

Response ID ANON-JN9Z-F8FN-W

Submitted to P1062 - Defining added sugars for claims
Submitted on 2023-10-06 13:05:51

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[REDACTED]

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[REDACTED]

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NSW Food Authority NSW Food Authority appreciates the opportunity to comment on Proposal 1062 (P1062) Defining added sugars for claims — 1st Call for Submissions (CFS). The submission does not represent a NSW Government position, which will be a matter for the NSW Government should notification be made by the FSANZ Board to the Food Ministers' Meeting. The views expressed in this submission may or may not accord with those of other NSW Government agencies. The NSW Food Authority has a policy which encourages the full range of NSW agency views to be submitted during the standards development stages before final assessment. Other relevant NSW Government agencies are aware of and agree with this policy. Dated as 6 October 2023

What is your position title?

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Are you the contact person for your organisation?

No

If you are not the contact person for your organisation, please provide an alternative contact and details. If not applicable, please leave blank.

Contact person's name:

[REDACTED]

Email address:

[REDACTED]

Telephone:

[REDACTED]

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Have you read the P1062 – Defining added sugars for claims call for submission paper?

Yes

Confidential information

All submissions will be published, including redacted versions of confidential submissions. We will not publish material that we accept as confidential. Does your submission contain confidential information?

No. My submission does not contain confidential information.

Proposed changes to 'no added sugar(s)' claim conditions

1 FSANZ proposes to continue to set 'no added sugar(s)' claim conditions based on the addition of ingredients to foods (see section 5.2 of the Call for submissions document).

Do you have any comments on this approach?:

NSW Food Authority acknowledges the challenging nature of this future-focused work on added sugars labelling given the lack of universal definition and agreement in this area. NSW supports FSANZ's approach to develop a package of voluntary 'no added sugar(s)' claim conditions to achieve consistency with dietary guidelines. NSW understands that Proposal 1062 will not impact values for sugars declared in the nutrition information panel (NIP) of food labels, regardless of whether a claim is made. Clarity on this point in the approval report is requested by NSW so the suite of changes introduced by Proposal 1062 are clearly understood and separated from the scope of work that will be undertaken by Proposal 1058 (P1058) – Nutrition labelling about added sugars. NSW Food Authority further offers the following comments on Proposal 1062.

Highly complex conditions

The proposed 'no added sugar(s)' claim conditions are highly complicated, comprising of the definition of 'added sugars' and additional claim conditions. Given the wide range of foods that may be affected, this complexity may pose a challenge in implementation, both for industry in determining applicability and for regulators in exploring concerns in how 'added sugars' has been applied to food labels.

NSW Food Authority notes each proposed condition was individually considered and there seems to be no overarching objective criteria in determining 'no added sugar(s)' claim eligibility. FSANZ's explanation that the proposed 'no added sugar(s)' claim conditions are 'based on the addition of ingredients to foods' may not be easily understood. In particular for hexose mono- and disaccharides produced during hydrolysis (i.e. the proposed conditions (g) and (h)), increase in total mono- and disaccharides content is not the result of literal addition of ingredients but the outcome of the production process. In this case hexose mono- and disaccharides produced during hydrolysis do not appear in the statement of ingredients.

NSW Food Authority suggests guidance material should be prepared in addition to the Code provisions to assist industry to comply with the requirements and to promote consumer understanding.

2 FSANZ proposes a food displaying a 'no added sugar(s)' claim must not contain an 'added sugars' as an added ingredient including an ingredient of a compound ingredient. FSANZ proposes defining 'added sugars' for this claim condition (see section 5.2.1.4 of the Call for submissions document).

Do you have any comments on this approach or the defined added sugars (see below)?:

NSW Food Authority generally supports the proposed 'added sugars' definition that is consistent with the existing 'no added sugar(s)' claim conditions and the area of consensus among stakeholders. It also generally matches consumers' literal interpretation of 'added sugars' as identified in the 2022 literature review (1).

NSW Food Authority supports the proposed definition of 'added sugars' including substances that are captured in the definition of 'sugars*' set out in Section 1.1.2—2 of the Australia New Zealand Food Standards Code (the Code). This link will assist implementation in that the food that contains sugars* as added ingredients would be automatically regarded as containing 'added sugars'. For example Section 1.1.2—3 of the Code permits addition of sugars* during production of formulated beverages, brandy and wine. Therefore if sugars* are added to such foods during production it would be regarded as 'added sugars'. Normal addition of sugars* during production needs to be declared in the statement of ingredients.

Concentrated fruit puree and fruit powder

The proposed definition of 'added sugars' includes concentrated fruit juice, however, excludes concentrated fruit puree and fruit powder (instead they are captured in the 'no added sugar(s)' claim condition). NSW Food Authority understands that 'fruit powder' means dried concentrated fruit juice. Given the concentrated nature and high sugar content of such products, NSW Food Authority suggests concentrated fruit puree and fruit powder should be included in the definition of 'added sugars'. This would align the 'added sugar' definition and impact on claims of particular foods (i.e. concentrated fruit juice, concentrated fruit puree and fruit powder) in a consistent manner.

Issues for clarification

NSW Food Authority suggests the claim conditions should provide clarity to minimise ambiguity. It is important that people can easily identify if any food is eligible for 'no added sugar(s)' claim. Some examples are provided below where additional consideration may be necessary to reduce potential for stakeholder confusion in applying 'added sugars'.

Substances added for standardisation.

As the proposed definition of 'added sugars' does not give consideration to purpose, substances listed in the proposed draft condition (c) would be regarded as 'added sugars' if added as an ingredient, regardless of purpose.

The Code sets out compositional requirements for selected foods, such as cow's milk and fruit juice to ensure integrity for these well-known products (2). NSW Food Authority queries if a substance listed in the proposed draft condition (c) added for standardisation purposes is captured as 'added sugars'.

