

Comments from the Victorian Department of Health

Due date of submission – 9 July 2021

The Victorian Department of Health (the department) welcomes the opportunity to respond to this consultation paper *Proposal P1030 - Composition and Labelling of Electrolyte Drinks*.

From the Food Standards Australia New Zealand (FSANZ) consultation paper and supporting document, it is understood that FSANZ is proposing to change the previous scope and approach for P1030 from one of assessing permissions for health claims on formulated supplementary sports foods, electrolyte drinks and electrolyte drink bases and transferring electrolyte drinks to Standard 2.9.4, to considering the composition and labelling of electrolyte drinks. We note Proposal P1030 now proposes:

- Retaining electrolyte drinks in Standard 2.6.2, noting a move to Standard 2.9.4 might be captured under Proposal P1010 – Review of Formulated Supplementary Sports Foods.
- Prohibiting health claims on electrolyte drinks, including self-substantiated health claims, other than for three specific claims for: hydration during strenuous physical activity; rehydration after strenuous physical activity; and hydration to maintain performance. The claims must specify effects occur under conditions of strenuous physical activity for a minimum time of 60 minutes.
- Restricting nutrition content claims in relation to electrolyte drinks to those about: carbohydrate; sugar or sugars; energy; and/or any electrolytes (calcium, sodium, magnesium, potassium and chloride). Percentage Recommended Dietary Intake (RDI) on electrolyte drinks would be prohibited as this is not relevant to electrolyte function.
- Reducing the minimum requirement for carbohydrate in electrolyte drinks from 50 g/L to 20 g/L, and reducing the maximum fructose permitted in electrolyte drinks from 50 g/L to 20 g/L.
- Prescribing the name ‘electrolyte drink’ to enable identification of electrolyte drinks among similar products not regulated as electrolyte drinks.
- Amending the definition of ‘electrolyte drink’ to align with compositional amendments by removing the definition’s reference to ‘carbohydrates’ and ‘minerals’ and removing the term ‘represented as’.

Summary of key views:

- The scope of the proposal must include a review of all compositional requirements and their suitability. Consideration also needs to be given to all electrolyte type drinks on the market to ensure regulations for EDs enable sufficient differentiation from other sports drinks in order to be enforceable.
- Support inclusion of EDs in Standards 2.9.4 with other sports products.
- Support change to minimum carbohydrate levels but any role of non-glycemic carbohydrates in hydration (e.g. fructose) needs to be established in setting new limits.
- Support the proposed approach for nutrition content claims.
- Support in principle the approach for specifying permitted health claims but suggest the term ‘sports performance’ may not be sufficiently specific. In order to inform consumers about the purpose of these products, the statement about type and duration of exercise should be included as a mandatory advisory statement rather than as part of a voluntary health claim.
- Support the proposed approaches in relation to nutrition information requirements, reference to ‘minerals’ and the units for tonicity claims.

Comments

Scope of P1030

The department questioned in 2014 the value of reviewing health claims on electrolyte drinks and sports foods in isolation prior to the review of *Standard 2.9.4 – Formulated supplementary sports foods*. A complete review of the evidence to inform the regulation, and subsequently any health claims, for these products was preferred. Given the review of Standard 2.9.4 is still underway, the department supports the proposed removal of Formulated Supplementary Sports Foods from the scope of P1030. The department considers there is then merit in broadening the scope beyond health claims to a comprehensive review of the composition and labelling of electrolyte drinks and completing this as a standalone piece of work to complement the review of sports foods. However, the department considers there are some gaps in FSANZ's review of the composition and labelling of electrolyte drinks that need to be addressed:

