



# **Live and Active Culture Yogurt Seal Program**

Procedures and Guidelines

*(Updated December 13, 2013)*

National Yogurt Association  
2000 Corporate Ridge, Suite 1000  
McLean, VA 22102  
(703) 821-0770

PURPOSE: This document, including appendices, sets forth the rules and procedures for obtaining permission to use the National Yogurt Association's (NYA) "Live and Active Cultures" (LAC) Seal for refrigerated cup and frozen yogurt products containing live and active cultures. The rules and procedures may be modified from time to time by the NYA Board of Directors.

## I. ELIGIBILITY

- A. Any company which produces and/or distributes refrigerated cup yogurt and/or frozen yogurt<sup>1</sup> (hard-packed or soft-serve mix) in the United States, whether or not a member of the NYA, may apply to use the Seal on product labels or in labeling or advertising.
- B. A separate application must be submitted for each product for which use of the Seal is sought. For purposes of this program, "product" is defined as a brand of yogurt of a particular type or form including an aggregation of different flavors of a type or form. By way of example, each of the following is considered a separate product:

- Nonfat yogurt – fruit on the bottom (all flavors)
- Low fat yogurt – fruit on the bottom (all flavors)
- Custard style yogurt (all flavors)
- Low fat frozen yogurt (all flavors)

Yogurt sweetened with aspartame (or any other similar non-nutritive sweetener) and yogurt sweetened with a nutritive sweetener, such as sucrose, are also considered separate products.

- C. If a company submits test results for the same product, as defined in Section I.B., which is sold under more than one brand name, the application must contain a list of all the brand names under which the product is sold.
- D. A company that wishes to apply to use the Seal must submit a signed application form with the specified information and fee, to the National Yogurt Association, 2000 Corporate Ridge, Suite 1000, McLean, VA 22102; ATTN: Seal Program.
- E. Applications must be accompanied by the fee specified in Section II.A.

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<sup>1</sup> The term "frozen yogurt" refers to dairy-based products containing "yogurt" (as defined in 21 C.F.R. 131.200, 21 C.F.R. 131.203, and 21 C.F.R. 131.206) that has been produced through fermentation of Grade A dairy milk, and that has not been heat-treated or dehydrated following fermentation.

## II. FEES

- A. A company which produces and/or distributes yogurt products may apply to use the Seal at a cost of \$2,500 per application. So, for example, if a company wants to use the Seal on four different types of yogurt products (as defined in I.B.) the total fee would be \$10,000. The fee, which is non-refundable, is for the sole purpose of offsetting the costs of the administration of the program.
- B. The dues of voting Members of the NYA include funds to cover an unlimited number of applications per 12-month period. The dues of active non-voting Members of the NYA include funds to cover ten applications per 12-month period. Additional applications must be accompanied by the fee set forth in paragraph II. A. above.

## III. CONTENT OF APPLICATION

An application shall consist of the following:

- A. A completed and signed Application Form (see Appendix C) for each type of yogurt product on which the requestor intends to use the Seal.
- B. The results of the analytical tests (conducted in accordance with the protocol set forth in Appendix A, including full reports of analytical procedures, signed worksheets, etc.) which establish the presence of live and active yogurt cultures in the product. The analytical tests must be conducted at independent laboratories (that is, not in the laboratories of the company which is applying to use the Seal). A list of independent laboratories known to be experienced in conducting tests in accordance with the requisite protocols is found in Appendix B. Other laboratories may be equally qualified to perform the analytical work.
- C. For Frozen Yogurt applications, the applicant must attest in writing to the fact that the product contains "yogurt" as defined in 21 C.F.R. 131.200, 21 C.F.R. 131.203, and 21 C.F.R. 131.206 and per the definition of frozen yogurt<sup>1</sup> specified in this document. Additionally, the applicant must attest in writing that the yogurt component, by itself, contributes to the final frozen yogurt product at least  $10^7$  CFU per gram of *Lactobacillus delbrueckii* subsp. *bulgaricus* and *Streptococcus thermophilus*, combined, at the time of manufacture.
- D. A check payable to the NYA for the appropriate fee, if a fee is required. See Section II. of this document.

