



National Milk Producers Federation

2101 Wilson Blvd., Suite 400, Arlington, VA 22201
703.243.6111 • www.nmpf.org

"Connecting Cows, Cooperatives, Capitol Hill, and Consumers"

March 31, 2009

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

RE: Proposed rule; Milk and Cream Products and Yogurt Products;
Proposal to Revoke the Standards for Lowfat Yogurt and Nonfat
Yogurt and to Amend the Standard for Yogurt (Docket No. FDA-
2000-P-0126)

Dear Sir or Madam:

The following comments are being submitted on behalf of the National Milk Producers Federation (NMPF) to FDA's Proposed Rule regarding Milk and Cream Products and Yogurt Products; Proposal to Revoke the Standards for Lowfat Yogurt and Nonfat Yogurt and to Amend the Standard for Yogurt (Docket No. FDA-2000-P-0126). 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 31 cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of 40,000 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. NMPF had raised a number of

Jerry Kozak, President/Chief Executive Officer

Randy Mooney, Chairman

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Agri-Mark, Inc.
Arkansas Dairy Cooperative Association
Associated Milk Producers, Inc.
Continental Dairy Products, Inc.
Cooperative Milk Producers Assn.
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
Humboldt Creamery
Just Jersey Cooperative, Inc.
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
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 Niagara Cooperative, Inc.
Zia Milk Producers

concerns in our comments to the original Advance Notice of Proposed Rulemaking (ANPR) published in 2003. After a careful review of the proposed rule, NMPF believes that, overall, the proposal appears to allow for appropriate technological advances in the manufacture of yogurt while still protecting the basic nature of yogurt and promoting honesty and fair dealing in the interest of consumers. We agree with FDA's assessment that modernizing the standard of identity for yogurt to permit flexibility and allow for technological advances is necessary. Some specific comments follow.

NMPF agrees with FDA's proposal regarding the use of dairy ingredients to manufacture yogurt. These include: the requirement for a minimum of 8.25% milk solids not fat and 3.25% milkfat; the allowance for optional milk-derived ingredients, but only above and beyond the minimum 8.25% milk solids not fat basic dairy ingredient requirement; and maintaining the ratio of protein to total nonfat solids and protein efficiency ratio. In addition, NMPF agrees with FDA that the allowance for optional dairy ingredients will allow for technological advances while the requirement for 8.25% milk solids not fat from basic dairy ingredients will protect the integrity of yogurt. These parameters are imperative to ensure the consistency of the product for consumers. Lastly, the use of reconstituted forms of cream, milk, partially skimmed milk, and skim milk as basic dairy ingredients is a provision in the current standard of identity that, while not specifically allowed, has been stayed for many years. Therefore, this change appears to reflect current industry practices.

NMPF agrees with FDA that the current lowfat and nonfat yogurt standards should be revoked, similar to what was done with the milk standard of identity back in the 1990's. These products should now be fat-modified versions of yogurt with labeling specified under existing FDA regulations. Similarly, NMPF agrees that removing the current requirement to fortify to specific levels of Vitamin A & D is appropriate. However, the requirement for nutritional equivalence for lower fat versions should remain. These changes make yogurt consistent with other foods with respect to nutrient modified versions.

NMPF agrees that the requirement in the existing standard for a 0.9% titratable acidity is outdated and does not reflect the milder yogurts currently marketed. As such, it is appropriate for a

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minimum titratable acidity of 0.7% or maximum pH of 4.6 to be required, as FDA has proposed. In fact, the current titratable acidity requirement has been stayed for many years, so this change reflects current products in the marketplace.

In the proposed rule, FDA denied the request to require live and active cultures, but permitted manufacturers to make a label declaration if 10^7 cfu/ml are present at manufacture and 10^6 cfu/ml at retail. This appears to be a good compromise that will allow manufacturers to differentiate their products, if they so desire.

NMPF also agrees with many of the proposed changes that allow for appropriate technological advances and recognizes that the science behind yogurt manufacturing has changed since the original standards of identity were enacted. These include allowing for: any appropriate bacterial culture; safe and suitable sweeteners, including non-nutritive sweeteners; safe and suitable stabilizers and emulsifiers; and safe and suitable preservatives.

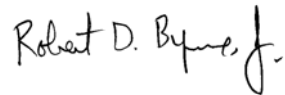
While NMPF agrees with many of the changes that FDA proposed, we also strongly agree with FDA's decision to not allow for many of the items identified in the ANPR. The request to allow for whey protein concentrate (WPC) as a basic dairy ingredient was particularly bothersome to NMPF. We are pleased to see that FDA has permitted WPC as an optional dairy ingredient, but only above and beyond the 8.25% minimum milk solids not fat from basic dairy ingredients and provided the protein to milk solids not fat ratio does not decrease. Allowing for WPC as a basic dairy ingredient could have had a severe negative impact on the quality of yogurt in that inferior products could result. In addition, the request to allow for any safe and suitable ingredients for nutritional or functional purposes would have left the ingredient section wide open. In the proposed rule, FDA maintained the list of ingredient categories specified above (e.g., basic dairy ingredients and optional dairy ingredients) and NMPF believes that this will help maintain the integrity of yogurt. FDA also rejected the request to add optional milk derived ingredients after pasteurization and culturing. NMPF had specifically objected to this for safety reasons and we are pleased that FDA agreed with this assessment.

Lastly, the requests identified in the ANPR to change the cultured milk standard were denied by FDA. These changes would have

basically allowed fermented milks and milk drinks that don't meet the yogurt standard of identity to fall under this cultured milk standard. FDA cited consumer confusion about these products as the rationale for denying the request and NMPF agrees with FDA. The cultured milk standard should be maintained.

Overall, the proposed rule looks like a good compromise of allowing for appropriate technological advances while still maintaining the basic integrity of the product known as Yogurt, particularly as it relates to the dairy ingredients permitted. NMPF appreciates FDA's efforts to update the standard of identity. If you have any questions about these comments, or would like to discuss them further, please contact us.

Sincerely,

A handwritten signature in black ink that reads "Robert D. Byrne, Jr." with a stylized flourish at the end.

Robert D. Byrne, Ph.D.
Senior Vice President, Scientific & Regulatory Affairs