



**30 September 2019**  
**[96-19]**

## Approval report – **Application A1166**

### Reduction in minimum alcohol for Tequila

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Food Standards Australia New Zealand (FSANZ) has assessed an application made by Spirits New Zealand Inc. to lower the minimum content of alcohol by volume (alc/vol) for Tequila only specified in Standard 2.7.5 of the Australia New Zealand Food Standards Code (the Code), from 37% to 35%.

On 7 May 2019 FSANZ sought submissions on a draft variation and published an associated report. FSANZ received seven submissions.

FSANZ approved the draft variation on 11 September 2019. The Australia and New Zealand Ministerial Forum on Food Regulation was notified of FSANZ's decision on 25 September 2019.

This Report is provided pursuant to paragraph 33(1)(b) of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act).

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## Executive summary

Food Standards Australia New Zealand (FSANZ) received an application from Spirits New Zealand Inc. on 6 June 2018 to lower the minimum alcohol content specified in the Australia New Zealand Food Standards Code (the Code) for Tequila, from 37% to 35% alc/vol.

Spirits New Zealand Inc. stated that the proposed amendment was needed to ensure that all spirits legally entitled to use the Tequila geographical indication (GI) under the relevant laws of Mexico could be sold in New Zealand and Australia. Geographical indications identify a good as originating in a particular country, locality or region, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographical origin.

At present, Standard 2.7.5 requires all spirits to have a minimum content of 37% alc/vol. The official Mexican rules for the Tequila GI allow authentic Tequila to be produced to a minimum alcohol content of 35% alc/vol. Therefore, some products legally entitled to use the Tequila GI are excluded from the New Zealand and Australian markets.

Spirits New Zealand considered that the change would give consumers greater choice across the full range of products entitled to use the Tequila GI, be consistent with the recognition of the Tequila GI by the governments of New Zealand and Australia, and avoid unnecessary obstacles to trade.

After assessing the application, FSANZ prepared a draft variation to the Code to lower the minimum alcohol percentage for Tequila from 37% to 35% alc/vol.

A public health and safety risk assessment was not considered necessary by FSANZ given the nature of the changes sought by the application.

FSANZ's assessment included an assessment of any potential effects on stakeholders including consumers, industry and government. Based on the available information, FSANZ's assessment was that the benefits of the proposed amendment outweigh any associated costs. FSANZ invited stakeholders to comment on its assessment, including the potential costs and benefits of the proposed amendment via submissions. A total of seven submissions were received on FSANZ's assessment report.

After consideration of public submissions, FSANZ has approved a draft variation to amend Standard 2.7.5 of the Code to reduce the minimum alcohol content for Tequila, from 37% to 35% alc/vol.

# 1 Introduction

## 1.1 The Applicant

Spirits New Zealand Inc. is the national trade organisation representing New Zealand's leading producers, distributors, brand owners, importers and exporters of premium spirits and spirit-based drinks. They represent over 98 per cent of spirit industry interests in New Zealand.

## 1.2 The Application

This application sought to lower the minimum alcohol content specified in the Code for Tequila, from 37% to 35% alc/vol. The stated aim of the application was to ensure that all spirits legally entitled to use the Tequila GI under the relevant laws of Mexico could be sold in New Zealand and Australia. The official Mexican requirements for Tequila allow for a minimum percentage of 35% alc/vol, whereas the Code specifies that all spirits, including Tequila, must contain at least 37% alc/vol.

## 1.3 The current Standard

Australian and New Zealand food laws require food for sale to comply with the following requirements of the Code.

### 1.3.1 *Identity and compositional requirements*

Sections 1.1.2—2 and 2.7.5—2 of the Code provide a definition and compositional requirements for a spirit. The Code provides as follows -

*spirit* means an alcoholic beverage consisting of:

- a) a potable alcoholic distillate, including whisky, brandy, rum, gin, vodka and tequila, produced by distillation of fermented liquor derived from food sources, so as to have the taste, aroma and other characteristics generally attributable to that particular spirit; or
- b) such a distillate with any of the following added during production:
  - i. water;
  - ii. sugars;
  - iii. honey;
  - iv. spices.