An example is lactose added for the product to comply with the compositional requirements for a food sold as cow's milk. NSW Food Authority considers it is unclear if lactose added for standardisation purposes is 'added as an ingredient'. Clarity is requested in the approval report as to scenarios that are and are not captured as 'added as an ingredient' for the 'added sugars' definition so this distinction is clear.

Section 2.6.1—3 permits a maximum of 4% (40 g/kg) added sugars* in food sold as 'fruit juice'. NSW Food Authority also requests clarity from FSANZ if sugars* added to fruit juice for standardisation purposes (i.e. to achieve consistent compositional profiles in the product despite variations in the composition of fresh fruits) are considered as 'added sugars'.

Determining ingredients of compound ingredients

The proposed condition (d) clarifies 'added as an ingredient' includes an ingredient of a compound ingredient. NSW Food Authority is concerned there are likely some scenarios where determining ingredients of compound ingredients can be confusing.

An example is milk solids. Section S10—2 states that the generic name 'milk solids' can describe any two or more of milk components including lactose. In many cases lactose added to foods may be under the name of 'milk solids' in the statement of ingredients and there is no way to know from the label if lactose has been added.

While agreeing naturally occurring lactose in milk should not be an added sugar, NSW Food Authority considers added lactose should be considered as an 'added sugar'. Considering the wide variety of processed dairy products and their use in various food production, NSW Food Authority requests more clarity when added lactose in processed dairy products is considered an 'added sugar'.

Sugars added for fermentation.

The proposed draft is unclear whether the substances listed in the proposed draft condition (c) that are added for fermentation (or similar food production process that reduces the mono- and di-saccharide content) are considered as 'added sugars'.

The example in the definition of 'component' in Section 1.1.2—2 of the Code states:

'If sodium bicarbonate is used as an ingredient to produce a food, it will be changed by the cooking into carbon dioxide and salts; the salts are identifiable as components of the food.'

In this example even though sodium bicarbonate is not present in the final food, sodium bicarbonate is an ingredient of the food. The Code does not provide a definition of 'ingredient'.

The proposed definition of 'added sugars', based solely on incoming ingredients, can read that if any of the substances listed in the proposed draft condition (c) are added, they are considered as 'added sugars' regardless of the purpose or the amount present in the final food for sale. Clarity is required in the final drafting on this matter as if the food for sale does not contain sugar, the benefits of declaring 'added sugar' are questionable.

Compound ingredients

As the statement of ingredients is not required to list all ingredients of compound ingredients (where the compound ingredient makes up less than 5% of the total food), it would be a challenge for enforcement agencies to identify all 'added sugars' added to food as ingredients of compound ingredients. Without an analytical method to distinguish 'added sugars' from 'total sugars', jurisdictions would need to expend significant resources to verify the source of sugar content in products based on recipes/formulations supplied by industry to successfully challenge a business's 'no added sugar(s)' claim.

Implication on the nutrition information panel

NSW Food Authority requests FSANZ to clarify the requirement for listing 'added sugars' in the nutrition information panel (NIP) under Proposal 1062. It is understood that Proposal 1062 is solely related to voluntary 'added sugar(s)' claim conditions. Any impact of the 'added sugars' definition in P 1062 on NIPs will be considered in Proposal 1058. This clarity is requested as Subsection 1.2.8—6(5) requires if a claim is made in respect of sugars, a NIP must include a declaration of the presence or absence of dietary fibre in accordance with Section S12—3 of Schedule 12. The format of the NIP provided in Section S12—3 contains a row for sub-group nutrients under 'sugars', however, the Code is silent about listing 'added sugars' in the NIP as part of 'sugars'.

Clarification is requested from FSANZ in the approval report for Proposal 1062 on:

- the amount of 'added sugars' (i.e. 0 g) that needs to be declared in the NIP if 'no added sugar(s)' claim is made; and
- if voluntary declaration of the amount of 'added sugars' in the NIP is permitted with or without 'no added sugar(s)' claim.

NSW Food Authority considers declaration of 'added sugars' content in the NIP except for '0g' should not be permitted until P1058 is resolved, as a consistent approach in the calculation method for 'added sugars' is required to avoid providing consumers with confusing messages.

Furthermore, if this new approach to managing voluntary 'no added sugar(s)' claims (i.e. a list of added sugars, conditions for making claims and exclusions) were to be applied to P1058, NSW suggests processed fruit ingredients (fruit powders, concentrated purees, pastes etc used for the purposes of sweetening) should be included in the calculation for added sugars in the NIP.

This would ensure consumers could identify those products high in added sugars from all sources. NSW has concerns that the current added sugars list for the purposes of voluntary claims would not adequately capture all 'added sugar' sources for calculating added sugars in the NIP.

An example here would be concentrated fruit puree, this would not be regarded by the ADG as a serve of fruit, but more like an added sugar if used as an

ingredient in another food. FSANZ should ensure that P 1062 creates alignment, clarity and consistency in the treatment of fruit products under the ADG for their listings in the Code. NSW would appreciate commentary from FSANZ on this matter in the approval report for P 1062.

Implication on the Australian Food Composition Database

NSW Food Authority queries if the definition of 'added sugars' developed through P1062 would also be applied in the Australian Food Composition Database (3). The estimated amount of 'added sugars' in food has been made available in the database through a project to determine the amount of added sugars and free sugars in foods listed in the AUSNUT 2011-13 dataset. (4)

'Added sugars' in the Australian Food Composition Database is calculated based on the combination of the definitions of 'sugars*' in the Code and WHO definition of 'free sugars', therefore, is not consistent with the proposed definition of 'added sugars' through this proposal. It is understood that the main difference of 'added sugars' in this proposal from that in the Australian Food Composition Database includes:

- 'added sugars' in this proposal are not the 'sugar component' of ingredient (e.g. fruit syrup itself can be 'added sugar', rather than mono- and disaccharide component of fruit syrup), and
- 'added sugars' in this proposal includes honey and concentrated fruit juice.

