



30 March 2012

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Dear Sir/Madam,

Call for submissions on draft nutrition, health and related claims standard

Thank you for the opportunity to comment on FSANZ's draft Standard 1.2.7, draft Food Standards (Proposal P293 – Nutrition, Health and Related Claims – Consequential) Variation and Discussion Paper.

Please find attached a submission from the Obesity Policy Coalition (Cancer Council Victoria, Diabetes Australia – Victoria, VicHealth and WHO Collaborating Centre for Obesity Prevention, Deakin University).

If you have any questions about the submission or need any further information, please contact Nicole Antonopoulos, Legal Policy Adviser, Obesity Policy Coalition on (03) 9635 5251 or by email at Nicole.antonopoulos@cancervic.org.au

Yours sincerely,

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Submitter name: Obesity Policy Coalition (OPC)

Summary

The OPC supports the revised drafting of Standard 1.2.7 and encourages FSANZ to adopt the Standard without further delay. The OPC does, however, maintain its view that nutrition content claims should only be permitted on foods that meet the Nutrient Profiling Scoring Criterion (NPSC). There is evidence that consumers do not differentiate between health and nutrition claims and that these claims can confuse and mislead consumers about the overall healthiness of food products.


The OPC supports the Food Standards (Proposal P293 – Nutrition, Health and Related Claims – Consequential) Variation, with the exception of the amendments to Standard 1.2.8 (subclauses 7(2) and 7B).

The OPC is concerned that the amendment to subclause 7(2) of Standard 1.2.8 removes the requirement for the statement accompanying percentage daily intake information in panels to highlight that a person's daily intakes may be higher or lower depending upon energy needs. The OPC recommends that this requirement be retained.

The OPC is also concerned that the new clause 7B in Standard 1.2.8 makes express provision for percentage daily intake information to be included outside the panel, including on front of pack (provided serving size is presented with that information and the information is presented together). A number of concerns were raised about percentage daily intake information on front of pack by, and in response to, the Review of Food Labelling Law and Policy. In light of these concerns, and the review currently being led by the Legislative and Governance Forum on Food Regulation (Forum) to develop an interpretive front of pack labelling system, the OPC urges FSANZ to defer its consideration of matters related to percentage daily intake information outside the panel/on front of pack until after the Forum's review is complete.

The OPC supports option 3, that fat-free and % fat-free claims be regulated with additional regulatory requirements. The OPC also recommends that "low-fat" claims be regulated in this manner. Regulation of these claims will be necessary to ensure that a consistent approach is taken across food products and food categories, that compliance is independently monitored and that the requirements are actively enforced.

Within option 3, the OPC supports option 3(a), that fat-free and % fat-free claims should only be permitted on foods that meet the NPSC. The NPSC provides an immediately available and appropriate tool for ensuring that these claims are not made on foods that are unhealthy overall, enabling consumers to make informed choices and consume healthier diets.



1. Does the revised drafting accurately capture the regulatory intent as provided in Attachment B? Please consider the clarity of drafting, any enforceability issues and the level of ‘user-friendliness’.

Subject to the comments below (and issues raised in the OPC’s previous submissions to Proposal P293), we support the revised drafting of Standard 1.2.7 which we agree clarifies and simplifies the Standard, reflects its regulatory intent and improves its enforceability. It will also reduce the burden on enforcement agencies and provide for better certainty and consistency in enforcement across jurisdictions. Significant consultation has now been undertaken in relation to this Standard so we encourage its adoption and implementation without delay.

If not, please provide specific details in the table below. Ensure that the relevant clause number, schedule number or consequential variation item number that you are commenting on is clearly identified in the left column. Lines may be added if necessary.

