Department of Health

Tasmanian Government

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Call for comment
Proposal P1010 – Formulated Supplementary Sports Foods

Public Health Services, Department of Health, Tasmania (PHS) appreciates the opportunity to comment on Proposal P1010 – Formulated Supplementary Sports Foods.

FSANZ is reviewing regulatory requirements for Formulated Supplementary Sports Food (FSSF) products and responses to this consultation paper will be considered by FSANZ to inform the proposed regulatory approach put forward in the 1st Call for Submissions.

PHS notes that P1056 - Caffeine review and P1030- Electrolyte Drinks are relevant to P1010 and will need to be considered in the final drafting of these standards.

PHS has provided responses to the following questions.

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?

The use of the term 'sports people' in the definition of FSSF needs to be more clearly defined. The original intent of this standard was aimed at elite sports, endurance athletes and body builders where the physical and physiological conditions placed them at risk of dietary inadequacy due to altered energy or nutrient requirements. The ordinary meaning of 'sports person' (a person who takes part in sport) rarely requires specially formulated products to meet their nutritional needs that cannot be obtained from general purpose foods.

FSSF products in Standard 2.9.4 have not been designed for the general population and even pose a risk for vulnerable groups such as children. A distinction between sports food products for the 'elite' athlete and non-elite athlete needs to be clearer.

Sports food products that are marketed to the general population and / or cannot substantiate their role in assisting 'elite' athletes in achieving specific nutritional or performance goals should not be included in Standard 2.9.4. However, if these products were to move into general purpose foods many of these products would need to undergo compositional changes to meet the Standards.

Including tighter restrictions on advertising, marketing and distribution of sports food products under Standard 2.9.4 is one way of differentiating these products. This is in line with the *Policy*

Guideline on the Intent of Part 2.9 – Special Purpose Food which states that consideration should be given to application of controls to restrict access to a special purpose food.

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

A requirement of any revised Standard is to clearly ensure proprietary blends are required to list full ingredients (and amount of ingredients). Consideration should also be given to ensuring that labelling requirements address the issue of stacking by including mandatory warning statements alerting consumers to the risks posed by 'stacking' certain products – notably the risk of exceeding recommended maximum daily intakes.

The recommended maximum amount of specific substances that can be safely consumed per day is important information for consumers to be aware of. It is inadequate to rely on a label statement advising a product 'should only be used under medical or dietetic supervision' when full ingredient details are not provided on a product label.

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

The current definition implies products developed under that Standard are for use by sports people (but fails to clarify what is intended by the term 'sports people'). However, it appears that products currently falling under Standard 2.9.4 are developed and marketed for use by a wide cross-section of society, including for purposes that are not readily just for 'sport people' (i.e. weight loss, memory enhancement, digestive health etc).

If the existing definition is to be maintained, consideration should be given to clarifying the intended meaning of the of the term 'sports people'.

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)?

A tiered approach has merit, although caution is needed if considering formalising the concept of self-substantiation (Noting the regulatory challenges posed by the concept of self-substantiation when utilised as part of other Standards).

A tiered system that clearly mandates pre-market assessment for identified high risk products (e.g., FSSFs containing stimulants) has merit and should be explored.

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?

There is the potential to consider the inclusion of mandatory warning statements that address the known risk of stacking. Any known risks, including the health risks of consuming greater than the recommended daily serve of certain substances should be clearly communicated to the purchasers of product via labelling provisions such as warning statement or explicit prohibitions.

Q9. To what extent are vulnerable consumers regularly consuming sports foods? Please provide evidence.

There is evidence to suggest some products being sold as FSSF are pitched to students as having nootropic/cognitive enhancement properties.

We know that young males are also higher consumers of sports supplements such as protein powders with a recent Australian study finding 49.8% of 14-16 year old boys reported current use of protein powders and 62% had intentions to use protein powders[i].

This is consistent with overseas reports where weekly supplement use (protein, creatine and dieting supplements) was common and more frequent in boys than girls and was related to eating disorder risk factors, exercise, sports participation and immigrant status[ii].

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.

The current lack of clarity in Standard 2.9.4 regarding composition requirements creates compliance and regulatory uncertainty:

- Express permissions exist in Standard 2.9.4 for the addition of certain substances/ingredients up to certain maximum levels to FSSFs (ie certain amino acids, vitamins and minerals and other nutritive substances listed in Schedule 29). However, the Standard does not prohibit the addition of other substances/ingredients to FSSF. Uncertainty (including whether a substance is or isn't a nutritive substance) about what can and cannot be added to a FSSF generates compliance challenges.

