



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

5-06

9 August 2006

INITIAL ASSESSMENT REPORT

APPLICATION A573

WATER USE IN WINEMAKING – AMENDMENT TO PERMITTED LEVEL

DEADLINE FOR PUBLIC SUBMISSIONS: 6pm (Canberra time) 20 September 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

Purpose

This Application from the Winemakers' Federation of Australia seeks to update the *Australia New Zealand Food Standards Code* (the Code) Standard 4.5.1 – Wine Production Requirements (Australia only), in order to permit additional water to be present in wine as a result of good manufacturing practices.

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

Reasons for Assessment

After considering the requirements for Initial Assessment as prescribed in section 13 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), FSANZ has decided to accept the Application for the following reasons:

- The Application seeks approval to vary the limit of water from 30 mL/L to 70 mL/L to permit additional water in the production of wine, under good manufacturing practices. Such an approval, if accepted, would warrant a variation to Standard 4.5.1 – Wine Production Requirements (Australia only).
- There is currently no permission in the Code for allowing up to 70 mL/L of water to be added to wine during the wine production process.
- The Application is not so similar to any previous application that it ought not be accepted.
- There are no other measures that would be more cost-effective than a variation to Standard 4.5.1 that could achieve the same end.
- At this stage no other relevant matters are apparent.

Consultation

Public submissions are now invited on this Initial Assessment Report. Responses to this Initial Assessment Report will be used to develop the next stage of the Application and the preparation of the Draft Assessment Report.

CONTENTS

INVITATION FOR PUBLIC SUBMISSIONS	2
INTRODUCTION	3
1. BACKGROUND.....	3
1.1 <i>Current Standard</i>	3
1.2 <i>Historical Background</i>	3
1.3 <i>International Situation</i>	3
2. THE ISSUE / PROBLEM.....	4
2.1 <i>Water Retention</i>	4
2.2 <i>Water Addition from Food Additives and Processing Aids</i>	4
2.3 <i>Limit on Water Addition</i>	5
3. OBJECTIVES.....	5
4. KEY ASSESSMENT QUESTIONS.....	6
RISK MANAGEMENT	6
5. OPTIONS.....	6
5.1 <i>Option 1 – status quo – no change to Standard 4.5.1</i>	6
5.2 <i>Option 2 – vary Standard 4.5.1 to incorporate the proposed amendments</i>	6
6. IMPACT ANALYSIS.....	6
6.1 <i>Affected Parties</i>	6
6.2 <i>Benefit Cost Analysis</i>	7
6.3 <i>Comparison of Options</i>	8
COMMUNICATION	8
7. COMMUNICATION AND CONSULTATION STRATEGY.....	8
8. CONSULTATION.....	8
8.1 <i>Public Consultation</i>	8
8.2 <i>World Trade Organization (WTO)</i>	9
CONCLUSION	9
9. CONCLUSION AND PREFERRED OPTION.....	9

INVITATION FOR PUBLIC SUBMISSIONS

FSANZ invites public comment on this Initial Assessment Report 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 Draft 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) 20 September 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

This Application from the Winemakers' Federation of Australia seeks to update the *Australia New Zealand Food Standards Code* (the Code) Standard 4.5.1 – Wine Production Requirements (Australia only), in order to permit additional water to be present in wine as a result of good manufacturing practices.

To remove the potential for non-compliance and to retain a maximum prescribed limit to prevent deliberate dilution, the Applicant has proposed varying subclause 5(7) of Standard 4.5.1 to increase the amount of water that may be added to wine from 30 mL/L to 70 mL/L but to include the proviso that this level is only permitted where the addition is 'in conformance with good manufacturing practice'.

The proposed amendment has no public health implications.

1. Background

1.1 Current Standard

The current Standard 4.5.1 applies to wine production requirements in Australia only.

Subclause 5(7) of this Standard states:

Wine, sparkling wine and fortified wine may contain water in proportion not exceeding 30 mL/L where the water is necessary for the incorporation of any substance specified in clause 3 or clause 4, or where the water is incidental to the winemaking process.

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 re-numbering of the Standard, implementation of 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'¹. However, the Standard has no effect on wine made in New Zealand and has no effect on wine imported into Australia or New Zealand.

1.3 International Situation

A side letter to the 'Agreement between the European Community and the United States of America on Trade in Wine'² states that 'the amount of water added to wine for reasons of technical necessity within the meaning of Article 3(1)(b) shall not exceed 7% by volume'.

