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January 4, 2007

Mr. Robert Eadie, Chief
Policy and Program Development Branch
Child Nutrition Division
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive, Room 634
Alexandria, Virginia 22302-1594

**Re: Fluid Milk Substitutions in the School Nutrition Programs, Proposed Rule
7 CFR Parts 210 and 229; RIN 0584-AD58**

Dear Mr. Eadie:

I am submitting comments on behalf of Dairy MAX, Inc. in response to the Food and Nutrition Service's (FNS) request for comments on a proposed rule governing fluid milk substitutions in the school nutrition programs.

Dairy MAX is the regional dairy promotion program which represents the dairy farm families in Texas, New Mexico and western Oklahoma. We are affiliated with the National Dairy Council. Our staff includes registered dietitians and home economists who work with health professionals and schools throughout the region. We provide dairy nutrition information, nutrition education curricula and programs that promote participation in school breakfast and lunch programs.

The authorization law for the National School Lunch and the School Breakfast Program requires milk, in a variety of fat levels be offered with each meal¹ This current law is also the first to mention flavored milk and lactose-free in that milk maybe flavored, unflavored and lactose-free.² The current law is consistent with the 2005 Dietary Guidelines for Americans which states that lactose-free milk and other dairy alternatives is the preferred solution for individuals with lactose intolerance.³

Proposed Rule on Substitute Beverages

The 2004 law creates some rules regarding which beverages may be substituted for milk under certain circumstances. The prior law allowed substitutions for milk when the child nutrition department was given official documentation from a physician. The 2004 law allows substitutions for milk with a written note from a parent or legal guardian.

¹ Child Nutrition and WIC Reauthorization Act of 2004. P.L. 108-265, June 30, 2004. 118 Stat. 729-790.

² 42 U.S.C. 1758(a).

³ U.S. Department of Health and Human Services and U.S. Department of Agriculture, *Dietary Guidelines for Americans, 2005*. 6th Edition, Washington, D.C.: U.S. Government Printing Office, January 2005.

Nutritional Standards for Milk Substitutes

The current law requires that milk substitutes be fortified with calcium, protein, vitamin A and vitamin D to the levels found in milk. The proposed rule establishes levels of a number additional key nutrients that are important in the diets of children and that in levels equivalent to milk must be met by acceptable substitute beverages. This requirement is a clear recognition by USDA of the value of milk in children's diets.

Even though nutrient levels of these key nutrients will be equivalent to milk, the nutritional benefits may not be equal to milk. As one example, in a study conducted by Dr. Robert Heaney,⁴ solids in some substitute beverages settled to the bottom of the container and could not be put back into solution even with vigorous shaking. The solids contained calcium, and thus it is reasonable to conclude that beverages that contain settled solids would not provide the amount of calcium specified on the label to a child. Milk, including lactose-free milk, consistently delivers a known amount of calcium and other nutrients.

The proposed rule states the recognition to keep the allowable milk substitutes consistent throughout all FNS nutrition programs. Consistency in programs translates into consistency in client information, administration, product development and industry practice.

Documentation for Substitutions

The proposed law allows a student's parent or guardian to submit a request for non-dairy substitution in writing and that the request indicates the medical or special dietary need for the substitution. The same law which permits the parent's note also establishes a general, and legally binding, requirement that milk be offered with every school meal.⁵ The proposed rule states the request for a substitute beverage "identifies the medical or other special dietary need that restricts the student's diet ..."⁶ The meaning of this is clear that "medical or other special dietary need" is not simply a matter of personal preference, such as a dislike of milk, but an true condition or circumstance that "restricts the student's diet." An official dietary guidance document written by FNS and cited in the preamble to the proposed rule states the following: "This provision [allowing for substitutions in cases of special dietary need] covers those children who have food intolerances or allergies but do not have life-threatening reactions (anaphylactic reactions) when exposed to the food(s) to which they have problems."⁷ Thus, the proposed rule's requirements that a substitute beverage may be provided only in cases of an identified medical or other special dietary need is consistent with congressional intent and FNS policy.

⁴ Heaney, RP et al. Not all calcium fortified beverages are equal. *Nutrition Today*. 40(1): 39-44, 2005

⁵ Richard B. Russell National School Lunch Act, Sec. 9(a)(2)(A)(i).

