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***Via*** [**www.regulations.gov**](http://www.regulations.gov)**,**

***Docket Number*** [**FDA-2016-P-0147**](https://www.regulations.gov/docket/FDA-2016-P-0147)

Dockets Management Staff (HFA–305)

Food and Drug Administration

5630 Fishers Lane, Rm. 1061

Rockville, MD 20852.

**Re: Proposed Rule - Fish and Shellfish; Canned Tuna Standard of Identity and Standard of Fill of Container**

**Comments from The National Consumers League**

The National Consumers League (“NCL”) thanks the Food and Drug Administration (“FDA”) for this opportunity to submit comments regarding the Proposed Rule,[[1]](#footnote-1) “Fish and Shellfish; Canned Tuna Standard of Identity and Standard of Fill of Container” (Proposed Rule). We believe that the Proposed Rule, when implemented, will modernize the standard of identity for “canned tuna,” 21 C.F.R. § 161.190 (“canned tuna SOI”), to require an accurate measure and declaration of weight, and to allow for “safe and suitable” ingredients to provide manufacturers with the flexibility to keep up with changing consumer tastes. Importantly, the final rule will assist consumers goal of consuming more protein, and specifically, fish.

Founded in 1899 to represent consumers in the marketplace and the workplace, NCL is the nation’s oldest nonprofit consumer advocacy organization. For over 120 years, NCL has represented the voice of consumers on matters affecting consumer protection and social justice. Today, NCL provides government, businesses, and other organizations with the consumer’s perspective on concerns including child labor, privacy, food safety, and medication information. NCL strongly supports food standard regulations that promote honesty and fair dealing for the benefit of consumers.

Notably, over the past decade, a number of stakeholders and stakeholder groups like NCL, have petitioned and filed proposals with FDA urging the agency to modernize the canned tuna SOI. In 2012, NCL provided comments supporting a Citizen Petition filed by certain canned tuna manufacturers requesting modernization of the standard.[[2]](#footnote-2) Then, in 2017, NCL provided similar comments on FDA’s initiative to implement the President’s Executive Orders on reducing regulation and the opportunity to submit comments in response to the Center for Food Safety and Applied Nutrition’s (“CFSAN”) notice on “Regulatory and Information Collection Requirements.”[[3]](#footnote-3) Consistent with our prior comments, NCL believes that the canned tuna SOI can and should be modernized, while continuing to protect the identity of traditional canned tuna.

Below, NCL reiterates its support and provides additional recommendations.

* **NCL supports revising the SOI to allow for the use of “safe and suitable” optional ingredients and removing provisions for specific flavorings and spices.[[4]](#footnote-4)** NCL supports the modified canned tuna SOI that allows greater flexibility for the use of “safe and suitable” ingredients and allows manufacturers to develop canned tuna products that conform to consumers’ changing tastes. Significantly, an increasing number of canned tuna products that use flavorings not permitted by the canned tuna SOI are currently being marketed outside of the SOI, defeating the purpose of the standard. As long as ingredients are “safe and suitable”[[5]](#footnote-5) and identified on the can as required, it makes little sense of restrict the use of ingredients.

As in previous versions, the 2020-2025 Dietary Guidelines for Americans (“Guidelines”) recommend that all American age-sex groups increase and include a variety of protein foods, including seafood, in their daily diet.[[6]](#footnote-6) Canned tuna is and has always been an important and affordable source of protein for Americans. In modernizing the SOI to allow the industry the ability or flexibility to provide a more appealing selection of canned tuna products, consumer intake of fish would likely increase, thereby assisting Americans to meet the Guidelines and benefiting public health.

* **NCL agrees that the current pressed cake weight method for determining fill of container should be replaced with the drained weight method. [[7]](#footnote-7)**  The pressed cake weight method is an archaic test that is difficult to perform and produces inconsistent results because it requires specialized equipment that most regulators do not possess. This is one of the reasons other regulatory agencies around the world have abandoned the pressed cake weight test in favor of the drained weight test. The drained weight test produces more consistent, reliable results. It is easier for government agencies to use and enforce and would help ensure that consumers receive an accurate amount of fish.

