



July 13, 2017

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U.S. Food and Drug Administration
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Re: CSPI Letter dated May 24, 2017 Regarding Labeling of 100 Percent Juices as Containing “No Added Sugar”

Dear Dr. Mayne,

We, the Juice Products Association (JPA) and undersigned trade associations, are writing in response to the May 24, 2017 letter from the Center for the Science in the Public Interest (CSPI) to the Food and Drug Administration (FDA) regarding the labeling of 100 percent juices with a “no added sugar” labeling claim. We write to explain why CSPI’s request is inconsistent with the underlying FDA regulation and the agency’s historical interpretation of this regulation. CSPI seeks to prohibit a “no added sugar” labeling claim on all 100 percent juices when such a claim is truthful, non-misleading, compliant with the relevant FDA regulation, and fully appropriate based on the guidance provided by FDA in the preamble to the 1993 final regulation.

We are joined in our response by the American Beverage Association, Can Manufacturers Institute, Concord Grape Association, Cranberry Institute, Florida Department of Citrus, Grocery Manufacturers Association, and U.S. Apple Association. As described in Appendix A, the undersigned trade organizations represent the juice beverage industry and their members include major processors, producers, and distributors of a wide variety of fruit and vegetable juices, juice beverages and drinks. These members represent a significant majority of the juice and juice beverage processors in the United States. We strongly encourage FDA to reject the CSPI request because it is inconsistent with the relevant agency regulation and historical precedent as well as with dietary guidance encouraging consumers to consume beverages like 100 percent juices with no added sugars.

- 1. A “no added sugar” claim is permitted on 100 percent juices because they substitute for beverages that normally contain added sugars, such as juice beverages and 100 percent juices with added sweeteners.**

The “no added sugars” regulation states that a food may bear the claim if, among other requirements, “[t]he food that it resembles and for which it substitutes *normally contains* added sugars.” ^{1/} CSPI bases its request that FDA prohibit “no added sugar” claims for 100 percent juices on a flawed interpretation of the regulation and the FDA’s guidance statements upon issuing the final regulation. The plain language of the regulation does not require 100 percent juices to normally contain added sugars, but instead requires the comparative products for which juices “resemble” and

^{1/} 21 C.F.R. § 101.60(c)(2)(iv) (emphasis added).

“substitute” to normally contain added sugars. Today’s customer has a wide variety of options when selecting beverages and can choose between 100 percent juice, juice drinks, fruit flavored punches, and a myriad of other products. Fruit flavored punches and fruit drinks normally are sweetened with added sugars. A 100 percent juice that does not contain added sugars resembles these beverages and can reasonably substitute for such foods in the diet while not contributing added sugars.

FDA has specifically weighed in on which foods are considered “substitute foods” in a way that makes clear that 100 percent juices are substitute foods for juice beverages or 100 percent juices with added sweeteners. The agency takes a broad view of “substitute foods” as including “similar foods” that “may be used interchangeably.” FDA regulations define the term “substitute food” for purposes of nutrient content claims like “no added sugar,” as follows:

A “substitute” food is one that may be used interchangeably with another food that it resembles, i.e., that it is organoleptically, physically, and functionally (including shelf life) similar to, and that it is not nutritionally inferior to unless it is labeled as an “imitation.” ^{2/}

CSPI omits any discussion of this regulation, which defines the key term at issue, from its request. Under the FDA regulation, if two foods are used interchangeably and are similar in terms of organoleptic, physical, and functional properties, they are considered substitute foods.

With respect to interchangeability, these products are neighbors on grocery store shelves, and many consumers purchase both 100 percent and non-100 percent juices to use in similar ways in the diet, depending on their taste preferences, cost sensitivities, and many other factors. Moreover, FDA has issued a single common or usual name regulation that governs the labeling of 100 percent juices, juice blends, and juice cocktails; and a single regulation that governs the percent juice declaration on all juices that purport to contain juice. ^{3/} The FDA regulations treat these products interchangeably by having one set of regulations govern the labeling of, and percent juice declaration for, any product that purports to contain juice.

In terms of similar characteristics, 100 percent juices indeed resemble juice beverages and 100 percent juices with added sweeteners in terms of taste, physical appearance, functionality, and shelf-life:

- Taste: Both juices and juice beverages taste like the characterizing fruit and/or vegetables used to make the juice, with varying degrees of sweetness.
- Physical Appearance: The products are similar in appearance, with the main differences being the color, which varies depending on the amount of each juice ingredient; the thickness, which may vary depending on whether purees or juices are used; and the clarity or cloudiness of the product, which depends on whether the juice has been clarified.
- Functionality (including shelf-life): All of the relevant products are used as beverages in the diet. Both juices and juice beverages have similar shelf lives or best by date intervals, and both are available as refrigerated or shelf stable products.