#### IV. TEST PROTOCOLS

- A. See Appendix A for specific protocols. In general, the company shall provide, to the independent laboratory it has selected, three samples for the activity test and three samples for the culture test. The independent laboratory shall analyze two (2) of the samples for each test to determine if they meet the requirements specified in Appendix A.
- B. If the two samples for each test pass, the product will be considered as meeting the Seal Program requirements.
- C. If one of the two samples does not pass any one of the tests, the laboratory shall test the third sample.
  - 1. If the third sample passes, the product satisfies the requirements for use of the Seal.
  - 2. If the third sample fails, the company must begin the entire testing process again by taking three new samples from a single production run.
- D. If both of the original samples fail any one of the tests, a company shall proceed as if the third sample failed, and thus follow the procedures specified in Section IV.C.2. Reports submitted with an application shall include all results, including results of analyses on samples that did not pass any one of the tests.

#### V. AWARD/DENIAL OF SEAL

- A. Decisions regarding whether to award or deny use of the Seal shall be made by the NYA Seal Program Committee, which consists of outside legal counsel and two other representatives from the staff of NYA. The decision is based solely on whether: (1) the application submitted is complete; and (2) complies with the specified requirements for use of the Seal. The Committee, in its discretion, may ask the applicant for additional information.
- B. The Seal Program Committee may consult with the Regulatory and Public Affairs Committee of the Association. If the product being reviewed involves an NYA member, the member's representative on the Committee is not permitted to advise on that product.
- C. Decisions on whether to award or deny use of the Seal should be made within 10 working days from the date a completed application is received. Applicants will be notified in writing promptly of the Seal Program Committee's decision.

## VI. APPEALABILITY OF DECISION

- A. If an applicant's request for use of the Seal is denied, the applicant may request a hearing before the Seal Program Committee. The hearing will be held within 20 working days from the date of the request, unless the applicant and the Seal Program Committee agree to extend the time period.
- B. The hearing will be held in the Washington, D.C. area. The hearing may be by telephone, if agreed to by the applicant.
- C. The hearing is informal in nature. The applicant may present written or oral testimony and/or argument and may be represented by counsel. A memorandum of the hearing will be made by the chairman of the Seal Program Committee and provided to the applicant.
- D. The Seal Program Committee will render a decision within five working days following a hearing. All decisions made by the Committee on appeal are final.

## VII. ANNUAL RENEWAL/RECERTIFICATION

- A. September 30 is the annual renewal deadline for all products utilizing the Seal. Applications or renewals received on or before this date during the same calendar year, that are subsequently approved, will be valid until September 30 of the following year.
- B. Continued use of the Seal will be granted each year upon submission of a renewal application (see Appendix E) certifying that a material change (*e.g.*, change in cultures used or a significant change in manufacturing processes) has not occurred in the manufacture of the product or upon provision to the Seal Program Committee of current information which demonstrates that the product still conforms to the required criteria. Where new information is provided, results of the analysis in accordance with Appendix A also must be submitted.
- C. A material change in the product or its method of manufacture that reasonably could affect compliance with the requirements will cause the right to use the Seal to end immediately, unless a new application has been approved.

- D. When a material change has occurred in a product, the renewal application must be accompanied by a non-refundable fee of \$2,500 for that product. If there are no material changes in the product, the renewal fee is \$2,000 for that product. Active, non-voting NYA members are allowed up to 10 initial and/or renewal applications per 12-month period (September to September). Voting members' dues include funds for an unlimited number of initial and/or renewal applications per 12-month period.
- E. Tests conducted to determine eligibility for the Seal are valid for three years (unless testing is otherwise required under the Seal criteria). At the end of the third year, a company must submit, along with its application for renewal, test results performed within the previous three months demonstrating that the product, for which the renewal application is submitted, still meets NYA Seal criteria.
- F. It is the responsibility of any company that wishes to continue to use the Seal to ensure compliance with the renewal provisions under this section.

#### VIII. USE OF THE NYA LAC SEAL

- A. The Seal is as follows:



***\*Meets National Yogurt Association Criteria for Live and Active Culture [Frozen] Yogurt***

- B. NYA recommends that the logo portion of the Seal appear on the Principal Display Panel of the product's label printed with a positive image. The acceptable minimum size is when the "L" in the "Live" of the logo equals 1/16<sup>th</sup> of an inch.
- C. NYA recommends that the logo be as close as possible to the bottom left hand corner of the Principal Display Panel.
- D. The asterisked statement, with or without "Frozen" included, as appropriate, should be as close as possible to the logo, but it may appear anywhere on the label. If the Seal is used in other media or printed materials (e.g., websites, advertising, coupons, etc.), the asterisked statement must appear in close proximity to the Seal such that it is easily located and associated with the Seal.

