

## INDUSTRY ANALYSIS AND JUSTIFICATION FOR WHEAT FLOUR FOODS PROMOTION, RESEARCH, AND INFORMATION ORDER<sup>1</sup>

The proposed Wheat Flour Foods Promotion, Research and Information Order (the “Proposed Order”) is an industry-led effort to drive consumer demand for bread and related products through the development and implementation of programs, plans, and projects of research, information, and promotion, with funding for such efforts provided by the industry through assessments paid by millers and bakers involved in the production of bread-basket products.

### I. AUTHORIZATION AND PROCESS

The Proposed Order is authorized by the Commodity Promotion, Research, and Information Act of 1996 (7 U.S.C. 7411-7425) (the “Act”), which provides the U.S. Department of Agriculture (“USDA”) the authorization to establish research and promotion programs for agricultural commodities. Under the Act, “agricultural commodities” are defined to include agricultural products as well as “products processed or manufactured from products specified in the preceding subparagraphs, as determined appropriate by the Secretary.”<sup>2</sup> The Act also includes provisions that authorize the Secretary to tailor programs to the specific characteristics of each different commodity, including Section 7413 that provides the USDA discretion in determining to whom the order should apply among the following: “(A) the producers of an agricultural commodity; (B) the first handlers of the agricultural commodity and other persons in the marketing chain as appropriate; and (C) the importers of the agricultural commodity, if imports of the agricultural commodity are subject to assessment...”<sup>3</sup>

Wheat flour foods, which are manufactured using milled wheat, fall within the Act’s definition of an agricultural commodity and bakers, sub-bakers, and millers, as defined in the Proposed Order, fall within the categories of “first handlers” and “other persons in the marketing chain.” The Proposed Order, which will establish a program of promotion, research, and information to promote consumer demand for wheat flour foods and strengthen the position of the wheat flour industry in the marketplace, is consistent with the Congressional intent of the Act to maintain and expand existing markets as well as develop new markets and uses for agricultural commodities.<sup>4</sup> As such, USDA is authorized to establish the Wheat Flour Foods Promotion, Research and Information program by approving the Proposed Order.

As part of the approval process set forth in the Act, the industry must formulate an Order and submit it to the USDA for review and final approval. Implementation of the Order, like all

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<sup>1</sup> The Industry Analysis and Justification for Wheat Flour Foods Promotion, Research and Information Order was originally submitted to USDA on April 26, 2019. This version was submitted to USDA on October 26, 2021. It reflects updates to data and information in those instances where accurate and updated data and information has been generated and made readily available. Note that due to the COVID-19 pandemic of 2020-2021, data and information provided in the April 26, 2019, justification remains the most accurate and updated data and information readily available.

<sup>2</sup> 7 U.S.C. §7412(1). The full text reads: “[t]he term “agricultural commodity” means: (A) agricultural, horticultural, viticultural, and dairy products; (B) livestock and the products of livestock; (C) the products of poultry and bee raising; (D) the products of forestry; (E) [organic products]; (F) other commodities raised or produced on farms, as determined appropriate by the Secretary; and (G) products processed or manufactured from products specified in the preceding subparagraphs, as determined appropriate by the Secretary.”

<sup>3</sup> 7 U.S.C. §7414.

<sup>4</sup> 7 U.S.C. §7413.

rulemaking, is subject to public notice and comment, and is subject to initial and ongoing referenda where participants are given the opportunity to vote to determine whether the program shall initiate or continue to operate. If approved by USDA and through the initial and ongoing referenda, the Order becomes and remains a regulation codified in the U.S. Code of Federal Regulations and carries the force of law.

## II. WHEAT FLOUR FOODS INDUSTRY ANALYSIS

### A. U.S. Wheat Industry

As one of the top three field crops in the United States, wheat is produced on over forty-six (46) million acres of cropland across forty-two (42) states.<sup>5</sup> For the 2017-2018 season, the total volume of wheat produced in the U.S. was 1.74 billion bushels or 1.68 billion excluding durum wheat.<sup>6</sup> The total market value of all U.S. wheat production for the 2017-18 season is estimated at \$8.2B, and market value of U.S. wheat production excluding durum wheat is estimated at \$7.84B.<sup>7</sup>

In the United States, raw wheat is processed into wheat flour that is used to produce a broad variety of household food products, including breads, cookies, and pasta. USDA distinguishes and collects data on five (5) different classes of wheat as follows: hard red winter (“HRW”), hard red spring (“HRS”), soft red winter (“SRW”), white, and durum.<sup>8</sup> Each class of wheat has different protein characteristics that determine how its resulting flour can be used in food products. Although the classes of wheat flour are not always interchangeable as ingredients, they are often combined. For example, durum wheat flour is used mostly for pasta, HRS is typically used as a high-protein bread flour, and SRW and white wheat flours are used for making cookies, muffins, cereal and crackers. The largest class of wheat, HRW, has a wider range of protein that makes it adaptable to a broad spectrum of food products, but is mainly used as a bread flour. The map below illustrates how the production of the various wheat classes is distributed throughout the United States.

