

§ 101.67 Use of nutrient content claims for butter.

(a) Claims may be made to characterize the level of nutrients, including fat, in butter if:

(1) The claim complies with the requirements of §101.13 and with the requirements of the regulations in this subpart that define the particular nutrient content claim that is used and how it is to be presented. In determining whether a claim is appropriate, the calculation of the percent fat reduction in milkfat shall be based on the 80 percent milkfat requirement provided by the statutory standard for butter (21 U.S.C. 321a);

(2) The product contains cream or milk, including milk constituents (including, but not limited to, whey, casein, modified whey, and salts of casein), or both, with or without added salt, with or without safe and suitable colorings, with or without nutrients added to comply with paragraph (a)(3) of this section, and with or without safe and suitable bacterial cultures. The product may contain safe and suitable ingredients to improve texture, prevent syneresis, add flavor, extend shelf life, improve appearance, and add sweetness. The product may contain water to replace milkfat although the amount of water in the product shall be less than the amount of cream, milk, or milk constituents;

(3) The product is not nutritionally inferior, as defined in §101.3(e)(4), to butter as produced under 21 U.S.C. 321a; and

(4) If the product would violate 21 U.S.C. 321a but for the nutrient content claim that characterizes the level of nutrients, that claim shall be an explicit claim that is included as part of the common or usual name of the product.

(b) Deviations from the ingredient provisions of 21 U.S.C. 321a must be the minimum necessary to achieve similar performance characteristics as butter as produced under 21 U.S.C. 321a, or the food will be deemed to be adulterated under section 402(b) of the act. The performance characteristics (e.g., physical properties, organoleptic characteristics, functional properties, shelf life) of the product shall be similar to butter as produced under 21 U.S.C. 321a. If

there is a significant difference in performance characteristics (that materially limits the uses of the product compared to butter,) the label shall include a statement informing the consumer of such difference (e.g., if appropriate, “not recommended for baking purposes”). Such statement shall comply with the requirements of §101.13(d). The modified product shall perform at least one of the principal functions of butter substantially as well as butter as produced under 21 U.S.C. 321a.

(c)(1) Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of this part.

(2) Safe and suitable ingredients added to improve texture, prevent syneresis, add flavor, extend shelf life, improve appearance, or add sweetness and water added to replace milkfat shall be identified with an asterisk in the ingredient statement. The statement “*Ingredients not in regular butter” shall immediately follow the ingredient statement in the same type size.

[58 FR 2455, Jan. 6, 1993]

§ 101.69 Petitions for nutrient content claims.

(a) This section pertains to petitions for claims, expressed or implied, that:

(1) Characterize the level of any nutrient which is of the type required to be in the label or labeling of food by section 403(q)(1) or (q)(2) of the Federal Food, Drug, and Cosmetic Act (the act); and

(2) That are not exempted under section 403(r)(5)(A) through (r)(5)(C) of the act from the requirements for such claims in section 403(r)(2).

(b) Petitions included in this section are:

(1) Petitions for a new (heretofore unauthorized) nutrient content claim;

(2) Petitions for a synonymous term (i.e., one that is consistent with a term defined by regulation) for characterizing the level of a nutrient; and

(3) Petitions for the use of an implied claim in a brand name.

(c) An original and one copy of the petition to be filed under the provisions of section 403(r)(4) of the act shall be submitted, or the petitioner may submit an original and a computer readable disk containing the petition.

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Contents of the disk should be in a standard format, such as ASCII format. Petitioners interested in submitting a disk should contact the Food and Drug Administration's (FDA) Center for Food Safety and Applied Nutrition for details. If any part of the material submitted is in a foreign language, it shall be accompanied by an accurate and complete English translation. The petition shall state the petitioner's post office address to which published notices as required by section 403 of the act may be sent.

(d) Pertinent information may be incorporated in, and will be considered as part of, a petition on the basis of specific reference to such information submitted to and retained in the files of FDA. However, any reference to unpublished information furnished by a person other than the applicant will not be considered unless use of such information is authorized (with the understanding that such information may in whole or part be subject to release to the public) in a written statement signed by the person who submitted it. Any reference to published information should be accompanied by reprints or photostatic copies of such references.

(e) If nonclinical laboratory studies are included in a petition submitted under section 403(r)(4) of the act, the petition shall include, with respect to each nonclinical study contained in the petition, either a statement that the study has been, or will be, conducted in compliance with the good laboratory practice regulations as set forth in part 58 of this chapter or, if any such study was not conducted in compliance with such regulations, a brief statement of the reason for the noncompliance.

