



January 18, 2018

Standards of Identity for Foods and Plant-Based Food Products

Foods are often subject to federal regulations or established standards regarding how they are formulated or ingredients they may contain. Given this regulatory framework, as the market for plant-based meat and milk alternatives has increased in recent years, so too have conflicts over the shared use of terms used to market these foods. To address this conflict, the Dairy Pride Act (H.R. 778/S. 130) would deem a food to be misbranded and in violation of existing food safety laws if it is labeled with market terms commonly associated with a dairy food—such as *milk* or *cheese*—but does not meet established definitions in federal regulations or established product standards. Similar concerns have involved the use of other terms, such as *mayonnaise*, which is generally associated with egg-based products and ingredients.

Standards of Identity for Food

Standards of identity establish a common name and set of content requirements for a food product. They refer to requirements that define the composition of food, prescribing both mandatory and optional ingredients in a product. They may specify the amount of each ingredient the food must contain or fix the relative proportion of each ingredient and may also prescribe a specific method of production. In establishing a common name for a food, standards of identity are intended to help consumers. If the appropriate term is not used or if the content requirement is not met, the food is considered misbranded and in violation of U.S. food safety laws. Standards do not address quality issues, such as inadvertent adulteration, or whether the item meets the consumer's individual nutritional needs.

Pursuant to statutory directives, standards of identity are established by regulations that determine what a food product must contain to be marketed under a certain name. At the federal level, three agencies have the authority to set requirements for foods entering interstate commerce:

1. **Food and Drug Administration (FDA).** Covering 300 identity standards in 20 categories of food, not including meat and poultry products (21 C.F.R. Parts 130-169).
2. **U.S. Department of Agriculture (USDA) Food Safety and Inspection Service.** Covering most meat (9 C.F.R. Part 319) and poultry (9 C.F.R. Parts 381.155-381.174) products.
3. **Alcohol and Tobacco Tax and Trade Bureau (TTB).** Covering malt beverages and distilled spirits, such as vodka, whiskeys, gin, brandy, and flavored liqueurs (27 C.F.R. Parts 5.22, 5.27, and 5.35).

Foods with standards of identity include many processed and value-added products. These include milk and dairy products, meat and luncheon products, poultry and egg products, canned and frozen fish and shellfish, sweeteners and syrups, canned and frozen fruits and vegetables, jellies and preserves, beverages and fruit juices, nut products,

cacao products, dressings and flavorings, bakery and cereal products, frozen desserts, fats and oils, and prepared foods.

Federal agencies promulgate standards of identity for foods through formal rulemaking. Additionally, members of the public or industry stakeholders may submit petitions to the relevant agencies to request new standards that may include, for example, requests to establish a common name or standard of identity for a food or color additive. Federal agencies might also adopt international standards, including those established by the Codex Alimentarius Commission or other standard-setting organizations. In addition, each state has the authority to set standards of identity for foods marketed within the state.

Addressing Food Ingredient Concerns

Congress is said to have taken action to establish standards of identity for foods in response to concerns involving a product called Bred-Spred. Bred-Spred was marketed and packaged in the 1920s as a jelly-like product that contained no fruit and was instead made of coal tar, artificial pectin, artificial flavors, and grass seeds. Because Bred-Spred had a distinctive name (and did not call itself jam or jelly), manufacturers had legal protection from misbranding provisions in U.S. food safety laws.



Congress first authorized the promulgation of standards of identity for foods in 1938 as part of the Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. §301 *et seq.*). Under this statute, FDA is authorized to establish regulations “for any food, ... a reasonable definition and standard of identity, a reasonable standard of quality, and reasonable standards of fill” of the container. FDA standards of identity cover mostly processed and value-added foods for a wide range of FDA-regulated food products.

The Federal Meat Inspection Act (FMIA) of 1906 (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspection Act (PPIA) of 1957 (21 U.S.C. 451 *et seq.*), as amended, also broadly provide for USDA to establish voluntary standards for meat and poultry products (FMIA, 21 U.S.C. §607(c); and PPIA, 21 U.S.C. §457(b)). Both FMIA and PPIA direct USDA to establish “definitions and standards of identity or composition” for meat and poultry products. Standards of identity cover a wide range of raw, cooked, cured, and processed meat and poultry products and ingredients for USDA-regulated food products.

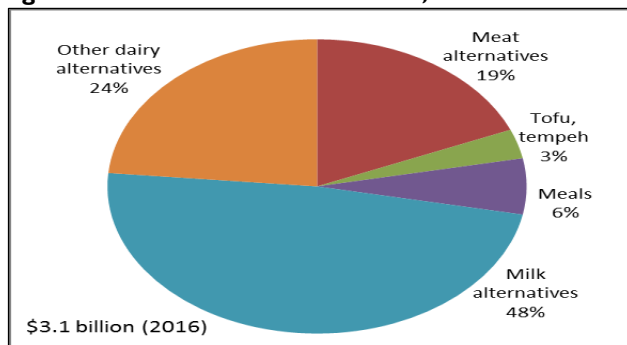
Although part of U.S. food safety laws, identity standards are not specifically intended to address potential safety or fraud concerns. However, food quality and grading product benchmarks for certain foods and food ingredients provide a way for federal agencies to protect consumers not only from contaminated products but also from economic fraud. FFDCA directs FDA to establish definitions and standards

for food to “promote honesty and fair dealings in the interest of consumers” (21 U.S.C. §341).

