January 29, 2018

School Programs Branch, Policy and Program Development Division
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive, 12th Floor
Alexandria, Virginia 22302

Re: FNS-2017-0021

Dear Sir or Madam:

On behalf of U.S. dairy farmers, cooperatives and processors, we write in strong support of the interim final rule "Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements," as published in the *Federal Register* on November 30, 2017. **This rule will provide an additional option to the nation's schools and students, and also will allow schools and fluid milk processors to address the alarming decline in school milk consumption.**

Declining School Milk Consumption

The decline of school milk consumption is widely recognized. Our organizations have been calling attention to the problem for several years, since both average daily participation (ADP) in school lunch programs and apparent milk consumption began to decline. This decline coincided with the 2012 regulations which, among other things, prohibited low-fat flavored milk in school lunches, breakfasts and (through a subsequent regulation) foods sold in competition with school meals. Up to that point, low-fat (1 percent) milk had been the most widely purchased variety of milk by schools.

It was not just the dairy industry that recognized a decline, but schools as well. Annual school and processor surveys conducted by the Milk Processor Education Program (MilkPEP), which is overseen by the Department of Agriculture, regularly found declines in milk consumption – specifically, a decline of 7 percent in total volume between the 2011-12 and 2015-16 school years. The percentage of reduction is even higher for flavored milk (12.5 percent), which could indicate that children are not pleased with the fat-free versions of flavored milk, which are currently the only types of flavored milk available[1]. With publication of the interim final rule, the Food and Nutrition Service (FNS) has likewise recognized the troubling trend toward lower school milk consumption. Writing in the preamble to the final rule, FNS

[1] Prime Consulting. School Milk Information: From Milk Processor Education Program Data. 2015 Edition. August 2016.

cites as-yet unpublished survey data that appear to show a substantial decline in milk consumption by the nation's students.

Implications of Declining Consumption

Unfortunately, the decline is consistent with a long-term fall in consumption of fluid milk by Americans. This trend is a threat to public health and to the nutritional intakes of all Americans, notably children and adolescents. Milk is the #1 source of nine essential nutrients in student diets. Moreover, milk is a source of three out of four nutrients of public health concern for under-consumption: potassium, vitamin D and calcium. According to the 2015-2020 Dietary Guidelines for Americans (DGA), healthy eating patterns, which include low-fat and fat-free dairy foods, are associated with reduced risk for several chronic diseases, including cardiovascular disease (strong evidence) and type 2 diabetes (moderate evidence). Dairy consumption is also linked to improved bone health, especially in children and adolescents. The DGA continues to recommend three daily servings of milk or other dairy foods for adolescents and most children, but the DGA also shows that nearly all age groups, including all school-age groups, of both males and females consume significantly less than the recommended amounts.

This is why milk has always been a central part of school meals and it is why milk is offered with every school meal. The requirement to offer milk is not just a matter of regulation but of statutory law. It is inappropriate to construct regulations in such a manner that they make it more difficult to achieve the law's intent, to meet the recommended number of servings of dairy foods. Unfortunately, though perhaps well-intended, the previous regulation on school milk seems to have had precisely this effect.

Nutritional Benefits of Flavored Milk

Flavored milks provide all of the same nutrients as white milk, but with a flavor that many children prefer. Flavored milks, like all cow's milk, are a source of 11 essential nutrients, including calcium, vitamin D and potassium. In a position paper from the American Academy of Pediatrics about foods and beverages in schools, the AAP's Council on School Health and Committee on Nutrition declared that "[c]onsideration of a beverage such as flavored milk provides a good example of the balance needed to limit added sugars and yet promote nutrient-rich foods." As the AAP paper on school foods highlights, schools that completely eliminated flavored milk found that less milk was consumed, meaning that kids were missing out on the critically important nutrients from milk[2].

Milk processors have significantly reduced the calorie and added sugar contents of flavored milk. Between the 2006-2007 and 2015-2016 school years, added sugar levels declined by more than 9 grams per serving, or 55 percent, in school chocolate milk. During that period, added sugar declined from 16.7 grams to 7.5 grams per cup (the naturally-occurring sugar in cow's milk (lactose) is unchanged at 12 grams per cup)[3].

With these formulation changes, the nutritional benefits of flavored milk are available with significantly lower levels of calories and added sugar.

[2] Council on School Health and Committee on Nutrition. Snacks, Sweetened Beverages, Added Sugars, and Schools Pediatrics 2015; 135: 575; originally published online February 23, 2015.
[3] Prime Consulting. August 2016.

Addressing Misconceptions

We would like to address several misconceptions about low-fat flavored milk in the school context. Once these misconceptions are understood, the case for the interim final rule becomes even more persuasive.

First, the interim final rule will not add undue calories to school meals. While low-fat milk does have more calories than fat-free milk, FNS's regulations for the average total calories per meal remain in effect. If changing the fat content of milk would cause average meal calorie counts to exceed regulatory limits, schools will modify other menu items accordingly. There would be no change in the overall calorie content of a meal, meaning that any concerns over increased calorie content due to flavored milk are misplaced.

Second, the absolute calorie difference is small in any case. As mentioned above, dairy processors have made progress in reducing the calories in flavored milk in schools. According to MilkPEP surveys[4], the average calorie content of flavored milk in schools declined significantly by 44 calories per cup (from 166.1 to 121.7 calories for fat-free flavored milk) between school years 2006-2007 and 2015-2016. And, as FNS pointed out in the preamble to the interim rule, an 8-ounce serving of low-fat flavored milk has only 20-40 more calories than the same serving of fat-free flavored milk[5]. Switching from fat-free to low-fat flavored milk represents a small net increase in calories, without compromising on the excellent nutrient package of milk.

