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Updating Food Standards of Identity

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Food Policy Impact
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Background on FDA's Standards of Identity

- Section 401 of the Food, Drug, and Cosmetic Act grants FDA authority to establish standards for food to "promote honesty and fair dealing in the interest of consumers"
- Establish the common or usual name and composition of the food
 - Ingredients
 - Method of production
 - Physical characteristics
- Consequence of non-compliance = **misbranded**



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Some Prior Efforts to Modernize Food Standards

1995: FDA Request for Comments on Existing Regulations

- Solicited input on benefits (or lack thereof) of food standards, and alternative means to "promote honesty and fair dealing"

2005: FDA/FSIS Proposed Rule—General Principles and Food Standards Modernization

- Would have established criteria by which agencies evaluate petitions to establish, revise, or eliminate a food standard
- Adherence to the principles would lead to standards that:
 - ✓ Allow for technological advances
 - ✓ Are consistent with international food standards
 - ✓ Are clear, simple, and easy to use

2006: Citizen Petition to Modernize Food Standards

- Submitted to FDA and FSIS by 12 major food industry associations
- Proposed amendments to food standards via regulation of general applicability to provide flexibility

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Recent(ish) FDA Statements on Modernizing Food Identity Standards

- Jan. 2018: **FDA Strategic Policy Roadmap, Nutrition Action Plan**
- Mar. 2018: **FDA Nutrition Innovation Strategy**

"Modernizing certain standards of identity to address current barriers to the development of healthier products while making sure consumers have accurate information about the foods they eat. Among other steps, FDA intends to issue a request for information to identify and help prioritize which potential standards of identity should be modernized based on their public health value."

Key Elements

- Modernizing Claims
- Modernizing Ingredient Labels
- Modernizing Standards of Identity
- Implementing the Nutrition Facts Label and Menu Labeling
- Reducing Sodium

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Recent(ish) FDA Statements on Modernizing Food Identity Standards (cont'd)

- June 2018: **Commissioner's Statement** on FDA's "new steps to advance health through improvements in nutrition under the agency's **Nutrition Innovation Strategy**"

"[S]tandards of identity... serve an important purpose, letting consumers know what they're buying meets a certain standard in terms of what's in it. But it's important that we take a fresh look at existing standards of identity in light of marketing trends and the latest nutritional science."

"We also want to know if consumers are being misled in ways that can adversely affect their dietary decisions when certain products qualify themselves with terms such as milk or rice, but are made from ingredients that don't reflect the traditional assumptions about how products labeled that way are derived. [D]epending on what we learn, we may step up our enforcement efforts against false or misleading labeling. ...[I]f we believe consumers are being misled by the use of these terms in a way that could adversely affect their diets, we might set out a process to develop new guidance that would identify terms that might confuse consumers about a product's ingredients or nutrients. ... For example, we need to more closely examine whether certain almond- or soy-derived products should be able to call themselves milk."

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Recent(ish) FDA Statements on Modernizing Food Identity Standards (cont'd)

- July 2018: **Commissioner's Statement** on "FDA's process for reviewing and modernizing standards of identity for dairy products"



"One area that needs greater clarity – and which has been the subject of much discussion of late – is the wide variety of plant-based foods that are being positioned in the marketplace as substitutes for standardized dairy products." "We intend to look at these differences in relation to potential public health consequences."

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Recent(ish) FDA Statements on Modernizing Food Identity Standards (cont'd)

Oct. 2018: Commissioner's Statement on Fall Unified Agenda
 "We are advancing rulemaking to revoke outdated standards of identity, including standards of identity in French salad dressing and frozen cherry pie. This is a down payment on a comprehensive effort to modernize food standards to reduce regulatory burden and remove old-fashioned barriers to innovation. To support this effort, we'll also reopen the comment period on a proposed rule seeking to establish general principles to update the framework for standards of identity. In addition to standards of identity, there are statutory and regulatory provisions that relate to the naming of food products."



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Dairy Standards: Some Context

- Many FDA standards of identity for dairy products
- Consistent pressure from industry
- Intermittent FDA enforcement
 - o Lifesoy (2008)
 - o Muscle Milk (2011)
 - o Fong Kee Tofu (2012)



Fong Kee Tofu Company, Inc. 3/7/12

"Your Fresh Soy Milk Sweet product uses the term 'milk' as part of the common or usual name. Milk is a standardized food defined in 21 CFR 101.110 as the lactical secretion, practically free from coagulables, obtained by the complete milking of one or more healthy cows. Therefore, we do not consider 'soy milk' to be an appropriate common or usual name because your product does not contain 'milk.' We consider 'soy drink' or 'soy beverage' to be an appropriate common or usual name for such products."

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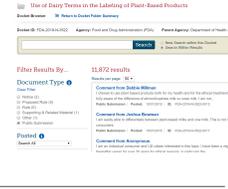
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FDA Request for Comments: Use of the Names of Dairy Foods in the Labeling of Plant-Based Products (9/28/18)

To "inform [the Agency's] development of an approach to labeling of plant-based products that consumers may substitute for dairy foods"

- Notice requested comments on:
 - Current market conditions and labeling costs of plant-based products
 - Consumer understanding, perception, purchase and consumption of plant-based products, particularly those manufactured to resemble dairy foods
 - Consumer understanding regarding the basic nature, characteristics, and properties of plant-based products
 - Consumer understanding of the nutritional content of plant-based products and dairy foods
 - Role of plant-based products and dairy foods in meeting the recommendations in the Dietary Guidelines
- Comment period closed on Jan. 28, 2019



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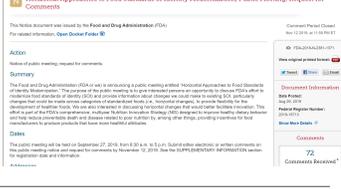
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Recent FDA Actions on Modernizing Food Identity Standards: Public Meeting (9/27/19)

Purpose: Explore specific changes that could be made across categories of standardized foods ("horizontal changes") to:

- encourage production of more nutritious foods
- facilitate industry innovation
- allow innovation and product reformulation to meet consumer expectations

- Established docket for public comments; closed Nov. 23, 2019
- FDA has been holding listening sessions with stakeholders who are interested in specific standards



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Thank you

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