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Standards Management Officer
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Dear Sir / Madam

Submission – P1030 – Health Claims – Formulated Supplementary Sports Foods & Electrolyte Drinks

Thank you for the opportunity to provide a submission on the call for submissions regarding P1030 - Health Claims – Formulated Supplementary Sports Foods & Electrolyte Drinks.

This submission provides technical advice and comments related to this issue. The submission does not represent a Queensland Government position, which will be a matter for the Queensland Government when notification is made by the FSANZ Board to the Legislative and Governance Forum on Food Regulation.

It is noted that the draft variation:

- Permits formulated supplementary sports foods (FSSFs), electrolyte drinks (EDs) and electrolyte drink bases to carry health claims consistent with their respective intended purposes and in accordance with Standard 1.2.7 – Nutrition, Health and Related Claims.
- Transfers the regulation of EDs from Standard 2.6.2 - Non-alcoholic Beverages and Brewed Soft Drinks to Standard 2.9.4 – Formulated Supplementary Sports Foods.
- Aims to deliver an interim arrangement pending the future review of Standard 2.9.4.

FSANZ states that the proposal seeks to address an anomaly whereby FSSFs and most EDs, apart from a few limited claims already permitted in Standard 2.9.4 and Standard 2.6.2, are not able to carry health claims consistent with their respective intended purposes.

It is not clear why the issues considered in this proposal have been raised separately instead of being considered in a review of Standard 2.9.4. FSANZ itself noted (Draft Assessment Report (Abandonment) – Proposal P236, 1 October 2013) that since 2003 there have been significant changes in the market, product range and composition of formulated supplementary sports food

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and that there are many products used for sport which are not currently regulated under Standard 2.9.4. These include electrolyte drinks, sports and vitamin waters which are regulated under Standard 2.6.2 – Non-alcoholic Beverages and Brewed Soft Drinks; formulated meal replacements and formulated supplementary foods regulated by Standard 2.9.3 – Formulated Meal Replacements and Formulated Supplementary Foods; and energy drinks regulated under Standard 2.6.4 – Formulated Caffeinated Beverages.

It is considered more appropriate for a comprehensive review of Standard 2.9.4 to consider the regulation and appropriate positioning of electrolyte drinks rather than this proposal P1030.

Electrolyte Drinks

This proposal appears to simply move electrolyte drinks to Standard 2.9.4 without proper consideration of the fact that they will now be special purpose foods and not general purpose foods. Some of the appropriate considerations are:

- An update of the scientific evidence around electrolyte and carbohydrate replacement. This may impact on the current compositional requirements for these products.
- Claim conditions or labelling requirements in the draft variation that reflect the proposed definition of an electrolyte drink - *a drink formulated for the rapid replacement of fluid, carbohydrate and electrolytes lost as result of sustained strenuous physical activity*.
- Inclusion of a definition for '*sustained strenuous physical activity*' in the draft variation and this omission needs to be addressed. This would make it clear to consumers that the target is the elite athlete not the average active person.
- Advisory statements regarding the target audience and the need for professional advice in using these products. The products are only relevant to a small minority of consumers.
- Requirements for directions stating the recommend quantity and frequency of intake of the food. It is noted that many of the sports drinks already give this advice, e.g. *during sustained and strenuous exercise drink 250ml every 15 minutes*. However the basis for this advice needs to be assessed.
- Managing inappropriate representation of EDs as general purpose foods especially to young children and adolescents and ensure that the products are targeted only to the appropriate consumers.

Clarification is sought as to whether simply moving electrolyte drinks to Standard 2.9.4 legitimises current claims without requiring self-substantiation of the claims. If so, this would create a different situation to general purpose foods where pre-approved claims appear in Schedule 3 of Standard 1.2.7.

It is not clear why proposed Clause 17(3) of the draft variation of Standard 2.9.4 is still necessary. Once again this appears to be legitimising a health claim for EDs without the necessity to review the current evidence. If FSANZ considers that this claim reflects current scientific evidence then it should appear in Schedule 3 of Standard 1.2.7 with appropriate claim conditions. Otherwise manufacturers should self-substantiate the claims.

