

definition and standard of identity therefor:

(a) If it contains an ingredient for which no provision is made in such definition and standard, unless such ingredient is an incidental additive introduced at a nonfunctional and insignificant level as a result of its deliberate and purposeful addition to another ingredient permitted by the terms of the applicable standard and the presence of such incidental additive in unstandardized foods has been exempted from label declaration as provided in §101.100 of this chapter.

(b) If it fails to contain any one or more ingredients required by such definition and standard;

(c) If the quantity of any ingredient or component fails to conform to the limitation, if any, prescribed therefor by such definition and standard.

§ 130.9 Sulfites in standardized food.

(a) Any standardized food that contains a sulfiting agent or combination of sulfiting agents that is functional and provided for in the applicable standard or that is present in the finished food at a detectable level is misbranded unless the presence of the sulfiting agent or agents is declared on the label of the food. A detectable amount of sulfiting agent is 10 parts per million or more of the sulfite in the finished food. The level of sulfite in the finished food will be determined using sections 20.123 through 20.125, "Sulfurous Acid (Total) in Food Modified Monier-Williams Method Final Action" in "Official Methods of Analysis of the Association of Official Analytical Chemists," 14th ed. (1984), which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51, and the refinements of the "Total Sulfurous Acid" procedure in the "Monier-Williams Procedure (with Modifications) for Sulfites in Foods," which is appendix A to part 101 of this chapter. A copy of sections 20.123 through 20.125 of the "Official Methods of Analysis of the Association of Official Analytical Chemists" is available from AOAC INTERNATIONAL, 481 North Frederick Ave., suite 500, Gaithersburg, MD 20877, or available for at the National Archives and Records Administration (NARA). For information on the avail-

ability of this material at NARA, call 202-741-6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

(b) Any standardized food that, as a result of actions that are consistent with current good manufacturing practice, contains an indirectly added sulfiting agent that has no functional effect in the food and that would, in the absence of §101.100(a)(4) of this chapter, be considered to be an incidental additive for purposes of §130.8, conforms to the applicable definition and standard of identity if the presence of the sulfiting agent is declared on the label of the food.

[58 FR 2876, Jan. 6, 1993, as amended at 63 FR 14035, Mar. 24, 1998]

§ 130.10 Requirements for foods named by use of a nutrient content claim and a standardized term.

(a) *Description.* The foods prescribed by this general definition and standard of identity are those foods that substitute (see §101.13(d) of this chapter) for a standardized food defined in parts 131 through 169 of this chapter and that use the name of that standardized food in their statement of identity but that do not comply with the standard of identity because of a deviation that is described by an expressed nutrient content claim that has been defined by FDA regulation. The nutrient content claim shall comply with the requirements of §101.13 of this chapter and with the requirements of the regulations in part 101 of this chapter that define the particular nutrient content claim that is used. The food shall comply with the relevant standard in all other respects except as provided in paragraphs (b), (c), and (d) of this section.

(b) *Nutrient addition.* Nutrients shall be added to the food to restore nutrient levels so that the product is not nutritionally inferior, as defined in §101.3(e)(4) of this chapter, to the standardized food as defined in parts 131 through 169 of this chapter. The addition of nutrients shall be reflected in the ingredient statement.

(c) *Performance characteristics.* Deviations from noningredient provisions of the standard of identity (e.g., moisture

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content, food solids content requirements, or processing conditions) are permitted in order that the substitute food possesses performance characteristics similar to those of the standardized food. Deviations from ingredient and noningredient provisions of the standard must be the minimum necessary to qualify for the nutrient content claim while maintaining similar performance characteristics as the standardized food, or the food will be deemed to be adulterated under section 402(b) of the act. The performance characteristics (e.g., physical properties, flavor characteristics, functional properties, shelf life) of the food shall be similar to those of the standardized food as produced under parts 131 through 169 of this chapter, except that if there is a significant difference in performance characteristics that materially limits the uses of the food compared to the uses of the standardized food, the label shall include a statement informing the consumer of such difference (e.g., if appropriate, "not recommended for cooking"). Such statement shall comply with the requirements of §101.13(d) of this chapter. The modified product shall perform at least one of the principal functions of the standardized product substantially as well as the standardized product.

(d) *Other ingredients.* (1) Ingredients used in the product shall be those ingredients provided for by the standard as defined in parts 131 through 169 of this chapter and in paragraph (b) of this section, except that safe and suitable ingredients may be used to improve texture, add flavor, prevent syneresis, extend shelf life, improve appearance, or add sweetness so that the product is not inferior in performance characteristics to the standardized food defined in parts 131 through 169 of this chapter.

(2) An ingredient or component of an ingredient that is specifically required by the standard (i.e., a mandatory ingredient) as defined in parts 131 through 169 of this chapter, shall not be replaced or exchanged with a similar ingredient from another source unless the standard, as defined in parts 131 through 169 of this chapter, provides for the addition of such ingredient

(e.g., vegetable oil shall not replace milkfat in light sour cream).

(3) An ingredient or component of an ingredient that is specifically prohibited by the standard as defined in parts 131 through 169 of this chapter, shall not be added to a substitute food under this section.

(4) An ingredient that is specifically required by the standard as defined in parts 131 through 169 of this chapter, shall be present in the product in a significant amount. A significant amount of an ingredient or component of an ingredient is at least that amount that is required to achieve the technical effect of that ingredient in the food.

(5) Water and fat analogs may be added to replace fat and calories in accordance with §130.10(c), (d)(1), and (d)(2).

(e) *Nomenclature.* The name of a substitute food that complies with all parts of this regulation is the appropriate expressed nutrient content claim and the applicable standardized term.

(f) *Label declaration.* (1) Each of the ingredients used in the food shall be declared on the label as required by the applicable sections of part 101 of this chapter and part 130.

(2) Ingredients not provided for, and ingredients used in excess of those levels provided for, by the standard as defined in parts 131 through 169 of this chapter, shall be identified as such with an asterisk in the ingredient statement, except that ingredients added to restore nutrients to the product as required in paragraph (b) of this section shall not be identified with an asterisk. The statement "*Ingredient(s) not in regular _____" (fill in name of the traditional standardized food) or "*Ingredient(s) in excess of amount permitted in regular _____" (fill in name of the traditional standardized food) or both as appropriate shall immediately follow the ingredient statement in the same type size.

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