NSW Food Authority considers it would be confusing if the two different definitions of 'added sugars' coexist in FSANZ resources. Users would naturally assume that 'added sugars' throughout FSANZ materials would have the same meaning.

NSW Food Authority suggests this issue be considered in P1058 together with other issues relevant to quantifying 'added sugars'.

Implications for the Nutrient Profile Scoring Criterion (NPSC)

Section S5—4 of Schedule 5 Fruit and vegetable points (V points) includes fruit puree and other processed fruit products as counting towards FVNL points. Whilst not relevant to 'no added sugar' claims, NSW Food Authority raises FVNL points as Proposal 1062 has the potential to prevent certain foods from making 'no added sugar(s)' claims but could allow the same ingredient in the food (e.g. dried fruit paste) to be counted towards FVNL points. This could result in a food not being eligible for 'no added sugar(s)' making a health claim. This will cause consumer confusion.

This confusion could be further compounded by the Health Star Rating (HSR) icon which displays all the nutrients including sugars on the front of pack. A food that could not make a 'no added sugar(s)' claim could possibly make a health claim and have a HSR rating of 3.5 stars or greater. This will cause considerable consumer confusion as conflicting messages about the same food are being provided. Consumer education on use of the 'added sugars' definition will be a critical component of Proposal 1062.

NSW Food Authority emphasises the importance of consumer education as to what 'no added sugar(s)' claim means. In particular consumer awareness that a 'no added sugar(s)' claim does not mean the food does not contain sugar, or that the food is 'healthy' overall. All consumers still need to consume a wide variety of nutritious foods from the five major food groups in a manner consistent with the Australian Dietary Guidelines.

References

1. <https://www.foodstandards.gov.au/code/proposals/SiteAssets/Pages/Proposal-P1058---Nutrition-labelling-about-added-sugars/P1058%20Literature%20Review.pdf>
2. <https://www.foodstandards.gov.au/code/proposals/documents/ACF364.pdf>
3. <https://www.foodstandards.gov.au/science/monitoringnutrients/afcd/Pages/default.aspx>
4. <https://www.foodstandards.gov.au/science/monitoringnutrients/ausnut/foodnutrient/Pages/Determining-the-amount-of-added-sugars-and-free-sugars-in-foods-li>

3 FSANZ proposes 'no added sugar(s)' and 'unsweetened' claims are not permitted on foods containing the hexose monosaccharide D-tagatose, as an ingredient, consistent with existing claim conditions in the Code. As D-tagatose is a hexose monosaccharide, it is captured in the definition of 'added sugars' (see section 5.2.2 of the Call for submissions document).

Do you have any comments on this approach?:

NSW Food Authority supports FSANZ's proposal to include all hexose monosaccharides in the definition of 'added sugars' with no exception. This simple and clear determination is favourable for the purpose of compliance and enforcement.

Furthermore, NSW Food Authority supports FSANZ's proposal to prohibit foods containing low energy sugar(s) from making 'no added sugar(s)' claim, unless permitted in the Code. Given low energy sugars may have different characteristics from conventional sugars, NSW Food Authority supports FSANZ's approach to undertake case-by-case assessment to determine if a particular low energy sugar should be regarded as 'added sugars' when permission is sought via Application process.

4 FSANZ proposes foods containing low energy sugars (mono- and disaccharides), as ingredients, listed in subsection S11—2(3) of Schedule 11 not be permitted to display 'unsweetened' claims (see section 5.2.2 of the Call for submissions document).

Do you have any comments on this approach?:

NSW Food Authority supports FSANZ's proposal to prohibit 'unsweetened' claim on foods containing low energy sugars. Given the primary purpose of low energy sugars as sweetening foods, it would be misleading if 'unsweetened' claim is permitted on foods that contain low energy sugars.

NSW Food Authority supports consistency that 'unsweetened' claim should not be permitted on foods containing any substances listed in subsection S11—2(3) of Schedule 11 as all substances provide a sweetening function.

5 FSANZ proposes a food displaying a 'no added sugar(s)' claim must not contain the fruit products listed below as an added ingredient (including as an ingredient of a compound ingredient). FSANZ proposes to exempt fruit products which are lemon or lime fruit (see section 5.3 of the Call for submissions document).

Do you have any comments on this approach or the fruit products listed?:

Issues for clarification

NSW Food Authority suggests the claim conditions should provide clarity to minimise ambiguity. It is important that people can easily identify if any food is eligible for 'no added sugar(s)' claim. Some examples are provided below where additional consideration may be necessary to reduce potential for stakeholder confusion in applying 'added sugars'.

Definition of fruit

The proposed condition (i) clarifies that 'fruit' in 'no added sugar(s)' claim conditions does not include legumes, fungi, herbs, nuts, spices and seeds. However, the draft does not provide details of what 'fruit' means.

Section 1.1.2—3 provides the definition of 'fruit and vegetables' as one term, and the definitions of 'fruit' and 'vegetable' are set out separately in Standard 1.2.7 and Standard 1.2.8. However, none of the definitions would assist practical determination if a product is a fruit or vegetable. As the proposed draft only captures fruit products, this ambiguity may result in inconsistent interpretation and consumer confusion.

The Macquarie dictionary provides the definitions of fruit and vegetable (botany) as follows:

Fruit

- The developed ovary of a seed plant with its contents and accessory parts, as the pea pod, nut, tomato, pineapple, etc.
- The edible part of a plant developed from a flower, with any accessory tissues, as the peach, mulberry, banana, etc.
- The spores and accessory organs of a cryptogam.

Vegetable

- Any herbaceous plant, annual, biennial, or perennial, whose fruits, seeds, roots, tubers, bulbs, stems, leaves, or flower parts are used as food, as tomato, bean, beet, potato, asparagus, cabbage, etc.
- The edible part of such plants, as the fruit of the tomato or the tuber of the potato.
- Any member of the vegetable kingdom; a plant.