¹ <http://beta.austlii.edu.au/au/other/dfat/treaties/1994/6.html>. Accessed on 22 June 2006.

² http://www.ustr.gov/assets/Document_Library/Fact_Sheets/2005/asset_upload_file917_8030.pdf. Accessed on 22 June 2006.

2. The Issue / Problem

The Winemakers' Federation of Australia has made an Application to vary Standard 4.5.1 in order to permit additional water to be present in wine as a result of good manufacturing practices. The Applicant states that this is necessary to recognise that water may be added to wine at levels in excess of those currently permitted but for legitimate technical reasons.

Currently, wine may only contain water up to a current maximum limit of 30 mL/L for the purpose of incorporating processing aids and food additives. The Applicant has stated that an amount of added water in excess of the current prescribed level may be necessary to incorporate processing aids and food additives.

In support of their Application, the Applicant has stated that in a review of current practices and typical dose rates for processing aids and food additives:

- the manufacture of wine on a large scale requires the transfer of wine through long pipelines and large volume equipment which can lead to volume change from entrained water in the pipelines and equipment; and
- the incorporation of food additives and processing aids at permitted levels may require more than 30 mL/L increment of water.

To correct this potential for non-compliance and to retain a maximum prescribed limit to prevent deliberate dilution, the Applicant has proposed increasing the amount of water that may be added to wine from 30 mL/L to 70 mL/L but to include the proviso that this level is only permitted where the addition is 'in conformance with good manufacturing practice'.

2.1 Water Retention

Water is used to clean and test pipelines at the start and the end of wine transfer. While this water is directed to waste there is the potential for small amounts to be retained in pipes or high volume equipment (e.g. filters) during wine transfer, particularly at the beginning and at the end of batches. There is also the potential for small amounts of water to be added during operations such as bottle rinsing. Given the volumes involved in transferring wine, it would be reasonable to expect that small amounts of water would be added to the final product from generally accepted manufacturing practice.

2.2 Water Addition from Food Additives and Processing Aids

Some food additives and processing aids are permitted to be added to wine and some of these additives must be mixed with water before addition. This is the basis of the current 30 mL/L limit. The Applicant has indicated that the existing limit may be too low to allow for the incorporation of processing aids and food additives which may need to be added to wine, especially where these additions may occur at different times during production and where certain additives may need to be added singularly. Given the variety of processing aids and food additives involved in producing wine, it would be reasonable to expect that small amounts of water would need to be added as part of incorporating these products.

2.3 Limit on Water Addition

Standard 4.5.1 currently includes a limit of 30 mL/L on water added to wine for a specific purpose (namely for the incorporation of additives). The Applicant is of the view that a limit should be retained to prevent deliberate dilution, even though this limit would not apply to imported wines, on the basis that Standard 4.5.1 only applies to the domestic production of wine. The Applicant also states that the purpose for the addition of water to wine should be stipulated in Standard 4.5.1 to prevent the addition of water other than for good manufacturing practices.

Given the existing limit and that the addition of many additives is currently regulated on a 'good manufacturing practice' basis, it is considered appropriate to retain a specific limit for water added to wine and to specify this addition as being permitted only where the addition is consistent with good manufacturing practice. FSANZ understands that there are techniques that could be used to determine the amount of water added to wine.³

3. Objectives

The Winemakers' Federation of Australia seeks, by way of this Application, to permit additional water to be present in wine for legitimate technical reasons.

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.

None of FSANZ's section 10 objectives of food regulatory measures are compromised by the proposed draft variations.

³ Analytical Method - Determination of the Isotopic Ratio $^{18}\text{O}/^{16}\text{O}$ of the water content in wines. Environmental Isotopes Pty. Ltd. Sydney, Australia.

4. Key Assessment Questions

A risk assessment has not been completed on the basis that there are no risk assessment issues related to this Application, though responses are sought to the following questions.

- Does changing the water limit for wine from 30 mL/L to 70 mL/L have any unintended consequences?
- Are there any implications with the proposed change for international wine trade for Australian wines?

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.

There are no options other than a variation to Standard 4.5.1 for this Application. Therefore the regulatory options available for this Application are:

5.1 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.

5.2 Option 2 – vary Standard 4.5.1 to incorporate the proposed amendments.

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

6. Impact 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 Draft Assessment of this Application will include information from public submissions.

