

ADVERTISING & CLAIMS REGULATIONS, 2018 : ISSUES ARISING

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TWO RELEVANT DATES

- Coming into force : 19th November, 2018
- Compliance by FBOs : 1st July, 2019



NEW CONCEPTS

“balanced diet” means a diet containing all essential (macro and micro) nutrients in optimum quantities and in appropriate proportions that meet the requirements;

MEANING ???⁴

- **Essential** = ???
- **Optimum** = ???
- **Appropriate** = ???
- **Requirements** = ???



Where is the science in these terms ??? See Section 18(1) & (2) of the Act

DIETARY FIBER

“dietary fiber” means carbohydrate polymers with a degree of polymerisation (DP) not lower than three, which are not hydrolysed by the endogenous enzymes in the small intestine of humans and the same consists of one or more of-

- (i) edible carbohydrate polymers naturally occurring in the food as consumed;
- (ii) carbohydrate polymers, which have been obtained from food raw material by physical, enzymatic or chemical means;
- (iii) synthetic carbohydrate polymers;



OTHER DEFINITIONS⁶

- Health Claim : includes (i) nutrient function claim, (ii) other function claim, and (iii) reduction of disease risk claim
- Nutrient defined
- Sugars defined
- RDA definition modified : 97 to 98%, healthy, life stage, gender brought in

GENERAL PRINCIPLES

- 14 principles against 9 earlier
- truthful, unambiguous, meaningful, not misleading and help consumers to comprehend the information provided... 4 specific points explained
- Disclaimer – 3 mm size in case of natural, fresh, pure, original,

PROHIBITED CLAIMS : NEW POINT

10. (6) No health claims shall be made for foods that contain nutrients or constituents in quantity that increase the risk of disease or an adverse health-related condition.

“HEALTHY DIETS” : OLD TEXT – REG 3.5

Claims related to Dietary Guidelines or Healthy Diets.-

(1) Claims may be made related to a “healthy diet” or any synonymous term referring to the pattern of eating as per ICMR dietary guidelines for Indians and the label shall carry a statement relating the food to the pattern of eating described thereof.

(2) Foods, which are described as part of a healthy diet, balanced diet, shall not be based on selective consideration of one or more aspects of the food. They shall also satisfy the criteria for other major nutrients related to the dietary guidelines, based on scientific evidence.

(3) Foods shall not be described as “healthy” or be represented in a manner that implies that a food in and of itself will impart health.

HEALTHY DIETS : NEW TEXT – REG 8 ¹⁰

(1) claims may be made related to a “healthy diet” or any synonymous term referring to the pattern of eating as per current Indian Council of Medical Research Dietary Guidelines for Indians and the label shall carry a statement relating the food to the pattern of eating described thereof.

(2) Foods, which are described as part of a healthy diet, balanced diet shall not be based on selective consideration of one or more aspects of the food and **shall also** satisfy the criteria for other **major nutrients** related to the current Indian Council of Medical Research Nutrient Requirements and Recommended Dietary Allowances for Indians and Indian Council of Medical Research Dietary Guidelines for Indians, **based on scientific evidence.**

(3) Foods shall not be described as “healthy” or be represented in a manner that implies that a food in and of itself will impart health.

(4) **Flexibility in the wordings is acceptable, if the claims remain faithful to the pattern of eating outlined in the current Indian Council of Medical Research Nutrient Requirements and Recommended Dietary Allowances for Indians and Indian Council of Medical Research Dietary Guidelines for Indians.**

SCHEDULES AMENDED¹¹

- Probiotics added in Schedule I (nutrition claims)
- Dietary insignificant source of deleted from Schedule II
- Schedule III : renamed to “Health Claims” (earlier “Health Claims : Reduction of Disease Risk”)
- Schedule III : and risk of coronary heart disease (CHD) added in row 3
- Schedule III : Alpha – linolenic acid (ALA) and lipid Profile changed to Alpha – linolenic acid (ALA) and blood cholesterol level
- Schedule V : Fresh liberalized with reference to frozen
- Schedule V : Premium, Finest, Best have been deleted

APPROVAL OF CLAIMS : FOR WHAT ?

