

**15 December 2023**  
**275-23**

## **Call for submissions – Application A1280**

### **Food derived from herbicide-tolerant and insect-protected corn line DAS1131**

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Food Standards Australia New Zealand (FSANZ) has assessed an application made by Corteva Agriscience Australia Proprietary Limited to amend the Australia New Zealand Food Standards Code to permit the sale and use of food derived from a new food produced using gene technology: corn line DAS1131. This corn line has been genetically modified for tolerance to the herbicide glyphosate and protection from insect pests. A draft food regulatory measure has been prepared. 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 [current calls for public comment and how to make a submission](#).

All submissions on applications and proposals will be published on our website. We will not publish material that we accept as confidential. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1982*. Submissions will be published as soon as possible after the end of the submission period.

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](#).

For information on how FSANZ manages personal information when you make a submission, see FSANZ's [Privacy Policy](#).

Submissions should be made in writing; be marked clearly with the word 'Submission'. You also need to include the correct application or proposal number and name. Electronic submissions can be made by emailing your submission to [submissions@foodstandards.gov.au](mailto:submissions@foodstandards.gov.au). FSANZ also accepts submissions in hard copy to our Australia and/or New Zealand offices.

There is no need to send a hard copy of your submission if you have submitted it by email. FSANZ endeavours to formally acknowledge receipt of submissions within 3 business days.

### **DEADLINE FOR SUBMISSIONS: 6pm (Canberra time) 9 February 2024**

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 a submission or application and proposal processes can be sent to [standards.management@foodstandards.gov.au](mailto:standards.management@foodstandards.gov.au).

Submissions in hard copy may be sent to the following addresses:

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## Supporting document

The following document which informed the assessment of this application is available on the [FSANZ website](#)<sup>1</sup>:

SD1        Safety Assessment Report

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<sup>1</sup> <https://www.foodstandards.gov.au/food-standards-code/applications/a1280-food-derived-herbicide-tolerant-and-insect-protected-corn-line-das1131>

## Executive summary

Food Standards Australia New Zealand (FSANZ) received an application from Corteva Agriscience Australia Proprietary Limited to request a variation to Schedule 26 in the Australia New Zealand Food Standards Code (the Code) to permit the sale and use of food derived from a new food produced using gene technology (GM food): corn line DAS1131. Corn line DAS1131 has been genetically modified (GM) for tolerance to the herbicide glyphosate and protection from lepidopteran insect pests.

A safety assessment is a critical part of the assessment approval process for all GM food applications. The completed safety assessment for corn line DAS1131 is in Supporting Document 1. The assessment found no potential public health and safety concerns. Based on the data provided by the applicant and other information, food derived from corn line DAS1131 is considered to be as safe for human consumption as food derived from conventional non-GM corn cultivars.

If approved, food derived from corn line DAS1131 may enter the Australian and New Zealand food supply as imported food products. These may include corn starch, grits, meal, flour, oil and sweetener. Food from corn line DAS1131 containing viable seeds would not be permitted without prior assessment and approval by the Gene Technology Regulator in Australia and the Environmental Protection Authority in New Zealand.

If approved, existing labelling requirements for GM food would apply to food derived from corn line DAS1131 in accordance with the Code.

For reasons set out above and in the assessment summary, FSANZ has decided to prepare a draft variation to amend Schedule 26 of the Code to include a new item 2 (zi) in the table to subsection S26—3(4) containing a reference to 'herbicide-tolerant and insect-protected corn line DAS1131' to permit the sale and use of food derived from corn line DAS1131. If approved, the effect of the draft variation would be to permit the sale and use of food derived from this corn line in accordance with the Code.

FSANZ seeks submissions on the draft variation.

# 1 Introduction

## 1.1 The Applicant

Corteva Agriscience Australia Proprietary Limited is a member of the Corteva Agriscience group, a global agriculture company.

## 1.2 The Application

Application A1280 was submitted on 3 July 2023. It seeks an amendment to the Australia New Zealand Food Standards Code (the Code) to permit the sale and use of food derived from a new food produced using gene technology (GM food): corn line DAS1131. This corn line has been genetically modified (GM) for tolerance to the herbicide glyphosate and protection from lepidopteran insect pests.