NSW Food Authority notes there is some overlap in the definitions of fruit and vegetable in the Macquarie dictionary. Without clear definitions in the Code to separate fruit and vegetable, (according to the Macquarie dictionary) foods such as pea, nut, tomato can be both fruit and vegetable.

While pea and nut would not be regarded as fruit for the purpose of 'no added sugar(s)' claim conditions due to the proposed condition (i), there is ambiguity about whether tomato is captured as a fruit or excluded as a vegetable. NSW Food Authority also notes:

- Schedule 17 of the Code includes tomato juice in both 'all fruit juice and concentrated fruit juice' and 'vegetable juice'.
- Schedule 22 of the Code classifies tomatoes (i.e. cherry tomato; goji berry; ground cherries (cape gooseberry); tomato) as 'fruiting vegetables' as part of vegetables.

The Australian Food Composition Database shows the sugar content of 'Tomato, paste, no added salt' is 9.6 g per 100g. (5) Given processed tomato products are widely used in food processing industry, NSW Food Authority requests FSANZ for commentary as to whether tomato should be considered as fruit or vegetable for the purpose of 'no added sugar(s)' conditions.

NSW Food Authority notes Australian Dietary Guidelines provide some examples of fruits to assist interpretation of the definition of fruit (same as in the Code) as follows:

Examples include pome fruit such as apples and pears, citrus fruit such as oranges and lemons, stone fruit such as apricots and plums, and berries.

NSW Food Authority suggests inserting such a list of examples of fruits in the 'no added sugar(s)' claim conditions may be of assistance to stakeholders in implementation.

Alignment with the Australian Food Composition database could also be considered when defining fruit for 'no added sugar(s)' claims. Consistency across these resources would be beneficial to user understanding and clear guidance would be required where they differ. The Australian Food Composition database lists tomato under vegetables.

Processed fruit products

The proposed condition (a) describes fruit products in two different ways.

- For dried fruit products the whole 'dried fruit' category is captured except for whole, cut or chopped dried fruit. The draft explanatory statement provides examples of captured products as dried fruit paste, minced dried fruit.
- For other fruit products the individual list of processed products that are captured is provided.

NSW supports traditional dried fruits (fruit from tree or vine, dried) from being excluded from the definition of added sugars and eligible to make no added sugar claims. The Australian Dietary Guidelines lists them as a core food in the fruit food group.

NSW Food Authority prefers a negative list-type approach (as applied to other 'dried fruit' products). Given the current industry practices that sell fruit

products under a wide variety of names, listing captured products one by one (as applied to fruit products other than dried fruits) may allow captured products to re-name themselves to avoid being captured by the condition to prohibit 'no added sugar(s)' claim. Examples includes grape must (as an ingredient for wine and balsamic vinegar production) and natural fruit flavours - the proposed draft is unclear such fruit products are captured. NSW Food Authority considers it would be impossible to create a thorough list of processed fruit products, therefore, suggests applying the same approach as dried fruit product (i.e. capture all unless exempt) to all fruit products to provide more clarity. Wording such as 'fruit product other than whole or cut fruit/dried fruit' could replace the proposed conditions (a)(ii)-(viii).

NSW Food Authority also considers the absence of definitions of most terms for processed fruit products is problematic in implementation. Only 'fruit juice' and 'jam' is defined and equipped with compositional requirements in the Code. However, the definitions for juice and jam may allow interpretation to cover broader products than what is commonly understood as juice or jam. For example, the definition of juice may be interpreted to include puree as puree can be in a liquid form.

NSW Food Authority considers without the clear definitions to separate each term used in the added sugar conditions; it would pose a challenge in determining which processed fruit products used in industry are subject to the condition to prohibit 'no added sugar(s)' claim. For example, for dried fruit products it may be difficult to determine if a product is not chopped but minced dried fruit.

Definitions of culinary terms in the Macquarie dictionary do not correspond fully with the culinary sense. For example, the Macquarie dictionary defines 'puree' as 'a cooked and sieved vegetable or fruit used for soups or other foods'. However, in culinary terms puree does not always have to be cooked. Such discrepancy between the Macquarie dictionary and common understanding in the food processing industry may result in confusion in interpretation of the proposed conditions. Therefore NSW suggests terms for processed fruit products listed in the conditions should be clearly defined in the Code.

This is relevant to products such as infant foods which are required to provide a 'pureed' texture for an age-related developmental stage. While acknowledging the special need for the form of infant foods, NSW Food Authority considers a 'no added sugar(s)' claim should not be permitted if fruit products are added to infant foods for sweetening or making the food more palatable. On the other hand infant food made of fruit puree itself (including a blend of multiple fruit purees) should be permitted to make 'no added sugar(s)' claim as a single ingredient food (in line with the proposed condition (e)(i)).

Whole/cut fruits added as ingredients and processed during production

NSW Food Authority requests clarity from FSANZ on the case when whole or cut fruits are used as an ingredient and processed during production process. For example, while smoothie 1, made from unsweetened ready-made banana puree and apple juice, cannot make 'no added sugar(s)' claim, can smoothie 2 made from fresh banana and apple and water make a 'no added sugar(s)' claim?

Clarity is required when the applicability of the 'no added sugar(s)' claim changes depending on difference in the form(s) of incoming ingredients, even though the composition (particularly total sugar content) of the final products may be very similar. If this is the case, detailed guidance material and a decision tree would be necessary to assist implementation.

Canned fruit

NSW Food Authority notes the Australian Dietary Guidelines consider canned and frozen fruit to be nutritious options in place of fresh fruit.

The proposed condition (a)(iii) permits 'no added sugar(s)' claim on canned fruit or frozen fruit that contain fruit juice. NSW Food Authority notes this permission is based on the recommendation in dietary guidelines for canned or frozen fruits in fruit juice.