- E. Color: For Seals on packages, NYA recommends *Process Magenta* or *Process Blue* on packages with 4-color processing. On non-4-color processing, NYA recommends the use of the darkest or most prominent color of the package graphics. On labeling, websites, and in advertising, any suitable color may be used.
- F. Where a frozen yogurt mix is sold or distributed to retailers for further processing and subsequent sale under the retailers' brand name, the Seal may be used and displayed in the retail store, on retailer websites, and in other retailer online social media (e.g., Facebook, Twitter) only if: (1) it is used solely in connection with Seal-approved yogurt; (2) the retailer notifies its Seal-holding yogurt supplier of its intent to use the Seal and obtains the Seal from such supplier; and (3) the retailer notifies NYA of its intent to use the Seal and provides NYA with the name of its Seal-holding yogurt supplier. Failure to comply with the above requirements is grounds for immediate termination of the retailer's right to use the Seal. The frozen yogurt Seal-holder shall inform its food brokers, distributors, and/or retailers of these requirements.

Retailers may submit written notification of their intent to use the Seal to:

National Yogurt Association  
Attn: Manager of Regulatory and Technical Affairs  
2000 Corporate Ridge, Suite 1000  
McLean, VA 22102

Notification letters may also be submitted electronically to Rishi Banerjee at [rbanerjee@aboutyogurt.com](mailto:rbanerjee@aboutyogurt.com).

- G. Use of the Seal whereby it could reasonably be associated with products to which the Seal has not been awarded is strictly prohibited.

## **APPENDICES**

- A. NYA CRITERIA, SAMPLING AND ANALYTICAL PROCEDURES
- B. LIST OF INDEPENDENT LABORATORIES
- C. NYA LIVE AND ACTIVE CULTURES SEAL APPLICATION
- D. NYA LABORATORY REPORT FORM
- E. NYA LAC SEAL RENEWAL FORM

**CRITERIA FOR LIVE AND ACTIVE CULTURE YOGURT AND FROZEN YOGURT**

Live and active culture yogurt is the food produced by culturing Grade A dairy ingredients with a characterizing bacterial culture in accordance with the standards of identity for yogurt (21 C.F.R. 131.200), low fat yogurt (21 C.F.R. 131.203), and nonfat yogurt (21 C.F.R. 131.206). In addition to the use of the bacterial cultures required by the referenced federal standards of identity and by these NYA criteria, live and active culture yogurt may contain other safe and suitable food grade bacterial cultures. Declaration of the presence of cultures on the label of live and active culture yogurt is optional.

Heat treatment of live and active yogurt is inconsistent with the maintenance of live and active cultures in the product; accordingly, heat treatment that is intended to kill the live and active organisms shall not be undertaken after fermentation. Likewise, manufacturers of live and active culture yogurt should undertake their best efforts to ensure that distribution practices, code dates, and handling instructions are conducive to the maintenance of live and active cultures.

In order to meet these NYA criteria, live and active culture yogurt must satisfy each of these requirements:

1. Yogurt products (*e.g.* refrigerated yogurt) must be fermented with both *Lactobacillus delbrueckii*\_subsp. *bulgaricus* and *Streptococcus thermophilus*.
2. For refrigerated yogurt, the total viable count at the time of manufacture must be at least  $10^8$  CFU per gram. In the case of frozen yogurt, the total viable count at the time of manufacture must be at least  $10^7$  CFU per gram.
3. For frozen yogurt products, the applicant must attest in writing to the fact that the product contains "yogurt" as defined in 21 C.F.R. 131.200, 21 C.F.R. 131.203, and 21 C.F.R. 131.206 and per the definition of frozen yogurt<sup>1</sup> specified in this document. Additionally, for frozen yogurt products, the applicant must attest in writing that the yogurt component, by itself, contributes to the final frozen yogurt product at least  $10^7$  CFU per gram of *Lactobacillus delbrueckii*\_subsp. *bulgaricus* and *Streptococcus thermophilus*, combined, at the time of manufacture.

