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Public Health Division
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Submission DUE by 6pm on 30 September 2014

**SUBMISSION ON PROPOSAL P1030 -
Health Claims – Formulated Supplementary Sports Foods & Electrolyte Drinks**

The Department of Health Western Australia (DOH) would like to thank the Food Standards Australia New Zealand (FSANZ) for seeking comment on Proposal P1030 – Health Claims – Formulated Supplementary Sports Foods & Electrolyte Drinks. Given public health concerns surrounding the consumption of excess discretionary foods and drinks, coupled with the current obesity issues, the DOH considers the changes to permissions for the use of health claims an important area of work.

This submission has been prepared by the DOH, Environmental Health Directorate. Comments in response to Proposal P1030 consultation paper are as follows:

The DOH considers that there is a need for a review of Standard 2.9.4 of the Australia New Zealand Food Standards Code (the Code) as a whole, rather than a piecemeal approach. Review of the whole Standard 2.9.4 of the Code is required, in order to appropriately and adequately identify the problem, and assess and evaluate food regulatory approaches, including current scientific evidence base, dietary consumption patterns in Australia, and establish the applicable populations and situations for electrolyte drink use in Australia.

The DOH would like to note the following general comments concerning Proposal P1030:

- There is a body of scientific evidence that the DOH regards as warranting consideration in the context of these food regulatory matters including, but not limited to, evidence pertaining to the applicability, specificity, and validity of electrolyte drinks as sports drinks for particular subgroups of the population;¹⁻⁴ and

evidence pertaining to new guidelines for carbohydrate, electrolyte and fluid intakes during exercise.^{5,6}

- Consumption of electrolyte drinks is not limited to elite athletes/ sports person requiring replacement of lost electrolytes and additional energy for performance during extended periods of strenuous exercise. In 2014, a comprehensive review conducted by Baker and Jeukendrup, the authors describe a broad range of situations in which the use of electrolyte drinks for fluid and electrolyte replacement are applicable.⁵ The authors state “the optimal composition of a fluid-replacement beverage depends upon the source of the fluid loss, whether from sweat, urine, respiration, or diarrhoea/vomiting.”, and this is dependent on the target population of “military, athletes, occupational, men, women, children, and older adults,”⁵ The DOH considers that Proposal P1030 limits the application of electrolyte drinks to sports people, which does not adequately cover the actual range of applications and population usage. Given this, the DOH **does not** consider electrolytes drinks are ideally positioned to be transferred to Standard 2.9.4 of the Code, and is concerned it may confuse or mislead consumers.
- The nutrient profile scoring criterion (NPSC) in Standard 1.2.7 of the Code was established to determine whether products were of sufficient nutritional value to carry a health claim, and prevent consumers being misled by the so called ‘halo effect’. It is unclear why electrolyte drinks, a beverage currently consumed by the general population, should be exempt from meeting the requirement of the NPSC. The DOH is concerned this exemption may confuse or mislead consumers in allowing some beverages (electrolyte drinks) to carry health claims regardless of their nutritional value. This proposed variation may create an anomaly in allowing the electrolyte drinks to be treated differently to similar beverage products that also effectively rehydrate people, and would still need to meet the requirements of the NPSC to make health claims. For example, flavoured vitamin water drinks, low joule beverages and bottled water. The DOH is concerned that this approach may lead to unfair trading issues. The DOH considers that the impact of the proposed variation regarding permission to carry health claims without meeting the NPSC requires further assessment.
- The proposed inclusion of electrolyte drinks under Standard 2.9.4 of the Code, means that electrolyte drinks are one of foods excluded from carrying the voluntary Health Star Rating (HSR) System graphics. The DOH is concerned that readily understood nutrition information will not be available to assist consumers to make informed beverage purchases, for example in comparison to packaged water that is assigned an automatic five star rating.
- The purpose stated in the draft variation to standard 2.9.4 of the Code is to “define and regulate the composition and labelling of foods specially to assist sports people in achieving specific nutritional or performance goals, and electrolyte drinks”. The DOH notes that it is not clear which words and phrases in this purpose are specific to ‘electrolyte drinks’. For example, is the purpose to define and regulate the composition and labelling of electrolyte drinks, with no relationship to sports people and their nutritional or performance goals?