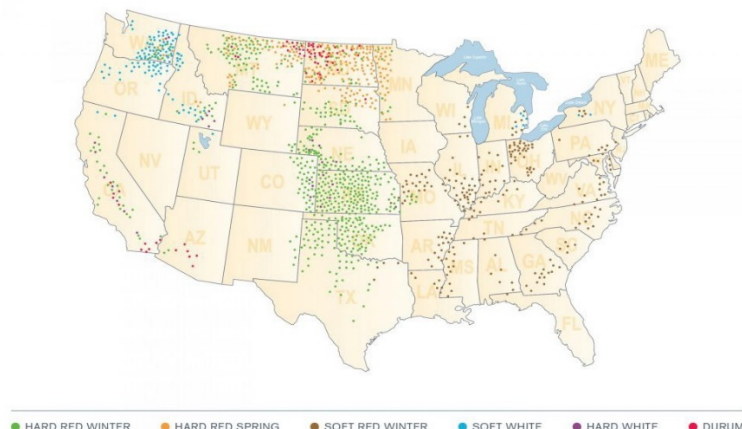
<sup>5</sup> *Wheat Overview*, USDA Economic Research Service, <https://www.ers.usda.gov/topics/crops/wheat/> (Feb. 6, 2019). See also Jennifer K. Bond and Olga Liefert, *Wheat Outlook*, WHS-18I, USDA Economic Research Service, (Dec. 13, 2018), [USDA ERS - Wheat Outlook: December 2018](#). The USDA notes that forty-six (46) million acres of cropland is a record low for wheat production. See *id.*

<sup>6</sup> See *Wheat Outlook*, *supra* note 4 at Table 1 and Table 2.

<sup>7</sup> The estimated \$7.84 billion market value was calculated by comparing the average price that farmers receive per bushel for all wheat for 2017/2018 (\$4.43) to the average price that farmers received for durum for the same time period (\$6.59), which indicates that farmers are receiving an average of \$1.88 (41%) more per bushel of durum than the average price for all wheat. In order to weigh the production of durum as 41% higher than the market value of the overall production of wheat, first calculate 1.74 billion bushels with a market value of \$8.2 billion gives an average of \$4.77 per bushel. Adding 41% to \$4.77 equals \$6.59 per bushel for durum. \$6.59/bushel multiplied by 55 million in production equals \$362 million. Then \$8.2 billion of total market value less \$362 market value of durum results in \$7.838 for the remaining wheat. This assumes that market value of all wheat is closely associated with the average price that farmers receive.

<sup>8</sup> The U.S. Grain Standards Act, administered by the USDA’s Grain Inspection, Packers and Stockyards Administration (GIPSA), provides criteria for determining the specific kind, class, and condition of the various wheat grains.

## U.S. Wheat Production Map<sup>2</sup>



### B. Wheat Flour Industry – Millers, Bakers, and Sub-bakers

Playing a pivotal role within the wheat industry’s supply chain are the millers and bakers. As the first processors of the raw wheat commodity, the milling industry is primarily responsible for processing raw wheat grain into wheat flour and other products used to make various consumer products. There are currently forty-seven (47) domestic milling companies (“milling companies” or “millers”) operating production facilities or mills across the U.S.<sup>10</sup> Out of the total 1.74 billion bushels of wheat produced by farmers in the U.S., these mills process 920 million bushels (almost half) into wheat flour for use in food products.<sup>11</sup> Operating at a rate of between 1-3.2 million pounds per day, during the most recent annual period for which statistics are available, the mills produced an estimated 428 million hundredweight (CWT) of wheat flour for consumption within the U.S.<sup>12</sup>

In addition to providing the vital processing function, mills also play an important role in monitoring the quality and safety of the wheat entering our food supply chain. While the USDA sets minimal standards for wheat grains, millers typically implement a more rigorous set of commercial specifications developed in conjunction with their baking industry partners that

<sup>9</sup> See National Association of Wheat Growers, Wheat Production Map, WHEATWORLD.ORG <https://www.wheatworld.org/wheat-101/wheat-production-map/> (last visited Oct. 13, 2021).

<sup>10</sup> Data collected by Prime Consulting in 2019.

<sup>11</sup> See *Wheat Data*, Wheat Data-Recent at Table 14, USDA Economic Research Service (Dec. 12, 2018) <https://www.ers.usda.gov/data-products/wheat-data/>; see also *Flour Milling Products – Quarterly Reports*, USDA National Agricultural Statistics Service, USDA Economics, Statistics, and Market Information System [https://www.nass.usda.gov/Surveys/Guide\\_to\\_NASS\\_Surveys/Current\\_Agricultural\\_Industrial\\_Reports/Flour\\_Milling/index.php](https://www.nass.usda.gov/Surveys/Guide_to_NASS_Surveys/Current_Agricultural_Industrial_Reports/Flour_Milling/index.php) (2019) (reporting the quarterly data collected as part of the Current Agricultural Industrial Reports (CAIR) program through its survey of mills). The remaining wheat production supply is used primarily for animal feed, seeding, and exports.

<sup>12</sup> From 4Q 2017 through 3Q 2018, the total production of all wheat flour was 428 million CWT, of which 32.05 million CWT was durum wheat. Total production without durum wheat was therefore 395.95 million CWT. See *Flour Milling Products – Quarterly Reports*, National Agricultural Statistics Service, USDA Economics, Statistics, and Market Information System *at supra* note 10.

purchase the wheat flour for use in consumer food products. These heightened specifications add additional requirements for the monitoring of toxins and hazardous exposures during multiple steps of the milling process.

After millers, the next essential link in the supply chain of raw wheat is the baking industry, providing a market for the milled wheat flour processed by the millers and linking to the consumer markets. Bakers use the wheat flour in their proprietary breads, cookies, crackers, and other baked products sold to consumers, enabling them to provide valuable feedback to millers regarding changing consumer market trends. The general baking industry, which employs close to 800,000 skilled individuals and generates an estimated overall economic impact of over \$153 billion,<sup>13</sup> consists of eighty-four (84) companies with 360 commercial baking plants that use wheat flour to produce wheat flour food products, including items like packaged sliced bread, buns, rolls, bagels, pitas, and English muffin products.<sup>14</sup> On an annual basis, these bakers collectively consume an estimated total of 102 million hundredweight (“CWT”) of wheat flour, or close to twenty-four percent (25%) of the total wheat flour produced for food consumption, and are responsible for an estimated \$19.8 billion in annual sales.<sup>15</sup>

The overall baking industry can be further broken down into bakers and sub-bakers. Bakers purchase wheat flour from millers for use in proprietary consumer goods, while sub-bakers provide baking services for bakers. The sub-baking industry plays a pivotal role for bakers, often filling in the gap when bakers want to offer a product that requires specialized facilities operated by a sub-baker or when bakers want to increase production in a specific geographic location. Some bakers provide sub-baking services, such that the range of sub-bakers covers the spectrum from large national businesses to small local operators.