^{2/} 21 C.F.R. § 101.13(d).

^{3/} 21 C.F.R. §§ 102.33(a) (common or usual name for beverages that contain fruit or vegetable juice); 101.30 (percent juice labeling for foods that purport to be beverages that contain fruit or vegetable juice).

100 percent juices, therefore, meet the plain language of the no added sugar nutrient content claim requirements because they resemble and are used as substitutes for juice beverages or fruit-flavored drinks with no juice content that normally contain added sugars.

Underscoring the broad FDA interpretation of which foods may be substitute foods, FDA explained in the preamble to the no added sugar regulation that substitute foods are “similar foods.” 4/

The agency advises that the purpose of a ‘no added sugar’ claim is to identify a food that differs from a similar food because it does not contain the added sugars that would normally be present in the other food. 5/

There is no requirement that substitute foods be “identical” foods. So the fact that 100 percent juice normally does not contain added sugars does not preclude a 100 percent juice from bearing a no added sugars claim. For the reasons discussed above, 100 percent juice is certainly “similar” to juice beverages or fruit-flavored drinks that contain added sugars.

2. FDA has recognized that a “no added sugars” claim is appropriate on 100 percent juices, provided all other criteria in the regulation are met.

In the preamble to the 1993 “no added sugars” regulation, FDA recognizes that “no added sugars” claims are appropriate for 100 percent juices as a category. FDA responded to two comments that asked about the addition of concentrated juices to 100 percent juices – where the juice concentrate is either reconstituted to single strength or used to achieve uniformity in the finished juice – and did not express any general objection to the use of the claim on the finished 100 percent juice. Excerpts from these comments and the agency’s response are copied below.

One comment expressed concern that the addition of concentrated juice to unconcentrated apple juice for the purpose of achieving uniformity in the finished juice may preclude the use of the term “no sugar added.” The agency advises that the addition of a concentrate of the same juice to achieve uniformity would not, in itself, preclude the use of a “no sugar added” claim, provided, the other conditions for the claim are met. 6/

The issue raised by this comment refers to 100 percent juices. FDA regulations expressly allow the addition of juice concentrate from the same fruit or vegetable to a 100 percent single species juice. 7/ In the statements quoted above, the agency recognizes a “no added sugars” claim is permitted on a 100 percent juice that contains the added concentrate, provided the other criteria for using the claim are met. A second comment discusses another potential use of juice concentrates in 100 percent juices:

One comment sought assurance that fruit juice from concentrate that has been reconstituted to normal strength would be able to make a “no sugar added” claim. The agency advises that the addition of water to a juice concentrate to produce a single strength juice would not

4/ This letter addresses only 100 percent juice substitution for similar juice products, but many 100 percent juice products also substitute for a wide array of non-juice beverage products as well.

5/ 58 Fed. Reg. 2302, 2327 (Jan. 6, 1993) (emphasis added).

6/ *Id.*

7/ 21 C.F.R. § 102.33(g)(2).

preclude the use of a "no added sugar" claim; however, the other conditions for the claim must still be met. 8/

The reference in this comment to a single strength juice demonstrates FDA considered it appropriate to make a “no added sugars” claim on a single strength juice. If the agency had an objection to the use of this claim for 100 percent juices as a category, the agency would have expressed that objection in this response, and yet it did not. In both of the above situations, FDA recognized that a “no added sugars” claim is permitted on a 100 percent juice, provided the other conditions for the claim – such as the disclosure statements for foods that are not low or reduced in calories – are met.

3. The CSPI request interprets the “no added sugar” regulation incorrectly and in a way that is inconsistent with agency precedent.

The CSPI letter takes an overly restrictive view of which foods 100 percent juice “resembles or may substitute for” in the diet. The letter quotes an FDA statement recognizing that a 100 percent juice may lawfully contain added sugars when it is labeled as “100% juice with added sweetener.” FDA has therefore expressly recognized that 100 percent juices may contain added sweeteners as long as they are appropriately labeled. 9/ Yet under the CSPI view, 100 percent juice with no added sugars does not substitute for or resemble “100% juice with added sweetener.” Under this view, the substitute food would need to have the exact same statement of identity as the food that bears the claim.