Protection against lepidopteran insect pests is conferred by the expression of the insecticidal *cry1Da2* gene encoding the Cry1Da2 protein. The *cry1Da2* gene is composed of two sequences from *Bacillus thuringiensis*: (1) the insecticidal core toxin sequence of the *cry1Da2* gene; and (2) a segment of the *cry1Ab* gene. Tolerance to the herbicide glyphosate is achieved by the expression of the *dgt-28 epsps* gene encoding the DGT-28 EPSPS protein. The introduced gene derived from *Streptomyces sviveus*, encoding the enzyme 5-enolpyruvylshikimate-3-phosphate synthase (EPSPS). The Cry1Da2 and DGT-28 EPSPS proteins have not previously been assessed by FSANZ.

If approved, food derived from corn line DAS1131 may enter the Australian and New Zealand food supply as imported food products. These may include starch, grits, meal, flour, oil and sweetener products. Food from corn line DAS1131 containing viable seeds, such as corn cobs, would require prior assessment and approval by the Gene Technology Regulator (GTR)<sup>2</sup> in Australia and the Environmental Protection Authority (EPA)<sup>3</sup> in New Zealand.

## 1.3 The current standard

Pre-market approval is necessary before GM foods can enter the Australian and New Zealand food supply. GM foods are only approved after a comprehensive pre-market safety assessment. Standard 1.5.2 of the Code sets out the permission and conditions for sale of food that consists of, or has as an ingredient, a GM food. Foods that have been assessed and approved are listed in Schedule 26 of the Code.

Subject to the exceptions listed below, section 1.5.2—4 requires food to be labelled as ‘genetically modified’ where novel DNA or novel protein is present in the food for sale.

Additionally, foods listed in subsections S26—3(2), (2A) and (3) of Schedule 26 must also be labelled with the words ‘genetically modified’, as well as any other additional labelling required by the Schedule, regardless of the presence of novel DNA or novel protein in the foods. These foods are considered to have an altered characteristic, such as an altered composition or nutritional profile, when compared to the existing counterpart food that is not produced using gene technology.

The requirement to label as ‘genetically modified’ applies to a food for sale that consists of, or has as an ingredient (including food additives and processing aids), food that is a

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<sup>2</sup> The Office of the Gene Technology Regulator (OGTR) provides administrative support to the Gene Technology Regulator in the performance of functions under the *Gene Technology Act 2000*.

<sup>3</sup> The EPA implements and enforces the *Hazardous Substances and New Organisms (HSNO) Act 1996*.

*genetically modified food*<sup>4</sup>. 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.

The labelling requirement in section 1.5.2—4 does not apply if the GM food:

- has been highly refined (other than food that has an altered characteristic), where the effect of the refining process is to remove novel DNA or novel protein;
- is a substance used as a processing aid or a food additive, where novel DNA or novel protein from the substance does not remain present in the food for sale;
- is a flavouring substance present in the food in a concentration of no more than 1 g/kg (0.1%); or
- is unintentionally present in the food in an amount of no more than 10 g/kg (or 1%) of each ingredient.

The above labelling requirement also does not apply if the food for sale is intended for immediate consumption and is prepared and sold from food premises and vending vehicles, including restaurants, take away outlets, caterers or self-catering institutions.

If the food for sale is a food not required to bear a label and is not in a package, the labelling information in section 1.5.2—4 must accompany the food or be displayed in connection with the display of the food (in accordance with subsections 1.2.1—9(2) and (3) of Standard 1.2.1).

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

## 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)
- it related to a matter that warranted the variation of a food regulatory measure
- it was not so similar to a previous application for the variation of a food regulatory measure that it ought to be rejected.

## 1.5 Procedure for assessment

The application is being assessed under the General Procedure.

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<sup>4</sup> Subsection 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 assessment

### 2.1 Safety assessment

The safety assessment of corn line DAS1131 is provided in Supporting Document 1 (SD1) and included the following key elements:

- a characterisation of the transferred genetic material, its origin, function and stability in the corn genome
- characterisation of novel nucleic acids and protein in the whole food
- detailed compositional analyses
- evaluation of intended and unintended changes
- assessment of the potential for any newly expressed protein to be either allergenic or toxic in humans.

In conducting the safety assessment, FSANZ considered information from a variety of sources including, but not limited to, a data package provided by the applicant (application and study reports), the scientific literature and previous applications.

The assessment of corn line DAS1131 was restricted to human food safety and nutritional issues. This assessment therefore does not address any risks to the environment that may occur as the result of growing corn line DAS1131, or any risks to animals that may consume feed derived from corn line DAS1131. Permission to cultivate corn line DAS1131 in or to import viable seeds into Australia or New Zealand would require separate regulatory assessment and approval by the GTR in Australia and by the EPA in New Zealand.