### C. Stakeholder Collaboration

Due to their important partnership within the wheat industry, millers and bakers have a long history of working together to find solutions to industry challenges and to ensure the prosperity of the entire industry. Among the numerous industry groups representing the specific interests of various bakers and millers, the North American Millers’ Association (“NAMA”)<sup>16</sup> has evolved as the primary association of U.S. milling companies and the American Bakers’ Association (“ABA”), which counts more than 100 baker-members, is the primary advocacy group for the wholesale baking industry. Both NAMA and ABA, along with smaller industry groups, have worked together to support the consumption of wheat flour products and provide information about the industry on many occasions, including during the U.S. embargo on the sale of grain to Russia in 1980 and during various challenges to the market caused by low-carbohydrate (“low carb”) diet trends.

In 2004, when the “low carb” diet was hitting a popularity high and severely impacting the wheat flour industry, ABA, NAMA, and over 100 individual companies formally joined forces by creating the Grain Foods Foundation (“GFF”), a separate legal entity with a mission to

<sup>13</sup> See *Bakers Enrich America*, American Bakers Association <https://www.americanbakers.org/bakersenrichamerica/> (last visited October 13, 2021).

<sup>14</sup> Data collected by Prime Consulting in 2019. For purposes of the market analysis, Prime Consulting focused on the millers and bakers involved with the production of “grain foods” as the term is defined in the Proposed Order.

<sup>15</sup> Data collected by Prime Consulting in 2019.

<sup>16</sup> The origins of the North American Millers’ Association (“NAMA”) stem back to 1902 when representatives of the major milling companies first organized as the Millers’ National Federation.

serve as the marketing and communications voice for the industry. Companies and industry associations, like ABA and NAMA, support GFF through voluntary donations. Under new leadership in 2013, GFF reoriented its marketing and communications focus away from the consumer and toward media influencers. This shift in focus better aligned with GFF revenue and has successfully benefited the entire wheat flour industry.<sup>17</sup> Despite this success, however, GFF’s ability to scale up its current programming efforts is limited due to its dependence on voluntary donations from members that keep its annual operational budget under \$3 million.

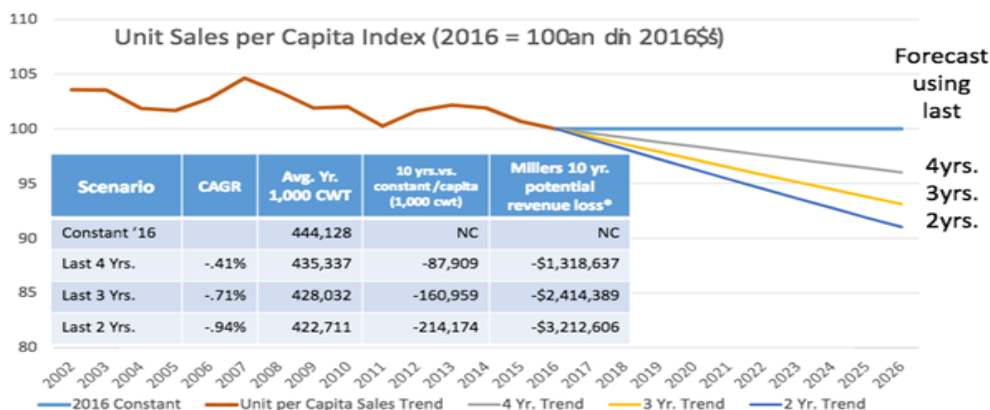
### III. JUSTIFICATION

#### A. Market trends supporting the need for a checkoff program

Since 2000, there has been a decline in the per capita consumption of wheat flour in the U.S., with severe long-term implications for the entire wheat flour foods industry. An analysis of wheat flour use per capita using USDA data (Wheat Yearbook Table 29) illustrates the growing nature of the problem. The trend line forecasts show that the decline has tilted steeper in each of the last four years, as outlined in the table below.

### Wheat Flour Use/(Disappearance) per Capita Index

#### \$1.3-3.2 Billion in Revenue at Risk for Millers



Source: USDA Wheat Yearbook Table 29 and US Census

\* Wheat Flour Wholesale of \$15 cwt per Table 32

Projection based on past years and US Census Population estimates



<sup>17</sup> Examples of GFF’s successful efforts include the establishment of a Scientific Advisory Board to provide scientific and nutrition information regarding carbohydrates, including wheat flour foods, for distribution in social media and video messaging channels as well as GFF’s collaboration with the International Council on Active Aging to produce a series of blog posts regarding healthy aging through the consumption of grain foods. In 2017, GFF’s messaging campaigns resulted in over 8 million media impressions, the nutrient study had over 222 million impressions, and they produced a viral video entitled “Eat a Sandwich.” See <https://grainfoodsfoundation.org/gff-at-work/2017-accomplishments/>.