Subsection 2.7.5—3(3) of the Code requires that "A food that is sold as a spirit must be a spirit and contain at least 37% alcohol by volume."

Section 1.1.1—13 provides in effect that, if a purchaser is likely to assume that the food was a spirit, it must be a spirit and hence contain at least 37% alcohol by volume.

### 1.3.2 *Restriction on the use of geographical indications*

Section 2.7.5—4 provides in effect that Tequila made in accordance with the relevant requirements specified by the Mexican Government can use the name Tequila.

Section 2.7.5—4 is set out below.

### 2.7.5—4 **Restriction on the use of geographical indications**

- 1) A geographical indication must not be used in relation to a spirit, even where the true origin of the spirit is indicated or the geographical indication is used in translation or accompanied by expressions such as 'kind', 'type', 'style', 'imitation' or the like, unless the spirit has been produced in the country, locality or region indicated.
- 2) A spirit lawfully exported under a geographical indication, but bottled other than in the territory, locality or region indicated by the geographical indication must not be sold under that geographical indication:
  - a. unless the concentration of alcohol by volume in the spirit is at a level permitted under the laws for that geographical indication of the territory, locality or region indicated by that geographical indication; or
  - b. if any other distinctive quality or characteristic of the spirit is such as to mislead or deceive the public as to the nature of the product identified by the geographical indication.
- 3) In this section:

**geographical indication** means an indication, whether express or implied:

- a. which identifies a spirit as originating in a particular country, locality or region; and
- b. where a given quality, reputation or other characteristic of the spirit is essentially attributable to its origin in that particular country, locality or region.

### **1.3.3 International standards**

#### **1.3.3.1 Codex Alimentarius**

There is no commodity committee or commodity standard for spirits generally, or Tequila specifically, in the Codex Alimentarius standards, meaning there is no formal definition or specification for such products. For the purposes of the General Standard for Food Additives (GSFA), Tequila is specifically named as being included within Category 14.2.6 Distilled spirituous beverages containing more than 15% alcohol. The GSFA does not prescribe a minimum alcohol content for Tequila at 35% alc/vol (Codex STAN 192-1995).

#### **1.3.3.2 European Union**

The 'Agreement between the European Community and the United Mexican States on the mutual recognition and protection of designations for spirit drinks' (97/361/EC), protects Tequila as a product made exclusively in accordance with the laws of Mexico. Tequila is not specified as a category of spirit drinks within the relevant EU directive, and therefore it falls within the 15% minimum alcohol content specified generically for such products (EC 110/2008). Consequently, Tequila is both a protected name for Mexican products within the EU and it can be placed on the EU market at the minimum content specified in Mexican law.

#### **1.3.3.3 Canada**

Spirits may only be sold under the name Tequila if it has been manufactured in Mexico in accordance with the laws and regulations of Mexico governing the manufacture of Tequila (Spirit Drinks Trade Act, S.C. 2005). There is no minimum percentage alc/vol specified in Canadian law for spirits generally, including Tequila. As such, Tequila is marketed in Canada at the minimum content specified by Mexican law.

#### **1.3.3.4 United States**

U.S. law (27 CFR 5.22 (g)) states that tequila must be "manufactured in Mexico in compliance with the laws of Mexico regulating the manufacture of Tequila for consumption in that country". However, Tequila cannot be sold in the U.S. at under 40% alcohol concentration (80 U.S. proof).

### **1.3.3.5 International recognition of the Tequila Geographic indications (GI)**

New Zealand, Australia and Mexico are signatories to the *Trade Related Aspects of Intellectual Property Rights Agreement* (TRIPs), which covers the use of geographical indications for goods particularly wine and spirits. Geographical indications' are defined under the TRIPs Agreement as – *indications which identify a good as originating in the territory of a member, or a region or locality in that territory, where a given quality, reputation or other characteristic of the good is essentially attributable to its geographic origin.*

Articles 22 and 23 of the TRIPs Agreement require members to provide legal means for interested parties to prevent the use of any designation or representation of a good that indicates or suggests that the good originates in a geographical area other than the true place

The Code reflects Australia and New Zealand's obligations under that Agreement in relation to food, including spirits.

