



Statement of

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Before the

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Committee on Energy and Commerce
United States House of Representatives**

**Federal Food and Drug Administration
Efforts to Ensure Safety and Transparency in
Food and Drug Supply**

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Introduction

Thank you for inviting me to testify at today's hearing in support of the Codifying Useful Regulatory Definitions Act ("CURD Act/H.R. 4487) which would establish a definition of the term "natural cheese" in federal statute. My name is David Carlin, and I am the Senior Vice President of Legislative Affairs and Economic Policy at the International Dairy Foods Association.

IDFA represents the nation's dairy manufacturing and marketing industry, which supports more than 3 million jobs that generate \$159 billion in wages and \$620 billion in overall economic impact. IDFA's diverse membership ranges from multinational organizations to single-plant companies, from dairy companies and cooperatives to food retailers and suppliers. Together, they represent 90 percent of the milk, cheese, ice cream, yogurt and cultured products, and dairy ingredients produced and marketed in the United States and sold throughout the world.

Why This Legislation is Needed

U.S. cheesemakers have used the term "natural cheese" for more than seventy years to describe a particular category of cheese and to differentiate it from "process cheese" in the supermarket. Natural cheeses are made directly from milk, while process cheese is made by combining and further processing various natural cheeses to achieve certain characteristics desired by consumers, such as how well it will melt or giving it a longer shelf-life. Consumers know that a "natural cheese" like Cheddar or Havarti would be appropriate to serve at a social function, and that "process cheese" is perfect for making a grilled cheese sandwich.

The term "natural cheese" has been used extensively over the years by the Food and Drug Administration (FDA), the U.S. Department of Agriculture (USDA), Congress, and the courts to describe a particular category of cheese. For example, the FDA standard of identity for "Spiced, Flavored Standardized Cheeses" requires that product to combine one or more safe and suitable spices and/or flavorings with a "specific natural cheese variety."¹ Similarly, in January 1983, FDA amended the standards of identity for "nine natural cheeses," including Cheddar cheese and Provolone cheese.² FDA's ultrafiltered milk rulemaking also recognized natural cheese as a category.³ USDA uses the term "natural cheese" in a manner consistent with FDA. For example, USDA has published a pamphlet called "How to Buy Cheese" in which it describes "natural cheese."⁴ USDA also requires warehouses storing "natural cheese" products to report their "natural cheese" stocks but excludes "processed cheese" from this requirement.⁵

Unfortunately, the ability of U.S. cheesemakers to continue to use the term "natural cheese" on their packaging is now threatened. Four years ago, the FDA initiated a separate process to define how the term "natural" may be used to make product claims such as "all natural." Even though the term "natural cheese" is not a product claim and is only used to define a particular category of cheese, U.S.

¹ 21 C.F.R. Section 133.193(a).

² Nine Natural Cheeses; Revision Based on International Standards of Identity, 48 Fed. Reg. 2736 (Jan. 21, 1983)

³ Cheeses and Related Cheese Products; Proposal to Permit the Use of Ultrafiltered Milk, 70 Fed. Reg. 60751 (Oct. 19, 2005) (discussing "natural cheese" made directly from milk).

⁴ U.S. DEPT. OF AGRIC., HOW TO BUY CHEESE (1995)

⁵ 7 C.F.R. Section 1170.10.

cheesemakers find themselves caught up in an unrelated policy debate that could force them to change decades worth of labeling practices that generations of consumers have come to rely on when choosing the right cheese for every occasion.

Defining the term “natural cheese” in statute will clarify its specific meaning and narrow the scope of FDA’s work so that it can focus on how the term “natural” may be used to make product claims. In fact, the CURD Act specifically provides that any cheese that does make a product claim such as “100 percent natural” or “all natural” must continue to comply with FDA’s current policy and any future regulations governing the use of that term.

Finally, it is important to note that this would not be the first time that Congress has acted to define a dairy term or type of food in federal statute. Definitions of “butter” and “nonfat dry milk” are already included in the Federal Food, Drug, and Cosmetic Act (“the Act”). Congress has also passed legislation that added definitions of “ginseng” and “catfish” to the Act.⁶

Description of the Legislation

The CURD Act defines “natural cheese” by identifying the types of cheeses covered by the “natural cheese” definition, as well as the permitted basic ingredients and processing techniques that would be used to make a cheese that meets the definition of “natural cheese.” Consistent with longstanding governmental and industry usage of the term, there are two paths for a cheese to be labeled as “natural cheese”:

1. A cheese will be considered “natural cheese” if it is covered by existing federal standards of identity issued as regulations by FDA (e.g., Cheddar cheese, Swiss cheese, Mozzarella cheese), or
2. Certain cheeses that are not defined in FDA regulation (e.g., Feta cheese) can also qualify as “natural cheese” if they generally follow the Codex Standard for Cheese, which is an international definition that is widely accepted by industry and policymakers.