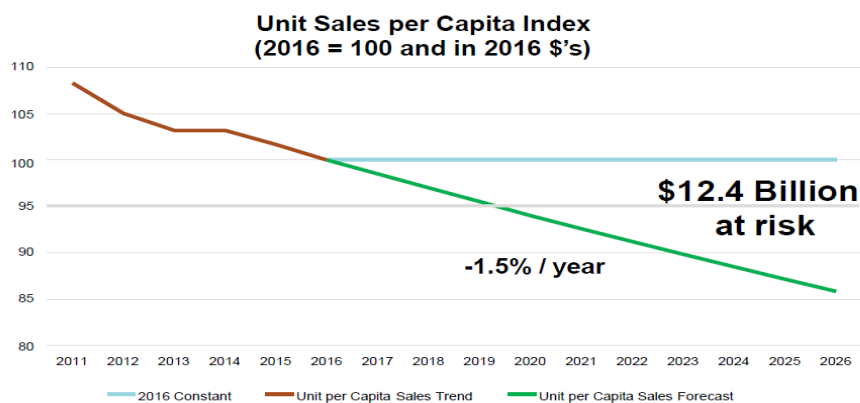
A closer look at how the consumption of wheat flour is distributed among specific food products and the market trends of those foods provides a deeper understanding of the overall decline. Below is a summary of wheat flour consumption in food products:

- 36.9% used for bread basket products (including packaged sliced bread sold in center aisles, artisan breads sold in store bakeries, breakfast breads, buns and rolls);<sup>18</sup>
- 25.8% used for sweet goods (cookies, donuts, cake, waffles, pancakes, etc.); and
- 37.3% used for a combination of smaller categories (cereal, crackers, pasta, frozen pizza, and other foods not including sweet goods).<sup>19</sup>

While only 36.9 percent of all wheat flour is used for bread basket products, bread's high rate of household penetration means that declines in per capita consumption have scaled implications for the wheat industry. During the 5-year period from 2011-2016, total sales of Bread Products declined by \$1.49 billion, due in large part to the decline in sales of sliced bread.<sup>20</sup> More critically, an analysis of IRI and US Census data indicates that *per capita sales* of commercial bread have decreased by \$3.78 billion since 2011. See **TABLE III.A(2)** below.

**TABLE III.A(2)**

### Commercial Bread Unit Sales per Capita Index



Source: IRI and US Census  
Projection based on past 5 years and US Census Population estimates

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Thus, the decline has particularly far-reaching implications for the entire industry. If this current trend continues for the next decade, the risk for commercial bread alone is estimated at \$12.4 billion. With declining sales and declining per capita consumption, the repercussions from

<sup>18</sup> Of the 36.9% of wheat flour used for the bread products category, 20% of the wheat flour is used for center store bread aisle products, 7.1% is used for in-store bakery bread, and 9.8% is used for food service items. Data provided by Statler Nagle LLC, based upon projections and analysis conducted by Prime Consulting in 2019 using data from the US Census and Information Resources, Inc. (IRI).

<sup>19</sup> Data collected by Prime Consulting in 2019.

<sup>20</sup> Packaged sliced bread has declined at a rate of -2.4%/year over the last five (5) years with price increases only able to mitigate half of that decline. Data provided by Statler Nagle LLC, based upon projections and analysis conducted by Prime Consulting using data from the US Census and Information Resources, Inc. (IRI)

bakers to millers to wheat farmers and all the stakeholders involved in the distribution channels in between could easily eclipse \$17 billion by 2026. The impact on the entire value chain may result in a loss of production capacity (acres planted and plant capacity) or decreased efficiency related to capacity that would raise the cost to consumers. This could lead to the failure of certain operations as well as a cascading loss of jobs.

## **B. Causes of Market Trends**

Amidst the numerous positive attributes that support the long-term durability of the wheat flour industry, including consumer passion for and nutritional benefits of bread products, there are also several challenges that have gained traction during the current decline.

### **1. Food, Health and Nutrition Trends**

The use of influence campaigns by groups representing various interests and, importantly with various credibility, combined with the increasing consumer demand for quick access to health and diet information has fueled the explosion of new online sources of nutrition information and led to consumers having more difficulty and less certainty in making health and nutrition decisions grounded in sound and reputable science. In particular, the explosion of dubious or unsupported scientific and nutritional information disseminated via social media is fueling ever-increasing consumer confusion. In addition, the recent amplification of health risks inherent in the growing obesity epidemic have consumers focused on weight loss. This spike in online communication channels for nutritional information combined with an increasing demand for weight control strategies has provided a new market for often dubious “quick-fix” dietary solutions. These solutions often involve the total restriction of certain foods and/or ingredients (*i.e.*, gluten) with demonstrated and consensus-supported positive roles in a healthy diet as defined by the Dietary Guidance. Although various low-carb diets have been around for over a century, many aspects of the traditional low-carb diet continue to be reinvented into seemingly “new” diets that easily gain consumer attention.<sup>21</sup> Regardless of the nutritional science behind these diets, consumer appetite for quick weight loss methods provides ample staying power for each new trend and ultimately reinforces the low-carb message.

Along with the reinforced, if not nutritionally sound, low-carb and specific food-avoidance diets have come a proliferation of food and ingredient substitutes to help consumers avoid gluten and carbohydrates. These food substitutes have been able to successfully leverage the consumer desire for bread products while edging out wheat flour as a main ingredient.<sup>22</sup> This deprives consumers of a proven source of positive nutrients from wheat flour food products, while also absorbing their “nutrition attention” away from well-supported dietary guidance within the Dietary Guidance framework.

For a variety of historic and structural reasons, the preponderance of the bread industry, while replete with many brands that consumers know, operates more like a commodity category than a brand marketing driven category like soft drinks and automobiles. With clear exceptions, much of the bread industry is characterized by “tradition brands” built more on longstanding

<sup>21</sup> For example, the keto, South Beach, and paleo diets.

<sup>22</sup> In fact, it is well-established that gluten avoidance has now reached levels inconsistent with most authoritative estimates of incidence of gluten-related disease. See Niland, Benjamin, and Brooks D Cash, *Health Benefits and Adverse Effects of a Gluten-Free Diet in Non-Celiac Disease Patients*, 14 GASTROENTEROLOGY & HEPATOLOGY 82 (2018), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5866307/> (last visited October 13, 2021).

historic community or regional presence over time, operating more like private label products without significant marketing margins or funding. This has left the bread industry unable to fully and effectively respond to the challenges noted above or defend its market positions and consumer preference.

