



National Milk Producers Federation

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December 28, 2020

Mr. Shawn Martin, School Programs Branch
Policy and Program Development Division
Food and Nutrition Service
1320 Braddock Place, 4th floor
Alexandria, Virginia 22314

Re: Docket No. FNS-2020-0038

Dear Mr. Martin:

The undersigned dairy farmer-owned cooperatives and producer associations strongly support the restoration of schools' option to offer low-fat flavored milk with school meals, and in other nutrition programs, as proposed by the Food and Nutrition Service (FNS) in the *Federal Register* November 25, 2020.¹ This step will help increase students' intake of calcium, potassium, vitamin D and several other essential nutrients and may also encourage higher levels of participation in school meal programs, thereby increasing consumption of fruits and vegetables, whole grains and other healthy foods.

Importance of Dairy in Students' Diet and Inadequacy of Current Consumption

Dairy producers take pride in supplying nutritious, great-tasting products to all Americans, especially our nation's children and adolescents. The Dietary Guidelines for Americans (DGA), recognizing the unique nutrient package dairy foods provide, recommends all Americans choose three servings of dairy each day and specifically recommends low-fat or fat-free milk consumption. Milk supplies three of the DGA's four nutrients of public health concern for underconsumption – calcium, potassium and vitamin D.²

Unfortunately, most Americans – including children and adolescents – fail to meet these recommendations, which means their intakes of key nutrients may be inadequate. In particular, from the age of 4 onward, all age groups of children and adolescents, both male and female, fail to consume adequate amounts of dairy. Among youth ages 9-13, 79 percent or more fall short of recommended dairy intakes, according to the 2020 Dietary Guidelines Advisory Committee. For all youth age 19 and younger, mean intake of dairy is only 1.9 cup-equivalent per day.³ Communities of color consume dairy at

¹ 85 FR 228, November 25, 2020, at 75241.

² U.S. Department of Health and Human Services and U.S. Department of Agriculture. 2015–2020 Dietary Guidelines for Americans. 8th Edition. December 2015. Available at <http://health.gov/dietaryguidelines/2015/guidelines/>

³ Dietary Guidelines Advisory Committee. 2020. Scientific Report of the 2020 Dietary Guidelines Advisory Committee: Advisory Report to the Secretary of Agriculture and the Secretary of Health and

lower rates, exacerbating nutrient deficiencies which may have life-long health consequences.⁴

Role of the School Meal Programs

One of the best ways to supply healthy dairy foods and model good nutritional habits is through meals and snacks in our nation's schools and child-care centers. Therefore, we support the central role of dairy in all child nutrition programs, including those covered by the proposed rule (the National School Lunch Program [NSLP], School Breakfast Program [SBP], Special Milk Program [SMP] and Child and Adult Care Food Program [CACFP]).

Following passage of the Healthy, Hunger-Free Kids Act of 2010 (HHFKA), implementing regulations made numerous changes in school meal patterns. Among these were provisions to limit school milk to low-fat and fat-free varieties, consistent with recommendations in the DGA. It should be noted that since that time an emerging body of science strongly suggests beneficial or neutral health effects of dairy at *all* fat levels.⁵

The 2012 final rule went further than the HHFKA in requiring that flavored milk in schools be limited to fat-free.⁶ This was a major change, as prior to that time, low-fat flavored milk was the most widely-consumed variety in schools.⁷ Unfortunately, school milk consumption declined following adoption of the new rules:

- **Average daily participation** in the NSLP fell significantly, which reduced milk consumption given milk is offered with each school lunch. Total NSLP meals fell from 5.2149 billion in 2012 to 4.8664 billion in 2019.⁸
- Periodic surveys conducted for the Milk Processor Education Program showed significant **declines in milk use in schools**, from 452.0 million gallons in 2011-2012 to 404.3 million in 2019-20.⁹
- In a survey of over 300 schools that reintroduced low-fat chocolate milk, 73 percent of the schools reported that students like this milk better.¹⁰

Human Services. U.S. Department of Agriculture, Agricultural Research Service, Washington, DC.

⁴ *Ibid.*

⁵ National Dairy Council. Science Brief: Whole and Reduced-Fat Dairy Foods.

<https://www.usdairy.com/news-articles/science-brief-whole-and-reduced-fat-dairy-foods>

⁶ 77 FR 17, January 28, 2012, at 4143.

⁷ 85 FR 228, November 25, 2020, at 75251.

⁸ Food and Nutrition Service. National School Lunch Program: Participation and Lunches Served.

<https://fns-prod.azureedge.net/sites/default/files/resource-files/slsummar-7.pdf>

⁹ Prime Consulting. All Channel Tracking: The Projection of Milk Volume by Sales Channel, 2019 Edition, August 2020.