The bill then sets forth the types of cheeses that do not meet the definition of “natural cheese.” These include process cheeses, process cheese foods, process cheese spreads, cold pack cheeses and grated American cheese food as currently defined in the Code of Federal Regulations.

As stated above, the CURD Act also contains clarifying language that “natural cheese” is a factual descriptor of a category of cheese and may not be used to make a product claim that is inconsistent with regulations, guidance or policy statements issued by the Secretary of Health and Human Services. Finally, the bill expressly preempts non-federal definitions of the term “natural cheese.”

Extensive FDA Review and Consultation

FDA’s technical experts have reviewed the CURD Act extensively and the agency has provided three sets of technical assistance comments on the bill to Congress over the past two years, including the most recent set of technical comments which were provided to Committee staff last month. We believe that the bill’s sponsors have addressed each of FDA’s previous technical comments and suggestions and we

⁶ 21 U.S.C. 321d; Public Law 107-171 (January 23, 2002).

look forward to working with the Committee and FDA to address two additional technical recommendations that FDA included in its most recent technical assistance comments. On behalf of our cheesemaking members, we appreciate FDA's careful review and extensive input regarding this legislation.

The Legislation is Strongly Supported by the U.S. Dairy Industry

The CURD Act is supported by all of IDFA's cheese company members, including those that manufacture process cheese products. In addition to IDFA, which represents the U.S. dairy processing and manufacturing industry, the bill is also supported by the National Milk Producers Federation which represents cooperatives and their dairy farmer members.

State dairy organizations also strongly support this legislation, including the Dairy Institute of California, the Dairy Products Institute of Texas, the New York State Cheese Manufacturers' Association, the Northeast Dairy Foods Association, the Wisconsin Cheese Makers Association, and the Wisconsin Dairy Products Association.

Misconceptions Regarding the Legislation

The goal of the CURD Act is to support labeling transparency and consistency for consumers so that they can easily differentiate between natural and process cheeses in the grocery store. Despite this simple goal, there have been some misconceptions as to how the bill would affect current law and regulations, and IDFA appreciates the opportunity that the Subcommittee has provided us to address each of these misconceptions.

First, the CURD Act does not change in any way the ingredients that may be used to make standard and non-standardized cheeses. Specifically, the bill would not override FDA's regulatory definition for milk as it pertains to standardized cheeses. In other words, if a cheesemaker was permitted to use a particular ingredient to make a standardized cheese before this bill is enacted, the cheesemaker will still be able to use that same ingredient after enactment of the bill. Conversely, if a particular ingredient was not permitted to be used before, it would not be permitted after enactment. Moreover, how the term "cheese" would apply to plant-based foods such as a food that resembles cheese made from a plant such as soy or almonds will be considered by FDA separately. FDA has committed to address this very issue as part of its Nutrition Innovation Strategy with multiple steps to solicit input from stakeholders regarding the Use of the Names of Dairy Foods in the Labeling of Plant Based Products.

Second, the CURD Act does not change FDA's policy on the use of "natural" or "all natural" claims and it does not establish a product-specific definition for "natural". The bill would simply codify a definition of "natural cheese" as a category of cheese. It does not define the term "natural" with respect to product claims. As stated earlier, Subsection (b) of Section (3) of the bill contains language that explicitly states that any cheese that makes a product claim such as "100% natural" or "all natural" must continue to comply with FDA's current regulations, guidance and policy statements regarding those terms.

Third, the CURD Act would not in any way create an inconsistency between FDA and USDA regarding the use of "natural" claims on labels. As members of this Subcommittee well know, FDA regulates most food products, including cheese, while USDA regulates meat, poultry and certain egg products. Therefore, USDA's definition of "natural" only applies to those meat, poultry and egg products that fall

under its jurisdiction. FDA regulates cheese, and accordingly, the only definition of “natural” that is relevant to this discussion is FDA’s definition of that term. As stated previously, even if this bill is enacted, U.S cheesemakers will continue to be required to comply with FDA’s current policy and any future regulations governing the use of the term “natural” for product claim purposes.

Conclusion

By preserving our industry’s ability to use the term “natural cheese” to describe a category of cheese, the CURD Act would ensure continued clarity in the marketplace for consumers and codify the historical regulatory use of the term by both FDA and USDA.

Thank you for inviting me to participate in today’s hearing. I look forward to answering questions from members of the Subcommittee.