Moreover, NCL believe the drained weight is an easier concept for consumers to understand than pressed cake weight. Most consumers discard or drain the water or oil packing medium, and therefore drained weight is useful and easier for the consumer to understand and should be included as part of the net contents declaration on the can label. We, therefore, urge FDA to include a dual net contents declaration requirement that includes both the net weight and drained weight so consumers may determine the amount of fish with and without the packing medium in the can.

Changing the method and declaration of fill and allowing for “safe and suitable” ingredients would not fundamentally change the canned tuna SOI. The canned tuna SOI would continue to define the product’s basic nature and essential characteristics (*e*.*g*., the appropriate fish species). The canned tuna SOI, if finalized will ensure the basic nature and essential characteristics of the food are maintained, but avoid unnecessary limitations on ingredients or manufacturing processes, which is in line with FDA’s proposed principles and current efforts to create, amend, and/or eliminate standards of identity.[[8]](#footnote-8)

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**Conclusion**

NCL commends FDA for initiating this rulemaking. We greatly appreciate the work the agency has done to develop the Proposed Rule. This rule, when finalized, will modernize the canned tuna SOI as outlined above and will ultimately benefit consumers. Moreover, such changes to the standard are not controversial and in the preamble of the Proposed Rule, FDA reiterates that “if finalized,” the Proposed Rule “will promote honesty and fairly dealing in the interest of consumers.”

NCL, therefore, respectfully requests that FDA finalize the Proposed Rule. NCL again thanks FDA for the opportunity to provide input on this important issue. Thank you for your consideration and please contact me at 202-835-3323 if you would like to discuss NCL’s position further.

Sincerely,



Sally Greenberg

Chief Executive Officer

National Consumers League

1. 88 Fed. Reg. 58, 157 (August 25, 2023), available at <https://www.govinfo.gov/content/pkg/FR-2023-08-25/pdf/2023-17916.pdf>. [↑](#footnote-ref-1)
2. See Citizen Petition, Docket No. FDA-2011-P-0763 (Oct. 17, 2011), available at <https://www.regulations.gov/docket/FDA-2011-P-0763>; This Citizen Petition was later withdrawn and replaced by a subsequent petition in 2015, Citizen Petition, Docket No. FDA-2016-P-0147-0001 (Sept. 3, 2015), <https://www.regulations.gov/docket/FDA-2016-P-0147>. [↑](#footnote-ref-2)
3. 82 Fed. Reg. 42,503 (Sept. 8, 2017), available at <https://www.govinfo.gov/content/pkg/FR-2017-09-08/pdf/2017-19030.pdf>. [↑](#footnote-ref-3)
4. i.e., monosodium glutamate currently in § 161.190(a)(6)(ii), spices or spice oils or spice extracts currently in § 161.190(a)(6)(iv), garlic currently in § 161.190(a)(6)(vi), and lemon flavoring currently in § 161.190(a)(6)(vii)), which are covered under § 101.22(a) ([21 CFR 101.22(a)](https://www.ecfr.gov/current/title-21/section-101.22#p-101.22(a)). [↑](#footnote-ref-4)
5. NCL urges FDA to allow for “safe and suitable” ingredients, as it has with other standards of identity, consistent with 21 C.F.R. § 130.3(d). [↑](#footnote-ref-5)
6. U.S. Department of Health and Human Services and U.S. Department of Agriculture, “*2020 – 2025 Dietary Guidelines for Americans,*” 9th Ed., (Dec. 2020), available at<https://www.dietaryguidelines.gov/sites/default/files/2021-03/Dietary_Guidelines_for_Americans-2020-2025.pdf>. [↑](#footnote-ref-6)
7. *See Proposed* § 161.190(a)(3)(ii) and (iii), (a)(7), and (c)), replacing currently required 21 C.F.R. § 160.191(c). [↑](#footnote-ref-7)
8. FDA, “Standards of Identity for Food,” available at <https://www.fda.gov/food/food-labeling-nutrition/standards-identity-food>. [↑](#footnote-ref-8)