



September 24, 2013

Julie Brewer, Chief  
Policy and Program Development Branch  
Child Nutrition Division  
Food and Nutrition Service  
U.S. Department of Agriculture  
P.O. Box 66874  
Saint Louis, MO 63166

Dear Ms. Brewer:

The School Nutrition Association (SNA), a national, nonprofit professional organization representing more than 55,000 members who provide high-quality, affordable, nutritious meals to students across the country, is pleased to submit the following comments in response to the interim final rule published by the Food and Nutrition Service (FNS) in the June 28, 2013 edition of the Federal Register, entitled "Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010 (HHFKA)." These comments echo and expand upon our comments submitted on March 25, 2013 in response to the proposed rule published on February 8, 2013. We would like to state up front that the final rule should not include anything on which the public has not had adequate opportunity to provide comment.

While SNA strongly supports the purpose of the proposed rule, we know from experience that implementation will bring several challenges and that adjustments based upon actual experience may be warranted. Changes made after the fact are confusing and costly to all. Therefore, SNA encourages a delay of the implementation of these standards. Please consider year one of implementation as the preliminary phase during which stakeholders at all levels (national, state, and local) may collect data to assess the final impact of the rule. Delaying implementation would allow an opportunity for reasonable and responsible adjustments while analyzing the data to ensure decisions surrounding competitive foods are evidence-based. This preliminary implementation period would retain the integrity of the interim rule while providing optimal flexibility should it be needed in the future.

- SNA would like to reiterate the need for flexible and simple regulations at the national level that are consistent with the meal pattern guidelines in order to limit any additional burden with regard to implementation.
- State and local policies can and do have stricter recommendations. We acknowledge that schools can develop their own wellness policies that best fit their district needs.
- School Nutrition Directors make food-related decisions that are best for students.



- SNA believes school nutrition programs should be the primary food provider within school buildings and throughout the campus. This rule should be reviewed with this perspective in mind.
- SNA firmly believes that any product that can be used as part of the reimbursable lunch should be able to be sold as a competitive food without any further restriction.
- SNA is keenly concerned about the additional labor and financial burden of compliance with any new regulations. SNA would like to mitigate the undue burden of monitoring competitive foods by School Food Authorities (SFAs) as well as training non-SFA employees.
- SNA urges the establishment of an equitable level playing field between SFAs and other school food sellers such as stores, culinary arts programs, fundraisers, and vending machines.

**Our detailed comments follow:**

**Combination Foods:**

*Interim Final Rule:* The interim final rule requires that an allowable competitive food includes a “combination food that contains 1/4 cup of fruit or vegetable.”<sup>1</sup>

*SNA Recommendation:* SNA would like to reiterate that the current meal requirements for lunches and requirements for afterschool snacks provide that a minimum creditable serving is 1/8 cup. In order to maintain consistency with the existing rule, SNA recommends that the fruit or vegetable requirement for a competitive combination food be reduced to 1/8 cup.

**Exemptions:**

*Interim Final Rule:* The Interim Final Rule adopts an exemption for NSLP/SBP entrée items only. Side dishes served à la carte would be required to meet all applicable competitive food standards. The exemption for the entrée items is available on the day the entrée item is served in the NSLP/SBP and the following school day.<sup>2</sup>

*SNA Recommendation:* School Nutrition Professionals are charged by their local Boards of Education (BOE) or other governing bodies to operate the programs entrusted to them with nutritional, operational, and fiscal integrity and fidelity. Achieving these expectations requires School Nutrition Professionals to have the latitude to make menu decisions, many of which are precluded by the interim final rule. The expectation of most local governing boards is for the school nutrition program to generate the revenues necessary to be financially self-supporting. As a result, SFAs are expected to generate revenues beyond the Federal reimbursement in order to meet routine financial obligations such as salaries/benefits, food, equipment, and accountability-related technologies.

Extreme limitations on à la carte menu items, like entrées and side dishes that are consistent with the *Dietary Guidelines*, prevents SFAs from making menu decisions that may impact student participation and subsequently, revenues. When SFAs are unable to generate the revenues needed to support program

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<sup>1</sup> Interim Final Rule 7 CFR 210.11(c)(1)

<sup>2</sup> Interim Final Rule 7 CFR 210.11(3)(i)



operations, local governing boards are required to provide financial support by contributing funds that are typically earmarked for classroom or other academic purposes to the SFA's non-profit school nutrition account. This situation often places the SFA and the local governing board at cross purposes. While nutrition is the cornerstone of the school nutrition program, the elements of operating the "business" of school meals must be considered when making the decision to severely limit the SFAs ability to generate revenues required to sustain and operate the program in a fiscally-responsible manner. Therefore, we respectfully request USDA consider the nutritional, operational, and financial consequences of limiting à la carte items that meet the recommendations of the *Dietary Guidelines* before issuing food and beverage specific limitations.

