May 21, 2013

Division of Dockets Management (HFA-305)
U.S. Food and Drug Administration
5630 Fishers Lane, Room 1061
Rockville, MD 20852

Re: Petition to Amend the Standard of Identity for Milk and Seventeen Additional Dairy Products (Docket No. FDA-20090P-0147)

Dear Sir or Madam:

The Environmental Working Group (EWG) is pleased to submit the following comments to the U.S. Food and Drug Administration (FDA) on the citizen petition submitted by the International Dairy Foods Association (IDFA) and the National Milk Producers Federation (NMPF) to amend the standard of identity for milk and seventeen other dairy products to account for the use of non-nutritive sweeteners in such products. EWG is a non-partisan, non-profit organization dedicated to marshaling the power of information to protect public health and the environment. As part of that mission, EWG advocates transparency in food labeling and empowers consumers with the facts they need to choose foods that are nutritious, affordable, and free of unhealthy additives or toxic contaminants.[1]

With their petition, IDFA and NMPF have asked the FDA to allow the dairy industry to significantly reduce the quality of information given to consumers about controversial ingredients that may be added to dairy products. FDA regulations currently allow for the use of non-nutritive sweeteners, such as aspartame and acesulfame-K, in the eighteen dairy products identified in the petition.[2] Because these artificial sweeteners are not recognized in the standards of identify of the products at issue, however, they may only be added to these products if the front-of-the-package label bears a clear qualifying term such as "reduced calorie."[3] This added label alerts consumers to the fact that the product contains an ingredient they would not otherwise expect to find. If the FDA changes the standards of identify of the eighteen dairy products named in the petition to recognize non-nutritive sweeteners as optional ingredients as the petitioners have requested, consumers would have a difficult time knowing at the point-of-sale whether a dairy product contains artificial and non-nutritive sweeteners. Specifically, they would have to carefully inspect the fine print on the back label of every dairy product they purchase to know for sure whether such sweeteners have been added. The petitioners, therefore, are not asking the FDA to allow the industry to introduce new dairy products to the market. Instead, they are asking the FDA to permit the industry to obscure information about controversial ingredients that may be added to dairy products. The FDA must protect consumers'

[1] See, e.g., Envtl. Working Group, Good Food on a Tight Budget (2012), http://static.ewg.org/reports/2012/goodfood/pdf/goodfoodonatightbudget.pdf.
[2] The following non-nutritive sweeteners have been approved by the FDA for use in food and/or beverages, with certain restrictions: aspartame, sucralose, acesulfame-K, neotame, and saccharin. See 21 C.F.R. §§ 172.804, 172.831, 172.800, 172.829, and 180.37.
[3] See 21 C.F.R. § 130.10(d).

right to know what they are feeding themselves and their families and deny the petition in its entirety.

The IDFA and NMPF's petition misleadingly conveys the idea that the only difference between nutritive and non-nutritive sweeteners is their respective caloric contents and urges the FDA to change the standards of identity in order to "promote honesty and fair dealing by creating consistency in the names of . . . products."[4] In fact, there are serious differences between nutritive and non-nutritive sweeteners that strongly support the need for different labeling requirements among products. Low or no calorie artificial sweeteners are, for example, far sweeter than nutritive sweeteners such as sugar,[5] which has caused some health professionals to suggest that they could cause stronger cravings for sweet products.[6] Laboratory studies also have shown that by divorcing sweetness from energy consumption, artificial sweeteners may disrupt the body's ability to regulate caloric intake.[7] Therefore, although the FDA has approved the use of certain non-nutritive sweeteners in foods and beverages, they remain controversial and insufficiently studied. The current labeling requirements clearly and honestly announce to consumers that artificially sweetened dairy products are different from dairy products sweetened with sugar or other nutritive sweeteners, allowing them to make informed choices about the food they eat.

Further, the petitioners' assertion that eliminating the "reduced calorie" labeling requirement for artificially sweetened dairy products such as flavored milk would help "promot[e] more healthful eating practices and decreas[e] childhood obesity" is grossly misleading.[8] The effect of non-nutritive sweeteners on diet and weight has been studied for decades and no clear evidence has emerged to prove that the consumption of artificially sweetened products causes weight loss.[9] In fact, several studies have suggested that regular consumption of artificially sweetened beverages may contribute to long-term weight gain.[10] Childhood obesity is one of the most pressing public health issues facing American families today. Given the lack of scientific consensus regarding the impact of artificial sweeteners on weight, the petitioners' suggestion to the FDA and the public that the change in labeling they are seeking could decrease the rate of childhood obesity is inaccurate and irresponsible.

EWG recognizes that dairy products can be part of a balanced, healthy diet. However, there are better ways to market milk to consumers and to encourage children to choose lower calorie foods and beverages than by selling artificially sweetened dairy products without clear labels. As the

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[4] IDFA & NMFA, Citizen Petition to the FDA to Amend the Standard of Identity for Milk and Seventeen Additional Dairy Products 6 (2009).

[5] Sucralose, for example, sold under the brand name Splenda, is 600 times sweeter than sugar. Sugary Drinks or Diet Drinks: What's the Best Choice?, Harvard School of Public Health, http://www.hsph.harvard.edu/nutritionsource/sugary-vs-diet-drinks/#references (last visited May 17, 2013).

[6] Heather White, Executive Dir., Envtl. Working Group, The Dr. Oz Show, Articles, Artificial Sweeteners in Milk? (Mar. 31, 2013), http://www.doctoroz.com/videos/artificial-sweeteners-milk.

[7] Richard D. Mattes & Barry M. Popkin, Nonnutritive Sweetener Consumption in Humans: Effects on Appetite and Food Intake and Their Putative Mechanisms, 89 Am. J. of Clinical Nutrition 1, 7 (2009).

[8] IDFA & NMFA, supra note 4, at 2.

[9] Mattes & Popkin, supra note 7, at 1.

[10] See, e.g., Sharon P. Fowler, et al., Fueling the Obesity Epidemic? Artificially Sweetened Beverage Use and Long-Term Weight Gain, 16 Obesity 1894, 1899 (2008).

1.2 million comments submitted to the FDA in support of mandated labeling for genetically engineered foods demonstrate, consumers want more information about their food — not less.

EWG urges the FDA to affirm consumers' right to know what is in their food by denying the petition.

Thank you for your consideration.

Sincerely,

Heather White
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