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Food Standards Australia New Zealand
PO Box 5423
KINGSTON
ACT 2604

13th of February 2023

To whom this may concern,

Re: Proposal P1056 – Caffeine Review

We are grateful for the opportunity to comment on the proposed changes relating to the inclusion of caffeine in the Formulated Supplementary Sports Food regulation.

Founded in 2004 in the UK, Myprotein is now Europe's No. 1 sports nutrition company. In Australia, we are a leading sports nutrition brand, delivering a range of quality products including protein powders, vitamins and minerals, high-protein foods and snack alternatives.

The need for a level playing field is indeed overdue in relation sports foods in Australia and as a highly accomplished European company growing in the Australian market, navigating the current regulatory uncertainty surrounding sports products, we welcome the review on caffeine and the formulated supplementary sports food regulation. We are extremely keen to be actively involved in constructively shaping the regulatory landscape of sports foods and supplements, to ensure the regulatory reforms are appropriate and proportionate.

While we support a hybrid mix of regulatory and non-regulatory approaches, to provide regulatory clarity and consumer safety, we do not support the full list of proposed regulatory measures, as are currently detailed in proposal P1056. In addition, there are inconsistencies in the approach to caffeine labelling across the varying food categories, which does not reflect a level playing field for manufacturers, nor does it present consistent information to consumers, so they can make informed decisions regarding caffeine intake.

3.2.1.8.2 Declaration of amount of caffeine and one-day quantity

We support a move to declare the amount of caffeine in products but believe this should be across all categories of foods permitted to add caffeine, to ensure consumers have transparency, particularly for cola drinks and formulated caffeinated beverages, which are more likely to be consumed by children.

The following example that contains 91mg of caffeine per serve, while we applaud the inclusion of the composition information on the label, clearly demonstrates that the inclusion of a maximum intake statement for Formulated Supplementary Sports Foods, is disproportionate to the

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requirements for a Formulated Caffeinated Beverage, that only requires a one-day quantity related to the 'listed substances', rather than the caffeine content.

To ensure there is consistency across all food categories permitted to contain caffeine and standard information available to consumers, we suggest one set of label advisory statements be implemented across all categories and that all labels must state the amount of caffeine per serve.

3.2.1.6 Proposed maximum level for caffeine in FSSF
To explicitly permit in FSSF, total caffeine up to 200 mg in a one-day quantity

This level is lower than is permitted in other comparative markets around the world.

Canada - Caffeine is included in the Natural Health Product Workout Supplements Monograph; approved for use in doses between 100-400mg per day; 100-200 mg per single dose (Health Canada, 2019). The proposed claims and advisory statements listed above are in line with those specified in the Health Canada Natural Health Product Workout Supplements Monograph (2019).

EU - EFSA (2015) provide that single doses of caffeine up to 200 mg (about 3 mg/kg for a 70-kg adult) do not give rise to safety concerns and; the same amount does not give rise to safety concerns when consumed < 2 hours prior to intense physical exercise under normal environmental conditions. In addition, EFSA considered that habitual caffeine consumption up to 400 mg per day does not give rise to safety concerns for non-pregnant adults (EFSA, 2015).

USA [FDA/IOM] - For healthy adults, the FDA has cited 400 mg of caffeine a day (the equivalent of four or five cups of coffee) as an amount not generally associated with dangerous, negative effects (FDA, 2018).
The National Academy of Medicine (formerly the Institute of Medicine [IOM]) provide that moderate intake of caffeine for the healthy adult population is defined as a dose level up to 400 mg/day (equivalent to 6 mg/kg body weight/day in a 65 kg person) (IOM, 2014).

It should be noted that the maximum 400 mg/day limit is based on a 70 kg adult consuming 5.7 mg/kg caffeine per day. However, an adult bodyweight of 70 kg is not reflective of the average weight of female and male Australians i.e., 72 kg and 87 kg, respectively (ABS, 2018). When based on the average weight of Australians, the 5.7 mg/kg/day maximum limit, this provides a higher daily limit of caffeine than the established maximum safe limit of 400mg a day caffeine, outlined in the following table.

Adult weight (≥18 years)	Exposures (mg/kg/bw/day)	Daily quantity
72kg	5.7 mg/ kg/bw/day	410mg
87 kg	5.7 mg/ kg/bw/day	495mg

Just as the original Standard 2.9.4 for Formulated Supplementary Sports Foods, could not have envisaged the development of the sports food and supplements category when the standard was originally developed, it is imperative that the sector isn't stifled now or in the future, in the attempt to clean up the non-compliant players in the market who are selling pure caffeine at excessively high doses, and while inconsistencies are prevalent between the varying categories that are permitted to contain caffeine.

Lastly, we would also suggest that a mg threshold/range is considered as part of the review and incorporated into any labelling amendments, due to flavouring agents that may contain extremely low amounts of caffeine and thus shouldn't require label advisory statements or a declaration of the caffeine content, incidentally, should the flavour be the only source of caffeine in the product.

Should you require further clarification to any of the points raised, or wish to consult on further related matters, please contact me.

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