January 28, 2019

Dockets Management Staff (HFA-305)

Food and Drug Administration

5630 Fishers Lane, Rm. 1061

Rockville, MD 20852

**RE: Docket No. FDA-2018-N-3522; Use of the Names of Dairy Foods in the Labeling of Plant-Based Products.**

The American Farm Bureau Federation (Farm Bureau) represents millions of farm and ranch families including dairy farmers, almond growers, soybean farmers, rice farmers, coconut growers, oat growers and many others. On behalf of our members, we appreciate the opportunity to provide comments concerning the U.S. Food and Drug Administration’s (FDA) request for information in the labeling of plant-based products with names that include the names of dairy foods such as “milk,” “yogurt” and “cheese”. It is imperative that FDA ensure consumers have accurate information about the food products they consume. Farm Bureau calls on FDA to vigorously enforce food standards regarding the labeling of dairy products and prohibit the misleading labeling of nut- and plant-based food products as “milk” or other common dairy terms.

Milk is a food product with an established standard of identity defined in 21 CFR 131.110 as: *“the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows.”* Nut- and plant-based beverages are not held to the same standards of identity and yet they share in the benefits of using the term “milk” on their packaging. The status quo of “enforcement discretion” by FDA is not acceptable and must be addressed immediately. Through their packaging, labeling and co-location in the refrigerated dairy section, these imitation products directly compete with and are marketed as substitutes for beverage milk products.

There are several reasons Farm Bureau is requesting the FDA to take immediate action on the mislabeling of imitation dairy products. First, the increasing market share of these imitation products means they are no longer a small “niche” market to be overlooked by regulators. It is also important to note that these products can mistakenly lead consumers to believe they are nutritionally equivalent to dairy products. Additionally, FDA already has a process outlined in the federal register for dealing with these products.

***1. Nut- and Plant-Based Foods and Beverages are Marketed as “Milk” and Other Dairy Terms***

Consumers rely on product indicators, such as the name on a product’s labeling, rather than technical information on the back of a label. This can create confusion when consumers are in the grocery store deciding to purchase milk or a non-dairy substitute. Nut- and plant-based beverages are marketed as milk, and sold in the milk case, right alongside traditional milk. These imitation products are not segregated or separated into another area of a grocery store; instead, they are sold in the refrigerated dairy section, often on the very same shelf and in the very same case as actual milk. Farm Bureau wholeheartedly supports a consumer’s right to access dairy-free products from an allergy, intolerance, or personal dietary preference perspective. Our organization believes that these products should adhere to current regulations in their marketing process and that consumers are presented with accurate information on a product’s label so that they can make an informed choice for themselves.

Farm Bureau does not argue that the majority of consumers purchase a nut- or plant-based beverage honestly believing that the product contains traditional milk from a cow (although a recent study conducted by the International Food Information Council Foundation shows that approximately one quarter of consumers are confused by this[[1]](#footnote-1)). The reality is that consumers associate the word “milk” with certain positive nutritional characteristics, characteristics that do not necessarily carry over to these substitute products. We elaborate on this concern in our comments below.

These products are marketed as natural substitutes, but in reality, are heavily processed products that include a variety of ingredients such as emulsifiers, thickeners, sweeteners, and artificially added nutrients. Yet consumers may well believe, based on marketing, that these artificial products are as natural as traditional milk.

These products can have severe consequences for parents who purchase them while believing that they possess the same nutritional profile as traditional milk for their children. The Commissioner of the FDA, Scott Gottlieb, himself has recognized this as an issue. Because these alternative products are “often popularly referred to as milk, we intend to look at whether parents may erroneously assume that plant-based beverages’ nutritional contents are similar to those of cow’s milk, despite the fact that some of these products contain only a fraction of the protein or other nutrients found in cow’s milk.[[2]](#footnote-2)” Gottlieb has mentioned that case reports have shown that feeding young children rice-based beverages resulted in a form of severe protein malnutrition. A separate case reported a toddler being diagnosed with a disease resulting from vitamin D deficiency due to parents feeding the toddler soy milk.