No potential public health and safety concerns have been identified.

Based on the data provided in the present application and other available information, food derived from corn line DAS1131 is considered to be as safe for human consumption as food derived from conventional non-GM corn cultivars.

### 2.2 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.

For the reasons listed in this report, FSANZ decided to prepare a draft variation to the Code to permit the sale and use of food derived from corn line DAS1131. If approved, the effect of the draft variation would be to permit the sale and use of food derived from this corn line in accordance with the Code.

#### 2.2.1 Regulatory approval

Corn line DAS1131 is a GM food for Code purposes as it is derived from 'an organism which has been modified by gene technology'. FSANZ is proposing to list corn line DAS1131 in the table to subsection S26—3(4). If approved, the proposed amendment would provide permission for the sale and use of food derived from corn line DAS1131 as a GM food in accordance with the Code.

#### 2.2.2 Labelling

In accordance with the labelling provisions in Standard 1.5.2 (see section 1.3 of this report),

food for sale derived from a GM food such as corn line DAS1131 would be required to be labelled as 'genetically modified' if, among other things, the GM food:

- contains novel DNA or novel protein; or
- is listed in subsection S26—3(2), 2(A) or (3) of Schedule 26 as being subject to the condition that the labelling must comply with section 1.5.2—4 of Standard 1.5.2 (such food has altered characteristics).

FSANZ has determined that food derived from corn line DAS1131 does not have altered characteristics (see section 5.3 of SD1).

Refined products from corn line DAS1131 such as corn starch, corn oil and sweeteners are unlikely to contain any novel DNA or novel protein and would be unlikely to require labelling as 'genetically modified'.

Products derived from corn line DAS1131 such as flour (used in bread), meal (used in polenta) and grits (used in cereals) would likely contain novel DNA or novel protein, and if so, would require labelling as 'genetically modified'.

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. Where required, the label statement 'genetically modified' must be made in conjunction with the name of the GM food (subsection 1.5.2—4(2)). If the GM food is present in the food for sale as an ingredient, this statement may be included in the statement of ingredients (subsection 1.5.2—4(3)).

### **2.2.3 Detection methodology**

An Expert Advisory Group (EAG) comprising laboratory personnel and representatives of Australian and New Zealand jurisdictions was formed by the Food Regulation Standing Committee's Implementation Sub-Committee<sup>5</sup> to identify and evaluate appropriate methods of analysis associated with all applications to FSANZ, including those applications for food produced using gene technology (GM applications).

The EAG indicated that for GM applications, the full DNA sequence of the insert and adjacent genomic DNA are sufficient data to be provided for analytical purposes. Using this information, any DNA analytical laboratory would have the capability to develop a PCR<sup>6</sup>-based detection method. This sequence information was supplied by the applicant for A1280.

## **2.3 Risk communication**

### **2.3.1 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 FSANZ Notification Circular, media release, FSANZ's social media channels and Food Standards News. Subscribers and interested parties are also notified about the availability of reports for public comment.

The process by which FSANZ approaches standards development matters is open, accountable, consultative and transparent. Public submissions are called to obtain the views

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<sup>5</sup> Now known as the Implementation Subcommittee for Food Regulation.

<sup>6</sup> Polymerase Chain Reaction.



of interested parties on the draft variation.

The draft variation will be considered for approval by the FSANZ Board taking into account all public comments received on this call for submissions.

The applicant and individuals and organisations that make submissions on this application will be notified at each stage of the 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 not substantially the same as existing international standards and the proposed measure may have a significant effect on trade.

There are no relevant international standards and amending the Code to permit food derived from corn line DAS1131 is unlikely to have a significant effect on international trade. Therefore, a notification to the WTO under Australia's and New Zealand's obligations under the WTO Technical Barriers to Trade 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 Consideration of costs and benefits**

Changes have been made to the impact analysis requirements by the Office of Impact Analysis (OIA)<sup>7</sup>. 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 required for applications relating to GM food. This is because applications relating to permitting the use of GM food that have been determined to be safe are considered to be minor and deregulatory in nature, as their use will be voluntary if the draft variation concerned is approved. Under the new approach, FSANZ's assessment is that a RIS is not required for this application.

FSANZ, however, has given 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 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, where status quo is rejecting the application. This analysis considers permitting the proposed sale and use of food derived from a new food produced using gene technology (GM food): corn line DAS1131.

