



National Milk Producers Federation

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National Milk Producers Federation • 2101 Wilson Blvd., Arlington, VA 22201 • 703-243-6111 FAX 703-841-9328

Agri-Mark, Inc.
Arkansas Dairy Cooperative Association
Associated Milk Producers, Inc.
California Dairies, Inc.
Cass-Clay Creamery, Inc.
Continental Dairy Products, Inc.
Cooperative Milk Producers Assn.
Country Classic Dairies, Inc.
Dairy Farmers of America, Inc.
Dairymen's Marketing Cooperative, Inc.
Dairylea Cooperative Inc.
Ellsworth Cooperative Creamery
Farmers Cooperative Creamery
First District Association
Foremost Farms USA
Land O'Lakes, Inc.
Lone Star Milk Producers, Inc.
Manitowoc Milk Producers Coop.
MD & VA Milk Producers Cooperative Association, Inc.
Michigan Milk Producers Assn.
Mid-West Dairymen's Company
Milwaukee Cooperative Milk Producers
Niagara Milk Cooperative, Inc.
Northwest Dairy Association
Prairie Farms Dairy, Inc.
St. Albans Cooperative Creamery, Inc.
Scioto County Co-op Milk Producers' Assn.
Select Milk Producers, Inc.
Southeast Milk, Inc.
Swiss Valley Farms, Co.
Tillamook County Creamery Assn.
United Dairymen of Arizona
Upstate Farms Cooperative Inc.

September 29, 2003

Division of Dockets Management (HFA-305)
Food and Drug Administration
5630 Fishers Lane, rm. 1061
Rockville, MD 20852

RE: Advance notice of proposed rulemaking; Petition to revoke standards for lowfat yogurt and nonfat yogurt and to amend standards for yogurt and cultured milk (Docket No. 00P-0685)

Dear Sir or Madam:

The following comments are being submitted on behalf of the National Milk Producers Federation (NMPF). NMPF, headquartered in Arlington, VA, develops and carries out policies that advance the well-being of U.S. dairy producers and the cooperatives they collectively own. The members of NMPF's 34 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of 60,000 dairy producers on Capitol Hill and with government agencies.

NMPF's interest in this matter lies in the fact that many of our organization's members supply the raw ingredients used to manufacture yogurt and some of NMPF's cooperative members manufacture yogurt directly. In addition, NMPF is very interested in ensuring that any changes to the standards of identity for yogurt products do not have an adverse impact on consumers or consumers' perceptions of the nutritious and wholesome nature of these or any other dairy products. For these reasons, NMPF does not agree with several of the changes proposed by the National Yogurt Association (NYA) because they will have an adverse impact on both dairy producers and consumers throughout the U.S.

For example, the proposal to maintain all three categories of yogurt (nonfat yogurt, lowfat yogurt, and yogurt) in one standard does not appear to be logical or consistent with current consumer understanding of the labeling of standardized foods. Virtually all standardized food products must follow the regulations passed as a result of the Food Labeling and Education Act of 1990. These regulations include requirements for standardized foods in which

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a nutrient content claim descriptor is used. In 1995, FDA made a change to the standards of identity for milk products in this regard and FDA chose to maintain one standard of identity and allow for the use of nutrient content claims for reduced fat, lowfat, and nonfat milks. NMPF does not see why yogurt standards of identity should be treated differently than any other food product in the U.S.

The rationale for seeking this special exception for yogurt appears to be related to a desire by the member companies of NYA to not fortify lower fat yogurt products with vitamin A. When FDA established the labeling regulations pertaining to the use of nutrient content claims in conjunction with standardized foods, one of the key components was to ensure that consumers did not suffer a decrease in beneficial nutrients when they sought lower fat versions of foods. Because of this, FDA established the requirement of nutritional equivalency for these products as it relates to nutrients lost as fat is removed. NMPF fails to see why yogurt should be exempt from this requirement. NMPF is not aware of any special processing or technological rationale that would explain why yogurt manufacturers should not or can not add vitamin A to the lower fat versions of the products. In fact, vitamin addition will occur prior to processing, just as it is currently done for fluid milk products. In addition, yogurt manufacturers are currently adding other nutrients or ingredients, such as inulin, to yogurt on a voluntary basis for marketing and nutritional reasons. NMPF believes Vitamin A addition will not be difficult to accomplish.