The Tequila GI is one of the most widely recognised spirits GIs in the world. It became recognised in Mexico in 1974 and subsequently registered in 1978 with the World Intellectual Property Organisation (WIPO) pursuant to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (WIPOa).

The Tequila GI is recognised in international agreements between Mexico and 10 other countries as well as the European Union. It is also registered as a GI or a brand or certification mark in at least 10 countries as well as in the European Union (WIPOb, Consejo Regulador de Tequila).

## **1.4 Reasons for accepting Application**

The Application was accepted for assessment because:

- it complied with the procedural requirements under subsection 22(2) of the FSANZ Act; and
- related to a matter that warranted the variation of a food regulatory measure.

## **1.5 Procedure for assessment**

The Application was assessed under the General Procedure.

## **1.6 Decision**

The draft variation as proposed following assessment was approved with one amendment after the consideration of submissions. The amendment was required to correct a minor typographical error.

The approved variation takes effect on gazettal. The approved draft variation is at Attachment A.

The related explanatory statement is at Attachment B. An explanatory statement is required to accompany an instrument if it is lodged on the Federal Register of Legislation.

## 2 Summary of the findings

### 2.1 Summary of issues raised in submissions

FSANZ called for submissions on a proposed draft variation on 7 May 2019. Seven submissions were received. Four of those submissions were supportive. These were from: The Victorian Departments of Health and Human Services and Jobs, Precincts and Regions, New Zealand Ministry for Primary Industries, Brown – Forman Australia Pty Ltd. and The New Zealand Food & Grocery Council.

The proposed draft variation was opposed by Diageo Australia and New Zealand, Spirits Platform and Borco and Proximo Australia Pty Ltd. The submissions received and FSANZ's responses to these are summarised in Table 1 below.

**Table 1: Summary of Submissions**

Issue	Raised by	FSANZ response
The call for submissions does not provide any compelling reason for reducing the minimum ABV content for Tequila from 37% to 35%.	Diageo Australia and New Zealand	Noted.  FSANZ's reasons for approving a reduction in the minimum ABV content for Tequila from 37% to 35% are detailed in this report.
<p>Reducing the minimum ABV content for Tequila from 37% to 35% will create unnecessary complexity. It creates a separate definition or category for Tequila. There are already sixteen different rates of alcohol excise tax in Australia and a range of different legal and regulatory requirements across federal, state and local jurisdictions.</p> <p>It will also create inconsistency in Australia and New Zealand in that one category of spirit will be treated differently.</p>	Diageo Australia and New Zealand	<p>Noted.</p> <p>FSANZ is not aware of any evidence that reducing the minimum ABV content for Tequila from 37% to 35% will create complexity in terms of regulation or compliance.</p> <p>The Australian Tax Office has advised that lowering the minimum allowable alcoholic content of products using the <i>Tequila GI</i> as proposed would have no administrative or compliance impact. They do not see how it would create a new definition or category for alcohol tax purposes, or result in a different rate of tax. Further, all administrative and regulatory requirements around calculation, reporting, and payment would remain unchanged.</p> <p>FSANZ also understands that this proposed change can be readily incorporated into existing automated tracking and inventory systems.</p>