- In Australia, electrolyte drinks (sports drinks) are consumed by the general population, with the overall consumption of sports drinks increasing steeply with age, both in terms of volume consumed and energy contribution.⁷ The Australian Dietary Guidelines specify that it is important to limit intake of drinks with added sugar including sports drinks, and that the majority of fluid intake should come from water.⁸ For those Australian children who consume sports drinks, they “have a large amount every day – more than 600 mL among children who are older than 9.”⁷ Currently young children who consume 600 mL of a sports drink after light exercise activities, consume around an extra 770 kJ, that can displace nutrient rich foods from the diet required for growth and development. Sugar sweetened beverages contribute to dental decay, are a source of excess energy (kilojoules) in the diet of many Australians, and there is now sufficient scientific evidence that they contribute to overweight/obesity.⁷ The American Academy of Pediatrics recently expressed concern about carbohydrates in sports drinks, saying: “Frequent or excessive intake of caloric sports drinks can substantially increase the risk for overweight or obesity in children and adolescents”.²
- The DOH considers Proposal P1030 needs to assess the public health impacts of the proposed variation and have regard to existing relevant Australia New Zealand Ministerial Forum on Food Regulation (Forum) policy and policy statements, including:
 - The policy statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures ;
 - The policy guideline on Nutrition, Health and Related Claims; and
 - The policy guideline on the intent of Part 2.9 – Special Purpose Foods.

The DOH would also like to note the following comments to specific sections of Proposal P1030 Summary of the Assessment:

1. The analysis summarised in Appendix 1. Special purpose foods: analysis of draft variation against policy guideline.
- In the analysis of scope and aim of Part 2.9 Policy guideline it is stated that electrolyte drinks are “**...for use by physiologically vulnerable individuals and population sub-groups, namely those requiring altered energy intake.**” The FSANZ analysis finding states that the intended use of electrolyte drinks is to replenish fluid, carbohydrates and electrolytes, and that electrolyte drinks “are a subset of food intended to assist with physiological demands placed on sports people.” . The DOH considers that if “**the proposed health claims are related to the intended dietary use**”, as stated in this analysis, then this intended usage information should be provided to the consumer. **If sports people are the identified target group, who are physiologically vulnerable after strenuous exercise, then it should be clear that this sub-group of the population is the target group for this product**, as is the case for Formulated Supplementary Sports Foods under 2.9.4 of the Code.

- In the analysis of the 'provision of adequate information', it is stated that adequate information should be provided to **"assist consumer understanding of the specific nature of the food, the intended population group and the intended special purpose of the food."** The FSANZ analysis finding states that the compositional labelling information provides this information. The DOH, however, considers compositional information **does not** provide information to the consumer on the issue of identifying the intended population group, or the intended special purpose of the food.
 - In the analysis of the 'provision of adequate information' of Part 2.9 Policy guideline, it is stated that information should be provided on electrolyte drinks "...**to help prevent inappropriate use by those for whom the special purpose food is not intended**". The FSANZ analysis finding "The recommended volume and frequency of use are labelling requirements", does not address this policy statement. There are no specified labelling requirements to indicate that these products are for those specifically 'vulnerable' sports people after strenuous exercise. There is no indication that electrolyte drinks are not appropriate for use as 'lifestyle drinks' by the general population, that they are a discretionary food with low nutritional value, and displace nutrient rich foods in the diet. Additionally, there is no capacity to carry a HSR system graphic, to indicate the overall nutritional value of this food product, for the consumer to use to make purchasing and consumption decisions.
2. The Forum policy statement on the Interpretation of Public Health and Safety in Developing, Reviewing and Varying Food Regulatory Measures states the following:
- "Public health and safety in relation to food refers to all those aspects of food consumption that could adversely affect the general population or a particular community's health either in the short term or long term, including preventable diet-related disease, illness and disability as well as acute food safety concerns. For the purposes of this Policy Statement, FSANZ should utilise the Overarching Statement to clarify the interpretation of public health and safety during the development and review of food regulatory measures. The work of FSANZ complements the roles of other key public health agencies within Australia and New Zealand. FSANZ takes into consideration both long-term health impacts and immediate health risks in the development and review of food regulatory measures."⁹*
- Claim pre-requisites specified in the policy include that *"the eligibility criteria, including qualifying criteria and/or disqualifying criteria (and any excluded categories of foods, such as alcohol and infant foods), are complied with;"⁹*
- Given issues of sugar sweetened beverages, obesity and health, and the current Australian Dietary Guidelines recommendation to limit consumption of sports drinks, the DOH further considers that there is need for additional work be