Clause Number	Comments
11	For the reasons expressed in the OPC’s previous submissions to Proposal P293 (and as discussed below in response to question 2), the OPC maintains the view that nutrition content claims should only be permitted on foods that meet the Nutrient Profiling Scoring Criterion.
Schedule	Comments
	No comments
Consequential variations	Comments
7(2) [Standard 1.2.8]	<p>The proposed variation to subclause 7(2) modifies the statement required to accompany percentage daily intake information included in a panel. The statement currently prescribed is “*Percentage daily intakes are based on an average adult diet of 8700 kJ. Your daily intakes may be higher or lower depending upon your energy needs.” The proposed variation provides that either of the following statements must be included – “based on an average adult diet of 8700KJ” or “Percentage daily intakes are based on an average adult diet of 8700KJ”. The words “Your daily intakes may be higher or lower depending upon your energy needs” are no longer prescribed.</p> <p>The OPC recommends that the words “Your daily intakes may be higher or lower depending upon your energy needs” continue to be prescribed. The failure to highlight different energy needs (depending on age, sex, gender, weight, illness factors and activity levels) may lead some consumers to underestimate the contribution of some foods to their daily energy requirements. This may in turn lead some people to consume more than they require. Ideally, the words prescribed would highlight the factors identified above that may influence a person’s energy needs.</p>

<p>7B</p>	<p>The new section 7B sets out requirements for percentage daily intake information to be declared outside the nutrition information panel. It provides that this information may be declared outside the nutrition information panel if the serving size is presented together with that information, and if this information is presented together. Currently, Standard 1.2.8 only prescribes requirements for percentage daily intake information in panels, and associated reference values. It does not deal with the use of this information outside the panel.</p> <p>Given the problems with providing percentage daily intake information on the front of pack (i.e. Daily Intake Guide thumbnails), we have concerns about this proposed variation.</p> <p>As recognised by the Food Labelling Law and Policy Review's expert panel, and in the Ministerial Council's response to the expert panel's report, this system is confusing for consumers. It does not provide interpretive guidance about the healthiness of products, is not based on current recommended nutrient intakes, may be misleading when used on children's products, and may encourage people to aim to reach (rather than stay below) 'recommended' intake levels for unhealthy nutrients (e.g. sodium, saturated fat and sugar) and energy. There is no independent evidence that it supports consumers to make healthier food choices.</p> <p>The presentation of percentage daily intake information per serving size on front of pack can be particularly misleading as it is based on variable serving sizes that are set by manufacturers. This has the potential to mislead consumers in relation to the energy value and nutrition content of products containing multiple non-fixed serves, such as breakfast cereals, as manufacturers are able to base % daily intake on smaller than realistic serving sizes for products higher in energy, fat, sugar and/or salt so that they appear to make a smaller contribution to recommended daily intakes (e.g. recommended serving sizes for some breakfast cereals are 30g and for others are 45g). Different serving sizes across products also makes it difficult for consumers to compare products within and across food categories.</p> <p>Given the review currently being led by the Legislative and Governance Forum on Food Regulation to develop an interpretive front of pack labelling system, the OPC recommends that consideration of matters related to percentage daily intake information outside the panel/on front of pack be deferred. The Food Standards (P293 – Nutrition, Health and Related – Consequential) Variation is intended to encompass changes to the Food Standards Code that are consequential upon the introduction of Standard 1.2.7. The changes proposed in subclauses 7(2) and 7B do not appear to be in anyway consequential to the introduction of Standard 1.2.7.</p>
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Fat-free and % fat-free claims

2. What evidence can you provide that shows consumers are purchasing foods of lower nutritional quality because they are being misled by fat-free or % fat-free claims? FSANZ is primarily interested in the substitution of foods of higher nutritional quality with foods of lower nutritional quality which have fat-free claims. Substitution within a general food group (e.g. choosing a different confectionery product) is of lesser importance. (Note: Please provide documented or validated evidence where possible)

We are pleased that FSANZ has commissioned a literature review on the available evidence in relation to fat-free and % fat-free claims. We hope that this review will be made available to the public via the FSANZ website.

As discussed in your discussion paper, fat-free and % fat-free claims are made on a significant number of products in Australia, and across a range of product categories. Of all nutrition claims on food, fat related claims are amongst the most prevalent.

