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[18-13]

Draft Assessment Report (Abandonment) – Proposal P236

Sports Foods

Food Standards Australia New Zealand (FSANZ) made a draft assessment to review current provisions for sports foods.

On 22 August 2001, FSANZ sought submissions on an Initial Assessment Report and received 22 submissions. Pursuant to paragraph 15B(b) of the *Food Standards Australia New Zealand Act 1991* (the former FSANZ Act) (as in force prior to 1 July 2007), FSANZ has abandoned the Proposal. Information on the reasons for FSANZ's decision is contained in this Report.

This decision is not reviewable under Section 63 of the FSANZ Act (as was in force prior to 1 July 2007).

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Executive summary

The original sports foods Standard R10 in the former Australian *Food Standards Code*, was gazetted in 1998. In 2000, this Standard was adopted as Standard 2.9.4 – Formulated Supplementary Sports Foods, with only minor amendments to language and structure. At that time, the then Australia New Zealand Food Authority (now Food Standards Australia New Zealand (FSANZ)) undertook to comprehensively review the content of Standard 2.9.4 and Proposal P236 was prepared.

In 2003, work on the Proposal was deferred after the Initial Assessment stage pending Ministerial policy guidance and other work priorities.

Since that time, there have been significant changes in the market, product range and composition of formulated supplementary sports food. Today, many products used for sport are not regulated under Standard 2.9.4. Electrolyte drinks are regulated under Standard 2.6.2 – Non-alcoholic Beverages and Brewed Soft Drinks. Some products used for sport are formulated meal replacements and formulated supplementary foods regulated by Standard 2.9.3 – Formulated Meal Replacements and Formulated Supplementary Foods. Some general purpose foods, regulated by Part 1 of the Code, are also used for sport.

Wide-ranging amendments to the FSANZ Act took effect on 1 July 2007. These included changes to the processes for assessing applications and proposals which affected all applications received and proposals prepared by FSANZ from 1 October 2007.

FSANZ's decision to abandon this Proposal follows a decision to prepare a new proposal (PP1010) to enable full consideration of all issues, including those raised at Initial Assessment, under FSANZ's current legislative framework and regulatory process. Previous work will be carried over to the new proposal.

1. Introduction

1.1 The Proposal

Proposal P236 – Sports Foods commenced in 2001 during the transition to the joint *Australia New Zealand Food Standards Code* (the Code).

The original sports foods Standard R10 in the former Australian *Food Standards Code*, was gazetted in 1998. In 2000, this Standard was adopted as Standard 2.9.4 – Formulated Supplementary Sports Foods with only minor amendments to language and structure. At that time, an undertaking to comprehensively review the content of Standard 2.9.4 was given by the then Australia New Zealand Food Authority (now FSANZ) and Proposal P236 was prepared.

Work on the Proposal was deferred after the Initial Assessment in 2003, pending notification of Ministerial Council¹ policy guidance on vitamin and mineral fortification, however higher work priorities then needed to be addressed.

1.2 Current standards

Standard 2.9.4 regulates the composition and labelling of foods specially formulated to assist sports people in achieving specific nutritional or performance goals.

The Standard defines formulated supplementary sports foods (FSSFs) as:

A food or mixture of foods specifically formulated to assist sports people in achieving specific nutritional or performance goals.

This Standard has two divisions. Division 1 outlines specific composition and labelling conditions of FSSFs. Division 2 sets out specific labelling requirements for high carbohydrate supplements, protein energy supplements and energy supplements.

There have been no substantial changes to Standard 2.9.4 since its original gazettal.

In New Zealand, the Supplemented Food Standard was gazetted in 2010. This Standard provides broader permissions and encompasses a broader range of products than Standard 2.9.4.

1.3 Reasons for preparing the Proposal

P236 was prepared to comprehensively review the content of Standard 2.9.4 and to develop joint regulations for sports foods, particularly in relation to New Zealand which previously had not specifically regulated sports foods.

1.4 Decision

The Proposal has been abandoned. However, FSANZ has decided to prepare a new proposal to enable full consideration of the issues, including those raised at Initial Assessment, under FSANZ's current legislative framework.

¹ Now known as the COAG Legislative and Governance Forum for Food Regulation

2. Summary of the findings

FSANZ sought public comment in an Initial Assessment Report (IAR) in August 2001 on issues relating to regulating sports foods in Australia and New Zealand. Issues discussed included the appropriate regulatory framework and its impact, the underpinning regulatory policy, scope and definition of sports foods and compositional and labelling requirements. In addition, four regulatory options were put forward for comment: maintaining the status quo, full revised regulatory provisions, co-regulation with an industry code of conduct, and no overt recognition of sports foods in the Code.

Today, the market, product range and composition of FSSFs have changed significantly since this Proposal was last considered. Today, many products used for sport are not regulated under Standard 2.9.4. Electrolyte drinks are regulated under Standard 2.6.2. Some products used for sport are formulated meal replacements and formulated supplementary foods regulated by Standard 2.9.3. Some general purpose foods, regulated by Part 1 of the Code, are also used for sport.

