

Yogurt Lobby: Kill “Grade A” Dairy Rules

by Pete Hardin

The federal agency that can't keep peanut butter safe now wants to dump “Grade A” dairy standards that have historically protected yogurt consumers' safety.

The Food and Drug Administration (FDA) is proposing dangerous, new industry-backed regulations to dilute federal yogurt standards of identity. The public has little warning and time to oppose this looming threat. Public comments to FDA are due March 31, 2009. (See detailed comment instructions below.)

The proposed amendment, published January 15, 2009 in the *Federal Register*, affects all forms of yogurt (regular, lowfat and nonfat) produced and marketed in the U.S. The proposed rules would allow the use of cheap, non-Grade A dairy imports as inferior substitutes for wholesome milk from American farms. Equally outrageous, controversial artificial sweeteners – which now must be labeled prominently on the front panel – could be hidden in the fine print on the back. These radical amendments could cheapen and degrade one of America's favorite – and most profitable (for processors) – dairy products.

The proposed amendment was triggered by a citizens petition filed February 18, 2000 by the National Yogurt Association (NYA) — an industry group representing foreign and domestic processors. NYA has worked for years to weaken American yogurt standards.

NYA members include the Dannon Company; General Mills/Yoplait; Johanna Foods, Inc.; The Kroger Company; Pinkberry; Wells' Dairy, Inc.; and YoCream International, Inc. NYA maintains a Web site: www.aboutyogurt.com. The NYA has close ties to the world's two largest fresh dairy product processors both based in France.

A recipe for disaster?

The FDA notice states that the petitioners justify the proposed changes because “current yogurt standards impede the yogurt industry and do not allow manufacturers to implement advances in food technology.” Translation: greedy processors want even fatter profit margins by using cheaper ingredients.

The NYA petition would undermine yogurt as we know it by weakening minimum ingredient and labeling requirements in current FDA standards of identity. The proposed amendment would allow processors to:

- * Substitute imported Milk Protein Concentrate (MPC) and other cheap, inferior (imported) dairy ingredients for the American farm milk and nonfat dry milk.
- * Use milk and dairy ingredients that do not meet minimum federal Grade A standards – a scary thought following the Chinese melamine milk scandal.
- * Include whey derivatives as allowable ingredients in yogurt.
- * Disguise the presence of aspartame and other controversial artificial sweeteners by hiding their presence in the fine print of the ingredients label.

Last month's *Federal Register* notice acknowledges that the NYA petition submitted in 2000 provoked public “concerns including the use of imported, cheaper, and inferior quality substances, which would adversely affect the quality of the yogurt; the potential health risks associated with unregulated, imported products; and the unfair economic disadvantage to U.S. dairy plants.” FDA has ignored those and other legitimate concerns.

Loss of Grade A Status

The Grade A label, an assurance of quality to consumers, apparently has become an archaic obstacle to progress for modern yogurt makers. Yogurt would cease to be a Grade A dairy product if the changes are approved. Consumer confidence in yogurt could be seriously undermined, risking the integrity of the product category that's been among the fastest-growing segments in the dairy case. Federal Grade A standards assure consumers that their yogurt is produced from milk that meets strict quality regulations. Grade A milk products are inspected from the farm to the dairy plant to safeguard against bacteria, antibiotics, pesticides and other contaminants.

Milk produced in India (the world's largest dairy producer), China, and other developing nations does not come close to meeting U.S. Grade A milk standards. These countries are aggressively exporting MPCs, casein, caseinates and other dairy products in partnership or with the aid of global dairy traders like New Zealand's Fonterra and Switzerland's Nestle Foods. The American

How to Submit Your Yogurt Comments FDA

Your comments are urgently needed – now. The comment deadline is March 31, 2009.

Be sure to identify your comments by including the agency name (Food and Drug Administration) and “Docket No. FDA-2000-P-0126” on the document.

Comments may be submitted by any of the following methods:

Written Submissions: written comments may be filed in the following ways:

Mail/Hand delivery/Courier (for paper, disk, or CD-ROM submissions):

Division of Dockets Management (HFA-305)

Food and Drug Administration

5630 Fishers Lane, Rm. 1061

Rockville, MD 20852

FAX: 301-827-6870 (Note: maybe not the best option – FDA sometimes “loses” faxes.)