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Issue	Raised by	FSANZ response
<p>Reducing the minimum ABV content for Tequila from 37% to 35% is inconsistent with international standards.</p> <ul style="list-style-type: none"> <li>The USA – which is by some distance the biggest tequila export market in the world - mandates a minimum 40 per cent alcohol content for tequila in the Electronic Code of Federal Regulations.</li> <li>The international standard for Sierra Tequila is 38%.</li> </ul>	<p>Diageo Australia and New Zealand</p> <p>Spirits Platform and Borco</p>	<p>Noted.</p> <p>FSANZ’s assessment is that a reduction in the minimum alc/vol percentage will be consistent with the recognition of the Tequila GI internationally.</p> <p>As the official Mexican rules for the Tequila GI, which allow authentic Tequila to be produced at a minimum alcohol content of 35% by volume were not being reflected in the Code, this has now been corrected.</p> <p>In effect this amendment will provide a small but positive impact on international trade across the full range of products entitled to use the Tequila GI.</p> <p>FSANZ also notes that other industry submissions did not share this view.</p>
<p>Reducing the minimum ABV content for Tequila from 37% to 35% is consistent with international standards. It will bring Australia and New Zealand into line with other developed nations, such as the EU and Canada.</p>	<p>Brown –Forman Australia Pty Ltd</p>	<p>Noted.</p>
<p>Reducing the minimum ABV content for Tequila from 37% to 35% is unlikely to have an adverse impact on international trade. It will benefit trade by expanding the brand of Tequila that can be imported into Australia and New Zealand</p>	<p>Brown –Forman Australia Pty Ltd</p>	<p>Noted.</p>
<p>Reducing the minimum ABV content for Tequila from 37% to 35% will enable Australian and New Zealand consumers to access a wider variety of Tequila brands across a variety of price points.</p>	<p>Brown –Forman Australia Pty Ltd</p>	<p>Noted.</p>
<p>Reducing the minimum ABV content for Tequila from 37% to 35% promotes competition.</p>	<p>Brown –Forman Australia Pty Ltd</p>	<p>Noted.</p>
<p>The status quo already provides consumers with access to a wide range – and the vast majority - of Tequila products that legitimately use</p>	<p>Diageo Australia and New Zealand</p>	<p>Noted.</p>



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Issue	Raised by	FSANZ response
<p>the Tequila GI.</p> <p>Reducing the minimum ABV content for Tequila from 37% to 35% is inconsistent with previous advice by the New Zealand, Australian and Mexican Governments that designating Tequila as a GI in Australia and New Zealand will not require a Code variation.</p> <p>As part of the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), there was an exchange of letters between Mexico and Australia, and Mexico and New Zealand that had the effect of designating Tequila as a GI in both countries. In all of these letters the respective Ministers in New Zealand, Australia and Mexico wrote that “no variation of the Code [the ANZ Food Standards Code] is necessary for such recognition.”</p>	<p>Diageo Australia and New Zealand</p>	<p>Noted.</p> <p>FSANZ is required to assess the application in accordance with the FSANZ Act. Advice that may have been given by Government in other contexts is not binding on FSANZ when assessing applications in accordance with that Act.</p>
<p>Reducing the minimum ABV content for Tequila from 37% to 35% will undermine the responsible consumption of spirits promoted by the spirits industry. The current required minimum content is the accepted consumer and industry benchmark.</p>	<p>Spirits Platform and Borco</p>	<p>Noted.</p> <p>No evidence was provided in submissions to support this claim.</p> <p>Nor is FSANZ aware of any such evidence.</p>
<p>Reducing the minimum ABV content for Tequila from 37% to 35% could potentially lead to inferior Tequila brands entering the market, which will create a negative impact on all Tequila brands and products.</p> <p>The influx of inferior Tequila brands will undermine consumer interest in and experience of the product and will undermine industry’s focus on quality and promotion of heritage brands.</p> <p>Reducing the alc/vol of Tequila alone will also reduce Tequila’s image against its competitive set and Tequila would no longer be considered a full proof spirit compared to other</p>	<p>Diageo Australia and New Zealand, Spirits Platform and Borco, Proximo Australia</p>	<p>Noted.</p> <p>FSANZ does not agree that a consequence of the draft variation will be an influx of inferior or imitation Tequila products into the market.</p> <p>No evidence of such a consequence was provided in submissions.</p> <p>All products legally produced in Mexico under the Tequila GI are produced under very strict rules and conditions to ensure product integrity.</p> <p>Imitation products would be non-compliant under State and Territory food law.</p>

