



21 April 2011
[8-11]

APPLICATION A1026

MINIMUM ALCOHOL CONTENT FOR WINE

ASSESSMENT REPORT

Executive Summary

Purpose

Food Standards Australia New Zealand (FSANZ) received an Application from the Winemakers' Federation of Australia (WFA) on 5 June 2009. The initial scope of the Application has been amended by the Applicant since it was originally submitted and currently seeks to amend Standard 4.5.1 – Wine Production Requirements (Australia only Standard) of the *Australia New Zealand Food Standards Code* (the Code).

The Application (Application A1026 – Minimum Alcohol Content for Wine) seeks to reduce the minimum alcohol content permitted in Standard 4.5.1 for wine and sparkling wine produced in Australia from 8 % (80 mL/L) to 4.5% (45 mL/L) alcohol/volume (alc/vol). This proposed amendment is relevant to wine produced in Australia only and does not apply to wine made in New Zealand or to wine imported into Australia and New Zealand.

A minimum alcohol content of 4.5% is sought to harmonise with the European Union (EU) in order to meet EU export requirements under the 2008 *Agreement between Australia and the European Community for Trade in Wine*. The Applicant asserts that this will facilitate trade with the EU, Australia's largest export market.

The Applicant states that the proposed amendment will also address a current regulatory disadvantage for the Australian wine industry in comparison to imported wines. Australian produced wine and sparkling wine currently has a prescribed minimum alcohol content of 8% alc/vol, whereas, there is no minimum alcohol content stipulated in the Code for imported wine. Wines imported into Australia below 8% alc/vol are therefore permitted to be sold as 'wine', while Australian produced wines below 8% alc/vol are not.

A risk assessment has not been completed for this Application on the basis that there are no public health and safety risks related to the proposed amendment.

In making this assessment, FSANZ has considered the potential impacts on all stakeholders including consumers, industry and government. Based on the available information, FSANZ concludes that the benefits of the proposed amendment outweigh any associated costs. Nevertheless, FSANZ is seeking further comment on the potential costs and benefits of the proposed amendment via submissions.

The Application is being assessed under the General Procedure.

Assessing the Application

In assessing the Application and the subsequent development of a food regulatory measure, FSANZ has had regard to the following matters as prescribed in section 29 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act):

- whether costs that would arise from varying the Code to reduce the minimum alcohol content outweigh the direct and indirect benefits to the community, government or industry
- whether other measures would be more cost-effective than a variation to Standard 4.5.1 that could achieve the same end
- whether there are any relevant New Zealand standards
- any other relevant matters.

Preferred Approach

To prepare a draft variation to Standard 4.5.1 – Wine Production Requirements to require wine and sparkling wine produced in Australia to contain no less than 45 mL/L of ethanol at 20°C.

Reasons for Preferred Approach

- The proposed draft variation does not raise any public health and safety issues. The proposed amendment to Standard 4.5.1 could provide Australian consumers with a greater range of low alcohol products.
- Approval of the proposed amendment promotes consistency between domestic and international food standards, particularly with the European Union, and promotes an efficient and internationally competitive food industry, which are matters that FSANZ must have regard to under the FSANZ Act.
- The impact analysis concluded that the benefits of the proposed amendment to Standard 4.5.1 outweigh any associated costs.
- There are no relevant New Zealand standards that would impact on our decision to amend the Code.
- There are no other measures than a variation to Standard 4.5.1 that could achieve the same end.

Consultation

Public submissions are now invited on this Assessment Report. Comments are specifically requested on the potential costs and benefits to all stakeholders.

As this Application is being assessed as a general procedure, there will be one round of public comment. Submissions to this Report will be used to develop the Approval Report for the Application.

Invitation for Submissions

FSANZ invites public comment on this Report and the draft variation to the Code based on regulation impact principles 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 further considering this Application. Submissions should, where possible, address the objectives of FSANZ as set out in section 18 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, separate it from your submission and provide justification for treating it as confidential commercial material. Section 114 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. 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 Changing the Code tab and then through Documents for Public Comment. Alternatively, you may email your submission directly to the Standards Management Officer at submissions@foodstandards.gov.au. There is no need to send a hard copy of your submission if you have submitted it by email or the FSANZ website. FSANZ endeavours to formally acknowledge receipt of submissions within 3 business days.