6.1 Affected Parties

The parties affected by this Application include the following:

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

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

6.2 Benefit Cost Analysis

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

6.2.1.1 Benefits

- for consumers, the adoption of this option could, in theory, result in less water in wine, although this benefit is unlikely to materialise or be discernible;
- for winemakers, the adoption of this option would not result in any discernible benefits;
- for Australian Government, State and Territory agencies, the adoption of this option would not result in any discernible benefits, although there may be a minor benefit resulting from the Standard remaining unchanged.

6.2.1.2 Costs

- for consumers, the adoption of this option could, in theory, result in less wine being available because of production restraints, although this cost is unlikely to materialise or be discernible;
- for winemakers, the adoption of this option would result in some costs resulting from their products potentially being non-compliant with Standard 4.5.1, even though they have been produced in accordance with good manufacturing practice;
- for Australian Government, State and Territory agencies, the adoption of this option would require enforcement action against those winemakers that do not comply with the existing Standard 4.5.1.

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

6.2.2.1 Benefits

- for consumers, the adoption of this option could, in theory, result in more wine being available because of production flexibility, although this benefit is unlikely to be discernible; and
- for winemakers, the adoption of this option would result in a benefit of more flexible production requirements in Standard 4.5.1; and
- for Australian Government, State and Territory agencies, the adoption of this option would reduce the potential for non-compliance and reduce the need for regulatory action against winemakers using good manufacturing practices for winemaking.

6.2.2.2 Costs

- for consumers, the adoption of this option could, in theory, result in more water in wine, although this cost is unlikely to be discernible and may already be incurred;
- for winemakers, the adoption of this option is unlikely to result in any costs, as the changes would recognise more flexible production requirements; and
- for Australian Government, State and Territory agencies, the adoption of this option would not result in any discernible 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:

- some costs to winemakers and potentially to consumers of reduced wine production in accordance with the current less flexible production requirements in Standard 4.5.1; and
- costs for government agencies in enforcing the current Standard 4.5.1 to ensure compliance with the current limit for water in wine.

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

This is a standard FSANZ Application with two rounds of public consultation calling for submissions to assist FSANZ toward a Final Assessment. FSANZ will ensure that relevant stakeholders and other interested parties are made aware of the Application, and their comments sought, particularly those of wine producers and jurisdictions which enforce the Code.

8. Consultation

8.1 Public Consultation

Submissions are invited from all who have an interest in this Application. Readers of this Application who are aware of other interested parties should bring this Application to their attention. The views of the submitters will assist in the development of the Draft Assessment and a preferred regulatory approach for Standard 4.5.1 subclause 5(7).

Public comment is sought by FSANZ to assist in assessing the Application. Comments on, but not limited to, the following would be useful:

- Do enforcement authorities monitor the amount of water entrained in wine?

- Do jurisdictions enforce compliance of the water limit in wine?
- Would the requested increase of an upper limit of 70 mL/L of water used in wine production, conform to international legislation?

Are there any other considerations which may affect the outcome of this Application?

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. This issue will be further considered at Draft Assessment and if necessary, notification will be recommended to the agencies responsible in accordance with Australia's and New Zealand's obligations under the WTO Technical Barrier to Trade (TBT) or Sanitary and Phytosanitary Measure (SPS) Agreements. This will enable other WTO member countries to comment on proposed changes to standards where they may have a significant impact on them.

CONCLUSION

9. Conclusion and Preferred Option

The Initial Assessment Report is based mainly on information provided by the Applicant and discusses relevant issues in relation to wine production processes. Having regard to the requirements for Initial Assessment as prescribed in section 13 of the FSANZ Act, FSANZ has decided to accept the Application for the following reasons:

- The Application seeks approval to increase the limit of water from 30 mL/L to 70 mL/L added to wine during the wine production process. Such an approval, if accepted, would warrant a variation to Standard 4.5.1 – Wine Production Requirements (Australia only).
- There is currently no permission in the Code for allowing up to 70 mL/L of water to be added to wine during the wine production process.
- The Application is not so similar to any previous application that it ought not be accepted.
- There are no other measures that would be more cost-effective than a variation to Standard 4.5.1 that could achieve the same end.
- At this stage no other relevant matters are apparent.

Responses to this Initial Assessment Report will be used to develop the next stage of the Application and the preparation of the Draft Assessment Report.