



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

3-06

31 May 2006

INITIAL/DRAFT ASSESSMENT REPORT

APPLICATION A551

AMENDMENTS TO STANDARD 4.5.1 – WINE PRODUCTION REQUIREMENTS

DEADLINE FOR PUBLIC SUBMISSIONS: 6pm (Canberra time) 12 July 2006

SUBMISSIONS RECEIVED AFTER THIS DEADLINE

WILL NOT BE CONSIDERED

(See 'Invitation for Public Submissions' for details)

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.

Preferred Approach

FSANZ has undertaken an assessment and recommends accepting this Application and the proposed draft variations to Standard 4.5.1 – Wine Production Requirements (Australia Only).

Reasons for Preferred Approach

This Application has been assessed against the requirements for Initial and Draft Assessments in sections 13 and 15 respectively, of the FSANZ Act. 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. Submissions are now invited on this Report to assist FSANZ to make a Final Assessment.

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INVITATION FOR PUBLIC SUBMISSIONS

FSANZ invites public comment on this Initial / Draft Assessment Report based on regulation impact principles and the draft variation/s to the Code for the purpose of preparing an amendment to the Code for approval by the FSANZ Board.

Written submissions are invited from interested individuals and organisations to assist FSANZ in preparing the Final Assessment of this Application. Submissions should, where possible, address the objectives of FSANZ as set out in section 10 of the FSANZ Act. Information providing details of potential costs and benefits of the proposed change to the Code from stakeholders is highly desirable. Claims made in submissions should be supported wherever possible by referencing or including relevant studies, research findings, trials, surveys etc. Technical information should be in sufficient detail to allow independent scientific assessment.

The processes of FSANZ are open to public scrutiny, and any submissions received will ordinarily be placed on the public register of FSANZ and made available for inspection. If you wish any information contained in a submission to remain confidential to FSANZ, you should clearly identify the sensitive information and provide justification for treating it as commercial-in-confidence. Section 39 of the FSANZ Act requires FSANZ to treat in-confidence, trade secrets relating to food and any other information relating to food, the commercial value of which would be, or could reasonably be expected to be, destroyed or diminished by disclosure.

Submissions must be made in writing and should clearly be marked with the word 'Submission' and quote the correct project number and name. Submissions may be sent to one of the following addresses:

Food Standards Australia New Zealand
PO Box 7186
Canberra BC ACT 2610
AUSTRALIA
Tel (02) 6271 2222
www.foodstandards.gov.au

Food Standards Australia New Zealand
PO Box 10559
The Terrace WELLINGTON 6036
NEW ZEALAND
Tel (04) 473 9942
www.foodstandards.govt.nz

Submissions need to be received by FSANZ by 6pm (Canberra time) 12 July 2006.

Submissions received after this date will not be considered, unless agreement for an extension has been given prior to this closing date. Agreement to an extension of time will only be given if extraordinary circumstances warrant an extension to the submission period. Any agreed extension will be notified on the FSANZ website and will apply to all submitters.

While FSANZ accepts submissions in hard copy to our offices, it is more convenient and quicker to receive submissions electronically through the FSANZ website using the Standards Development tab and then through Documents for Public Comment. Questions relating to making submissions or the application process can be directed to the Standards Management Officer at the above address or by emailing slo@foodstandards.gov.au.

Assessment reports are available for viewing and downloading from the FSANZ website. Alternatively, requests for paper copies of reports or other general inquiries can be directed to FSANZ's Information Officer at either of the above addresses or by emailing info@foodstandards.gov.au.

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, 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) of Standard 4.5.1 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) of Standard 4.5.1 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.

1.2 Historical Background

Standard 4.5.1 was originally published as Standard 4.1.1 in the *Food Standards Gazette* No. FSC 5 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 Australia’s agreement with the European Union (EU) on 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 Issue

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 suggested 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 arrest and/or 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 include the words 'or prevent' between the words 'arrest' and 'fermentation' in the definition of 'mistelle' in subclause 3(2) of Standard 4.5.1.

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 permitted for food use (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'.

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. The information needed to make a Final Assessment of this Application will include information from public submissions.

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,

FSANZ now invites written submissions for the purpose of the Final Assessment under s.17(3)(c) of the FSANZ Act and will have regard to any submissions received.

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.

Section 63 of the FSANZ Act provides that, subject to the *Administrative Appeals Tribunal Act 1975*, an application for review of FSANZ's decision to omit inviting public submissions prior to making a Draft Assessment, may be made to the Administrative Appeals Tribunal.

The issues raised in the Application are of minor significance or complexity so FSANZ has applied a basic communication strategy. This combined Initial/Draft Assessment Report will now be advertised seeking public comment. FSANZ will take note of those comments to decide if an altered communication and consultation strategy is required.

8. Consultation

8.1 Public Consultation

FSANZ seeks comment on this Initial/Draft Assessment Report. These submissions will be used to complete the Final Assessment.

Specifically FSANZ seeks comment whether:

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

8.2 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 has undertaken an assessment and recommends the acceptance of this Application and the proposed draft variations to Standard 4.5.1 – Wine Production Requirements (Australia Only). 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.

ATTACHMENT

1. Draft variations to the *Australia New Zealand Food Standards Code*

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) and inserting –*

(2) In this clause -

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

[1.2] *omitting 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 permitted for food use (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) and inserting –*

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