- Challenges with the application of the Novel Food Standard (notably around what constitutes a history of human consumption) and debate as to whether ingredients in FSSFs are novel (and therefore require pre-market assessment), or not novel (because it is argued that there is already an established history of use) also add to compliance and regulatory challenges associated with Standard 2.9.4.

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? 22

If electrolyte drinks were to remain in Std 2.6.2 these products would be able to use the HSR. PHS does not support the use of the HSR on electrolyte drinks as the revised algorithm for non-dairy beverages (Category 1) does not take into consideration sodium and therefore would not be a fair comparison to other sweetened drinks. This would be misleading to consumers and potentially lead to excess sodium intake.

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.

Currently electrolyte drinks are marketed to the general population and are readily available and accessible through sales at convenience stores, petrol stations and supermarkets. However, the *Ministerial Policy Guidelines on the Intent of Part 2.9 – Special Purpose Foods* states special purpose foods should be targeted only to those population groups to which they were intended for. It also states that adequate information (including through labelling) should be

provided to help prevent inappropriate use by those for whom the special purpose food is not intended. The transfer of electrolyte drinks to Standard 2.9.4 is consistent with the fact these products are a sports foods and not a lifestyle product for the general population.

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.

Noting the manner in which FSSFs can be 'stacked', greater consideration should be given to mandatory warning statements that address the risks associated with product stacking.

This issue may also be exacerbated depending on the outcomes of P1056 Caffeine review where FSANZ are considering express permission to add caffeine to FSSF with a maximum single dose safety limit of 200mg/day. This proposed one day quantity of 200mg (which is often the same as the quantity to be consumed in a single serve) would exceed the acute safety level for adolescents. With the known behaviour of 'stacking' for users of sports foods this creates an even greater risk for young adolescents as the *Ministerial Policy Guideline – Regulatory Management of Caffeine in the Food Supply* (2014) under specific policy principles states adolescents are included as a vulnerable population group, along with children, pregnant and lactating women and caffeine sensitive consumers.

If additional substances are permitted to be added to FSSFs the need for improved risk management strategies is warranted, particularly for additional substances that have not been tested or approved for use in vulnerable groups, knowing that young adolescents will still consume these products.

The labelling of products with general advisory statements that warn against consumption by vulnerable groups should be one of a *number* of risk management strategies for sports food products. Evidence suggests that few people read labels and many parents and adolescents tend to rely on endorsement by coaches and / or other athletes. Other risk management strategies need to be put in place to ensure these foods are consumed by the intended group.

Consideration should be given to restriction on advertising and / or sales of these products. This is in line with the *Policy Guideline on the Intent of Part 2.9 – Special Purpose Food* which states that consideration should be given to application of controls to restrict access to a special purpose food.

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.

The relevance of existing warning and advisory statements is dependent upon the contents/ingredients permitted and contained within FSSFs. If FSSF products remain as special purpose foods, and not general-purpose foods, it is reasonable to have appropriate mandatory warnings/advisory statements like those contained in the current Standard. The nature of these statements could however be varied depending upon the risk status (low – high) of a FSSF product. However, this would depend on how issues such as stacking, what constitutes a novel ingredient and what can and cannot be added to FSSF products is managed under a revised Standard. This is particularly the case if additional substances have not been tested in vulnerable population groups such as adolescents whom we know are large consumers of these products.

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.

A recent study[iii] of FSSF products in Australia indicated there was a large number of sports food like products that were not technically FSSF (i.e., did not contain the words formulated supplementary sports food or warning advisory labels) yet were visible similar, contained similar ingredients and displayed many of the same claims and therefore could be confused by consumers to be genuine sports foods. These products needs to be clearly differentiated to ensure consumers are not misled.

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[i] Yager, Z., McLean, S. Muscle building supplement use in Australian adolescent boys: relationships with body image, weightlifting, and sports engagement. *BMC Pediatr* **20**, 89 (2020). https://doi.org/10.1186/s12887-020-1993-6

[ii] Svantorp-Tveiten KME, Friborg O, Torstveit MK, et al., Protein, Creatine, and Dieting Supplements Among Adolescents: Use and Associations With Eating Disorder Risk Factors, Exercise-, and Sports Participation, and Immigrant Status. Front Sports Act Living. 2021 Oct 13;3:727372. https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8548763/

[iii] Chapple CI, Russell CG, Burnett AJ and Woods JL (2023) Sports foods are not all they shake up to be. An audit of formulated supplementary sports food products and packaging in Australian retail environments. Front. Nutr. 10:1042049. https://www.frontiersin.org/articles/10.3389/fnut.2023.1042049/full