

Consumers Union's Comments Regarding
"Flavored Milk; Petition to Amend the Standards of Identity
For Milk and 17 Additional Dairy Products,"

Docket No. FDA-2009-P-0147

Prepared by
Michael Hansen, Ph.D.
Senior Scientist
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Consumers Union¹ (CU), the policy and advocacy arm of Consumer Reports, is pleased to comment on the petition from the International Dairy Foods Association (IDFA) and the National Milk Producers Federation (NMPF) to amend the standards of identity for milk and 17 other dairy products to allow the use of "any safe and suitable sweetener as an optional ingredient." In essence, IDFA and NMPF seek to be able to add artificial sweeteners, aka "non-nutritive sweeteners," to flavored milk, and yet not have to label that milk with a nutrient content claim such as "reduced calorie milk," as currently is the law, while still listing the artificial sweetener in the ingredient list.

We urge the U.S. Food and Drug Administration (FDA) to reject the IDFA/NMPF petition, because we believe the proposed changes will not "promote honesty and fair dealing in the interest of consumers," as claimed by the proponents, but instead could have just the opposite effect.

As the *Federal Register* Notice points out, "IDFA and NMPF argue that nutrient content claims such as "reduced calorie" are not attractive to children, and maintain that consumers can more easily identify the overall nutritional value of milk products that are flavored with non-nutritive sweeteners if the labels do not include such claims."² In other words, in order to get children to drink flavored milk that contains artificial sweeteners, IDFA and NMPF want to make it harder for the children and their parents to determine that the flavored milk does contain an artificial sweetener.

Currently, any flavored milk that contains an artificial sweetener must have a nutrient content claim, e.g. "reduced calorie flavored milk," "no sugar added," which makes it easy for consumers (children and their parents) to determine what is actually in the product they are consuming. IDFA and NMPF propose to drop the required nutrient content claim and only list the artificial sweetener in the list of ingredients, which in our opinion is an attempt to "trick" children into choosing flavored milk containing artificial

¹ Consumers Union is the public policy and advocacy division of Consumer Reports. Consumers Union works for telecommunications reform, health reform, food and product safety, financial reform, and other consumer issues. Consumer Reports, a non-profit, is the world's largest independent product-testing organization. Using its more than 50 labs, auto test center, and survey research center, the nonprofit rates thousands of products and services annually. Founded in 1936, Consumer Reports has over 8 million subscribers to its magazine, website, and other publications.

² Pg. 11792 78 *Federal Register* 34, Wednesday, February 20, 2013.

sweeteners without the children's knowledge, by making it harder to find that information.

We think this does not “promote honesty and fair dealing in the interest of consumers” as claimed in the petition. Indeed, we believe the petition is misleading in that regard, and that the proposed change would decrease, not increase, fair dealing in the interest of consumers. If flavored milks containing nutrient content claims such as “reduced calorie” are not attractive to children, perhaps it is because those children know by experience that they can detect the presence of an artificial sweetener and do not like it. Currently all milk and dairy products that contain artificial sweeteners, aka non-nutritive sweeteners, must make a nutrient content claim on the label so consumers are aware that an artificial sweetener has been used.

If the petition is granted, the only way that a consumer would know that a flavored milk contains an artificial sweetener is to examine the ingredient list. Although we generally encourage consumers to examine the ingredients list for any concerns they might have, consumers have until now been able to rely on the fact that milk products containing artificial sweeteners will be labeled as such. We are concerned that many consumers would be misled, since based on experience they would assume that a flavored milk product that does not contain a nutrient content claim such as “reduced calorie” would not contain any artificial sweeteners.

Consequently, we urge that, to “promote honesty and fair dealing in the interest of consumers,” the FDA turn down this petition and, instead, require that any flavored milk or other dairy product that contains a non-nutritive sweetener should have the words “contains artificial sweetener(s)” on the label; for the identity of the particular artificial sweetener, the consumer could consult the ingredient list, as they can currently. Such labeling—“contains artificial sweetener(s)—is clearer and more honest to the consumer than claims such as “reduced calorie” or “non-nutritive sweetener.”

