



**National
Yogurt
Association**

Donald J. Carrington c/o
Dockets Management Branch (HFA-305)
Food and Drug Administration
5630 Fishers Lane, rm. 1061
Rockville, MD 20852

August 20, 2002

**Re: Comments; Docket No. 98N-0359; Program Priorities in the
Center for Food Safety and Applied Nutrition**

Dear Mr. Carrington:

Thank you for the opportunity to submit these comments on behalf of the National Yogurt Association ("NYA"). NYA is the national trade association representing manufacturers of refrigerated cup and frozen yogurt products containing live and active cultures, as well as suppliers to the industry. NYA sponsors scientific research regarding the health attributes associated with the consumption of live and active culture yogurt, and serves as an information resource for the American public about these attributes.

NYA is pleased to respond to your request for comments regarding the establishment of program priorities in the Center for Food Safety and Applied Nutrition ("CFSAN") for fiscal year 2003 ("FY 2003"). 67 Fed. Reg. 42272 (June 21, 2002). The notice states that for FY 2002, the program priorities contain two lists of activities: the "A" list for which CFSAN's goal is to fully complete at least 90 percent of the activities by the end of FY 2002, and the "B" list activities for which CFSAN's goals is to make progress during FY 2002. The 2002 workplan identifies eight program areas and cross-cutting areas that need emphasis, including nutrition, health claims and labeling. The notice states that FDA expects that there will be considerable continuity and follow-through between the 2002 and 2003 workplans, including a number of goals that inherently require a multiyear effort.

NYA believes that CFSAN should include on its "A" list of priorities for the FY 2003 workplan the publication in the *Federal Register* of a proposed rule to modify the standards of identity for yogurt. On February 18, 2000, NYA submitted to FDA a citizen's petition requesting FDA to promulgate a regulation establishing a modernized standard of identity for yogurt to replace the existing yogurt standards of identity, and to make conforming amendments to the existing cultured milk standard of identity. NYA filed this petition recognizing that the current standards of identity for yogurt contain many stayed provisions that create multiple gaps in the standard, for which no guidelines exist. In addition, industry practices and FDA policies often differ from, or are not explicit in, the standards.

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The NYA's proposed yogurt standard finally completes and fully implements a yogurt standard, while clarifying that yogurt is a food product containing a minimum level of certain live and active bacterial cultures. The NYA's proposed standard takes into account current industry practices and recognizes the need to allow for use of future technologies. The proposed standard establishes a clear, consistent, modernized, and flexible yogurt standard that will benefit both industry and consumers.

Since NYA's submission of the citizen's petition in 2000, FDA has not taken any action on the petition. Congress recognized FDA's delay in its Agriculture Appropriations Report for FDA's FY 2002 budget and requested that FDA report to Congress by June 1, 2002, concerning FDA's action on the petition. According to recent statements by a CFSAN representative, it is our understanding that, by the end of 2002, CFSAN plans to publish the citizen's petition as a notice in the *Federal Register* to invite public comments.

Furthermore, in April 2002, the Codex Committee on Milk and Milk Products (CCMMP) advanced to Step 8 of the Codex process, and submitted to the Codex Alimentarius Commission for its approval, a proposed international fermented milk standard. The draft standard, if approved by the Commission next year, contains many provisions that are similar to and align with those contained in the NYA petition. Thus, FDA proposing revision of the U.S. standard is appropriate and consistent with international activities.

NYA believes that FDA should set as an "A" priority for FY 2003 the publication of a proposed rule modifying the yogurt standards. Making publication of a proposed rule a priority would come within one of the broad priority areas that CFSAN has recognized – that of food labeling. Furthermore, given FDA's plans to publish the petition for comments this year, the logical next step is for FDA to publish a proposed rule based on the petition. By publishing a proposed rule in FY 2003, FDA would avoid disrupting the continuity of the project and would prevent further delay in resolving the issues associated with the yogurt standards that have existed for 20 years.

Thus, NYA respectfully requests that CFSAN list as a priority on its "A" list for FY 2003 priorities the publication of a proposed rule based on NYA's citizen's petition requesting the modification of the yogurt standards of identity and conforming amendments to the cultured milk standard of identity.

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Thank you for your consideration of these comments. Please do not hesitate to contact us if you have any questions.

Sincerely,

A handwritten signature in black ink, reading "Leslie G. Sarasin". The signature is written in a cursive style with a large initial "L".

Leslie G. Sarasin, CAE
President and
Chief Executive Officer