Such a view is contrary to FDA’s broad interpretation of substitute foods. As discussed above, FDA regulations and preamble statements provide that substitute foods include “similar foods” used interchangeably in the diet and that resemble one another in terms of taste, physical appearance, and functionality. Moreover, in 1993, FDA specifically considered the use of no added sugars claims on 100 percent juices, including 100 percent juices with juice concentrates to standardize the Brix, and declined to assert 100 percent juices are ineligible for a “no added sugars” claim. In doing so, the FDA rejected the erroneous position advanced by CSPI that such juices do not substitute for or resemble foods that normally contain added sugars. To the contrary, the agency statements establish that such claims are permitted on 100 percent juices.

CSPI now seeks to reopen this question more than 20 years later, when for decades “no added sugars” claims have been appropriately used throughout the beverage industry on 100 percent juices consistent with the plain language and agency interpretation of that regulation. Put simply, there is no requirement that the two foods be “identical foods” as CSPI would require. Rather, the two foods need only be “similar foods.”

4. Federal dietary guidelines encourage Americans to consume 100 percent juice with no added sugars in place of beverages that contain added sugars, illustrating that 100 percent juice can substitute for such beverages.

The Dietary Guidelines for Americans repeatedly recognize the benefits of consuming 100 percent juice with no added sugars, stating, for example, that “When juices are consumed, they should be

8/ 58 Fed. Reg. at 2327 (emphasis added).

9/ 21 C.F.R. § 101.30(b)(3).

100% juice, without added sugars.” ^{10/} The Dietary Guidelines also recognize that beverages frequently substitute for one another in the diet and therefore makes the following recommendation:

When choosing beverages, both the calories and nutrients they may provide are important considerations. Beverages that are calorie-free—especially water—or that contribute beneficial nutrients, such as fat-free and low-fat milk and 100% juice, should be the primary beverages consumed. Milk and 100% fruit juice should be consumed within recommended food group amounts and calorie limits. ^{11/}

We note that the Dietary Guidelines does not conclude that all juices containing less than 100 percent juice contribute excess calories and few nutrients, stating that “[t]here is room for Americans to include limited amounts of added sugars in their eating patterns, including to improve the palatability of some nutrient-dense foods, such as fruits and vegetables that are naturally tart (e.g., cranberries and rhubarb.”

The Dietary Guidelines offer the following additional recommendation:

Juices may be partially fruit juice, and only the proportion that is 100% fruit juice counts (e.g., 1 cup of juice that is 50% juice counts as ½ cup of fruit juice). The remainder of the product may contain added sugars. Sweetened juice products with minimal juice content, such as juice drinks, are considered to be sugar sweetened beverages rather than fruit juice because they are primarily composed of water with added sugars (see the Added Sugars section). The percent of juice in a beverage may be found on the package label, such as “contains 25% juice” or “100% fruit juice.” ^{12/}

These statements support that juice beverages are indeed substitute foods for 100 percent juices, as considered by both the Department of Health and Human Services (HHS) and the U.S. Department of Agriculture (USDA), which jointly issue the Dietary Guidelines.

Additionally, if manufacturers were prohibited from making a “no added sugar” claim for 100 percent juices, this would be detrimental to consumers trying to implement the recommendations of the Dietary Guidelines. By allowing manufacturers of 100 percent juices with no added sugars to highlight this product attribute on the label, companies are able to point consumers toward the juice products with no added sugars that the Dietary Guidelines encourage consumers to consume in place of sugar-sweetened beverages or other juice products.

In contrast, prohibiting “no added sugars” claims on these products could deter consumers from choosing 100 percent juices, which have a negative effect on the population’s ability to meet the recommended fruit intake set forth by the Dietary Guidelines. As stated in the Dietary Guidelines, juice contributes about one-third of the fruit intake in the U.S. diet (and nearly 50% of all fruit intake for children ages 1-3 years). Discouraging consumers from choosing 100 percent juices would result in significant public health concerns because the essential nutrients from 100 percent juice, including calcium, potassium, vitamin D, and vitamin C, are recognized as underconsumed nutrients that are key to public health. Moreover, fruits and fruit juice contribute only one percent of added sugars intake in the U.S. population.

^{10/} Dietary Guidelines for Americans (2015-2010) at 21 (emphasis added).

^{11/} *Id.* at 61.

