



**Testimony of Tom Balmer**  
Executive Vice President  
National Milk Producers Federation

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Chairwoman Eshoo, Ranking Member Burgess, members of the Subcommittee, my name is Tom Balmer, and I serve as Executive Vice President of the National Milk Producers Federation (NMPF), the voice of America's dairy cooperatives and their farmer-owners for over 100 years. I thank you for the opportunity to testify before you today regarding the DAIRY PRIDE Act, a bipartisan bill intended to finally compel the FDA to enforce its existing standards of identity for dairy products. Mr. Welch, we commend you for introducing this legislation and thank your co-author, Mr. Simpson, and many others for their support, including members of this panel. We also commend Senators Baldwin and Risch for authoring this measure in the Senate.

At its core, the DAIRY PRIDE Act would ensure the accurate and appropriate labeling of non-dairy foods utilizing standardized dairy terms, an issue with significant implications for consumers. Standards of identity were written to promote honesty and fair dealing in the interest of consumers by promulgating regulations to establish reasonable definitions or standards for food products. These food product terms have come to carry distinct meaning in the minds of consumers, including their understanding of the nutrient values present in certain foods.

Dairy farmers nationwide work hard to ensure that their products are wholesome, nutritious, and in compliance with regulations regarding the use of standardized dairy terms. However, over many years, the Food and Drug Administration has been negligent in enforcing these established standards of identity, which clearly stipulate that a product labeled as "milk" comes from a cow or certain other lactating animals, and that other similar products – including cheese, butter, ice cream, and yogurt – are likewise made from the milk from animals – not from beans, seeds, nuts, or grains.

Unfortunately, grocery store shelves today are filled with innumerable copycat products that flout these long-established standards of identity and mislead consumers about their nutritional equivalence to real milk and milk-based products. Real milk is a nutritional powerhouse, with numerous vitamins, minerals, and nutrients essential to human health. Milk is the number-one source of nine nutrients in children's diets, and the leading food source of potassium, calcium, and vitamin D in the American diet. These are three of the four nutrients of public health concern, according to the 2015 Dietary Guidelines for Americans (DGAs). Even the DGAs

recognize that most plant-based imitation milk products are not nutritionally equivalent to milk and are therefore not included in the dairy group.

Plant-based industrial food processors typically go to great lengths to try to replicate real milk by grinding seeds, nuts or grains into a powder, adding water, whiteners, sweeteners, stabilizers and emulsifiers, possibly blending in some vitamins and minerals, and then marketing the resulting concoction using dairy terms. By calling these products “milk” they are clearly seeking to trade on the health halo of real milk. Yet these imitators engage in misleading marketing because their products don’t have the same consistent nutritional offerings as real milk, certainly not across the many types of imitation beverages on the market. Glass after glass, and even after fortification, such offerings still do not offer the same extensive nutrition profile that is found naturally in every glass of real milk. You would never know this from the labeling of many dairy imitators, which mislead people into thinking these products are comparable replacements for milk. In fact, most are nutritionally inferior, and thus not suitable substitutes.

The proliferation of these imitation products in the marketplace has created an abundance of consumer confusion. While consumers generally understand that plant-based alternatives do not contain dairy, evidence shows that consumers think that plant-based products are nutritionally equal to or better than cow’s milk. An IPSOS survey conducted in 2018 found that 73% of consumers surveyed believe that almond-based beverages have as much or more protein per serving than milk, when in reality milk has up to eight times as much protein. A follow-up survey found that roughly 50 percent of consumers mistakenly believe that the main ingredient in a plant-based beverage is the plant itself, when such drinks are mostly flavored water.

We are seeing the negative health impacts caused by a decrease in the intake of the nutrients provided by real dairy products. The 2015 DGAs found that most Americans are not meeting the recommended intake for the dairy foods group. Importantly, FDA itself has noted an increase in children who have become malnourished when fed — with benign intentions — a nutritionally inadequate, water-based slurry of nuts, seeds, or beans. Finally, four public health organizations — the American Academy of Pediatrics, the American Heart Association, the Academy of Nutrition and Dietetics, and the American Academy of Pediatric Dentistry — issued a report last fall urging that children ages five and below not be fed most plant-based imitation products in place of cow’s milk, as their nutrition profiles are largely not equivalent to real milk.

NMPF has repeatedly raised concerns with FDA regarding its failure to enforce the law when nondairy products co-opt terms like “milk” and “cheese.” Therefore, we were encouraged when former Commissioner Gottlieb announced in 2018 that FDA would finally begin to look at this issue. We appreciated his interest in examining the nutrition perspective I have already outlined. During the agency’s review process, multiple stakeholders — including the American Academy of Pediatrics, North American Society for Pediatric Gastroenterology, Hepatology & Nutrition, and the School Nutrition Association — gave voice to the concern that consumers do not grasp the nutritional differences between real products and imitation products. We could not agree more.