- Earlier, for **nutrition and health claims /claims** other than those that are defined and for which criteria are laid out under these regulations or any other regulations made under FSS Act.
- Now : for **reduction of disease risk claims** other than those that are defined and for which criteria are laid out under these regulations or any other regulations made under the Food Safety and Standards Act, 2006 (34 of 2006)

PROCEDURE FOR APPROVAL – REG 12

- (1) Application with **unrefundable fees prescribed** (not yet prescribed) :
- (i) Claim to be made;
 - (ii) Name of ingredient, nutrient or substance on the basis of which the claim is to be made;
 - (iii) Validated Method of analysis of ingredient or substance for which the claim is to be made;
 - (vi) Scientific information or materials substantiating the claim;
 - (v) How is the claim clear and meaningful and help consumers to comprehend the information provided;
 - (vi) **Well-designed human intervention studies** in case of **health claims** conducted by or under guidance of **established** research institutions; and
 - (vii) Any other useful information.

PANEL OF FSSAI AND SCRUTINY

(2) The food authority itself or may appoint an agency or panel (what composition/qualifications?) to carry out preliminary scrutiny of the application submitted by food business operators or marketers for approval of their claims

(3) Scrutiny to be done within 90 days of receipt of application. (NEW)

(3) Applicant to provide information within 30 days of requisition, else rejection.

Will rejection happen if information is timely but not sufficient ?

How sufficient is sufficient ?

No transparency on the above

SPEAKING ORDER BY FSSAI

15

(5) After scrutiny, the Food Authority may pass a speaking order either for approval or rejection of concerned claims and may also suggest an amendment for the concerned claim. ... (30 days time limit for FBO)

- But by what timeline approval / rejection/amendment ?
- And what criteria for approval or rejection ?, and What science ?
- No opportunity to the applicant-FBO to show cause against rejection /amendment ?

NON-COMPLIANCE WITH THE A & C REGS

Regulation 13 says : Sec 53 of the Act applies :

53. Penalty for misleading advertisement.

(1) Any person who publishes, or is a party to the publication of an advertisement, which—

(a) falsely describes any food; or

(b) is likely to mislead as to the nature or substance or quality of any food or gives false guarantee, shall be liable to a penalty which may extend to ten lakh rupees.

(2) In any proceeding the fact that a label or advertisement relating to any article of food in respect of which the contravention is alleged to have been committed contained an accurate statement of the composition of the food shall not preclude the court from finding that the contravention was committed.

PROCEDURE FOR REDRESSAL OF NON-COMPLIANCE : REG 14

17

(1) Two ways : referral to FSSAI or suo moto action by FSSAI.

(1) FSSAI may appoint an agency or panel (**what composition or qualifications?**) to analyse misleading claims (what is **misleading**???)

(3) FBO to submit information to FSSAI in 30 days

(4) After scrutiny of submissions, FSSAI to pass a **speaking order** within 90 days for **acceptance** or **rejection** of the misleading claim

(5) FSSAI can also **suggest** improvement and improved claim **shall** be intimated by FBO to FSSAI in 45 days.

CORRECTIVE ADVERTISEMENT

Reg 15 :

If an advertisement is **found to be in violation** of the provisions of these regulations, the Food Authority may, by order, require the concerned food business operator or advertiser to stop it immediately and to issue corrective advertisement within thirty days through the same medium for neutralising the effect of such advertisement.

- Found by **whom** ? What procedure ? No transparency.
- On what **scientific basis** ? Not provided for.
- No opportunity for the FBO to be heard ?
- Who will decide the nature and text of the correction ?

Q&A

Questions are welcome

THANK YOU !