NSW Food Authority suggests describing this type of foods more broadly in the condition, rather than specifically referring to canned and frozen fruits. Current drafting may create ambiguity, as it is not clear if other forms of preserved fruit products are captured by the exemption in the proposed condition (a)(iii) such as raw cut fruits in plastic containers and jars, or fruit compotes. Refinement in drafting is required to enable consistent implementation and reduce confusion.

NSW Food Authority further requests clarity from FSANZ on the case when deionised fruit juice is added to canned fruit or frozen fruit. Deionised fruit juice is captured in the proposed definition of 'added sugars', however, the proposed condition (a)(iii) may read canned fruit that contains deionised fruit juice can make a 'no added sugar(s)' claim. NSW Food Authority suggests inserting 'deionised fruit juice' after 'other than concentrated fruit juice' in the proposed condition (a)(iii). This will reduce ambiguity and achieve consistency in treating concentrated fruit juice and deionised fruit juice (i.e. both are included in the proposed definition of 'added sugars'). This would also be consistent with the recommendation in the Australian Dietary Guidelines that state 'some processed fruits and vegetables, such as those that are canned or frozen in natural juices, are nutritious alternatives'.

Fruit-based products

NSW Food Authority would like FSANZ to clarify the following foods should not be eligible to make 'no added sugar(s)' claim:

- alcoholic beverages made from fruits (e.g. wine, fruit wine and cider) - NSW Food Authority suggests prohibiting 'no added sugar(s)' claim on alcoholic beverages, based on the Ministerial Policy Guideline on Nutrition, Health and Related Claims (6) determining alcohol as a food category that should be excluded from making any claims.
- fruit vinegar (e.g. apple cider vinegar, balsamic vinegar)
- jam (including conserve) made from fruit and fruit juice, without addition of sugars* or honey.

When no other ingredients than fruit-based ingredient (e.g. apple juice, grape must), permitted food additives and processing aids are added, are they considered as products that a fruit product is added as an ingredient and are ineligible for 'no added sugar(s)' claim?

Statement of ingredients may only state the name of fruit

As the statement of ingredients may not describe the state/form of fruit product (e.g. 'apple puree') but only mention the name of the fruit used (e.g. 'apple'), it would be a challenge for enforcement agencies to investigate if the fruit products used as ingredients are captured in 'no added sugar(s)' claim conditions. Without an analytical method to distinguish 'added sugars' from 'total sugars', jurisdictions would need to expend significant resources to verify the form of fruit product ingredients based on recipes/formulations supplied by industry to successfully challenge a business's 'no added sugar(s)' claim. Could FSANZ consider a mandatory requirement to name the form/state of the fruit ingredient in the ingredient list where a "no added sugar(s)" claim is being made e.g. "Dried apple puree".

Dried fruit

NSW supports FSANZ's proposal to treat whole, cut or chopped dried fruit the same way as the whole fruit (i.e. foods containing whole, cut or chopped dried fruit can make 'no added sugar(s)' claim).

Any traditional dried fruit (fruit from tree or vine which is dried) whole or chopped with cells remaining intact (e.g. sultanas, raisins, dried apricots, prunes, dates etc) should be excluded from the definition of 'added sugars'. Current evidence suggests traditional dried fruit plays a role in several health outcomes. (7-21)

NSW Food Authority suggests the terms such as 'cut' and 'chopped' should be defined in the Code to reduce ambiguity.

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6 FSANZ proposes a fruit product which is the food for sale (e.g. fruit juice) be permitted to make a 'no added sugar(s)' claim. This includes when the food is sold as a singular fruit (e.g. apple juice) or a blend of different fruits (e.g. blend of fruit juices), providing the food contains no 'added sugars' or other products identified in claim conditions, as added ingredients. A blend or combination of different fruit products (e.g. fruit juice and fruit purée) will not be permitted to make the claim. FSANZ also proposes to clarify that fruit does not include legumes, fungi, herbs, nuts and spices for the purpose of the claim conditions (see section 5.3 of the Call for submissions document).

Do you have any comments on this approach?:

Issues for clarification

NSW Food Authority suggests the claim conditions should provide clarity to minimise ambiguity. It is important that people can easily identify if any food is eligible for 'no added sugar(s)' claim. Some examples are provided below where some additional consideration may be necessary to reduce potential for stakeholder confusion in applying 'added sugars'.

'Juice' may contain sugars*

Section 2.6.1—3 allows a food sold as fruit juice to contain sugars* as an additional ingredient. The CFS document pg. 24 clarifies that 'fruit juice which is sold as the food will continue to be able to make a 'no added sugar(s)' claim'. Then the proposed condition (e) can read that fruit juice that contains sugars* can make 'no added sugar(s)' claim as it is still a food for sale that is 'fruit juice'. To resolve this ambiguity, NSW Food Authority suggests adding to condition (e)(iii) that the food for sale does not contain any added sugars as an added ingredient.

Fruit juice containing fruit pulp.

In accordance with the following definitions in Section 2.6.1—2, fruit juice can contain pulp obtained from a fruit.

fruit juice means juice made from a fruit.

juice:

(a) means the liquid portion, with or without pulp, obtained from:

(i) a fruit or a vegetable; or

(ii) in the case of citrus fruit, other than lime—the endocarp only of the fruit; and

(b) includes a product that results from concentrating juice and then reconstituting it with water.

juice blend means a blend of more than one juice (including a blend of one or more fruit juices and one or more vegetable juices).

This means fruit juice with pulp naturally occurring from squashing the fruit can make 'no added sugar(s)' claim. However, if fruit pulp is added to fruit juice the food cannot make the claim (the proposed condition (e)(ii)). The final products in the two scenarios may look similar, therefore, NSW Food Authority suggests adding more examples that suit different scenarios in the proposed conditions or explanatory statements to provide more clarity. Developing guidance material would also assist interpretation.