undertaken to assess this proposed variation to the food regulatory measure to permit electrolyte drinks to carry health claims, and to be excluded from displaying the voluntary HSR system graphic.

The DOH is concerned that the proposed variation does not adequately assess and have regard to the specific policy principles of the Forum policy guideline on Nutrition, Health and Related Claims specifically:

- policy principles three that states a health claim for food should “support government, community and industry initiatives that promote healthy food choices by the population.”
 - policy principle four that states a health claim for food should “be consistent with and complement Australian and New Zealand national policies and legislation including those relating to nutrition and health promotion,…”
3. In Section 2.4.3 FSANZ notes that there was no need to consider a scientific risk assessment, as there were no changes to composition, or pre-approval of health claims. The DOH notes that there has been recent investigations into the validity of the European Food Safety Authority assessment of scientific evidence for sports drinks claims, with authors concluding that there is significant cause for concern with regards the validity of the process and of the final scientific opinion.^{1,4} These issues of scientific validity of the health claims permitted on electrolyte drinks on the international market, are of concern to the DOH.

Concluding comments

In summation, DOH **does not** support the proposed amendments to Standard 2.6.2 and Standard 2.9.4 of the Code as described in the 18 August 2014 Proposal P1030. Specifically, the DOH **does not** support

- Shifting electrolyte drinks from being regulated under Standard 2.6.2 of the Code to Standard 2.9.4 of the Code;
- Permission for electrolyte drinks to make health claims without meeting the requirements of the NPSC and being exempt from displaying the voluntary front of pack labelling HSR system graphics; and
- Electrolyte drinks being regulated under Standard 2.9.4 as a special purpose food, with no requirement to include advisory statements on the front of the pack.

The DOH considers that in the case where electrolyte drinks are regulated under Standard 2.9.4 of the Code, electrolyte drinks should be required to include advisory statements on **front of pack** labels to ensure consumers are provided with sufficient information to make informed purchasing and consumption decisions including:

- Identifying the intended purpose of the electrolyte drinks as a supplement to diet due to physical demands of intensive and extended activity to replace lost electrolytes and supply additional energy.

- Identifying the intended sub-group of the population - for **sports people**.
- Providing adequate information including dose, timing and duration that is specific to the particular athletic activity.

The DOH consider that a review of Standard 2.9.4 is required, encompassing the proposed variation, including scientific evidence, advisory labelling options, and having regard to existing and relevant Forum policy and policy statements.

Justification

The DOH considers that the proposed amendments to Standard 2.6.2 and Standard 2.9.4 of the Code, providing for the transfer of electrolytes drinks from Standard 2.6.2 to Standard 2.9.4 of the Code, creates further problems and raises new anomalies. The proposed variations require further assessment to ensure consistency with the primary objectives of the *Food Standards Australia New Zealand (FSANZ) Act 1991* including the protection of public health and safety; the provision of adequate information relating to food to enable consumers to make informed choices, and the prevention of misleading or deceptive conduct. This assessment has not fully examined the problem and related issues in their entirety, or fully assessed the proposed variation having regard to existing relevant policy and policy statements, or current scientific evidence.

Thank you for considering the above comments. [REDACTED]

Yours sincerely

[REDACTED]
**MANAGER
FOOD UNIT
ENVIRONMENTAL HEALTH DIRECTORATE**

26 September 2014

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