



VITACO HEALTH (NZ) LIMITED SUBMISSION

Proposal P1010 – Formulated Supplementary Sports Foods

Consultation Paper One: Regulatory Framework for Standard 2.9.4.

9 March 2023



Executive Summary

Vitaco Health (NZ) Limited (**Vitaco**) is pleased to have the opportunity to provide a written submission on Proposal P1010 – Formulated Supplementary Sports Foods (**FSSFs**). Vitaco supports the review of all aspects of Standard 2.9.4.

The following submission includes Vitaco's responses to questions presented in the Consultation Paper One: Regulatory Framework for Standard 2.9.4.

Company Overview

Vitaco has over 400 employees across manufacturing, quality, research and development, sales and other functions at the office and manufacturing site in East Tāmaki, Auckland.

We manufacture and distribute some of New Zealand's best known dietary supplements, specialist food and beverage, and sports nutrition products. Vitaco's brands include Healtheries, Nutra-life, Musashi and Aussie Bodies, with annual net revenue of NZ\$270 million.

Vitaco operates across grocery, pharmacy and health food, gyms and specialist channels with retailers throughout New Zealand, Australia and global markets.

We export products to Australia, Asia, the Middle East, Europe and other markets, and we are accelerating international expansion of our brands into new markets.

Our Submission

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?

The definition of a FSSF is a product that is specifically formulated to assist sports people in achieving specific nutritional or performance goals.

Some of the substances currently permitted in FSSFs (listed in Schedule 29) are sold in New Zealand and Australia as single ingredient products (e.g. creatine, glutamine, L-carnitine). These products are valued by sports people, however single ingredient products do not fit within the current definition of FSSF because they are not products that are 'formulated' with other ingredients. Vitaco recommends that the definition of FSSF is revised to include single ingredient products.

The term 'sports people' is general, understandable, and can reasonably encompass amateurs doing sport part-time as a hobby through to elite full-time professional athletes. It is reasonable to retain this phrase within the definition of FSSF.

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

Proprietary Blends

Mandating that ingredients are listed is appropriate to inform consumers.

Stacking

Vitaco considers that existing labelling requirements as well as consumer education and information is an appropriate approach to managing stacking, rather than increased regulation.

Sports people taking several exercise supplements per day (e.g. before, during and after exercise) generally are aware of ingredients that may create issues for them and would generally self-manage issues related to stacking.

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)?

A tiered system classifying products as high, medium and low risk seems unnecessary for FSSF and if it was to be adopted it would require extensive research and consultation to ensure it was fit-for

-purpose. Moreover, if this approach was adopted for FSSF then it would need to be considered for all categories of food. It would create a complex regulatory system which is unnecessary for consumer safety.

Maximum amounts of ingredients that may be added to a one-day quantity should continue to be used to manage the level of risk for food products.

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 response to Q3.

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

Vitaco is not aware of the number of vulnerable consumers regularly consuming FSSFs.

We are not aware that this is a significant issue.

There are existing mandatory warning statements to protect people under 15 years or who are pregnant.

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.

See response to Q2 regarding Definitions.

See responses to Q14 – Q19 regarding Compositional and Labelling requirements.

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?

Vitaco is of the view that electrolyte drinks should not be transferred to a special purpose food standard. It is an unnecessary change that would require product labels to be updated.

Electrolyte drinks may be used by consumers for a range of purposes, not necessarily as a sports food. For example, these drinks can be recommended by health professionals for any population group where rehydration is required (e.g. people who have experienced prolonged diarrhoea or vomiting).

To apply the mandatory Standard 2.9.4 advisory statements and warnings to electrolyte drinks would be unnecessary for this category of product.

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?

Vitaco is supportive of electrolyte drinks remaining as a general purpose food.

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.

See response to Q11. Vitaco is of the view that transferring electrolyte drinks to Standard 2.9.4 would negatively impact consumer messaging because these products can be used for wide range of purposes.

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.

There is no permission to use descriptors (e.g. good source) for vitamins and minerals which is an unnecessary restriction given that this information is likely to be of benefit to the consumer.

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 existing warning and advisory statements should be reviewed to ensure that they are fit-for-purpose and relevant.

While the blanket warning statement 'Not suitable for children under 15 years of age or pregnant women: Should only be used under medical or dietetic supervision' is appropriate in many cases, there are cases where this warning may be excessive after considering the evidence.

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.

There is the potential for more balanced labelling requirements for FSSFs to enable consumers to make more informed choices.

The existing advisory and warning statements enable consumers to make partially informed choices.

Consumers would benefit from pre-approved (Schedule 4) and self-substantiated health claims to be permitted for FSSFs.

Q17. What are your views on the usefulness of the labelling statements in Division 3 for particular sports foods (high carbohydrate supplement, protein energy supplement, energy supplement)? Please provide reasons for your view.

The categories, composition, required statements and optional statements for particular FSSFs described in Division 3 are no longer fit-for-purpose and aligned with existing sports products on the market and do not meet consumers' expectations regarding sports foods. Many FSSFs will not fit into one of these particular categories. It is recommended that these categories are reviewed to ensure they are relevant to consumers and industry.

Q19. To inform the scope of the second consultation paper, do you have any views on how Standard 1.2.7 – Nutrition, health and related claims could apply to sports foods?

The composition requirements for the particular FSSFs in Division 3 are narrow. Any FSSF that does not fit into one of the three categories is prohibited from implying that the product may lead to *“enhanced performance or beneficial physiological effects”*.

Given that these products are developed to assist sports people, it would benefit consumers if FSSFs were permitted to make health claims from Schedule 4 as well as self-substantiated health claims.