



REGULATORY REGISTER

Volume 22, Issue 2 | Summer 2020

In this issue

U.S. Dairy Innovation Center sets 2050 Goals, *Page 2*

Navigable Waters Protection Takes Effect in 49 States, *Page 4*

NMPF Lauds Bipartisan Movement Forward on Agriculture Climate Legislation, *Page 4*

Dietary Guidelines Reaffirms Dairy's Crucial Role but Wider Science Review Needed, *Page 5*



NMPF Mobilizes Advocates to Urge FDA to Enforce Standards of Identity

Dairy farmers and their allies demonstrated their strong disapproval of the FDA's lack of enforcement of existing standards of identity by commenting on the agency's "[Food Standards; General Principles and Food Standards Modernization](#)" docket, which closed July 20. Nearly 60 percent of the comments filed were directed to the docket through a call-to-action shared with NMPF advocates. The overwhelming interest from the dairy community reinforces the topic's continued relevance and its dissatisfaction with the status quo.

The FDA re-opened the docket from 2005 as part of the agency's multi-year Nutrition Innovation Strategy. In doing so, FDA requested public comments on 13 guiding principles, which will be used to review existing standards of identity -- definitions of food set by regulatory agencies that are intended to protect consumers. The FDA will use these principles to review existing standards before revising, revoking, or establishing new ones.

Given some standards of identity are over 75 years old, NMPF supports this review. But the review must be thoughtful, and the changes appropriate. In addition to revising standards, FDA also must enforce existing standards, including those prohibiting the use of dairy terms to label plant-based products. Read NMPF's comments [here](#).

Miyoko's Kitchen Sues CDFA

After years of watching the FDA fail to take action against plant-based food manufacturers' use of dairy terminology on plant-based food labels in violation of both state and federal laws, the California Department of Food and Agriculture (CDFA) decided to try to correct the problem on its own. As a result, CDFA is now defending its actions in federal court.

The lawsuit, filed on February 6, comes after CDFA in December of last year told Miyoko's they must remove the terms "butter," "lactose-free," "hormone-free," "revolutionizing dairy with plants" and "cruelty-free" from their labeling because "the product is not a dairy product." Miyoko's also was told to remove the photos of a woman hugging a cow from their marketing materials. To adhere to the state's enforcement of state and federal laws, Miyoko's would have to develop new packaging for their products to be sold in California. In response, Miyoko's filed its lawsuit alleging its First Amendment rights have been violated. The state of California attempted to have the suit dismissed on the grounds that the case was not ripe because there was still time for Miyoko and CDFA to try to negotiate a resolution. The court did not agree so the lawsuit is moving forward.

NMPF understands California's move to enforce the federal standards of identity after decades of FDA inaction. Despite NMPF's constant and consistent requests over several decades for enforcement, plant-based companies have been able to disregard federal regulations due to little pushback from FDA, while dairy companies have followed rules meant to prevent consumer confusion all the time.





U.S. Dairy Innovation Center sets 2050 Goals

The Innovation Center for U.S. Dairy set aggressive new environmental stewardship goals on April 22 to advance the U.S. dairy industry's role in a sustainable future, including plans to reach net-neutral or even negative carbon emissions as a sector, the cornerstone of the industrywide Net-Zero Initiative. The goals build on the progress dairy has already made as it continues producing sustainable, nutritious products for the growing world population. The 2050 Environmental Stewardship Goals are:

1. Become carbon neutral or better;
2. Optimize water use while maximizing recycling;
3. Improve water quality by optimizing utilization of manure and nutrients.

The U.S. dairy community has already made great strides toward these goals by leveraging new technology and innovation. These goals, and the [U.S. Dairy Stewardship Commitment](#) build upon the great work already being done and demonstrate the industry's commitment to social responsibility efforts. NMPF has been working to submit comments to various dockets and lobby for legislation which support the dairy industry in achieving these goals.

EPA Publishes COVID-19 Related Disposal of Surplus Milk Memo

The Environmental Protection Agency (EPA) released a [memo](#) on May 6, advising dairy farmers on how to handle surplus milk as a result of short-term oversupply challenges because of COVID-19. The EPA recommended taking appropriate measures to hold excess milk in containment systems, waste storage facilities, and/or land dispose of milk as appropriate in accordance with nutrient management planning and other conservation practices. In addition, they pointed to guidance developed by different states that may also be helpful. EPA

emphasized that they still expect "all regulated entities to continue to manage and operate their facilities in a manner that is safe and that protects the public and the environment."

