



Supplementary News

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Functional Food or Dietary Supplement? An Update in Recent Regulatory Decisions

Is my product a food or a dietary supplement? This question often asked by manufacturers seeking to market their products containing functional ingredients. Since the introduction of the first regulation governing dietary supplements, the market has evolved significantly to include products in food formats (e.g., beverages, bars). In those jurisdictions where no regulatory provisions for supplements in food formats were made, regulators have been trying to catch up with the innovation of industry. With the differing approaches that regulators around the world are taking to address such products, the answer to industry's question depends entirely on where the product is being marketed.

Within the European Union (EU), dietary supplements have been clearly defined since 2002 as foods marketed in therapeutic-type dosage forms. Additional provisions were made in 2006 for the addition of vitamins, minerals, and other substances to food, thereby creating a "functional food" category. Although the EU has provisions in place for these types of products, other regulatory agencies are in the process of updating their existing regulations and/or providing guidance to industry to help address this issue.

In Canada, the Natural Health Product (NHP) Regulations were originally designed for supplement products in a discrete dosage format; however, the lack of any restrictions on dosage forms (other than those administered by injection) and the early licensing of products in food-formats have provided industry with a regulatory "loop-hole" for supplements in food formats. In March 2009, the Natural Health Products Directorate (NHPD), in conjunction with the Food Directorate, released a guidance document outlining principles and considerations to aid in the classification of products at the food – natural NHP interface. Since then, the NHPD has been informing product licence applicants that Health Canada may transition these products to the food regulatory framework at some point in the future.

With the growth of conventional foods containing novel ingredients being marketed as dietary supplements, the United States (U.S.) Food and

Drug Administration similarly released a draft guidance document in December 2009 concerning the classification of products in liquid form for sale in the U.S. The guidance document identifies several factors that may be used to discern whether a liquid product should be marketed as a dietary supplement or food; however, as this guidance is still in draft form, these recommendations are not implemented at this time.

In order to prevent food-type supplements from entering a regulatory "no man's land" between dietary supplements and conventional foods, the New Zealand Food Safety Authority (NZFSA) recently amended the *Dietary Supplements Regulation 1985* by creating a distinction between the two broad categories of dietary supplements that exist within New Zealand. Within the amendment, the definition of dietary supplements was changed to include only therapeutic-type supplements, whereas a new standard, *New Zealand Food (Supplemented Food) Standard 2010* (the Standard), was promulgated March 31, 2010 with a two-year transition period for food-type dietary supplements (supplemented foods) under the responsibility of NZFSA. Furthermore, the Standard creates interim regulations for supplemented foods until an appropriate pathway for inclusion into the Australia New Zealand Food Standards Code can be created for these products.

The introduction of new regulations and clearer definitions will help industry to determine how their products may be categorized; however, it also may result in new requirements for premarket approval that previously did not exist. It is not surprising, therefore, that foods with functional ingredients may be misrepresented when sold across various markets, causing not only confusion for consumers, but also for industry trying to navigate the multitude of regulations. Staying on top of the changing regulatory climate and developing a clear regulatory strategy is key for manufacturers to ensure that they are able to meet any premarket requirements and get timely approvals for their products.

Upcoming Events

NBJ Summit

June 20-23, 2010
Dana Point, California
<http://www.nbjsummit.com/nbj10/public/enter.aspx>

The Toxicology Forum 36th Annual Summer Meeting

July 11-15, 2010
Aspen, Colorado
<http://www.toxforum.org/content>

IFT 10 Annual Meeting & Food Expo

July 17-20, 2010
Chicago, Illinois
<http://www.am-fe.ift.org/cms/>
Visit us at booth 6213

Health Ingredients Japan

October 13-15, 2010
Tokyo, Japan
<http://www.hijapan.info/eng/>
Visit us at the Canadian Pavilion

Supplieside West 2010

October 20-22, 2010
Las Vegas, Nevada
<http://www.suppliesideshow.com/west/>
Visit us at booth 16085

CHFA ExpoEast 2010

October 21-24, 2010
Toronto, Ontario
<http://www.chfa.ca/EVENTS/ExpoEast.aspx>

Do you have an upcoming event?

Find out how you can highlight it in our newsletter by sending an email to: food@cantox.com

UPLAR and More: What's New with NHPs

The first half of 2010 has been a whirlwind of activity at the Canadian Natural Health Products Directorate (NHPD). As reported in the October 2009 edition of Supplementary News, questions about the fate of thousands of unlicensed natural health products (NHPs) sold on the Canadian market loomed over the industry as the six-year transition period for the full implementation of the NHP Regulations drew to a close.

In November 2009, the NHPD, in conjunction with the Marketed Health Products Directorate (MHPD) and the Health Products and Food Branch Inspectorate (HPFBI), held a stakeholder consultation workshop to get feedback on what industry believed would be the best approach to address compliance and enforcement issues in the wake of the end of the transition period and a backlog of several thousand product licence applications (PLAs). At that time, the NHPD was committed to "addressing" the backlog by March 31, 2010, a commitment that they were able to keep; however, "addressing" was defined as having issued at least one information request notice (IRN) to applicants, which in many cases is still far from having completed a full assessment of a PLA. With so many unlicensed products on the market, no deadline for the completion of PLA reviews, and no clear performance standards for the assessment of PLAs, the NHPD, MHPD, and HPFBI sought industry feedback on what the new compliance and enforcement policy should entail.

