



James Mulhern, *President & Chief Executive Officer* | Randy Mooney, *Chairman*

May 5, 2014

Division of Dockets Management (HFA-305)  
Food and Drug Administration  
5630 Fishers Lane, Rm. 1061  
Rockville, MD 20852  
Submitted electronically via [www.regulations.gov](http://www.regulations.gov)

**Re: Docket No. FDA-2009-D-0430: Draft Guidance for Industry on Ingredients Declared as Evaporated Cane Juice; Reopening of Comment Period; Request for Comments, Data, and Information.**

Dear Sir or Madam:

The National Milk Producers Federation (NMPF) appreciates the opportunity to submit comments in response to the Food and Drug Administration's (FDA) request for information about the common or usual name for the ingredient referred to as "evaporated cane juice". The National Milk Producers Federation, based in Arlington, VA, develops and carries out policies that advance the well-being of dairy producers and the cooperatives they own. The members of NMPF's cooperatives produce the majority of the U.S. milk supply, making NMPF the voice of more than 32,000 dairy producers on Capitol Hill and with government agencies. Visit [www.nmpf.org](http://www.nmpf.org) for more information.

In the March 5, 2014 *Federal Register* notice, FDA states that it has not reached a final decision on the common or usual name for the ingredient which is the solid or dried form of sugar cane syrup. FDA further states that "evaporated cane juice" is not the common or usual name for these ingredients because that term falsely suggests the sweeteners are "juice", despite not meeting the definition for such (21 CFR §120.1(a)).

The purpose of NMPF's current comments is not to advise FDA on an appropriate name for what would be obvious to most consumers is a type of sweetener, but rather to question the Agency's allocation of resources to such an effort. It seems rather disingenuous for the Agency to utilize its often-referenced "limited resources" to issue additional labeling guidance while

Agri-Mark, Inc.  
Arkansas Dairy  
Cooperative  
Association  
Associated Milk  
Producers Inc.  
Continental Dairy  
Products, Inc.  
Cooperative  
Milk Producers  
Association  
Dairy Farmers of  
America, Inc.  
Dairymen's Marketing  
Cooperative, Inc.  
Ellsworth  
Cooperative  
Creamery  
Farmers  
Cooperative  
Creamery  
FarmFirst Dairy  
Cooperative  
First District  
Association  
Foremost  
Farms USA  
Land O'Lakes, Inc.  
Lone Star Milk  
Producers  
Maryland & Virginia  
Milk Producers  
Cooperative  
Association  
Michigan Milk  
Producers  
Association  
Mid-West  
Dairymen's  
Company  
Northwest Dairy  
Association  
Prairie Farms  
Dairy, Inc.  
Premier Milk Inc.  
Scioto County  
Cooperative  
Milk Producers'  
Association  
Select Milk  
Producers, Inc.  
Southeast Milk, Inc.  
St. Albans  
Cooperative  
Creamery, Inc.  
Swiss Valley Farms  
Company  
Tillamook County  
Creamery  
Association  
United Dairymen  
of Arizona  
Upstate Niagara  
Cooperative, Inc.  
Zia Milk  
Producers, Inc.

simultaneously not enforcing existing regulations pertaining to the identity of foods as found in 21 CFR §101.3.

The current request for comments centers on FDA's existing regulations that require the common or usual name to be used in the labeling of foods; however, the Agency has blatantly disregarded the names displayed on the labels of imitation dairy products (e.g., "soy milk", "rice yogurt", etc.) in the current marketplace. While the FDA has made its position clear through warning letters to several manufacturers who have misbranded foods by misusing names of standardized dairy products as to what is considered an appropriate common or usual name<sup>1</sup>, NMPF would argue that these actions have been too infrequent to be effective, essentially creating a labeling landscape free of enforcement.

NMPF has called the Agency's attention to the issue in previous communications<sup>2</sup>, yet the inaction by FDA to address the category of plant-based imitation dairy products that are marketed using the names of standardized dairy products has only allowed these manufacturers to continue to mislead and confuse consumers. To be clear, NMPF is not maintaining that consumers are confused as to the origin of these imitators – we do not think Americans mistakenly believe soybeans and almonds have udders and produce "lacteal secretions". However, NMPF strongly contends that consumers are being defrauded by the inferior nutrient content of these misbranded non-dairy products compared to their true dairy counterparts (21 CFR §101.3 (e)(1)).

The name of a food as it appears on the front of a package does convey nutritional information to the consumer about the product. Consumers think

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<sup>1</sup> FDA Warning Letter dated August 8, 2008 from Alonza E. Cruse, District Director, FDA Los Angeles District to Mr. Long H. Lai, Lifesoy, Inc.;  
Letter dated July 18, 1985 from Lillie Taylor, Assistant to the Director, Division of Regulatory Guidance, CFSAN to C. Hwang, Dr. Chung's Foods Company, Ltd.;  
Letter dated September 29, 1983 from James R. Taylor, Jr., Assistant to the Director, Division of Regulatory Guidance, Bureau of Foods to Mr. Kok Ee Lynn, Senior Officer, Singapore Institute of Standards and Industrial Research.

<sup>2</sup> Letter dated July 28, 2010 from Dr. Beth Briczinski, Director, Dairy Foods & Nutrition, NMPF to Docket #FDA-2010-N-0210;  
Letter dated April 28, 2010 from Jerry Kozak, President and CEO, NMPF to Margaret A. Hamburg, Commissioner, FDA;  
Letter dated November 2, 2001 from Dr. Robert Byrne, Vice President, Regulatory Affairs, NMPF to Dr. Christine Lewis, Director of Office of Nutritional Products, Labeling and Dietary Supplements;  
Letter dated February 14, 2000 from Dr. Robert Byrne, Vice President, Regulatory Affairs, NMPF to Joseph Levitt, Director, CFSAN.

non-dairy alternatives with the term “milk” or “yogurt” in their name contain protein, vitamins, and minerals that are equivalent to what is present in dairy milk or yogurt, respectively. It has been recognized that many consumers rely on visual cues from the front of the package (the product imagery, style of packaging, nutrient claims) **and the name of the food** to make inferences about the nutrient content of the product. *Given their physical state, similar packaging, images on the label, recommended uses, label claims (e.g. “as much calcium as milk”), along with the inclusion of the term “milk” in the name of the product on the principal display panel, consumers are being misled into thinking these imitation beverages are nutritionally equivalent to dairy milk.*

Therefore, NMPF would again urge the Agency to consider enforcing established policy, especially in light of existing consumer confusion, before creating additional labeling regulations. Manufacturers of these imitation products have misled American consumers for far too long – making a mockery of current labeling regulations – by usurping the “dairy halo” associated with wholesome and nutritious milk and dairy products.

NMPF appreciates FDA’s consideration of these comments and we hope to continue to dialogue with the Agency on this important topic. Please contact NMPF for additional information.

Sincerely,

A handwritten signature in black ink that reads "Beth Panko Briczinski". The signature is written in a cursive, flowing style.

Beth Panko Briczinski, Ph.D.  
Vice President, Dairy Foods & Nutrition