In February 2019, NMPF filed a Citizen Petition asking FDA to enforce its existing rules against nutritionally inferior plant-based foods and to modify and refine these rules to address issues such as the consideration of protein quality when determining nutritional inferiority. While we

were encouraged that FDA would take long overdue action, it is clear that the timeline for such action is continually shifting, with no end in sight. 2019 came and went with no FDA action; this needs to be the year the job gets done. In past years the agency had repeatedly said this was a low priority issue, and it must not send that message again while labeling malpractice proliferates, consumers are being misled, and children of well-intentioned parents are at risk of getting sick as a result. Unless Congress acts, FDA's follow-through remains uncertain.

While we will continue to press for FDA to enforce its own rules to address the public health issues that have arisen from their inaction, we believe the time has come for Congress to take legislative action. That's why we are encouraged that the bipartisan, bicameral DAIRY PRIDE Act is included in today's hearing. This legislation doesn't create a new definition of milk, but rather establishes explicit conditions under which FDA must explain how and when it will enforce dairy food standards of identity. The DAIRY PRIDE Act would require foods that inappropriately use standardized dairy terms to be considered 'misbranded' under the law and subject to enforcement. It would also direct FDA to issue guidance regarding its enforcement approach within 90 days of enactment and to keep Congress informed of its work.

Let me be clear: We do not oppose the sale of imitation dairy products, but we do oppose their use of dairy terms in violation of provisions specified in the Code of Federal Regulations. Dairy farmers are not seeking to eliminate competition from these products; they just want the enforcement of existing regulations, including the frequently ignored imitation food regulation found in 21 CFR 101.3 (e), that require clear labeling of inferior copies of established food products. Many other countries take the same approach as the U.S. But the difference is, they enforce it, which is why you will not find a product labeled as "almond milk" in Canada, the United Kingdom, or the 28-nation European Union, even though almond-based beverages are sold in those nations. Many of those are manufactured in the U.S. but are required to use different labels when exported because other nations, unlike our FDA, diligently enforce dairy terms. It is worth noting that some U.S. manufacturers *do* properly label imitation products without using standardized dairy names. Unfortunately, the vast majority do not, thereby creating a "wild west" mentality in the marketplace and undermining the integrity of food labeling regulations.

The promoters of dairy alternatives claim that passing the DAIRY PRIDE Act, as well as enforcing existing dairy labeling standards, would somehow violate the First Amendment by undermining free speech. This is nothing more than a red herring argument. It is well-established that commercial speech is entitled to protection under the First Amendment, but it is equally well-established that regulations that compel factual and uncontroversial information to help consumers make informed decisions meet First Amendment requirements. We address this point at length in our Citizen Petition. Manufacturers of dairy imitators have chosen to formulate and label their products as substitutes for standardized dairy products by choosing to use standardized dairy nomenclature. These are clear attempts to deceive consumers, and for decades FDA has held that such misleading references do not align with its mission to protect consumers and public health. Unfortunately, publicly holding a position and actually enforcing the position are two separate things – thus, the need for passage of the DAIRY PRIDE Act.

We also hear claims that enforcing standards of identity will interfere with the marketing of other common foods such as coconut cream, milk of magnesia, and peanut butter. This, too, is a red herring. These other products do not market themselves as replacements for real dairy foods, and thus do not mislead the public. Peanut butter is not a functional replacement for butter made with real cream. In fact, butter makers first dealt with this issue 80 years ago, when plant-based spreads began appearing. They were not then called, nor are they today labeled, “soy butter” or “vegetable butter.” They’re called margarine or vegetable oil spreads, precisely because the federal standard dictates that butter comes from milk, not plant sources.

On the topic of butter, I would be remiss if I did not point out that imitation products like Country Crock® Plant Butter are not only in violation of regulatory standards, they are in violation of the federal *statutory* definition of butter enacted by Congress. The Butter Act of 1923 established the oldest food standard in the U.S., and the law defined butter as “the food product usually known as **butter**, and which is made exclusively from **milk** or cream, or both, with or without common salt, and with or without additional coloring matter, and containing not less than 80 per centum by weight of **milk fat**, all tolerances having been allowed for.” FDA has repeatedly stated in the Federal Register and elsewhere that any product that uses the term butter that does not follow the enacted standard of identity for butter is misbranded and in violation of other provisions of the Federal Food, Drug, and Cosmetic Act. While this definition has not changed since 1923, the word “butter” is now being used to market imitation products nationwide. FDA’s decision not to enforce this definition amounts to an agency rewriting an act of Congress, undermining the separation of powers enshrined in the U.S. Constitution.

I point this out to underscore a widespread pattern of deception in the marketplace. Put simply, this deception presents consumers with false, misleading information that may cause them to make well-intentioned but misguided nutrition decisions for them and their families. We have repeatedly urged the FDA to enforce its own rules in the name of transparency and public health, but they have refused to act. Passage of the DAIRY PRIDE Act would fix this problem once and for all and put an end to the deception.

Madame Chair, I want to once again thank you and the Ranking Member for holding today’s hearing. We appreciate the opportunity to testify, and I look forward to answering any questions members may have.