Blend with vegetable products

Clarity is required if a blend of fruit and vegetable products is captured (e.g. pumpkin and apple purees; pear, carrot and beetroot juice blend that also contains pumpkin puree).

NSW Food Authority considers if food sold as a vegetable product contains a fruit product (e.g. food sold as 'spinach and kale juice' that contains pear juice as an ingredient), it should not be permitted to make 'no added sugar(s)' claim, as in this case it is likely fruit product is used for sweetening purpose.

However, if food is sold as fruit and vegetable blend product (e.g. food sold as 'orange and carrot juice'), 'no added sugar(s)' claim should be permitted. This is consistent with the approach for fruit juice blend product.

Different characteristics of fruits

Unique characteristics of some fruits may only allow industry to produce a blend or combination of different types of fruit products. For example, as mango or apricot are not juiceable but can be pureed, mango and orange juice blend can only be a blend of mango puree and orange juice. For this reason, unlike other types of juice blend products, mango and orange juice blend would be prohibited from making 'no added sugar(s)' claim.

NSW Food Authority further requests clarity from FSANZ if mango and orange juice blend is made from fresh pureed mangoes and (ready-made) orange juice. Can the juice blend make 'no added sugar(s)' claim?

NSW Food Authority anticipates a challenge in implementation as it may not be easy to understand the conditions and determine if individual products are eligible for 'no added sugar(s)' claim. Detailed stakeholder education and assistance is essential to reduce ambiguity and confusion.

Different conditions may apply to the same product.

For fruit products, the proposed draft implies that different conditions may apply to the same product depending on how it is used. For example, while grape juice made of concentrated grape juice and water by itself can make 'no added sugar(s)' claim, grape jelly made from concentrated grape juice, water and gelatine cannot make 'no added sugar(s)' claim. How about grape jelly made from concentrated grape juice, water and food additives (e.g. sweetener, gelling agent, preservative)? This may confuse manufacturers producing variety of fruit products who try to find out which of their products are eligible for 'no added sugar(s)' claim.

NSW Food Authority suggests including more examples that suit different scenarios in the proposed conditions or explanatory statements developed to accompany the added sugars definition. Developing guidance materials may be of use to assist consistent interpretation and implementation.

Distinction between different fruit products

NSW Food Authority considers the lack of definitions of most of processed fruits in the Code would hinder compliance and enforcement activities. If FSANZ is to proceed with the proposed approach, the Code should provide definitions of every term for fruit products so that jurisdictions would be able to distinguish different fruit products.

7 FSANZ proposes 'no added sugar(s)' claims are not permitted when the concentration of sugars in the food is increased from the hydrolysis of carbohydrates during food manufacture, except when the sugars concentration in cereal-based plant milks made using hydrolysis is $\leq 1.5\%$ (and the product otherwise meets claim conditions) (see section 5.3.2 of the Calls for submissions document).

Do you have any comments on this approach?:

The proposed claim conditions (g) and (h) relating to hydrolysis are the only conditions that consider the change in total sugar content during production. NSW Food Authority supports FSANZ's proposal that 'no added sugar(s)' claim should be prohibited if the amount of mono- and disaccharides increases during production as the effect on total sugar content would be no different from adding mono- and disaccharides as an ingredient.

NSW Food Authority queries the rationale why 1.5% threshold is proposed only for cereal-based plant milk to allow exemption from this prohibition. The CFS document pg. 29 states 'the process of hydrolysis is needed to produce cereal-based plant milks of an appropriate viscosity, and this results in an unavoidable increase in sugar concentration'.

How did FSANZ determine 1.5% as a threshold amount of unavoidable sugar content during production for cereal-based products? Does the production of plant-based milk made from other sources (e.g. legumes, nuts) involve unavoidable increase in sugar concentration due to hydrolysis for technological purposes? Noting other proposed claim conditions have no mention to the amount of mono- and disaccharides, reasonable rationale to permit the exemption only for cereal-based products should be provided and explained in the explanatory statement and/or guidance material.

NSW Food Authority also questions if the term 'cereal-based plant milk' is appropriate in the Code as a legal document.

8 FSANZ proposes to maintain the existing condition that a food displaying an 'unsweetened' claim must meet the conditions for a 'no added sugar(s)' claim, noting that the amended 'no added sugar(s)' claim conditions will apply (see section 5.4 of the Call for submissions document).

Do you have any comments on this approach?:

NSW Food Authority supports the proposal to maintain the existing approach that the conditions for 'no added sugar(s)' claim is prerequisite for 'unsweetened' claim.

9 FSANZ proposes to maintain the existing condition for intense sweeteners, sorbitol, mannitol, glycerol, xylitol, isomalt, maltitol syrup or lactitol. FSANZ proposes a food containing low energy sugars (mono- and disaccharides) listed in subsection S11—2(3) of schedule 11, as an ingredient (including an ingredient of a compound ingredient), not be permitted to display an 'unsweetened' claim (see section 5.4 of the Call for submissions document).

Do you have any comments on this approach?:

NSW Food Authority supports the proposal.

10 FSANZ is proposing a two-year transition period to allow producers, manufacturers and importers time to make any required labelling changes for products carrying 'no added sugar(s)' or 'unsweetened' claims to comply with the new claim conditions (see section 7 of the Call for submissions document).

Do you have any comments on this approach?:

NSW Food Authority suggests a three-year transition period for this Code amendment.

The proposed 'no added sugar(s)' claim conditions are highly complicated, comprising of the definition of 'added sugars' and additional claim conditions. Given a wide range of foods may be affected by this change, this complexity may pose challenges in implementation.

Substantial time (as long as 12 months) would be needed for preparation of guidance and explanatory material that includes stakeholder mapping, developing a decision tree, industry guidance and education resources. NSW Food Authority considers detailed assistance materials would be required to promote understanding of the new conditions in line with FSANZ's intention.

