

Submission to Food Standards Australia New Zealand Proposal P293 Nutrition, Health and Related Claims March 2012

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About CHOICE

CHOICE exists to unlock the power of consumers. Our vision is for Australians to be the most savvy and active consumers in the world.

As a social enterprise we do this by providing clear information, advice and support on consumer goods and services; by taking action with consumers against bad practice wherever it may exist; and by fearlessly speaking out to promote consumers' interests - ensuring the consumer voice is heard clearly, loudly and cogently in corporations and in governments.

To find out more about CHOICE's campaign work visit www.choice.com.au/campaigns and subscribe to CHOICE Campaigns Update at www.choice.com.au/ccu.



Introduction:

CHOICE appreciates the opportunity to provide the following comments to Food Standards Australia New Zealand (FSANZ) on Proposal P293 Nutrition, Health and Related Claims. CHOICE has been actively involved in the debate over regulation of nutrition and health claims for many years based on our commitment to consumer rights. Consumers have the right to make informed decisions, including about the foods they eat, and be protected from misleading or deceptive conduct. Regulation is needed to ensure that health and nutrition claims can only be made on products that are generally healthy to minimise the possibility of consumers being misled by the so-called 'halo effect' created by claims that highlight a positive aspect on a product of lower nutritional quality.

CHOICE supports the use of the Nutrient Profiling Scoring Criteria (NPSC) to determine whether products are healthy enough to carry health claims. We also support extension of the NPSC to nutrition claims and we would welcome its application to fat free and percentage (%) fat free claims as a first step. However, CHOICE urges FSANZ to extend additional regulatory requirements to all fat content claims in order to achieve regulatory consistency. Failing to do so could create consumer confusion as products carrying claims like low fat, reduced fat and 25% less fat would not be subject to the same rules as products carrying fat free and % fat free claims. Most importantly, FSANZ should extend any additional regulation to '% fat' claims like '2% fat' to avoid creating a loophole allowing manufacturers to avoid the NPSC by inverting a % fat free claim.

Key recommendations:

RECOMMENDATION 1: The decision to regulate should recognise strong consumer support and research showing the influence of nutrition claims generally, and fat free and % fat free claims specifically, on consumer decisions to purchase foods of poor nutritional quality. If more specific evidence is required, FSANZ should undertake consumer research.

RECOMMENDATION 2: CHOICE recommends the implementation of Option 3, introducing additional regulatory requirements for fat free and % fat free claims so that consumers are not mislead by these claims on products of lower nutritional quality.

RECOMMENDATION 3: CHOICE recommends that Option 3 extend to all fat content claims including % fat to avoid regulatory inconsistency and consumer confusion.

RECOMMENDATION 4: CHOICE recommends the adoption of Option 3 (a) in order to provide consistency with proposed health claims regulation and a comprehensive evaluation of nutritional quality. Option 3(a) should be extended to all products carrying fat content claims.



Questions:

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'.

CHOICE has no 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?

CHOICE has found evidence that fat free and % fat free claims mask high levels of other nutrients which should be limited, like saturated fat, sugars and sodium. CHOICE collected numerous examples of nutrition claims on products that were high in undesirable nutrients in our 2011 'Shame the Claim' campaign. Fat free and % fat free claims appeared on 9 of the 32 products that made it to the 'Wall of Shame' (http://www.choice.com.au/consumer-action/food-labelling/better-food-labelling-campaign/better-food-labelling/page/wall-of-shame.aspx), which featured the worst examples sent in:

- Old El Paso Mild Taco Sauce '97% fat free' but high in sodium
- Sun Rice Honey Flavoured Rice Cakes '98% fat free' but high in sugars and medium for sodium
- Darrell Lea Fresh Liquorice '98% fat free' but high in sugars
- Praise Balsamic Dressing '100% fat free' but high in sodium and medium for sugars
- Praise Creamy Mayonnaise '97% fat free' but high in sodium and sugars
- Ocean Spray Craisins 'fat free' but high in sugars (note that the two ingredients listed are cranberries at 61% and sugar)
- Primo Shaved Leg Ham '97% fat free' but high in sodium
- Gravox Traditional Gravy '98% fat free' but high in sodium
- Nestle Sustagen Sport Chocolate '98% fat free' but high in sugars and medium for sodium



The Wall of Shame included a further 8 products carrying other claims relating to fat content:

- Lowan Cocoa Bombs 'low fat' but high in sugars and medium for sodium
- Smiths Original chips '75% less saturated fat' but high in fat and sodium and medium for saturated fat
- Smiths Grain Waves sour cream and chives '30% fat' but high in fat and medium for saturated fat, sugars and sodium
- Smooze Fruit Ice Coconut and Pineapple '0% trans fat' but high in sugars and medium for fat and saturated fat
- Gelativo Vanilla Bean Gelato 'Less fat' but high in sugars and medium for fat and saturated fat
- Ajitas Vege Chips '40% less fat than regular potato chips' but high in fat and medium for sugars and sodium
- Aunty Betty's De-Lites Sticky Toffee Low Fat Steamed Puddings 'low fat' but high in sugars and medium for sodium
- Ali's Eastern Turkish Delights 'less than 10% fat' but high in sugars and medium for fat and saturated fat

In total, over 50% of the 'shamed' products carried claims relating to fat. This is strong, market-based evidence that food manufacturers believe that consumers are influenced by fat content claims and that industry uses these claims to market products of lower nutritional quality. These examples from supermarket shelves around Australia show the need for regulatory intervention.

