



FOOD STANDARDS
Australia New Zealand
Te Mana Kounga Kai – Ahitereiria me Aotearoa

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FINAL ASSESSMENT REPORT

APPLICATION A551

AMENDMENTS TO STANDARD 4.5.1 – WINE PRODUCTION REQUIREMENTS

For information on matters relating to this Assessment Report or the assessment process generally, please refer to <http://www.foodstandards.gov.au/standardsdevelopment/>

Executive Summary

This Application (A551) seeks to amend Standard 4.5.1 – Wine Production Requirements (Australia Only) of the *Australia New Zealand Food Standards Code* (the Code). It is an Application from the Winemakers’ Federation of Australia, to update the Code in order to correct some editorial deficiencies with the Standard and to improve its use by winemakers.

The *Agreement between the Government of Australia and the Government of New Zealand concerning a Joint Food Standards System* (the Treaty), excluded primary production standards from the joint Australia New Zealand food standards setting system. Australia and New Zealand independently and separately develop food regulatory measures for the production of wine.

The amendments associated with the Application have no public health and safety implications.

Purpose

The purpose of the Application is to correct some editorial deficiencies within Standard 4.5.1 – Wine Production Requirements (Australia Only) of the Code in order to clarify the standard to assist winemakers.

Decision

Approval is given by FSANZ to the proposed draft variations to Standard 4.5.1 – Wine Production Requirements (Australia Only).

Reasons for Decision

FSANZ recommends accepting this Application and the proposed draft variations to Standard 4.5.1 – Wine production Requirements (Australia Only) (Attachment 1) for the following reasons:

- The proposed draft variations do not have any implications for public health and safety;
- The proposed draft variations correct some editorial deficiencies with Standard 4.5.1, clarifying the standard which will assist winemakers;
- FSANZ has undertaken a full regulation impact assessment process. That process concluded that the proposed draft variations are necessary, cost-effective and beneficial to producers; and
- FSANZ’s objectives outlined in section 10 of the FSANZ Act will not be compromised by the proposed changes.

Consultation

FSANZ decided, pursuant to section 36 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), to omit inviting public submissions in relation to the Application prior to making a Draft Assessment. In making this decision, FSANZ was satisfied that the Application raised issues of minor significance or complexity only.

Public comment on the Initial/Draft Assessment Report was sought from 31 May 2006 until 12 July 2006. Five submissions were received within this time frame, in which no issues were raised. A late submission was received, which was not accepted due to it being late, however, FSANZ has regard to the issues it raised since they are pertinent to the Application.

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INTRODUCTION

1. Background

1.1 Nature of Application

This Application (A551) seeks to amend Standard 4.5.1 – Wine Production Requirements (Australia only) of the *Australia New Zealand Food Standards Code* (the Code). It is an Application from the Winemakers' Federation of Australia (WFA), to update the Code in order to correct some editorial deficiencies with the Standard and to clarify the standard which will assist winemakers.

1.2 Summary of Proposed Amendments

The original Application related to seven suggested changes to Standard 4.5.1, four of these have been withdrawn by the Applicant. The remaining changes are:

1. amendment to the definition of 'mistelle' in subclause 3(2);
2. deletion of the term 'prepared cultures' from subclause 3(2) and insertion of the term 'cultures of micro-organisms' in clause 4; and
3. amend the reference to dimethyl dicarbonate limits in paragraph 5(5)(i) referring to the amount 'added' as distinct from the amount present.

1.3 Current Standard

The current Standard 4.5.1 – Wine Production Requirements is an Australia only standard relevant for the wine industry. The Applicant, the WFA which represents the Australian wine industry has noted a number of small errors or amendments that they consider should be made to clarify the requirements in this Standard.

1.4 Historical Background

Standard 4.5.1 was originally gazetted as Standard 4.1.1 on 24 October 2002 and has been amended from time to time, including to renumber the Standard, implement some editorial changes and to permit the use of some new additives.