There is consistent evidence that fat-free, low-fat, %fat-free and other nutrition claims may induce positive biases towards products, including 'halo effects' (where consumers rate the product higher on other health attributes not mentioned in the claim) and 'magic bullet effects' (where consumers attribute inappropriate health benefits to the product).¹ There is evidence that consumers do not distinguish between health and nutrition claims and that these claims can discourage consumers from seeking more information to evaluate the full nutritional value of foods.² These claims clearly have the ability to confuse and mislead consumers about the overall nutrition quality of a food product.³

There is also evidence that "low fat" claims on hedonic (i.e. chocolate) and relatively utilitarian (i.e. granola) snack foods leads consumers to increase the amount they believe to be an appropriate serving size, decrease their perception of energy density and reduce consumption guilt (particularly among those who are overweight), influencing consumers to overeat these foods and significantly impacting on energy intake.⁴

While there may be limited evidence to demonstrate the effects of positive biases on purchasing behaviour (and in particular, whether consumers are purchasing foods of lower nutritional quality) we would encourage FSANZ to take a precautionary

¹ See for example, Andrews J.C, Burton S and Netemeyer R.G (2000) Are Some Comparative Nutrition Claims Misleading? The Role of Nutrition Knowledge, Ad Claim Type and Disclosure. *Journal of Advertising* Vol. 29, No. 3, pp. 29-42; Roe B, Levy A and Derby B (1999) "The impact of health claims on consumer search and product evaluation outcomes: results from FDA experimental data *Journal of Public Policy and Marketing* 18(1), 89 – 105.

² Williams P (2005) Consumer understanding and use of health claims for foods. *Nutrition Review* 63, 245-264.

³ Williams P, Yeatman H, Zakrzewski S, Aboozaid B, Henshaw S, Ingram K, Rankine A, Walcott S, Ghani F (2003) Nutrition and related claims used on packaged Australian foods – implications for regulation. *Asia Pacific Journal of Clinical Nutrition* 12(2): 138-150.

⁴ Wansick P & Chandon B (2006) Consumer understanding and use of health claims for foods. *Nutrition Review*, 63, 245-264; Rolls BJ, [Miller DL \(1997\)](#) Is the low-fat message giving people a license to eat more? [J Am Coll Nutr.](#) Dec;16(6):535-43; [Shide DJ](#), Rolls BJ (1995) Information about the fat content of preloads influences energy intake in healthy women. [J Am Diet Assoc.](#) Sep;95(9):993-8.

approach to this issue. It can be difficult to isolate the effects of one food labelling measure on consumer behaviour given the influence of many other factors and policies on that behaviour. The time lag between the imposition of a given food labelling measure and the benefits to public health must also be taken into account. Unequivocal experimental evidence will be impossible to obtain, so other evidence must be relied upon to inform action and reforms should be monitored, evaluated and refined over time.⁵

It is well established in Australia that measures to protect consumers from potentially serious risks of harm, such as overweight and obesity, should not be delayed because there may be a lack of incontrovertible evidence.⁶ Instead, a precautionary approach should be taken to protect consumers from potentially misleading claims and reduce the risks of harm associated with overweight and obesity.

There is also a high level of consumer support for regulation in this area. A national survey conducted by Cancer Council Victoria in 2010 found that 89% of consumers were in favour of government introducing regulations to stop food companies promoting healthy aspects of foods that are overall unhealthy.

3. Do you support option 1 (status quo), option 2 (voluntary action through a code of practice), or option 3 (regulate with additional regulatory requirements for fat-free and % fat-free claims)? Please give your reasons.

