

Application P293 – Nutrition, Health and Related Claims

Table 1: Revised draft Standard 1.2.7

Submitter name: Queensland Health	
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'.	
Clause number	Comment
Claim	The term 'claim' is used throughout the proposed standard but is not defined. It is strongly recommended that 'claim' be defined for the purposes of the Standard. Furthermore, it would assist enforcement officers and industry if the definition clarifies whether claims have to be express or can be implied, and whether they are restricted to words and spoken statements or may include designs, illustrations, symbols and animations (i.e. moving images).
2 Health claim definition	The definition of 'health claim' refers to 'a claim'. It would assist enforcement officers if the scope of the term 'health claim' is further defined. That is, does it refer to just written and spoken statements or does it have a broader meaning that encompasses other elements of a label or advertisement such as illustrations, design elements and symbols. Applying a definition of 'claim' as suggested above maybe sufficient to address this.
4(b) Standard does not apply to certain foods	It is noted that the term 'delivered meal organisation' (DMO) is not defined in the Food Standards Code. The absence of a definition means that it is unclear which types or organisations are exempted. Does it only apply to not-for-profit organisations such as Meals on Wheels services, or does it also apply to for-profit catering businesses that deliver prepare meals such as Jenny Craig, Lite n' Easy, Gourmet Dinner Service, workplace caterers (eg. provide frozen meals to mining camps) etc.
5(c)	The term 'the Act' should be specified or defined because it is unclear which Act it refers to.
6 Form of food to which provisions of this Standard apply	<p>It is likely that most people reading the Standard will not be able to understand the application of clause 6. As such, additional guidance will be needed to explain how the requirement is to be applied. Wording similar to that used in clauses 9 and 10 of Standard 1.2.8 may be easier to understand.</p> <p>Some products can be used in different ways. For example, tinned kidney beans may be drained for a salad, or the whole contents of the can included in a Mexican style recipe. Similarly, tinned fruit salad may be drained when used in a desert or the entire contents used in punch. As such, consideration could be given to requiring a short statement to be included on a label clarifying which portion or form of the food a nutrition content claim applies to.</p>
7 Claims must not be therapeutic in nature	<p>Under the current health claim prohibition, some businesses have successfully circumvented the prohibitions by making their health claims in relation to a 'program' involving a food product. For example, with some weight loss/gain food products, at face value the claims look to be related to a particular food, but on closer examination of the small print, the claim relates to a program involving other components such as a calorie controlled diet and exercise program. This may be able to be addressed by inserting "about or associated with a food" after "A claim" at the start of Clause 7.</p> <p>Consideration could also be given to prohibiting claims that compare a food with exercise or dieting, for example, xyz food is equivalent to regular exercise or a calorie controlled diet.</p>
14 Nutrition claims must not imply slimming effects	This clause should not be restricted to claims about energy because the terms 'slimming', 'weight loss' and 'weight maintenance' may be associated with fat or other properties such as sugar. Our experience is that these terms may be used without reference to a descriptor, eg. slimming tea, weight loss coffee. Therefore it is recommended that clause 14 be amended by deleting the words "about energy" so that it applies to any nutrition content claim.

16 New health claims deemed to be high level health claims	This clause is unlikely to be understood by most people, particularly anyone not involved in developing food standards. It is recommended that additional supporting information be included, perhaps in a preamble to the clause or an editorial note. Additional information could also be considered in any interpretive guidance on the Standard and the Application Handbook.
24(1) Labelling of food required to meet the NPSC	The acronym 'fvl' is not defined. While this may not be necessary, it would make it easier to understand.
24(5)	Clause 24 appears to include a typographical error in the reference to 'subclause (5)', which should refer to another subclause.
Schedule	Comments
Schedule 1, Energy, Diet	The conditions under column 4 are not clear. 'And' at the end of a(ii) needs to be clearly separated from a(ii) so that it is clear that a(i) or a(ii) and (b) are required conditions.
Consequential variations	Comments
[2.15]	Note the removal of the current requirement to include the statement 'your daily intakes may be higher or lower depending on your energy needs' after 'percentage daily intakes are based on an average adult diet of 8700kJ. Consumers may believe that 8700kJ is an aspirational target rather than a reference value and therefore raise concerns with its removal.
7A (4)	Should this refer to 'percentage dietary intake' rather than 'percentage daily intake'?