(f) If clinical investigations are included in a petition submitted under section 403(r)(4) of the act, the petition shall include a statement regarding each such clinical investigation relied upon in the petition that the study either was conducted in compliance with the requirements for institutional review set forth in part 56 of this chapter or was not subject to such requirements in accordance with §56.104 or §56.105 of this chapter, and that it was conducted in compliance with the requirements for informed consent set forth in part 50 of this chapter.

(g) The availability for public disclosure of petitions submitted to the agency under this section will be governed by the rules specified in §10.20(j) of this chapter.

(h) All petitions submitted under this section shall include either a claim for a categorical exclusion under §25.30 or 25.32 of this chapter or an environmental assessment under §25.40 of this chapter.

(i) The data specified under the several lettered headings should be submitted on separate sheets or sets of sheets, suitably identified. If such data have already been submitted with an earlier application from the petitioner, the present petition may incorporate it by specific reference to the earlier petition.

(j) The petition must be signed by the petitioner or by his attorney or agent, or (if a corporation) by an authorized official.

(k) The petition shall include a statement signed by the person responsible for the petition, that to the best of his knowledge, it is a representative and balanced submission that includes unfavorable information, as well as favorable information, known to him pertinent to the evaluation of the petition.

(l) All applicable provisions of part 10—Administrative Practices and Procedures, may be used by FDA, the petitioner or any outside party with respect to any agency action on the petition.

(m)(1) Petitions for a new nutrient content claim shall include the following data and be submitted in the following form.

(Date) _____
Name of petitioner _____
Post office address _____
Subject of the petition _____
Office of Nutritional Products, Labeling and Dietary Supplements (HFS-800)
Food and Drug Administration,
Department of Health and Human Services,
Washington, DC 20204.
To Whom It May Concern:
The undersigned, _____
submits this petition under section 403(r)(4) of the Federal Food, Drug, and Cosmetic Act (the act) with respect to (statement of the claim and its proposed use).
Attached hereto and constituting a part of this petition, are the following:

A. A statement identifying the descriptive term and the nutrient that the term is intended to characterize with respect to the level of such nutrient. The statement should address why the use of the term as proposed will not be misleading. The statement should provide examples of the nutrient content claim as it will be used on labels or labeling, as well as the types of foods on which the claim will be used. The statement shall specify the level at which the nutrient must be present or what other conditions concerning the food must be met for the use of the term in labels or labeling to be appropriate, as well as any factors that would make the use of the term inappropriate.

B. A detailed explanation, supported by any necessary data, of why use of the food component characterized by the claim is of importance in human nutrition by virtue of its presence or absence at the levels that such claim would describe. This explanation shall also state what nutritional benefit to the public will derive from use of the claim as proposed, and why such benefit is not available through the use of existing terms defined by regulation under section 403(r)(2)(A)(i) of the act. If the claim is intended for a specific group within the population, the analysis should specifically address nutritional needs of such group, and should include scientific data sufficient for such purpose.

C. Analytical data that shows the amount of the nutrient that is the subject of the claim and that is present in the types of foods for which the claim is intended. The assays should be performed on representative samples using the AOAC INTERNATIONAL (AOAC International) methods where available. If no AOAC International method is available, the petitioner shall submit the assay method used, and data establishing the validity of the method for assaying the nutrient in the particular food. The validation data should include a statistical analysis of the analytical and product variability.

D. A detailed analysis of the potential effect of the use of the proposed claim on food consumption and of any corresponding changes in nutrient intake. The latter item shall specifically address the intake of nutrients that have beneficial and negative consequences in the total diet. If the claim is intended for a specific group within the population, the above analysis shall specifically address the dietary practices of such group and shall include data sufficient to demonstrate that the dietary analysis is representative of such group.

E. The petitioner is required to submit either a claim for categorical exclusion under § 25.30 or § 25.32 of this chapter or an environmental assessment under § 25.40 of this chapter.

Yours very truly,
Petitioner _____

By _____
(Indicate authority)

(2) Within 15 days of receipt of the petition, the petitioner will be notified by letter of the date on which the petition was received by the agency. Such notice will inform the petitioner:

(i) That the petition is undergoing agency review (in which case a docket number will be assigned to the petition), and the petitioner will subsequently be notified of the agency's decision to file or deny the petition; or

(ii) That the petition is incomplete, e.g., it lacks any of the data required by this part, it presents such data in a manner that is not readily understood, or it has not been submitted in quadruplicate, in which case the petition will be denied, and the petitioner will be notified as to what respect the petition is incomplete.