For the reasons expressed in the OPC's previous submissions to Proposal P293, the OPC maintains the view that nutrition content claims should only be permitted on foods that meet the Nutrition Profiling Scoring Criterion (NPSC). There is evidence that consumers do not differentiate between health and nutrition claims and that these claims can confuse and mislead consumers about the overall healthiness of food products.⁷

Fat-free and % fat-free are amongst the most common nutrition content claims made on food labels. The OPC therefore supports option 3, that fat-free and % fat-free claims be regulated with additional requirements. In particular, as discussed below in response to question 4(a), the OPC supports option 3(a), that fat-free and %fat-free claims should only be permitted on foods that meet the NPSC.

The OPC also recommends that "low-fat" claims be regulated in this manner. While low-fat claims may not be used as regularly as fat-free or %fat-free, the evidence discussed above demonstrates that they have the same capacity as fat-free and % fat-free to mislead and confuse consumers (influencing them to overeat these food and impacting on energy intake).

⁵ Institute of Medicine (2010) Bridging the Evidence Gap in Obesity Prevention: A Framework to Inform Decision Making. Report Brief. April 2010. Available at <http://www.iom.edu/~media/Files/Report%20Files/2010/Bridging-the-Evidence-Gap-in-Obesity-Prevention/Bridging%20the%20Evidence%20Gap%202010%20%20Report%20Brief.pdf> (accessed 1 September 2011)

⁶ Reynolds C. Public Health – law and regulation, Sydney: Federation Press, 2004.

⁷ Andrews J.C, Burton S and Netemeyer R.G (2000) Are Some Comparative Nutrition Claims Misleading? The Role of Nutrition Knowledge, Ad Claim Type and Disclosure Conditions *Journal of Advertising* Vol. 29, No. 3, pp. 29-42. Roe B, Levy A and Derby B (1999) "The impact of health claims on consumer search and product evaluation outcomes: results from FDA experimental data" *Journal of Public Policy and Marketing* 18(1), 89 – 105; Williams P (2005) Consumer understanding and use of health claims for foods. *Nutrition Review* 63, 245-264; Williams P, Yeatman H, Zakrzewski S, Aboozaid B, Henshaw S, Ingram K, Rankine A, Walcott S, Ghani F (2003) Nutrition and related claims used on packaged Australian foods – implications for regulation. *Asia Pacific Journal of Clinical Nutrition* 12(2): 138-150.

Regulation of fat-free and % fat-free (and low-fat) claims will be necessary to ensure that a consistent approach is taken across food products and food categories, that compliance is independently monitored and that the requirements are actively enforced (including appropriate sanctions).

When determining the appropriate level of regulation (i.e. mandatory, co- or self-regulatory) the following factors should be taken into account:

- Industry incentives to effectively self-regulate and alignment of consumer and industry interests.
- Importance of universal and consistent labelling.
- The consequences and impact of inadequate regulation of these claims.
- Record of industry compliance with self-regulatory and legislative provisions.⁸

Firstly, the food industry has little incentive to effectively self- or co- regulate in this area. Manufacturers gain significant market advantages from promoting foods with fat-free and % fat-free claims and many would be disadvantaged in the market by no longer being permitted to make these claims.

Secondly, the effectiveness of restrictions on fat-free and % fat-free claims will be reliant on the universal application of the requirements to all products. This is necessary to ensure consumers are not confused by inconsistencies and are able to make effective comparisons between products. A voluntary scheme is unlikely to be adopted by all food manufacturers or extended to all products. This has been the experience with the voluntary Daily Intake Guide labelling scheme that has not been adopted by all food manufacturers. There is no independent evidence to demonstrate that this scheme has contributed to healthier diets in Australia.