⁶ *Ibid*, Sec. 9(a)(2)(B)(ii).

⁷ USDA/FNS, Accommodating Children with Special Dietary Needs in the School Nutrition Programs: Guidance for School Food Service Staff. Fall 2001.

http://www.fns.usda.gov/cnd/Guidance/special_dietary_needs.pdf

Lactose-Free Milk: Preferred Solution in *Dietary Guidelines for Americans 2005*

As previously noted, the *DGA 2005* discusses lactose intolerance and mentions alternative sources of calcium for individuals who have difficulty digesting milk. However, the *DGA 2005* explicitly suggests a preference to solutions within the milk food group: “If a person wants to consider milk alternatives because of lactose intolerance, the most reliable and easiest ways to derive the health benefits associated with milk and milk product consumption is to choose alternatives within the milk food group, such as yogurt or lactose-free milk, or to consume the enzyme lactase prior to the consumption of milk products.”⁸

FNS could consider various ways in which the agency could highlight the potential of lactose-free milk to be a solution for students who are lactose intolerant, for example, by encouraging schools to offer lactose-free milk. In so doing, FNS would be consistent not only with the *DGA 2005*, but also with the 2004 child nutrition law, which states that schools “may offer ... lactose-free fluid milk,” and permits this product to be offered without any of the formal documentation required for substitute beverages.

American Academy of Pediatrics (AAP) and the National Medical Association (NMA) have stressed the importance of developing dairy-based solutions to lactose intolerance. For example, the AAP’s Committee on Nutrition published a major article on lactose intolerance in September, 2006 which said, in part, that “[t]reatment of lactose intolerance by elimination of milk and other dairy products is not usually necessary given newer approaches to lactose intolerance, including the use of partially digested products (such as yogurts, cheeses, products containing *Lactobacillus acidophilus*, and pretreated milks). Evidence that avoidance of dairy products may lead to inadequate calcium intake and consequent suboptimal bone mineralization makes these important as alternatives to milk. Dairy products remain principle sources of protein and other nutrients that are essential for growth in children.”⁹

Similarly, the NMA issued a consensus report in December 2004 that said that “the American public as a whole and African Americans in particular should consume three-to-four servings per day of low-fat milk, cheese, and/or yogurt ...” and noted that “[f]or those individuals who cannot tolerate dairy products in the form of low-fat milk, cheese, or yogurt, lactose-free milk may be an alternative option to obtain needed calcium and other important nutrients.”¹⁰

⁸ U.S. Department of Health and Human Services and U.S. Department of Agriculture, *Dietary Guidelines for Americans, 2005*. 6th Edition, Washington, D.C.: U.S. Government Printing Office, January 2005.

⁹ Heyman, M, Lactose Intolerance in Infants, Children, and Adolescents. *Pediatrics* 2006;118;1279-1286. Footnotes omitted.

¹⁰ Wooten, W., and Price, W., Consensus Report of the National Medical Association: The Role of Dairy and Dairy Nutrients in the Diet of African Americans. Supplement to *Journal of the National Medical Association*, Vol. 96, No. 12, December 2004.

Other Nutrients

Finally, we note that USDA's decision "not to propose maximum standards for calories or total fat, saturated fat, trans fat and sugars for milk substitutes" but instead to "recommend that schools do not offer fluid nondairy milk substitutes that exceed maximum levels for these nutrients based on the nutrient profile of chocolate-flavored whole milk" is consistent with the *DGA 2005*. The *DGA 2005* state "sugars can improve the palatability of foods and beverages that otherwise might not be consumed," and favorably cites flavored milk in that context.¹¹

Conclusion

Dairy MAX, Inc. appreciates this opportunity to provide comments based on nutrition science, and will continue its work with school nutrition professionals and others to maximize the nutritional benefits that our nation's children derive from the federal school meal programs.

Sincerely,



Sue Ann Claudon
General Manager

¹¹ U.S. Department of Health and Human Services and U.S. Department of Agriculture, *Dietary Guidelines for Americans, 2005*. 6th Edition, Washington, D.C.: U.S. Government Printing Office, January 2005.