



National Milk Producers Federation

2101 Wilson Blvd., Suite 400, Arlington, VA 22201

703-243-6111 • www.nmpf.org

“Connecting Cows, Cooperatives, Capitol Hill, and Consumers”

October 28, 2013

Mr. William Wagoner, Section Chief
Policy and Program Development Branch
Child Nutrition Division
Food and Nutrition Service
3101 Park Center Drive
Alexandria, VA 22302

Re: National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold as Required by the Healthy, Hunger-Free Kids Act of 2010 (FNS-2011-0019, RIN 0584-AE09)

Dear Mr. Wagoner:

The National Milk Producers Federation (NMPF) appreciates the opportunity to comment on the interim final rule establishing nutrition standards for all food sold outside the school meal programs. NMPF, 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 for more information.

Milk is produced in every state and region of the country by thousands of family-owned, often multi-generational, farms. Dairy farmers are dedicated to producing nutritious, high-quality foods and beverages that are irreplaceable sources of essential nutrients. Dairy farmers share the Food and Nutrition Service’s (FNS) interest in helping children and adolescents make good dietary choices. Our family farms have demonstrated this interest – and commitment – for decades by funding the National Dairy Council and other joint efforts to promote sound nutrition in our schools and communities.

The interim final nutrition standards should promote increased consumption of milk and other dairy foods in schools, as is consistent with the 2010 *Dietary Guidelines for Americans*. Current guidelines recommend three daily servings of dairy for Americans age nine and older (2½ servings for children four to eight years old). However, average consumption is barely half that amount and, after early childhood, all age groups continue to fall further short of recommended amounts, with under-consumption being more pronounced in female and minority populations. Fortunately, schools offer a setting in which the

Agri-Mark, Inc.
Arkansas Dairy Cooperative Association
Associated Milk Producers Inc.
Continental Dairy Products, Inc.
Cooperative Milk Producers Association
Dairy Farmers of America, Inc.
Dairylea Cooperative 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.
St. Albans Cooperative Creamery, Inc.
Scioto County Cooperative Milk Producers’ Association
Select Milk Producers
Southeast Milk, Inc.
Swiss Valley Farms Company
Tillamook County Creamery Association
United Dairymen of Arizona
Upstate Niagara Cooperative, Inc.
Zia Milk Producers, Inc.

consumption of fluid milk and other nutrient-dense dairy foods can be encouraged. This is one of the basic reasons why milk is required to be offered with each school meal.

Although NMPF favors policies which encourage students to utilize the reimbursable meal programs, we are conscious that competitive foods are and will remain a presence in schools. For the first time, Congress in 2010 gave USDA full authority to regulate these foods and beverages throughout the school campus and school day. The interim final rule constitutes USDA's first exercise of this authority. The rule is fundamentally sound, but precisely by issuing it on an interim basis, FNS recognized the potential need for adjustments.

NMPF commends FNS for many aspects of the interim final rule, which encourages consumption of dairy foods in several different ways – notably through an exemption for reduced-fat cheese from the total fat and saturated fat standards; the use of a weight-based sugar standard that accommodates the majority of yogurts; and the allowance of school meal entrees as a la carte offerings under specific circumstances. These and other features of the rule are positive and should be retained.

The science-based justification for the provisions we have cited has been amply demonstrated in FNS's rulemaking, both through the agency's own explanations and in the public comment record, so we will not repeat those arguments here. Instead, we will focus on a small number of areas where, in our judgment, FNS should consider modest changes for the purpose of further enhancing dairy consumption in order to close the gap between current dietary recommendations and consumption of milk and dairy products.

Limiting Time and Place of Non-Dairy, Non-Juice Competitive Beverages.

NMPF commends FNS for noting in the preamble to the interim final rule that the agency "will monitor this provision [allowing non-dairy, non-juice lower-calorie and calorie-free beverages to be sold at any time and place] to ensure that the sale of such competitive beverages in the food service area does not negatively impact consumption of milk, an excellent source of calcium."

NMPF likewise commends FNS for its plan to conduct a School Nutrition and Meal Cost Study, in the course of which we assume data on milk sales would be gathered. However, this study is not scheduled to be carried out until the 2014-15 school year, with presumably a delay after that time before results can be interpreted and published.

FNS statistics already show a decline in average daily participation (ADP) at lunch, and some anecdotal reports state that milk sales have fallen to a greater extent than ADP. We are concerned that the favorable treatment afforded to the competing beverages – which, in contrast to milk and juice, do not supply significant amounts of nutrients essential to students' diets – already confers an unfair and inappropriate advantage to these products,

given their ubiquity in the current culture and the enormous amounts of corporate advertising dollars spent promoting them. If it is FNS's goal to promote the consumption of milk in both reimbursable and a la carte settings, and of 100% juice a la carte, the bright green light which the interim final rule gives to competitive beverages lacking in nutrients seems inconsistent and difficult to understand. Moreover, waiting several years to evaluate potential milk consumption declines seems risky in terms of adolescents' nutrient intakes.

Recommendation: We respectfully urge FNS to limit the time and sale of non-dairy, non-juice lower-calorie and calorie-free beverages, so that they can be sold only outside of meal times and meal service areas. The fact that FNS does not permit such beverages at all for middle and elementary grades is already an indication that the agency views them in a different light than water, milk and juice. From that standpoint, NMPF does not think that time and place limitations would, as FNS writes in the preamble, "send a mixed message to students regarding whether such beverages are a part of a healthy diet". Rather, such limitations would send a message that is appropriate and consistent with current recommendations of the *Dietary Guidelines* that FNS promotes the consumption of water, milk and juice. If further study shows that these beverages pose no threat to sales of milk, the agency would always have the avenue of further rulemaking available.

