

December 10, 2020

Tina Namian, Chief  
School Programs Branch  
Policy and Program Development Division  
Food and Nutrition Service  
P.O. Box 2885  
Fairfax, Virginia 22031-0885

**Re: Restoration of Milk, Whole Grains, and Sodium Flexibilities; Request for Comments, Docket No. FNS-2020-0038**

To Tina Namian:

The undersigned organizations respectfully request that the U.S. Department of Agriculture (USDA) grant an extension of 60 days on the comment period for the Food and Nutrition Service's (FNS) proposed rule entitled: "Restoration of Milk, Whole Grains, and Sodium Flexibilities" (85 FR 75241). The proposal would reinstitute the school nutrition changes on sodium, whole grains, and flavored milk (83 FR 63775, December 12, 2018).

These changes were widely opposed by the public<sup>1</sup> and invalidated by a federal court over a lack of notice on key provisions.<sup>2</sup> The extreme brevity of the proposed comment period repeats the Department's pattern of failing to provide adequate time and opportunity for meaningful public input on this proposal.

Moreover, its timing and length is problematic. Many schools and impacted organizations are dealing with COVID-related feeding issues and are not able to devote adequate time to preparing comments within an abbreviated 30-day window.

The timing of this proposed rule is also premature, especially given the imminent release of the 2020-2025 Dietary Guidelines for Americans that impacts at least 30 million children who receive school meals. A short extension will permit review of the new Dietary Guidelines that will inform any final rule and avoid the need for yet another redrafting of the proposed rule. At a minimum, the public should be provided with additional time to determine if the proposed changes to the sodium, whole grains, and milk standards are consistent with the latest dietary recommendations.

Given the severe economic impacts of COVID-19, more children will continue to qualify for free or reduced-priced school meals. For many of these children, school breakfast and lunch may be the only nutritious meals they will consume in a day. The percentage of people experiencing food insecurity since the pandemic began has doubled overall and tripled among households with children.<sup>3</sup> A wide range of stakeholders thus must adequately assess how the proposed rollbacks may impact access to nutritious meals when children need them the most.

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<sup>1</sup> See comment tables 83 FR 63777-8: Less than 1 percent of all comments received supported the proposed changes to sodium, whole grains, and flavored milk.

<sup>2</sup> Center for Science in the Public Interest et al., v. Sonny Perdue, Secretary, et al., April 13, 2020

<sup>3</sup> Schanzenbach, DW, Pitts A. How much has food insecurity risen? Evidence from the Census Household Pulse Survey. Institute for Policy Research Rapid Research Report. 2020. Accessed at: <https://www.ipr.northwestern.edu/documents/reports/ipr-rapid-research-reports-pulse-hh-data-10-june-2020.pdf>

Most importantly, the negative implications for children’s health are far too significant in this proposed rule to give the public the shortest possible comment period. Consider:

- 1) The standards promulgated in 2012 and 2014 for meals and competitive foods could prevent up to two million cases of childhood obesity and save up to \$792 million in healthcare costs over ten years.<sup>4</sup>
- 2) USDA’s own study, the 2019 *School Nutrition and Meal Cost Study*—the first nationally-representative study to assess school meals after the Healthy, Hunger-Free Kids Act (HHFKA)—found that the nutritional quality of school lunches and breakfasts, measured by the HEI-2010 scores,<sup>5</sup> increased by 41 percent and 44 percent, respectively, between school years 2009-10 and 2014-15.<sup>6</sup>
- 3) Another recent study found that for children in poverty, the risk of obesity declined substantially each year after implementation of HHFKA such that obesity prevalence would have been 47 percent higher in 2018 if there had been no legislation.<sup>7</sup>
- 4) Stronger nutrition standards help reduce disparities in healthy food access. The nutritional quality of school meals under HHFKA is the same across socioeconomic status and race and ethnicity.<sup>8</sup>

Moreover, such a short period of time is contrary to White House directives. Executive Order 12866 advises that agencies generally should provide a minimum of 60 days for public comment.<sup>9</sup>

For all of the reasons above, we request a 60-day extension of the comment period.

Sincerely,

Academy of Nutrition and Dietetics  
Action for Healthy Kids (AFHK)  
Advocates for Better Children's Diets  
Alliance for a Healthier Generation  
American Cancer Society Cancer Action Network  
American Heart Association  
American Public Health Association  
Berkeley Media Studies Group  
Boulder County Public Health  
Campaign for a Commercial-Free Childhood  
Center for Biological Diversity  
Center for Digital Democracy  
ChangeLab Solutions  
Chef Ann Foundation  
Coalition for Healthy School Food

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<sup>4</sup> Gortmaker SL, Wang YC, Long MW, et al. Three Interventions that Reduce Childhood Obesity Are Projected to Save More Than They Cost to Implement. *Health Aff.* 2015;34:1932-9.

<sup>5</sup> Total HEI-2010 scores provide an overall measure of nutritional quality. A higher score reflects better conformance with Dietary Guidelines for Americans recommendations and higher nutritional quality.

<sup>6</sup> U.S. Department of Agriculture. *School Nutrition and Meal Cost Study*. Washington, DC. USDA; 2019. The study also found schools made significant progress on whole grains and sodium reduction; a majority of schools met daily meal components, especially for fruits and vegetables; schools with healthier meals experienced higher participation rates in the program; and plate waste remained the same.

<sup>7</sup> Kenney EL, Barrett JL, Bleich SN, et al. Impact Of The Healthy, Hunger-Free Kids Act On Obesity Trends. *Health Aff.* 2020;39:1122–1129.

<sup>8</sup> Bardin S, Washburn L, Gearan E. Disparities in the Healthfulness of School Food Environments and the Nutritional Quality of School Lunches. *Nutrients*. 2020;12:2375.

<sup>9</sup> Executive Order 12866 (September 30, 1993): “In addition, each agency should afford the public a meaningful opportunity to comment on any proposed regulation, which in most cases should include a comment period of not less than 60 days.”

Colorado Children's Campaign  
Consortium to Lower Obesity in Chicago Children  
Consumer Reports  
Dolores Huerta Foundation  
Earthjustice  
First Focus on Children  
FoodCorps  
Harvard T.H. Chan School of Public Health  
Healthy Food America  
Healthy School Food Maryland  
Healthy Schools Campaign  
Jefferson County Food Policy Council  
Johns Hopkins Center for a Livable Future  
Jump IN for Healthy Kids  
Laurie M. Tisch Center for Food, Education & Policy, Teachers College, Columbia University  
Life Time Foundation  
MAZON: A Jewish Response to Hunger  
Montgomery County Food Council  
NAACP  
National Association of Pediatric Nurse Practitioners  
National Disability Rights Network (NDRN)  
National Education Association  
National PTA  
National Wellness Policy Study at the University of Illinois Chicago  
National WIC Association  
NorthWest Initiative  
Nourish Colorado  
Nutrition Policy Institute, University of California Division of Agriculture and Natural Resources  
Physicians Committee for Responsible Medicine  
Project Bread  
Real Food for Kids  
Redstone Global Center for Prevention and Wellness  
San Francisco Marin Medical Society  
Socially Responsible Investment Coalition  
Society for Nutrition Education and Behavior  
Society of State Leaders of Health and Physical Education  
The Nourished Principles, LLC  
The Praxis Project  
Trust for America's Health  
Union of Concerned Scientists  
University of Connecticut Rudd Center for Food Policy & Obesity  
Urban School Food Alliance  
Wellness in the Schools, Inc.  
World Action on Salt, Sugar and Health