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

Submitter name: Queensland Health	
Question	Comment
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?	No comments
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.	<p><i>Option 1</i> does not address the issues raised by the Forum on Food Regulation.</p> <p><i>Option 2</i> has limited success such as the voluntary <i>Code of Practice on Nutrient Claims in Food Labels and in Advertisements (COPONC)</i> where fat-free and % fat-free claims are currently described. Its adoption has varied across food businesses from complete compliance to total disregard. Percentage fat-free claims are often incorrectly used on labels. Independent monitoring of compliance is required.</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>It is considered that fat-free/% fat-free claims do not serve any public health purpose and are essentially marketing tools. Accordingly our preference would be for these claims to be removed as nutrition content claims. This would also remove the potential for the claims to be potentially misleading about the nutritional quality of the food. Low fat claims would still be available to industry.</p> <p>The public health message related to the intake of fat is not supported by a fat-free/% fat-free claims, as:</p> <ul style="list-style-type: none"> – a small amount of fat, particularly unsaturated fatty acids, is required in the diet. – fat-free/% fat-free claims are often made on food and drink products that do not align with the recommended core foods.

	<p>The draft <i>Australian Dietary Guidelines</i> recommend to “limit intake of foods and drinks containing saturated and trans fat” and “include small amounts of foods that contain unsaturated fats”.</p> <p>Draft Standard 1.2.7, includes guidance on nutrient content claims for saturated fatty acids, trans fatty acids, monounsaturated fatty acids, and polyunsaturated fatty acids, which are aligned with public health messages and the recommended dietary guidelines.</p> <p>However it is recognised that the fat-free/% fat-free claims are widely used by industry and possibly by consumers. Our response to the various options for putting conditions around such claims are as follows:</p> <p><i>Option 3(a): Require foods to meet the nutritional profiling scoring criterion</i></p> <p>It is considered that foods carrying nutrition content claims should meet the nutritional profiling scoring criterion (NPSC). Whilst it is considered that this requirement should be applied to all nutrition content claims, there is already precedence in the draft standard for requiring foods making certain nutrition content claims, e.g. the claim ‘diet’, to meet the NPSC. There would be justification in singling out the fat-free/% fat-free claims as they are widely used by industry and are potentially misleading about the nutrition quality of the food. Fat-free/% fat-free claims must both be treated as low fat claims for consistent application of conditions.</p> <p><i>Option 3(b): Require a disclosure statement if above a sugar concentration.</i></p> <p>There is merit in considering this option. However this would be more effective if a disclosure statement was also required for sodium, where applicable, as well. An appropriate front-of-pack system would be a solution to this issue.</p> <p>Requiring a disclosure statement could also act as a deterrent to industry to use fat-free/% fat-free claims on products that are high in sugar and/or salt.</p> <p><i>Option 3(c): Not permit claims on certain products by food category</i></p> <p>This option would allow products that do not normally contain fat, yet are non-core foods and drinks, such as confectionery and sugar-sweetened beverages, to be identified as not being appropriate for a fat-free/% fat-free claim. However defining all food categories for inclusion in the Code would be challenging.</p> <p><i>Option 3(d): Not permit claims on foods above a sugar concentration threshold</i></p> <p>Setting a consistent sugar threshold across food products is not realistic, and thresholds would need to be set that are specific to one or more food categories.</p> <p>Using ‘total sugar’ to set a threshold is potentially misleading as foods high in fruit would have a higher total sugar, compared to if “added sugars” was the basis.</p> <p>The draft <i>Australian Dietary Guidelines</i> recommend to “limit intake of foods and drinks containing added sugars”, while also recommending to eat a variety of foods including fruit, milk and yoghurt which naturally contain sugar in the form of fructose and lactose respectively.</p>
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