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Call for submissions – Proposal P1049

Carbohydrate and sugar claims on alcoholic beverages

Food Standards Australia New Zealand (FSANZ) has assessed a proposal to clarify requirements in the Australia New Zealand Food Standards Code with respect to claims about carbohydrate content and the components of carbohydrate (such as sugar) in relation to food that contains more than 1.15% alcohol by volume (ABV), including alcoholic beverages, and has prepared a draft food regulatory measure. Pursuant to section 61 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act), FSANZ now calls for submissions to assist consideration of the draft food regulatory measure.

For information about making a submission, visit the FSANZ website at [current calls for public comment and how to make a submission](#).

All submissions on applications and proposals will be published on our website. We will not publish material that we accept as confidential. In-confidence submissions may be subject to release under the provisions of the *Freedom of Information Act 1982*. Submissions will be published as soon as possible after the end of the submission period.

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Submissions should be made in writing; be marked clearly with the word 'Submission'. You also need to include the correct application or proposal number and name. Electronic submissions can be made by emailing your submission to submissions@foodstandards.gov.au. FSANZ also accepts submissions in hard copy to our Australia and/or New Zealand offices.

There is no need to send a hard copy of your submission if you have submitted it by email or via the FSANZ website. FSANZ endeavours to formally acknowledge receipt of submissions within 3 business days.

DEADLINE FOR SUBMISSIONS: 6pm (Canberra time) 4 September 2023

Submissions received after this date will not be considered unless an extension had been given before the closing date. Extensions will only be granted due to extraordinary circumstances during the submission period. Any agreed extension will be notified on the FSANZ website and will apply to all submitters.

Questions about making a submission or application and proposal processes can be sent to standards.management@foodstandards.gov.au.

Submissions in hard copy may be sent to the following addresses:

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Supporting document

The [following document](#) which informed the assessment of this proposal are available on the FSANZ website:

- SD1 Consumer value, perceptions and behaviours in relation to carbohydrate and sugar claims on alcoholic beverages

Executive summary

Food Standards Australia New Zealand (FSANZ) has assessed a proposal to clarify Australia New Zealand Food Standards Code (the Code) requirements for making voluntary nutrition content claims about carbohydrate and sugar on food that contains more than 1.15% alcohol by volume (ABV), including alcoholic beverages.

Standard 1.2.7 in the Code currently permits voluntary claims about carbohydrate content in alcoholic beverages. Sugar is a component of carbohydrate, however the Code lacks clarity around the extent of these content claims. Both carbohydrate and sugar content claims are being made about alcoholic beverages sold in Australia and New Zealand.

At the request of Australian and New Zealand food ministers, FSANZ has reviewed the requirements for making voluntary nutrition content claims about carbohydrate and sugar for alcoholic beverages to provide clarity on what claims can be made.

FSANZ is proposing to amend the standard to clarify what content claims are permitted for carbohydrate and sugar on food containing more than 1.15% ABV. The proposed amendment is intended to support consumers to make informed choices while providing clarity and certainty for enforcement agencies and industry.

In our assessment, FSANZ considered Australia and New Zealand alcohol consumption data and the prevalence of carbohydrate and sugar claims about alcoholic beverages in the marketplace. We undertook a rapid systematic review to examine the available evidence on consumer value, perceptions and behaviours in response to carbohydrate and sugar claims on alcoholic beverages (see Supporting Document 1 (SD1)). The costs and benefits that may arise in relation to this proposal were considered (Attachment D), while the assessment also had regard to relevant Ministerial Policy Guidelines and the Australian and New Zealand dietary guidelines.

FSANZ undertook targeted consultation with the public health and consumer groups, jurisdictions and the alcohol industry in both Australia and New Zealand in July 2022 to inform this call for submissions (CFS).

Based on the available evidence and for reasons set out in this CFS, FSANZ has prepared a draft variation to the Code (Attachment A), which, if approved, would amend Standard 1.2.7 to clarify the existing permission to make nutrition content claims about carbohydrate, and by including clarity around nutrition content claims about sugar¹ on food that contains more than 1.15% ABV.

The draft variation also contains amendments, which if approved, would prohibit nutrition content claims about specifically named sugars (e.g. fructose) and about components of carbohydrate other than sugar (e.g. fibre) on food containing more than 1.15% ABV.

The proposed amendments are intended to provide:

- clarity and certainty for industry and government in the implementation and enforcement of the limited voluntary nutrition content claims permitted to be made about food that contains more than 1.15% ABV, including alcoholic beverages; and

¹ This includes both 'sugars' and 'sugar' as defined in Standard 1.1.2.

- information about sugar content to consumers who choose to consume alcoholic beverages to enable them to make informed choices consistent with dietary guideline recommendations about sugars.

FSANZ seeks submissions on the proposed draft variation.

1 Introduction

1.1 The proposal

The purpose of this proposal is to consider clarifying requirements in the Australia New Zealand Food Standards Code (the Code) in relation to making nutrition content claims about carbohydrate content which includes the components of carbohydrate (such as sugar) on alcoholic beverages².

1.2 Reasons for preparing the proposal

Standard 1.2.7 – Nutrition, health and related claims prohibits nutrition content and health claims to be made about food that contains more than 1.15% alcohol by volume (ABV), including alcoholic beverages, other than nutrition content claims about carbohydrate, energy or gluten content.

As sugar is a component of carbohydrate, the permission to make claims about carbohydrate content on food that contains more than 1.15% ABV has been interpreted as a permission to also make claims about sugar content. Consequently, nutrition content claims about both carbohydrate and sugar are being made in relation to alcoholic beverages for sale in Australia and New Zealand.

Food enforcement agencies in Australia and New Zealand have reported the Code is unclear whether nutrition content claims about sugar on alcoholic beverages are permitted by Standard 1.2.7.

In 2017 the Australia and New Zealand Ministerial Forum on Food Regulation (now the Food Ministers' Meeting (FMM)) raised concerns about sugar claims on alcoholic beverages, specifically that % sugar free claims are misleading and that alcohol is being promoted as a healthier choice for consumers when public health advice is to limit alcohol intake. The FMM asked FSANZ to review the matter.

In response, FSANZ undertook a technical assessment to determine whether changes to the Code were required. Based on this technical assessment, FSANZ considered there was justification to clarify requirements in Standard 1.2.7 with respect to nutrition content claims about carbohydrate and sugar content in relation to food containing alcohol.

This proposal (P1049) was prepared in August 2018 to consider changes to the Code to clarify requirements in Standard 1.2.7.

1.3 Procedure for assessment

The proposal is being assessed under the General Procedure of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act).

² For the purpose of this report, 'alcoholic beverages' means alcoholic beverages containing more than 1.15% alcohol by volume (ABV).

1.4 Scope of the proposal

The scope of this proposal is limited to considering the permission to make nutrition content claims about carbohydrate which includes components of carbohydrate such as sugar, in relation to food that contains more than 1.15% ABV.

As the FMM's request related to sugar claims on alcoholic beverages, and the lack clarity in the Code as identified by enforcement agencies also related to alcoholic beverages, FSANZ's assessment of this proposal focuses on carbohydrate and sugar claims on alcoholic beverages.

Other permitted nutrition content claims e.g. energy content, and the prohibition on other nutrition content and health claims about food that contains more than 1.15% ABV are not within scope.

Permissions for making nutrition content and health claims about food that contains $\leq 1.15\%$ ABV are also out of scope.

2 Background

2.1 Current standards

Section 1.2.7—4 of the Code prohibits the following types of claims being made about foods containing more than 1.15% ABV:

- health claims; and
- nutrition content claims other than a nutrition content claim about energy, carbohydrate or gluten content; or salt and sodium content about a food that is not a beverage.

These prohibitions apply to claims made on labels and in advertisements (section 1.2.7—3).

'Nutrition content claim' is defined in section 1.1.2—9 of Standard 1.1.2. The definition states that a 'nutrition content claim' means, among other things, a claim that is not a health claim which is about the presence or absence of carbohydrate or the components of carbohydrate.

Carbohydrate is defined in the Code to mean available carbohydrate, which must be calculated by direct summation or by difference (subsection 1.1.2—2(3); and subsections S11—3(1) and (2)). Both calculations would include total sugars as part of the available carbohydrate content of a food.

Both 'sugar' and 'sugars' are defined in Standard 1.1.2³.

For the purposes of Standard 1.2.7, Standard 1.2.8 and Schedule 4 (except where it appears with an asterisk as 'sugars*'), 'sugars' is defined to mean *monosaccharides and disaccharides*.

The word 'sugar' means, *unless otherwise expressly stated, any of the following:*

- (a) *white sugar;*
- (b) *caster sugar;*
- (c) *icing sugar;*
- (d) *loaf sugar;*

³ For the purposes of this report, the word sugar has been used to mean both sugar and sugars unless expressed otherwise.

- (e) *coffee sugar;*
- (f) *raw sugar.*

Sugars* in Schedule 4 is relevant for 'no added sugar' and 'unsweetened' nutrition content claims. Sugars* means any of the following products, derived from any source:

- (i) *hexose monosaccharides and disaccharides, including dextrose, fructose, sucrose and lactose;*
- (ii) *starch hydrolysate;*
- (iii) *glucose syrups, maltodextrin and similar products;*
- (iv) *products derived at a sugar refinery, including brown sugar and molasses;*
- (v) *icing sugar;*
- (vi) *invert sugar;*
- (vii) *fruit sugar syrup;*

but does not include:

- (i) *malt or malt extracts; or*
- (ii) *sorbitol, mannitol, glycerol, xylitol, polydextrose, isomalt, maltitol, maltitol syrup, erythritol or lactitol.*

The requirements for making nutrition content claims are set out in Division 4 of Standard 1.2.7; and Schedule 4. Section S4—3 of Schedule 4 sets out a table which includes the property of food⁴ (Column 1) along with general claim conditions (Column 2) that must be met when making a nutrition content claim about the property of food, and specific claim conditions (Column 4) for certain descriptors (Column 3), which must be met (in addition to the general claim conditions) when making nutrition content claims about a property of food using the associated descriptor. The conditions for the property of food 'Carbohydrate' are listed separately to those for the property of food 'Sugar or sugars' in this table.

For nutrition content claims about carbohydrate, there are no general conditions and only specific conditions for making increased and reduced⁵ (or synonyms, e.g. lower) carbohydrate claims. Other nutrition content claims about carbohydrate, such as 'low carbohydrate', are permitted but there are no general or specific conditions in the Code for these claims (subsection 1.2.7—12(8)).

With regard to nutrition content claims about sugar or sugars, there are also no general conditions and only specific conditions for '% free', 'low', 'reduced (or light/lite)', 'no added' and 'unsweetened' claims or claims using synonyms of those descriptors. Other nutrition content claims about sugar or sugars, such as 'x grams sugar', are permitted but there are no general or specific conditions in the Code for these claims (subsection 1.2.7—12(8)).