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Issue	Raised by	FSANZ response
<p>categories.</p> <p>Brands looking to deliver better value can already achieve this by being classified as a 'Liqueur'.</p>		<p>FSANZ also notes that other industry submissions did not share this view.</p>
<p>Reducing the minimum ABV content for Tequila from 37% to 35% will result in a reduction in excise revenues by reduced imports. It will reduce excise collection from Casa Cuervo alone, by over \$1million.</p>	<p>Proximo Australia</p>	<p>Noted.</p> <p>Advice to FSANZ is that any change in excise revenue due to the proposed change is likely to be low (compared to overall excise revenues) and will be dependent on a wide range of factors, including changes in quantities of different types of imported products.</p> <p>The Australian Tax Office confirms a \$1.71/litre reduction in payable excise tax for the 35% alc/vol Tequila opposed to the 37% alc/vol Tequila. However, the net effect on excise revenues might not be negative. For example if Tequila at 35% alc/vol creates a wider market for Tequila because of its lower cost, it could sufficiently stimulate demand to increase revenue if enough consumers switch from other products to Tequila rather than just move from 37% alc/vol to 35% alc/vol Tequila.</p> <p>FSANZ considers then, that the net effect is very difficult to predict.</p>
<p>Reducing the minimum ABV content for Tequila from 37% to 35% will result in increased production costs and offset consumer savings (e.g. due to additional production costs to bottle unique 35% production runs, and the need for bespoke labelling).</p>	<p>Proximo Australia</p>	<p>Noted.</p> <p>Current products produced and sold at 37% alc/vol would not need labelling changes.</p> <p>The Code would not require any Tequila supplier to specifically market a 35-37% alc/vol Tequila.</p> <p>Tequila suppliers remain free to choose whether or not to sell Tequila with the reduced alc/vol, taking into account associated production and labelling costs.</p>

Issue	Raised by	FSANZ response
<p>NZFGC supports the application for an amendment that would accommodate a reduced minimum alcohol level in Tequila.</p> <p>However NZFGC suggest drafting a generic provision that accommodates any future reduced minimum alcohol level (i.e. &lt;37%) in a spirit that is legally entitled to use the relevant geographical indication (GI) for a spirit under the law of the country of origin, so that it could be sold in New Zealand and Australia.</p>	<p>New Zealand Food &amp; Grocery Council</p>	<p>Noted</p> <p>Such an amendment is out of scope for the purposes of this application.</p>

## 2.2 Risk assessment

The scope of this application was confined to permitting a slight reduction in the minimum alcohol content of Tequila only. FSANZ remains unaware of any evidence that a reduction of the minimum alc/vol by 2% will result in a change in overall consumption patterns and that would warrant a public health and safety assessment. Therefore, FSANZ did not undertake a public health and safety risk assessment as there would be no change to the current risks associated with this product.

## 2.3 Risk management

The options available to FSANZ, after assessment and public consultation, were to:

- approve the draft variation issued for consultation and which would amend the Code to lower the minimum alcohol content specified in the Code for Tequila, from 37% to 35% alc/vol;
- approve an amended version of that draft variation; or
- reject that draft variation.

FSANZ is satisfied, in recommending a lower alc/vol percentage for Tequila only, that:

- the integrity of Tequila GI will be maintained
- there are no other aspects of the spirit Tequila that would change relating to this application
- consumers will have a greater choice across the full range of products entitled to use the Tequila GI
- Tequila would still be subject to a minimum alc/vol content
- a reduction in the minimum alc/vol percentage will be consistent with the recognition of the Tequila GI internationally
- unnecessary obstacles to trade can be avoided.

FSANZ's conclusion is that amendment of the Code as requested by Spirits New Zealand was warranted and therefore approved an amended draft variation to amend the Code to lower the minimum alcohol content specified in the Code for Tequila, from 37% to 35% alc/vol.

FSANZ identified a typographical error in the draft variation issued for public consultation

which required correction.

## **2.4 Risk communication**

### **2.4.1 Consultation**

Consultation is a key part of FSANZ's standards development process. FSANZ developed and applied a basic communication strategy to this application. All calls for submissions are notified via the Food Standards Notification Circular, media release, FSANZ's social media tools and Food Standards News.