***2. Increasing Market Share of Nut- and Plant-Based Beverages***

According to Farm Bureau analysis of household scanner data from Information Resources, Inc., in 2017, over $1.6 billion dollars of plant- and nut-based beverages were sold in the milk case, right next to traditional milk. These sales were up $141 million or 9 percent from 2015 levels.

With sales approaching $2 billion per year, these imitation milk products are no longer a small “niche” category that can continue to be overlooked by regulators. The market share of nut- and plant-based beverages has increased from under 10 percent in 2015 to over 13 percent in 2018. During this same time, the market share of traditional milk beverages has dropped from 90 percent in 2015 to 87 percent in 2018. Data on the market share for traditional and non-dairy beverage products are included in Table 1.

**Table 1. Market Shares by Value as a Percent of Cow’s Milk and Plant-Based Milk Analogs Combined**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Year | Cow’s Milk | Almond Beverages | Soy Beverages | Other Plant-Based Beverages | Total Plant-Based Beverages |
| 2015 | 90.14 | 6.06 | 1.89 | 1.91 | 9.86 |
| 2016 | 88.97 | 6.94 | 1.76 | 2.32 | 11.03 |
| 2017 | 88.49 | 7.52 | 1.55 | 2.45 | 11.51 |
| 2018 1/ | 86.86 | 8.87 | 1.50 | 2.78 | 13.14 |

*Source: Farm Bureau analysis of household scanner data from Information Resources, Inc. 1/ Year-to-date through July 15, 2018*

The compound annual growth rates for traditional milk products and imitation milk products are on very different trajectories. The sales volumes for refrigerated almond and coconut beverages have increased annually by 8 percent and 9 percent, respectively. Other imitation milk products have increased their sales volume each year by an average of 25 percent. Figure 1 highlights the compound annual growth rate from 2015 to 2017 for selected products.

**Figure 1. Compound Annual Growth Rate of Milk and Imitation Milk Beverages**

*Source: Farm Bureau analysis of household scanner data from Information Resources, Inc. Compound Annual Growth Rate estimated using the sales values obtained by IRI household scanner data.*

Analysis from the United States Department of Agriculture’s Economic Research Service confirmed similar trends in the growth in the market share of nut- and plant-based beverage products.[[3]](#footnote-3) During the three-year period from 2013 to 2015, the market share for imitation milk products grew from 5.3 percent to nearly 8 percent. Meanwhile, the market share for traditional milk products fell by 2 percent. Table 2 identifies the market shares by volume for cow’s milk and imitation milk beverages.

**Table 2. Market Shares by Volume as a Percent of Cow’s Milk and Plant-Based Milk Analogs Combined**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Year | Cow’s Milk | Almond Beverages | Soy Beverages | Other Plant-Based Beverages | Total Plant-Based Beverages |
| 2013 | 94.33 | 3.42 | 1.82 | 0.43 | 5.28 |
| 2014 | 92.70 | 4.90 | 1.69 | 0.71 | 7.30 |
| 2015 | 92.37 | 5.12 | 1.38 | 1.14 | 7.64 |

*Source: U.S. Dept. of Agriculture, Economic Research Service analysis of household scanner data from Information Resources, Inc.*

As evidenced, imitation beverage milk products have grown their market share considerably in recent years at the expense of traditional milk products. These imitation products have been able to grow their market share by exploiting FDA’s “enforcement discretion” and intentionally mislabeling their nut- and plant-based beverage products as “milk”. Further inaction by FDA is no longer acceptable and Farm Bureau respectfully requests mislabeling of imitation dairy products be addressed immediately.

Farm Bureau recommends FDA model their regulations in a fashion similar to how imitation milk beverage products are labeled in other countries such as Canada, the European Union and the United Kingdom. These governments actively police and enforce mislabeling of misbranded nut- and plant-based beverages. Dairy terms such as “milk” are not allowed to be accompanied by clarifying or descriptive terms indicating the plant origin of the product. In fact, to comply with the rules set forth in other countries, U.S.-based companies must change their labels when their products are sold in these markets. For example, “almond milk” must be re-labeled “almond beverage” in Canada. Importantly, these other countries’ enforcement of these labeling standards has not prevented these nut- and plant-based beverages from coexisting alongside real milk in the marketplace; rather they provide the consumer with accurate information about the product ingredients and dietary content.