As some products may have a shelf life as long as two years, NSW Food Authority considers a three-year transition period is appropriate for this proposal. Depending on when P1058 is gazetted a longer transition period may help industry comply with both sets of labelling requirement changes at the same time.

Data and evidence

11 Do you have any data or are you aware of published data on the number of products with 'no added sugar(s)' or 'unsweetened' claims in Australia and/or New Zealand (see data used for this proposal at section 3.1 of the Call for submissions document)?

No

If yes, please upload your file here.:

No file uploaded

12 Do you have any evidence or are you aware of published literature on consumer understanding of and responses to 'no added sugar(s)' or 'unsweetened' claims on food products (see evidence used for this proposal at section 3.2 of the Call for submissions report and Supporting Document 1)?

No

If yes, please upload your file here.:

No file uploaded

13 Do you have any data or know of any published data on the costs of labelling changes per stock keeping unit or package type (see data used for this proposal at Attachment E to the Call for submissions document)?

No

If yes, please upload your file here:

No file uploaded

Additional comments

Comments and other input

Additional comments and input:

NSW Food Authority acknowledges the extensive work undertaken by FSANZ and concurs with FSANZ's assessment so far that has identified complexities and challenges with implementing added sugars labelling. Recognising the challenging nature of this future-focused work on added sugars labelling, NSW Food Authority notes the aim of this proposal is limited to ensure added sugar claims align with dietary guidelines, as the first stage prior to exploring the best way to incorporate added sugars information into the NIP and on front of package labelling as agreed by Food Ministers in July 2023. (22)

Given the role of this proposal as the first milestone towards further work to incorporate added sugars information into the NIP and on front of package labelling (Proposal 1058), NSW Food Authority suggests the 'added sugars' definition should lie dormant in the Code until such time as P1058 is finalised. This allows time to discuss use and impacts of the added sugar definition to make voluntary claims.

Australian Dietary Guidelines (ADGs)

The current ADGs, released in 2013, are currently under review by the National Health and Medical Research Council (NHMRC). NHMRC anticipates having the revised ADGs released in 2024-2025. (23) As the core principle of this work is to be consistent with the dietary guidelines including the ADGs, alignment is needed between the types of added sugars the ADGs seek to reduce to improve health outcomes and those to be defined in the Code. It is understood that the broad research questions on 'high vs low/no intake and health outcomes for "added sugar"' are identified as a 'moderate' priority for review, which NHMRC aims to at least partially address, via existing systematic reviews, within limits of review resources. (24) FSANZ's intention to proceed with this proposal while the ADGs are under review creates significant uncertainty. Although we note FSANZ has consulted with the ADGs review committee and they have in principle agreed that the approach FSANZ is taking aligns with the Dietary Guidelines.

Careful consideration on overall consequences is required.

Although the scope of this proposal is limited to 'no added sugar(s)' claim conditions, NSW Food Authority suggests careful consideration should be given as to broad implications of the new definition in the Code. Likely and unintended consequences should be assessed and regarded.

This proposal is closely linked to a program of activities in the Food Regulation System to contribute towards reducing chronic disease related to overweight and obesity as agreed by Food Ministers in 2019 (25). Added sugars labelling should be implemented in a manner that aligns with, and does not downplay various health policy initiatives to increase consumption of a healthy diet, as determined in the National Preventive Health Strategy (26) (e.g. the ADGs, voluntary Health Star Rating system (27), the Healthy Food Partnership's Reformulation Program (28)). It is important to ensure consistency in messages across the policy initiatives to reduce misunderstanding or confusion.

Furthermore, NSW Food Authority considers defining 'added sugars' as the types of sugars that are recommended to be limited has broader implications beyond claims. The definition of 'added sugars' may affect activities currently underway under one of the Food Regulation priorities 'supporting the public health objectives to reduce chronic disease related to overweight and obesity', such as the P2 project improving commercial infant and toddler foods. (29) Comprehensive health policy discussion is required prior to progression to the next stage of the added sugar work.

NSW Food Authority also raises concerns that this proposal may result in encouraging manufacturers to replace processed fruits with cheaper sweeteners and flavourings in their products. For example, manufacturers may choose to replace fruit content in their products with artificial sweeteners to retain 'no added sugar(s)' claim. Consequently the levels of micronutrients available in the food would be reduced. NSW suggests that overall impact including the potential change in other nutrient intakes should be assessed.

Synonyms of 'no added sugar(s)'

With the provision in Section 1.2.7—10, some variation is permitted in the wordings of pre-approved claims, if the modification has the same meaning as the required statement (Subsection 1.1.1—8(2)). NSW Food Authority considers this may enhance confusion between 'no added sugar(s)' claim and other sugar claims. For example, is a 'no sugar added' claim considered to have the same meaning as 'no added sugar(s)'? It is concerning as 'no added sugar(s)' and 'no sugar added' are likely to have different meanings, especially for fruit products. NSW Food Authority suggests prescribing the wording of 'no added sugar(s)' claim if FSANZ are to proceed with the update of 'no added sugar(s)' claim conditions.

This suggestion is provided as FSANZ has identified low level of consumer understanding of the meaning of 'no added sugar(s)' claim, with nearly half of consumers perceiving 'no added sugar(s)' as meaning no sugar in the food for sale (CFS pg15).

NSW Food Authority does not support use of the term 'free sugars' for labels and claims - unless consumer market research is undertaken in a range of consumer audiences including CALD to ensure 'free sugars' is not confused with 'free of sugar' or 'sugar free'. However, NSW notes that the evidence suggests the nutritional problem the dietary guidelines is seeking to address is related to reducing 'free sugars' as defined by the WHO. NSW Food Authority is open to considering other terms, but the terms should be aligned with those used in the ADGs when updated and consumer tested to ensure

it will not cause further confusion.