The process by which FSANZ considers standards development matters is open, accountable, consultative and transparent. Public submissions were called to obtain the views of interested parties on issues raised by the application and the impacts of the regulatory option. FSANZ acknowledges the time taken by individuals and organisations to make submissions on this application.

The draft variation was considered for approval by the FSANZ Board taking into account public comments received from this call for submissions.

### **2.4.2 World Trade Organization**

As members of the World Trade Organization (WTO), Australia and New Zealand are obliged to notify WTO members 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 Tequila GI is recognised internationally and amending the Code to reduce the minimum alcohol content from 37% to 35% alc/vol to ensure that compliance with that internationally recognised GI is unlikely to have a significant effect on international trade. Instead, it would remove a current trading obstacle. Therefore, a notification to the WTO under Australia's and New Zealand's obligations under the WTO Technical Barriers to Trade or Application of Sanitary and Phytosanitary Measures Agreement was not considered necessary.

## **2.5 FSANZ Act assessment requirements**

### **2.5.1 Section 29**

#### **2.5.1.1 Consideration of costs and benefits**

The direct and indirect benefits that would arise from a food regulatory measure developed or varied as a result of the application outweigh the costs to the community, government or industry that would arise from the development or variation of the food regulatory measure.

The OBPR exempted FSANZ from the need to undertake a formal Regulation Impact Statement in relation to the regulatory change proposed in response to this Application (OBPR reference number: 24954). This was due to OPBR being satisfied that this appears to be a simple alignment of our regulations with importers.

FSANZ, however, has given consideration to the costs and benefits that may arise from the proposed measure for the purposes of meeting FSANZ Act considerations. Section 29(2)(a) of the FSANZ Act requires FSANZ to have regard to whether costs that would arise from the proposed measure outweigh the direct and indirect benefits to the community, government or

industry that would arise from the proposed measure.

The purpose of this consideration was to determine if the community, government, and industry as a whole would benefit, on balance, from a move from the status quo. This analysis considered the option to lower the minimum alcohol content by volume specified in Standard 2.7.5 of the Code for spirits using the Tequila GI from 37% to 35% alc/vol.

The consideration of the costs and benefits in this section were not intended to be an exhaustive, quantitative economic analysis of the proposed measures and, in fact, most of the effects that were considered cannot easily be assigned a dollar value. Rather, the assessment sought to highlight the likely positives and negatives of moving away from the status quo to the option described above.

***Costs and benefits of lowering the minimum alcohol content for Tequila GI from 37% to 35% alc/vol.***

**Consumers** - There are no likely costs to consumers from the proposed change. The main benefit to consumers would be the availability of a full range of products legitimately entitled to use the Tequila GI and therefore they may be able to increase their utility by consuming a product they prefer.

The integrity and quality of Tequila GI will be maintained. All products legally produced in Mexico under the Tequila GI are produced under very strict rules and conditions to ensure product integrity.

**Industry and business in general** - There are unlikely to be any net costs to industry and business collectively from the proposed change as indicated in Table 1. The main benefit to producers, importers and retailers would be the availability of a full range of products legitimately entitled to use the Tequila GI enabling them to increase sales and profits by better meeting customer needs.

The proposed change is unlikely to result in any significant commercial advantage for importers and retailers of Tequila over other products or businesses. Tequila is a comparatively high cost product (the average price is \$NZ\$AU 50 to 60 per litre) that has a small market share. There are no domestic producers of Tequila GI.

**Government** - There is unlikely to be any substantial costs or benefits to government from the proposed change. There may be change in excise revenue collected because of the change proposed in this application but it is likely to be small especially when compared to overall excise revenues. The size and direction of the change will be dependent on consumers' changed purchasing behaviour. Whilst it could result in lower consumption of higher alcohol Tequila therefore lowering excise, it could equally result in a growth in the amount of Tequila being consumed thereby increasing the total of excise collected.

