



## Consumer Federation of America

December 23, 2020

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 whom it may concern:

Consumer Federation of America writes to oppose the above-referenced proposed rule by the U.S. Department of Agriculture (USDA). Similar to the USDA's illegal 2018 interim final rule, "Child Nutrition Programs: Flexibilities for Milk, Whole Grains, and Sodium Requirements," the proposed rule would operate to reverse progress that the National School Lunch and Breakfast Programs have made in serving healthier meals, instead foisting upon the nation's children a surfeit of junk food products laden with excessive salt, added sugars, and refined carbohydrates. USDA should stop pandering to the purveyors of low quality school meals. The agency should abandon this proposed rule and work to support schools and children's health by bringing school nutrition standards into greater conformity with the Dietary Guidelines for Americans, and by providing technical and other appropriate assistance to schools that need help meeting the standards.

As we explained in our previous comments on the interim final rule, the National School Lunch and Breakfast Programs—updated under the Healthy, Hunger-Free Kids Act of 2010 (HHFKA)—have made tremendous progress in serving healthier meals with less salt, less fat (and no trans fat), fewer added sugars, and more fruits, vegetables, and whole grains. Those changes are extremely popular, with surveys showing overwhelming support for the new nutrition standards among consumers.<sup>1</sup> However, industry opponents of healthier school meals succeeded for several years in blocking implementation of the law, persuading members of Congress to pass appropriations riders that prevented the standards from going into full effect. With its 2018 interim final rule, USDA took the unprecedented step of attempting to carry out *anticipated* congressional intent, reasoning that Congress' past "repetitive legislative action manifests a clear Congressional message to USDA." As we argued then, this attempt to shield Congress from accountability was unlawful, and earlier this year, a federal court agreed.<sup>2</sup>

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<sup>1</sup> See, e.g. The Pew Charitable Trusts. <https://www.pewtrusts.org/-/media/assets/2014/11/pewcatoplinesfinal.pdf>

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

Now, USDA seeks to once again do what it claimed Congress instructed it to do, but on the basis of sound science and evidence. The science and evidence, however, support doing more to improve school meal nutrition, not less.

The importance of healthy school meals has become increasingly apparent as Americans struggle to meet the challenges of the COVID-19 pandemic. The percentage of households with children that are experiencing food insecurity has tripled since the pandemic began.<sup>3</sup> For many of the children in these households, school meals represent their most important source of nutrition. Healthier school meals are key to addressing the epidemic of childhood obesity facing the nation. Fully one third of children aged 2 to 19 are overweight or obese, and like COVID-19, the obesity epidemic has disproportionately affected poor and minority communities.<sup>4</sup> In a cruel twist, researchers have documented how obesity dramatically increases mortality from COVID-19, with the Centers for Disease Control and Prevention advising that “having obesity may triple the risk of hospitalization due to a COVID-19 infection.”<sup>5</sup>

Fortunately, research also shows that higher standards for school meals make a difference. Researchers have documented how the nutritional quality of school meals increased in the years following the HHSFKA’s passage by over 40%, without an increase in so-called “plate waste.”<sup>6</sup> Researchers credit this boost in nutrition with substantial declines in the risk of obesity among children in poverty,<sup>7</sup> and hundreds of millions of dollars in healthcare cost savings.<sup>8</sup> Yet USDA has failed to account for these benefits, or to include any cost-benefit analysis in its proposed rule, despite the requirements Executive Orders 12866 and 13563.

Were USDA to conduct such an analysis, it would demonstrate that the proposed “flexibilities” would not only damage public health and deepen social inequities, they would not be cost-effective. A seven year delay in implementing sodium reduction targets, watering down whole grain standards from 100% to 50% of grains served, and carving out an exemption for chocolate and other flavored milk products, will do little to support struggling school meals programs, while significantly damaging public health. We urge USDA to follow the law and to develop school nutrition standards on the basis of the most recent Dietary Guidelines for Americans.

Sincerely,

Thomas Gremillion  
Director of Food Policy  
Consumer Federation of America

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<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. <https://www.ipr.northwestern.edu/documents/reports/ipr-rapid-research-reports-pulse-hh-data-10-june-2020.pdf>

<sup>4</sup> Ogden CL, Carroll MD, Fryar CD, Flegal KM. Prevalence of Obesity Among Adults and Youth: United States, 2011-2014. NCHS Data Brief. 2015;219:1-8.; Ogden CL, Carroll MD, Kit BK, Flegal KM. Prevalence of Childhood and Adult Obesity in the United States, 2011-2012. JAMA. 2014;311:806-14.

<sup>5</sup> <https://www.cdc.gov/obesity/data/obesity-and-covid-19.html>

<sup>6</sup> U.S. Department of Agriculture. *School Nutrition and Meal Cost Study*. Washington, DC. USDA; 2019.

<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> 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.