4. The cultures must be active at the end of the stated shelf-life as determined by the activity test described in the "Sampling and Analytical Procedures." Compliance with this requirement shall be determined by meeting the criteria for the activity test on two of the three representative samples of yogurt which have been stored at temperatures between 32 °F and 45 °F for refrigerated cup yogurt and at temperatures of 0 °F or colder for frozen yogurt for the entire stated shelf-life of the product. The activity criteria are met if there is at least an increase of 1 log CFU/mL (10-fold increase) during fermentation.
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## **SAMPLING AND ANALYTICAL PROCEDURES**

The applicant should submit three samples representing a single line of product, ideally taken from the beginning, middle and end of a single manufacturing run,<sup>2</sup> plus three additional samples of the same product line that is at the end of the determined shelf-life date,<sup>3</sup> that demonstrates that the yogurt has met the standard. Consultation with the laboratory performing the analysis, prior to collection of samples, is recommended to determine the most appropriate sampling protocol, including sample size and number. The samples shall be analyzed according to the following procedures:

### Refrigerated Yogurt

1. Total viable yogurt counts will be enumerated following the standard NYA protocol<sup>4</sup>. The total viable count will be reported on the NYA Laboratory Report Form (see Appendix C). The total viable count is the sum of colony forming units of *Streptococcus thermophilus* and *Lactobacillus delbrueckii* subsp. *bulgaricus* per gram of the product. Resulting counts should be reported in standard scientific notation (e.g., 1.5 x 10<sup>8</sup> cfu/g).
2. At the end of the stated shelf-life designated by the applicant, activity of the culture will be reported for at least two of the three random samples on the NYA Laboratory Report Form.

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<sup>2</sup> For small production batches/lots produced at retail (e.g., frozen yogurt mix), where product from the beginning, middle and end of a batch/lot is not easily definable, one sample from three separate batches should be submitted for testing. This applies to total viable counts at time of manufacture and for end of shelf-life testing (i.e., the activity test).

<sup>3</sup> The shelf-life date, whether appearing on the product label or not, shall be determined by the manufacturer according to standard company practice.

<sup>4</sup> ISO 7889/IDF 117 (2003): Yogurt—Enumeration of characteristic microorganisms—Colony-count technique at 37 °C

The activity test is carried out by pasteurizing 12 % solids non-fat dry milk at 198 °F for seven minutes, cooling to 110 °F, adding 3 % inoculum of the material under test and fermenting at 110 °F for 4 hours. The total yogurt organisms in the inoculated milk substrate are to be enumerated both before and after fermentation by ISO/IDF methodology.

The activity test will be reported as log increase in yogurt organisms (CFU/g) following fermentation of the defined substrate under the standard condition at the end of the stated shelf life.

### Frozen Yogurt

1. Total viable yogurt counts will be enumerated by the standard NYA protocol (see footnote 4 on the previous page). The total viable count will be reported on the NYA Laboratory Report Form. The total viable count is the sum of colony forming units of *Streptococcus thermophilus* and *Lactobacillus delbrueckii* subsp. *bulgaricus* per gram of the product.
2. At the end of the declared shelf-life designated by the applicant, the activity of the yogurt cultures will be reported for at least two of the three random samples on the Laboratory Report Form (Appendix D).

#### ***Special considerations for end of shelf-life testing:***

**Hard-packed frozen yogurt** products shall have the end of shelf-life testing performed after a minimum of 30 days of frozen storage.

**Soft-serve frozen yogurt** that is distributed frozen and then thawed before re-freezing in a soft-serve machine, shall have end of shelf-life testing performed after a minimum of 30 days of frozen storage followed by thawing and holding of the product at refrigeration temperatures, according to the manufacturer's directions, for the duration of the manufacturer's declared shelf-life for the thawed product (typically 14-21 days).

The activity test is carried out by pasteurizing 12 % solids non-fat dry milk at 198 °F for 7 minutes, cooling to 110 °F, adding 3 % inoculum of the material under evaluation and fermenting at 110 °F for 4 hours. The total yogurt organisms in the inoculated milk substrate are to be enumerated both before and after fermentation by the ISO/IDF methodology.

The activity will be reported as the log increase in yogurt organisms (CFU/g) following fermentation of the defined substrate under the standard conditions at the end of the stated shelf-life.

**REPRESENTATIVE LIST OF LABORATORIES\***

*(\*The National Yogurt Association does not endorse any particular laboratories. The following laboratories are, however, believed to be qualified to perform the analyses required for the NYA Seal Program.)*

**ABC Research Corporation**

3437 SW 24th Ave  
Gainesville, FL 32607  
Phone: 352 372 0436  
Fax: 352 378 6483  
www.abcr.com

**Analytical Food Laboratories, Inc.**

865 Greenview Dr.  
Grand Prairie, Texas 75050  
Phone: 972 336 0336  
Fax: 972 623 0055  
www.afltexas.com

**Medallion Laboratories, Inc.**

9000 Plymouth Ave N  
Minneapolis, MN 55427  
USA  
Phone: 763 764 4453  
Fax: 763 764 4010  
www.MedallionLabs.com

**Minnesota Valley Testing Laboratories, Inc.**

Rob True, Sales/Business Development  
PO Box 249, 1126 North Front Street  
New Ulm, MN 56073  
United States  
Phone: 800 782 3557  
Fax: 507 359 2890  
www.mvttl.com