**International Trade** - The draft amendment may have a small but positive impact on international trade by removing an unnecessary obstacle to the importation of legitimate Tequila products as outlined above.

***Conclusions from cost benefit considerations***

FSANZ's assessment is that the direct and indirect benefits that would arise from the option above most likely outweigh the associated costs.

#### **2.5.1.2 Other measures**

There are no other measures (whether available to FSANZ or not) that would be more cost-effective than a food regulatory measure developed or varied as a result of the application.

#### **2.5.1.3 Any relevant New Zealand standards**

Standard 2.7.5 applies in both New Zealand and Australia. There are no New Zealand only standards.

FSANZ notes that the approved variation is consistent with New Zealand legislation for spirits. For example, section 5 of the *Sale and Supply of Alcohol Act 2012* (NZ) defines a spirit as a potable alcoholic distillate, including whisky, brandy, rum, gin, vodka and tequila that contains at least 23% ethanol by volume.

#### **2.5.1.4 Any other relevant matters**

Other relevant matters are considered below.

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

FSANZ has also considered the three objectives in subsection 18(1) of the FSANZ Act during the assessment.

#### **2.5.2.1 Protection of public health and safety**

See section 2.2 above. FSANZ considers that there are no additional public health and safety risks related to the proposed amendment relative to the consumption of existing Tequila spirit.

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

The reduction in minimum alcohol from 37% to 35% alc/vol will allow spirits produced according to the relevant laws of Mexico to be named Tequila, including those within the 35-37% alc/vol range. Alcoholic beverages must be labelled with a statement of alc/vol, providing consumers with information about the alcohol content. This enables informed choice when purchasing Tequila.

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

There are no issues identified with this application relevant to this objective.

### 2.5.3 Subsection 18(2) considerations

FSANZ has also had regard to:

- **the need for standards to be based on risk analysis using the best available scientific evidence**

See section 2.2 above. FSANZ considered the need for formal risk analysis, concluding that it was unnecessary based on the scope of the application.

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

The Tequila GI is recognised in international agreements between Mexico and 10 other countries as well as the European Union. The proposed change promotes consistency with regards to domestic and international food standards.

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

The proposed change may provide benefits such as consistency with the international recognition of the Tequila GI.

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

There are no issues identified with this application relevant to this objective.

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

There are no specific policy guidelines that apply to this Application.

## 4 References

97/361/EC [Agreement between the European Community and the United Mexico States on the mutual recognition and protection of designations for spirit drinks](#). Accessed 21 February 2019

Consejo Regulador de Tequila, [International Protection of the Tequila Designation of Origin](#). Accessed 12 Dec 2018

EC 110/2008. [Regulation \(EC\) No 110/2008](#) of the European Parliament and of the Council of 15 January 2008 on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks. Accessed 19 Dec 2018.

Codex STAN 192-1995. [Codex General Standard for Food Additives](#) Accessed 25 February 2019.

NZ Public Act 2006 No. 60. [Geographical Indications \(Wine and Spirits\) Registration Act 2006](#). Accessed 21 February 2019.

NZ Public Act 2012 No. 20. [Sale and Supply of Alcohol Act 2012](#). Accessed 21 February 2019.

[Spirit Drinks Trade Act, SC 2005](#), c 39. Accessed 19 Dec 2018.

WTOa. Article 22.1 of the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) [Section3: geographical indications](#). Accessed 12 Dec 2018.

WIPOa [Lisbon Agreement for the Protection of Appellations of Origin and their International Registration](#). 12 Dec 2018.

WIPOb. [Liquid Gold from the Agave, Geographical Indications and Appellations of Origin](#). Accessed 12 Dec 2018.

### Attachments

- A. Approved draft variation to the *Australia New Zealand Food Standards Code*
- B. Explanatory Statement
- C. Draft variation/s to the *Australia New Zealand Food Standards Code* (call for submissions)



## **Attachment A – Approved draft variation to the *Australia New Zealand Food Standards Code***

### **Food Standards (Application A1166 – Reduction in minimum alcohol for Tequila) Variation**

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The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The variation commences on the date specified in clause 3 of this variation.