Due to the diligence of dairy farmers, cooperatives, and processors, many supply chain issues experienced during the early weeks of the pandemic have been resolved. The need for on-farm milk disposal has significantly lessened, but EPA guidance remains in place should there be a future need.

EPA Puts Dairy Members on Farm and Rural Communities Committee

The EPA included two dairy-affiliated members among its June 17 list of nominees to serve on its [Farm, Ranch, and Rural Communities Advisory Committee](#): Matthew Freund of Freund's Farm and CowPots LLC. from East Canaan, Connecticut and David Graybill of Red Sunset Farm and Pennsylvania Farm Bureau from Mifflintown, Pennsylvania. NMPF was pleased with the decision.

The Advisory Committee provides independent policy advice, information and recommendations to the EPA administrator on a range of environmental issues and policies that are of importance to agriculture and rural communities. Established

in 2008, the committee consists of 33 nominees representing a broad and balanced membership from a variety of relevant sectors across the United States. The nominees will hold 2 to 3-year terms, which began on June 15.

"One of my priorities for EPA has been to restore trust for our agency among agricultural stakeholders and rural communities," EPA Administrator Andrew Wheeler stated in the announcement. "I am excited to reinstate the Farm, Ranch, and Rural Communities Committee in 2020 with full membership."

NMPF Submits Comments to NRCS RCPP Docket

NMPF submitted comments to USDA Natural Resources Conservation Service (NRCS) May 12 on the Interim Rule for the Regional Conservation Partnership Program (RCPP), discussing the opportunity that RCPP can present to support demonstration farms and expand dairy adoption of practices that reduce greenhouse emissions and improve water quality.

NMPF also urged NRCS to make the application process streamlined and to keep the requirements consistent across all states to allow for engagement throughout multiple areas. The comments are timely, given dairy's recently announced 2050 Net Zero Initiative sustainability goals of a carbon-neutral or better dairy industry.

RCPP promotes coordination between NRCS with partners, ag producers, and private landowners to address local and regional natural resource challenges. Through this program, NRCS co-invests with partners on projects that demonstrate innovative solutions to conversation challenges.

NMPF encouraged NRCS to maintain a strong working relationship with dairy producers in all states and to allow us to maintain our goal of providing high quality products in an environmentally sustainable manner. The full comments can be found [here](#).



USDA APHIS Seeks Public Comment on Transition to RFID Official ID Tags

USDA APHIS proposed in a notice published July 6 to transition official animal ID for cattle and bison to [RFID](#) tags only for use in interstate movement that are required to be identified by the traceability regulations on Jan. 1, 2023. Cattle and bison tagged with official ID tags prior to that will be grandfathered in and not be required to switch to official RFID tags. The notice also seeks comment on the proposed timeline for implementation.

RFID tags will increase livestock traceability and surveillance efforts by enabling greater use of electronic Certificates of Veterinary Inspection, making it easier for animal health officials to quickly and accurately query databases for animal disease traceability purposes. This will result in quicker, more efficient containment of outbreaks and less time spent trying

to trace animals back to the farms.

Rapid response to an intentional or accidental introduction of an animal disease is necessary to minimize economic losses to dairy farms and maintain consumer confidence in the food supply. NMPF has advocated for a national animal traceability that allows tracking of all animal movements within 48-hours to enhance the ability of animal health professionals to trace and contain an animal disease.

NMPF has supported the use of RFID tags for official identification for more than a decade. NMPF will submit comments in support of this transition.

Navigable Waters Protection Takes Effect in 49 States

The new Waters of the United States rule, now known as the Navigable Waters Protection Rule, took effect in 49 states on June 22. But even before the rule had taken effect, several organizations and states brought lawsuits against it.

One lawsuit was brought by 17 states in the Northern District of California requesting an injunction to block the rule from taking effect. In a win for the rule and for dairy farmers, this request was denied on June 19. However, hours later, a district court judge issued a preliminary injunction for only the state of Colorado, which the Department of Justice will now appeal. NMPF was pleased with the ruling in California; still, more lawsuits are expected, making it likely that a patchwork

of different rules may be applied, as has happened with the WOTUS rules in the past.

NMPF has long battled to prevent the WOTUS rule from overreaching and is pleased with the new Navigable Waters rule. The new rule establishes the scope of federal regulatory authority under the Clean Water Act, narrowing Federal jurisdiction and providing certainty to dairy farmers about which waterbodies are regulated. The Navigable Waters Protection Rule includes four simple categories of jurisdictional waters and provides specific exclusions for many water features that traditionally have not been regulated.

