

December 28, 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:

On behalf of the undersigned organizations representing more than 13,000 Local Education Agencies (LEAs), rural school districts, and K–12 education leaders, we write to submit comments in favor of the U.S. Department of Agriculture’s (USDA) proposed rule entitled: “Restoration of Milk, Whole Grains, and Sodium Flexibilities” (85 FR 75241). If passed, this rule would provide LEAs and other school system leaders with the necessary flexibilities to accommodate menu planning, procurement challenges, local operational differences, taste, and community preferences that currently limit student participation in the National School Lunch (NSLP) and School Breakfast Programs (SBP).

As noted in the Restoration of Milk, Whole Grains, and Sodium Flexibilities Notice of Proposed Rule Making (NPRM), the administrative and Congressional action around new provisions under the National School Lunch Act has been a contentious policy area since 2012. Specifically, many school districts found trouble complying with requirements that (1) mandated half of the grains offered in the NSLP and SBP be whole grain-rich beginning in School Year (SY) 2012-2013, (2) increased the phase II sodium restrictions for SY 2024-25, and (3) prohibited LEAs’ ability to sell and serve 1% flavored milk.

Upon acknowledgment that many school districts experienced difficulties meeting the previously mentioned requirements, USDA issued the 2018 Final Rule, which became effective July 1, 2019, for SY 2019–2020, and codified the flexibilities offered in the 2017 Interim Final Rule relating to the following:

- Allowed schools in the NSLP and SBP to offer flavored, low-fat milk (1% fat) at lunch and breakfast and as a beverage for sale à la carte, and requiring that unflavored milk (fat-free or low-fat) be available at each school meal service;
- Required that half of the weekly grains in the NSLP and SBP be whole grain-rich and that the remaining weekly grains offered be enriched; and
- Retained Sodium Target 1 through SY 2023–2024, recognizing more time was needed for Target 2 and moving it to SY 2024–2025, and removed the Final Target.

Our allied organizations supported these policy changes as they provided targeted long-term regulatory flexibility that was practical and necessary to increase student participation and decrease the food waste associated with providing unfamiliar dairy products, preparing whole grain-rich food items, and offering appealing meals with lower sodium content.

Unfortunately, the April 2020 District Court decision that vacated the 2018 Final Rule was made without consideration for the rescission's impact on school district operations, as many schools have never truly implemented the 2012 requirements for milk, grains, or sodium as written in the 2012 NPRM. As such, our allied organizations are pleased to see that the Food Nutritional Service is maintaining its commitment to improving long-term program efficiency by continuing the flavored milk flexibility, allowing all grains offered on the school menu to meet the FNS 50% whole grain-rich criteria, and maintain Sodium Target 1 requirements through SY 2023–2024 (June 30, 2024) and remove the Final Sodium Target.

Due to the Coronavirus pandemic's effect on normal district operations, our superintendents, school business officials, and rural districts need the maximum flexibilities and tools to ensure school food meal service operations are not further interrupted by regulatory changes in SY 2020–2021. As such, we urge you to maintain current regulatory continuity by implementing the Restoration of Milk, Whole Grains, and Sodium Flexibilities NPRM as written.

Sincerely,

AASA, The School Superintendents Association
Association of Educational Service Agencies
Association of School Business Officials International
National Rural Education Advocacy Consortium
National Rural Education Association