Direct answers to the questions posed in the *Federal Register* Notice follow.

Questions:

1. Would the proposed amendments promote honesty and fair dealing in the interests of consumers?

The proposed amendments will neither promote honesty nor fair dealing in the interests of consumers. The proposed amendments would make it harder for a consumer to determine that the flavored milk or 17 other dairy products contain an artificial sweetener, aka “non-nutritive sweetener.” Currently, the consumer simply looks on the main label panel of the flavored milk and sees a nutrient content claim such as “reduced calorie content” or “no sugar added” and can tell that the product contains an artificial sweetener of some kind. If the petition is approved, a consumer will no longer be able to tell if the flavored milk contains an artificial sweetener without examining the ingredient

list. Thus, for consumers who want to know whether their dairy products contain an artificial sweetener, post amendments they would have to spend more time and effort to determine that fact—pick up product, turn over, examine ingredient list vs. simply glance at front label panel. Finally, the petitioners argue that nutrient content claims such as “reduced calorie” are “not attractive to children,” and so children do not buy or consume such products as much as they should. In an attempt to get children to consume more flavored milks and other dairy products with artificial sweeteners, IDFA and NMPF want to “trick” such children by not letting them know on the front label that the milk contains an artificial sweetener. This is fundamentally misleading, an attempt to make it more difficult to determine that the dairy products contain an artificial ingredient.

2. Will the inclusion of the non-nutritive sweeteners in the ingredient statement provide consumers with sufficient information to ensure that consumers are not misled regarding the characteristics of the milk they are purchasing?

The inclusion of the non-nutritive sweeteners in the ingredient statement will not be sufficient information to ensure that consumers are not misled. Currently, consumers are used to seeing flavored milk or other dairy products labeled on the front label panel with a nutrient declaration such as “reduced calorie,” etc., which lets consumers know that the product contains an artificial sweetener. Conversely, consumers assume that products that do not have such a nutrient declaration on the label will not contain any artificial sweeteners. It appears that the petitioners, IDFA and NMPF, hope to quietly change the labels and deprive consumers of important information.

4a. Would amending the Additional Dairy Standards as requested promote honesty and fair dealing in the interest of consumers?

For the same reasons as articulated above for flavored milks, amending the 17 additional dairy standards as requested (i.e. by removing information from the front label) would not promote honesty or fair dealing in the interest of consumers. Consumers’ interest is served when labels are clear and non-misleading.

4b. If the labels of these products do not bear nutrient content claims, would the inclusion of non-nutrient sweeteners in the ingredient statements provide consumers with sufficient information to distinguish between the two types of products (i.e., sweetened with nutritive versus non-nutritive sweeteners) so that consumers are not misled?

No, for the same reasons as articulated for flavored milks, the inclusion of the non-nutritive sweeteners in the ingredient statement will not be sufficient information to ensure that consumers are not misled.

6. If the standards of identity for milk and the Additional Dairy Standards are amended in the manner requested by the petition, what will be the effect on search costs for consumers who would like to determine whether a product contains a nutritive or non-nutritive sweetener?

The proposed amendments would significantly increase the “search costs” for consumers, in the sense that many consumers would likely not to obtain the information, or would obtain it only after purchasing and consuming the product. Currently, a consumer simply looks on the main label panel of the flavored milk and sees a nutrient content claim such as “reduced calorie content,” or “no sugar added” and can immediately tell at a glance that the product contains an artificial sweetener of some kind. If the amendments are approved and go into effect, the same consumer must now pick up the flavored milk product, turn it over, and then examine the ingredient list looking for the name of an artificial sweetener. In some cases, the name of the artificial sweetener may be a chemical name that is unrecognizable to many consumers. All these actions—pick up product, turn it over, examine ingredient list—take considerably more time and effort than simply glancing at the main label panel and seeing a nutrient content claim such as “reduced sugar,” etc.