116TH CONGRESS
1ST SESSION

S. _____

To require enforcement against misbranded milk alternatives.

IN THE SENATE OF THE UNITED STATES

Ms. BALDWIN introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To require enforcement against misbranded milk alternatives.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Defending Against Imitations and Replacements of Yogurt, Milk, and Cheese To Promote Regular Intake of Dairy Everyday Act'' or the ''DAIRY PRIDE Act.''.

SEC. 2. FINDINGS.

Congress finds as follows:

(1) Dairy products are an important part of a healthy diet for both children and adults, according to the 2015–2020 Dietary Guidelines for Americans

(referred to in this section as the ''Dietary Guidelines'') published by the Department of Health and Human Services and the Department of Agriculture. The Dietary Guidelines state that most Americans are not meeting recommended intake for the dairy food group. Consumption of dairy foods provides numerous health benefits, including lowering the risk of diabetes, metabolic syndrome, cardiovascular disease, and obesity.

(2) The Dietary Guidelines state that dairy foods are excellent sources of critical nutrients for human health, including vitamin D, calcium, and potassium, all of which are under-consumed by people of the United States. When consumed in the amounts recommended by the Food Patterns of the Department of Agriculture, on average across the calorie levels, dairy foods contribute about 67 percent of calcium, 64 percent of vitamin D, and 17 percent of magnesium.

(3) About 30 percent of adolescent boys meet or exceed the recommended 3 cup equivalents per day, but less than 10 percent of adolescent females meet or exceed this recommendation. An age-related decline in dairy intake appears to begin in adolescence and intakes persist at very low levels among adult

females across the age distribution. Less than 5 percent of adult females consume the recommended 3 cup equivalents per day. Overall, more than 80 percent of the entire population of the United States does not meet the daily dairy intake recommendation.

(4) The Dietary Guidelines state that vitamin D and potassium amounts vary across plant-based milk alternatives. The amount of calcium per calorie is lower for most plant-based alternative milk products. To obtain the amount of calcium contained in one cup of non-fat fluid milk from a plant-based milk alternative, the portion size and calorie intake must be greater.

(5) Imitation dairy products, such as plant-based products derived from rice, nuts, soybeans, hemp, coconut, algae, and other foods that imitate milk, yogurt, and cheese, often do not provide the same nutrition content as real milk, cheese, and yogurt derived from dairy cows.

(6) Plant-based products labeled as milk are misleading to consumers.

(7) The Food and Drug Administration has regulations that define milk and cream as the ''lacteal secretion, practically free from colostrum, ob-

tained by the complete milking of one or more healthy cows'' (section 131.110 of title 21, Code of Federal Regulations). This definition further applies to milk used to create other dairy products, including yogurt and cheese, as specified in section 131 and 133 of title 21, Code of Federal Regulations.

(8) Given the proliferation of plant-based products in the marketplace that are mislabeled as milk despite the standard of identity defined for this substance, enforcement by the Food and Drug Administration against these practices should be improved to avoid misleading consumers.

SEC. 3. PURPOSE.

No food may be introduced or delivered for introduction into interstate commerce using a market name for a dairy product if the food does not meet the criterion set forth for dairy products under paragraph (z)(2) of section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) (as added by section 4(a)).

SEC. 4. ENFORCEMENT OF DEFINITION.

(a) IN GENERAL.—Section 403 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343) is amended by adding at the end the following:

''(z)(1) If it uses a market name for a dairy product described in subparagraph (3) and the food does not meet

the criterion for being a dairy product, as described in subparagraph (2).

''(2) For purposes of this paragraph, a food is a dairy product only if the food is, contains as a primary ingredient, or is derived from, the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more hooved mammals.

''(3) A market name for a dairy product described in this subparagraph means the dairy product terms described in parts 131 and 133 of subchapter B of chapter I of title 21, Code of Federal Regulations and sections 135.110, 135.115, and 135.140 of title 21, Code of Federal Regulations (or any successor regulations), or any other term for which the Secretary has promulgated a standard of identity with respect to a food that is formulated with a dairy product (as described in subparagraph (2)) as the primary ingredient.''.

(b) GUIDANCE.—The Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall—

(1) not later than 90 days after the date of enactment of this Act, issue draft guidance on how enforcement of the amendment made by subsection (a) will be carried out; and

(2) not later than 180 days after the date of enactment of this Act, issue final guidance on such enforcement.

(c) REPORT TO CONGRESS.—Not later than 2 years after the date of enactment of this Act, the Secretary of Health and Human Services, acting through the Commissioner of Food and Drugs, shall report to Congress on enforcement actions taken under paragraph (z) of section 403 of the Federal Food Drug and Cosmetic Act (21 U.S.C. 343), as amended by this Act, including warnings issued pursuant to such paragraph and penalties assessed under section 303 of such Act (21 U.S.C. 333) with respect to such paragraph. If food that is misbranded under section 403(z) is offered for sale in interstate commerce at the time of such report, the Commissioner of Food and Drugs shall include in such report an updated plan for enforcement with respect to such food.