NMPF Praises USDA for FMD Preparedness with Initial Vaccine Purchase

NMPF praised the U.S. Department of Agriculture for taking a critical step in modernizing Foot and Mouth Disease (FMD) preparedness for U.S. dairy farmers through its [initial purchase](#) of \$27.1 million in foot-and-mouth disease vaccine for the National Animal Vaccine and Veterinary Countermeasures Bank.

The initial purchase, published on July 8, culminates a multi-year effort by NMPF and other livestock organizations working with USDA to update U.S. preparedness for a Foot and Mouth Disease outbreak.

“NMPF appreciates the leadership shown by Congress in including FMD preparedness in the 2018 Farm Bill and USDA in moving forward with implementation,” said Jim Mulhern, president and CEO of NMPF. “A modernized vaccine bank signals appropriate vigilance against a threat that, while not a present danger, is always a potential risk.”

The U.S. has not had an FMD outbreak since 1929. Still, recent foreign animal disease outbreaks in the U.S. of avian influenza and porcine epidemic diarrhea has focused attention on the importance of preparedness for other diseases, including FMD, for which outbreaks would have profound effects on international trade and animal health.

NMPF’s Board of Directors in 2014 endorsed a set of FMD priorities for the U.S. dairy industry, including modernizing the FMD vaccine bank, which enabled NMPF to advocate for dedicated funding in the 2018 Farm Bill. This first purchase agreement for FMD vaccine is part of a multi-year USDA commitment to modernize the FMD vaccine bank.



NMPF Lauds Bipartisan Movement Forward on Agriculture Climate Legislation

The Growing Climate Solutions Act, introduced in the Senate on June 4 and the House on June 26, highlight increasing congressional attention to climate-change solutions in which dairy farmers would play a prominent role. NMPF lauded the bills as an important step that will enhance the many conservation and environmental efforts dairy farmers are taking as they care for air, land, and water resources.

Jason Weller, vice-president of Truterra, LLC, the sustainability arm of Land O’Lakes, [testified](#) in a Senate Agriculture Committee hearing on June 24 in support of the bill. NMPF also submitted written testimony on behalf of Environmental Issues Committee Chair Mike McCloskey and President & CEO Jim Mulhern.

“To continue and enhance our efforts to combat climate change, the dairy industry is launching the Net Zero Initiative to reduce the industry’s climate impact to ‘net zero’ by as early as 2050,” McCloskey and Mulhern wrote in their testimony. “Carbon markets will play an important role in helping us to achieve our goal, making the Growing Climate Solutions Act a valuable addition to the legislative landscape in this regard.”

The Growing Climate Solutions Act’s Senate sponsors are Sens. Mike Braun (R-IN) and Debbie Stabenow (D-MI), while the House version was introduced by Reps. Abigail Spanberger (D-VA) and Don Bacon (R-NE). NMPF is pleased with the bill’s bipartisan support in both chambers, a crucial step toward reducing agricultural carbon emissions that aligns well with dairy’s goal to achieve carbon neutrality or better by 2050 through the industry’s Net Zero Initiative.

“We are grateful that so many members of Congress in both parties have recognized the important contributions dairy farmers make to conservation and sustainability,” said Mulhern. “We look forward to working to advance this and other proposals as Congress takes up environmental legislation.”



Dietary Guidelines Reaffirm Dairy's Role but Wider Review Needed

NMPF said it was pleased that the Dietary Guidelines Advisory Committee's [final report](#) released July 15 reaffirms dairy's crucial role in a nutritious diet but expressed concern that the committee failed to recognize newer, broader science that shows the benefits of dairy foods at all fat levels.

"The Dietary Guidelines Advisory Committee today restated what consumers already know – that regular dairy consumption offers essential nutrition that nourishes people throughout their lives," said Jim Mulhern, president and CEO of NMPF, the largest organization of U.S. dairy farmers and the cooperatives they own. "Across different types of diets and throughout all stages of life, dairy products provide the nutrients people need to be healthy."

But Mulhern said it was disappointing that the committee largely reflected long-held assumptions on saturated fat, despite numerous studies that have called traditional anti-fat guidance into question.

"We repeatedly called on the committee to take a fresh look at multiple studies that show beneficial or neutral effects of dairy on chronic disease risk at all fat levels," Mulhern said. "Unfortunately, the DGAC report does not reflect this newer science."

NMPF sent a joint letter with IDFA to the secretaries of USDA and HHS, as well as the chair of the DGAC, ahead of the release of the report, to reiterate our strong view, as explained more fully in previous comments to the DGAC, that a body of science in recent years has found that dairy foods, regardless of fat level, appear to have either neutral or beneficial effects on chronic disease risks. The NMPF-IDFA joint message called on the committee "to complete its review by including all relevant scientific studies that bear on these questions and, if the findings so indicate, recommend Americans incorporate dairy foods in all forms as an integral part of all dietary patterns,"

noting failure to examine the validity of existing dietary advice "will represent a lost opportunity to share newer science with consumers, health professionals and policy makers and contribute to ongoing confusion about the healthfulness of dairy."