The consideration of the costs and benefits in this section is not intended to be an exhaustive, quantitative economic analysis of the proposed measures and, in fact, most of

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<sup>7</sup> [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)

the effects that were considered cannot easily be assigned a dollar value. Rather, the assessment seeks to highlight the potential positives and negatives of moving away from the status quo by approving the variation to the Code proposed by the application.

#### *Costs and benefits*

FSANZ's conclusions regarding the costs and benefits of the proposed measure are set out below. However, information received from the call for submissions may result in FSANZ arriving at a different outcome.

The sale and use of foods derived from corn line DAS1131 would be permitted under the Code, allowing broader market access and increased choice in raw materials. For those food products containing novel DNA or novel protein from corn line DAS1131, labelling would be required to assist consumers wishing to avoid these products to do so.

Due to the voluntary nature of the permission, manufacturers and retailers would only engage with foods derived from corn line DAS1131, where they believe a net benefit exists for them. Part of any cost savings to industry may be passed onto consumers.

There may be small and likely inconsequential costs of monitoring an extra GM food ingredient for regulators to ensure compliance with labelling requirements.

#### *Conclusions from cost benefit assessment*

FSANZ's assessment is that the direct and indirect benefits that would arise from permitting the sale and use of food derived from corn line DAS1131 most likely outweigh the associated costs.

#### **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 relevant standards apply in both Australia and New Zealand. There are no relevant New Zealand only standards.

#### **2.4.1.4 Any other relevant matters**

The applicant has submitted applications for regulatory approval of corn line DAS1131 to other countries, as listed in Table 1.

Cultivation in Australia or New Zealand would require independent assessment and approval by the GTR in Australia and EPA in New Zealand, respectively.

**Table 1: List of countries to whom applications for regulatory approval of DAS1131 have been submitted**

Country	Authority	Type of approval sought	Status
Argentina	Comisión Nacional Asesora de Biotecnología Agropecuaria (CONABIA), Servicio Nacional de Sanidad y Calidad Agroalimentaria (SENASA)	Cultivation	Submitted
Canada	Canadian Food Inspection Agency (CFIA) – Plant Biosafety Office (PBO)	Cultivation	Submitted
	Health Canada	Food	Submitted
	Canadian Food Inspection Agency (CFIA) – Animal Feed Division (AFD)	Feed	Submitted
Columbia	Instituto Colombiano Agropecuario (ICA)	Feed	Submitted
	El Instituto Nacional de Vigilancia de Medicamentos y Alimentos (INVIMA)	Food	Submitted
European Union	European Food Safety Authority (EFSA)	Food and Feed	Submitted
Japan	Ministry of Health, Labor and Welfare (MHMW)	Food	Submitted
	Ministry of Agriculture, Forestry and Fisheries (MAFF)	Feed	Submitted
Korea	Ministry of Food and Drug Safety (MFDS)	Food	Submitted
	Rural Development Administration of South Korea (RDA)	Feed	Submitted
Malaysia	MEWAK / KATS	Food and Feed	Submitted
Taiwan	Ministry of Health and Welfare (MOHW) / Taiwan Food and Drug Administration (TFDA)	Food	Submitted
	Council of Agriculture (COA)	Feed	Submitted
Uruguay	MGAP/GNBio	Cultivation	Submitted
United States	Food and Drug Administration (FDA)	Food and Feed	Submitted
	United States Department of Agriculture (USDA)	Determination of nonregulated status	Submitted

Other relevant matters are considered below.

#### **2.4.2. Subsection 18(1)**

FSANZ has also considered 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's assessment did not identify any public health and safety concerns with food derived from corn line DAS1131. Based on the best available scientific evidence, including detailed studies provided by the applicant, FSANZ's assessment is that food derived from corn line DAS1131 is as safe for human consumption as food derived from other conventional non-GM corn lines.

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

Existing labelling requirements for GM food will apply to food derived from corn line DAS1131 in accordance with the Code to enable informed consumer choice (see section 2.2.2).

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

The provision of DNA sequence information by the applicant (as described in section 2.2.3) satisfies 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**

FSANZ's approach to the safety assessment of all GM foods applies concepts and principles outlined in the Codex Principles for the Risk Analysis of Foods derived from Biotechnology (Codex, 2009). Based on these principles, the risk analysis undertaken by FSANZ for corn line DAS1131 used the best scientific evidence available. The applicant submitted a comprehensive dossier of quality-assured raw experimental data. In addition to the information supplied by the applicant, other available resource material including published scientific literature and general technical information was used by FSANZ in the safety assessment.

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

This is not a consideration as there are no relevant international standards.