(3) Within 100 days of the date of receipt of the petition, FDA will notify the petitioner by letter that the petition has either been filed or denied. If denied, the notification shall state the reasons therefor. If filed, the date of the notification letter becomes the date of filing for the purposes of section 403(r)(4)(A)(i) of the act. If FDA does not act within such 100 days, the petition shall be deemed to be denied unless an extension is mutually agreed upon by the FDA and the petitioner. A petition that has been denied, or has been deemed to be denied, without filing shall not be made available to the public. A filed petition shall be available to the public as provided under paragraph (g) of this section.

(4) Within 90 days of the date of filing FDA will by letter of notification to the petitioner:

(i) Deny the petition; or

(ii) Inform the petitioner that a proposed regulation to provide for the requested use of the new term will be published in the FEDERAL REGISTER. FDA will publish the proposal to amend the regulations to provide for the requested use of the nutrient content claim in the FEDERAL REGISTER within 90 days of the date of filing. The proposal will also announce the availability of the petition for public disclosure.

(iii) If FDA does not act within 90 days of the date of filing, the petition

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shall be deemed to be denied unless an extension is mutually agreed upon by FDA and the petitioner.

(5) If FDA issues a proposal, the rule-making shall be completed within 540 days of the date of receipt of the petition.

(n)(1) Petitions for a synonymous term shall include the following data and be submitted in the following form.

(Date) _____
Name of petitioner _____
Post office address _____
Subject of the petition _____
Office of Nutritional Products, Labeling and Dietary Supplements (HFS-800)
Food and Drug Administration,
Department of Health and Human Services,
Washington, DC 20204.
To Whom It May Concern:

The undersigned, _____ submits this petition under section 403(r)(4) of the Federal Food, Drug, and Cosmetic Act (the act) with respect to (statement of the synonymous term and its proposed use in a nutrient content claim that is consistent with an existing term that has been defined under section 403(r)(2) of the act).

Attached hereto and constituting a part of this petition, are the following:

A. A statement identifying the synonymous descriptive term, the existing term defined by a regulation under section 403(r)(2)(A)(i) of the act with which the synonymous term is claimed to be consistent. The statement should address why the proposed synonymous term is consistent with the term already defined by the agency, and why the use of the synonymous term as proposed will not be misleading. The statement should provide examples of the nutrient content claim as it will be used on labels or labeling, as well as the types of foods on which the claim will be used. The statement shall specify whether any limitations not applicable to the use of the defined term are intended to apply to the use of the synonymous term.

B. A detailed explanation, supported by any necessary data, of why use of the proposed term is requested, including an explanation of whether the existing defined term is inadequate for the purpose of effectively characterizing the level of a nutrient. This item shall also state what nutritional benefit to the public will derive from use of the claim as proposed, and why such benefit is not available through the use of existing term defined by regulation. If the claim is intended for a specific group within the population, the analysis should specifically address nutritional needs of such group, and should include scientific data sufficient for such purpose.

C. The petitioner is required to submit either a claim for categorical exclusion under §25.30 or §25.32 of this chapter or an environmental assessment under §25.40 of this chapter.

Yours very truly,
Petitioner _____
By _____
(Indicate authority)

(2) Within 15 days of receipt of the petition the petitioner will be notified by letter of the date on which the petition was received. Such notice will inform the petitioner:

(i) That the petition is undergoing agency review (in which case a docket number will be assigned to the petition) and the petitioner will subsequently be notified of the agency's decision to grant the petitioner permission to use the proposed term or to deny the petition; or

(ii) That the petition is incomplete, e.g., it lacks any of the data required by this part, it presents such data in a manner that is not readily understood, or it has not been submitted in quadruplicate, in which case the petition will be denied, and the petitioner will be notified as to what respect the petition is incomplete.

(3) Within 90 days of the date of receipt of the petition that is accepted for review (i.e., that has not been found to be incomplete and consequently denied, FDA will notify the petitioner by letter of the agency's decision to grant the petitioner permission to use the proposed term, with any conditions or limitations on such use specified, or to deny the petition, in which case the letter shall state the reasons therefor. Failure of the petition to fully address the requirements of this section shall be grounds for denial of the petition.

(4) As soon as practicable following the agency's decision to either grant or deny the petition, FDA will publish a notice in the FEDERAL REGISTER informing the public of his decision. If the petition is granted the Food and Drug Administration will list, the approved synonymous term in the regulations listing terms permitted for use in nutrient content claims.