The Standard underpins the 'Agreement between the European Community and Australia for Trade in Wine.' However, the Standard has no effect on wine made in New Zealand and has no effect on wine imported into Australia or New Zealand.

2. The Issues

This is an Application from the WFA. It relates to very minor changes to Standard 4.5.1 to correct some editorial matters and to clarify the standard, which will assist winemakers.

The original Application related to seven suggested changes, four of these have been withdrawn by the Applicant. The remaining changes are outlined in Part 1.2.

2.1 Definition of Mistelle

The WFA raised the issue that the current definition of mistelle in subclause 3(2) of Standard 4.5.1 is deficient in that fermentation must have already commenced before the grape spirit is added. The WFA has agreed that the current definition of:

mistelle means grape must or grape juice prepared from fresh grapes to which grape spirit has been added to arrest fermentation and which has an ethanol content between 120 mL/L and 150 mL/L at 20°C.

be amended to:

mistelle means grape must or grape juice prepared from fresh grapes to which grape spirit has been added to prevent fermentation and which has an ethanol content between 120 mL/L and 150 mL/L at 20°C.

FSANZ notes the interpretation and considers that the clarification is minor and has merit. Therefore, FSANZ proposes to change the word ‘arrest’ with ‘prevent’ in the definition of ‘mistelle’ in subclause 3(2) of Standard 4.5.1. For further explanation in reaching this conclusion see 8.2.1.1.

2.2 Cultures of micro-organisms

The WFA has noted that:

- the term ‘prepared cultures’ has been retained as a definition in subclause 3(2) of Standard 4.5.1, even though it has been removed from the Table to that clause; and
- the term ‘cultures of micro-organisms’ is used elsewhere in the Standard but is not defined.

The WFA has indicated that the term ‘prepared cultures’ should be deleted and the term ‘cultures of micro-organisms’ should be defined in similar terms to that currently used for the definition of ‘prepared cultures’.

As part of Proposal P266 (Minor Amendments Omnibus IV) the term ‘prepared cultures’ in the Table to clause 3, was replaced with ‘cultures of micro-organisms’, which at that time was considered to be more specific and less ambiguous. At the time, the definition should have been changed but was overlooked. FSANZ agrees with the WFA comment and proposes to delete the term ‘prepared cultures’ from subclause 3(2) of Standard 4.5.1 and include the following definition of ‘cultures of micro-organisms’ in clause 4:

‘cultures of micro-organisms means yeasts or bacteria (including yeast ghosts) used in wine manufacture with or without the addition of any one or more of thiamine hydrochloride, niacin, pyridoxine, pantothenic acid, biotin and inositol.’

FSANZ is of the opinion that the words ‘permitted for food use’ should be removed from the definition, as the Code does not provide specific permissions for these. The definition above reflects this.

2.3 Dimethyl dicarbonate

The WFA has noted that under paragraph 5(5)(i) of Standard 4.5.1 the restriction on the presence of dimethyl dicarbonate should be clarified to indicate that the restriction of 200 mg/L applies to the amount of dimethyl dicarbonate added and not the amount present. The WFA supports its view on the basis that dimethyl dicarbonate is quickly converted to methanol and carbon dioxide.

During consideration of Proposal P266, the permission to use the preservative dimethyl dicarbonate with a maximum permitted level of 200 mg/L was included in Standard 4.5.1. FSANZ has noted the comment from the WFA and agrees that paragraph 5(5)(i) of Standard 4.5.1 should be amended to include the word 'added' before the words 'dimethyl dicarbonate'.

3. Objectives

In developing or varying a food standard, FSANZ is required by its legislation to meet three primary objectives which are set out in section 10 of the FSANZ Act. These are:

- the protection of public health and safety;
- the provision of adequate information relating to food to enable consumers to make informed choices; and
- the prevention of misleading or deceptive conduct.

In developing and varying standards, FSANZ must also have regard to:

- the need for standards to be based on risk analysis using the best available scientific evidence;
- the promotion of consistency between domestic and international food standards;
- the desirability of an efficient and internationally competitive food industry;
- the promotion of fair trading in food; and
- any written policy guidelines formulated by the Ministerial Council.

