

Congress of the United States
Washington, DC 20510

May 18, 2022

The Honorable Shalanda Young
Director
White House Office of Management and Budget
725 17th Street NW
Washington, DC 20503

Dear Director Young:

We write regarding the U.S. Food and Drug Administration (“FDA”) proposed guidance on the “Labeling of Plant-based Milk Alternatives and Voluntary Nutrient Statements,” which we understand the Office of Management and Budget (“OMB”) received on March 31, 2022.

Though that guidance has not yet been made publicly available, we write to address potential concerns regarding inclusions such as special regulations for non-dairy products using qualifying terms and ‘milk’ in their names.

For decades, the FDA has declined to clarify standards for plant-based milks, even as other Federal agencies have increasingly adopted plant-based milks and names into programs. The Soyfoods Association of North America requested that FDA recognize the term “soymilk” through a “common or usual name regulation” in 1997. No action was taken. In 2018, the Plant Based Foods Association (PBFA) created an industry standard for plant-based milks to promote consistency and clarity in labeling across the category. Again, no action was taken by FDA. There is no reason for OMB to now allow regulation in this space, which would contradict FDA’s own rules as well as court rulings.

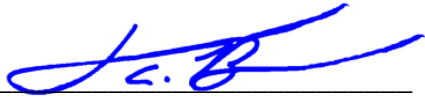
For example, in *Painter v. Blue Diamond Growers*, 2017 WL 4766510 (C.D. Cal. May 24, 2017), *aff’d*, 757 F. App’x 517 (9th Cir. 2018), the court found that the use of qualifying terms such as soy, almond or oat next to the term “milk” mitigates against confusion regarding nutritional equivalency and that without proof of confusion, use of the term “milk” is protected commercial speech. In addition, the court found that a reasonable jury could not conclude that almond milk is “nutritionally inferior” to dairy milk within the meaning of 21 C.F.R. 101.3(e)(4), as two distinct food products necessarily have different nutritional profiles.

Furthermore, FDA’s own Standards of Identity do not prescribe nutritional components, and FDA has not previously asked producers to disclose other wide variations in nutritional components – including among milks derived from different animals. Goat milk, for example, has less folate, zinc, riboflavin and vitamin B12 than cow milk. Buffalo milk has twice as much saturated fat as cow milk, as well as considerably more calcium.

Any guidance, even if voluntary, that asks plant-based milks to identify differences without doing the same for animal milk is discriminatory towards the plant-based industry as well as the hard-working farmers who grow crops like oats and almonds. FDA should not be using its labeling authority to harm a growing industry and the millions of American consumers for whom plant-based foods are an important part of their diet.

Therefore, if this draft guidance contains any such provisions, we urge you to return it to the Food and Drug Administration without moving forward. Thank you for your consideration of our views.

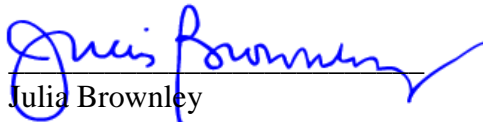
Sincerely,



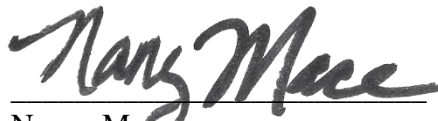
Cory A. Booker
United States Senator



Mike Lee
United States Senator



Julia Brownley
Member of Congress



Nancy Mace
Member of Congress