

The purpose of the application is to amend the Australia New Zealand Food Standards Code (the Code) to permit the use of the enzyme pectinesterase (EC 3.1.1.11), a pectinase, as a processing aid for breaking down pectin in the manufacture and/or processing of fruit and vegetable juices/products and in the production of coffee, flavouring substances and wine. The enzyme is produced from a genetically modified (GM) strain of *Aspergillus oryzae* (*A. oryzae*) (strain AR-962) containing the pectinesterase gene from *Aspergillus tubingensis* (*A. tubingensis*). *A. oryzae* is the host (source) species and *A. tubingensis* is the donor of the pectinesterase gene.

The enzyme is to be used in combination with polygalacturonase that was assessed under A1240 (submitted simultaneously with A1241). The polygalacturonase and pectinesterase enzyme blend is sold by the applicant under the proprietary name ROHAPECT® MA Plus.

## 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 the final food.

Paragraph 1.1.1—10(6)(c) provides that food for sale cannot contain, as an ingredient or component, a substance ‘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 the course of processing that meets all of the following conditions:

- it is used to perform a technological purpose during the course of processing
- it does not perform a technological purpose in the food for sale, and
- it is a substance listed in Schedule 18 or identified in section S16—2 as an additive permitted at Good Manufacturing Practice (GMP).

Standard 1.3.3 and Schedule 18 of the Code 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) of Schedule 18, depending on whether a technological purpose has been specified. Enzymes of microbial origin listed in the table to subsection S18—4(5) are 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

particular sources, that 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—9.

Paragraph 1.1.1—10(6)(g) requires that the presence as an ingredient or component in a food for sale of a food produced using gene technology 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).

Under subsection S18—4(5), pectinesterase is already permitted from two sources: from (non-GM) *Aspergillus niger*, and from *Aspergillus oryzae* containing the gene for pectinesterase isolated from *Aspergillus aculeatus*.

### 1.3.2 Identity and purity requirements

Paragraph 1.1.1—15(1)(b) 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.

Subsection S3—2(1) of Schedule 3 incorporates by reference the specifications listed in the Joint FAO/WHO Expert Committee on Food Additives (JECFA) Combined Compendium of Food Additive Specifications (FAO JECFA Monographs 23 (2019)), and the United States Pharmacopeial Convention (2020) Food chemicals codex (12<sup>th</sup> edition). These include general specifications for enzyme preparations used in food processing for identity and purity parameters.

### 1.3.3 Labelling requirements

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

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 requires processing aids that are, or have as ingredients, foods produced using gene technology to be labelled 'genetically modified' in conjunction with the name of that food, where novel DNA and/or novel protein from the processing aid remains present in the final food. The requirement applies to foods for sale that consist of or have as an ingredient, food that is a *genetically modified food*<sup>2</sup> (GM food). The requirements imposed by section 1.5.2—4 apply only to foods for sale prescribed by Divisions 2 to 4 of Standard 1.2.1.

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<sup>2</sup> 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*).

### **1.3.4 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 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.

## **1.4 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 might be developed as a food regulatory measure.

## **1.5 Procedure for assessment**

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

## **1.6 Decision**

For reasons set out in this report, FSANZ decided to approve a draft variation amending the Code to permit the use of this enzyme as a processing aid in the manufacture and/or processing of coffee, fruit and vegetable juices, fruit and vegetable products, wine, and flavouring substances.

The draft variation as proposed following assessment was approved without change. The approved draft variation is at Attachment A. The approved draft variation takes effect on gazettal.

The related 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.

# **2 Summary of the findings**

## **2.1 Summary of issues raised in submissions**

FSANZ sought public comments on the draft variation included in the call for submissions report between 20 May 2022 and 1 July 2022.

FSANZ received two submissions, both from government agencies (New Zealand Food Safety and the Victorian Departments of Health, Precincts and Regions) who supported the draft variation and raised no issues that needed to be considered and addressed.

## 2.2 Risk assessment

FSANZ assessed the public health and safety risks associated with pectinesterase produced from GM *A. oryzae* strain AR-962, which contains the pectinesterase gene from *A. tubingenensis*.