**The National Food Laboratory, Inc.**

Technology Center  
Shaunti Luce  
2441 Constitution Dr.  
Livermore, CA 94551  
Phone: 925-556-4806

Innovation Center  
365 North Canyons Pkwy, Suite 201  
Livermore, CA 94551  
Phone: 925-551-4205  
www.TheNFL.com

**Silliker Food Science Center**

3600 Eagle Nest Dr.  
South Building  
Crete, IL 60617  
Tel. 708-367-4699

**National Yogurt Association  
Live and Active Cultures Seal Application**

*A separate application must be completed for each product. Each application must be accompanied by a nonrefundable fee of \$2,500 per product line payable to the National Yogurt Association.*

Company: \_\_\_\_\_

Address: \_\_\_\_\_ Phone: \_\_\_\_\_

\_\_\_\_\_ Fax: \_\_\_\_\_

\_\_\_\_\_ Email: \_\_\_\_\_

Are a producer and/or distributor of yogurt in the United States? Yes \_\_\_\_\_ No \_\_\_\_\_

Product: \_\_\_\_\_

Shelf life of product: \_\_\_\_\_

List other brands name(s) of product, if marketed under more than one name: \_\_\_\_\_

\_\_\_\_\_

Were the required analytical tests conducted in accordance with the protocols set forth in Appendix A of the NYA Seal Program Procedures? \_\_\_\_\_ (Please attach test results.)

Were the analytical tests conducted by a state or USDA-certified independent laboratory? \_\_\_\_\_

Laboratory Contact Information:

Name/Contact: \_\_\_\_\_

Address: \_\_\_\_\_

*All applications, attachments, test results, record of any action by the Seal Program Staff, renewal forms, etc. will be provided to any member of the public upon written request.*

*If NYA approves the application, the company ("the licensee") agrees to hold NYA ("the licensor") harmless; and to defend at licensee's expense, all actions arising out of the licensee's use of the NYA Seal on a product that does not contain the levels of live and active cultures specified by licensor for use of the seal, provided that licensee fraudulently or negligently misrepresented the levels of live and active cultures in the product identified in this application or otherwise misrepresented any material fact. The licensee shall indemnify the licensor against all judgments, fines, amounts paid in settlement, and reasonable expenses including attorney's fees, as actually and necessarily incurred by licensor in connection with such action, suit, investigation or proceeding or in connection with any appeal therein.*

*By signing this application, you certify that the product was tested by the above named laboratory and that the results of the test were in compliance with the guidelines set forth in Appendix A of the NYA Seal Program Procedure.*

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_

## National Yogurt Association Seal Program Laboratory Report Form

### A. CULTURE COUNTS

SAMPLE	TOTAL VIABLE CULTURE COUNT – FRESH SAMPLES (CFU/g) *Please use scientific notation.
Beginning of Production Run	
Middle of Production Run	
End of Production Run	

### B. ACTIVITY TEST (at end of code in CFU/g) \*Please use scientific notation.

Sample A      Before Fermentation: \_\_\_\_\_

After Fermentation: \_\_\_\_\_

Log Increase: \_\_\_\_\_

Sample B      Before Fermentation: \_\_\_\_\_

After Fermentation: \_\_\_\_\_

Log Increase: \_\_\_\_\_

Sample C      Before Fermentation: \_\_\_\_\_

After Fermentation: \_\_\_\_\_

Log Increase: \_\_\_\_\_

PRODUCT: \_\_\_\_\_

MANUFACTURER: \_\_\_\_\_

CERTIFICATION: I certify that the information presented in this report is correct and has been completed by my laboratory, which is independent of the company applying for the NYA Seal.

Laboratory Name/Address: \_\_\_\_\_

Lab Manager (Print name): \_\_\_\_\_

Lab Manager Signature: \_\_\_\_\_

Date: \_\_\_\_\_

**National Yogurt Association**  
Live and Active Cultures Seal Renewal Application

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Phone: \_\_\_\_\_

\_\_\_\_\_

Fax: \_\_\_\_\_

\_\_\_\_\_

Email: \_\_\_\_\_

I certify that a material change has not occurred in the manufacture of the following products that reasonably could affect compliance with NYA Seal Program criteria:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_