Thirdly, as discussed above, failure to consistently regulate these claims is likely to result in continued confusion and positive biases towards foods displaying these claims. This may lead consumers to over consume these products, contributing to overweight, obesity and other health problems. Experts agree that the problems of overweight and obesity require a multi-strategy solution and a range of policy and regulatory measures, including improvements to food labelling.⁹

Fourthly, the food industry's lack of compliance with voluntary labelling requirements to date should be considered. A survey of the labelling of 6662 products in 40 food categories in NSW in 2001 found that many nutrient claims did not comply with regulations, particularly those in the then voluntary Code of Practice on Nutrition Content Claims (80% of non-compliant claims).¹⁰ For example, it found that 14.4% of % fat-free claims on foods failed to include a statement (as required by the Code of Practice) in close proximity giving the percentage of fat in the product, and 59.2% of

⁸These considerations are drawn from Australian guidelines on regulation, including the Office of Best Practice Regulation, Australian Government (2007) *Best Practice Regulation Handbook*, Canberra: Commonwealth of Australia; Department of Treasury and Finance, Victorian Government (2007) *Victorian Guide to Regulation*, Melbourne: Victorian Government; Taskforce on Industry Self-Regulation, Australian Government (2000) *Industry Self-Regulation in Consumer Markets*, Canberra: Australian Government.

⁹ See, eg: Swinburn, B. (2008) 'Obesity prevention: the role of policies, laws and regulations' *Australia and New Zealand Health Policy*, 5: 12; Armstrong, R. (2007) 'Obesity, law and personal responsibility' *Medical Journal of Australia*, 186(1), 20; Zimmet, P.J., & James, W.P.T. (2006) 'The unstoppable obesity and diabetes juggernaut: what should politicians do?' *Medical Journal of Australia*, 185(4), 187-188.

¹⁰Williams, P.G., Yeatman, H., Zakrezewski, S., Aboozaid, B., Henshaw, S., Ingram, K., Rankine, A., Walcott, S., & Ghani, F. (2003) 'Nutrition and related claims used on packaged Australian foods – implications for regulation', *Asia Pacific Journal of Clinical Nutrition*, 12, 138-150.

products displaying low or reduced saturated fat claims failed to include a declaration of the content in the nutrition information panel. The study's authors' noted that the industry's enforcement of the Code of Practice was limited due to its lack of legal power over its members and concluded that the higher level of compliance with requirements in the Food Standards Code arguably justified regulation in this area (as has now largely occurred).¹¹ While there is also evidence of low compliance with the Food Standards Code¹², this lack of compliance is most likely due to inadequate monitoring and enforcement. Levels of compliance would most likely improve significantly if more resources were allocated, and the enforcement activities of regulators were better coordinated.

Co-regulatory measures (option 2) could only be effective if government is responsible for setting and developing rules, and takes a leading role in monitoring and enforcing compliance (with meaningful penalties applying to breaches). Industry involvement in rule setting is likely to result in weakened requirements and industry responsibility for monitoring/enforcement would result in compliance problems. As discussed above, it could also only be effective if adopted by all food manufacturers.

The OPC opposes maintaining the status quo and merely undertaking a consumer education campaign (option 1). While a consumer education campaign (tailored to reach the general population, as well as vulnerable groups) should accompany any action in this area, an education campaign alone is unlikely to protect consumers in any significant way. The purchasing environment would remain unchanged, confusion would remain among consumers and the food industry would continue to manipulate food packaging to increase their sales.

In addition, it is arguable that fat-free or % fat-free claims on food products that are unhealthy overall are misleading and deceptive in breach of the Australian Consumer Law. Australian courts have accepted that silence or omission of an important fact can constitute misleading or deceptive conduct if the effect of the silence or omission is to create an overall impression that is misleading.¹³ In the context of food packaging and labelling however, misleading and deceptive conduct provisions (formerly, s.52 of the Trade Practices Act 1975) have only been enforced by the Australian Competition and Consumer Commission against food packaging displaying information and claims that have been found to be factually false or inaccurate.¹⁴ The OPC takes the view that this constitutes an unduly narrow interpretation of the meaning of misleading and deceptive conduct, and demonstrates that the Australian Consumer Law is inadequate to protect consumers from the use of fat-free and %fat-free claims on products that are unhealthy overall.

¹¹ Ibid

¹² Fabiansson, S. Precision in nutritional information declarations on food labels, *Asia Pacific Journal of Clinical Nutrition* (2006) 15(4).