Specifically the WFA seeks by way of this Application, to correct some editorial deficiencies with Standard 4.5.1 and to clarify the standard which will assist winemakers.

4. Questions to the Risk assessors

There is no requirement for scientific risk assessment since the suggested amendments are minor and of an editorial nature with the aim of improving the clarity of this standard. In light of this, no risk assessment has been completed on the basis that there are no risk assessment issues related to this Application.

RISK MANAGEMENT

5. Options

FSANZ is required to consider the impact of various regulatory (and non-regulatory) options on all sectors of the community, which includes consumers, food industries and governments in Australia.

The regulatory options available for this Application are:

Option 1 *status quo* – no change to Standard 4.5.1

Under this option, the *status quo* would be maintained and there would be no changes to the existing Standard 4.5.1.

Option 2 vary Standard 4.5.1 to incorporate the proposed amendments

Under this option, the proposed amendments to Standard 4.5.1 would be made.

6. Impact Analysis

6.1 Affected Parties

The parties affected by this Application include the following:

- domestic winemakers;
- Australian Government, State and Territory agencies involved in monitoring and enforcing the Code.

Given the nature of the proposed amendments and the Standard only applying to domestically produced wine, FSANZ is of the view that there are no discernable costs or benefits associated with the proposed amendments for consumers or importers.

6.2 Benefit cost Analysis

The impact analysis considers the likely impacts based on available information. The impact analysis is designed to assist in the process of identifying the affected parties, any alternative options consistent with the objective of the Application, and the potential impacts of any regulatory or non-regulatory provisions.

6.2.1 Option 1 – status quo – no change to the existing Standard 4.5.1

6.2.1.1 Benefits

- for winemakers, the adoption of this option would not result in any discernable benefits.

- for Australian Government, State and Territory agencies, the adoption of this option would not result in any discernable benefits, although there may be a minor benefit resulting from the Standard remaining unchanged.

6.2.1.2 Costs

- for winemakers, the adoption of this option would result in the Standard retaining a lack of clarity and may lead to some misinterpretation of Standard 4.5.1;
- for Australian Government, State and Territory agencies, the adoption of this option would continue deficiencies in Standard 4.5.1 with a consequential loss of credibility.

6.2.2 Option 2 – vary Standard 4.5.1 to incorporate the proposed amendments

6.2.2.1 Benefits

- for winemakers, the adoption of this option would result in a minor benefit in using Standard 4.5.1; and
- for Australian Government, State and Territory agencies, the adoption of this option would foster community confidence that regulatory authorities are maintaining wine quality.

6.2.2.2 Costs

- for winemakers, the adoption of this option is unlikely to result in any costs, as the changes are minor in nature and reflect current practices; and
- for Australian Government, State and Territory agencies, the adoption of this option would not result in any discernable costs, although there would need to be an awareness of changes in Standard 4.5.1.

6.3 Comparison of Options

Option 1 is a viable option but its adoption would result in:

- lack of clarity for winemakers in relation to the requirements of Standard 4.5.1; and
- continuation of deficiencies in Standard 4.5.1 that would reflect poorly on government agencies.

FSANZ's preferred approach is to adopt Option 2 to vary Standard 4.5.1 of the Code to include the proposed amendments.

COMMUNICATION

7. Communication and Consultation Strategy

FSANZ decided, pursuant to section 36 of the FSANZ Act to omit inviting public submissions in relation to the Application prior to making a Draft Assessment. However, submissions for the purpose of the Final Assessment were invited under s.17(3)(c) of the FSANZ Act.

FSANZ made its decision under section 36 because it was satisfied that omitting to invite public submissions prior to making a Draft Assessment would not have an adverse effect on anyone's interests and that the Application raises issues of minor significance or complexity only.

8. Consultation

8.1 Public Consultation

FSANZ prepared an Initial/Draft Assessment on A551, for which public comments were called for from 31 May 2006 to 12 July 2006. Five submissions with no issues raised were received within this time frame, and one which was not accepted because of it being late. However FSANZ has regard to this submission, as it raises some pertinent issues. A list of submitters and a summary of submissions can be found in **Attachment 2**.