The proposed use of the pectinesterase is as a processing aid to catalyse the breakdown of pectin during the manufacture and/or processing of fruit and vegetable juices/products and in the production of coffee, flavouring substances and wine. Based on an analysis of the evidence provided, FSANZ concluded that the use of the enzyme in the quantity and form proposed is technologically justified.

No public health and safety concerns were identified in the assessment of pectinesterase sourced from GM *A. oryzae* strain AR-962 containing the pectinesterase gene from *A. tubingenensis* under the proposed conditions of use. A microbiological assessment concluded that the GM host strain is neither pathogenic nor toxigenic. A biotechnology assessment confirmed the genetic modification is as described and that the inserted gene has been stably introduced. A toxicological assessment combined with a dietary exposure assessment concluded the enzyme is safe under the proposed conditions of use.

In the absence of any identifiable hazard, an acceptable daily intake (ADI) 'not specified' is appropriate.

For further details on the risk assessment, refer to SD1— Risk and Technical Assessment Report.

## 2.3 Risk management

The risk management options available to FSANZ after assessment, were to:

- either reject the application; or
- prepare a draft variation of the Code.

The Risk and Technical Assessment Report concluded that the use of this enzyme is technologically justified in the foods requested and there are no concerns when used for its stated purpose, at levels consistent with GMP.

FSANZ therefore considered it appropriate to prepare a draft variation amending the Code to permit the proposed use of this enzyme; and called for submissions on the draft variation.

Following the call for submissions and having regard to all submissions received, FSANZ considers it appropriate to approve the draft variation proposed following assessment without change (Attachment A).

Risk management considerations for this application are related to the enzyme and source microorganism nomenclature, specifications and labelling, which are discussed below. The regulatory options analysed in Section 2.5.1.1 of this report take account of the safety of the enzyme.

### 2.3.1 Regulatory approval for enzymes

As stated above, FSANZ has approved a draft variation to permit the use of the enzyme as a

processing aid in the manufacture and/or processing of fruit and vegetable juices/products and in the production of coffee, flavouring substances and wine. The express permission for the enzyme to be used as a processing aid will also provide the permission for its potential presence in the food for sale as a food produced using gene technology. The enzyme is a food produced using gene technology for Code purposes as it is derived from ‘an organism that has been modified using gene technology’ (see subsection 1.1.2—2(3) of the Code)<sup>3</sup>.

### **2.3.2 Enzyme nomenclature, source microorganism nomenclature, and specifications**

FSANZ notes that the International Union of Biochemistry and Molecular Biology (IUBMB) lists the accepted name as ‘pectinesterase’ for the enzyme EC 3.1.1.11 (see section 2.1.1 of the SD1). FSANZ has decided to use this name (one word) instead of pectin esterase (used in the application), consistent with the IUBMB and to remain consistent with how the already permitted pectinesterase enzymes have been listed in the Code.

Nomenclature for the host and gene donor organisms (*A. oryzae* and *A. tubingensis*, respectively) is in accordance with accepted international norms for fungal taxonomy.

There are relevant general specifications for the identity and purity of the enzyme in two of the primary sources of specifications listed in Schedule 3 of the Code – namely the JECFA Combined Compendium of Food Additive Specifications, and the United States Pharmacopeial Convention Food chemicals codex. As noted in section 2.2.2 of SD1, the enzyme will have to comply with those identity and purity specifications.

### **2.3.3 Labelling requirements**

In general, processing aids are exempt from the requirement to be declared in the statement of ingredients, unless other labelling requirements apply (see Section 1.3.3 above). In the case of foods manufactured using this processing aid, other requirements apply as detailed below.

#### ***2.3.3.1 Labelling requirements for food produced using gene technology***

Section 1.5.2—4 of the Code generally requires a food for sale that consists of a GM food or has a GM food as an ingredient to be labelled as ‘genetically modified’, unless one of the exemptions listed in that subsection apply. If the GM food is present in the food for sale as an ingredient due to its use as a processing aid, the ‘genetically modified’ statement must be in conjunction with the name of the GM food (subsection 1.5.2—4(2)) and it may be included in the statement of ingredients for the food for sale (subsection 1.5.2—4(3)).