Regarding the addition of ingredients after culturing, NMPF does not believe that optional milk-derived ingredients should be added after pasteurization and culturing. Dairy products readily support the growth of microorganisms, including pathogenic microorganisms. NMPF considers it to be a good manufacturing process for manufacturers to ensure that all dairy ingredients are pasteurized just prior to any additional processing. If previously pasteurized ingredients are permitted to be added to yogurt after culturing, NMPF believes that the potential for unintentional contamination exists. While it may not happen every time, NMPF believes that the risk is too great. In order to ensure that consumers are adequately protected, FDA should require that all dairy ingredients be pasteurized immediately prior to any additional processing step, such as culturing.

Regarding the use of dairy ingredients, NMPF does not agree with the addition of whey protein concentrate (WPC) as a standard dairy ingredient. Currently, the yogurt standard of identity allows for cream, milk, partially skimmed milk, or skim milk, used alone or in combination. This current list of ingredients has resulted in a product of consistent quality - made from fresh, high quality ingredients - that consumers have come to expect. The use of WPC may result in an inferior quality product. In fact, NYA acknowledges the potential for inferiority by placing a limit on the level of WPC that can be used. NMPF

believes that consumers do not expect that yogurt will contain more whey proteins than are naturally present in milk. While there are many very good sources of WPC available for use, the potential for using lower quality ingredients also exists. One of the paramount purposes of standards of identity is to ensure honesty and fair dealing in the interest of consumers. Allowing for lower quality ingredients will not achieve this goal. Consumers expect yogurt to be made from fresh ingredients.

NMPF does not agree with the proposal to allow for any milk-derived ingredient that provides a technical or functional purpose. The list of optional ingredients that may be added to yogurt under the current standard of identity has an important provision that the ratio of protein to total nonfat solids and the protein efficiency ratio of all protein present must not be decreased. This provision is not included in the NYA petition and NMPF believes that this omission may result in inferior quality products reaching consumers. The intent of allowing for optional ingredients above the minimum required by the standard dairy ingredients is to allow for increasing the solids content of the product while still using a definite set of well-defined ingredients. NMPF feels that this intent must be maintained. To allow for any additional milk-derived ingredient to be used is too open for a standard of identity. The uncertain phrase "provides a technical or functional purpose" is open to much interpretation and will not ensure that consumers receive the high quality product that they have come to expect when they purchase yogurt. NYA does not provide any examples of what cannot be accomplished technologically with the current list of ingredients or what limitations the current ingredients impose. In the absence of such information, it appears that the true rationale for allowing more ingredients is to allow for a lower cost of manufacturing. Unfortunately, this often results in a lower quality finished product, as well. In addition, NMPF is uncertain as to who will enforce this requirement for providing a technical or functional purpose. State Regulatory Agencies and FDA do not have the resources to enforce such loose provisions in a standard of identity.

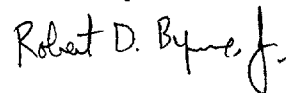
The request to amend the standard of identity for cultured milk contains many of the same concerns to NMPF in the ingredient area. In addition to adding the term "fermented milk" as a labeling option for cultured milk products, NYA seeks to expand the use of whey protein concentrate and other milk-derived dairy ingredients. NMPF has the same concerns about this change as we do with the changes suggested to the yogurt standard of identity.

Overall, NMPF has many concerns about the changes proposed by NYA. Many of them appear to be merely seeking an allowance to potentially use cheaper ingredients in the manufacture of yogurt. NMPF believes such actions will have a negative impact on the use of milk in yogurt making and will also negatively impact dairy producers across the U.S. Of equal importance is the fact that the potential for confusing labeling inconsistencies and for inferior

quality products will not promote honesty and fair dealing in the interest of consumers.

Thank you for the opportunity to provide these comments to the advance notice of proposed rulemaking. Please feel free to contact us if you have any questions or would like additional information.

Sincerely,

A handwritten signature in black ink that reads "Robert D. Byrne". The signature is written in a cursive style with a prominent initial "R" and a long, sweeping tail on the "y".

Robert D. Byrne, Ph.D.
Vice President of Regulatory Affairs