In seeking submissions on the Initial/Draft Assessment Report, FSANZ specifically requested comments on the following to complete the Final Assessment:

- is the proposed drafting correct and appropriate; and
- are there any unforeseen impacts and costs in relation to the proposed drafting.

The 5 accepted submissions support Option 2, to vary Standard 4.5.1 of the Code to include the proposed amendments.

8.2 Issues raised

8.2.1 Definition of Mistelle

A comment made in the late submission stated that 'to arrest' fermentation implies that fermentation has already commenced, in which case the product can no longer be mistelle. To clarify this, the use of "to prevent" fermentation has been suggested.

8.2.1.1 FSANZ's Response

FSANZ notes the interpretation and considers that the clarification is minor and has merit. Therefore, FSANZ proposes to include the words 'to prevent' between the words 'added' and 'fermentation' in the definition of 'mistelle' in subclause 3(2) of Standard 4.5.1, as follows:

mistelle means grape must or grape juice prepared from fresh grapes to which grape spirit has been added **to prevent** fermentation and which has an ethanol content between 120 mL/L and 150 mL/L at 20°C.

The Applicant had originally proposed the words ‘to arrest and/or prevent’. In response to this FSANZ decided that the words ‘to arrest or prevent’ would suffice, and the legal drafting for the Initial/Draft Assessment Report reflected that. Considering the view of a late submission, FSANZ has decided to adopt the words ‘to prevent’ in the definition, which is supported by the WFA.

8.2.2 *Cultures of micro-organisms*

It was noted that the definition refers to yeasts or bacteria ‘permitted for food use’. It was further stated that the Code does not expressly permit any yeasts or bacteria for food use, which could create difficulties in wine production.

8.2.2.1 FSANZ’s Response

FSANZ agrees with the WFA and proposes to delete the term ‘prepared cultures’ from subclause 3(2) of Standard 4.5.1. and include the following definition of ‘cultures of micro-organisms’ in subclause 2 of clause 4. With regard to the late submission, FSANZ agrees that the current words could cause confusion, and proposes to include the following revised definition of ‘cultures of micro-organisms’, which omits the words ‘permitted for food use’, to which the WFA also agrees.

cultures of micro-organisms means yeasts or bacteria (including yeast ghosts) used in wine manufacture with or without the addition of any one or more of thiamine hydrochloride, niacin, pyridoxine, pantothenic acid, biotin and inositol.

8.2.3 *Dimethyl dicarbonate*

Information was received stating that subclause 5(5) of Standard 4.5.1 deals with the composition of wine, and lists maximum residue limits. The addition of 200 mg of dimethyl dicarbonate relates to a maximum usage rate, and not composition. The following subclause was proposed - 4(3) *dimethyl dicarbonate may be used in the production of wine at a rate not exceeding 200 mg/L.*

8.2.3.1 FSANZ’s Response

FSANZ is of the opinion that the current position of dimethyl dicarbonate in subclause 5(5) of Standard 4.5.1 of the Code is appropriate and reasonable, and that it was not justifiable to create a new subclause in another section of the Standard.

8.2.4 *Inclusion of adjuncts to the definition of micro-organisms*

The comment was made that the inclusion of adjuncts in the definition of micro-organisms, are superfluous, since they are covered in clause 18 of the Standard 1.3.3 - Processing Aids, i.e. thiamine hydrochloride, niacin, pyridoxine, pantothenic acid, biotin and inositol.

8.2.4.1 FSANZ's Response

Standard 4.5.1 is a self contained Standard, prescribing the requirements for wine production in Australia. Due to its stand alone nature, the inclusion of these adjuncts within the definition of 'Cultures of micro-organisms' is necessary for clarity. The clauses in Standard 1.3.3 do not have an effect on Standard 4.5.1.

