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May 23, 2022

Julie Wise

Office of Management and Budget: Office of Information and Regulatory Affairs (OIRA)
725 17th Street NW
Washington DC 20503

RE: Executive Order 12866 Meeting concerning RIN 0910-ZB08; OIRA Review of the Food and Drug Administration's (FDA) Labeling of Plant-based Milk Alternatives and Voluntary Nutrient Statements; Draft Guidance for Industry

Dear Ms. Wise:

The Good Food Institute (GFI) appreciates the opportunity to meet today regarding OIRA's review of the FDA's proposed Draft Guidance for Industry titled "Labeling of Plant-Based Milk Alternatives and Voluntary Nutrient Statements." GFI is a 501(c)(3) nonprofit organization focused on creating a more sustainable, secure, and just protein supply by advancing alternative proteins through scientific, industry-focused, and policy initiatives. Below we recap the major points made in our meeting.

To the extent that FDA's proposed guidance recommends special nutrient statements that apply only to plant-based products using milk in their names, it raises several economic, anticompetitive, and constitutional concerns.

First, the guidance would reverse FDA's longstanding practice of permitting compound names like "soy milk" and "almond milk," imposing an arbitrary de facto requirement on companies that have used those names in their labeling for decades to change either their product labels or the products themselves, at significant cost. The use of new product names or comparative nutrient statements that are not imposed on animal-based dairy products could also unfairly drive consumers away from plant-based milk products. Imposing this unique burden on plant-based milk products would be arbitrary, especially because the standard of identity for milk includes no nutritional standards and there are significant variations in the nutritional composition of animal-based milks on the market. Moreover, other food labels are not required to display statements calling out nutritional differences with other products (e.g., almond butter or apple butter as compared with peanut butter).

Second, special labeling restrictions for plant-based milk products may stifle innovation in this sector by discouraging the creation of new products. This would be detrimental to consumer

choice, with a potentially outsized negative impact on consumers of color, who are more likely to purchase plant-based products.¹

Third, constraints on innovation and unfair economic impacts on the plant-based milk sector would undercut the Biden Administration's stated climate goals. The President set a 2030 Greenhouse Gas Pollution Reduction Target as part of the country's commitments under the Paris Agreement. But the Agreement's maximum warming targets will not be achievable without cutting emissions from the global food system.² Plant-rich diets that reduce consumption of animal-based foods are a proven way to reduce food systems emissions.³ Moreover, unlike the production of bovine milk, the production of plant-based milks is not a significant source of methane emissions. Publishing labeling guidance that favors bovine milk over plant-based milk would undercut the Administration's goals of reducing agricultural methane emissions and meeting global emissions targets.

Finally, it is unlikely that such restrictions on commercial speech would withstand First Amendment scrutiny, especially because the FDCA and FDA's implementing regulations already include a mechanism—namely, the Nutrition Facts panel—for providing clear and direct information to consumers about the nutritional composition of food products. Recent First Amendment jurisprudence provides a clear basis for challenging government restrictions on the use of standardized dairy terms that are not narrowly tailored to alleviate a real harm to a material degree.⁴

Given the substantial negative impact the guidance may have on competition and innovation, as well as the likely financial burden on both government and industry, GFI encourages OIRA to return the guidance to FDA for further consideration. As we stated in our meeting, a more fair and less costly approach would be guidance or a regulation that permits the use of standardized terms like “milk” in plant-based product names, so long as an appropriate modifier is included and accurate nutrition information is included in the nutrition facts panel. GFI proposed such a regulation in our 2017 Citizen Petition to FDA.⁵ We hope OIRA and FDA will consider this far less burdensome option, which will ensure consumers receive accurate information without harming the plant-based milk industry.

¹ See The Good Food Institute, [2021 U.S. Retail Market Insights: Plant-Based Foods](#), p. 7.

² See Clark, M. A., Domingo, N. G., Colgan, K., Thakrar, S. K., Tilman, D., Lynch, J., Azevedo, I. L., & Hill, J.D. (2020). Global food system emissions could preclude achieving the 1.5° and 2°C climate change targets. *Science*, 370(6517), 705–708. <https://doi.org/10.1126/Science.aba7357>.

³ See, e.g., Hayek, M.N., Harwatt, H., Ripple, W.J. et al. The carbon opportunity cost of animal-sourced food production on land. *Nat Sustain* 4, 21–24 (2021). <https://doi.org/10.1038/s41893-020-00603-4>.

⁴ See, e.g., *Ocheese Creamery v. Putnam*, 851 F. 3d 1228 (11th Cir. 2017); *Miyoko's Kitchen v. Ross*, 2021 WL 4497867 (N.D. Cal. Aug. 10, 2021).

⁵ The Good Food Institute, Citizen Petition, Mar. 2, 2017, Docket No. [FDA-2017-P-1298-0001](#).

Sincerely,

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