Standardised alcoholic beverages⁶ and beverages containing no less than 0.5% ABV that are not standardised alcoholic beverages are exempt from the requirement to be labelled with a nutrition information panel (NIP) under Standard 1.2.8 – Nutrition information requirements, unless a nutrition content claim is made, in which case a NIP must be provided (section 1.2.8—5). A NIP must include (among other things) the average energy content, and average quantity of protein, carbohydrate, sugars, fat, saturated fat and sodium (section 1.2.8—6).

Standard 2.7.1 - Labelling of alcoholic beverages and food containing alcohol requires a statement of alcohol content for a food (including an alcoholic beverage) that contains more

⁴ **property of food** means a component, ingredient, constituent or other feature of food (see section 1.1.2--2).

⁵ These are comparative claims, as defined in section 1.2.7—16: A **comparative claim** is a nutrition content claim that directly or indirectly compares the nutrition content of one food (or brand) with another and uses descriptors including light or lite, increased, reduced or words of similar import.

⁶ **standardised alcoholic beverage** means beer, brandy, cider, fruit wine, fruit wine product, liqueur, mead, perry, spirit, vegetable wine, vegetable wine product, wine or wine product.

than 1.15% ABV (section 2.7.1—3).

2.2 Related proposals

2.2.1 P1059 – Energy labelling on alcoholic beverages

Proposal P1059 was prepared in 2022 to consider amending the Code to require energy (kilojoule (kJ)) labelling information on alcoholic beverages currently exempt from providing a NIP.

In January 2023, FSANZ called for submissions on a draft variation to amend the Code to require the mandatory declaration of energy content information, in a prescribed format, on the label of packaged standardised alcoholic beverages and beverages containing no less than 0.5% ABV that are not standardised alcoholic beverages.

Under P1059, FSANZ is proposing to retain the current requirement to provide a NIP if a permitted nutrition content claim is made about an alcoholic beverage.

Given the interrelationship between P1059 and P1049, these proposals are being progressed in tandem to minimise the potential impact on industry of having to make multiple label changes and to consider the implication of any label changes on consumers ability to make informed choices.

2.2.2 P1058 – Nutrition labelling about added sugars

In April 2022, FSANZ prepared Proposal P1058 to consider amending the Code to include ‘added sugars’ information in the NIP to enable consumers to make informed food choices in support of dietary guidelines. This proposal follows a review of nutrition labelling for added sugars, completed in 2021 (FSANZ, 2021). Any changes to labelling requirements for added sugars in the NIP under P1058 may apply to alcoholic beverages in the future.

2.3 Policy considerations

2.3.1 Ministerial policy guidance

2.3.1.1 Policy Guideline on Nutrition, Health and Related Claims

In December 2003, the FMM (then the Australia and New Zealand Food Regulation Ministerial Council) endorsed a Policy Guideline on Nutrition, Health and Related Claims⁷ to assist with the development of Standard 1.2.7.

This policy guideline sets out claim pre-requisites and states that every health claim must meet a number of overarching principles. One of these overarching principles is that claims can be made providing:

‘the eligibility criteria, including qualifying and/or disqualifying criteria (and any excluded categories of foods, such as alcohol and infant foods) are complied with.’

In the context of these overarching principles, the eligibility criteria is specifically in relation to health claims.

However, the policy guideline also includes a Claims Classification Criteria section which states:

‘Consideration should be given to including criteria for making each level of claim and

⁷ [Policy Guideline on Nutrition, Health and Related Claims](#)

any parameters (e.g. qualifying and disqualifying criteria, or exclusions for certain categories of foods, such as alcohol and baby foods) should be specifically stated in the Standard.'

In addition, the Regulatory Model section states:

'The standard may also set out qualifying and disqualifying criteria for the different types of claims and categories of foods which may be excluded from making claims (e.g. alcohol and baby foods).'

2.3.1.2 Policy Guideline on Food Labelling to Support Consumers Make Informed Healthy Choices

In August 2020, the FMM (then the Australia and New Zealand Forum on Food Regulation) endorsed the *Policy Guideline on Food Labelling to Support Consumers to Make Informed Healthy Choices*⁸. The overall aim of this policy guideline is that ministers expect *food labels to provide adequate information to enable consumers to make informed food choices to support healthy dietary patterns recommended in the Dietary Guidelines*. The scope of the policy guideline applies to foods, beverages and alcoholic beverages. It also recognises where additional optional information is provided on a food label, such as by nutrition, health and related claims, that other policy guidance may also be relevant.

2.3.2 Australia and New Zealand dietary guidelines

Guideline 3 of the Australian dietary guidelines is *Limit intake of foods containing saturated fat, added salt, added sugars and alcohol* (NHMRC, 2013). Specifically, the guideline recommends the following:

- (c) Limit intake of foods and drinks containing added sugars such as confectionary, sugar-sweetened soft drinks and cordials, fruit drinks, vitamin waters, energy and sports drinks; and*
- (d) If you choose to drink alcohol, limit intake.*

The guidelines consider alcohol to be a discretionary food (i.e. energy dense, nutrient poor) and state that *limiting alcohol intake is an important strategy for achieving appropriate energy intake*. The guidelines recommend that *alcohol intake contribute less than 5% of dietary energy* and note that sugar-sweetened alcoholic drinks add a further risk for excessive weight gain.

The Eating and Activity Guidelines for New Zealand Adults note that *drinking alcohol can add more energy to the diet than people are aware of* and recommend that *if you drink alcohol, keep your intake low* (New Zealand Ministry of Health, 2020). The guidelines also note that adding sugar increases the energy content of foods and drinks and recommend choosing foods with the lowest amount of added sugar by comparing the sugar content on food labels.

Neither guidelines include recommendations about carbohydrate intake. However, the Australian guidelines note *dietary patterns that tend to be relatively low in total fat and moderate (not high) in carbohydrate are consistent with reduced risk of excess weight gain* (NHMRC, 2013).

⁸ [Policy Guideline on Food Labelling to Support Consumers to Make Informed Healthy Choices](#)

2.4 History of Standard 1.2.7

2.4.1 Standard 1.2.7 development

Standard 1.2.7 was developed via Proposal P293 – Nutrition, Health and Related Claims⁹ (P293). P293 commenced in 2004 and included six rounds of public consultation in addition to numerous targeted consultations with a range of interested parties. The standard was gazetted in January 2013 with a three year transition period.

The general prohibition on making nutrition content and health claims on alcoholic beverages was based on both the intention to support public health messages about limiting alcohol intake and the nutrition, health and related claims policy guideline (see Section 2.3.1).

As an exception to the prohibition, FSANZ initially proposed that claims about alcohol and energy content be permitted as these claims serve a useful purpose in promoting responsible alcohol consumption and providing an additional choice for consumers respectively. However, permission for nutrition content claims about carbohydrate content was provided following public consultation, mainly because there were claims specifically about carbohydrate on alcoholic beverages (in particular ‘low carb’ beers) in the marketplace at the time. It was noted in the Preliminary Final Assessment Report that this would permit brands developed around those claims to remain in the marketplace and therefore be no cost to industry (FSANZ, 2007). It was also noted that this would provide greater opportunity for industry innovation, provide additional nutrition information to consumers and increase consumer choice. Claims about sugar on alcoholic beverages were not specifically mentioned.

Further information, including the approaches proposed in P293 consultation papers for the regulation of nutrition content claims about alcoholic beverages during the development of Standard 1.2.7, is available in sections 2.1 and 2.3 of the Technical Assessment (see below) and P293 documentation.

2.4.2 Changes to claim permissions post gazettal of Standard 1.2.7

Since Standard 1.2.7 was gazetted, FSANZ has amended the standard to permit nutrition content claims about gluten content on alcoholic beverages (subject to conditions in the Code for making those claims). This amendment was to enable consumers with coeliac disease to continue to make suitable choices appropriate for their condition within the range of alcoholic beverages and other food containing alcohol¹⁰.

2.5 FSANZ Technical Assessment

As noted in Section 1.2 above, the FMM raised concerns about sugar claims on alcoholic beverages in November 2017 and referred the matter to FSANZ to review. The communiqué from their meeting states: *Ministers are aware of an increasing number of alcoholic beverages for sale in Australia and New Zealand with the claim they are ‘% sugar-free’ and they are concerned that these claims are misleading and that alcohol is being promoted as a healthier choice for consumers when public health advice is to limit alcohol intake* (Food Regulation Secretariat, 2017).

In response, FSANZ undertook a technical assessment¹¹ to determine whether changes to the Code were required. The technical assessment concluded the policy intent was that claims specifically about the ‘sugar’ content of foods containing alcohol were not to be

⁹ [Proposal P293 – Nutrition, Health and Related Claims](#)

¹⁰ [Proposal P1035 – Gluten claims about Foods containing Alcohol](#)

¹¹ [Technical Assessment - Carbohydrate claims about food containing alcohol](#)

permitted by Standard 1.2.7 (FSANZ, 2018). This conclusion was based on the main reason permission for nutrition content claims about 'carbohydrate content' was provided, i.e. because there were claims specifically about carbohydrate on alcoholic beverages in the marketplace at the time the standard was developed, in particular 'low carb' beers. This issue was raised by stakeholders at the time (2006-2007).

During the technical assessment, no studies were found which specifically examined the effects of sugar claims on consumers' perceptions of alcoholic beverages or on their behaviour. Some evidence was identified that indicated consumers may make inappropriate assumptions about the energy content and perceived healthiness of alcoholic beverages making claims about carbohydrate. Based on the evidence considered it was unclear whether a similar effect would be found for sugar claims.

The technical assessment therefore concluded that to regulate claims about 'sugar' differently to claims about 'carbohydrate' could be seen to be inconsistent, particularly in light of the nature of claims that were in the marketplace at the time and the available consumer evidence.

In June 2018, food ministers considered the technical assessment and noted that in addition to the identified issues concerning sugar claims, there were also issues more broadly concerning carbohydrate claims on food that contain alcohol (Food Regulation Secretariat, 2018). The meeting communique states: *FSANZ has agreed to raise a proposal to clarify Standard 1.2.7 of the Australia New Zealand Food Standards Code in line with the original policy intent that prohibits claims on alcoholic beverages in relation to sugar and carbohydrate.* Ministers further noted the work will be undertaken in the next 12 months.

In October 2018 food ministers asked FSANZ to consider mandatory labelling for pregnancy warning labels on packaged alcoholic beverages as a priority and that the work be expedited. Consequently work on P1049 was slowed and was ultimately paused when FSANZ was also asked to undertake work on energy labelling on alcoholic beverages.

2.6 Overseas regulations

2.6.1 Codex Alimentarius

There is no Codex standard or guideline specific to the labelling of alcoholic beverages, and the Codex Guidelines for Use of Nutrition and Health Claims¹² (CAC/GL 23-1997) and the Codex General Guidelines on Claims¹³ (CAC/GL 1-1997) do not refer to claims about food containing alcohol.

2.6.2 European Union

European Union Regulation 1924/2006¹⁴ (Article 4, clause 3) prohibits beverages containing more than 1.2% ABV from displaying health or nutrition claims. There are exceptions from this prohibition for claims relating to a reduction in energy or alcohol content of the beverage.

2.6.3 United States

In the United States of America (USA), the labelling of alcoholic beverages is regulated by the Food and Drug Administration (FDA) and the Alcohol and Tobacco Tax and Trade Bureau (TTB).