FSANZ's decision to abandon this Proposal was taken in order to prepare a new proposal to enable full consideration of all the issues, including those raised at Initial Assessment, under FSANZ's current legislative framework and regulatory process. The new proposal will be scoped to address the issues associated with the broadening market and product range. Previous work will be carried over to the new proposal.

The new proposal will also take into account wide-ranging amendments to the FSANZ Act that took effect on 1 July 2007. These included changes to how applications and proposals are assessed.

2.1 Summary of submissions

Consultation is a key part of FSANZ's standards development process. FSANZ acknowledges the time taken by individuals and organisations to make submissions on this Proposal.

Every submission on an application or proposal is reviewed by FSANZ staff who examine the issues identified and prepare a response to those issues. While not all comments can be taken on board during the process, they are valued and all contribute to the rigour of our assessment.

Twenty-two submissions were received in response to the Initial Assessment Report.

All submissions on the IAR are available at <http://www.foodstandards.gov.au/code/proposals/Pages/proposalp236sportsfo1143.aspx>.

Issues raised by submitters at Initial Assessment included the:

- placement of sports foods as special purpose foods in the Code
- purpose statement and definition of sports foods
- inclusion of provisions for electrolyte drinks in the sports food standard
- compositional aspects such as permissions for vitamins, minerals, amino acids, other nutritive substances and food additives
- need for labelling statements such as advisory/warning statements, claims and the provision of adequate information to allow appropriate use.

These issues will be considered by FSANZ and, where appropriate, will be addressed in the new proposal that will be prepared by FSANZ in due course.

2.2 Risk communication

In December 2001 and April 2002, FSANZ met with representatives from the Sports Supplement Industry Development Group, formed under the aegis of the Complementary Healthcare Council, to discuss issues raised in their submissions to the IAR. No further public consultation has occurred since Proposal P236 was deferred in 2003.

A discussion paper on sports foods was released for targeted consultation in April 2011 signalling the intent to review the Standard. This discussion paper did not make any specific mention of the process under which the Standard would be reviewed. The FSANZ web page relating to sports foods indicates that Standard 2.9.4 will be under review.

The abandonment of P236 will be notified on the FSANZ website and deleted from the work plan. All previous submitters and identified stakeholders will be notified of this decision. They will also be added to the interested parties list and will receive email communication relating to the future work to review the Standard under the proposed new proposal.

3. Reasons for decision

In reaching its decision, FSANZ had regard to the following matters under section 15AA of the FSANZ Act (as was in force prior to 1 July 2007):

- (a) any submissions made to it within the specified period in response to a notice sent or published under section 14A of that Act

Many issues raised at Initial Assessment may no longer be relevant, whereas other issues continue to cause concern. Issues raised by submitters at Initial Assessment will be considered by FSANZ and, where relevant, addressed in the new proposal.

- (b) the objectives and matters listed in section 10 of that Act – section 10 objectives are addressed in Section 3.1 of this report.
- (c) any relevant New Zealand standards
The New Zealand Supplemented Food Standard 2010 is relevant to this Proposal.
- (d) any other relevant matters.
There are no other relevant matters.

The new proposal will enable FSANZ to more appropriately respond to the current market and consider the issues under the current FSANZ regulatory and administrative arrangements.

3.1 Addressing FSANZ's objectives for standards setting

FSANZ has considered the three objectives in subsection 10(1) of the FSANZ Act (as was in force prior to 1 July 2007) during the assessment of this Proposal as follows.

3.1.1 Protection of public health and safety

As this decision results in no regulatory change, there is no change to the current protection of public health and safety.

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

As the outcome of this decision results in no regulatory change, there is no change to the amount of information provided to consumers to enable informed choice. Consumers will have the same amount of information to make decisions as they have available today. Any requirement for additional information will be determined in the new proposal.

3.1.3 The prevention of misleading or deceptive conduct

As the outcome of this decision results in no regulatory change, there is no change to the regulations relating to misleading or deceptive conduct. Manufacturers will continue to be required to provide the same level of information to consumers as they do today. The new proposal will allow full exploration of these issues under the new FSANZ regulatory arrangements.

3.1.4 Subsection 10(2) considerations

FSANZ has also had regard to the objectives set out in subsection 10(2) of the FSANZ Act (as was in force prior to 1 July 2007):

- the need for standards to be based on risk analysis using the best available scientific evidence
- the promotion of consistency between domestic and international food standards
- the desirability of an efficient and internationally competitive food industry
- the promotion of fair trading in food
- any written policy guidelines formulated by the Ministerial Council.

The sports foods market, product use, and the underpinning science have changed significantly in the 10 years since the project was deferred. Many issues identified at Initial Assessment may no longer apply. Abandoning the Proposal will allow FSANZ to recommence the project and redefine the problem, and objectives for the current market and consumers.

Relevant issues remaining from P236 will be addressed in the future proposal and will draw on the founding elements in the: Health Claims framework in Standard 1.2.7 – Nutrition, Health and Related Claims, and framework developed as a result of P1024 – Revision of the Regulation of Nutritive Substances & Novel Foods.

3.2 Rights of review

Under Section 63 of the FSANZ Act (as was in force prior to 1 July 2007), the decision is not reviewable by the Administrative Appeals Tribunal.