

April 15, 2013

Margaret A. Hamburg, MD
Commissioner
Food & Drug Administration
10903 New Hampshire Avenue
Silver Spring, MD 20993

Re: Docket No. FDA-2009-P-0147

Dear Dr. Hamburg:

We, the undersigned, oppose the Citizen Petition (Docket No. FDA-2009-P-0147) filed by the International Dairy Foods Association (IDFA) and the National Milk Producers Federation (NMPF) seeking to amend the standards of identity for milk and 17 other dairy products. We urge you to deny that petition. That petition, if granted, would allow the use of non-caloric sweeteners in these dairy products without any front-label nutrient content claim (such as “reduced sugar” or “reduced calorie”) presently required by FDA regulations.

While the dairy industry is already free to add non-caloric sweeteners to flavored milk, it claims (without any supporting evidence) that “use of the phrase ‘reduced calorie’ is not attractive to children and contributed to the overall decline in milk consumption.” And in a public statement¹, IDFA indicated that this “petition was and continues to be a direct attempt to keep flavored milks in school cafeterias.” Accordingly, it seems clear that if the petition is successful, there would be a dramatic increase in the volume of artificially sweetened flavored milk offered in U.S. schools, in packages that omit material information.

Industry Does Not Need Artificial Sweeteners to Keep Flavored Milk in Schools

IDFA and NMPF point to the current childhood obesity epidemic as a rationale for granting their request. We, too, agree that overly sweetened beverages are a matter of concern. However, the dairy industry has already demonstrated that it can effectively reduce sugar in its products without using artificial sweeteners.

In their 2009 citizen petition, IDFA and NMPF point to various state policies and proposed national guidelines restricting the number of calories and grams of sugar in flavored milk in school, and then conclude that, without the use of artificial sweeteners, flavored milk will be barred from school meal programs. But in the intervening four years -- which have included the passage of the landmark Healthy, Hunger Free Kids Act -- the landscape has changed significantly. Many school districts have since worked with their suppliers to lower the sugar content in flavored milk, and many of these milks now

¹ <http://www.idfa.org/news--views/headline-news/details/7991/>

contain around 130 calories and 22 grams of total sugar per serving (12 grams of which are naturally occurring). Houston ISD, the nation's seventh largest district, offers flavored milk with only 18 grams of sugar per serving. These reductions in sugar are consistent with what the Institute of Medicine recommended in its 2007 report, "Nutrition Standards for Foods in Schools." Moreover, the new national school lunch standards and the proposed national competitive food and beverage standards do not include sugar or calorie limits for fat-free flavored milk. So while we applaud dairy industry efforts to develop lower-sugar products, these efforts demonstrate that there is no need to amend the current standard of identity for flavored milk in order to keep flavored milk in school.

Questions Regarding Artificial Sweeteners

We acknowledge that the artificial sweeteners intended to be used by the dairy industry in flavored milk have been approved by this agency. That said, there have been legitimate questions raised about the safety of some of them – particularly aspartame and acesulfame-potassium – and we are troubled by any plan to increase their availability in school cafeterias. Children are our most vulnerable population and the dairy industry's desire to increase flavored milk sales in schools is not a sufficient justification for increasing any potential risks to students' long-term health.

The Proposed Labeling Changes Will Mislead Parents

Petitioners' request, if granted, would leave parents uninformed about what their children are drinking at school. Very few school districts offer full ingredient disclosures on their websites, but the majority of them use FDA nutrient content claims ("low-fat" milk, "fat-free" milk) to describe milk on their menus. If artificially sweetened chocolate milk can still be called "chocolate milk," without a qualifier such as "reduced sugar" or "reduced calorie," parents will not know that the product contains an artificial sweetener unless they are in the cafeteria at the time of meal service and are able to read the ingredient label – an unlikely scenario.

A spokesman for the National Dairy Council, seeking to address this concern, indicated to a media outlet² that "school administrators would likely inform parents of the change by putting it on menus, websites and newsletters." There is no basis for that statement and the petition does not include any information about school-based communication mechanisms. In addition, the use of menus, websites and newsletters would in all probability be unreliable and inconsistent across the 14,000 school districts and 100,000 schools throughout the country. Current labeling laws, if left unchanged, would better ensure that parents know exactly what kind of flavored milk their children are consuming at school.

The Proposed Labeling Changes Will Mislead Other Consumers

IDFA and NMPF maintain that "updating the food standard of identify for 'milk' in this way would promote honesty and fair dealing in the interest of milk consumers" because "consumers do not recognize milk or even flavored milk as a beverage that contains

² <http://www.npr.org/blogs/thesalt/2013/03/06/173618723/can-milk-sweetened-with-aspartame-still-be-called-milk>

substantial amounts of sugar.” Not only did the petitioners not offer any supporting evidence for this statement, one has only to taste flavored milk, as compared with regular milk, to understand that it is sugar-sweetened.

Without the front-label nutrient content claims currently required for artificially sweetened milk, consumers have no reason to check ingredient listings for what they already assume: that “milk” does not normally contain non-nutritive sweeteners such as aspartame or acesulfame-potassium. Accordingly, if petitioners’ request is granted, a great many American consumers are likely to be unfairly confused or misled.

Moreover, IDFA and NMPF are also seeking to amend the standards of identity for an additional 17 dairy products. Permitting products like artificially-sweetened sour cream and nonfat dry milk to be marketed without the required front-label nutrient content claims seems to have nothing to do with the petitioners’ purported concern for the health of school children. Granting this wide-ranging request would further compound confusion in the marketplace and lead to more misleadingly labeled dairy products.

For the foregoing reasons, we respectfully request that the IDFA and NMPF petition be denied.

Sincerely,

AllergyKids Foundation

CA Center for Public Health Advocacy

California Food Policy Advocates

Center for Communications, Health & the Environment

Center for Science in the Public Interest

Defeat Diabetes Foundation

Earth Day Network

Environmental Working Group

Farm Sanctuary

Healthy Child, Healthy World

Healthy Schools Campaign

Jamie Oliver Food Foundation

Real Food For Kids

Society for Nutrition Education and Behavior

Yale Rudd Center for Food Policy & Obesity

Kate Adamick, Co-Founder, Cook for America®

Andy Bellatti, M.S., R.D., Creator & Co-Founder, Dietitians for Professional Integrity

Gracie Cavnar, Founder & CEO, Recipe for Success Foundation

Ann Cooper, Founder, Food, Family, Farming Foundation

Karen Devitt and Lindsey Parsons, Co-Founders, Real Food For Kids – Montgomery

Dr. Yoni Freedhoff, Assistant Professor, Department of Family Medicine, University of Ottawa, Medical Director, Bariatric Medical Institute

Justin Gagnon, CEO, ChoiceLunch

Casey Hinds, Tweens Nutrition and Fitness Coalition

Nancy Huehnergath, Nutrition Advocate/Food Reformer and Founder, Nancy Huehnergath Consulting

Chery Kline, Clinical R.D., Dignity Health Hospital

Jeffrey B. Schwimmer, M.D., Professor of Pediatrics, University of California, San Diego

Bettina Elias Siegel, J.D., School Food Activist, Writer - The Lunch Tray

Michele Simon, J.D., M.P.H., President, Eat Drink Politics

Dana Woldow, School Food Activist and Founder, Parents, Educators & Activists Connection for Healthier School Food (PEACHSF)