In Appendix 1 (Analysis of draft variation against policy guideline) of the Call for Submissions report EDs are assessed against *risk of dietary inadequacy to support physical and physiological conditions that require altered energy intake*. The analysis states that physical activity can require increased energy intake or increased intake in the form of fluid, carbohydrate, electrolytes, and minerals. In this case physical activity should relate to sustained strenuous physical activity not physical activity in general.

Formulated Supplementary Sports Foods

Clarification is also sought as to whether industry expects that the current health claims in the marketplace will be legitimised by the inclusion of proposed Clause 6(2) of Standard 2.9.4 without the need to self-substantiate the claims. Current claims on some sports foods are not substantiated and because of the some of the ingredients used have implications for public health.

Health claims currently allowed for certain types of sports foods such as high carbohydrate, energy and protein energy supplements should either be self-substantiated by the manufacturers or appear in Schedule 3 of Standard 1.2.7 once the scientific evidence has been reviewed by FSANZ.

Health Claims

In principal the proposal to regulate EDs under Standard 2.9.4 is supported. It is important that the increasing range of sports food and drinks are appropriately regulated to ensure consumers are properly informed about the risks and benefits of these products. There are a number of potential health risks associated with the use and misuse of FSSFs and EDs which justifies the inclusion of these products in Standard 2.9.4 and limitations and qualifications around health claims.

Therefore the following is important regarding any health claims carried on EDs and FSSFs:

- The science underpinning the currently permitted claims should be reviewed to ensure their continued validity and applicability to sports products.
- A health claim must state the exercise conditions in which the stated performance claim applies. For example, the claimed benefits for FSSRs and EDs may only occur when the exercise is of sufficient duration, intensity and frequency.
- A n explanation of 'sustained strenuous exercise' should appear on the label and on advertising material so it is clear that these claims only apply in certain conditions.
- A health claim must clearly state the appropriate target consumer so that it is clear that the intended benefit only relates to elite athletes and not the general active consumer.
- The mandatory advisory statement currently required under Clause 3 of Standard 2.9.4 that the product is not suitable for children under 15 years of age and pregnant women should apply to EDs as well FSSFs. The need for professional advice in using these products should also be included where appropriate. This would also align with the Queensland Government Smart Choices and the Queensland Government Food for Sport Guidelines which classify electrolyte drinks as RED and therefore should be limited.

Other Issues

The regulation of sports water needs to be considered as these do not currently meet the definition of an ED. Examples are Mizone sports water and Poweraid Zero which make claims regarding hydration benefits. These products will not have the restriction on types of health claims placed on them. Also there are drinks such as Gatorade Prime which appear to be sports drinks and not electrolyte drinks. A review of Standard 2.9.4 should consider relevant parts of Standard 2.6.2.

Next Steps

The preference is for FSANZ to consider the full range of issues as part of a comprehensive review of Standard 2.9.4 including the relevant clauses of Standard 2.6.2 relating to EDs. The

sports foods market, product use, and the underpinning science have changed significantly in the 11 years since Proposal P236 – Sports Foods was deferred in 2003.

It is therefore considered that FSANZ should defer this current proposal P1030 and consider the issues as part of a review of Standard 2.9.4 so that all issues are properly considered in context and the current scientific evidence regarding sports foods and drinks is assessed.

The proposal is represented as an interim arrangement yet a review of Standard 2.9.4 does not appear on the current FSANZ work plan. Therefore a commitment to the progression of the review of Standard 2.9.4 in a timely manner is requested.

Depending on the extent of comments received in response to this proposal, it may be necessary to consider a further round of consultation.

Should you require further information in relation to this matter, please contact Food Safety Standards and Regulation, Department of Health on (07) 3328 9310 or at foodsafety@health.qld.gov.au

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