¹² [Codex Guidelines for Use of Nutrition and Health Claims](#)

¹³ [Codex General Guidelines on Claims](#)

¹⁴ [European Union Regulation 1924/2006](#) (Nutrition and Health Claims)

The TTB enforces the provisions of the Federal Alcohol Administration Act¹⁵ (FAA Act) which includes standards for regulating the labelling of alcoholic beverages under TTB Ruling 2004-1. This ruling applies to wines containing 7% or more ABV, distilled spirits and malt beverages. Numerical statements about energy and carbohydrate content on labels of these alcoholic beverages are permitted as long as they are truthful, accurate and not misleading. *Low carbohydrate* claims are permitted provided certain conditions are met. The TTB consider that as sugar is a type of carbohydrate, sugar content statements are considered to be a carbohydrate claim and are permitted provided they are accompanied by either a Servings Facts statement or a statement of the Average Analysis as set out in TTB Ruling 2013-2 (Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau, 2013), and TTB Ruling 2004-1 (Department of the Treasury Alcohol and Tobacco Tax and Trade Bureau, 2004) respectively.¹⁶

The labelling of food containing less than 7% ABV, other than beverages that meet the definition of 'malt beverage' under the FAA Act, is regulated under Title 21 (Food and Drugs)¹⁷ of the Code of Federal Regulations. Beers that are not made from both malted barley and hops but are instead made from substitutes for malted barley (such as sorghum, rice or wheat) or are made without hops are regulated under Title 21, regardless of their alcohol content. Under Title 21, claims about sugar such as *sugar-free* and *reduced sugar* are permitted provided specified conditions are met. Percent sugar free claims and claims about carbohydrate content are not permitted.

2.6.4 Canada

The Canadian Food and Drug Regulations¹⁸ include labelling requirements and permissions for food, including alcoholic beverages. This includes requirements for nutrient content claims (B.01.500). A limited number of claims in relation to sugar content are permitted, including *sugar-free*, *reduced in sugars*, *lower in sugars*, *no added sugars* and *unsweetened*¹⁹. Percent sugar free claims and claims referring to carbohydrate e.g. *low carbohydrate* are not permitted.

However, section B.01.301 of the Regulations permits quantitative statements about the amount of a nutrient in a food under specified conditions. For carbohydrates, this may be expressed as the number of grams per serving of stated size e.g. '8 g of carbohydrate per 30 g serving'.

¹⁵ [USA Federal Alcohol Administration Act](#)

¹⁶ See [TTB guidance for sugar content statements](#)

¹⁷ USA [Title 21 of the Code of Federal Regulations](#)

¹⁸ Canadian [Food and Drug Regulations](#)

¹⁹ [Specific nutrient content claim requirements - Canadian Food Inspection Agency \(canada.ca\)](#)

3 Assessment of the proposal

3.1 Consumer trends and changing market

Over the last five years consumer interest in health and wellness has increased (IBISWorld, 2022a, 2023). Consumers are growing increasingly conscious of their dietary choices and choosing to moderate their alcohol intake (PlayInnovation, 2018; Food and Beverage Media Pty Ltd, 2022; IWSR, 2022).

Per capita consumption of alcoholic beverages in Australia and New Zealand has decreased over the last 20 years from 10.44 and 9.10 litres per capita to 9.29 and 8.76 litres per capita respectively (IBISWorld, 2022a and 2022b). Consumers' increasing health consciousness is expected to result in a continuation of the downward trend in alcohol consumption over the next 5 years (IBIS, 2022a and 2022b).

There has also been an increased focus on sugar intakes and the sugar content of food and beverages in more recent years. In 2015 the World Health Organisation (WHO) published a new guideline providing recommendations on the intake of free sugars to reduce the risk of non-communicable diseases in adults and children (WHO, 2015). Following this, the Australian Department of Health prepared a paper with a summary of current issues and policies relating to sugars in Australia and New Zealand (Australian Department of Health, 2017). The paper noted that government, public and media attention towards added and total sugar had noticeably increased in recent years.

In 2021, health and wellness preferences emerged as the key trend permeating all alcoholic drinks categories in New Zealand (Euromonitor, 2022). Industry reports note there has been a change in drinking preferences and behaviour. A trend for 'healthier' alternatives is driving innovation in the alcohol industry which has led to an array of new products on the market that appeal to health conscious consumers (Wine Australia, 2019). These include low/no sugar, low carbohydrate and low energy beers, ciders and traditional ready-to-drink alcoholic beverages (RTDs) e.g. gin and tonic, as well as products such as 'hard' seltzers and alcoholic kombuchas. Industry stakeholders have advised that low carbohydrate, calorie and sugar products are now a large and established part of the market.

When this matter was initially referred to FSANZ in 2017, there was an advertising campaign in both Australia and NZ which promoted nutritional information about beer. The campaign included advertising and labelling of some brands of beer as 99.9% sugar free. At that time, concerns were raised suggesting that this advertising campaign was misleading consumers and diverting consumers attention away from the harms associated with alcohol consumption (Drink Tank, 2016; Advertising Standards Authority, 2018). FSANZ understands this campaign has since been discontinued.

3.2 Composition

Foods containing more than 1.15% ABV are predominantly beverages. Other types of food that can contain more than 1.15% ABV are soy sauce and vanilla extract (FSANZ, 2022; (The New Zealand Institute for Plant & Food Research Limited and Ministry of Health, 2022).

In most alcoholic beverages, e.g. beer, wine and spirits, alcohol is the main source of energy. However, other components, primarily carbohydrate in the form of sugar, can also contribute to total energy content.

The carbohydrate and sugar content of alcoholic beverages varies across categories (e.g. beer, wine, spirits) and across different products within categories (e.g. lager and stout, white wine and fortified wine). While the carbohydrate content will be equal to or similar to the sugar (mono and disaccharides) content in most alcoholic beverages, some may also contain other forms of carbohydrate e.g. maltodextrin in beer.

Most beers and spirits inherently contain very little sugar. The sugar content of wines varies depending on a combination of factors related to the grape growing process (e.g. climate, ripeness) and the winemaking techniques (e.g. degree of fermentation). The sugar content of ciders varies for similar reasons, as well as from the addition of sugar to some products. RTDs can contain considerable amounts of sugar, primarily where alcohol is mixed with a sugar-sweetened beverage.

Hard seltzers have gained popularity since they were introduced into the Australian and New Zealand markets in 2019 (DrinksTrade, 2019; New Zealand Story, 2022) primarily due to their lower carbohydrate and lower sugar content than many other alcoholic beverages. Generally hard seltzers are also lower in energy despite their alcohol content being comparable to full strength beer. On average seltzers readily available for retail sale in Australia and New Zealand contain around 124 kJ and less than 1 gram of carbohydrate and sugar per 100mL.

Table 1 outlines the average carbohydrate, sugar and energy content of some common alcoholic beverages.

Table 1: Average carbohydrate, sugar and energy content of alcoholic beverages

Beverage	Carbohydrate (grams per 100 mL)	Sugar (grams per 100 mL)	Energy (kJ per 100 mL)
Beer, full strength	2.3	0	153
Beer, full strength lower carbohydrate	1.2	0.2	119
Beer, stout	2.7	0.2	144
Wine, white	0.2	0.2	301
Wine, red	0.2	0.2	323
Wine, sparkling	1.0	1.0	306
Port	12.9	12.9	624
Spirits e.g. gin, rum, whiskey, vodka	0.1	0.1	856
Cider, apple	8.2	8.1	251
Cider, apple lower carbohydrate	4.5	3.2	180
RTD - rum and cola 4.6% ABV	9.4	9.3	266
RTD - rum and cola zero 4.6% ABV	0.1	0	107
RTD - gin & tonic 5.3% ABV	4.5	4.5	202
RTD – gin and tonic lower sugar 5.5% ABV	0	0	121

* Values derived from label data for packaged alcoholic beverages available for retail sale in Australia and New Zealand 2021-2023, industry website information, The Australia Food Composition Database (FSANZ, 2022) and The New Zealand Food Composition Database (The New Zealand Institute for Plant & Food Research Limited and Ministry of Health, 2022).

3.3 Prevalence of carbohydrate and sugar claims on alcoholic beverages

Over the last decade there has been an increase in the prevalence of alcoholic beverages that carry nutrition content claims about sugar and/or carbohydrate.

In 2020, FSANZ undertook a limited, qualitative survey of nutrition information on the labels of alcoholic beverages for sale at major liquor retail outlets and supermarkets in Australia (two stores in Canberra) and New Zealand (three stores in Wellington).

Table 2 summarises the types of carbohydrate and sugar claims made on different categories of alcoholic beverages identified by FSANZ in the survey. FSANZ does not have any information on the market share of the alcoholic beverages with these claims. No carbohydrate or sugar content claims were identified on wines, spirits or liqueurs during the survey.

Table 2: Sugar and carbohydrate claims on alcoholic beverages

Alcoholic beverage type	Carbohydrate claims	Sugar claims
Beer	Lower carb* Low carb Extra low carb Ultra low carb X % fewer carbs* X % less carbs* X % carbs No-carb lager	X % sugar free
Cider	Low carb Lower carb X % lower carbs	No added sugar X % less sugar Contains X % less sugar Lower sugar* Low sugar
RTD vodka	No carbs	X g sugar < X g sugar No sugar Zero sugar
RTD gin	No carbs	< X g sugar No sugar
RTD bourbon/whiskey		X g sugar Zero sugar No sugar cola Zero sugar cola
Seltzers	X g carbs	Low sugar Low in sugar X g sugar Less than X g sugar Less than X % sugar No sugar Zero sugar
Other e.g. alcoholic mineral water, kombucha	No carbs Low carbs	Lower sugar No sugar

The prevalence of nutrition content claims on alcoholic beverages in Australia was more recently investigated by Barons et al. (2022) and Haynes et al. (2022).

In 2021, Barons et al. (2022) conducted an in-store audit of 850 products across five categories of alcoholic beverages²⁰ at the largest alcohol retailer in Melbourne. Low carbohydrate claims were presented on 5.9% of alcoholic beverages. Low sugar claims were also presented on 5.9% of products, however the frequency of categories of alcoholic beverages carrying sugar claims were different. Table 3 details these findings. No carbohydrate or sugar claims were observed on wine or spirits. All products carrying a nutrition content claim also provided a NIP consistent with current Code requirements (see Section 2.1).

Table 3: Frequency of carbohydrate and sugar nutrition content claims in an in-store sample of beverages available for retail sale in Victoria, Australia in 2021

	Total (n 850)	Beers (n 200)	RTDs (n 140)	Ciders (n 110)
Low carbohydrate claims	50 (5.9%)	23 (11.5%)	23 (16.4%)	4 (3.6%)
Low sugar claims	50 (5.9%)	10 (5%)	32 (22.9%)	8 (7.3%)

In contrast, Haynes et al. (2022) conducted an online audit of all beers, ciders and RTDs, as well as selected wines, on the website of the largest liquor retailer in Australia in 2020. Spirits and liqueurs were not included. Carbohydrate claims were observed on 3.7% of all beers, ciders and RTDs audited. In this study, sugar claims were more common as they were identified on 6.9% of all beers, ciders and RTDs. Table 4 details these findings.