***3. Misrepresentation of Nutritional Equivalency and Mislabeling***

This mislabeling of nut and plant-based beverages as “milk” confuses consumers from a nutritional equivalency standpoint. Dairy products are an important part of a healthy diet, and the 2015 Dietary Guidelines for Americans found that most Americans are not meeting recommended intake for dairy foods.

Consumers know the healthiness of dairy labels such as “milk”, and likely infer that any product bearing this term possesses the same, or at least an equivalent, nutritional profile. This is not the case. For example, one serving of traditional milk contains 8 grams of protein while other imitation beverages including almond, coconut and rice have a lower protein content than milk. In many cases, the sweetened versions of the imitation beverages contain more sugars and carbohydrates than traditional non-flavored milk. Clearly, the mislabeling of nut and plant-based beverages as “milk” conveys a nutritional equivalency that is not accurate.

Empirical research confirms that imitation milk products are labeled in such a way as to directly mislead consumers on the nutritional content. Academic researchers in the Journal of Food Science and Technology recently concluded that *“consumers associate these alternatives to be a direct substitute of cow’s milk which might not be true in all cases”*.[[4]](#footnote-4) Much of the research has suggested these alternatives to dairy are nutritionally inferior and shows how these products differ from cow’s milk in nutritional content.[[5]](#footnote-5)Additionally, inappropriate comparisons to traditional milk beverages by imitation products increases the risk of nutritional deficiency for under- and misinformed consumers.[[6]](#footnote-6)

A recent survey conducted by IPSOS and commissioned by Dairy Management Inc. found that 73 percent of consumers believed that almond-based drinks had as much or more protein per serving than milk, when in reality, as previously discussed, milk has as much as 8 times as much protein. Additionally, 53 percent stated that they believed that plant-based food manufacturers labeled their products “milk” because their nutritional value was similar, which is not in fact the case. The survey also revealed that consumers who were already purchasers of plant and nut-based beverages tend to hold these misbeliefs more than the general consumer. Of buyers who solely buy plant-based beverages, 68 percent strongly or somewhat agreed these drinks have the same overall nutritional content as actual dairy milk.[[7]](#footnote-7)

Consumers deserve accuracy and truth in their product labels and mounting evidence and data show that consumers are more frequently demanding this. A 2018 National Tracking Poll conducted by Morning Consult and Politico found that consumers support accurate labeling. When asked about whether “marketing non-dairy products as milk, such as almond milk, soy milk, and oat milk, misleads consumers into thinking that non-dairy milk is nutritionally similar to cow’s milk”, 48 percent of those polled said that “milk” should not be used to market non-dairy beverages while only 23 percent felt that it should be used.[[8]](#footnote-8) Higher-aged consumers felt more strongly that milk should not be used to label imitation products. Figure 2 highlights the selected survey results from the Morning Consult and Politico poll.

**Figure 2. Survey Responses For “The Label ‘Milk’ Should Not be Used to Market Nut- or Plant-Based Beverages”**

*Source: National tracking Poll #180736, Morning Consult and Politico*

A more recent survey conducted by IPSOS in the beginning of 2019 shows this trend has continued, and that consumers, by a nearly 3-to-1 margin want the FDA to enforce existing regulations and prohibit non-dairy beverage companies from mislabeling these products as “milk”.[[9]](#footnote-9) This survey found that 61 percent of consumers believe FDA should restrict non-dairy beverage companies from inaccurately labeling their plant and nut-based beverages as milk.

The failure to enforce existing regulation when it comes to nut- and plant-based beverages using the term “milk” in product labeling has contributed to an erosion in traditional milk’s market share and intentionally misrepresents the nutritional equivalency of these imitation products. The dairy case is now the center of products with false and misleading labels.