Electronic Submissions: FDA is not accepting comments submitted directly by email, but it is accepting comments submitted electronically through the Federal Documents Management System at: <http://www.regulations.gov>. Follow the step-by-step instructions on the Web site for submitting comments.

For further information, contact Ritu Nalubola, Center for Food Safety and Applied Nutrition (HFS-820), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 301-436-2371.

The National Yogurt Assn's long-ago (2000) petition to “dumb down” U.S. yogurt standards was honored by FDA on January 15, 2009. Big, foreign-owned yogurt makers want to dump requirements that all yogurt sold in the U.S. must meet our high, Grade A dairy sanitation standards. If okayed by FDA, that move would allow cheap, imported dairy ingredients in yogurt. NYA wants to eliminate the “Aspartame” warning label on the front panel.

Dairy's and consumers' interests are not well-served by degrading yogurt quality.



yogurt market would be a magnet for these cheap, substandard dairy ingredients which would threaten the health of loyal, paying customers.

Recent food safety headlines ... about melamine-contaminated dairy products and pet food ingredients from China, and salmonella-tainted peanut butter in the U.S. ... suggest that **more** safety oversight of the American food supply is needed, not less.

The Codex compromise

Proponents argue that the proposed amendment is needed to bring U.S. yogurt standards into compliance with *Codex Alimentarius Commission* rules. *Codex* rules are incompatible with U.S. Grade A standards. *Codex* is a Rome-based bureaucracy working hard to “harmonize” global food standards down to the lowest-common-denominator levels dictated by “Free Traders” at the World Trade Organization (WTO). *Codex* requires the U.S. to accept dairy imports from countries like India, China and Eastern Europe – where sanitary standards fall far short of the sanitary standards required for U.S. dairy farms and processing plants. U.S. refusal to accept substandard Third World dairy imports that meet minimal *Codex* requirements would violate WTO rules as an illegal “non-tariff trade barrier.” Such violations could provoke retaliation against U.S. exports by other WTO members and/or other trade sanctions.

The “French Connection”

Two of NYA's largest members – Dannon and Yoplait – are deeply rooted in France. Dannon is a subsidiary of France's Groupe Danone, the global leader in yogurt and other fresh dairy products that reported sales of 12.776 billion Euros (US\$16.385 billion) in 2007. Groupe Danone also owns Stonyfield Farms, another U.S. yogurt brand.

General Mills is the U.S. franchise holder of Yoplait France, the world's second-leading fresh dairy products company with a presence in nearly 50 countries. Yoplait France reports that the U.S. accounted for 36% of its gross revenues in 2003.

It's no surprise that the NYA proposal would be very good for its two biggest members' parent companies in France. Like competitors Fonterra and Nestle, these two French yogurt giants are aggressively pursuing strategies to expand their global market shares.

After the recent global dairy trade bubble burst, milk production is rising and exports are lagging in the major producing countries worldwide. The European Union (whose 25 member nations include France) is re-instituting export subsidies to dispose of growing dairy surpluses.

The FDA yogurt plan would thus create a “safety valve” allowing French dairy processors to help relieve mounting internal EU milk production pressures by exporting MPCs and other surplus dairy ingredients to their American subsidiaries and franchisees.

(The injury from compromised yogurt standards would be further compounded by USDA's “Section 625” import licensing rules that help concentrate dairy imports in the hands of Fonterra and a few big U.S. subsidiaries of European dairy firms.)

Similar to earlier attack on cheese standards

The NYA proposal is a case of déjà vu all over again. *The Milkweed* reported on similar, equally harmful attempts to gut U.S. natural cheese standards in the late 1990s. The assault on federal cheese standards ... by members of the International Dairy Foods Association, National Milk Producers Federation and others, would have allowed the widespread use of imported MPC as a substitute for U.S. farm milk in cheese vats.

Those plans were halted after U.S. Sen. Russ Feingold (D-WI) and other vigilant lawmakers introduced bills in Congress to safeguard cheese standards. The legislative threat hasn't stopped processors' efforts to erode natural cheese standards, however, by using MPC-based “starter” and other subterfuges. FDA, meanwhile, has helped erode standards through an “alternate make procedure” allowing cheese plants in the Midwest to use concentrated, ultra-filtered milk shipped from big dairy operations in New Mexico.