DEADLINE FOR PUBLIC SUBMISSIONS: 6pm (Canberra time) 2 June 2011

SUBMISSIONS RECEIVED AFTER THIS DEADLINE WILL NOT BE CONSIDERED

Submissions received after this date will only be considered if 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.

Questions relating to making submissions or the application process can be directed to the Standards Management Officer at standards.management@foodstandards.gov.au.

If you are unable to submit your submission electronically, hard copy submissions may be sent to one of the following addresses:

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PO Box 7186
Canberra BC ACT 2610
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Introduction

FSANZ received an Application from the Winemakers' Federation of Australia (WFA) on 5 June 2009. The WFA is the peak national body for the Australian wine industry.

The Application initially sought to amend the tolerances (i.e. accuracy) permitted between the alcohol content stated on the label and the actual alcohol content determined by analysis for wine, wine products and fortified wine in Standard 2.7.1 – Labelling of Alcoholic Beverages and Food containing Alcohol of the *Australia New Zealand Food Standards Code* (the Code).

On 17 February 2010, the WFA requested an addition to the Application seeking to also reduce the minimum alcohol content permitted for wine and sparkling wine in the Australia only Standard 4.5.1 – Wine Production Requirements.

On 14 March 2011, the WFA withdrew its request to amend the tolerances in Standard 2.7.1 and requested to only proceed with the proposed amendment to Standard 4.5.1.

The Application therefore seeks to reduce the minimum alcohol content permitted in Standard 4.5.1 for wine and sparkling wine from 8% to 4.5% alcohol/volume (alc/vol). This proposed amendment is relevant to wine and sparkling wine produced in Australia only. The proposed amendment does not apply to wine made in New Zealand or to wine imported into Australia or New Zealand for which there are no minimum alcohol requirements prescribed in the Code.

1. The Issue / Problem

Application A1026 seeks to reduce the minimum alcohol content prescribed in Standard 4.5.1 for wine and sparkling wine produced in Australia from 80 mL/L to 45 mL/L of ethanol at 20°C (i.e. 8% to 4.5% alc/vol¹).

A minimum alcohol content of 4.5% alc/vol is sought to harmonise with the European Union (EU). The Applicant states that under the terms of the *2008 Agreement between Australia and the European Community on Trade in Wine* (Australia – EU Wine Agreement), Australia can export wine to the EU with a minimum of 4.5% alc/vol if it is legal to produce such wine in Australian regulations. The Applicant has submitted letters from the European Commission's Directorate-General for Agriculture and Rural Development confirming that Australian wines with an alcohol content greater than 4.5% v/v can be sold in the European Community labelled as 'wine' if produced in accordance with conditions specified both in the relevant Australian and Community legislation. The Applicant states that harmonising the Code with the EU will facilitate access to the European market, Australia's largest export market.

The Applicant asserts the proposed amendment will address a current regulatory disadvantage for Australian produced wine in comparison to wine imported into Australia. This disadvantage arises from provisions contained within two Standards which relate to wine in Australia, Standard 2.7.4 and Standard 4.5.1.

¹ The alcohol/volume (alc/vol) measurement is used interchangeably with vol/vol (or v/v) or vol throughout this report to express the minimum alcohol content, though the alc/vol measurement will be used unless reporting from specific references.

Standard 2.7.4 is a joint Standard which applies to wine produced in Australia and New Zealand, and to wine imported into Australia and New Zealand. This Standard sets out general definitions for wine and wine product and provides permissions for the addition of certain foods during the production of wine. There is no minimum alcohol limit prescribed in relation to the production or marketing of wine.

Standard 4.5.1 covers a range of specific production requirements including a minimum alcohol content of 8% alc/vol.

This means that wines below 8% alc/vol are permitted to be imported and sold in Australia as 'wine', while domestically produced wines below 8% alc/vol are not. Reducing the minimum alcohol content will therefore allow Australian produced low alcohol wines above 4.5% alc/vol to be labelled and sold as 'wine' in Australia and to be exported to the EU. As indicated above, a minimum of 4.5% is sought to align with EU export requirements under the *Agreement between Australia and the European Community Agreement on Trade in Wine* (Australia – EU Wine Agreement) and facilitate trade to the European market.