#### **Frequency of Service:**

*Interim Final Rule:* This interim final rule adopts an exemption for NSLP/SBP entrée items only. Side dishes served à la carte would be required to meet all applicable competitive food standards.<sup>3</sup>

*SNA Recommendation:* As previously stated, SNA would like to emphasize that once an item, any item, is served that meets current meal pattern guidelines, it should be available for service without frequency restrictions. The proposed rule adds unnecessary and burdensome complexity for operators; it also poses significant financial challenges to many school districts that rely upon the sale of à la carte food and beverages to meet operating expenses. School nutrition personnel should not be restricted as to the frequency of serving specific items as long as those items adhere to the meal pattern guidelines and are consistent with the *Dietary Guidelines for Americans*.

#### **Naturally Occurring Nutrients:**

*Interim Final Rule:* This interim final rule implements a phased-in approach to identifying allowable competitive food under the general standard. This approach will allow three years for product manufacturers to reformulate their products, if desired, to qualify under the other criteria of the general standards. However, should the *2015 Dietary Guidelines for Americans* identify additional nutrients of concern applicable to school-age children, the Department anticipates allowing these additional nutrients to qualify products until that criterion is removed on July 1, 2016.<sup>4</sup>

*SNA Recommendation:* SNA would like to point out the cost and challenges for industry to reformulate. The way the interim final rule is written, these standards may only last for a few years. We would encourage waiting for the publication of the *2015 Dietary Guidelines* to be finalized before assessing which nutrients of concern would qualify. Otherwise, this poses undue burden to industry to reformulate products multiple times.

#### **Grains:**

*Interim Final Rule:* The Interim Final Rule adopts the standard as proposed which measures whole grains by weight or as the first ingredient.<sup>5</sup>

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<sup>3</sup> Interim Final Rule 7 CFR 210.11(k)

<sup>4</sup> Interim Final Rule 7 CFR 210.11(c)(2)(iv)

<sup>5</sup> Interim Final Rule 7 CFR 210.1(c)(2)(ii) and (e)



*SNA Recommendation:* As stated throughout our comments, the competitive foods rule needs to remain consistent with the standards set forth for the meal pattern. SNA still supports modifying the whole grain requirement to be consistent with current guidance provided in Memo SP10-2012ar6 Revised January 25, 2013. This guidance states:

**“1. How will schools identify whole grain-rich products?”** “Element #2 Food must meet at least one of the following: The whole grains per serving (based on minimum serving sizes specified for grains/breads in FNS guidance) must be  $\geq 8$  grams. This may be determined from information provided on the product packaging or by the manufacturer, if available.”

Again, given that food items may often appear on both the reimbursable meal menu as well as the à la carte menu, they should meet the same standard.

**Fats:**

*Interim Final Rule:* USDA extends an exemption to the total fat and saturated fat standards for part-skim mozzarella cheese as appropriate, as there is an FDA standard of identity for part-skim mozzarella cheese. The reduced-fat cheese (and now part-skim mozzarella) exemptions do not apply to combination foods.<sup>6</sup>

*SNA Recommendation:* SNA would like to reiterate that cheese is a good protein source and portion control would already be in place if meeting the meal pattern standards. Singling out this nutrient dense product regarding combination foods limits menu creativity and is inconsistent with the *Dietary Guidelines*. We want to restate the importance of maintaining consistency between competitive food standards and the requirements set forth for the operation of the National School Lunch Program to ease the burden of evaluating labels, menu design, training staff, and overall consistency in operations.

**Sodium:**

*Interim Final Rule:* Sodium content in snacks is limited to 230 mg per item as packaged or served. Entrée items must have no more than 480 mg of sodium per item as packaged or served, unless they meet the exemption for NSLP/SBP entrée items.<sup>7</sup>

*SNA Recommendation:* We urge USDA to not issue any sodium standard inconsistent with that required for the NSLP. Again, it would be impractical, if not impossible, to manage a different standard when some of the same food items may be served as either à la carte or among reimbursable meal selections.

**Calories:**

*Interim Final Rule:* The interim final rule retains the proposed calorie limits for snacks and side dishes as 200 calories per item as packaged or served and 350 for entrée items.<sup>8</sup>

*SNA Recommendations:* SNA does not support the 350 calorie limit for à la carte entrées as such limits are

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<sup>6</sup> Interim Final Rule 7 CFR 210.11(f) (3)(i)

<sup>7</sup> Interim Final Rule 7 CFR 210.11(k)(1)

<sup>8</sup> Interim Final Rule 7 CFR 210.11(i and j)



not consistent with standard procedures from HUSSC and IOM, and are not required if served as part of the reimbursable meal. SNA proposes an allowable calorie range for à la carte entrée items of 350-500 for Middle School and High School students with a weekly average of 450.

School nutrition operators are in the business of feeding healthy foods to children. Many times kids come through the lunch line and are not interested in a reimbursable meal. In some situations, shortened lunch periods make it impossible for students to select and consume their meal in the time allotted and return to class. In these situations, students need the flexibility offered by nutritious à la carte foods and beverages. It is important that healthy offerings are available that keep kids coming to the school cafeteria.