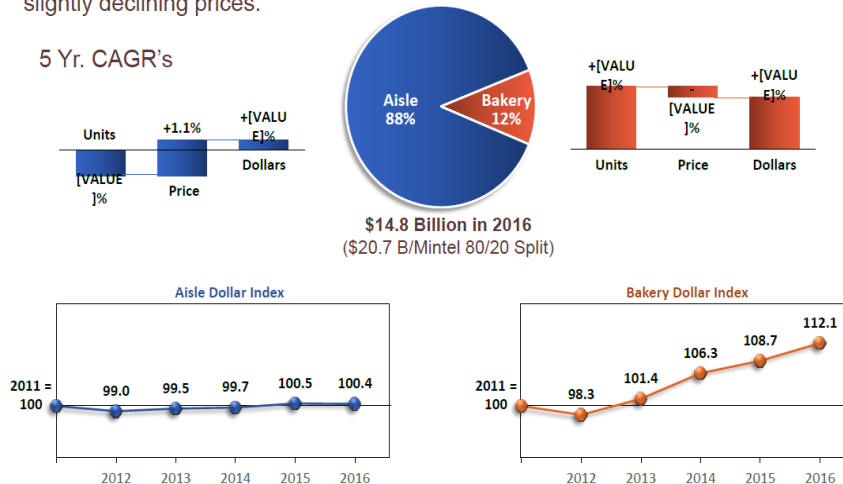
## 2. Retail Performance

In response to these trends, the industry has seen a sustained decline in unit sales in the commercial bread aisle along with slowing growth in the in-store bakery sales, as outlined in the table below.

**TABLE III.B(2)<sup>23</sup>**

### Total All Breads

Bread aisle sales have been -0.8% /yr. in units and +0.3% in dollars over the past five years. The In-store Bakery has enjoyed growing units (+2.8%/yr.) but at slightly declining prices.



Based on extensive retail customer research, the industry faces structural barriers to counter the sales and consumption decline. Both individual consumers and corporate retail customers cite confusion in the bread aisle due to various factors, including changing distribution approaches, product and claim proliferation, and anti-carb activism. Retailers simultaneously understand the importance of the category and the steady decline in sales and continue to express concern that the wheat flour foods industry, as a whole, is not adequately responding to the challenges.<sup>24</sup> Fast-paced changes in both the retail grocery industry and the consumer desire for healthy eating solutions are evolving challenges for the wheat flour foods industry. In addition, demographic trends indicate increasing growth in segments of the population that are traditionally non-bread eaters. Although the industry recognizes these issues negatively impacting its sales, there is a knowledge gap currently preventing it from effectively addressing the issues. A checkoff program would enable the industry to conduct pre-competitive research to better understand and conduct promotion to address product confusion as well as create opportunities for effective innovation throughout the value chain.

<sup>23</sup> Source: IRI and Prime Consulting analysis in 2019.

<sup>24</sup> Based on confidential interviews of retail customers conducted by GFF's consulting firm, Statler Nagle.



### C. What alternatives to checkoff program were considered and why were they rejected

Recognizing the recent trend of decline in consumer bread sales and overall wheat flour use, the industry, led by GFF, began working to mitigate this trend alongside other industry organizations such as the National Association of Wheat Growers (“NAWG”), the Wheat Foods Council and the various wheat commissions. In early 2017, the GFF Board of Trustees authorized a stakeholder assessment. From February through April 2017, GFF’s consultant conducted fifty-four (54) interviews with leaders representing thirty-three (33) stakeholder companies and organizations in the wheat flour foods value chain.<sup>25</sup> Interview participants included GFF investors, millers, bakers, as well as industry participants not likely to be included in a new checkoff program. Among the various data collected, participants were asked to select between the following three options:

- ✓ The current industry program could make adjustments to its programming with the goal of having an increased impact on the sales of wheat flour food products;
- ✓ Industry members could increase their voluntary contributions to the current industry program; or
- ✓ Industry members could establish an industry checkoff program with the goal of amplifying the current industry program’s current programming

In weighing these options, industry investors considered the current program’s limited ability to scale up due to the voluntary nature of its funding. They also recognized that the current universe of investors did not include all the industry participants who would likely benefit from broader programming. The results of the assessment indicated approximately 85 percent of participants were in favor of pursuing a checkoff program, 11 percent needed more information, and 4 percent felt their companies were effectively managing the decline.

After reviewing the results of the stakeholder assessment in May 2017, the GFF Board of Trustees determined the industry’s current programming was appropriately targeted and effective, just not broad enough to have the desired industry impact. They ultimately determined the checkoff option was the best and most efficient option to increase the scale of the wheat flour food’s current programming pursuits while also ensuring the greatest industry participation and agreed that the next step would be to initiate a feasibility study.

Thereafter, in September 2017, the GFF Board of Trustees established an industry Steering Committee comprised of millers and bakers, which was charged with overseeing a checkoff feasibility study to explore the most efficient and effective means to establish such a program with broad industry support. This feasibility study included a consumer positioning and values study, customer research, and a return on investment (“ROI”) model. Thereafter in January 2018, the Steering Committee met for the first time to consider the results of the study, which included recommendations for funding and assessment levels, recommendations for stakeholder participation, program architecture and resource allocation, as well as the ROI model and measurement plan. After studying preliminary results, the Steering Committee engaged Prime Consulting to perform an industry analysis and provide recommendations for an

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<sup>25</sup> Consulting firm, Statler Nagle, conducted the assessment using interviews, reviewing and analyzing both private and public industry data, and benchmarking with other industry initiatives.

appropriate de minimis threshold to include in the Proposed Order.<sup>26</sup> The relevant findings from that report included the following:

- There are 47 milling companies in the U.S. who mill wheat flour, of which 18 milling companies provide wheat flour as an ingredient.
- In general, millers do not have accurate information about what products a baker produces using the purchased wheat flour, especially when multiple types of products are manufactured in the same plant, either regularly or occasionally. Millers, therefore, are not well positioned to determine how much of their wheat flour sales to a given baker would be subject to the Proposed Order and related assessment.
- Based on the information received from the various sources and interviews, it is estimated that the checkoff assessment will apply to seven (7) millers.<sup>27</sup>
- In the U.S., companies that manufacture and sell baked foods that contain wheat flour range from single unit bakery stores to large national companies, including 2,800 commercial bakeries and over 6,000 retail bakeries. The analysis focused on identifying companies operating at least one commercial bakery plant that manufacturers wheat flour foods, regardless of whether they wholesale or retail the products.
- The analysis identified eighty-four (84) companies with 360 commercial baking plants that use 101,652 M CWT of wheat flour to produce consumer food products. Of these, there are:
  - Twenty-three (23) bakers that each use at least 750 M CWT of wheat flour (of which three (3) bakers use over 10,000 M CWT, zero (0) bakers use between 5,000-9,999 M CWT, and twenty (20) bakers use between 750 M and 4,999 M CWT);
  - Zero (0) bakers that use between 600-750 M CWT; and
  - Sixty-one (61) bakers that each use less than 600 M CWT of Wheat Flour.
- Based upon the total CWT of wheat flour used in the production and sale of wheat flour food products, the 750 M CWT level serves as a logical separation point for the de minimis volume exemption level for several reasons, including: (a) the largest 23 bakers each exceed the 750 M CWT level; (b) they use an estimated 82,529 M CWT or 81.2% of all the wheat flour used by the 84 companies; (c) the 23 companies operate a total of 218 (61%) of the 360 commercial bakery plants, nearly half of which (106 plants) are operated by the three largest companies.

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<sup>26</sup> For purposes of the de minimis analysis, Prime Consulting focused on “millers” and “bakers” involved with the production of “grain foods” as these terms are defined in the Proposed Order.

<sup>27</sup> The uncertainty traces to how much assessable wheat flour that each miller supplies to some of the assessed bakers.

#### **D. How a National Checkoff Program Could Address Marketplace issues**

After careful analysis and discussions, the Steering Committee determined that the checkoff program would be best positioned to have the greatest industry impact with the broadest level of industry support if it was implemented as follows:

- Funding for program activities will be provided through assessments on millers selling and bakers purchasing wheat flour for the purpose of producing a specific set of wheat flour foods referred to by the industry as “bread basket” products and defined under the Proposed Order as “grain foods.”<sup>28</sup> The grain foods products include, but are not limited to, the following: sliced bread, unsliced bread, rolls and buns, bagels, naan, pitas, other flatbreads, and English muffins. Products specified as not being subject to assessment are products sold in frozen form to consumers, as well as tortillas, croissants, biscuits, bars, crackers, and sweet goods.
- Sub-bakers will not be assessed, but bakers will pay an assessment based on an estimated amount of wheat flour contained in the wheat flour foods they purchase from sub-bakers.
- The assessment rate will be based upon the weight of wheat flour purchased or sold (in CWT) and not on the price of the wheat flour due to the rapidly fluctuating price of wheat flour for each class of wheat and the varying combinations of wheat class flours in the proprietary formulas that bakers use to make their products.
- Under the Proposed Order, millers contribute funding at a rate of 2.4 cents per CWT of wheat flour sold for the purpose of producing bread-basket products. Bakers contribute funding at a rate of 13.6 cents per CWT of wheat flour purchased from a miller for the purpose of producing bread-basket products. In addition, where one baker (a “sub-baker”) purchases wheat flour from a miller and bakes the finished bread-basket product on behalf of another baker to market, the latter baker contributes funding at a rate of 8.2 cents per CWT of finished bread-basket products purchased from the sub-baker for the baker to market.
- This rate of 8.2 cents per CWT of finished bread-basket products is determined by multiplying the baker’s 13.6 per hundredweight assessment on wheat flour by the average percentage of wheat flour comprising the weight of finished bread-basket products, which is 60%. 60% of 13.6 equals 8.2 (rounded). This 8.2 cents per CWT assessment is applied to the weight of the finished bread-basket products purchased by a baker from a sub-baker, ensuring equal assessment owed by the baker on both (i) the raw wheat flour purchased from a miller and (ii) the baked wheat flour contained in finished bread-basket products produced by and purchased from a sub-baker. Note that sub-bakers are not subject to assessment under the program. Only millers and bakers which sell bread-basket products into commerce are subject to assessment.
- The assessment rates are subject to revision of no more than ten percent (10%) annually and may not exceed four cents (\$0.04) per CWT of wheat flour sold by millers and eighteen cents (\$0.18) cents per CWT of wheat flour purchased by bakers to produce wheat flour foods which it markets or ten cents (\$0.10) per CWT of bread-basket products purchased by bakers from sub-bakers.

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<sup>28</sup> These “included” products represent the area of consensus for the Steering Committee.