¹⁰ National Dairy Council. 1% Chocolate Milk in Schools. <https://www.usdairy.com/news-articles/1-percent-chocolate-milk-in-schools>

- **FNS cited declines** in milk consumption as among the primary reasons for permitting schools to again offer low-fat flavored milk.¹¹ This flexibility was included in a final rule promulgated in 2018.¹²

Need for Proposed Rule

The current rulemaking is necessary because of a court decision¹³ that remanded the 2018 final rule to FNS for further action. In the absence of the final rule, and after expiration of meal pattern waivers now available due to the COVID-19 pandemic, regulations would revert to their 2012 requirements, and schools would be precluded from offering students low-fat flavored milk. This would have several adverse consequences:

- Most important by far, students' **milk consumption** may decline, robbing them of essential nutrients they need for growth and health.
- **School meal participation** could decline further, as already happened in the years after the 2012 regulations were instituted.
- **Schools' procurement schedules** could be called into question. In just a few short months, beginning in early spring, schools across the country will solicit bids for school milk during the 2021-22 school year. As it stands, they may be in doubt as to which varieties they are permitted to legitimately procure.
- **Milk processors**, including those owned by farmers, similarly will face operational uncertainties centered around whether the school market will demand low-fat or fat-free flavored milk. These uncertainties are exacerbated by the fact that retail demand for fat-free flavored milk is minuscule, so the school market is its primary outlet.

Conclusion

We strongly urge FNS to finalize regulations permitting low-fat flavored milk, at schools' option, while requiring unflavored milk to be available as well. We would note that the proposed rule is –

- **Consistent with the DGA**, which recommends low-fat or fat-free milk, and therefore also consistent with the HHFKA;
- **An appropriate response to the court decision** in Maryland, which did not find any procedural or substantive problems with the milk provisions of the rule, provisions which were also not challenged in the underlying lawsuit;

¹¹ 82 FR 229 at 56707

¹² 83 FR 238 at 63775.

¹³ Center for Science in the Public Interest et al., v. Sonny Perdue, Secretary, et al., No. 8:19-cv-01004-GLS (D. Md. 2019).

- **Consistent with overall calorie minimum and maximum levels** in school meal programs, since there is only a 20-40 calorie difference¹⁴ (and more likely closer to the lower end of that range) between low-fat and fat-free flavored milk, and 82 percent of schools in a survey said it was easy or very easy to accommodate low-fat flavored milk within the maximum calorie limits for their menus;¹⁵ and
- **Consistent with the views of health professionals**, including the American Heart Association which noted in a scientific statement that sweetened dairy products” such as “low-fat or fat-free flavored milk, [and] sweetened yogurt” are “foods that may have a positive impact” on diet quality.¹⁶

By giving schools more flexibility to offer low-fat flavored milk, FNS will contribute to better nutrient intakes among our nation’s youth and potentially to an increase in meal participation. We urge FNS to move expeditiously to finalize the proposed rule.

Sincerely,

Agri-Mark, Inc.
 Alabama Farmers Federation – Dairy Division
 Arizona Dairy Producers Trade Association
 Associated Milk Producers Inc.
 Bongards’ Creameries
 California Dairies, Inc.
 Cayuga Marketing
 Center for Dairy Excellence
 Colorado Dairy Farmers
 Cooperative Milk Producers Association
 Dairy Farmers of America, Inc.
 Dairy Producers of New Mexico
 Ellsworth Cooperative Creamery
 FarmFirst Dairy Cooperative
 First District Association
 Foremost Farms USA
 Georgia Milk Producers, Inc.
 Idaho Dairymen’s Association

¹⁴ National Milk Producers Federation and International Dairy Foods Association. Comments on Docket No. FNS-2017-0021, Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements, January 29, 2018.

¹⁵ National Dairy Council. 1% Chocolate Milk in Schools. <https://www.usdairy.com/news-articles/1-percent-chocolate-milk-in-schools>

¹⁶ Vos MB et al. Added sugars and cardiovascular disease risk in children. A scientific statement from the American Heart Association. *Circulation* 2017;135:e1017-e1034. <https://www.ahajournals.org/doi/pdf/10.1161/CIR.000000000000439>

Illinois Milk Processors Association
Indiana Dairy Producers
Iowa State Dairy Association
Kansas Dairy Association
Kansas Livestock Association
Land O'Lakes, Inc.
Lone Star Milk Producers
Maryland & Virginia Milk Producers Cooperative Association
Michigan Milk Producers Association
Midwest Dairy Coalition
Milk Producers Council
Minnesota Milk Producers Association
Mount Joy Farmers Cooperative Association
National All-Jersey Inc.
National Milk Producers Federation
Nebraska State Dairy Association
North Carolina Dairy Producers Association
Northeast Dairy Farmers Cooperatives
Northeast Dairy Producers Association
Northwest Dairy Association
Ohio Dairy Producers Association
Oneida-Madison Milk Producers Cooperative Association
Oregon Dairy Farmers Association
Prairie Farms Dairy, Inc.
Premier Milk Inc.
Professional Dairy Managers of Pennsylvania
Scioto Cooperative Milk Producers' Association
Select Milk Producers, Inc.
South Dakota Dairy Producers
Southeast Milk, Inc.
Texas Association of Dairymen
Tillamook County Creamery Association
United Dairymen of Arizona
Upstate Niagara Cooperative, Inc.
Vermont Dairy Producers Alliance
Virginia State Dairymen's Association
Washington State Dairy Federation
Western States Dairy Producers Association
Western United Dairymen