Accordingly, standards of identity enable federal regulators to take enforcement action against food fraud—that is, the act of defrauding buyers of food and food ingredients for economic gain, whether the buyers are consumers or food manufacturers, retailers, and importers. Foods and food ingredients commonly associated with food fraud include olive oil, fish, honey, milk and dairy products, meat products, grain-based foods, fruit juices, wine and alcoholic beverages, organic foods, spices, coffee, tea, and some highly processed foods. (For other related information, see CRS Report R43358, *Food Fraud and “Economically Motivated Adulteration” of Food and Food Ingredients.*)

Combating food fraud has been the goal of previous legislation involving identity standards. For example, the 2014 farm bill (P.L. 113-79, §10012) required USDA to submit a report to FDA regarding federal standards for honey. Another debated provision would have established tighter import controls for olive oil in an effort to enforce quality standards for those products. Although the provision was included in an early version of the House farm bill, it was removed by amendment during floor debate.

Figure 1. Plant-Based Product Sales, 2016



Source: CRS from GFI and PBFA data (reported by Nielsen).

Market for Plant-Based Foods

Plant-based foods refer to products derived from plants including vegetables, whole grains, legumes, and fruits with few or no animal-based ingredients. Often such foods exclude meat, poultry, eggs, dairy, and seafood ingredients and are intended to replace animal products in foods. Plant-based foods represent a small but growing part of the U.S. food industry. The Plant Based Foods Association (PBFA) and the Good Food Institute (GFI) report that the retail market for plant-based foods totaled \$3.1 billion in sales in 2016 (**Figure 1**), up 8% from 2015. These estimates are based on data commissioned from Nielsen, a leading retail sales research company. These data cover most market outlets including grocery stores, club stores, mass marketers, commissaries, and retail stores.

Major plant-based food categories include meat and milk alternatives, other dairy alternatives, egg substitutes, mayonnaise, tofu and tempeh, and prepared meatless meals. Milk and other dairy alternatives accounted for 72% of total plant-based sales in 2016 (**Figure 1**). Milk alternatives include soy, almond, hemp, rice, and pea non-dairy beverages and creamers. Other dairy alternatives include

non-dairy cheese (e.g., cashew cheese), yogurt (e.g., coconut yogurt), frozen desserts, butters, spreads, dips, dressings, and sour cream. Butter alternatives do not include margarines that are not specifically marketed as butter replacements. Meat and egg product alternatives include branded prepared meals and plant-based spreads.

Conflicts Involving Use of Food Terms

For marketing purposes, plant-based foods often use terms associated with animal-based products—for example, *milk* when marketing soymilk or *mayo* for non-egg alternatives. Some producers of dairy and egg products claim that the use of these terms may violate existing standards of identity for certain foods. They also maintain that these products are imitation products. These producers claim that, based on these allegations, such dairy and egg product alternatives are misbranded within the meaning of the FFDCA and therefore in violation of U.S. food safety laws. Under the FFDCA, a food is misbranded when the product’s label is “false or misleading in any particular,” “is offered for sale under the name of another food,” or “is an imitation of another food,” unless the product’s label indicates that it is an imitation (Section 403 of FFDCA, 21 U.S.C. §343).

The Dairy Pride Act (H.R. 778/S. 130) would amend Section 403 to emphasize that products marketed using terms for which a standard of identity exists, but that do not meet that standard, are “misbranded” and subject to FDA enforcement action. The Dairy Pride Act would further require FDA to develop enforcement guidance to these misbranded foods and could effectively prohibit plant-based foods from being labeled using words such as *milk*, *cheese*, or *yogurt*. Some plant-based food industry groups claim that this could also prohibit the use of certain modifiers—such as *soy* and *dairy-free*—in the labeling of plant-based dairy alternatives. Report language for FY2018 agriculture appropriations (H-Rept. 115-232) would direct FDA to develop a dairy specific standard of identify and guidance.

The Dairy Pride Act is supported by the U.S. dairy industry, which has, since the 1990s, promoted efforts to rein in the use of terms in the marketing of non-dairy alternatives. Although FDA has continued to monitor the use of such terms on product labels, the dairy industry contends that it has failed to enforce violations of established standards of identity for *milk* claims.

The plant-based food industry, on the other hand, wants clarification with respect to terms for which there exists a standard of identity under FDA’s regulations. GFI has formally petitioned FDA to allow for the use of “clarifying words or phrases before the common or usual name of a food to characterize the main ingredient or component” or to indicate its absence. In an August 2017 response, FDA stated that it was reviewing GFI’s petition but was not currently able to respond given other competing priorities. The plant-based food industry has also initiated a series of court cases regarding the use of certain marketing terms, mostly involving milk and dairy products. In a recent case involving almond milk, the court referred the case back to FDA, which it found to have primary jurisdiction.

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