- Bakers are responsible for collecting the assessments directly from millers on their purchases of wheat flour and remitting them to the Board along with their own assessments. Because bakers use different amounts of wheat flour in their proprietary products, not all of which products are subject to assessment, the bakers are in the best position to determine what exact amount of wheat flour sold to them by the millers will be used for the purpose of producing bread-basket products, or what amount of wheat flour sold by the millers must be assessed.
- With respect to baker purchases of finished bread-basket products purchased from sub-bakers, the baker collects and provides the required documentation from the sub-baker and provides it to the Board of Directors (the “Board”, explained below), and the relevant millers receive an invoice from the Board on the assessed wheat flour sales to the sub-baker.
- There are two exemptions from assessment for millers and bakers under the program: a de minimis exemption and an organic exemption. With respect to the de minimis exemption, millers selling less than 750,000 CWT of wheat flour to bakers for the purpose of producing bread-basket products are exempt from assessment. Likewise, bakers buying less than 750,000 CWT total of wheat flour annually for the purpose of producing and marketing bread basket products are exempt from the payment of assessments. This 750,000 CWT total of wheat flour is calculated by adding (i) the CWT of wheat flour purchased directly from millers and (ii) sixty percent (60%) of the weight of break-basket products as measured in ounces purchased from sub-bakers for the bakers to market.
- Millers are also exempt from assessment on that portion of wheat flour sold to an exempt baker, even if the miller would otherwise be subject to assessment on that wheat flour.
- In addition, millers selling and bakers purchasing wheat flour for the purpose of producing products certified as organic are also exempt on that portion of wheat flour sold or purchased that goes toward the production of certified organic products.
- The checkoff program shall be governed by the Board to oversee the wheat flour foods promotion program. The Board, composed of millers and bakers who pay assessments into the program, oversees the operations of the program, including developing and approving all programs, plans, or projects developed and executed to promote demand for wheat flour foods.
- The Board will be initially composed of two (2) miller representatives and eight (8) baker representatives, which division of representation is intended to reflect the relative percentage of assessments paid by each class into the program. This division of representation is subject to modification to ensure that the division of representation accurately reflects the pro-rata contribution of each class. An analysis of whether a revision to representation between the classes is warranted occurs at least once every five (5) years under the Order. Aside from baker representatives on the board that also provide sub-baker services, there will be no board positions specific to sub-bakers.
- The Board Members will be appointed by the Secretary of USDA from nominations presented by millers and bakers. Millers and bakers are given the opportunity to caucus, select representatives to serve on the Board, and then submit a slate of nominations to the

Secretary for appointment. Directors serve staggered terms of three (3) years and are limited to two (2) consecutive terms.

- Each Board Member is entitled to one (1) vote on any matter put to a vote, and the motion carries if supported by one (1) vote more than 50 percent of the votes cast at a meeting where a quorum exists. The Board has the authority to organize and select officers, committees, and subcommittees, from Board members and non-Board members, as the Board determines is appropriate. The Board may develop bylaws and may hire staff.
- USDA provides oversight of the program through its Agricultural Marketing Service (“AMS”). AMS must approve Board contracts for program activities and the annual budget for the Board, and AMS has various rights set forth in the Order to ensure compliance with the provisions of the Orders. The Board may not lobby, conduct false or misleading advertising, or conduct advertising disparaging another commodity.

The industry stakeholders determined that the primary goal of the checkoff program will be to stop the decline in wheat flour use per capita by reversing the unit sales decline, increasing overall demand for bread-basket items, and positioning the industry to proactively identify and address future threats. Through the collection of an assessment on wheat flour food manufacturers, the checkoff will be able to leverage pooled assessment funds and have a broad impact on the industry by developing new markets, strengthening existing markets, conducting important consumer and scientific research, and promoting industry initiatives and activities.

This new wheat flour foods checkoff, just like the current programming efforts by the industry, will be positioned to complement the efforts of other industry organizations. Although the Proposed Order is being initially launched to include assessments on millers and bakers involved with the production of wheat flour food products, the hope is that the positive impact of the checkoff program will attract other industry participants that elect to participate despite being eligible for a de minimis or organic exemption or indicate a desire to participate by recommending an amendment to the Order that specifically includes other food items.

## **E. Funding**

### **1. How much income could the program expect to generate at the optimum assessment rate?**

The program will be funded by the industry through assessments paid by both bakers and millers, as defined in the Proposed Order. Based on a de minimis level of 750,000 CWT, the program is estimated to collect \$13.2 million in assessments<sup>29</sup> from the top producing millers and bakers and will conduct research, marketing and promotion programs that will benefit the entire industry, including the small millers and bakers exempt under this proposal as well as the wheat producers not subject to the assessment. The benefits of such programs are expected to outweigh the costs of the program. Evaluations of similar research and promotion programs by independent economists, required to be conducted every five (5) years, have shown positive financial benefits with benefit-cost ratios in the range of \$2.14 to \$17.40 for every dollar

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<sup>29</sup> This estimated assessment total calculated in 2019 is subject to change, depending on the final determination of de minimis threshold and assessment rates.

invested in the programs.<sup>30</sup> Under the proposed program, the assessments collected from bakers and millers are relatively small in comparison to the revenue of the bakers and millers.

## 2. How much would it cost to administer the program, including Government reimbursements (user fees)?

As outlined in Section 7414(e)(5) of the Act, the administrative costs for any program authorized under the Act may not exceed fifteen percent (15%) of the total assessments and other income collected for the fiscal year, beginning three (3) years after the program is established.<sup>31</sup> For purposes of the cap, the administrative costs do not include the reimbursements that each program is required to pay the USDA for their incurred expenses related to implementation, administration, and supervision of the program.<sup>32</sup> Although the Proposed Order adopts this fifteen percent (15%) cap on administrative costs beginning three (3) years after the program is established,<sup>33</sup> the industry intends to adhere to the cap prior to the required date and estimates that the administrative costs would be closer to ten percent (10%) of total assessments and USDA reimbursements would be five percent (5%) of total assessments.

See Table III.E below.

## 3. After program administration costs are paid, how much funding would remain to finance the program?

See Table III.E below.

