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Food Standards Australia New Zealand
PO Box 5423
KINGSTON
ACT 2604

14th of March 2023

To whom this may concern,

Re: Proposal P1010 – Formulated Supplementary Sports Foods

We are grateful for the opportunity to comment on the proposed changes to 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 of 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.

Market Overview

Q1. For industry or regulators, do you have market or product data or information that you would like to provide to update FSANZ's understanding of the current market in Australia, New Zealand or globally?

Yes, we compiled data from 2012-2021 for the Amino Acid products sold in other regions, that either have higher levels than currently permitted under 2.9.4 or contain Amino Acids that are not currently permitted under 2.9.4 and also the customer service complaints related to these products from 2017-2021. Please let me know if this would be of use.

Definitions

Q2. As a consumer, regulator or industry stakeholder, have you identified any issues resulting from the definitions in the Code? If so, what are they and why are they an issue?

Yes, there are various issues:

2.9.4-4 (b) (ii) – a statement of the recommended consumption in one day. This has been an issue with biosecurity, as some inspectors interpret as recommended consumption without the need for a maximum statement and other inspectors interpret as the need for a daily maximum intake

statement, thus, as some sports products have no intake concern such as whey protein, we dealt directly with Canberra on this issue and they agreed the current 2.9.4 is not clear and doesn't specifically state the wording maximum consumption in one day. We therefore suggest the updated regulation is amended to:

2.9.4—4 Labelling information

(1) For the labelling provisions:

(b) the required information is:

(i) directions stating the recommended amount and frequency of intake of the food; and

(ii) a statement of the recommended maximum consumption in one day when:

(A) The product contains ingredients that have a maximum daily limit specified in Schedule 29; or

(B) The ingredients pose a food safety risk if used excessively

Division 3 – Particular formulated supplementary sports foods

These categories either need to be reviewed/updated, with additional categories added such as 'high protein supplement' with permitted claims OR these categories be deleted and there be a claims section with criteria for each claim, incorporated into the new regulation or added to Schedule 4 nutrition, health and related claims.

Q3. For industry and regulators, how should proprietary blends or stacks best be regulated and why?

As per Q2. and the recent caffeine review, clearer labelling guidance for products that contain ingredients with intake risk with over consumption. Noting these labelling requirements should also include other categories energy drinks, cola drinks and formulated caffeinated beverages, to ensure consumers have transparent and available information across all high risk substance intakes.

Q4. For all, should the Code retain the existing definitions in Standard 2.9.4? If so, why and if not, why not?

Please see Q2. reply above.

Current Compositional Permissions

Q5. Would a tiered approach to regulation based on composition improve public health and safety for consumers, while allowing for innovation (e.g. provisions for 'high risk' substances, restriction on sale, differing labelling requirements or compositional deviation)? If so, how could it look? How could high, medium and low risk products be differentiated? What requirements could apply to each and why (e.g. pre-market assessment, compositional and labelling requirements)?

In addition to the detail already provided in Q2., Schedule 29 could be used to manage 'high risk' substances and the relevant maximum intake labelling requirements. I think a three tiered approach would be too complex to manage and open to more grey in the regulation, which we need to move away from, but a two tiered high and low risk system could remove much of the existing uncertainty and provide relevant safety/intake information for consumers.

If a product contained a schedule 29 'high risk' substance the warning statements in 2.9.4 could also be adjusted to suit the low and high risk categories e.g. pregnancy warning only required for products containing 'high risk' substances.

Pre-market assessment while a fabulous idea for clarity on regulatory interpretation, would create a administrative nightmare to launch products, based upon the current level of staffing within FSANZ, therefore, we support compositional and labelling differences for the different risk tiers.

Q6. Is there any evidence that current practice in relation to analogues and derivatives pose a health concern or risk? If you consider that there is a health concern or risk, please provide relevant details and data, where available.
Please refer to data presented in the CMA response.

Q7. Is there any evidence in current research in relation to known analogues and derivates that pose a health concern or risk? If you consider that there is a health concern or risk, please provide relevant details and data, where available.
Question duplication, please see Q6. reply.