### **2.3.4 Risk management conclusion**

The risk management conclusion was to permit pectinesterase sourced from a GM strain of *A. oryzae*, expressing a pectinesterase gene from *A. tubingensis*, as a processing aid by amending the table to subsection S18—9(3), which includes enzymes permitted for a stated technological purpose. The technological purpose of this enzyme will be use as a processing aid in the manufacture and/or processing of fruit and vegetable juices/products and in the production of coffee, flavouring substances and wine. The maximum level at which the enzyme may be present in the food will have to be an amount consistent with GMP. The

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<sup>3</sup> 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’.



express permission for the enzyme to be used as a processing aid in Schedule 18 of the Code will also provide the permission for the enzyme's potential presence in the food for sale as a food produced using gene technology.

## **2.4 Risk communication**

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

FSANZ developed and applied a standard communication strategy to this application. The call for submissions was notified via the Food Standards Notification Circular, media release, FSANZ's social media tools and Food Standards News.

The process by which FSANZ approaches standards development matters is open, accountable, consultative and transparent. Public submissions were called to obtain the views of interested parties on issues raised by the application and the impacts of regulatory options. 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.

## **2.5 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.

### **2.5.1 Section 29**

#### **2.5.1.1 Consideration of costs and benefits**

The Office of Best Practice Regulation (OBPR) granted FSANZ a standing exemption from the requirement to develop a Regulatory Impact Statement for applications relating to processing aids and GM food (OBPR correspondence dated 24 November 2010, reference 12065). This standing exemption was provided as permitting new GM foods and new enzyme processing aids is deregulatory as their use will be voluntary if the application concerned is approved. This standing exemption relates to the introduction of a food to the food supply that has been determined to be safe.

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 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 considered permitting the proposed use of pectinesterase sourced from *GM A. oryzae* (the enzyme) as a processing aid.

The consideration of the costs and benefits in this section was not intended to be an exhaustive, quantitative economic analysis of the proposed measure. In fact, most of the effects that were considered cannot easily be assigned a dollar value. Rather, the assessment sought to highlight the likely positives and negatives of moving away from the

status quo by permitting the proposed use of the enzyme.

FSANZ's conclusions regarding costs and benefits of the proposed measure are set out below.

*Costs and benefits of permitting the use of enzyme pectinesterase (EC 3.1.1.11) sourced from a GM strain of A. oryzae as a processing aid*

Using the enzyme from this new permitted production microorganism may benefit industry by having additional choice of inputs to their manufacturing process especially if it proves cheaper, is more effective than what is presently available or results in additional competition. Due to the voluntary nature of the permission, manufacturers will only use it where they believe a net benefit exists for them. Part of savings to the manufacturing industry may be passed on to consumers. Consumers may conceivably also as a result of its use have access to higher quality products.

Permitting the enzyme to be used as a processing aid may result in a small cost to government in terms of adding this new substance to the current range of processing aids that are monitored for compliance.

*Conclusions from cost benefit considerations*

FSANZ's assessment at the call for submissions stage was that the direct and indirect benefits that would arise from permitting the proposed use of the enzyme from this source most likely outweigh the associated costs. No further information was received during the consultation process that changed that assessment.

**2.5.1.2 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.

**2.5.1.3 Any relevant New Zealand standards**

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

**2.5.1.4 Any other relevant matters**

Other relevant matters are considered below.

**2.5.2. Subsection 18(1)**

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

**2.5.2.1 Protection of public health and safety**

FSANZ undertook a safety assessment (see SD1) and concluded there were no public health and safety concerns associated with the proposed use of this enzyme.

**2.5.2.2 The provision of adequate information relating to food to enable consumers to**

### ***make informed choices***

The labelling requirements for this enzyme are discussed in section 2.3.3 above. FSANZ considers that those requirements would enable this objective to be satisfied.

#### **2.5.2.3 *The prevention of misleading or deceptive conduct***

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

#### **2.5.3 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 used the best available scientific evidence to conduct the risk analysis, which is provided in SD1. The applicant submitted a dossier of information and scientific literature as part of its application. This dossier, together with other technical and scientific information, was considered by FSANZ in assessing the application.