1. *Composition is limited to the consideration of a lower minimum carbohydrate requirement.* The compositional requirements for electrolyte drinks have not been reviewed for more than 20 years. Any review of the composition of these products should consider whether all compositional requirements in the Code are still fit for purpose. Specific aspects that should be included:
 - *Minimum requirement for glycaemic carbohydrates.* The EU regulations for electrolyte drinks require at least 75 per cent of energy to be derived from carbohydrates which induce a high glycaemic response, such as glucose, glucose polymers and sucrose. FSANZ proposes 20–100 g/L carbohydrate from dextrose, glucose syrup, maltodextrin, sucrose, fructose, with no more than 20 g/L fructose. This appears to allow 100% of carbohydrate to be derived from fructose, without assessment of whether fructose enables water transport across the gut in a similar way to sodium/ glucose co-transporters. FSANZ indicates in its paper that the role of carbohydrate in these products is for active hydration not energy and so consideration of the types of carbohydrate used is required.
 - *Other electrolyte compositional requirements.* A full review of the compositional requirements is required to assess suitability for the intended purpose. For example, sodium has a minimum requirement of 10mmol/L in the Code but 20mmol/L in the EU, and in Australia, leading brands can differ significantly in the amount of sodium provided. Assessment of which level best achieves active hydration is needed. Similarly, the role of other electrolytes in hydration, such as calcium and magnesium, needs to be assessed.
 - *Ensuring clear differentiation from other sports drinks.* It is unclear whether the proposed drafting under P1030 would permit the addition of other nutritive substances or ingredients (e.g., whey protein), and the effect this may have on both the efficacy of electrolyte drinks and the ability to differentiate electrolyte drinks from formulated beverages for enforcement purposes. This should be considered to ensure provisions are fit-for-purpose for both current and anticipated future innovations within the electrolyte drink category. Consideration also needs to be given to other drinks referencing electrolytes and hydration that appear to be out of scope. The department considers that a more holistic review of regulatory provisions for these beverages is required to ensure that products can be clearly differentiated for enforcement and that there are no regulatory gaps or unintended consequences of considering electrolyte drinks in isolation of other 'electrolyte type' drinks.
2. *Consideration of advisory statements.* Labelling considers health claims and the Nutrition Information Panel, but not advisory statements, the use of which would be consistent with sports foods and in line with the specialised purpose of these products and the risks they pose to consumers. This is discussed in more detail with health claims below.

Location of electrolyte drink regulations

In 2014, the consultation paper stated:

‘The draft variation transfers regulation of EDs to a new division of Standard 2.9.4 to more clearly recognise the purpose of EDs as a food specifically formulated for strenuous physical activity, rather than as a lifestyle product not specifically formulated for sports people. This transfer is consistent with targeted consultation with industry and jurisdictions in 2011 and the findings of FSANZ consumer research which showed consumers consider EDs to be a sports food.’

The department **does not support** FSANZ’s current proposed approach to retain EDs in Standards 2.6.2 and supports the initial proposal to move these products to Standard 2.9.4 for the following reasons:

- As FSANZ explained in 2014, these are special purpose products and fit better in Part 2.9 of the Code. Inclusion in Standard 2.9.4 also communicates the regulatory intent that these products have a special purpose and are not intended to be marketed for general use.
- The current proposed changes to the regulation of electrolyte drinks (such as prescribing the name and the prohibition on content and health claims unless expressly permitted) are more consistent with the regulatory approach for special purpose products than for general beverages.
- Inclusion in Standard 2.9.4 brings electrolyte drinks within scope of P1010 and enables the regulation of these to be considered alongside other sports drinks, to ensure seamless and effective regulation.
- FSANZ indicated a public health submission in 2014 opposed the move to Standard 2.9.4 on the basis that the Health Star Rating (HSR) would not apply. The department does not support the use of the HSR on electrolyte drinks as the calculator used for drinks is based entirely on energy, sugar and fruit content and does not consider the sodium content. The department considers the HSR would not enable an accurate comparison against other sugar sweetened drinks and so would not provide sufficient reason to regulate them under Standard 2.6.2.

Definition of electrolyte drink and use of the term ‘electrolyte’

The department supports revising the definition and requiring a prescribed name for electrolyte drinks to ensure clarity for both consumers and regulators.

In 2014, the department supported the removal of the reference to ‘represented as’ from the definition of an electrolyte drink based on potential enforcement uncertainty related to defining a product purely by how it is represented. Since that time there has been significant market innovation within the sports drink category, giving rise to a subgroup of products that are positioned as electrolyte-type drinks but do not meet the compositional requirements. In order to ensure there is sufficient differentiation between electrolyte drinks and other sports drinks for enforcement purposes, the department is now of the view that the definition could include both ‘represented as’ and ‘formulated for’, or alternatively these could be replaced with ‘is suitable for’.

In addition, the current wording around intended use is a little ambiguous in that it could be taken to mean ‘for rapid hydration in activity under or over 60 minutes’, instead of clarifying these products are only effective for longer bouts of exercise. The department suggests the following adjustments to the definition:

FSANZ’s proposed definition:

Electrolyte drink means a drink formulated for the rapid replacement of fluid and electrolytes during or after 60 minutes or more of strenuous physical activity.

Suggested alternatives:

- Electrolyte drink means a drink formulated, and represented as being, for the rapid replacement of fluid and electrolytes during strenuous physical that lasts 60 minutes or more,*
or

- b) Electrolyte drink means a drink that is suitable for the rapid replacement of fluid and electrolytes during strenuous physical activity that lasts 60 minutes or more*

Minimum amount of carbohydrate g/L

The department notes the preferred approach is to reduce the minimum carbohydrate requirement from 50mmol/L to 20mmol/L on the basis that a review of the evidence suggests there is no clear difference with higher levels in terms of benefit on rehydration or enhancing exercise performance when consumed during or on completion of sustained exercise (at least 60 minutes or 2% body weight loss). The department supports this approach.