^{12/} *Id.* at 22.

5. “No added sugars” is a truthful and non-misleading statement on 100 percent juices.

In addition to being compliant with the FDA regulation and historic agency interpretation, as well as supported by the Dietary Guidelines, a “no added sugars” claim on a 100 percent juice product is a truthful and non-misleading statement. It accurately conveys that a product has not been formulated with added sugars and, once the new rules on the Nutrition Facts Panel including the added sugars declaration are in place, will be consistent with the information the consumers will see in the NFP regarding the added sugars content of 100 percent juices. FDA has recognized for more than two decades that “no added sugars” claims are appropriate on products that contain inherent sugars and that are not low or reduced in calories, provided the appropriate disclaimers are used, as set out in the FDA regulation. The claim remains an appropriate way to inform consumers of the fact that 100 percent juices do not contain added sugars.

* * *

The undersigned associations strongly encourage FDA to reject the CSPI request as inconsistent with agency regulations and precedent and public health recommendations. We appreciate the opportunity to provide our viewpoints on the use of a “no added sugar” statement on 100 percent juices. Please do not hesitate to contact us if we can provide further information.

Sincerely,



Carol Fresinger
Executive Director
Juice Products Association

American Beverage Association

Can Manufacturers Institute

Concord Grape Association

Cranberry Institute

Florida Department of Citrus

Grocery Manufacturers Association

U.S. Apple Association

Appendix A

American Beverage Association

The American Beverage Association (ABA) is a national trade association representing non-alcoholic beverage producers, distributors, franchise companies and support industries that bring to market hundreds of products, including regular and diet soft drinks, bottled water and water beverages, 100 percent juice and juice drinks, sports drinks, energy drinks and ready-to-drink coffees and teas. In existence for nearly 100 years, ABA advocates for its members in federal, state and local public policy discussions.

Can Manufacturers Institute

The Can Manufacturers Institute (CMI) is the national trade association for the metal and composite can manufacturing industry and its suppliers in the United States. The can industry accounts for the annual domestic production of approximately 124 billion food, beverage and other metal cans; which employs more than 20,000 people with plants in 33 states, Puerto Rico and American Samoa; and generates about \$13.3 billion in direct economic activity.

Concord Grape Association

The Concord Grape Association represents Concord grape processors and manufacturers of products made from Concord grapes. The organization operates as the Concord Grape Section under the umbrella of the Juice Products Association (JPA), which represents the juice and juice products industry in the U.S. and overseas. Concord Grape Section members process more than 90% of the Concord grapes processed annually in the United States.

Cranberry Institute

The Cranberry Institute (CI) is a not-for-profit organization founded in 1951 to further the success of cranberry growers and the industry in the Americas through health, agricultural and environmental stewardship research as well as cranberry promotion and education. CI is funded voluntarily by supporting members who handle, process, and sell more than 80% of cranberries harvested annually.

Florida Department of Citrus

The Florida Department of Citrus is an executive agency of Florida government charged with the marketing, research and regulation of the Florida citrus industry. Its activities are funded by a tax paid by growers on each box of citrus that moves through commercial channels. The industry employs more than 45,000 people, provides an annual economic impact of \$8.6 billion to the state, and contributes hundreds of millions of dollars in tax revenues that help support Florida's schools, roads and health care services.

Grocery Manufacturers Association

The Grocery Manufacturers Association (GMA) is the voice of more than 250 leading food, beverage and consumer product companies that sustain and enhance the quality of life for hundreds of millions of people in the United States and around the globe. Based in Washington, D.C., GMA's member organizations include internationally recognized brands as well as steadily growing, localized brands. The \$2.1 trillion food, beverage and consumer packaged goods industry employs 14 million U.S. workers, and contributes over \$1 trillion in added value to the nation's economy.

Juice Products Association

The Juice Products Association (JPA) is the trade association representing the fruit and juice products industry. JPA's mission is to connect members by strengthening the juice products industry, providing a unified voice, serving as the expert resource, enhancing industry best practices, and promoting consumer benefits of juice products. Membership includes processors, packers, extractors, brokers and marketers of fruit or vegetable juices, drinks, or bases, as well as industry suppliers and food testing laboratories.

U.S. Apple Association

US Apple is a nonprofit, member-based association comprised of and supported by individuals, companies, and state/regional associations within the apple industry. We are the national voice and resource center serving the interests of American apple growers, packer/shippers, processors, marketers, and other interested parties within the apple industry.