

DEPARTMENT OF AGRICULTURE, FISHERIES AND FORESTRY (DAFF)

SUBMISSION TO FOOD STANDARDS AUSTRALIA NEW ZEALAND (FSANZ)

PROPOSAL P293 – NUTRITION, HEALTH AND RELATED CLAIMS

Summary

This submission by the Department of Agriculture, Fisheries and Forestry (DAFF) is a response to the FSANZ Consultation Paper – Proposal P293 – Nutrition, Health and Related Claims (February 2012).

DAFF is the Commonwealth Department with responsibility for industries that span the food supply chain, from agricultural industries through to food processing. DAFF jointly shares responsibility with the Department of Health and Ageing (DoHA) for food regulation policy for the Commonwealth Government.

DAFF acknowledges that development of the draft standard has been a particularly challenging process with diverse stakeholder views, and appreciates the significant time and effort that has been invested by FSANZ to date.

DAFF supports the development of a nutrition and health claims standard that enables consumers to make healthier food choices to promote better health outcomes. However, DAFF is eager to ensure that the standard provides a framework that promotes competition and innovation in the food industry with minimum regulatory burden, and does not jeopardise the efficiency and international competitiveness of the food industry in Australia and New Zealand.

With these objectives in mind, and following consideration of the consultation paper, DAFF supports the status quo with respect to the regulation of ‘fat-free’ and ‘percentage fat-free’ claims. However, we have some concerns with the revised regulatory approach for health claims. Further discussion on our position in relation to each of these issues is provided below.

Key Issues

Pre-approval and Substantiation of Food-Health Relationships

The consultation paper proposes a revised regulatory approach for health claims such that all food-health relationships underpinning health claims would be pre-approved by FSANZ and listed in the standard. This represents a substantial deviation from the previous two-tiered approach for health claims which, at Final Assessment, allowed for industry self-substantiation of general level claims.

While the revised approach to the regulation of health claims addresses the Ministerial Council’s concerns regarding enforceability of the standard, we have some concerns that a ‘one size fits all approach’ might be applied to the level of substantiation required for future health claims applications, regardless of the level of ‘risk’ associated with that claim. Such an approach is likely to be time consuming and

costly for the food industry, with resultant negative impacts on innovation. One option to address this issue could be to have two levels of substantiation, one for lower 'risk' health claims and another for higher 'risk' claims. These different 'risk' categories could be based on the criteria previously used to differentiate between a general level and high level health claim (i.e. the food health relationship does or does not directly or indirectly refer to a serious disease or biomarker). Ideally, we would see these different categories reflected in the substantiation requirements for health claims that will be outlined in the *Application Handbook*.

Fat-Free and Percentage Fat-Free Claims

FSANZ has proposed a range of options with respect to the management of 'fat-free' and 'percentage fat-free' claims, in response to the Legislative and Governance Forum's concerns about the potential for consumers to be misled by these types of claims.

DAFF considers that the status quo, as currently proposed under P293, should remain - that 'fat-free' claims would continue to be regulated under Australian and New Zealand consumer law and 'percentage fat-free' claims as proposed in draft Standard 1.2.7.

FSANZ has previously commissioned research which shows that nutrition content claims on products of lower nutritional quality (e.g. those high in fat, sugar or salt) do not alter consumers' perceptions of the nutritional quality of those products or their intention to purchase the product. Although this research did not specifically focus on 'fat-free' and 'percentage fat-free' claims, it is nonetheless relevant in this context. Therefore, in the absence of any current evidence that consumers are being misled by 'fat free' and 'percentage fat free' claims we consider that additional regulatory measures are not warranted.

We consider that the sub-option which includes increasing consumer education in relation to 'fat-free' and 'percentage fat-free' may be warranted to limit any consumer confusion that may arise regarding these claims. This approach would be consistent with principles outlined in the *Council of Australian Governments (COAG) Best Practice Regulation: A Guide for Ministerial Councils and National Standard Setting Bodies*, and would serve to address the concerns raised about the possibility of some consumers being misled by such claims.

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