Claims similar to 'no added sugar(s)'

FRSC Policy paper: Labelling of sugars on packaged foods and drinks (30) discussed the arbitrary nature of industry practices to advertise products in relation to 'added sugars' 'natural sugars' 'naturally occurring sugars' and 'refined sugars'. The absence of definitions of these terms in the Code was identified as an issue.

Clarifying the 'no added sugar(s)' claim conditions that includes defining 'added sugars' in the Code would provide some improved clarity, however, as all other similar terms (e.g. 'natural sugars', 'refined sugars', 'no cane sugar') will remain undefined and unregulated by the Code, NSW Food Authority considers that consumer confusion by these claims will remain.

While identifying consumer confusion as to the difference between 'total sugars' and 'added sugars', FSANZ's recent literature review (31) identified consumer perception that:

- natural or less processed sugars are good, while more processed sugars are bad; and
- sugar sources that are perceived as natural or less processed, including fruit sugar, honey and brown sugar, are generally viewed as healthier.

This implies a 'health halo' created by claims advertising 'healthier' types of sugars, whereas healthier food choices should be rather based on total energy and added sugar intakes.

The TGA has guidance on what "natural" means (32) and the ACCC has also provided this guidance in the past (33). If a claim referring to "natural" is to be allowed, it too will require a definition.

Although noting that claims other than 'no added sugar(s)' are out of scope of this proposal, NSW Food Authority considers there is a need to consider regulating other sugar related claims (e.g. natural sugars) that may mislead consumers in the Code. This suggestion is consistent with the Policy Guideline on Food Labelling to Support Consumers Make Informed Healthy Choices (34) and Policy statement on front of pack labelling (35).

Careful consideration should be given as to the appropriate range of sugar claims on foods that are regulated by the Code. In the Australian Competition and Consumer Commission (ACCC) v H.J. Heinz Company Australia Limited [2018] FCA 360 (19 March 2018) case, the Federal Court determined that claims on Heinz's fruit and vegetable products purporting benefits to the health of young children were misleading (36). Their products mainly contained fruit/vegetable paste and purees and carried a claim '99% fruit and veg', with the total sugar content of over 60 percent.

Given the absence of any regulation concerning 'natural sugars' in Proposal 1062, there is scope for these types of products to bear 'natural sugars' type claims, be compliant with the Code but still have capacity to be potentially misleading (e.g. artwork with pictures of whole fruit/vegetables). NSW Food Authority urges FSANZ to consider if a limited focus on 'added sugars' will appropriately address the health halo concerns expressed by Food Ministers in requesting this piece of work be addressed in a timely manner.

References

22. <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/forum-communique-2023-july>
23. <https://www.nhmrc.gov.au/health-advice/nutrition/australian-dietary-guidelines-review/guideline-development>
24. <https://www.nhmrc.gov.au/about-us/publications/prioritisation-process-report>
25. <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/forum-communique-2019-August>
26. https://www.health.gov.au/sites/default/files/documents/2021/12/national-preventive-health-strategy-2021-2030_1.pdf
27. <http://www.healthstarrating.gov.au/internet/healthstarrating/publishing.nsf/content/home>
28. <https://www.health.gov.au/our-work/healthy-food-partnership/partnership-reformulation-program>
29. <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/current-activities>
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31. <https://www.foodstandards.gov.au/code/proposals/SiteAssets/Pages/Proposal-P1058---Nutrition-labelling-about-added-sugars/P1058%20Literature%20Review.pdf>
32. <https://www.tga.gov.au/resources/resource/guidance/therapeutic-goods-advertising-ensuring-natural-claims-are-not-misleading>
33. <https://www.accc.gov.au/media-release/accc-calls-for-fair-trading-in-food-and-beverage-industry>
34. <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/Policy-Guideline-on-Food-Labelling-to-Support-Consumers-Make-Informed-Healthy-Choices>
35. <https://foodregulation.gov.au/internet/fr/publishing.nsf/Content/publication-Policy-Statement-on-Front-of-Pack-Labelling>
36. <https://www.accc.gov.au/media-release/court-finds-heinz-made-a-misleading-health-claim>

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Feedback

What is your level of satisfaction with using this platform to complete your submission?

Unsatisfied

Do you have any feedback you would like to provide to FSANZ regarding this new platform?

Yes

If yes, please provide details.:

NSW Food Authority appreciates the opportunity to comment on this new platform. NSW Food Authority supports FSANZ's initiative to improve the way to receive stakeholder submissions, and also notes this platform is still under development. The following comments are offered for future improvement.

NSW Food Authority finds it useful to have the 'additional comments' section with the opportunity to upload any relevant documents. This section is well-suited to deliver comments on overarching issues and issues that are not captured in any of the questions.

NSW Food Authority also appreciates the way the questions allow freestyle comments/discussions. In this submission NSW Food Authority generally supports the proposal, however, raises a number of specific issues. This free-style format enables submitters to develop their comments with flexibility.

NSW Food Authority has identified some challenges in preparing this submission via this platform. Firstly, points covered by the questions are often interrelated with shared overarching fundamental issues. For example, fruit juice is relevant to both questions 5 and 6. Another example is the need for education/detailed assistance in preparation for implementation is one of the main suggestions to alleviate issues raised in different parts in this submission. As it is unclear how submitter responses are read, repetition is inevitable.

Also each question can be written more succinctly. Due to the length of each question, some time is required to determine how questions of a similar nature should be individually responded. NSW Food Authority suggests highlighting a topic/issue for discussion first. Any further information or description by FSANZ can be given afterwards.

Lastly, improvement could be made for compatibility with Microsoft word software. NSW Food Authority recognises formatting (for the ease of reading) disappears once pasted in the online form. This includes footnote formatting for references. To save submitters' time to fix formatting issues and references, NSW Food Authority suggests improving compatibility with software submitters commonly use in drafting.