The Applicant states that the proposed amendment will remove a technical barrier to innovation in Australian low alcohol wine. The Applicant has indicated that the demand for low alcohol and low calorie wines in Australia and internationally is increasing. Improved technology has meant that lower alcohol wines can be produced with increasing quality and taste. This has led to this Application to reduce the alcohol limit for Australian produced wine.

An assessment of this Application is therefore required to determine whether approval should be granted to reduce the minimum alcohol content for Australian produced wine and sparkling wine under Standard 4.5.1.

2. Background

2.1 Historical Background

Standard 4.5.1 provides specific requirements for wine produced in Australia only. This Standard was prepared primarily from the former Standard P4 in the Australian *Food Standards Code*. The Standard underpinned the previous 1994 *Agreement between the European Community and Australia for Trade in Wine* in order to uphold the terms of the trade agreement with Europe and ensure the continued access of Australian wine to the European market. Australia's agreement with the EU relied on all wine made in Australia, whether for domestic consumption or for export, being recognised by the EU as wine of designated quality and origin. The new Australia – EU Wine Agreement has been in force since 1 September 2010, replacing the previous 1994 agreement.

Standard 2.7.4 is a joint Standard which was developed to recognise accepted wine practices throughout the world. This Standard applies to wine produced in Australia and New Zealand and to wine imported into Australia and New Zealand.

2.2 Current Standard

Standard 4.5.1 includes requirements for the production of wine in Australia only. Clause 5 of this Standard currently requires wine and sparkling wine to contain no less than 80 mL/L of ethanol at 20°C (i.e. 8% alc/vol).

2.3 Scope of the Application

The proposed amendment to Standard 4.5.1, as currently applying to the production of wine and sparkling wine in Australia only, does not apply to wine produced in New Zealand or to wine imported into Australia or New Zealand.

2.4 International Regulatory Considerations

There is no Codex Alimentarius standard for wine.

2.4.1 European Union

Regulations on the common organisation of the EU wine market are provided in Council Regulation (EC) No 479/2008. Annex IV of this Regulation indicates that wine shall have an alcoholic strength of not less than 8.5% vol or 9% vol depending on the wine-growing zone. However, by way of derogation from the otherwise applicable minimum alcoholic strength, wine with a protected designation of origin or geographical indication shall have an actual alcohol content of not less than 4.5% vol.

2.4.2 Regulation in other countries

Although Standard 4.5.1 only applies to wine produced in Australia, the minimum alcohol content requirements for wine in the major wine trading countries, as provided by the Applicant, are summarised in Table 1 below.

Table 1: Minimum alcohol requirements for wine in the major wine trading countries

Country	Minimum alcohol (vol/vol)	Comments
Australia	8%	For Australian produced wine
New Zealand	Not specified	
Europe	9%	With derogations for certain wines (styles or regions) to lower minimum alcohol requirements, all not less than 4.5%
USA	No minimum specified	For wines with <7% alcohol ingredient labelling is required
Argentina	7%	
Canada	Not specified	
Chile	10%	
China	7%	
South Africa	Not specified	

2.4.2.1 New Zealand Regulations

In New Zealand, winemakers must comply with the *Wine Act 2003* and the Regulations, Specifications and Notices made under this Act. Additionally, all wine sold in New Zealand must meet the composition and labelling requirements of the Code. In relation to minimum alcohol content requirements applicable to New Zealand, there is no minimum prescribed in the Code, and as far as FSANZ is aware, there is no minimum specified in any New Zealand legislation.

2.5 Technological Considerations

Australian wines are produced and sold as 'wine' with alcohol content above 8% alc/vol as currently permitted in the Code. The Applicant has indicated that lower alcohol wines can be produced by limiting the supply of fruit sugars, stopping the fermentation prior to conversion of all the sugars to alcohol or removal of alcohol from the wine. Improved technology and demand has meant that wine can be produced with lower alcohol levels with acceptable flavour and stability.

As previously indicated, a minimum alcohol content of 4.5% alc/vol is sought to align with the EU to meet the export requirements under the Australia – EU Wine Agreement and facilitate trade.

The Applicant has also indicated that there is a potential risk of microbiological instability with alcohol contents below 4.5% alc/vol which can cause quality issues (e.g. taste), although it does not raise any health and safety issues. The Applicant believes the proposed minimum of 4.5% alc/vol, as well as current industry wine making practice, is appropriate to preserve the reputation of Australian wine with trading partners.