Table 4: Frequency of nutrition content claims in an on-line audit of beverages available for retail sale in Australia in 2020

	Total (n 2332)	Beers (n 1564)	RTDs (n 407)	Ciders (n 361)
Carbohydrate claims	86 (3.7 %)	46 (2.9 %)	26 (6.4 %)	14 (3.9 %)
Sugar claims	161 (6.9 %)	19 (1.2 %)	80 (19.7 %)	62 (17.2 %)

Consistent with Barons et al. (2022), Haynes et al. (2022) found that sugar and carbohydrate claims are not prevalent on wines in Australia. Carbohydrate claims were not observed on any wines and only one wine carried a sugar claim.

Haynes et al. (2022) also reported other 'health-oriented' claims are prevalent on alcoholic beverages, such as 'natural', 'preservative free' and claims referring to 'fruit ingredients'.

FSANZ has not found any recent studies investigating the prevalence of nutrition content claims on alcoholic beverages in New Zealand, however it is likely to be similar to the Australian market due to the similarity of products available in the two countries.

3.4 Consumer evidence

In 2022, FSANZ undertook a rapid systematic review to examine the available evidence on consumer value, perceptions and behaviours in response to carbohydrate and sugar claims on alcoholic beverages as provided in Supporting Document 1 (SD1). As little research was available, the review is based on a mix of internationally-based samples and Australian-/New Zealand-based samples. The key findings are described below.

3.4.1 Consumer understanding of the nutritional properties of alcoholic beverages

Consumers generally have a poor understanding of the nutritional properties of alcoholic

²⁰ Wine (n = 200), beer (n = 200), spirits (n = 200), RTDs (n = 140) and ciders (n = 110)

beverages (based on their general knowledge).

Firstly, results from two studies indicate that consumers tend to overestimate the sugar content of alcoholic beverages. This is the case for all types of alcoholic beverages (wine, beer, spirits, cider, RTDs).

Secondly, results from three studies indicate that consumers' ability to estimate the carbohydrate content of alcoholic beverages is also poor, with consumers tending to overestimate the carbohydrate content of beer in particular. The direction of inaccuracy is unclear for other alcoholic beverages (i.e. whether consumers tend to overestimate versus underestimate).

Thirdly, FSANZ's previous (2021) consumer literature review and meta-analysis found that only a minority of consumers are able to correctly estimate the energy (i.e. kilojoule/calorie) content of alcoholic beverages (pooled proportion of correct estimates across studies = 18% [95% CI: 14-24%]). Consumers are also generally unable to correctly rank the relative energy content of different alcoholic beverages. Consumers tend to underestimate the relative energy content of wine and spirits, and overestimate the relative energy content of beer. Finally, consumers do not understand that the main source of energy in most alcoholic beverages comes from the alcohol itself. Instead, consumers believe that sugar or carbohydrates are the main sources.

3.4.2 Consumer value of carbohydrate and sugar claims on alcoholic beverages

Consumers generally value sugar claims (and sugar information more broadly) on alcoholic beverages.

Results from two studies found that consumers generally feel that 99.9% sugar-free claims on beer are acceptable, and perceived the sugar-free claims as 'health facts' that enabled them to make a more informed choice. One additional study found that consumers generally value sugar content information on alcoholic beverages (whether they think the information should be displayed in a NIP versus claim format was not examined in this study).

Consumers may also value carbohydrate claims on alcoholic beverages, however this evidence is less clear as the results are not generalisable to all types of alcoholic beverages. One international study found that German and USA consumers value low-carbohydrate claims on wine when accompanied with a relatively low alcohol content (9% ABV versus 14% ABV), whereas UK consumers do not. It is unclear whether the German, USA or UK consumers would value low-carbohydrate claims on wine that does not have a relatively low alcohol content, as this type of wine was not examined in this study.

It is important to note that none of these studies examined the effect of carbohydrate/sugar claims on consumer perceptions of alcoholic beverages. It is therefore unclear whether the participants in these studies had a good understanding of the meaning of the claims (i.e. whether or not the claims caused consumers to make inaccurate assumptions about alcoholic beverages).

3.4.3 Consumer perceptions of carbohydrate and sugar claims on alcoholic beverages

Sugar/carbohydrate claims may cause consumers to make inaccurate assumptions about alcoholic beverages.

Three studies that examined consumer perceptions of carbohydrate claims on beer indicate that consumers may mistakenly perceive low-carbohydrate beer as healthier than low-alcohol strength beer, with some consumers also perceiving low-carbohydrate beer to be healthy in an absolute sense, and mistakenly believing that they 'don't need to worry about their weight' when drinking low-carbohydrate beer. This is likely related to the additional finding that consumers do not understand that most of the energy in beer comes from the alcohol itself. Carbohydrate claims on beer may further exacerbate this misconception. However, caution is advised when interpreting these three studies, as they were all of low quality.

A fourth (high quality) study found that sugar claims on ciders and RTDs cause young female adults to mistakenly perceive those beverages as being lower in alcohol. This indicates that sugar claims on ciders and RTDs cause consumers to make inaccurate assumptions about an unrelated drink attribute. It is unclear whether this effect is limited to young female adults.

3.4.4 Consumer behaviours in response to carbohydrate and sugar claims on alcoholic beverages

There is no clear evidence to suggest that sugar and carbohydrate claims on alcoholic beverages affect consumers' level of alcohol intake. However, the presence of a claim may make consumers less likely to exercise, and less likely to change their diet, in order to compensate for the energy from alcoholic beverages.

Results from one study indicate that sugar claims have no effect on young female adults' level of alcohol consumption (as measured by the likelihood of consuming an alcoholic beverage, or the number of drinks intended to be consumed over a two week period). However there is evidence to suggest that sugar claims may cause young female adults to be *less* likely to modify their food intake or physical activity in order to compensate for the energy from alcoholic beverages. This indicates that sugar claims may encourage consumers to underestimate the contribution of alcoholic beverages to energy in the diet. However, this evidence is limited in that consumers' behavioural *intentions* were examined, and it is well known that behavioural intentions do not always lead to actual behaviour change. Secondly, although the observed behavioural effect is small, it is unclear whether providing consumers with energy content information on alcoholic beverages will alleviate this effect, and whether the effect is limited to young female adults. It is also unclear whether sugar claims on alcoholic beverages affects choice among different types of alcoholic beverages, which in turn could also affect energy intake.

Given that consumers report believing both carbohydrates and sugar are likely to cause weight gain and report trying to limit their intake, carbohydrate claims may have similar behavioural effects as sugar claims. However, no study has sufficiently addressed the effect of carbohydrate claims on alcoholic beverages on consumer behaviour.

3.4.5 Conclusions

The findings of FSANZ's (2022) rapid systematic review (see SD1) found that consumers generally have a poor understanding of the nutritional properties of alcoholic beverages, based on their general knowledge.

Consumers generally value sugar claims on alcoholic beverages and may also value

carbohydrate claims on alcoholic beverages. Limited evidence indicates that these claims may cause consumers to make inaccurate assumptions about the alcohol and/or energy content of alcoholic beverages. This evidence is limited because the available research was either of low quality or did not reflect the current regulatory environment (i.e. did not examine the effects of claims when a NIP is also present). It is also unclear whether the provision of energy content information on all alcoholic beverages would mitigate any potential misperceptions caused by sugar or carbohydrate claims.

There is no clear evidence to suggest that sugar and carbohydrate claims affect consumers' level of consumption of alcoholic beverages.

4 Targeted stakeholder consultations

FSANZ undertook targeted consultations with key stakeholders from the alcohol industry, public health and consumer groups and jurisdictions in July 2022. A list of stakeholder organisations and groups represented at these meetings is at Attachment C.

The purpose of these consultations was to seek views on clarifying requirements in the Code with respect to nutrition content claims about carbohydrate and sugar on alcoholic beverages to inform the development of this call for submissions. A range of potential options were discussed, from the status quo through to removing the current permission for nutrition content claims about carbohydrate (which would clarify that nutrition content claims about the sugar content of alcoholic beverages are not permitted).

Industry stakeholders generally supported carbohydrate and sugar claims on alcoholic beverages. They suggested these claims provide relevant and factual information to consumers and consider there is insufficient evidence that consumers are being misled.

Public health and consumer stakeholders and most jurisdictions supported prohibiting carbohydrate and sugar claims on alcoholic beverages as they considered these claims mislead consumers by creating a 'health halo' which increases perceptions of healthiness and may lead to increased alcohol consumption.

Other options considered included permitting certain carbohydrate and sugar claims (e.g. comparative claims) only and permitting only comparative carbohydrate and sugar content claims on alcoholic beverages which also met the condition for a reduced energy claim. There was limited stakeholder support for these options. Most stakeholders considered the selection of an appropriate reference food²¹ for making comparative claims would be problematic for alcoholic beverages.

5 Risk Management

FSANZ has considered clarifying requirements in the Code in relation to nutrition content claims about carbohydrate and sugar on alcoholic beverages in the context of the available evidence (see Section 3) and other matters relevant to FSANZ's statutory objectives (see Section 5.4).

²¹ **reference food**, in relation to a claim, means a food that is:

- (a) of the same type as the food for which the claim is made and that has not been further processed, formulated, reformulated or modified to increase or decrease the energy value or the amount of the nutrient for which the claim is made; or
- (b) a dietary substitute for the food in the same *food group as the food for which the claim is made.

5.1 Nutrition content claims about carbohydrate and sugar content

FSANZ's 2018 technical assessment concluded that to regulate claims about 'sugar' differently to claims about 'carbohydrate' on alcoholic beverages could be seen to be inconsistent, particularly in light of the nature of claims that were in the marketplace at the time and the available consumer evidence.

The permission for nutrition content claims about carbohydrate content on food that contains more than 1.15% ABV was provided during the development of Standard 1.2.7 mainly because these claims, in particular 'low carb' claims on beers, were in the marketplace at the time. While claims about components of carbohydrate (e.g. sugar) were not specifically considered at the time, by virtue of the permission to make nutrition content claims about carbohydrate on food that contains more than 1.15% ABV, the Code has been interpreted as permitting nutrition content claims about sugar (a component of carbohydrate) on alcoholic beverages. As a result sugar content claims on alcoholic beverages are now also an established part of the marketplace.

Since the development of Standard 1.2.7, consumer interest in health and wellness has increased and there has been an increased focus on sugar intake, particularly added sugars. Both the Australian and New Zealand dietary guidelines recommend limiting or avoiding foods containing added sugars. Available evidence from FSANZ's literature review indicates that consumers want and value information related to the sugar content of alcoholic beverages (see SD1). As alcoholic beverages are exempt from providing a NIP with the average quantity of sugar, for consumers who choose to drink alcoholic beverages and are seeking low and no added sugar alternatives, sugar content claims can serve as a source of information, enabling consumers to make informed choices consistent with the dietary guideline recommendations about sugar intake.