To complicate matters, in January 2010 the National Association of Pharmacy Regulatory Authorities (NAPRA) issued a position statement that pharmacies should not sell any marketed health products that did not have premarket approval, putting in jeopardy a host of NHPs that until then were able to be sold on the Canadian market. It was NAPRA's position that unlicensed products may pose a risk to public safety and as they are no longer on the market legally, they should not be sold. Since then, Health Canada has introduced several new measures to address the current issues.

UPLAR: A NEW REGULATION

In response to NAPRA's position statement and the growing concern about the fate of NHPs on the Canadian market, Health Canada developed the Unprocessed Product License Application Regulations (UPLAR), providing a band-aid solution. The UPLAR were published in the Canada Gazette I as proposed regulations on May 8, 2010 and will permit the legal sale of unlicensed NHPs under certain conditions. The main provisions of the UPLAR are as follows:

- If the UPLAR are implemented, products for which PLAs have been in the submission queue for at least 180 days will be eligible for an exemption number, provided that they do not meet certain risk criteria (e.g., intended for use by children under 12, pregnant or breastfeeding women, etc.).
- Once an exemption number is posted on the NHPD's website, a product will be permitted to be legally sold in Canada.



- Since information such as brand name, company name, and other product details will be made publicly available, applicants will have the option to opt-out of the exemption number, hence committing not to sell their product until a product licence has been granted.
- The exemption number must be printed on the product label within a "reasonable" amount of time. The current definition of "reasonable", according to the NHPD, is the sooner of 12 months or the next label run.
- If implemented, the UPLAR would be repealed 30 months after promulgation.

As stated above, products that have been in the application submission queue for at least 180 days will be eligible for an exemption number, once the UPLAR have been implemented. For products whose applications have been submitted less than 180 days before implementation, there will be a 180-day waiting period following the receipt of a submission acknowledgement notice before those products will be eligible for an exemption number and can be placed on the market. Although the UPLAR includes labelling provisions, one issue that is not clear is whether advertising of NHPs with an exemption number will be permitted, and under what restrictions, if any.

NEW APPLICATION MANAGEMENT POLICY

In their efforts to develop performance standards, the NHPD has unveiled a new Application Management Policy to streamline the application review process, with the aim of completing the review of PLAs that require a full assessment of safety, efficacy, and quality within 180 days. The new Application Management Policy is scheduled to come into effect with the implementation of the UPLAR, or in Fall 2010 if the UPLAR do not proceed. This new Policy includes the following changes:

- Once a PLA has been submitted, it will undergo a preliminary assessment to determine whether data supporting safety, efficacy, and quality have been provided. This process is expected to take up to 40 days.
- Following the preliminary review process, the NHPD will either issue a submission number for a complete application

or a refusal notice for an application that is considered to be deficient.

- IRNs, for which the NHPD had established a 30-calendar day deadline by which responses must be submitted, will no longer be granted an automatic 30-day extension to the deadline. A valid explanation for requesting an extension will be required for consideration.
- Prior to submitting a PLA, applicants must ensure that all medicinal and non-medicinal ingredients in their products are in the NHP Ingredients Database. If an ingredient is not in the database, applicants must submit a database Change Request Form and provide information demonstrating that a medicinal ingredient meets the definition of an NHP (Schedule 1 of the NHP Regulations) or that a non-medicinal ingredient has an excipient purpose that is considered to be acceptable for NHPs. The process to update the NHP Ingredient Database takes approximately 4 weeks to complete.

The preliminary review process for PLAs replaces the current NHPD practice of reviewing the data only after a submission acknowledgement notice had been issued, which often occurred several months after the application had been submitted and resulted in the issuance of Evidence IRNs (E-IRNs) if the data submitted in the PLA were deemed to be insufficient.

COMPLIANCE AND ENFORCEMENT POLICY

The biggest question in the minds of industry stakeholders is what the new Compliance and Enforcement Policy will entail and when it will be implemented. As per the previous Policy, compliance and enforcement will continue to be based on risk and the Policy will clarify instances of non-compliance based on potential level of risk. The new Policy is proposed to take effect in August 2010, at which time a compliance promotion period of six months in duration will begin. During this time, the NHPD, MHPD, and HPFBI will seek to enhance awareness of compliance issues to ensure that all regulated parties understand the requirements. Compliance and enforcement will continue to be based on risk;

however, in low-risk situations enforcement activities may not necessarily take place. The new Compliance and Enforcement Policy is proposed to be fully implemented in February 2011.

SO WHAT DOES THIS MEAN?