3. Objectives

In developing or varying food standards, FSANZ is required by its legislation to meet three primary objectives which are set out in section 18 of the FSANZ Act. These are:

- the protection of public health and safety; and
- 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.

4. Risk Assessment

A risk assessment has not been completed on the basis that there are no public health and safety risks related to this Application. The main considerations relevant to this Application are the promotion of consistency between domestic and international food standards, and the desirability of an efficient and internationally competitive food industry. In considering this Application, FSANZ must therefore give regard to the international obligations under the Australia – EU Wine Agreement.

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 government. The benefits and costs associated with the proposed amendment to the Code have been assessed using regulatory impact analysis principles.

As this assessment considers an application from industry to amend a regulatory Standard that already exists, this assessment does not consider a third, non-regulatory option.

FSANZ has identified two regulatory options that are available for the assessment of this Application:

Option 1 Reject the Application, thus maintaining the status quo.

Under this option, the status quo would be maintained and there would be no change to the existing Standard 4.5.1. This option would see the rejection of the Application.

Option 2 Prepare a draft variation to Standard 4.5.1

Under this option, Standard 4.5.1 would be amended so that the minimum alcohol content for wine and sparkling wine would reduce from 80 mL/L to 45 mL/L of ethanol at 20°C.

6. Impact Analysis (RIS ID: 11677)

The Office of Best Practice Regulation (OBPR) has advised FSANZ that the proposed amendment is likely to have a minor impact on business and therefore does not require a Regulation Impact Statement (RIS).

6.1 Affected Parties

The proposed amendment to the minimum alcohol content in Standard 4.5.1 only applies to the production of wine in Australia. Wines produced in New Zealand and wines imported into Australia or New Zealand are not affected by the proposed change. Therefore the parties potentially affected by the regulatory options outlined above include:

- Australian wine industry
- Consumers of Australian wine
- Australian Government, State and Territory enforcement agencies.

6.2 Benefit Cost Analysis

6.2.1 Option 1 – Reject the Application

Maintaining the status quo could result in the following costs and benefits to the affected parties.

6.2.1.1 Industry

- This option does not address the current regulatory disadvantage where Australian produced wine must conform to a minimum alcohol content of 8% alc/vol, whereas, there is no minimum alcohol content specified in the Code for imported wine.

- The status quo may be seen as a disincentive for the Australian wine industry to make innovations with respect to low alcohol wines. This may be regarded as a cost to the Australian wine industry in terms of a more limited product range and market opportunities.

6.2.1.2 Consumers

- There is a potential cost to Australian consumers due to the non-availability of a wider range of domestically produced low alcohol wines.

6.2.1.3 Government

- Should the status quo prevail, there would be no impact on enforcement agencies. Jurisdictions would not need to make changes to the systems currently in place to monitor compliance.

6.2.2 *Option 2 – Prepare a draft variation to Standard 4.5.1*

The draft variation could result in the following costs and benefits to the affected parties.

6.2.2.1 Industry

- The Australian wine industry would likely regard a lowering of the minimum alcohol content of wine as beneficial as it addresses a regulatory disadvantage compared to import requirements. This would increase product range and market opportunities, and provide regulatory certainty for Australian produced low alcohol wines to be labelled and sold as 'wine'.
- The change in the Standard would make it possible for Australian producers to locally produce and market wine with a lower level of alcohol. Those who choose to produce wines with lower alcohol content may need to make changes to their production process, and this could entail additional costs. However this would be a voluntary business decision, embarked upon only if the individual producer sees an economic benefit in producing such wines for the domestic market.
- The proposed minimum alcohol content would also align the requirements for wine produced in Australia with the EU and meet the requirements under the trade agreement and thus facilitate trade.

6.2.2.2 Consumers

- The change in the Standard would encourage the Australian wine industry to produce low alcohol wine and this could provide Australian consumers with a wider range of low alcohol wines.
- There is a potential benefit to Australian consumers due to possible increased competition in the production and marketing of low alcohol wines.

6.2.2.3 Government

- The Applicant has indicated that no changes would be required to the analytical testing procedures for determining the alcohol content in Australian produced wine. As such, there should be no costs imposed on enforcement agencies as they would not need to alter the current testing procedures used for determining compliance of the alcohol content.