CHOICE also knows that our members care about accurate food labelling. In CHOICE's 2009 members survey, 92% of respondents said that food issues like labelling, health and marketing were important or very important to them. 98% of respondents supported CHOICE's work on enhancing food labels to provide more information (56% strongly supported this) while 94% supported CHOICE's work on overhauling nutrition labels. CHOICE's pre-2010 election survey found that food labelling was the number one consumer issue that respondents wanted the new government to act on.

FSANZ's own qualitative has found that consumers assume that there is strict government control of our food, that they trust labels as long as they think governments are monitoring compliance, and that they valued a government watchdog to keep manufacturers honest.

These findings are supported by evidence showing that consumers are influenced by claims about the fat content of food products.¹

¹ Chung Chan, Craig Patch and Peter Williams (2005) 'Australian consumers are sceptical about but influenced by claims about fat on food labels' *European Journal of Clinical Nutrition* 59, 148-151.



There is evidence showing that consumers are influenced by % fat free claims to purchase foods of lower nutritional quality:

- Delvina Gorton, Cliona Ni Mhurchu, Dale Bramley, Robyn Dixon (2010) 'Interpretation of two nutrition content claims: a New Zealand survey' *Australian and New Zealand Journal of Public Health* Volume 34 Issue 1, 57-62.
 - The research surveyed the responses of 1,525 shoppers in 25 Auckland supermarkets to % fat free and no added sugar nutrition claims.
 - The researchers concluded that consumers frequently misinterpreted % fat free and no added sugar claims and incorrectly believed the product carrying the claim was healthy overall. The researchers found this response was particularly prevalent among Maori, Pacific, Asian and low-income respondents.
 - The research demonstrates that % fat free claims mislead consumers into believing that products are healthy overall. The fact that this response was more prevalent among minority and low income respondents is particularly significant as it suggests that misinterpretation of % fat free claims is greater among those at higher risk of diet-related disease, increasing the need for regulatory intervention.
- Helen Dixon, Maree Scully, Melanie Wakefield, Bridget Kelly, Kathy Chapman and Robert Donovan (2011) 'Parent's responses to nutrient claims and sports celebrity endorsements on energy-dense and nutrient-poor foods: an experimental study' *Public Health Nutrition* 14(6), 1071-1079.
 - The research tested the responses of 1551 parents to nutrient claims and sports celebrity endorsements on energy dense, nutrient poor foods.
 - The researchers concluded that nutrient claims influenced consumer preferences towards buying foods which were energy dense but nutrient poor.
 - The research is relevant to the present question because fat free and % fat free claims are particularly common on foods marketed to children such as confectionary, yoghurts and breakfast cereals. The findings of this comprehensive study suggest that parents would be likely to be influenced by fat free and % fat free claims.

Both these studies demonstrate the so-called 'halo effect' in which the claim leads consumers to believe that the product is healthy overall. 2

CHOICE notes that FSANZ has commissioned a literature review of evidence concerning the impact of fat free and % fat free claims on consumer purchasing. In the event that the literature review does not satisfy the specific nature of this enquiry, CHOICE believes that FSANZ should undertake its own consumer research.

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² Peter Williams (2005) 'Consumer understanding and use of health claims for foods' *Nutrition Reviews* 63(7) 256-264.



Finally, the current state of the market indicates that fat free and % fat free claims influence consumers. It is reasonable to conclude that food manufacturers use fat free and % fat free claims because they know these claims influence consumers to purchase products carrying such claims. FSANZ's preliminary market scanning has identified that breakfast cereals and confectionary are two categories in which a range of products carry fat free and % fat free claims. CHOICE is aware of many examples in these categories which carry these claims despite being high in other nutrients which are best limited such as added sugars, saturated fat and sodium. We therefore support regulatory intervention to ensure that only products that satisfy an overall nutrition standard can carry these claims.

RECOMMENDATION 1: The decision to regulate should recognise strong consumer support and research showing the influence of nutrition claims generally, and fat free and % fat free claims specifically, on consumer decisions to purchase foods of poor nutritional quality. If more specific evidence is required, FSANZ should undertake consumer research.

