

Relative Claims (“Less”, “Fewer”)

Substantiation Requirements [PRIVILEGED AND CONFIDENTIAL/ WORKING DRAFT]

***This guide applies to products sold in the US market. It is not intended to apply to products sold or marketed internationally.**

Product Scope

These requirements are applicable to product and packaging types.

Regulatory Requirements

The Lanham Act of 1946 – Section 43(a) Prohibits companies from making false or misleading statements about products or services.

9 CFR 317.313 – Defines “relative claims” for USDA regulated products. A product may bear a statement that compares the level of a nutrient in the product with the level of a nutrient in a reference product. This includes “light”, “reduced”, “less” (or “fewer”), and “more” claims.

9 CFR 317.360 - Defines the use of “less sugar” for USDA regulated products. Product must contain 25% less sugar than referenced material

21 CFR 101.13 – Defines “relative claims” for FDA regulated food and dietary supplement items. This includes “light”, “reduced”, “less” (or “fewer”), and “more” claims.

21 CFR 101.6(c)(5) - Defines the use of “less sugar” for FDA regulated products. Product must contain 25% less sugar than referenced material

Section 5 of the FTC Act prohibits deceptive acts and practices in or affecting commerce. A representation, omission, or practice is deceptive if it is likely to mislead consumers acting reasonably under the circumstances and is material to consumers’ decisions.

Claim Language

The requirements in this standard are applicable to the following:

- Less_____
- Fewer_____
- Reduced_____

Omnichannel Merchant Requirements

The approved claim to be used in Walmart and Sam's Club omnichannel initiatives is dependent on the specific comparison being made. Please see claim language above.

Comparative claims **cannot** be inferred from an ingredients list or external sources.

Substantiation Requirements

Before representing a product in any omnichannel initiative, the Merchandising team must ensure the following requirements are met:

- The claim or one of the variants above is on the package.

Additional Requirements

As part of the omnichannel initiative, the following or similar statement should be prominently displayed to consumers: "These products have been identified by the manufacturer as containing enhancements compared to a competing product. Always check the label to ensure the product aligns with your dietary preferences". Modifications to this language should be escalated to Consumer Protection Compliance.

Exceptions

At this time, marketplace products are not allowed to participate in relative claims omnichannel initiatives unless the product is also a 1P item.

Private Brand Requirements

The approved claim to be used in Walmart and Sam's Club omnichannel initiatives is dependent on the specific comparison being made. Please see claim language above.

Before representing a private brand product with a relative claim on the packaging and in any omnichannel initiative, the supplier must ensure the following requirements are met:

- The supplier must complete and provide in the specification system a Supplier Acknowledgment of Expectations for the product making the claim, **AND**
- A third party of Walmart's or Sam's Club's choosing shall review the product and confirm the:
 - FDA regulated foods and dietary supplement items meets 21 CFR 101.13(j) and 21 CFR 101.60 **OR**
 - USDA-FSIS regulated food meets 9 CFR 317.313(j) and 9 CFR 317.360, **OR**
 - The private brand non-food item is compared to a reference product with similar functionality and contains a measurable enhancement.

Label Requirements

- The label must state the identity of the reference product and the percent (or fraction) of the amount of the nutrient in the reference product by which the nutrient has been modified; **AND**
- The information shall be immediately adjacent to the most prominent location on the label (21 CFR 101.13 or 9 CFR 317.313), **AND**
- The label must also bear:
 - Clear and concise quantitative information comparing the amount of the subject nutrient in the product per labeling service size with that in the reference product, **AND**
 - This statement shall appear adjacent to the most prominent claim or to the nutrition label.
- Refer to the Proofing Standard or Brand Guide for brand requirements.

Artwork Requirements

- Packaging artwork and design shall conform to the final product's applicable regulatory guidelines against misleading labeling **AND**
- The applicable Walmart or Sam's Club US Proofing Standard or Brand Guide

Exceptions

A relative claim for decreased levels of a nutrient in food or dietary supplements may not be made on the labeling of a product if the nutrient content of the referenced product meets the requirement for a “low” nutrient claim.

Ongoing Substantiation Requirements

- If the formulation was reviewed, the supplier must send the formulation to a third-party reviewing agency of Walmart/Sam’s Club’s choice for review every time the product gets reformulated, or label updated.

Continuing Obligation to Defend and Indemnify

As a private brand supplier to Walmart Inc., the supplier is solely responsible for the accuracy of all product labeling and claims. Compliance with the requirements outlined in the “Product and Packaging Claims - Substantiation Requirements for Private Brands”, or any label review conducted by or at the request of Walmart Inc., in no way impacts contractual defense and indemnity obligations to Walmart Inc. as set forth in the Supplier Agreement for all claims related to merchandise, including claims related to the labeling.

Version History				
Version	Approved By	Revision Date	Description of Change	Author
1.0			Original version was drafted.	Nathan Traw