(o)(1) Petitions for the use of an implied nutrient content claim in a brand name shall include the following data and be submitted in the following form:

Food and Drug Administration, HHS

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(Date) _____
Name of petitioner _____
Post office address _____
Subject of the petition _____
Office of Nutritional Products, Labeling and
Dietary Supplements (HFS-800),
Food and Drug Administration,
Department of Health and Human Services,
Washington, DC 20204.

To Whom It May Concern:
The undersigned, _____ sub-
mits this petition under section 403(r)(4) of
the Federal Food, Drug, and Cosmetic Act
(the act) with respect to (statement of the
implied nutrient content claim and its pro-
posed use in a brand name).

Attached hereto and constituting a part of
this petition, are the following:

A. A statement identifying the implied nu-
trient content claim, the nutrient the claim
is intended to characterize, the cor-
responding term for characterizing the level
of such nutrient as defined by a regulation
under section 403(r)(2)(A)(i) of the act, and
the brand name of which the implied claim is
intended to be a part. The statement should
address why the use of the brandname as pro-
posed will not be misleading. It should ad-
dress in particular what information is re-
quired to accompany the claim or other ways
in which the claim meets the requirements
of sections 201(n) and 403(a) of the act. The
statement should provide examples of the
types of foods on which the brand name will
appear. It shall also include data showing
that the actual level of the nutrient in the
food qualifies the food to bear the cor-
responding term defined by regulation. Assay
methods used to determine the level of a
nutrient should meet the requirements
stated under petition format item C in para-
graph (k)(1) of this section.

B. A detailed explanation, supported by
any necessary data, of why use of the pro-
posed brand name is requested. This item
shall also state what nutritional benefit to
the public will derive from use of the brand
name as proposed. If the branded product is
intended for a specific group within the pop-
ulation, the analysis should specifically ad-
dress nutritional needs of such group and
should include scientific data sufficient for
such purpose.

C. The petitioner is required to submit ei-
ther a claim for categorical exclusion under
§ 25.30 or § 25.32 of this chapter or an environ-
mental assessment under § 25.40 of this chap-
ter.

Yours very truly,
Petitioner _____
By _____

(2) Within 15 days of receipt of the pe-
tition the petitioner will be notified by
letter of the date on which the petition
was received. Such notice will inform
the petitioner:

(i) That the petition is undergoing
agency review (in which case a docket
number will be assigned to the peti-
tion); or

(ii) That the petition is incomplete,
e.g., it lacks any of the data required
by this part, it presents such data in a
manner that is not readily understood,
or it has not been submitted in quadru-
plicate, in which case the petition will
be denied, and the petitioner will be
notified as to what respect the petition
is incomplete.

(3) FDA will publish a notice of the
petition in the FEDERAL REGISTER an-
nouncing its availability to the public
and seeking comment on the petition.
The petition shall be available to the
public to the extent provided under
paragraph (g) of this section. The no-
tice shall allow 30 days for comments.

(4) Within 100 days of the date of re-
ceipt of the petition that is accepted
for review (i.e., that has not been found
to be incomplete and subsequently re-
turned to the petitioner), FDA will:

(i) Notify the petitioner by letter of
the agency's decision to grant the peti-
tioner permission to use the proposed
brand name if such use is not mis-
leading, with any conditions or limita-
tions on such use specified; or

(ii) Deny the petition, in which case
the letter shall state the reasons there-
for. Failure of the petition to fully ad-
dress the requirements of this section
shall be grounds for denial of the peti-
tion. Should FDA not notify the peti-
tioner of his decision on the petition
within 100 days, the petition shall be
considered to be granted.

(5) As soon as practicable following
the granting of a petition, the Commis-
sioner of Food and Drugs will publish a
notice in the FEDERAL REGISTER in-
forming the public of such fact.

[58 FR 2413, Jan. 6, 1993; 58 FR 17343, Apr. 2,
1993, as amended at 58 FR 44033, Aug. 18, 1993;
62 FR 40598, July 29, 1997; 63 FR 26718, May 14,
1998; 63 FR 40024, July 27, 1998; 67 FR 9585,
Mar. 4, 2002; 69 FR 16481, Mar. 30, 2004]

**Subpart E—Specific Requirements
for Health Claims**

§ 101.70 Petitions for health claims.

(a) Any interested person may peti-
tion the Food and Drug Administration
(FDA) to issue a regulation regarding a