**TABLE III.E<sup>34</sup>**

<i>Sales volume</i>	<i>Low</i>	<i>Average</i>	<i>High</i>
<i>USDA costs 5%</i>	<i>\$XXX</i>	<i>\$660,000</i>	<i>\$XXX</i>
<i>Admin/compliance 10%</i>	<i>\$XXX</i>	<i>\$1,320,000</i>	<i>\$XXX</i>
<i>Promotion 35%</i>	<i>\$XXX</i>	<i>\$4,620,000</i>	<i>\$XXX</i>
<i>Research 25%</i>	<i>\$XXX</i>	<i>\$3,300,000</i>	<i>\$XXX</i>
<i>Information 25%</i>	<i>\$XXX</i>	<i>\$3,300,000</i>	<i>\$XXX</i>

## F. Feasibility

The assessments to be collected under the Proposed Order will enable the wheat flour foods industry to establish an effective research and promotion program. Impactful program results have been accomplished with much less funding on a voluntary basis through both the Wheat and Wheat Foods Research and Nutrition Education Act (7 U.S.C. §§ 3401 et seq.)(the

<sup>30</sup> See US Gov't Accountability Office, GAO-18-54, AGRICULTURAL PROMOTION PROGRAMS USDA Could Build on Existing Efforts to Further Strengthen Its Oversight (2017), <https://www.gao.gov/assets/690/688519.pdf>.

<sup>31</sup> 7 U.S.C. §7414(e)(5).

<sup>32</sup> 7 U.S.C. §7414(e).

<sup>33</sup> See §12XX.49(h) of the Proposed Order.

<sup>34</sup> Based on contemplated assessment rates and de minimis levels in 2019.

“Wheat Checkoff Program”) and the current voluntary GFF program. The positive results for the industry are quantifiable and quantified, as described herein. These results were achieved under the Wheat Checkoff Program with approximately \$1,000,000 per year, which is 4% (not adjusted for inflation) of what this program is anticipated to collect in assessments. With respect to the GFF voluntary program, the results have been achieved with approximately \$3,000,000 per year, which is approximately 23% of what this program is anticipated to collect in assessments. Additionally, the proponents of the program believe the program will grow and assessments (including through an expansion of assessed products) as the program is proved out and industry re-invigorates itself. The question has not been whether promotion programs work for the industry, but how to make the program sustainable using consistent funding from industry participants.

#### **IV. OBJECTIVES**

The main objectives of the wheat flour industry in establishing their new checkoff include increasing sales to reverse the current decline in wheat flour consumption, changing the perception of bread, and producing research to strengthen the industry’s promotion of the goodness of bread through the following:

- Consumer Media;
- Retail Channel Development;
- Food Service Channel Development; and
- Science/Nutrition Research.

In addition to these goals, the checkoff will offer the wheat flour foods sector several added benefits that their current structure does not provide, such as ensuring that benefits to the entire industry are paid for by the entire sector and stabilizing funding to allow for better planning and to maximize the utilization of funds.

#### **V. IMPACT ON SMALL BUSINESS**

There should be minimal impact on small or large businesses.

The baker will be responsible for providing the following information: (i) the CWT of wheat flour purchased from a miller and the CWT of bread-basket products purchased from a sub-baker, (ii) the percentage of such wheat flour, both used by the baker or used by the sub-baker, going toward the production of wheat flour food products covered by the Order and therefore subject to assessment, (iii) the assessment amount paid by the miller on such wheat flour, and (iv) the baker’s own assessment amount due on the wheat flour it purchased from the miller and on the bread-basket products purchased from the sub-bakers. The assessments are due on a monthly basis, but not for 60 days following the end of the applicable month. The aforementioned reports will be submitted with the assessment remittance. Bakers will also provide or cause the sub-baker to provide a receipt for the assessment collected to the miller as part of the wheat flour transaction, although that information would be added to a receipt already generated and provided by the baker. Bakers may also provide additional reports as determined by the Board.

Millers are responsible for providing reports as determined by the Board. Millers and bakers claiming an exemption from assessment will submit an annual report to the Board. Additionally, most millers and bakers qualifying as small businesses will likely be exempt from

assessment under the de minimis exemption, so those entities will have no paperwork burden other than a single report annually claiming the exemption.

No particular skills or training is required. The transactional documentation will be added to documents already generated and maintained by millers and bakers.

All assessment payments and reports will be submitted to the checkoff board on a monthly basis. A late payment charge shall be imposed on any producer who fails to remit to the board, the total amount for which any such producer is liable on or before the due date established by the board. In addition to the late payment charge, an interest charge shall be imposed on the outstanding amount for which the producer is liable. The rate of interest shall be prescribed in regulations issued by the Secretary.

There are no known federal rules that duplicate, overlap, or conflict with the proposed promotion program.

## **VI. INDUSTRY SUPPORT**

As noted herein, the Proposed Order has resulted from the collaborative efforts of the millers and bakers as key industry stakeholders. The four-year effort began by broadly canvassing the industry to collect information and data regarding whether there was broad support for such a program. Led by the efforts of GFF, a marketing and communications group representing the same group of stakeholders that will be included in the checkoff program, the stakeholders have had repeated opportunities to consider various options and methodologies for combatting the decline in wheat flour consumption. As evidenced by the numerous letters of support from key industry groups and individual businesses, there is broad industry support for the Proposed Order.<sup>35</sup>

## **VII. REFERENDUM**

The Proposed Order is subject to an initial referendum to ensure that millers and bakers participating in the program favor its operation.

As part of the referendum, assessed millers and bakers will be given the opportunity to vote to determine whether they favor the ongoing operation of the program. The Proposed Order will be approved only if a majority of persons voting and also representing a majority of the volume of wheat flour during the representative period approve the Order.

Subsequent referenda requiring the same thresholds for approval will occur (i) every seven (7) years, (ii) at the request of the Board, (iii) at the request of ten percent (10%) of more of persons eligible to vote in a referendum, or (iv) as determined by the Secretary.

## **IX. TEXT OF PROPOSED ORDER**

[Forthcoming]

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<sup>35</sup> See Attachment A [letters of support-forthcoming].