***4. FDA Should be Enforcing Current Rules***

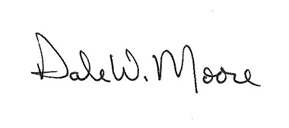
When it comes to labeling these alternative beverages, FDA already has the rules on the books. FDA clearly explained these guidelines as far back as January 6, 1993 in a Federal Register notice:

“A modified food that does use a traditional standardized term but that does not comply with the traditional standard of identity or with new § **130.10** must be labeled either as an "imitation," if it is nutritionally inferior, or as a "substitute," "alternative," or other appropriate term, if it is not nutritionally inferior, as specified in § 101.3(e) which will remain in effect. For example, a mozzarella cheese product made with skim milk and vegetable oil does not comply with the standard for mozzarella cheese **(§ 133.155)** or with new § **130.10(d)(2)** and, therefore, must be labeled as "imitation mozzarella cheese" if nutritionally inferior to mozzarella cheese or as "mozzarella cheese alternative" or "mozzarella cheese substitute" if it is not nutritionally inferior. For this reason, FDAconcludes that there is no need to amend the definitions for "imitation" or "substitute" foods in § 101.3(e) at this time.”[[10]](#footnote-10)

The process is clear: if the modified food is nutritionally inferior, as is most often the case in plant and nut-based beverages, it must bear the word “imitation”. Even if the food is not nutritionally inferior, it must bear the either the words “substitute,” “alternative” or another appropriate term. If these rules are expected to be followed by the dairy industry, as is the case in the mozzarella example above, then all marketers of similar products should be expected to comply as well.

While Farm Bureau is encouraged by recent comments from FDA Commissioner Gottlieb conceding that “an almond doesn’t lactate”, we respectfully and urgently call upon FDA to vigorously enforce existing standards of identity when it comes to dairy to ensure a fair marketplace where consumers experience truth and accuracy in product labeling. We desire to be a part of a constructive dialogue moving forward to ensure that consumers receive accurate product information on the label.

While we work to achieve these goals, it is absolutely critical that these efforts not result in changing the standards of identity for milk to include products beyond its established standard of identity, and in particular the nut- and plant-based beverages that are currently in violation of these standards of identity.

Sincerely,

Dale Moore

Executive Vice President

American Farm Bureau Federation

1. <https://www.foodinsight.org/whats-in-a-name-types-of-milk-dairy-nondairy-alternatives-consumer-research> [↑](#footnote-ref-1)
2. <https://www.feedstuffs.com/business/fda-prioritizing-review-modernize-dairy-labeling> [↑](#footnote-ref-2)
3. Haley, M. 2017. “Livestock, Dairy, and Poultry Outlook” U.S. Department of Agriculture. Published September 2017. Available online: <http://usda.mannlib.cornell.edu/usda/ers/LDP-M/2010s/2017/LDP-M-09-18-2017.pdf> [↑](#footnote-ref-3)
4. Vanga, S.K. & Raghavan, V. J Food Sci Technol (2018) 55: 10. <https://doi.org/10.1007/s13197-017-2915-y> [↑](#footnote-ref-4)
5. Singhal, et al. A Comparison of the Nutritional Value of Cow’s Milk and Nondairy Beverages. *JPGN* 2017; 64: 799-805 [↑](#footnote-ref-5)
6. Lee GJ, Birken CS, Parkin PC, et al. Consumption of non-cow's milk beverages and serum vitamin D levels in early childhood. *CMAJ* 2014; 186:1287–1293 [↑](#footnote-ref-6)
7. <http://www.nmpf.org/latest-news/press-releases/oct-2018/oct-30-nmpf-calls-out-plant-based-beverage-industry> [↑](#footnote-ref-7)
8. <https://morningconsult.com/wp-content/uploads/2018/07/180736_crosstabs_POLITICO_v1_DK.pdf> [↑](#footnote-ref-8)
9. <http://www.nmpf.org/files/files/Ipsos%20Poll%20Results%20_011019.pdf> [↑](#footnote-ref-9)
10. <https://cdn.loc.gov/service/ll/fedreg/fr058/fr058003/fr058003.pdf> [↑](#footnote-ref-10)