Q8. How could the Code assist in reducing the risk to consumers who are stacking sport food products and potentially consuming more than the maximum amount permitted by Standard 2.9.4 in the Code?
Please see comments in previous questions relating to intakes and high risk substances. The use of schedule 29 would be ideal to update when new high risk substances enter the market.

Q9. To what extent are vulnerable consumers regularly consuming sports foods? Please provide evidence.
Based upon the customer queries received pregnant women are highly engaged consumers who are looking for better labelling, as the current 2.9.4 warning isn't relevant to all sports foods, such as low risk protein powders which would pose no risk to pregnant consumers. Teenage boys appear to be a growing market and thus better information on pack, plus public health education in schools and via social media would be a positive to ensure they are educated to buy from Australian websites and how to read labels.

Formulated caffeinated beverages and cola drinks, are of more concern in relation to excess consumption by vulnerable consumers, due to the availability and accessibility of these products, thus the labelling and consumer education relating to high risk substances, should also encompass all relevant product categories, that contain high risk substances.

Q10. Do the current definitions and compositional and labelling requirements in the Code relating to sports foods pose any difficulties in compliance or enforcement? If yes, please provide reasons why and examples.
Yes, please refer to previous questions, relating to import issues.
In addition, many biosecurity inspectors have flagged that they would benefit from education on the new code, as sports products are an area they find confusing.

Electrolyte Drinks

Q11. If the existing requirements for electrolyte drinks were transferred to a special purpose food standard (i.e. under Standard 2.9.4), what impacts (positive or negative) might this have on industry, regulators and/or consumers?

Positives – standardised labelling including warning statements across all sports products and the potential to create electrolyte products with a broader range of permitted ingredients.
Negatives – updates to current labelling for existing electrolyte products.

Q12. If electrolyte drinks were to remain a general purpose food (i.e. under Standard 2.6.2) what impacts (positive or negative) would this have on industry, regulators and/or consumers?

The definition of an electrolyte drink relating to sustained strenuous physical activity, therefore it makes sense to align all products that are for consumers engaging in sustained strenuous physical activity, so consumer have the same information, claims and warnings across all products.

Q13. How would transferring electrolyte drinks to Standard 2.9.4 impact consumer messaging around their purpose and use? Please provide reasons for your view.

Hopefully a stronger focus on sports related wording and thus consumers would better understand their purpose and ideal consumption.

Labelling

Q14. Are the existing labelling requirements in the Code for sports foods appropriate for managing potential risks to public health and safety? Please provide details on why or why not.

Please see comments in previous questions relating to intakes and high risk substances.

Energy drinks, cola drinks and formulated caffeinated beverages, are of more concern in relation to public health and safety, due to the availability and accessibility of these products, thus the labelling requirements, should also encompass these product categories.

Q15. What are your views on the relevance to sports foods of the existing warning statement and advisory statements? Please provide reasons for your view.

Statements (i), (ii) and (iv) are still relevant, however statement (iii) 'Not suitable for children under 15 years of age or pregnant women: Should only be used under medical or dietetic supervision' isn't relevant to all sports products (e.g. low risk) and does not reflect current usage or consistent wording with other similar categories such as 2.6.4 formulated caffeinated beverages, that requires the statement 'not suitable for children, pregnant or lactating women.' Therefore, for products containing high risk substances, we support a move to alignment of the same consistent warning statement as 2.6.4 formulated caffeinated beverages.

Q16. Please discuss whether you think the existing labelling requirements for sports foods enable consumers to make informed choices. Please provide reasons for your view.

Please see previous questions which detail many areas of inconsistency, thus we support a move to aligned and consistent labelling so consumers have the same information on all products that

contain high risk substances, such as caffeine. Without consistent information across sports food and other categories that contain high risk substances, consumers are unable to make informed choices or monitor/measure their daily intake of high risk substances.

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. We therefore support appropriate and proportionate regulatory changes, to ensure authorities are better able to manage the potential risks to public health and safety, while providing a level playing field for industry.

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

Kind regards

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