



June 27, 2023

Dockets Management Staff (HFA-305)  
Food and Drug Administration  
5630 Fishers Lane, rm. 1061  
Rockville, MD 20852

RE: Docket #: FDA-2023-D-0451  
Labeling of Plant-Based Milk Alternatives and Voluntary Nutrient Statements; Draft  
Guidance for Industry;

I am submitting these comments on behalf of FarmFirst Dairy Cooperative regarding the draft guidance "Labeling of Plant-Based Milk Alternatives and Voluntary Nutrient Statements: Guidance for Industry," as published by the Food and Drug Administration in the *Federal Register* on February 22.

FarmFirst Dairy Cooperative is based in Madison, Wisconsin and has more than 2,600 dairy farmer members in seven Upper Midwestern states. We are a diverse cooperative that provides milk test verification services for members shipping their milk to proprietary milk processors, markets milk for 138-member dairy farms and sells it to 20-25 milk processors annually, and we own a milk testing laboratory. We advocate for our members through policies adopted by our members.

While we are pleased that the FDA has come out with the "Labeling of Plant-Based Milk Alternatives and Voluntary Nutrient Statements; Draft Guidance for Industry;" the proper labeling of milk continues to be a most frustrating issue for my members. We have long standing policy asking FDA to:

- enforce current labeling laws for dairy products. Terms such as "milk," "cheese," and "yogurt" have specific standards of identity and must be protected. Plant and nut-based products such as almond, soy, or rice extract misrepresent dairy products and are examples of mislabeled products which mislead consumers into thinking they are consuming dairy products or that plant and nut-based products have the same nutritional quality as milk and dairy products.
- require that the word "imitation" be used in the advertising and labeling of imitation milk, cheese, and other substitutes for dairy products.
- require that all food labels be easily understood, and any claims should be supported by science in keeping with FDA's standards of identity.

As stated in the guidance document, in 1973, FDA established a definition and standard of identity for milk. "Milk has since been defined as "the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows." Products that purport to be or are represented as milk are required to conform to the definition and standard, and their

labels must bear the name “milk.” Products that do not purport to be and are not represented as milk are not subject to these requirements.

Plant-based milk alternatives are not milk; they are made from plant materials rather than the lacteal secretion of cows. Consequently, under the FD&C Act, they may not be offered for sale as “milk.” Although many plant-based milk alternatives are labeled with names that bear the term “milk” (e.g., “soy milk”), they do not purport to be nor are they represented as milk.”

We appreciate that FDA in the guidance document recognizes the importance of milk and dairy in healthy diet. Specifically,

“The U.S. Dietary Guidelines for Americans (Dietary Guidelines) make recommendations for healthy eating patterns that can help reduce chronic disease risk and help individuals meet nutrient needs. Depending on calorie needs and age, the Dietary Guidelines, 2020-2025 recommends 1 $\frac{2}{3}$ -2 cup equivalents (whole-fat) from the Dairy Group per day for toddlers ages 12-23 months and between 2-3 cup equivalents (low-fat or fat-free) from the Dairy Group per day for children ( $\geq 2$  years of age) and adults to achieve a healthy eating pattern.

The Dietary Guidelines identify the Dairy Group as a key contributor of calcium, protein, vitamin A, vitamin D, magnesium, phosphorus, potassium, riboflavin, vitamin B-12, as well as zinc, choline, and selenium. The Dietary Guidelines, 2020-2025 identifies calcium, vitamin D, and potassium as nutrients of public health concern across all age groups, including ages 12-23 months, and the Scientific Report of the 2020 Dietary Guidelines Advisory Committee (2020 DGAC Report) notes vitamin A, magnesium, and choline as nutrients that pose a special public health challenge for individuals one year of age and older. FDA also identified calcium, vitamin D, and potassium as nutrients of public health significance, requiring them to be declared on the updated Nutrition Facts label.”

We agree with FDA’s assessment that consumers understand plant-based milk alternatives are different products than milk. What consumers do not understand is the nutritional differences and inferiority of plant-based milk alternatives compared to milk.

We are pleased with FDA’s recommendation for voluntary nutrition statements found on page 15 of the guidance document, Specifically, “FDA recommends that plant-based milk alternatives that use the term “milk” in their name (e.g., “soy milk,” “almond milk,” “oat milk,” “almond-macadamia milk blend,” etc.) and have a nutrient composition that is different than milk (e.g., calcium, protein, vitamin A, vitamin D, magnesium, phosphorous, potassium, riboflavin, or vitamin B12 bear an additional nutrient statement on the product label describing how it is nutritionally different. The use of these statements is voluntary.”

“FDA recommends the use of these statements to help consumers understand certain nutritional differences between milk and plant-based milk alternatives that use the term “milk” in their name (e.g., “soy milk,” “almond milk,” “oat milk,” “almond-macadamia milk blend,” etc.) and have a nutrient composition that is different than milk. ....milk plays an important role in healthy diets, and the Dietary Guidelines encourage increased consumption of milk to help alleviate specific nutrient shortfalls. Additionally, consumer research indicates that, while the majority of consumers understand that milk and plant-based milk alternatives are different products, consumers may not understand the nutritional differences between them. Consumer research also indicates that consumers perceive plant-based milk alternatives labeled with the term “milk” to have a more favorable nutritional profile than similar products labeled with terms like “drink” or “beverage””

The Labeling of Plant-Based Milk Alternatives and Voluntary Nutrient Statements; Draft Guidance for Industry is the most significant work done in recent memory on dairy labeling. It does a very good job laying out and explaining 1) current law which defines “milk” and was put in place 50 years ago, 2) the important role of milk and dairy in a healthy diet, 3) acknowledging the nutritional superiority of milk over plant-based beverages, and 4) directing plant-based beverage processors, although voluntary, to label their products where it is inferior to milk.

However, due to years of not enforcing the standard of identity for milk for any number of reasons, it appears that FDA now is trying to find a “happy medium” with its voluntary labeling recommendation.

Dairy farmers and the cooperatives they own are “Not Happy” that FDA is suggesting that processors of plant-based beverages will be able to continue to use the good name of “milk” because as FDA states in the guidance document, “Consumer research also indicates that consumers perceive plant-based milk alternatives labeled with the term “milk” to have a more favorable nutritional profile than similar products labeled with terms like “drink” or “beverage.”

Now is the time for FDA to take the next step and enforce the established regulation and standard of identity for milk.

Respectfully,

A handwritten signature in black ink, appearing to read 'Jeff Lyon', with a long horizontal flourish extending to the right.

Jeff Lyon  
General Manager