

Attachment D – Template for submissions – Proposal P293 – Nutrition, Health & Related Claims

To assist us in compiling submissions, please complete the tables below.

Table 1: Revised draft Standard 1.2.7

Submitter name: Robert Holdaway Public Health Services MidCentral Health Private Bag 11036 Palmerston North 4442	
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’. 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. Overarching comment: It is our feeling that the whole proposal is unnecessarily complicated and probably beyond the ability of the small to medium sized food manufacturer to interpret. We submit that there needs to be more “absolutes” – there should be very clear exclusions and no nutrition claims should be allowed unless they meet certain absolute criteria. We suggest that the NPSC is too complex a system for such exclusions. The outcome of the consultation needs to be the development of a system that the average consumer is able to understand, - it needs to be intuitive. The system should take into account the needs of those who already have, or are at higher risk of nutrition-related conditions such as diabetes or cardiovascular disease.	
Clause number	Comment
Part 1 definitions: Reference food means a food that is	This clause is ambiguous and unnecessarily vague. The reference food definition is vital to the ability to interpret the standard. Using the draft standard it is possible to selectively choose a reference food in order to support a nutrition content claim – e.g. a very high fat thin-cut chip can be used as the reference food to support a “Lite” claim.

<p>(a) of the same type as the food for which a claim is made and that has not been further processed, formulated, reformulated or modified to increase or decrease the energy value or the amount of the nutrient for which the claim is made; or</p>	<p>The clause appears to be too vague to allow the standard to be enforced or be judged “user-friendly”.</p> <p>We would like to see criteria added to require:</p> <ol style="list-style-type: none"> 1. that the reference food is frequently and commonly purchased within the Australian-New Zealand market; and 2. where the reference food has an identifiable name, that brand and product is identified so that consumers can judge if the product is “lighter” than their current choice. <p>There is the possibility of unnecessary legal proceedings being required to determine whether a food is an appropriate reference food before the veracity of a nutrition claim can even be checked.</p>
<p>(b) a dietary substitute for the food in the same food group as the food for which a claim is made.</p>	<p>This clause would make enforcing any part of the code that uses the phrase “reference food” potentially so difficult that it would not be enforced; unless the code was to specify the instances where a product could count as a dietary substitute.</p> <p>While a major manufacturer could afford to get a court judgement about the suitability of a dietary substitute as a reference food, a citizen or voluntary group is unlikely to have the resources to access the legal pathway. Their only recourse will be to contact the local agent of MAF or FSANZ for help. This will result in unnecessary cost and work for all involved.</p>
	<p>The use of a traffic-light system would help reduce the above problems with the use of the phrase “referent foods” by creating an easily understood representation of fats, sugars and salt contents in the “lighter” product that the consumer could apply to their diet and their need to control energy and salt intakes.</p>

Table 2: Fat-free and % fat-free claims

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Question	Comment
<p>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?</p> <p>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.</p> <p><i>(Note: Please provide documented or validated evidence where possible)</i></p>	<p>The standard is based on the need to protect public health. The studies that we have seen (and presumably that are referred to by NZFSA) are general population studies. Hence we cannot tell what percentage of the sampled population have health issues (or the severity of those health issues) that are affected by the energy and/or fat content of their diet, or even if the sample has a percentage of overweight or obese people that is comparable to the general population.</p> <p>Levels of education, income and ethnicity are correlated to risk of obesity-related illness and again many of these studies do not adequately control for these variables.</p> <p>We note that people on diets have benefited from a list of NEEDNT foods (ie foods that are often regarded as healthy but are best avoided by people trying to control their energy intakes) (http://journal.nzma.org.nz/journal/abstract.php?id=5073, accessed March 2012).</p> <p>This suggests that there is a proportion of the Australian and New Zealand population who are purchasing unsuitable foods because they are misled about the healthiness of that food. Obviously the “healthiness” of the food for this population is not just related to fat-free claims; but equally there is a risk relating to packaging and consumer choice that needs to be addressed.</p>
<p>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 %</p>	<p>We support Option 3.</p> <p>Existing research shows that the current standards are not being followed by the whole food industry (http://apjcn.nhri.org.tw/server/apjcn/Volume15/vol15.1/Finished/Williams.pdf, accessed March 2012):</p> <p>“118 high-level and therapeutic claims did not conform to current food standards and there were many general level claims for ingredient benefits that were unlikely to be able to be scientifically substantiated. The results of this survey suggest that more than 5% of claims were not complying with the</p>

<p>fat-free claims)? Please give your reasons.</p>	<p>current regulations and that the standards were not being fully enforced.”</p> <p>We would therefore favour a compulsory code with additional regulatory requirements for fat-free and % fat-free claims</p>
<p>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:</p> <p>a. Which option do you support and why?</p> <p>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.</p> <p>c. Are there other suitable options for additional regulatory requirements for fat-free and % fat-free claims? Please describe.</p>	<p>We would support 3(a) as this would help people at risk of diabetes or diabetes-related-illness avoid energy-dense foods without losing access to other nutrients that they need. This is the only option that has a specific exclusion for foods that could inappropriately carry nutrition claims.</p> <p>We believe this option would further complicate the task faced by an at-risk person seeking to quickly choose a low energy food.</p> <p>A traffic light system would help people identify if the fat-free or % fat free claim was offset by either excess salt or sugar; or whether it is a food type best avoided by a person with their particular health-condition.</p>

References

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