Dated [To be completed by Delegate]

[Insert details of Delegate]

Delegate of the Board of Food Standards Australia New Zealand

**Note:**

This variation will be published in the Commonwealth of Australia Gazette No. FSC XX on XX Month 2019. This means that this date is the gazettal date for the purposes of clause 3 of the variation.

**1 Name**

This instrument is the *Food Standards (Application A1166 – Reduction in minimum alcohol for Tequila) Variation*.

**2 Variation to a standard in the *Australia New Zealand Food Standards Code***

The Schedule varies a Standard in the *Australia New Zealand Food Standards Code*.

**3 Commencement**

The variation commences on the date of gazettal.

**Schedule**

**[1] Standard 2.7.5** is varied by omitting subsection 2.7.5—3(3), and inserting

- (3) A food that is sold as a spirit must:
  - (a) be a spirit, and;
  - (b) contain no less than:
    - (i) in the case of tequila—35% alcohol by volume; and
    - (ii) otherwise—37% alcohol by volume.

## Attachment B – Explanatory Statement

### 1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 1 of Part 3 of the FSANZ Act specifies that the Authority may accept applications for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering an application for the development or variation of food regulatory measures.

The Authority accepted Application A1166 which sought a reduction in minimum alcohol content requirement for Tequila. The Authority considered the Application in accordance with Division 1 of Part 3 and has approved a draft variation to a Standard.

Following consideration by the Australia and New Zealand Ministerial Forum on Food Regulation, section 92 of the FSANZ Act stipulates that the Authority must publish a notice about the standard or draft variation of a standard.

Section 94 of the FSANZ Act specifies that a standard, or a variation of a standard, in relation to which a notice is published under section 92 is a legislative instrument, but is not subject to parliamentary disallowance or sunseting under the *Legislation Act 2003*.

### 2. Purpose

The Authority has approved a draft variation to amend section 2.7.5—3 of the Code. The amendment will lower the minimum alcohol content requirement for Tequila, from 37% to 35% alc/vol.

### 3. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference.

### 4. Consultation

In accordance with the procedure in Division 1 of Part 3 of the FSANZ Act, the Authority's consideration of Application A1166 included one round of public consultation following an assessment and the preparation of a draft variation and associated report. Submissions were called for on 7 May 2019 for a six-week consultation period.

A Regulation Impact Statement was not required because the approved variation to Standard 2.7.5 are likely to have a minor impact on business and individuals.

### 5. Statement of compatibility with human rights

This instrument is exempt from the requirements for a statement of compatibility with human rights as it is a non-disallowable instrument under section 94 of the FSANZ Act.

**6. Variation**

Item [1] amends Standard 2.7.5 of the Code by omitting subsection 2.7.5—3(3) and inserting a new subsection The new subsection provides for a lower minimum alcohol content by volume (alc/vol) for Tequila.

The effect of this amendment will be to lower the minimum alcohol content by volume (alc/vol) for Tequila, specified in the Code, from 37% to 35%.

This amendment will ensure that all spirits legally entitled to use the Tequila geographical indication (GI) under the relevant laws of Mexico can be sold in New Zealand and Australia.

## Attachment C – Draft variation/s to the Australia New Zealand Food Standards Code (call for submissions)

### 1 Name

This instrument is the *Food Standards (Application A1166 – Reduction in minimum alcohol for Tequila) Variation*.

### 2 Variation to a standard in the *Australia New Zealand Food Standards Code*

The Schedule varies a Standard in the *Australia New Zealand Food Standards Code*.

### 3 Commencement

The variation commences on the date of gazettal.

#### Schedule

[1] **Standard 2.7.5—3** is varied by omitting subsection 2.7.5—3(3), and inserting

- (3) A food that is sold as a spirit must:
  - (a) be a spirit, and;
  - (b) contain no less than:
    - (i) in the case of tequila—35% alcohol by volume; and
    - (ii) otherwise—37% alcohol by volume.