Third, low-fat flavored milk is consistent with the 2015-2020 Dietary Guidelines, as required by law. The DGA recommends low-fat or fat-free milk and acknowledges the potentially positive role of moderate amounts of sweeteners in making foods like milk and yogurt more palatable. Nowhere in the DGA is there any suggestion that flavored milk should be fat-free, or that there is any reason to avoid low-fat flavored milk. Rather, the previous prohibition on low-fat flavored milk was a decision by FNS, which was in no way required by the relevant statute or the DGA. Our organizations cautioned against this prohibition in public comments at the time, and in retrospect it clearly was a mistake, as FNS itself now implicitly acknowledges. Correcting the mistake still leaves FNS's school milk rules compliant with DGA recommendations.

Fourth, the interim final rule is consistent with a much-needed reexamination of the science on fat in general, and dairy fat specifically. It is all but universally recognized that previous warnings to reduce intake of total fat were misguided, and likely contributed to excessive carbohydrate consumption and perhaps to growing obesity and overweight. There is presently a vigorous debate, which is likely to intensify during discussion of the 2020 DGA, about the appropriate role of saturated fat. And a growing body of science appears to show either a neutral or beneficial role for full-fat dairy foods with respect to the risk of several chronic diseases. A distinguished nutrition researcher, Dariush Mozaffarian, wrote in a recent review of the science: "No long-term studies support harms, and emerging evidence suggests

[4] Prime Consulting. August 2016.

[5] The preamble to the interim final rule notes that low-fat flavored milk contains 20-40 more calories per cup than fat-free flavored milk. However, the USDA-ARS National Nutrient Database for Standard Reference (Release 28 slightly revised May 2016) reports low-fat and fat-free unflavored milks contain 102 and 83 calories, respectively, which is only a 19-calorie difference. As the rule's preamble states, the calorie difference between low-fat and fat-free flavored milks is "almost entirely due to a difference in fat content", therefore we would expect a difference in calories closer to the lower end of the range presented in the interim final rule.

some potential benefits, of dairy fat or high-fat dairy foods …[6]" This science will no doubt continue to evolve, and will inform considerations of revisions to the DGA in 2020.

Fifth, the interim rule gives schools an additional option, but does not compel schools to offer low-fat flavored milk. It is possible some schools may prefer to continue serving fat-free flavored milk, and they should be able to do so. Other schools may return to low-fat flavored milk, which was the most popular variety before the 2012 regulations. Still other schools might offer both. In any case, while we believe it would be nutritionally advantageous to do so, no school in the United States will be forced to offer low-fat flavored milk under this interim rule.

Sixth, this rule offers some hope of increasing Average Daily Participation (ADP) as well as milk consumption. Both the National Dairy Council and MilkPEP previously sponsored research that showed the potential for attracting more students to school meals when the milk offered was more appealing. A similar effect is possible here, especially in schools that consciously promote the return of low-fat flavored milk to students and parents.

We agree with USDA's determination that low-fat flavored milk should be added as an option to school meals and competitive food sales. Both low-fat and fat-free milk are recommended under the 2010 DGAs and the 2015 scientific report of the Dietary Guidelines Advisory Committee. Flavored low-fat milk has the same levels of fat and saturated fat as unflavored low-fat milk, while containing some additional calories from added sugar.

Sodium Provisions

In addition to the milk provisions which are the primary focus of these comments, the interim final rule also permits schools to remain in compliance with sodium requirements as long as they have met Target 1 for sodium reduction. This appears to be a sensible measure, inasmuch as many schools have found it challenging to obtain food items with lower sodium that are also acceptable to students. For some foods such as cheese, sodium promotes preservation and food safety in addition to its other functions.

Moreover, we note that an expert committee has been commissioned by the National Academies of Sciences, Engineering, and Medicine to review the Dietary Reference Intake (DRI) for sodium, and held its first meeting in December. After what is expected to be an 18-month process of reviewing the most current science, this committee will recommend new DRIs, which may or may not match the current Tolerable Upper Intake Level (UL) for sodium, on which the existing meal regulations are based. It makes sense to take into account this ongoing project which, when completed, will represent the most current and authoritative scientific thinking on appropriate sodium intake.

Conclusion: Need for Stability and Certainty

At several points in its preamble, FNS has observed that schools and their vendors need regulatory certainty. NMPF and IDFA strongly agree. We have heard from numerous processors that the lead time inherent in responding to school milk bids – including, potentially, the need to change product labels, reformulate products and set up additional dedicated production lines – makes it imperative for the government to provide some stability in the regulatory environment.

[6] Mozaffarian D. Dietary and Policy Priorities for Cardiovascular Disease, Diabetes, and Obesity: A Comprehensive Review. Circulation 2016; 133: 187-225.

Through the interim final rule, FNS has provided stability for the 2018-19 school year. We urge the agency to move expeditiously toward a final rule that is unchanged, as to milk requirements, from the interim final rule.

Please feel free to contact us with any questions.

Respectfully,

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The National Milk Producers Federation (www.nmpf.org), 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.

The International Dairy Foods Association (www.idfa.org), Washington, D.C., represents the nation's dairy manufacturing and marketing industry, that employs nearly 1 million skilled individuals, generates more than $39 billion in direct wages and has an overall economic impact of more than $200 billion. IDFA is the umbrella organization for the Milk Industry Foundation (MIF), the National Cheese Institute (NCI) and the International Ice Cream Association (IICA). Our members range from large multinational organizations to single-plant companies. Together they represent more than 85 percent of the milk, cultured products, cheese, ice cream and frozen desserts produced and marketed in the United States and sold throughout the world. Our diverse membership includes numerous food retailers, suppliers and companies that offer infant formula and a wide variety of milk ingredients.