The new regulations and policies will have a tremendous impact on the NHP industry in Canada. With the UPLAR, Health Canada has found a way to temporarily address the issues surrounding the sale of non-compliant products in the Canadian market that await their product licenses; however, new products entering the market will have a 180-day waiting period following receipt of their application submission number. When this is viewed together with the new Application Management Policy, under which applications will only receive a submission number after a 40-day preliminary review period, this extends to a 220-day waiting period. While the NHPD is aiming for a 180-day performance standard for the review of PLAs that require full assessment, they have not actually demonstrated that they can meet this target and it is unclear as to when applications that are still in the queue will be completed. Thus, the 30-month timeline for the UPLAR may go by very quickly. Indeed, at a recent NHPD Workshop held in Toronto, many concerns were raised with respect to performance standards and the timelines for submission numbers, eligibility for exemption numbers, and full implementation of the new Compliance and Enforcement Policy.

For those intending to submit PLAs, the timing of your submission and plans for market entry are critical, as is ensuring that PLAs are complete and of high quality. With the preliminary assessment of PLAs and the new 180-day waiting period, the days of immediately marketing products once a submission number has been issued are very quickly drawing to a close.

For information more information on how the new regulations and policies may affect you, and how Cantox can help, please contact us at: food@cantox.com



Did You Know?

While the food regulations are harmonized between Australia and New Zealand, regulations governing the use of supplement products are not. In Australia, supplement products, known as Complementary Medicines, are governed under the authority of the Therapeutic Goods Administration, while in New Zealand, dietary supplements fall under the authority of the Ministry of Health (Medsafe). Each regulatory authority has its own guidelines and requirements to establish the safety, efficacy, and quality of supplement products. Are you considering your options for entering the markets "down under"?

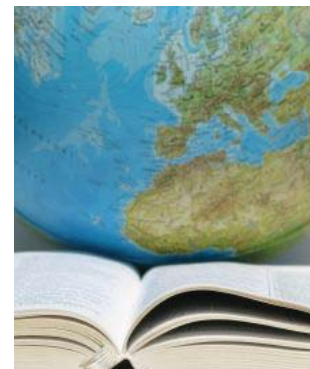
Cantox can help!

Headlines from Around the World

As part of their commitment to improving product licence application (PLA) review times and streamlining the application process, the Canadian Natural Health Products Directorate introduced a pilot program to increase the amount of pre-cleared information that may be cited by applicants for the purposes of a PLA. Introduced in October 2009, the abbreviated labelling standards are intended to provide maximum permitted doses, generalized claims, and/or efficacy information, but are not as comprehensive as a standard ingredient monograph. Labelling standards have been published to date for *alpha*-lipoic acid, choline, lactase, lecithin, lycopene, methionine, para-aminobenzoic acid, phosphatidylserine, taurine, theanine, and tomato extract.

Over the past several months, the Canadian Natural Health Products Directorate issued new monographs outlining the provisions for the use of several new medicinal ingredients. The addition of monographs for conjugated linoleic acid, soy extracts and isolates, cod liver oil, glucomannan, and hawthorn will reduce the amount of data required in support of PLAs for products containing these ingredients, and for single ingredient products that meet the provisions of their respective monographs, reduce the submission review processing time to obtain a product licence.

In January 2010 the Australian Advisory Committee on Complementary Medicines (ACCM) was formed, superseding the Complementary Medicines Evaluation Committee (CMEC). The ACCM will continue the CMEC's role in providing advice and making recommendations to the Therapeutic Goods Administration on the inclusion of complementary medicine ingredients; however, the ACCM is expected to take on a greater advisory role in the regulatory framework of complementary medicines.



The Australian Therapeutic Goods Administration published draft compositional guidelines for a number of newly approved ingredients for use in listed complementary medicines. The guidelines, published on April 1, 2010, apply to quercetin, rutin trihydrate, hesperidin, and citrus bioflavonoids extract and are open for comment until October 1, 2010.

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We're Here to Help!

The promulgation of the Canadian Natural Health Products (NHP) Regulations in 2004 created a new category of products and regulatory requirements for the marketing of such products. Since then, the Natural Health Products Directorate (NHPD) has come out with new policies, changes to how they handle product license applications, and new guidelines concerning the type and level of detail required for certain aspects of applications on more than one occasion. Therefore, keeping abreast of the changing requirements can be quite challenging for many.

Since 2003, Cantox has participated in numerous workshops and information sessions on natural health products and is aware of the latest updates that are not always available to the general public. As such, Cantox is well-positioned to help companies navigate the NHP Regulations, and in this area, Cantox:

- Provides general guidance on requirements under the NHP Regulations
- Performs feasibility analyses to determine whether sufficient data exist to substantiate product safety and efficacy
- Completes product licence applications, which include safety, efficacy, and quality data
- Acts as a liaison with the NHPD during the submission review process
- Completes master file submissions
- Provides guidance on site licensing requirements
- Designs, places and monitors clinical studies to ensure completeness of the safety and/or efficacy database, as necessary
- Writes investigator's brochures for clinical trials
- Develops adverse reaction monitoring programs to meet post-market requirements

For more information please contact us at food@cantox.com.

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HEALTH SCIENCES INTERNATIONAL

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