FSANZ notes concerns raised by the FMM that '% sugar-free' claims on alcoholic beverages are misleading and that alcohol is being promoted as a healthier choice for consumers when public health advice is to limit alcohol intake and stakeholder views that carbohydrate and sugar content claims mislead consumers by creating a 'health halo' which increases perceptions of healthiness and may lead to increased alcohol consumption. However, as detailed in SD1, there is no clear evidence to suggest that sugar and carbohydrate claims on alcoholic beverages affect consumers' level of consumption of alcoholic beverages, and thereby affect the protection of public health and safety. This is also consistent with there being an overall decline in consumers' consumption of alcohol (on a per capita basis) in Australia and New Zealand, despite there being increased prevalence of nutrition content claims about both carbohydrate and sugar on alcoholic beverages in the marketplace since 2017.

There is limited evidence to suggest that carbohydrate and sugar content claims may cause consumers to make inaccurate assumptions about the alcohol and/or energy content of alcoholic beverages (see SD1). However, the current requirements to provide a statement of alcohol content, and a NIP when a nutrition content claim is made, on alcoholic beverages provides information to assist consumers make informed choices and reduces the likelihood of consumers being misled about the alcohol and energy content of alcoholic beverages respectively.

Through Proposal P1059 – Energy labelling on alcoholic beverages, FSANZ is considering a requirement for most standardised alcoholic beverages and beverages containing 0.5% or more ABV to be labelled with energy content information. Currently only alcoholic beverages that make a nutrition content claim are required to declare energy content in a NIP. Subject to approval, mandatory energy labelling on alcoholic beverages would provide information to enable consumers make informed choices and could further reduce the

potential for consumers to be misled as energy content information will be available for all alcoholic beverages, allowing consumers to compare energy content information across both alcoholic and non-alcoholic beverages and with products making nutrition content claims.

FSANZ has considered a range of potential options for clarifying the requirements with respect to nutrition content claims about carbohydrate and sugar on alcoholic beverages. In relation to options to permit comparative claims, FSANZ considers these options are not well supported by the available evidence, would not adequately address the problem in clarifying the Code and pose technical difficulties for implementation and enforcement. Additionally there was limited stakeholder support for these options.

Based on the available evidence as discussed above, FSANZ is therefore proposing to clarify the existing permission to make nutrition content claims about carbohydrate, by adding an express permission to make nutrition content claims about 'sugar' and 'sugars' on food that contains more than 1.15% ABV, including alcoholic beverages.

In all cases, the existing conditions for making nutrition content claims about carbohydrate in Schedule 4 of the Code would continue to apply. The existing conditions for making nutrition content claims about 'sugar' and 'sugars'²² as a property of food in Schedule 4 would also apply to any nutrition content claim made about sugar on food that contains more than 1.15% ABV. As both 'ingredient' and 'component' are included in the definition of 'property of food', the approach would also clarify that nutrition content claims about sugar ingredients, such as 'no added sugar' and 'unsweetened', would be permitted subject to meeting the conditions for these claims.

Furthermore, nutrition content claims would continue to be subject to consumer and fair trading laws that require labels do not misinform consumers through false, misleading or deceptive representations.

The proposed approach would provide clarity and certainty for industry and government in the implementation and enforcement of the limited voluntary nutrition content claims permitted to be made about alcoholic beverages. It would also provide information about sugar content to consumers who choose to consume alcoholic beverages to enable them to make informed choices consistent with dietary guideline recommendations about sugar.

5.1.1 Nutrition content claims about specifically named sugars

Table 2 in Section 3.3 summarises the types of sugar content claims currently being made on alcoholic beverages for sale in Australia and New Zealand. These claims specifically refer to 'sugar' e.g. low sugar and zero sugar.

FSANZ notes that a specific permission for sugar content claims could create uncertainty about the types of claims permitted and could be interpreted as a permission for claims that refer to specifically named or specific types of sugars e.g. fructose.

FSANZ is therefore proposing to prohibit nutrition content claims about specifically named sugars. This proposed prohibition is limited to 'sugars' as defined in the Code for the purposes of Standard 1.2.7, Standard 1.2.8 and Schedule 4 (i.e. mono and disaccharides), and not 'sugars' as defined in the Code for other purposes.

The proposed prohibition would also not apply to 'sugar' as defined in the Code as it is not the intention to prohibit claims referring to specific sugar ingredients (e.g. raw sugar).

²² The terms 'sugars' and 'sugar' are both defined in the Code. See Section 2.1 above.

This would provide further clarity on the permission to make nutrition content claims about sugar on food that contains more than 1.15% ABV, including alcoholic beverages, and certainty that the permission for claims about 'sugar and sugars' is not a permission to make claims about specifically named sugars such as fructose.

5.1.2 Nutrition content claims about components of carbohydrates

As noted in Table 2 to Section 3.3, the claims about carbohydrate currently observed on alcoholic beverages in the marketplace specifically refer to 'carbohydrate/s' e.g. low carb and x grams carbs.

As the permission to make claims about carbohydrate content has been interpreted as a permission to also make claims about sugar, a component of carbohydrate, there is a risk that the permission could also be interpreted as a permission to make nutrition content claims about other components of carbohydrate e.g. fibre.

FSANZ is therefore proposing to prohibit claims about components of carbohydrate other than 'sugar and sugars', to provide clarity that nutrition content claims about components of carbohydrate other than sugar are not permitted in relation to food that contains more than 1.15% ABV, including alcoholic beverages.

5.2 Summary

Based on FSANZ's assessment above, FSANZ has prepared a draft variation to:

- clarify the existing permission to make carbohydrate content claims on food that contains more than 1.15% ABV by including an express permission to make nutrition content claims about sugar and sugars;
- prohibit nutrition content claims about specifically named/specific types of sugars e.g. fructose; and
- prohibit nutrition content claims about other components of carbohydrate e.g. fibre.

5.3 Risk communication

5.3.1 Consultation

Consultation is a key part of FSANZ's standards development process.

FSANZ has developed a communication strategy for this proposal. Subscribers and interested parties have been notified about this call for submissions via the FSANZ Notification Circular, media release and through FSANZ's social media channels and Food Standards News.

FSANZ undertook targeted consultation with key stakeholders from the alcohol industry, public health and consumer groups and jurisdictions in July 2022, to seek views on preliminary options for this proposal (see Section 4). FSANZ has considered the views and information provided by these targeted stakeholders in its assessment.

FSANZ acknowledges the time taken by individuals and organisations to make submissions on this proposal. All comments are valued and contribute to the rigour of our assessment. Comments received will be taken into account when developing any draft variation for approval by the FSANZ Board. A summary of views will be provided to the Board to assist its decision making process.

If a draft variation to the Code is approved by the FSANZ Board, that decision will be notified to the FMM. If the ministers do not request a review, the variation to the Code would be gazetted soon after. Gazetting of the variation to the Code would be publicly notified in the national press and on the FSANZ website.

5.3.2 World Trade Organization (WTO)

As members of the World Trade Organization (WTO), Australia and New Zealand are obliged to notify WTO members where proposed mandatory regulatory measures are inconsistent with any existing or imminent international standards and the proposed measure may have a significant effect on trade.

There are no relevant international standards. Amending the Code to clarify the permissions for making voluntary nutrition content claims in relation to carbohydrate and sugar content on food that contains more than 1.15% ABV is unlikely to have a significant effect on international trade. Therefore, a notification to the WTO under Australia's and New Zealand's obligations under the WTO Technical Barriers to Trade Agreement was considered unnecessary.

5.4 Act assessment requirements

When assessing this proposal and the subsequent development of a food regulatory measure, FSANZ has had regard to the following matters in section 59 of the FSANZ Act:

5.4.1 Section 59

5.4.1.1 Consideration of costs and benefits

The FSANZ Act requires FSANZ to have regard to whether costs that would arise from the proposed measure outweigh the direct and indirect benefits to the community, Government or industry that would arise from the proposed measure (paragraph 59(2)(a) of the Act).

The Office of Impact Analysis (OIA)²³ has exempted FSANZ from the need to prepare a formal Consultation Regulation Impact Statement (CRIS) in relation to the regulatory change proposed (reference number OBPR22-02136, letter dated 13 March 2023). The OIA was satisfied that FSANZ has demonstrated extensive and ongoing consultation with effected stakeholders has occurred and a statutory consultation process will be undertaken.

Although a formal CRIS is not required, FSANZ has given consideration to the costs and benefits that may arise from the proposed measure. A detailed account is provided in Attachment D. It provides a consideration which satisfies the requirements of section 59 of the FSANZ Act and the Regulatory Impact Analysis Guide for Ministers' and National Standard Setting Bodies (the Regulatory Impact Guide) (OBPR, 2021).

FSANZ has considered options for addressing:

- the lack of clarity in the Code about whether nutrition content claims about sugar on alcoholic beverages are permitted by Standard 1.2.7; and
- concerns raised by the FMM that % sugar free claims on alcoholic beverages are misleading, and that alcohol is being promoted as a healthier choice for consumers when public health advice is to limit alcohol intake.

²³ Formerly The Office of Best Practice Regulation (OBPR)

Options

The following information is a summary of the key conclusions set-out in Attachment D for the three current options being considered.

Option 1 - maintain the status quo

In any consideration of changes to regulation, the status quo must be a part of FSANZ's assessment.

Option 2 – clarify the existing permission to make nutrition content claims about carbohydrate by including an express permission in the Code to make nutrition content claims about sugar²⁴ on food that contains more than 1.15% ABV

Under this option the Code would be amended to include an express permission for nutrition content claims about sugar on food that contains more than 1.15% ABV, including alcoholic beverages. Nutrition content claims about carbohydrate would continue to be permitted. The existing conditions for making carbohydrate and sugar content claims would apply.

Option 3 – Remove the permission in the Code to make nutrition content claims about carbohydrate on food that contains more than 1.15% ABV

Under this option the Code would be amended to remove the existing permission for making nutrition content claims about carbohydrate on food that contains more than 1.15% ABV, including alcoholic beverages. This would also clarify that nutrition content claims about sugar on food that contains more than 1.15% ABV, including alcoholic beverages are not permitted. Option 3 would require a transition period after gazettal to allow sufficient time for producers to make relevant changes to labels and advertising.

Consideration of costs and benefits of each option

FSANZ has considered the net benefits of each option. Net benefits means benefits minus costs. That involves FSANZ having regard to whether costs that would arise from the proposed measure outweigh the direct and indirect benefits to the community, Government or industry that would arise from the proposed measure (paragraph 59(2)(a) of the FSANZ Act).

The net benefit of the status quo option (option 1) by definition is zero as no amendments to the Code would be made. The status quo is the option against which the costs and benefits of all other options are considered.

Net benefits of option 2

Compared to the status quo, this option is expected to bring the following benefits:

- clarity and certainty for industry and government in the implementation and enforcement of the limited nutrition content claims that are permitted to be voluntarily made on alcoholic beverages under the Code.
- allow for the provision of information about sugar content for consumers who choose to consume alcoholic beverages to enable them to make informed choices consistent with dietary guideline recommendations about sugar.
- would not have any associated costs for industry.