Nutrition content claims

The department supports FSANZ's proposed approach to limit nutrient content claims to those about carbohydrates, sugar, energy and certain prescribed electrolytes (calcium, sodium, magnesium, potassium, chloride) in line with the purpose of these products. We further support the proposed amendments to list 'prescribed electrolytes' and conditions when making nutrient content claims about these substances in electrolyte drinks, namely that Schedule 4 conditions will not apply for these minerals.

Health claims

The department **supports in principle** FSANZ's proposed approach to permit certain health claims on electrolyte drinks. We do not support the third proposed health claim to maintain 'sports performance' on the basis that it is not sufficiently specific. We note the *Policy Guideline on Nutrition, Health and Related Claims* specifically states '*claims must communicate a specific rather broad benefit (e.g. improves recovery from exercises rather than improves sports performance.)*'

The department also strongly supports FSANZ's intention to 'provide clarity for both target and non-target consumers to more clearly identify both the intended purpose and the intended end user of these products'. This is consistent with our position in 2014 and supported by the consumer research presented, indicating participants in both Australia and New Zealand felt these products are being marketed to the general population (and specifically to children) and that they are perceived as healthier than other sugar sweetened beverages.

However, the department does not believe that clarification of the intended purpose subject to a health claim being made will achieve this. A health claim about hydration is currently permitted but the industry does not appear to use it. The main brand names and packaging design are now synonymous with the concepts of rehydration and electrolyte drinks and a health claim may not be as desirable for manufacturers if it narrows the user market.

Instead of clarifying the purpose and end user of these products via a voluntary health claim, the department supports presenting this information as a mandatory advisory statement. This approach is consistent with the special purpose of these products and the presence of advisory statements on sports foods more generally. This approach would help:

- Achieve FSANZ's intention to make the intended purpose and end user of these products clear. This would help address consumer research that found these products were marketed to the general population and limit the potential for consumers to be misled about the ability of these products to enhance hydration outside of sustained strenuous exercise.
- Limit the inappropriate use of these products and the contribution they make to excess sugar and sodium intakes, particularly in children, and dental disease (due to their acidity, sugar and frequent sipping during and after exercise, which distinguishes them from other sweet acidic beverages). In our last submission in 2014 the department referenced a number of studies showing that acidity-related dental erosion in particular is a problem with EDs, irrespective of

sugar content. These beverages can also contribute to excess sodium intake. For example, Gatorade provides 306mg sodium per serve: in 14-18 year olds this equates to 44% of the mid-point of their daily AI (460-920mg)¹. This highlights the importance of ensuring the composition is fit for purpose and the purpose and target user of these products is clear.

Despite children not being the target audience of these products, 14-18 year olds were the highest consumers of sugar sweetened beverages in the Australian Health Survey in 2011-12, with the leading sources being soft drinks, electrolyte and energy drinks². While FSANZ's dietary exposure assessment concluded that overall consumption of electrolyte drinks is low compared to soft drinks, sales of electrolyte drinks have increased³ while sales of soft drinks have decreased over time. We note FSANZ data indicates a 30% increase in sales of electrolyte drinks since the Australian Health Survey.

Reference to 'minerals'

The department agrees that the function of the various mineral salts permitted to be added to electrolyte drinks are more appropriately described as electrolytes and supports FSANZ's proposal to remove the reference to 'minerals' in the current electrolyte drink permissions within the Code.

Nutrition information requirements

The department supports the proposed changes to nutrition information requirements that seek to remove existing duplication and inconsistencies within the Code and increase consumer access to relevant and more readily understood nutritional information. We note that while FSANZ proposes to prohibit RDI declarations, percentage dietary intake (%DI) would still be permitted, which would allow consumers to access information (where manufacturers choose to voluntarily include %DI information on the label) about the contribution of electrolyte drinks to their intake of key nutrients, including sodium.

Claims in relation to the tonicity of electrolyte drinks

The department supports FSANZ's proposal to change the units of measure for tonicity claims to mOsm/kg, whilst retaining labelling requirements as mOsm/L.

¹ From Nutrient Reference Values for Australia and New Zealand, <https://www.nrv.gov.au/nutrients/sodium>, accessed 9 June 2021

² Australian Health Survey: Consumption of added sugars, 2011-12

³ Shrapnel WS, Butcher BE. Sales of Sugar-Sweetened Beverages in Australia: A Trend Analysis from 1997 to 2018. *Nutrients*. 2020; 12(4):1016. <https://doi.org/10.3390/nu12041016>