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

There are relevant identity and purity specifications in Schedule 3 of the Code with which the enzyme must comply.

The applicant advised that the enzyme is approved for use as a processing aid in France and Denmark.

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

As the use of this enzyme is already permitted in Denmark and France, approval for use would bring Australia and New Zealand into line with other jurisdictions where it is already authorised for use. 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 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 this alternative enzyme for the various applications proposed by the applicant.

Ultimately, the domestic food industry will make their own economic decisions, taking into account the costs and benefits of using the new enzyme, to determine if it is of benefit to their particular 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*<sup>4</sup> 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 in regard to the substance.

FSANZ has determined that permitting the proposed use of this enzyme is consistent with these 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

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<sup>4</sup> [Food regulation website](#)

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



### Food Standards (Application A1241 – Pectinesterase from GM *Aspergillus oryzae* as a processing aid) Variation

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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 name and position title]

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 A1241 – Pectinesterase from GM Aspergillus oryzae 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:

Pectinesterase (EC 3.1.1.11)  
sourced from *Aspergillus oryzae*  
containing the pectinesterase gene  
from *Aspergillus tubingensis*

For use during the manufacture and/or  
processing of the following types of food:

- (a) coffee;
- (b) fruit and vegetable juices;
- (c) fruit and vegetable products;
- (d) wine; and
- (e) flavouring substances.

GMP

## Attachment B – 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 A1241 which sought an amendment to the Code to permit the enzyme, pectinesterase (EC 3.1.1.11) sourced from a genetically modified (GM) strain of *Aspergillus oryzae* containing the pectinesterase gene from *Aspergillus tubingensis*. The technological purpose of the enzyme is that of a processing aid used to catalyse the breakdown of pectin in the manufacture and/or processing of coffee, fruit and vegetable juices, fruit and vegetable products, wine, and flavouring substances. The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft 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 standard or draft variation of a standard.

### 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](http://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) in Schedule 18 of the Code to permit the use of the enzyme, pectinesterase (EC 3.1.1.11) sourced from a GM strain of *Aspergillus oryzae* containing the pectinesterase gene from *Aspergillus tubingensis*, as a processing aid to catalyse the breakdown of pectin in the manufacture and/or processing of coffee, fruit and vegetable juices, fruit and vegetable products, wine, and flavouring substances. 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 draft variation does not incorporate any documents by reference.

However, existing provisions of the Code incorporate documents by reference that will 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) Combined Compendium of Food Additive Specifications (FAO JECFA Monographs 23 (2019)) and the United States Pharmacopeial Convention (2020) Food Chemicals Codex (12th edition). These include general specifications for the identity and purity 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 A1241 included one round of public consultation following an assessment and the preparation of a draft variation and associated assessment summary. Submissions were called for on 20 May 2022 for a six-week consultation period.

The Office of Best Practice Regulation (OBPR) granted the Authority a standing exemption from the requirement to develop a Regulatory Impact Statement for applications relating to permitting new processing aids and GM food (OBPR correspondence dated 24 November 2010 - reference 12065). This standing exemption was provided as permitting new GM foods and new enzyme processing aids is deregulatory as their use will be voluntary if the application concerned is approved. This standing exemption relates to the introduction of a food to the food supply that has been determined to be safe.

### **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**

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



the table:

- 'Pectinesterase (EC 3.1.1.11) sourced from *Aspergillus oryzae* containing the pectinesterase gene from *Aspergillus tubingensis*'

The technological purpose for this enzyme prescribed in column 2 of the table is use as a processing aid in the manufacture and/or processing of the following types of food:

- coffee;
- fruit and vegetable juices;
- fruit and vegetable products;
- wine; and
- flavouring substances.

Specifically, this enzyme catalyses the breakdown of pectin in the manufacture and/or processing of those foods.

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 the variation is to permit the proposed use of the enzyme, pectinesterase (EC 3.1.1.11), sourced from *Aspergillus oryzae* containing the pectinesterase gene from *Aspergillus tubingensis*, as a processing aid in accordance with the Code.