Following our consideration of the benefits outlined above, FSANZ's current view is that option 2 has net benefits over option 1, the status quo.

²⁴ This includes both 'sugars' and 'sugar' as defined in Standard 1.1.2.

Net benefits of Option 3

Compared to the status quo, option 3 would provide clarity and certainty for enforcement agencies about the nutrition content claims that may and may not be made on food that contains more than 1.15% ABV, including alcoholic beverages under the Code. This clarity may also benefit some in the alcohol industry.

Costs to industry would include costs of re-branding, advertising and defending market shares of alcoholic beverages, as well as the costs of changing labels (see Attachment D for further details).

For consumers who choose to drink alcoholic beverages, nutrition content claims about carbohydrate and sugar can serve as a source of information enabling consumers to make informed choices. Therefore, prohibiting claims and removing this information under option 3 may limit consumers' ability to make informed choices in some circumstances.

FSANZ's current view is that option 3 has negative net benefits over option 1, the status quo.

Conclusions from consideration of costs and benefits

For reasons set out in Attachment D, FSANZ currently concludes that option 2 represents the greatest net benefit to the community, government and industry. However, information received through this consultation process may result in FSANZ arriving at a different conclusion.

Questions for submitters (refer to Attachment D when considering these questions)

1. Do you have or are you aware of any evidence to suggest that nutrition content claims about carbohydrate and/or sugar on alcoholic beverages affect consumers':
 - (a) level of consumption of alcoholic beverages?
 - (b) level of physical activity?
 - (c) general food intake?
2. Are you aware of any studies that sufficiently examine the effects of nutrition content claims about carbohydrate and/or sugar on choice between different types of alcoholic beverages?
3. Do you agree with the estimates for the average cost of labelling change for option 3 for affected Stock Keeping Units (SKUs) in Attachment D? Please provide evidence to support your position.
4. Do you have any data on amounts or proportions of SKUs that carry nutrition content claims about carbohydrate and/or sugar and that would be affected by option 3?
5. Do you agree with FSANZ's current overall consideration of costs and benefits?
6. Are there any other material costs and benefits that you believe should be taken into account in this analysis?

5.4.1.2 Other measures

There are no other measures (whether available to FSANZ or not) that would be more cost-effective than a food regulatory measure developed or varied as a result of the proposal.

5.4.1.3 Any relevant New Zealand standards

The relevant standards apply in both Australia and New Zealand. There are no relevant New Zealand only standards.

5.4.1.4 Any other relevant matters

Other relevant matters are considered below.

5.4.2 Subsection 18(1)

FSANZ has also considered the three objectives in subsection 18(1) of the FSANZ Act during the assessment.

5.4.2.1 Protection of public health and safety

Based on available evidence, FSANZ's assessment indicates that clarifying the requirements in the Code for making voluntary nutrition content claims about carbohydrate and sugar content on food that contains more than 1.15% ABV will not affect the protection of public health and safety of consumers who choose to consume alcoholic beverages.

5.4.2.2 The provision of adequate information relating to food to enable consumers to make informed choices

Clarifying requirements in the Code for making nutrition content claims about carbohydrate and sugar will provide information for those consumers who choose to consume alcoholic beverages and are seeking low and no added sugar alternatives, to enable them make informed choices.

5.4.2.3 The prevention of misleading or deceptive conduct

Clarifying requirements in the Code for making nutrition content claims about carbohydrate and sugar along with the existing labelling requirements for providing information about alcohol content and nutrition information on alcoholic beverages reduces the likelihood of consumers being misled.

5.4.3 Subsection 18(2) considerations

FSANZ has also had regard to:

- **the need for standards to be based on risk analysis using the best available scientific evidence**

FSANZ's assessment has used best available evidence, including a rapid systematic review on consumer value, perceptions and behaviours in response to carbohydrate and sugar claims on alcoholic beverages (see SD1).

- **the promotion of consistency between domestic and international food standards**

There is no relevant international food standard, i.e. Codex standard or guideline (see Section 2.6).

- **the desirability of an efficient and internationally competitive food industry**

Clarifying requirements in the Code around the permission to make voluntary nutrition content claims about carbohydrate and sugar content on food that contains more than 1.15% ABV would provide certainty for industry to be more efficient and competitive domestically in making nutrition content claims and when accessing some overseas markets where these claims are permitted e.g. USA and Canada.

- **the promotion of fair trading in food**

The proposed draft variation would provide clarity for implementation of the limited nutrition content claims that may be made on alcoholic beverages and a level playing field for the alcohol industry.

- **any written policy guidelines formulated by the Forum on Food Regulation**

The relevant policy guidelines, the *Policy Guideline on Nutrition, Health and Related Claims*, and the *Policy Guideline on Food Labelling to Support Consumers Make Informed Healthy Choices* have been considered as part of our assessment (see Section 2.3.1).

6 Draft variation

The draft variation to the Code is at Attachment A and, if approved, is intended to take effect on gazettal.

A draft explanatory statement is at Attachment B. An explanatory statement is required to accompany an instrument if it is lodged on the Federal Register of Legislation.

6.1 Transitional arrangements

Commencement on gazettal.

The draft variation does not expressly provide for specific transitional arrangements. However, if approved, section 1.1.1—9 (Effect of variations to Code) would apply.

7 References

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Attachments

- A. Draft variation to the Australia New Zealand Food Standards Code
- B. Draft Explanatory Statement
- C. List of participants from targeted consultations held in July 2022
- D. Consideration of costs and benefits

Attachment A – Draft variation to the Australia New Zealand Food Standards Code



Food Standards (Proposal P1049 – Carbohydrate and sugar claims on alcoholic beverages) Variation

The Board of Food Standards Australia New Zealand gives notice of the making of this variation under section 92 of the *Food Standards Australia New Zealand Act 1991*. The variation commences on the date specified in clause 3 of this variation.

Dated [To be completed by Delegate]

[Insert Delegate name and title]

Delegate of the Board of Food Standards Australia New Zealand

Note:

This variation will be published in the Commonwealth of Australia Gazette No. FSC **XX on XX Month 20XX**. This means that this date is the gazettal date for the purposes of clause 3 of the variation.

1 Name

This instrument is the *Food Standards (Proposal P1049 – Carbohydrate and sugar claims on alcoholic beverages) Variation*.

2 Variation to a standard in the *Australia New Zealand Food Standards Code*

The Schedule varies a Standard in the *Australia New Zealand Food Standards Code*.

3 Commencement

The variation commences on the date of gazettal.

Schedule

[1] Standard 1.2.7

[1.1] After Note 1 to section 1.2.7—2

Insert:

Note 1A In this Code (see section 1.1.2—3):

sugar means, unless otherwise expressly stated, any of the following:

- (a) white sugar;
- (b) caster sugar;
- (c) icing sugar;
- (d) loaf sugar;
- (e) coffee sugar;
- (f) raw sugar.

[1.2] Section 1.2.7—4

Repeal the section, substitute

1.2.7—4 Restrictions on nutrition content claims and health claims about certain foods

- (1) A nutrition content claim or *health claim must not be made about:
 - (a) kava; or
 - (b) an infant formula product; or
 - (c) a food that contains more than 1.15% alcohol by volume, other than a nutrition content claim about:
 - (i) salt or sodium content of a food that is not a beverage;
 - (ii) carbohydrate content;
 - (iii) energy content;
 - (iv) gluten content;
 - (v) sugar content; or
 - (vi) sugars content.

Note 1. The term **sugar** is defined in section 1.1.2—3. The term **sugars** is defined differently in section 1.1.2—2.

Note 2. Section 1.4.4—7 proscribes health claims and nutrition content claims in relation to cannabidiol in hemp food products.

- (2) A nutrition content claim about sugars content of a food that contains more than 1.15% alcohol by volume must not name or refer to any specific sugars.

Example A nutrition content claim that refers to fructose is not permitted.

- (3) A nutrition content claim about carbohydrate content of a food that contains more than 1.15% alcohol by volume must not name or refer to a component of carbohydrate other than sugar or sugars.

Attachment B

DRAFT EXPLANATORY STATEMENT

Food Standards Australia New Zealand Act 1991

Food Standards (Proposal P1049 – Carbohydrate and sugar claims on alcoholic beverages) Variation

1. Authority

Section 13 of the *Food Standards Australia New Zealand Act 1991* (the FSANZ Act) provides that the functions of Food Standards Australia New Zealand (the Authority) include the development of standards and variations of standards for inclusion in the *Australia New Zealand Food Standards Code* (the Code).

Division 2 of Part 3 of the FSANZ Act specifies that the Authority may prepare a proposal for the development or variation of food regulatory measures, including standards. This Division also stipulates the procedure for considering a proposal for the development or variation of food regulatory measures.

The Authority prepared Proposal P1049 to consider clarifying requirements in the Code in relation to making nutrition content claims about carbohydrate and sugar on alcoholic beverages²⁵. The Authority considered the Proposal in accordance with Division 2 of Part 3 and has prepared a draft variation - the *Food Standards (Proposal P1049 – Carbohydrate and sugar claims on alcoholic beverages) Variation*.

2. Variation will be a legislative instrument

If approved, the draft variation would be a legislative instrument for the purposes of the *Legislation Act 2003* (see section 94 of the FSANZ Act) and be publicly available on the Federal Register of Legislation (www.legislation.gov.au).

If approved, this instrument would not be subject to the disallowance or sunset provisions of the *Legislation Act 2003*. Subsections 44(1) and 54(1) of that Act provide that a legislative instrument is not disallowable or subject to sunset if the enabling legislation for the instrument (in this case, the FSANZ Act): (a) facilitates the establishment or operation of an intergovernmental scheme involving the Commonwealth and one or more States; and (b) authorises the instrument to be made for the purposes of the scheme. Regulation 11 of the *Legislation (Exemptions and other Matters) Regulation 2015* also exempts from sunset legislative instruments a primary purpose of which is to give effect to an international obligation of Australia.

The FSANZ Act gives effect to an intergovernmental agreement (the Food Regulation Agreement) and facilitates the establishment or operation of an intergovernmental scheme (national uniform food regulation). That Act also gives effect to Australia's obligations under an international agreement between Australia and New Zealand. For these purposes, the Act establishes the Authority to develop food standards for consideration and endorsement by the Food Ministers' Meeting (FMM). The FMM is established under the Food Regulation Agreement and the international agreement between Australia and New Zealand, and consists of New Zealand, Commonwealth and State/Territory members. If endorsed by the FMM, the food standards on gazettal and registration are incorporated into and become part

²⁵ alcoholic beverages containing more than 1.15% alcohol by volume (ABV).

of Commonwealth, State and Territory and New Zealand food laws. These standards or instruments are then administered, applied and enforced by these jurisdictions' regulators as part of those food laws.

3. Purpose

The Authority has prepared a draft variation to make the following amendments to Standard 1.2.7 of the Code in relation to nutrition content claims about food that contains more than 1.15% ABV:

1. specify that the prohibition on the making of nutrition content claims and health claims about such food in section 1.2.7—4 would not apply to nutrition content claims about the content of 'sugar' and 'sugars' in the food (among other things);
2. prohibit nutrition content claims about the sugars content of such food from naming or referring to any specific sugars e.g. fructose; and
3. prohibit nutrition content claims about the carbohydrate content of such food from naming or referring to any component of carbohydrate other than sugar or sugars.