¹³ *Demagogue Pty Ltd v Ramensky* (1993) 110 ALR 608; *Warner v Elders Rural Finance Ltd* (1993) 113 ALR 517 at 519-520; *General Newspapers Pty Ltd v Telstra Corporation* (1993) 117 ALR 629 (per Davies andinfeld JJ at 641-642; per Gummow J at 657-658); *Ramset Fasteners (Aust) Pty Ltd v. Advanced Building Systems Pty Ltd* (1999) 164 ALR 239; *Software Integrators Pty Ltd v. Roadrunner Couriers Pty Ltd* [1997] ATPR (Digest) 46-177.

¹⁴ See for example, ACCC Media Releases: Uncle Tobys stops claims Roll Ups are 'made with 65% real fruit' dated 13 September 2006, available at <http://www.accc.gov.au/content/index.phtml/itemId/762460/fromItemId/720536>; Court declares Arnott's biscuit packaging misleading, dated 29 April 2008, available at <http://www.accc.gov.au/content/index.phtml/itemId/825714>; Go Natural amends 'fruit pieces in yoghurt' packaging, dated 8 April 2008, available at <http://www.accc.gov.au/content/index.phtml/itemId/820182>

4. Please comment on the possible options for additional regulatory requirements for fat-free and % fat-free claims (option 3) (refer section 8) as follows:

a. Which option do you support and why?

The OPC supports option 3(a), that fat-free and %fat-free claims should only be permitted on foods that meet the NPSC.

The aim of regulations to restrict fat-free and % fat-free claims should be to prevent these claims on foods that are unhealthy overall, enabling consumers to make informed choices and consume healthier diets. The NPSC has been developed by FSANZ to consider both the positive and negative nutritional characteristics of foods, consistent with dietary guidelines. The OPC believes all nutrition characteristics should be taken into consideration when determining whether a fat-free or %fat-free claim may be made as they all contribute to the overall healthiness of a food (as opposed to sugar content alone). Regulatory inconsistencies should be avoided and FSANZ should not reinvent the wheel given this tool is available and clearly suited to this task.

Option 3(b) is that foods displaying fat-free or %fat-free claims should be required to display a disclosure statement (i.e. this food is high in sugar) if its sugar content is above a sugar concentration threshold. The OPC is concerned that a disclosure statement may be inadequate to correct any misleading impression that fat-free or % fat-free claims may create on food that have high sugar content, high energy content and/or are unhealthy overall (and may even increase consumer confusion – see below). There is also limited space on the front of pack, which may influence the content that may be included and whether it is noticed by consumers.

If option 3(b) is to be adopted, the permitted disclosure statement or statements should be prescribed to prevent inconsistencies across food products. Careful consideration would need to be given to the content of the disclosure statement(s) and the positioning, size and font of the permitted disclosure statement(s) should also be prescribed to ensure that they are clear enough to reach consumers making quick purchasing decisions.

In the US, the Nutrition Labelling and Education Act of 1990 requires that the disclosure statement “See [appropriate panel] for nutrition information” accompany nutrition claims in certain circumstances. To ensure consumers can make an informed decision at a glance, it would be preferable for the disclosure statement itself to highlight negative nutrients (and ideally their risk to health), such as sugar or energy in the disclosure statement itself.

From 1996 - 1998, the US Federal Trade commission undertook a project to determine consumers understanding of disclosure statements in advertising.¹⁵ 1700 consumers were asked to view 29 fictitious advertisements that promoted products’ positive nutrients (e.g. high in calcium or fibre), and included disclosure statements regarding risk-increasing nutrients (e.g. saturated fat or sodium). Four different disclosure statements were tested and all were found to be overlooked by a significant proportion of consumers in the presence of a positive nutrition claim.