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

The inclusion of GM foods in the food supply, providing there are no safety concerns, allows for innovation by developers and a widening of the technological base for producing foods. Corn line DAS1131 is a new food crop designed for tolerance to the herbicide glyphosate and to provide growers with an additional control option for lepidopteran insect pests.

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

Issues related to consumer information and safety are considered in sections 2.2 and 2.3 above.

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

No specific policy guidelines have been developed.

## **3 Draft variation**

The draft variation to the Code is at Attachment A and is intended to take effect on 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**

Codex (2009) Foods derived from modern biotechnology, Second Edition. Codex Alimentarius Commission, Rome. <http://www.fao.org/3/a1554e/a1554e00.htm>

### **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 A1280 – Food derived from herbicide-tolerant and insect-protected corn line DAS1131) 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 the variation.

Dated [To be completed by the delegate]

Christel Leemhuis  
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 A1280 – Food derived from herbicide-tolerant and insect-protected corn line DAS1131) 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 26—Food produced using gene technology**

**[1] Subsection S26—3(4) (table item 2, column headed “*Food derived from:*”)**

Insert:

(zi) herbicide-tolerant and insect-protected corn line DAS1131

## Attachment B – Draft Explanatory Statement

### DRAFT EXPLANATORY STATEMENT

*Food Standards Australia New Zealand Act 1991*

#### ***Food Standards (Application A1280 – Food derived from herbicide-tolerant and insect-protected corn line DAS1131) 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 A1280 which seeks to amend the Code to permit the sale and use of food derived from a new food produced using gene technology (GM food) – corn line DAS1131. Corn line DAS1131 has been genetically modified for tolerance to the herbicide glyphosate and protection from lepidopteran insect pests. The Authority considered the application in accordance with Division 1 of Part 3 and has prepared a draft variation - the *Food Standards (Application A1280 – Food derived from herbicide-tolerant and insect-protected corn line DAS1131) Variation*.

##### **2. Variation will be a legislative instrument**

If approved, the draft variation would be a legislative instrument for the purposes of the *Legislation Act 2003* (see section 94 of the FSANZ Act) and be publicly available on the Federal Register of Legislation ([www.legislation.gov.au](http://www.legislation.gov.au)).

If approved, this instrument would not be 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 Food Ministers Meeting (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 prepared a draft variation amending the table to subsection S26—3(4) in Schedule 26 of the Code to permit the sale and use of food derived from corn line DAS1131, in accordance with the Code. Corn line DAS1131 has been genetically modified for tolerance to the herbicide glyphosate and protection from lepidopteran insect pests.

### **4. Documents incorporated by reference**

This draft variation does not incorporate any documents by reference.

### **5. Consultation**

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1280 will include one round of public consultation following an assessment and the preparation of a draft variation and associated assessment summary. A call for submissions (including the draft variation) will be open for an eight-week period.

Changes have been made to the Impact Analysis requirements by the Office of Impact Analysis (OIA)<sup>8</sup>. Impact analysis is no longer required to be finalised with the OIA. Prior to those changes, the OIA had granted the Authority a standing exemption from the requirement to develop a Regulatory Impact Statement for applications relating to permitting new GM foods (OBPR correspondence dated 24 November 2010, reference 12065). This is because applications relating to permitting the use of GM food that have been determined to be safe are considered to be minor and deregulatory in nature, as their use will be voluntary if the draft variation concerned is approved. Under the new approach, FSANZ's assessment is that a RIS is not required for this application.

### **6. Statement of compatibility with human rights**

If approved, this instrument would be exempt from the requirements for a statement of compatibility with human rights as it would be a non-disallowable instrument under section 44 of the *Legislation Act 2003*.

### **7. Variation**

Clause 1 of the draft variation provides that the name of the variation is the *Food Standards (Application A1280 – Food derived from herbicide-tolerant and insect-protected corn line DAS1131) Variation*.

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

Clause 3 of the draft variation provides that the variation will commence on the date of gazettal of the instrument.

Item [1] of the Schedule to the draft variation would amend Schedule 26 by inserting, in alphabetical order, new paragraph '(zi)' into the column headed '*Food derived from:*' for item 2 of the table to subsection S26—3(4) of the Code. Item 2 of this table is headed 'Corn'.

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

The new paragraph (zi) refers to 'herbicide-tolerant and insect-protected corn line DAS1131'.

If approved, the draft variation would permit the sale and use of food derived from corn line DAS1131 in accordance with the Code.