4. Documents incorporated by reference

The variations to food regulatory measures do not incorporate any documents by reference.

5. Consultation

In accordance with the procedure in Division 2 of Part 3 of the FSANZ Act, the Authority's consideration of P1049 will include one round of public consultation following an assessment, targeted communication with key stakeholders, and the preparation of a draft variation and associated assessment summary.

The Office of Impact Analysis (OIA) has exempted FSANZ from the need to prepare a formal Consultation Regulation Impact Statement (CRIS) in relation to the regulatory change proposed (reference number OBPR22-02136). The OIA was satisfied that ongoing consultation has been undertaken over a prolonged period, and the options under consideration have been tested with relevant stakeholders and representative stakeholder views are known.

6. Statement of compatibility with human rights

If approved, this instrument would be exempt from the requirements for a statement of compatibility with human rights as it would be a non-disallowable instrument under section 44 of the *Legislation Act 2003*.

7. Variation

Clause 1 of the draft variation provides that the name of the variation is the *Food Standards (Proposal P1049 – Carbohydrate and sugar claims on alcoholic beverages) Variation*.

Clause 2 of the draft variation provides that the Code is amended by the Schedule to the variation.

Clause 3 of the draft variation provides that the variation will commence on the date of gazettal of the instrument.

Subitem [1.1] of the Schedule to the draft variation would amend Standard 1.2.7 by inserting after Note 1 to section 1.2.7—2 a new Note 1A. Section 1.2.7—2 sets out the definitions of 'fruit' and 'vegetable' for the purposes of Standards 1.2.7 and 1.2.8. The Notes in section

1.2.7—2 set out copies of relevant definitions provided in Standard 1.1.2, which apply throughout the Code; and list other terms that are defined within Standard 1.2.7 itself. New Note 1A sets out a copy of the definition of ‘sugar’ in section 1.1.2—3 that applies throughout the Code.

Subitem [1.2] of the Schedule to the draft variation would amend Standard 1.2.7 by repealing existing section 1.2.7—4, and substituting it with a new section 1.2.7—4.

Existing section 1.2.7—4 is about nutrition content claims and health claims which must not be made about certain food and is entitled ‘Nutrition content claims or health claims not to be made about certain foods’.

‘Nutrition content claim’ and ‘health claim’ are defined in section 1.1.2—2.

New section 1.2.7—4 is entitled ‘Restrictions on nutrition content claims and health claims about certain foods’ and contains three subsections.

New subsection 1.2.7—4(1) contains three paragraphs.

Paragraphs 1.2.7—4(1)(a) and (b) provide that a nutrition content claim or health claim must not be made about kava nor an infant formula product. These prohibitions are the same as that set out in existing paragraphs 1.2.7—4(a) and (b).

New paragraph 1.2.7—4(1)(c) provides that a nutrition content claim or health claim must not be made about a food that contains more than 1.15% ABV, other than a nutrition content claim about:

- (i) salt or sodium content of a food that is not a beverage;
- (ii) carbohydrate content;
- (iii) energy content;
- (iv) gluten content;
- (v) sugar content; or
- (vi) sugars content.

That is, the new paragraph 1.2.7—4 (1)(c) retains the current exclusions to the prohibition on nutrition content claims about food that contains more than 1.15% ABV for: salt or sodium content of a food that is not a beverage, carbohydrate content, energy content and gluten content. The new paragraph then adds two new exclusions to the prohibition on nutrition content claims about food that contains more than 1.15% ABV for sugar content (subparagraph 1.2.7—4 (1)(c)(v)) and sugars content (subparagraph 1.2.7—4 (1)(c)(vi)).

The new paragraph 1.2.7—4 (1)(c) also contains two notes – Notes 1 and 2. Note 1 states: ‘**Note 1.** The term *sugar* is defined in section 1.1.2—3. The term *sugars* is defined differently in section 1.1.2—2.’

Note 2 is identical to the existing note to paragraph 1.2.7—4 (c). It states: ‘**Note 2** Section 1.4.4—7 proscribes health claims and nutrition content claims in relation to cannabidiol in hemp food products.’

New subsection 1.2.7—4(2) provides that a nutrition content claim about *sugars* content of a food that contains more than 1.15% ABV must not name or refer to any specific *sugars*. The following example of this prohibition is provided under this subsection for clarity - a nutrition content claim that refers to fructose is not permitted.

New subsection 1.2.7—4(3) provides that a nutrition content claim about carbohydrate content of a food that contains more than 1.15% ABV must not name or refer to a component

of carbohydrate other than sugar or sugars.

Attachment C – List of participants from targeted consultations held in July 2022

Australia	New Zealand
ACT Health	Alcohol Healthwatch
Alcohol and Drug Foundation (ADF)	Brewers Association of New Zealand
Australian Brewers Association	Brewers Guild of New Zealand
Australian Chronic Disease Prevention Alliance and Cancer Council	Consumer New Zealand
Australian Distillers Association	Countdown
Australian Government Department of Health	Dietitians New Zealand
Australian Grape and Wine	Distilled Spirits Aotearoa New Zealand Inc
Campari Australia Pty Ltd	Foodstuffs New Zealand
Cancer Council New South Wales	Health Promotion Agency
Cancer Council Victoria	Lion New Zealand
Cancer Council Western Australia	New Zealand Alcohol Beverages Council
Cider Australia	New Zealand Winegrowers
Coca-Cola Europacific Partners Australia	New Zealand Alcohol Beverages Council
Coles Group Limited	New Zealand Ministry of Health
Consumers' Federation of Australia (CFA)	New Zealand Ministry of Primary Industries
Department of Agriculture, Fisheries and Forestry	Spirits New Zealand
Department of Health and Human Services Tasmania	
Department of Health and Human Services Victoria	
Diageo Australia	
Endeavour Group	
Foundation for Alcohol Research and Education	
Independent Brewers Association Australia	
Lion Australia	
National Alliance for Action on Alcohol (NAAA)	
New South Wales Food Authority	

New South Wales Ministry of Health	
Obesity Policy Coalition at Cancer Council Victoria	
Public Health Association of Australia	
Queensland Health	
South Australia Health	
Spirits and Cocktails Australia	
Tasmanian Government Department of Health	
The George Institute	
The Heart Foundation	
Victorian Health	
Western Australian Health	
Wine Australia	

Attachment D – Consideration of costs and benefits

1. Introduction

The purpose of Proposal *P1049 – Carbohydrate and sugar claims on alcoholic beverages* is to consider clarifying requirements in Standard 1.2.7 of the Australia New Zealand Food Standards Code (the Code) in regard to making nutrition content claims about carbohydrate content which includes the components of carbohydrate (such as sugar) on alcoholic beverages²⁶.

FSANZ has given consideration to the costs and benefits that may arise in relation to this proposal. This attachment to the statutory Call for Submissions (CFS) provides a consideration of those costs and benefits to satisfy the requirements of section 59 of the *Food Standards Australia New Zealand Act 1991* (FSANZ Act) and the Regulatory Impact Analysis Guide for Ministers' Meetings and National Standard Setting Bodies (the Regulatory Impact Guide) (OBPR, 2021). It is not attempting to replicate the content of a Consultation Regulatory Impact Statement (CRIS). Much of the content and the detail typically contained in a CRIS is contained in the CFS. This attachment adopts the general structure of a CRIS, but instead of restating the content of the CFS, it refers the reader to information within the CFS where relevant.

The Office of Impact Analysis (OIA)²⁷ has exempted FSANZ from the need to prepare a formal CRIS in relation to the regulatory change in this proposal (reference number OBPR22-02136, letter dated 13 March 2023). The OIA was satisfied that FSANZ has demonstrated extensive and ongoing consultation with effected stakeholders has occurred and that a statutory consultation process will be undertaken. The CFS and its attachments is that statutory consultation process, including this consideration of costs and benefits.

2. What is the problem?

Standard 1.2.7 – Nutrition, health and related claims prohibits nutrition content and health claims to be made about food that contains more than 1.15% alcohol by volume (ABV), including alcoholic beverages, other than nutrition content claims about carbohydrate, energy or gluten content.

As sugar is a component of carbohydrate, the permission to make claims about carbohydrate content on food that contains more than 1.15% ABV has been interpreted as a permission to also make claims about sugar content. Consequently, nutrition content claims about both carbohydrate and sugar are being made in relation to alcoholic beverages for sale in Australia and New Zealand.

Food enforcement agencies in Australia and New Zealand have reported the Code is unclear whether nutrition content claims about sugar on alcoholic beverages are permitted by Standard 1.2.7.

In 2017 the Australia and New Zealand Ministerial Forum on Food Regulation (now the Food Ministers' Meeting (FMM)) raised concerns about sugar claims on alcoholic beverages, specifically that % sugar free claims are misleading and that alcohol is being promoted as a healthier choice for consumers when public health advice is to limit alcohol intake. The FMM asked FSANZ to review the matter.

Please see Sections 1 and 2 of the CFS for a full statement of the problem, relevant

²⁶ For the purpose of this attachment 'alcoholic beverages' means alcoholic beverages containing more than 1.15% alcohol by volume (ABV).

²⁷ Formerly The Office of Best Practice Regulation (OBPR)

background and history of the development of Standard 1.2.7.

The available evidence on consumer value, perceptions and behaviours in response to nutrition content claims about carbohydrate and sugar content in alcoholic beverages is described in Supporting Document 1 (SD1) and summarised in Section 3.4 of the CFS. Key findings include:

- there is currently no clear evidence to suggest that sugar and carbohydrate claims affect consumers' level of consumption of alcoholic beverages;
- there is limited evidence that carbohydrate or sugar claims affect the extent that consumers modify their food intake or physical activity in order to compensate for the energy from alcoholic beverages. Although some evidence suggests that sugar claims may influence young female adults' intentions about physical activity and food intake, this was only examined in the absence of energy content information;
- consumers generally value sugar claims (and sugar information more broadly) on alcoholic beverages and may also value carbohydrate claims.

3. Why is Government Action Needed?

The Standards in the Code are legislative instruments under section 92 of the FSANZ Act. Therefore any lack of clarity in Standard 1.2.7 of the Code with respect to the requirements for making nutrition content claims about carbohydrate and sugar content on alcoholic beverages is a regulatory problem that would be most effectively addressed by regulatory change. Regulatory change requires government action.

Guidance for industry and/or enforcement agencies about how to interpret the permission for carbohydrate claims in relation to alcoholic beverages would not by itself address the lack of clarity in Standard 1.2.7. Without regulatory change, there is some ongoing chance of differing legal opinions and interpretations of the Code.

Consumer education might help mitigate concerns raised by the FMM about sugar claims on alcoholic beverages, specifically that % sugar free claims are misleading for consumers. However, consumer education would not address the lack of regulatory clarity in Standard 1.2.7 about whether nutrition content claims about sugar on alcoholic beverages are prohibited.