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.

CHOICE supports **Option 3** which is regulation with additional regulatory requirements for fat free and % fat free claims. While we would prefer additional regulatory requirements to apply to all nutrition claims, regulation of all fat content claims would be a welcome first step. In particular, we recommend that the additional regulatory requirements cover '% fat' claims such as '2% fat'. We are aware of examples of these claims already in the market and an increase would be likely if there was a loophole under which products that would not meet regulatory criteria for '% fat free' claims could simply invert the claim. This would create regulatory inconsistency and potentially mislead consumers.

We also believe that regulatory consistency demands that additional requirements apply to all fat content claims, including low fat, reduced fat and % less fat. As the results of Shame the Claim showed, these claims were almost as common as fat free claims on products high in undesirable nutrients (see Question 2).

CHOICE supports Option 3 because we know that nutrition claims are used widely, including on foods of lower nutrition quality, and influence consumer purchasing. As noted in response to Question 2, evidence confirms that consumers are influenced by nutrition claims, including fat free and % fat free claims, to purchase products. As the Gorton et al and Dixon et al research show, consumers frequently misinterpret these claims to perceive that the product is healthy overall - the 'halo' effect - and this is particularly so for consumers from minority and lower socio-economic groups.

Regulating fat free and % fat free claims would satisfy FSANZ's statutory objectives. Firstly, preventing unhealthy products from carrying claims that influence consumers to buy them would



contribute to public health outcomes. Secondly, only allowing healthy products to carry these claims would remove the current, confusing situation where the claim highlights only the good aspect of the product and inhibits the consumer's ability to make an informed choice. Finally, evidence that fat free and % fat free claims mislead consumers into believing products are healthy overall validates intervention in order to prevent misleading or deceptive conduct.

RECOMMENDATION 2: CHOICE recommends the implementation of Option 3, introducing additional regulatory requirements for fat free and % fat free claims so that consumers are not mislead by these claims on products of lower nutritional quality.

RECOMMENDATION 3: CHOICE recommends that Option 3 extend to all fat content claims including % fat to avoid regulatory inconsistency and consumer confusion.

- 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?

CHOICE supports Option 3(a) because this approach is based on an evaluation of how healthy a product is overall rather than focusing on a single undesirable nutrient. By making a calculation based on a product's risk-increasing as well as risk-reducing attributes, the nutrient profiling scoring criteria (NPSC) provide a comprehensive, behind the scenes evaluation. Limiting fat free and % fat free claims to those products that meet the NPSC would give consumers confidence that when they see a product with this type of claim, it is healthy overall.

Further, the NPSC have been developed to regulate health claims and adopting the same approach for fat free and % fat free claims would achieve regulatory consistency.

In order to minimise consumer confusion and maximise regulatory consistency, Option 3(a) should be extended to all products carrying fat content claims including % fat, for the reasons expressed at Question 3.

CHOICE does not support regulatory approaches considering sugar alone such as those suggested in Options 3(b) and (d) because they do not consider the overall nutritional quality of a product. In the consultation paper at 8.3.1, FSANZ listed 6 categories in which products would likely be ineligible to carry fat free claims under NPSC. While sugar was a reason for failing in just 2 categories, sodium was a reason for failing in 5 categories. The results of CHOICE's Shame the Claim campaign referred to at Question 2 suggest that sodium is at least as problematic as sugars, with 5 out of the 9 products carrying fat free or % fat free claims having high levels of sodium and 5 products having high levels of sugars.

Adoption of options 3(b) or (d) would mean that additional regulatory requirements based on sugar concentration thresholds would allow products with high sodium contents to carry fat free



and % fat free claims, maintaining public health risks and failing to address consumer information needs.

Further, an approach based solely on sugar concentration would be inconsistent with regulation of health claims which will be subject to the NPSC under Proposal P293. This fragmented approach would create consumer confusion, subject industry to greater compliance and regulatory burdens, and demand greater oversight by regulators.

Finally, CHOICE believes that Option 3(c) would be less comprehensive than using the NPSC and would result in further delays as regulators embark on a project of defining product categories. As FSANZ notes at 8.3.3, it would be difficult to avoid inadvertent consequences such as excluding or including healthy or unhealthy foods by virtue of their category's overall status.

RECOMMENDATION 4: CHOICE recommends the adoption of Option 3 (a) in order to provide consistency with proposed health claims regulation and a comprehensive evaluation of nutritional quality. Option 3(a) should be extended to all products carrying fat content claims.

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.

As noted above at Question 4(a), CHOICE does not support options 3(b) or 3(d). However, if options 3(b) or 3(d) were adopted, CHOICE believes the sugar concentration threshold should be consistent with the NPSC and criteria for low sugar content claims.

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

No. CHOICE believes that the best approach available is requiring products with fat free and % fat free claims to meet the NPSC.