

Summary of *Amicus Curiae* Brief of School Nutrition Association  
Submitted in  
Center for Science in the Public Interest v. Sonny Perdue, Secretary of the USDA  
Case No. 8:19-cv-01004 GJH, U.S. District Court, District of Maryland

In April 2019, two non-profit advocacy organizations sued the Department of Agriculture (USDA), USDA Secretary Sonny Perdue and USDA Deputy Undersecretary Brandon Lipps over the USDA's adoption of the 2018 Final Rule on sodium and whole grain content of school meals.

The 2018 Final Rule extended the current Target 1 sodium level requirement through school year 2023-24, postponed sodium Target 2 and eliminated sodium Target 3. The 2018 Final Rule requires that at least half of grain products be whole grain rich but removed the earlier requirement that all products be whole grain rich unless a hardship waiver is obtained.

The advocacy organizations contend that the Final Rule does not follow the Dietary Guidelines for Americans as required by federal legislation and that the USDA violated the public comment requirements of the Administrative Procedure Act, which governs how federal agencies create and adopt regulations.

After a proposed new rule was issued for public comment in 2018, SNA submitted a Comment Letter to the USDA. SNA's Comment Letter addressed the concerns of SNA members regarding the sodium and whole grain requirements contained in previous USDA regulations implemented in 2012. SNA reported that due to regional and cultural preferences, school meal administrators were struggling to meet the 100% whole grain requirement. SNA's Comment Letter also pointed out that 92% of school districts were concerned about the lack of available foods that meet the Target 2 and Target 3 sodium requirements, which could adversely impact participation, and that under current nutritional science there is a lack of evidence that Targets 2 and 3 are required or even beneficial for children.

When the USDA issued the Final Rule, the USDA stated that SNA's recommendations in the Comment Letter supported its decision.

SNA's core purpose is for all students to have access to nutritious school meals and to empower school nutrition professionals to advance the accessibility, quality and integrity of school nutrition programs. This mission compels SNA to support the Department of Agriculture's (USDA) efforts to implement regulations that strike a balance between nutritional requirements, the acceptance of school meals by students and the ability of school food authorities to provide meals at affordable cost.

SNA has been actively involved in rulemaking surrounding the sodium and whole grain requirements since 2008. SNA is uniquely positioned to comment on these regulations because its 58,000 members represent the vast majority of operators who provide meals under the National School Lunch Program (NSLP) and School Breakfast Program (SBP).

The palatability and cost of school meals have historically been considered as factors in designing NSLP and SBP regulations, in accordance with the original National School Lunch Act in 1946. The USDA is not required to merely track the Dietary Guidelines for Americans without considering the factors noted by SNA in its Comment Letter.

- Both the Dietary Guidelines and the Institute of Medicine's report on sodium and whole grain standards specifically list student tastes and palatability, availability of products, food costs and operational challenges as appropriate factors to consider in implementing regulations for sodium and whole grains.
- Neither the Dietary Guidelines nor the Institute of Medicine's report have the force of law. They are starting points for the USDA's analysis and provide goals, but do not tie the hands of the USDA in exercising its expertise and considering all relevant factors in issuing sodium and whole grain standards.
- Congress expressly indicated its intent that the sodium and whole grain requirements adopted in 2012 should be modified by twice passing Continuing Resolutions that temporarily implemented the same requirements as the Final Rule.

The USDA correctly followed the public comment requirements of the Administrative Procedure Act. The vast majority of public comments opposing the sodium and whole grains flexibility provided by the Final Rule were form letters resulting from 16 form letter writing campaigns conducted by advocacy organizations. USDA is not required to side with the majority of the public comments it received but instead must thoughtfully consider the comments it received. The quality – not the sheer quantity – of public comments matters most. Because SNA is recognized as the lead authority on school nutrition and the national forum for professionals working under the NSLP and SBP, due to SNA's members' direct experience with these programs, SNA's Comment Letter supporting the Final Rule is a more valuable perspective.

SNA urges the Court to grant the Motion for Summary Judgment submitted by the USDA, Secretary Sonny Perdue and Deputy Undersecretary Brandon Lipps and to uphold the 2018 Final Rule regarding sodium and whole grain requirements.