4. What options have been considered?

In July 2022, FSANZ undertook targeted consultation with key stakeholders to seek views on five preliminary options for clarifying requirements in the Code with respect to nutrition content claims about carbohydrate and sugar content on alcoholic beverages (see Section 4 of the CFS). Except for the status quo (option 1), all options would require an amendment to the Code.

Option 1 - Status quo

Option 2 – Maintain the permission for carbohydrate content claims and explicitly permit sugar content claims on alcoholic beverages

Option 3 – Permit only comparative carbohydrate and sugar content claims on alcoholic beverages

Option 4 – Permit only comparative carbohydrate and sugar content claims on alcoholic beverages which meet the condition for a reduced energy claim

Option 5 – Remove the permission to make carbohydrate content claims on alcoholic beverages.

Stakeholders had mixed views on the options. Industry stakeholders generally supported option 2, whereas public health and consumer stakeholders and most jurisdictions supported option 5 (see Section 4 of the CFS).

After further assessment, FSANZ considered options 3 and 4 were not well supported by the available evidence, would not adequately address the problem in clarifying requirements in the Code and posed technical difficulties for implementation and enforcement.

5. What are the current options for addressing the problems?

This consideration of the costs and benefits considers three options to address the problem.

Option 1 - maintain the status quo

In any consideration of changes to regulation, the status quo must be a part of FSANZ's assessment.

Option 2 – clarify the existing permission to make nutrition content claims about carbohydrate by including an express permission in the Code to make nutrition content claims about sugar²⁸ on food that contains more than 1.15% ABV

Under this option the Code would be amended to include an express permission for nutrition content claims about sugar on food that contains more than 1.15% ABV, including alcoholic beverages. Nutrition content claims about carbohydrate would continue to be permitted. The existing conditions for making carbohydrate and sugar content claims would apply (see Section 2.1 of CFS).

Option 3 – Remove the permission in the Code to make nutrition content claims about carbohydrate on food that contains more than 1.15% ABV

Under this option the Code would be amended to remove the existing permission for making nutrition content claims about carbohydrate on food that contains more than 1.15% ABV, including alcoholic beverages. This would also clarify that nutrition content claims about sugar on food that contains more than 1.15% ABV, including alcoholic beverages are not permitted.

Option 3 would require a transition period after gazettal to allow sufficient time for producers to make relevant changes to labels and advertising.

6. What is the likely net benefit of each current option?

FSANZ has considered the net benefits of each option. Net benefits means benefits minus costs. That involves FSANZ having regard to whether costs that would arise from the proposed measure outweigh the direct and indirect benefits to the community, Government or industry that would arise from the proposed measure (paragraph 59(2)(a) of the FSANZ Act).

The net benefit of the status quo option (option 1) by definition is zero as no amendments to the Code would be made. That would mean keeping the current regulatory situation, i.e. the current standard as set out in section 2.1 of the CFS. The status quo is the option against which all other options' costs and benefits are considered.

Net benefits of option 2 - clarify the existing permission to make nutrition content claims about carbohydrate by including an express permission in the Code to make nutrition content claims about sugar on food that contains more than 1.15% ABV

²⁸ This includes both 'sugars' and 'sugar' as defined in Standard 1.1.2.

Compared to the status quo, this option is expected to bring the following benefits:

- clarity and certainty for industry and government in the implementation and enforcement of the limited nutrition content claims that are permitted to be voluntarily made on alcoholic beverages under the Code
- allow for the provision of information about sugar content for consumers who choose to consume alcoholic beverages to enable them to make informed choices consistent with dietary guideline recommendations about sugar. Available evidence indicates that consumers want and value information related to the sugar content of alcoholic beverages (see SD1).

A number of alcoholic beverages already carry claims about sugar content (see Section 3.3 of the CFS).

The available consumer evidence does not suggest that nutrition content claims about carbohydrate or sugar content in food that contains more than 1.15% ABV affect consumers' level of consumption of alcoholic beverages (see SD1), and thereby affect the protection of public health and safety.

Additionally, an amendment to the Code to include an express permission for nutrition content claims about sugar on food that contains more than 1.15% ABV, including alcoholic beverages would not have any associated costs for industry.

Following our consideration of the benefits outlined above, FSANZ's current view is that option 2 has net benefits over option 1, the status quo.

Net benefits of option 3 – Remove the permission in the Code to make nutrition content claims about carbohydrate on food that contains more than 1.15% ABV

Compared to the status quo, this option would provide clarity and certainty for enforcement agencies about the nutrition content claims that may and may not be made on food that contains more than 1.15% ABV, including alcoholic beverages under the Code. This clarity may also benefit some in the alcohol industry, but FSANZ currently expects that the costs outlined below would outweigh such benefits. FSANZ's current view, therefore, is that option 3 has negative net benefits over option 1, the status quo.

There is currently no clear evidence to suggest that nutrition content claims about carbohydrate and sugar affect consumers' level of consumption of alcoholic beverages, and thereby affect the protection of public health and safety. It is also unclear whether or not carbohydrate or sugar claims affect choice between different types of alcoholic beverages (see SD1).

For consumers who choose to drink alcoholic beverages, nutrition content claims about carbohydrate and sugar content can serve as a source of information enabling consumers to make informed choices. Therefore, prohibiting claims and removing this information may limit consumers' ability to make informed choices in some circumstances.

The costs of option 3 compared to the status quo are outlined below.

There would be costs of relabelling some alcoholic beverages to remove nutrition content claims about carbohydrate and sugar content. In 2021, FSANZ updated its model of the costs of changing labels on packaged alcoholic beverages containing 1.15% or more ABV. FSANZ contracted the consultant Marsden-Jacob to undertake the surveys and modelling involved in those updates (Marsden-Jacob Consultants, 2021). FSANZ has used the Australian Producer Price Index (PPI) to update label change costs to the latest period

available for this PPI, March 2023. These cost estimates are not final and may change, including taking account of any evidence-based feedback from stakeholders.

Table 1 (below) estimates average costs of relabelling affected Stock Keeping Units (SKUs) under option 3. A SKU covers all containers with the same unique package type, shape, size, brand, contents, and vintage. For instance: all 750 mL bottles of the same red merlot wine with the same label, produced by the same company with the same brand in the same year (different SKU to a merlot wine produced by the same company in the same year but of a different size at 375mL); and all 330 mL cans of the same lager, of the same shape, produced by the same company with the same label.

It should be noted that actual relabelling costs can greatly vary according to individual circumstances. Relabelling certain SKUs may cost notably less or notably more than these averages.

Table 1: Estimated average label change costs of option 3 per affected SKU in Australian dollars in March 2023 prices

Sub-component	Bottle	Can	Cask
Administration activities	85	305	996
Label redesign	876	10,311	108
Develop proof and film/files, engrave plates/cylinders and colour match	4,819	5,296	184
Review label sample	317	305	108
Total Costs	6,097	16,217	1,397

Affected SKUs that would incur label change costs under option 3 are those SKUs that currently have carbohydrate and/or sugar claims. A transition period of 2-3 years is assumed for the cost figures above. That is, businesses would have 2-3 years from the date of gazettal to remove all nutrition content claims about carbohydrate and/or sugar from alcoholic beverages.

Under option 3, FSANZ expects less tangible costs to businesses e.g. costs of re-branding, advertising and defending market shares of alcoholic beverages to often be greater than label change costs. For certain beverages, businesses have invested large amounts of money in product and brand development, such as for a low-carb beer or a low-sugar cider.

New Zealand exporters of alcoholic beverages²⁹ could be disadvantaged in overseas markets by option 3 because under certain New Zealand legislation³⁰, New Zealand exports have to conform to domestic labelling standards, unless an exemption is given. Therefore, in certain overseas markets, an exported alcoholic beverage from New Zealand may not be permitted to display the same carbohydrate or sugar claim as a competing export or home-manufactured product from another country. That is unless New Zealand exporting businesses succeed in devoting time and expenses to obtaining exemptions. This requirement to conform to domestic standards does not apply to exports from Australia and FSANZ is not aware of any Australian legislation that requires Australian exports to conform to domestic labelling standards.

²⁹ For destinations other than Australia.

³⁰ [New Zealand legislation: Imports and Exports \(Restrictions\) Act 1988](#) and amendments; plus [Wine Act 2003](#).

Implementing option 3 would also remove information that:

- consumers generally value. There is evidence that consumers generally value sugar claims on alcoholic beverages. Consumers may also value carbohydrate claims on alcoholic beverages (see SD1); and
- may be particularly useful for consumers of alcoholic beverages that are typically higher in sugar, such as ready-to-drink mixed beverages (RTD's) or ciders. For consumers who choose to drink alcoholic beverages and are seeking low and no added sugar alternatives, nutrition content claims about sugar content in those beverages can serve as a source of information, enabling consumers to make informed choices consistent with the dietary guideline recommendations about sugar.

As stated above, FSANZ's current view is that option 3 has negative net benefits over the status quo.

7. Who was consulted and how was their feedback incorporated?

Targeted consultation has been undertaken as part of this process. Please see Section 4 of the CFS for full details.

8. Which option has the highest net benefit from those considered?

Based on the consideration of costs and benefits, option 2 would likely have the highest net benefit compared to the status quo option 2 would:

- provide clarity and certainty for industry and government in the implementation and enforcement of the limited voluntary nutrition content claims permitted to be made about alcoholic beverages, without requiring a transition period that option 3 would require
- provide information about sugar content for consumers who choose to consume alcoholic beverages to enable them to make informed choices consistent with dietary guideline recommendations about sugar.
- allow for information about carbohydrate and/or sugar content about alcoholic beverages to be retained that is of value for some consumers who choose to drink alcohol.
- facilitate industry to innovate and provide consumers with information they value through claims.

Option 2 would not have the same potentially high costs as option 3, and would not incur any costs to businesses of changing labels, re-branding, advertising, or defending market shares of alcoholic beverages.

9. How would a chosen option be implemented and evaluated?

Standards in the Code are enforced by the state and territory governments in Australia and by the Ministry for Primary Industries in New Zealand. Therefore, implementation and enforcement of the Code as amended, would be their responsibility. Those agencies and bodies are also typically responsible for initiating any review or evaluation of the Code through the FMM.

Questions for submitters

1. Do you have or are you aware of any evidence to suggest that nutrition content claims about carbohydrate and/or sugar on alcoholic beverages affect consumers':
 - (a) level of consumption of alcoholic beverages?
 - (b) level of physical activity?
 - (c) general food intake?
2. Are you aware of any studies that sufficiently examine the effects of nutrition content claims about carbohydrate and/or sugar on choice between different types of alcoholic beverages?
3. Do you agree with the estimates for the average cost of labelling change for option 3 for affected Stock Keeping Units (SKUs) in Attachment D? Please provide evidence to support your position.
4. Do you have any data on amounts or proportions of SKUs that carry nutrition content claims about carbohydrate and/or sugar and that would be affected by option 3?
5. Do you agree with FSANZ's current overall consideration of costs and benefits?
6. Are there any other material costs and benefits that you believe should be taken into account in this analysis?

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