Allowing Low-Fat Flavored Milk as a Competitive Beverage.

NMPF encourages FNS to reconsider the restriction on flavored milk which requires that it must be fat-free (skim). We fully understand that this restriction already exists in the reimbursable meal programs, but we feel schools should be able to make a choice with respect to milk sold a la carte or in vending. We would submit that –

- In these venues, milk is competing against other popular beverages rather than being offered automatically. If school food service professionals would like to offer low-fat flavored milk in the belief that milk sales would thereby increase, that is a positive nutritional outcome since milk is the #1 source of nine essential nutrients in the diets of America's children¹, while most competitive beverages offer a vastly inferior nutrient package.
- Concerns about flavored milk in recent years centered around the product's higher calorie level compared to unflavored milk. However, in this case, the regulatory response has not kept up with the times: In response to customer (school) demand, fluid milk processors have already reformulated flavored milk so that added sugar levels (and therefore calories) have been significantly reduced in both skim (fat-free) and 1% (low-fat) milks. Total sugars of 22 grams per serving – the amount recommended by the Institute of Medicine – are extremely common in flavored

¹ Keast DR, Fulgoni VL, Nicklas TA, et al. Food Sources of Energy and Nutrients among Children in the United States: National Health and Nutrition Examination Survey 2003-2006. *Nutrients* 2013, 5: 283-301.

milks offered in schools today, and represent a significant change from just a few years ago, when total sugars were often 25-30 grams. Therefore, the flavored milks offered in schools already have fewer calories than in past years. To the extent that the fat-free mandate reflects a desire to reduce average calorie levels in milk, that has already happened.

- Most children are not drinking skim (fat-free) milk at home. Total sales of low-fat ($\frac{1}{2}$ % or 1%) milk have risen substantially, more than doubling nationwide since 1989, whereas sales of both whole and 2% milk have fallen in the same period. However, the reality is that the majority of current fluid milk intake is reduced-fat (2%) or whole milk, with reduced-fat milk sales about more than double the sales of low-fat (1%) milk. Ultimately, children often prefer to drink the same milk at school that they drink at home, and American families are still consuming mostly whole and reduced-fat milk.

Recommendation: NMPF strongly suggests FNS allow low-fat flavored milk as a competitive beverage at all grade levels in addition to fat-free flavored milk. Undoubtedly, there are regional and demographic consumption variations, and flavored fat-free milk is extremely popular in some schools. We certainly do not argue that schools be *required* to serve low-fat milk. We simply support giving school food service professionals a *choice* of offering low-fat flavored milk in the same way they can offer low-fat unflavored milk. In many cases, schools will continue to successfully offer fat-free flavored milk, but in others, the schools may be able to prevent further declines in milk consumption by offering students milk that tastes more like what they are used to at home.

Extending the Saturated Fat Exemption for Reduced-Fat Cheese to Combination Foods.

NMPF appreciates the interim final rule's exemption from the saturated fat standard for "reduced fat cheese and part skim mozzarella cheese." In particular, we commend FNS for adding part skim mozzarella to the original regulatory language, consistent with the agency's intent and important as a clarification, given regulatory provisions for labeling products as reduced-fat.

However, we join the School Nutrition Association, which represents the professionals who prepare and serve school meals, in urging FNS to apply the same exemption to cheese used in combination foods. As SNA stated in its comments, "cheese is a good protein source and portion control would already be in place if [the combination food is] meeting the meal pattern standards." SNA states that including combination foods in the exemption would "ease the burden of evaluating labels, menu design, training staff, and overall consistency in operations." The organization also notes that the exclusion of combination foods "limits menu creativity and is inconsistent with the *Dietary Guidelines*."

Recommendation: NMPF recommends that the final rule apply the cheese exemption from the saturated fat standard to combination foods. Because of higher costs (including some that flow from the interim final rule and the meal standards rule) and constant funding struggles, school food service professionals understandably want regulatory requirements to be simple, consistent and streamlined. In NMPF's view, including combination foods in the exemption would meet these goals and would also encourage use of reduced-fat cheese. Students' intake of several key nutrients would benefit as a result; while milk is the #1 source of calcium in the American diet, cheese is #2. Hence the inclusion of combination foods can encourage intake of nutrients that are under-consumed by many students, especially teens.

Clarifying the Saturated Fat Standard.

NMPF respectfully requests clarification from FNS that the final rule would allow saturated fat levels *up to and including* 10% of calories. In the "Summary of Major Provisions" section of the interim final rule, it is stated: "Competitive foods must contain no more than 10 percent of total calories from saturated fat per item as packaged or served." This would imply that products at 10% of calories from saturated fat would be allowed.


However, later in the interim final rule, in the to-be-added 7 CFR 210.11(f)(1)(ii), the language reads: "(ii) The saturated fat content of a competitive food must be less than 10 percent of total calories per item as packaged or served...." This would indicate that the saturated fat content of a product cannot be 10% of calories, but must be below. These two statements in the same interim final rule conflict with each other.

Recommendation: We would ask that USDA clarify that the limit will include products that contain 10% of calories from saturated fat, using the words from the Summary of Major Provisions, "no more than 10 percent of total calories from saturated fat." This would also be consistent with other standards in the interim final rule (percentage of calories from total fat, total sugars, calories/sodium in snack items and side dishes and entrées, etc.), which are expressed in a similar manner.

NMPF again commends FNS for its diligent work on challenging rulemaking. We appreciate your consideration of the few changes we have recommended as a means of increasing students' consumption of milk and other nutrient-rich dairy products.

Please contact us if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Beth Panko Briczinski".

Beth Briczinski, Ph.D.
Senior Director, Regulatory Affairs