



**PO Box 3182
Asquith
NSW 2077
1300 728 000**

www.allergyfacts.org.au

Standards Management Officer
Food Standards Australia New Zealand
PO Box 7186
Canberra BC ACT 2610

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To whom it may concern:

On behalf of Anaphylaxis Australia Inc I wish to make a submission on the draft nutrition, health and related claims standard, proposal P293.

Background

Anaphylaxis Australia Inc (AAI) is a charitable, non-profit organisation established in 1993 to support and assist those affected by anaphylaxis. AAI is dedicated to assisting individuals and their caregivers in the management of anaphylaxis. AAI's aim is to enable them to cope with everyday life whilst minimising risk to their health and wellbeing.

AAI strives to raise awareness of life threatening allergy in the community and provides science-based information, resources and services to support children and adults living with the risk of anaphylaxis. AAI has members in all States and Territories. Members include people who have food allergy, parents of children who have food allergies, school officials, and medical and food industry professionals. AAI estimates the number of food allergy sufferers in Australia to be in excess of 500 000. AAI also participates in an international partnership through the Food Allergy & Anaphylaxis Alliance (FAAA) which was established in 1999 to facilitate information sharing among non-profit organizations working in the field of food allergy around the world. In addition to AAI, FAAA is comprised of groups from the United States, United Kingdom, Canada, Quebec, New Zealand, Italy, the Netherlands, Germany, Sweden, Japan, Hong Kong and Israel.

Summary

AAI broadly supports the provisions relating to endorsements, with a minor suggested amendment; there are a number of concerns with nutrition content claims, which do not appear to allow for informative material to appear in a label or advertisement, and which could otherwise be useful to those with food allergies; AAI has serious concerns over the potential for the names of serious diseases to appear in labels and advertisements outside the scope of health claims; finally, AAI disagrees with FSANZ's decision to remove the provisions relating to cause-related marketing.

Specific Issues

Endorsements

AAI generally supports the provisions relating to endorsements.

AAI is concerned that the definition of 'endorsing body' is too broad. The definition includes the words "permits a supplier to make an endorsement". In practice any such permission would relate to one or more specific products of that supplier, not necessarily all of their products. AAI suggests adding to the definition the words "with respect to one or more specific products" to negate any argument that the endorsement is general rather than specific, and to therefore avoid the risk of an endorsement appearing on an inappropriate product for which it was not intended.

Nutrient Content Claims

AAI notes that a nutrient content claim means a claim about the presence or absence of protein. Clause 11(1) of the draft standard would seem to restrict a nutrition content claim about protein to the conditions prescribed in schedule 1. This would seem to prevent a claim about the absence of protein, which would correspond to neither low nor reduced protein as required in column 2 of the schedule.

AAI suggests that column 2 be amended to allow for claims about the absence of specific proteins, in the interests of those with food allergies. For example, a product may contain an egg product, but with the egg protein removed, rendering the product safe for individuals with an egg allergy. As safe food choices for those with food allergy are restricted, specific information about presence or absence of food protein is of assistance if it can be verified using testing methods.

Secondly, for the reasons discussed above, the draft standard would seem to preclude any more general information in the label about protein which does not meet the conditions required by the schedule. Such general information could be of value to those with a food allergy making product choices in the market place or could enhance general understanding of food allergies. For example, it may be useful to include in a label a statement such as "A food allergy is an immune system response to a food protein that the body mistakenly believes is harmful. When the individual eats food containing that protein, the immune system releases massive amounts of chemicals, triggering symptoms that can affect a person's breathing, gastrointestinal tract, skin and/or heart."

With respect to clause 12, AAI notes that components of protein, that is amino acids or peptides, are not subject to the schedule 1 conditions which apply to protein. This would seem a somewhat inconsistent approach to the regulation of nutrition content claims and AAI suggests FSANZ review this aspect.

Name or reference to disease or physiological condition

The current standard for health claims prohibits the name or reference to any disease or physiological condition (Standard 1.1A.2) except as expressly permitted. AAI notes that the draft standard seems to have dropped that prohibition. Accordingly it would appear that a supplier could make reference in a label or advertisement to a condition such as food allergy or anaphylaxis so long as the reference is not caught by the definition of a “health claim”. Some sections of the food industry might regard this as carte blanche to make reference to a disease, overtly outside the scope of the definition of health claims, but from which consumers might mistakenly construe as claiming a therapeutic effect, posing a significant health risk to vulnerable consumers.

This makes the standard particularly difficult to enforce, as the relevant authority would have to prove beyond reasonable doubt that the reference to the disease was in the context of a health claim in order to take action.

For these reasons AAI urges FSANZ to reinstate the prohibition on the name or reference to any disease or physiological condition except as expressly permitted. Please see also comments on cause related marketing statements, below.

Cause-related marketing statements

AAI notes that the previous draft standard had a clause dealing with cause-related marketing statements, which has now been removed for the reasons given in the consultation paper.

AAI notes that cause-related marketing statements would not be prohibited by the draft standard, because of the removal of the current prohibition on the name of or reference to a disease, and reiterates its comments on that point. In addition, and in the context of food allergies, AAI would support cause-related marketing statements only where the product is endorsed by AAI as suitable for those with a specific food allergy.

Accordingly AAI opposes the deletion of this provision on the basis that it creates unreasonable uncertainty for the industry and for organisations such as AAI and their endorsed suppliers. To suggest that misleading aspects could potentially be addressed by Australian and New Zealand consumer law would seem to require action by the ACCC or State Consumer Affairs which may have neither the resources, the powers or the competence to deal with such matters. For these reasons AAI urges FSANZ to reinstate specific provisions for cause-related marketing.

Yours sincerely,

Maria Said
President
Anaphylaxis Australia Inc
Email: msaid@allergyfacts.org.au
Mobile Phone: 0409 609 831
Tel: (02) 9482 5988