8.2.5 Drafting interpretation

The issue was raised that "omitting clause 4..." at [1.2] in the drafting to the Initial/Draft Assessment, would suggest that the Table to clause 4 would also be omitted.

8.2.5.1 FSANZ's Response

This minor oversight has been addressed in the drafting so as to be consistent with the intent of retaining the Table to clause 4.

8.3 World Trade Organization (WTO)

As members of the World Trade Organization (WTO), Australia and New Zealand are obligated to notify WTO member nations where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

While there are relevant international standards for the production of wine, amending the Code as proposed is unlikely to have a significant effect on international trade as the Standard does not apply to imported wine. Therefore, FSANZ determined there was no need to notify the WTO under either the Technical Barrier to Trade (TBT) or Sanitary and Phytosanitary Measure (SPS) Agreements.

CONCLUSION

9. Conclusion and Preferred Option

FSANZ's preferred option is Option 2, to vary Standard 4.5.1 to incorporate the proposed amendments. Under this option, the proposed amendments to Standard 4.5.1 would be made. The proposed drafting is included in **Attachment 1**.

10. Implementation and Review

If the draft variations were adopted then they would come into effect upon gazettal.

ATTACHMENTS

1. Draft variations to the *Australia New Zealand Food Standards Code*
2. Summary of Public Submissions

Draft Variations to the *Australia New Zealand Food Standards Code*

To commence: On gazettal

[1] *Standard 4.5.1 of the Australia New Zealand Food Standards Code is varied by-*

[1.1] *omitting subclause 3(2), inserting –*

(2) In this clause -

mistelle means grape must or grape juice prepared from fresh grapes to which grape spirit has been added to prevent fermentation and which has an ethanol content between 120 mL/L and 150 mL/L at 20°C.

[1.2] *omitting clause 4 other than the Table to clause 4, substituting –*

(1) Subject to any limits imposed by clause 5 of this Standard, any of the substances specified in the Table to this clause may be used in the production of wine, sparkling wine or fortified wine.

[1.2.1] *inserting after subclause 4(1) –*

(2) In this clause -

cultures of micro-organisms means yeasts or bacteria (including yeast ghosts) used in wine manufacture with or without the addition of any one or more of thiamine hydrochloride, niacin, pyridoxine, pantothenic acid, biotin and inositol.

[1.3] *omitting paragraph 5(5)(i), inserting –*

(i) 200 mg/L of added dimethyl dicarbonate.

Summary of Submissions

Initial/Draft Assessment Report

List of Submitters:

Australian Food and Grocery Council
New Zealand Food Safety Authority
Food Technology Association of Victoria Inc.
Department of Human Services Victoria
Queensland Department of Health

The submitters as listed above, all support Option 2 – vary Standard 4.5.1 to incorporate the proposed amendments.

The following information was received after the closing date for submissions. Some of the issues raised were considered to be relevant and were taken into account in the Final Assessment:

NSW Food Authority (NSWFA)

- With regard to the definition of ‘mistelle’, the NSWFA states that ‘to arrest’ fermentation implies that fermentation has already commenced, in which case the product can no longer be mistelle. To clarify this, the use of “to prevent” fermentation has been suggested.
- NSWFA asks the question that by “*omitting clause 4...*” at [1.2] in the drafting, does this also include the Table to clause 4?
- NSWFA notes that subclause 5(5) of Standard 4.5.1 deals with the composition of wine, and lists maximum residue limits. The addition of 200 mg of dimethyl dicarbonate relates to a maximum usage rate, and not composition. NSWFA proposes the following subclause - 4(3) *dimethyl dicarbonate may be used in the production of wine at a rate not exceeding 200 mg/L.*
- Cultures of micro-organisms – the definition refers to yeasts or bacteria “permitted for food use”. The code does not expressly permit any yeasts or bacteria for food use, which could create difficulties in wine production.
- The inclusion of adjuncts in the definition of micro-organisms are superfluous since they are covered in clause 18 of the Standard 1.3.3 - Processing Aids, i.e. thiamine hydrochloride, niacin, pyridoxine, pantothenic acid, biotin and inositol.