The DGAC's final scientific advisory report submitted to the secretaries of Agriculture and Health and Human Services notes that Americans overall need more dairy in their diets, with 88 percent of them falling short of recommendations. That figure includes 79 percent of 9-13-year-olds, who rely heavily on the school-lunch program to meet nutritional needs. The report also highlights dairy's unique place as a provider of key nutrients that otherwise would be under-consumed in American diets.

- Dairy is recommended for consumption within all three healthy eating patterns featured in the report, with three servings per day recommended in the Healthy U.S. style eating pattern and Healthy Vegetarian Style patterns and two servings per day in the Healthy-Mediterranean pattern;
- The committee recognized milk as a nutrient-rich beverage that contributes positively to under-consumed nutrients, including potassium, calcium, phosphorus, magnesium, vitamins A and D, and others;
- Low-fat and nonfat dairy foods are recommended as nutrient-dense building blocks of a healthy diet; and
- In the committee's first-ever recommendations for birth through 24 months, yogurt and cheese are recognized as complementary feeding options for infants ages 6-12 months, and dairy foods (milk, cheese and yogurt) are included in healthy eating patterns for toddlers 12-24 months.



FARM Adds New Vendors, Revamps Training

The management and development of the FARM Program database and evaluation app was transferred to NewInsights on June 1, one of several changes in the past month that will enhance FARM's ability to serve the dairy community.

[NewInsights](#) is a customer-focused technology company with extensive dairy industry and IT experience that has the capacity to drive continuous improvement of the FARM technology suite. Having worked with organizations such as Land O'Lakes and John Deere for IT solutions, NewInsights was selected from a number of potential vendors to meet the growing needs of the FARM program. They will improve the user experience and develop new features tailored to the unique needs of program participants and producers.

The FARM Program has also retained ACER Consulting to jointly develop programming for 2020 virtual and slated in-person FARM-hosted evaluator training sessions. [ACER Consulting](#) brings a background in animal health and animal care quality assurance programs across the globe; it also has extensive experience developing science-based educational and training resources for animal agriculture.

The program continues to adapt evaluator training opportunities and expectations to remain precautionous amid the current COVID-19 outbreak. Evaluators and program participants with questions regarding evaluator trainings should contact dairyfarm@nmpf.org.

New Guides, Stakeholder Summit

The FARM Program continues to produce relevant and timely resources and materials related to all its program areas for producers.

The [2020 Milk and Dairy Beef Residue Prevention Reference Manual](#) and accompanying [pocket guide](#) is now available in Spanish and English. Interested stakeholders can view and download the manual of the FARM website or purchase the manual or pocket guide in the FARM Store. Updated each year, the manual and accompanying pocket guide are convenient resources detailing which antibiotics and other drugs are approved for treatment of dairy animals.

The FARM Program and the Beef Quality Assurance Program has also revised the previously named Top 10 Considerations when Culling Dairy Animals poster. The refined poster clarifies and adds

additional context to what observations to conduct before loading and transporting dairy cattle. Available in [Spanish](#) and [English](#), this resource can be [downloaded](#) or [purchased](#) on the FARM website.

FARM is also participating in two key virtual events being held in July. FARM staff will provide updates on the FARM Animal Care, Environmental Stewardship and Workforce Development program areas and examine other developments in related policy areas as part of NMPF's Virtual Dairy Stakeholder Summit, July 8-9.

Additionally, the annual FARM evaluator conference will also be held virtually and at no cost to attendees. This event will take place on July 21-22. Session topics include media training, training development and intake discoveries at the beef processing plant. Evaluators, program managers can register [here](#).

NMPF Regulatory Staff

Clay Detlefsen, Esq.

Senior Vice President, Regulatory & Environmental Affairs

cdetlefsen@nmpf.org

Clay deals with initiatives related to food safety and defense, product labeling, and environmental issues.

Jamie Jonker, Ph.D.

Vice President, Sustainability & Scientific Affairs

jjonker@nmpf.org

Jamie's work in sustainability and scientific affairs includes animal health, biotechnology, biosecurity, air and water quality issues, sustainability, and technical service issues.

Miquela Hanselman

Manager, Regulatory Affairs

mhanselman@nmpf.org

Miquela's regulatory efforts focus on issues related to interstate shipments of milk, food safety, labeling, nutrition and the environment.