FSANZ seeks any further information on the potential costs and benefits arising from Option 2 in relation to amending Standard 4.5.1.

1. What are the potential costs and/or benefits to you as a stakeholder?
2. Are there other potential issues that you feel should be considered in the impact analysis?

6.3 Comparison of Options

Option 2 is favoured since there is no benefit derived for any affected party from Option 1. Option 2 provides benefits to the Australian wine industry in terms of product innovation and market opportunities and addresses a regulatory disadvantage for the Australian wine industry in comparison to imports. Australian consumers may also benefit from a potentially wider range of low alcohol wine products and increased competition. Any costs incurred by industry would be voluntary. Overall, the benefits outweigh the costs.

Conclusion

On the basis of the available information to date, FSANZ considers that, on balance, Option 2 – Prepare a draft variation to Standard 4.5.1 is the preferred option.

Communication and Consultation Strategy

7. Communication

FSANZ does not anticipate the proposed amendment will be of major significance and has therefore applied a basic communication strategy to this Application. This involves alerting the community to the opportunity to comment on the proposed change to the Code via a media release, website and FSANZ's Facebook page. Email alerts will be sent to more than 5000 subscribers to the FSANZ Notification Circular and to interested parties.

If approval is recommended, once the FSANZ Board has approved the variation to the Standard, that decision will be notified to the Ministerial Council. The Applicant and stakeholders, including the public, will be notified of the gazettal of the change to the Code on the FSANZ website. FSANZ also provides an advisory service to the jurisdictions on changes to the Code.

8. Consultation

FSANZ is seeking comments from the public and interested stakeholders to assist us in assessing this Application. Information is specifically sought on the questions raised within this report. As this Application is being assessed as a general procedure, there will be one round of public comment.

The Applicant and individuals and organisations who make submissions on this Application will be notified at each stage of the assessment of the Application.

8.1 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.

The proposed amendment to Standard 4.5.1 is unlikely to have a significant impact on international trade as it applies to the production of wine in Australia only. Therefore, notification is not considered necessary under either the WTO Technical Barriers to Trade or Sanitary and Phytosanitary Measures Agreements.

Conclusion

9. Conclusion and Preferred Option

This Application has been assessed against the requirements of section 29 of the FSANZ Act. On the basis of the available information, FSANZ recommends the proposed draft variation to Standard 4.5.1.

The proposed draft variation is provided in **Attachment 1**.

Preferred Approach

To prepare a draft variation to Standard 4.5.1 – Wine Production Requirements to require wine and sparkling wine produced in Australia to contain no less than 45 mL/L of ethanol at 20°C.

9.1 Reasons for Preferred Approach

- The proposed draft variation does not raise any public health and safety issues. The proposed amendment could provide consumers with a greater range of low alcohol products.
- Approval of the proposed amendment promotes consistency between domestic and international food standards, particularly with the European Union (EU), and promotes an efficient and internationally competitive food industry, which are matters that FSANZ must have regard to under the FSANZ Act.
- The impact analysis concluded that the benefits of the proposed amendment outweigh any associated costs.

There are no relevant New Zealand standards that would impact on our decision to amend the Code.

- There are no other measures than a variation to Standard 4.5.1 that could achieve the same end.

10. Implementation and Review

Following the consultation period for this document, an Approval Report will be completed and the draft variation will be considered for approval by the FSANZ Board. If a draft variation to the Code is approved by the FSANZ Board, that decision will be notified to the Ministerial Council for its consideration. The proposed draft variation to the Code would then be gazetted, subject to any request from the Ministerial Council for a review of FSANZ's decision.

11. References

Agreement between Australia and the European Community on Trade in Wine.
Available from various websites including the Department of Agriculture, Fisheries and Forestry (DAFF). http://www.daff.gov.au/_data/assets/pdf_file/0011/913754/wine-agreement.pdf. Accessed 26 October 2010.

ATTACHMENTS

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

Draft variation to the Australia New Zealand Food Standards Code

Section 94 of the FSANZ Act provides that standards or variations to standards are legislative instruments, but are not subject to disallowance or sunseting

Commencement: On gazettal

[1] **Standard 4.5.1** of the Australia New Zealand Food Standards Code is varied by omitting subclause 5(1), substituting –

(1) Wine and sparkling wine must contain no less than 45 mL/L of ethanol at 20°C.