Hiding the Aspartame

The FDA proposal would allow the industry to mislead consumers about the presence of aspartame (marketed as NutraSweet or Equal) and other artificial sweet-

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eners used in yogurt. Current standards require artificial sweeteners such as aspartame to be prominently listed in large type on the front panel of the yogurt container (see photos). This requirement is essential to alerting consumers to the presence of these ingredients, which can cause health problems for some individuals.

The NYA plan “would permit yogurt to contain non-nutritive sweeteners and be labeled simply ‘yogurt’ without a specific declaration of the non-nutritive sweetener in the name of the food,” the January 2009 *Federal Register* notice states. “While comments from industry supported this provision, several consumers and at least one State government agency strongly opposed this provision, stating that consumers have become accustomed to identification of aspartame in the name of the food and that removal of this identification would be misleading to consumers and could prove harmful to those individuals with phenylketonuria.” (Wikipedia.com defines phenylketonuria as a serious genetic disorder which requires affected persons to avoid all contact with the artificial sweetener aspartame due to the presence of two amino acids: phenylalanine and aspartic acid.)

Aspartame (also known as NutraSweet) is the focus of long-running consumer controversy. Aspartame was originally developed by a Defense Department scientist who was researching toxins. By chance, the researcher noted the sweet taste of the poison he was developing. The major ingredient in Aspartame is the same chemical that transfers synapses in the human brain. Aspartame is technically an “excitotoxin” -- that kills brain neurons by overstimulating them. Dairy could lose sales of yogurt, if consumer’s right to know this controversial ingredient is lost, as the NYA prefers.

One leading opponent of the FDA yogurt proposal is Betty Martini, founder of Mission Possible World Health International Mission Possible headquartered in Duluth, Georgia. Martini is an expert on the dangers of aspartame and has posted detailed information for concerned consumers at her Web site: <http://www.mpwhi.com/main.htm>.

Killing Dairy’s Golden Goose?

By compromising U.S. yogurt standards, the FDA proposal is dairy’s equivalent of killing the goose that laid the golden eggs. Yogurt is one of the fastest-growing and most profitable dairy products in recent years. According to

USDA data cited on the NYA Web site, yogurt sales tripled from 1983 to 2002 and have continued to rise at a healthy clip. Total yogurt sales of \$2.9 billion in 2005 were up 3.6% from the previous year.

Since mid-2008, however, U.S. yogurt output has been down about 2%.

FDA: a Failed Agency

Meanwhile, the FDA has failed to enforce current federal yogurt standards after it “stayed” a final rule on yogurt standards published January 30, 1981 in the *Federal Register*. Among other provisions, the 1981 final rule prohibited the use of milk-derived ingredients, barred reconstituted dairy ingredients as basic ingredients, and excluded the addition of preservatives to yogurt, lowfat yogurt, and nonfat yogurt.

In its January 15, 2009 notice, FDA admits to its shortcomings on yogurt standards: “To date, due to competing priorities and limited resources, FDA has not held a public hearing to resolve these issues and the effective date for these provisions remains stayed ... although the current standards do not permit the use of certain ingredients such as preservatives or a reconstituted dairy ingredient as a basic ingredient, because of the stayed provisions, FDA has not taken enforcement action against the use of these ingredients in yogurt, lowfat yogurt, or nonfat yogurt.”

Dangerous Proposal Must be Stopped Now

The proposed yogurt amendment comes from the same under-funded, understaffed FDA that has betrayed the public trust in other critical areas. FDA’s failure to inspect imported foods and medicines – typically 1% or less – have left American consumers exposed to contaminated products from foreign shores. FDA officials admit their agency doesn’t have the resources to do their job. The yogurt proposal is further proof of that failure – FDA hasn’t enforced existing standards and has now stooped to letting the yogurt industry write its own ticket, at our expense.

Dairy’s interests are best served by protecting the quality of ingredients used in yogurt sold domestically. Dairy doesn’t need a yogurt-based replay of the quality fiasco that has occurred with processed cheese products that have been deteriorated by certain manufacturers’ use of cheap, foreign ingredients. Yogurt’s strong image as a nutritious food product is endangered by NYA proposal to FDA.