Only a small minority of consumers understood that Disclosure 1 – disclosure containing the quantity of sodium or saturated fat per serve (in grams or milligrams) – meant the product was high in sodium or saturated fat. A similar number interpreted it as meaning

¹⁵Murphy D, Hoppock T & Rusk M (1998) Generic Copy Test of Food Health Claims in Advertising. Washington DC: Federal Trade Commission. Available at <http://www.ftc.gov/os/1998/11/foodhealrep.htm>

the product was low in sodium or saturated fat. The study authors concluded that this was because consumers had not at that time become familiar enough with these quantitative metrics. Consumers with limited understanding of these metrics appeared to construe the quantitative information about risk-increasing nutrients in a positive light.

Disclosure 2 – which expressed the level of these nutrients both in absolute terms and as a percentage of the daily recommended value – was similarly misunderstood and its effectiveness was found to be at least as poor.

Disclosure 3 – which added to disclosure 2 an advisory warning of the health consequences of a high dietary intake of sodium or saturated fat – was found to exacerbate confusion, however this was largely due to a design defect in the disclosure statement.

Disclosure 4, which stated that the product was high in sodium or saturated fat and then warned of the associated health consequences, was found to be the most effective with 85% of respondents understanding that this meant the product was high in sodium or saturated fat (although some consumer confusion was still present in relation to some food products).

The study authors concluded that at that time, plain English disclosures, limited to simple nutrient content (such as “high in sodium”) were the most effective. They also acknowledged that disclosure information on a label (as opposed to in an advertisement) may be viewed differently, meaning that the study results may or may not have any bearing on how consumers interpret such information in labelling.

In Australia, the metric system has applied for some time and is likely to be understood by the majority of consumers. Consumers from countries with other systems, or consumers with low levels of education may, however misconstrue this information. As discussed above, there is evidence that consumers are confused by %DI information on front of pack. Accordingly, this information is unlikely to be useful. Plain English statements are likely to be the most effective and would ideally also aim to inform consumers of the health consequences of consuming the negative nutrients concerned.

It follows that a range of disclosure statements would need to be focus tested to ensure that consumers understand the disclosure statement (or statements) eventually prescribed, understand its or their intent and are empowered to make an informed decision. The effectiveness of any disclosure statement to inform consumers and correct any misleading impressions created by fat-free or % fat-free claims should also continue to be independently monitored and regularly reviewed.

Option 3(c) is that fat-free and %fat-free claims not be permitted on certain products by food category. The OPC is concerned that the development of product category definitions would be technically difficult. It is also concerned that consumers need to be protected from these claims not only on foods that are usually high in sugar and/or energy (i.e. confectionary), but all foods. Indeed, consumers may be more likely to be misled by the use of these claims on foods that are not ordinarily, or are not generally perceived as being, high in sugar or energy.

Option 3(d), is that fat-free and % fat-free claims not be permitted on foods with a sugar content above a sugar concentration threshold. As discussed above, the OPC is concerned that these claims should not be permitted on foods that are high in sugar, energy or are otherwise unhealthy overall. It is not only high-sugar content that needs to be protected against. If this approach is taken careful consideration will need to be given to the appropriate cut-off and should be based on sugar concentration content per 100g, as opposed to per serving size (as discussed below).

- b. What is an appropriate sugar concentration threshold for options 3(b) and 3(d)? Where possible, provide information and evidence to support your suggested threshold value.**

If Options 3(b) or 3(d) are adopted, the sugar concentration threshold should be consistent with the criteria for low sugar nutrition content claims, and the assessment of when sugar earns baseline points under the NPSC. As above, it would be important not to create regulatory inconsistencies and confuse consumers and industry.

The threshold should also be based upon sugar content per 100g, rather than per serve, to ensure that serving sizes are not manipulated by the food industry to meet the requirements for displaying fat-free and % fat-free claims. In the absence of standardised serving sizes, food manufacturers that manipulate serving sizes on labels will continue to gain an unfair advantage, their products will continue to appear healthier than they are and it will remain difficult for consumers to compare foods within and across food categories.

- c. Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe**

As discussed above, the OPC supports option 3(a). It also recommends that requirements to be applied to fat-free and %fat-free claims should be extended to include “low-fat” claims.