Student participation in the school nutrition programs is a critical measure of success. According to the School Nutrition Association's 2013 Back to School Trends Report<sup>9</sup>, declines in student participation are generally consistent across most district sizes and locations. Half of the School Nutrition Directors that responded to the survey reported smaller portions and calorie limits as a factor for this decline. The decline in participation was seen among all age groups, but most affecting high schools. Operators need flexibility in menu options that keep students satiated throughout the afternoon who may not choose the reimbursable meal.

Further, many states have wellness policies and regulations around serving à la carte items and competitive foods. SNA urges the competitive food policy to remain in line with the current meal pattern and allow states the flexibility to create their own policies as needed.

***For example -***

**TX:** Texas has restrictions around à la carte regarding portion sizes and fat limits.<sup>10</sup>

**CA:** For Middle and High School, CA requirements are 250 calories or less for snack; 400 calories or less for entrée.<sup>11</sup>

**CT:** Entrées sold as à la carte may have no more than the calorie content and serving size of comparable entrée items in the USDA meal pattern.<sup>12</sup>

**AZ:** Has a calorie limit in place of 300 for 'all other items' outside the reimbursable meal.<sup>13</sup>

**Breakfast Entrée Definition:**

*Interim Final Rule:* The Department requested further comment on this issue in the context of the totality of the competitive food standards set forth in this interim final rule.

*SNA Recommendations:* SNA would like to separate proteins and grains in defining components of the School Breakfast Program. Training staff on components to the school breakfast is too complicated. SNA seeks a definition that does not cause bread grains and protein to overlap in counting components.

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<sup>9</sup> School Nutrition Association, Back to School Trends Report, August 2013

<sup>10</sup> Texas Public Schools Nutrition Policy, effective February 26, 2009, 34 TexReg 1231

<sup>11</sup> California Nutrition Standards, CA current law SB 965

<sup>12</sup> Connecticut Nutrition Standards for Food in Schools, January 2011 published, taken into effect July 2011

<sup>13</sup> Arizona Nutrition Standards, Revised January 2007



### **Beverages:**

*Interim Final Rule:* USDA allows calorie-free beverages with a maximum container size of 20 fluid ounces and is also adopting proposed Alternative D1 for lower-calorie beverages, which allows up to 40 calories per 8 ounces and 60 calories per 12 ounces, with the maximum proposed 12 ounce limit.<sup>14</sup>

*SNA Recommendations:* SNA would like to reiterate our position that to be consistent with the standards established by the Food and Drug Administration there should be a modification to 80 calories per 12 ounce serving. The proposed guidelines, alternative D2 capped 12 oz beverages at 75 calories. SNA is requesting rounding to 80 calories to be consistent with FDA rounding rules.<sup>15</sup> SNA recommends that the same standards for beverages be applied regardless of the point of sale. For many school nutrition programs, beverage sales provide much needed revenue to support the preparation of healthy, nutritious meals. We would also like to point out that while the proposed rule does restrict the sale of several beverages in the meal service area during the meal service period, the beverage section of the table entitled “Proposed Competitive Food Standards” does suggest that the prohibition is during the meal service period, without restriction on location. Further, SNA would like to encourage utilizing two grade groups to ease implementation of the rule. An alternative option could be a waiver for those schools with overlaps in grade groups in order to ease implementation and utilize a common sense approach.

### **Fundraisers:**

*Interim Final Rule:* USDA believes that the most appropriate approach to specifying the standards for exempt fundraisers is to allow State agencies to set the allowed frequency. It is important to note that school districts may implement more restrictive competitive food standards, including those related to the frequency with which exempt fundraisers may be held in their schools, and further restrictions on the areas and times when exempt fundraisers may occur.<sup>16</sup>

*SNA Recommendation:* We urge USDA to provide guidance with respect to allowable “frequency.” We also suggest the definition require an official approval of fundraisers by a school authority as a part of a local wellness policy. Even though it is addressed by USDA, SNA is gravely concerned with the onus of monitoring and tracking fundraisers falling upon school nutrition departments. Many states have guidelines in place around fundraisers, for example TX<sup>17</sup> and CT.<sup>18</sup> SNA would prefer that this policy be managed through wellness policies and best practices as operationally, states and localities are more equipped to manage the fundraising process.

SNA supports the National School Board Association’s comments<sup>19</sup> on the proposed rule on this issue, where they state:

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<sup>14</sup> Interim Final Rule 7 CFR 210.11(m)

<sup>15</sup> Guidance for Industry: A Food Labeling Guide (16. Appendix H: Rounding the Values According to FDA Rounding Rules), October 2009

<sup>16</sup> Interim Final Rule 7 CFR 210.11(b)(4)

<sup>17</sup> Texas Public Schools Nutrition Policy, effective February 26, 2009, 34 TexReg 1231

<sup>18</sup> Fundraising with Foods and Beverages; Requirements for Complying with Sections 10-215f and 10-221q of the Connecticut General Statutes

<sup>19</sup> National School Board Association Public Comment on Proposed Rule, April 9, 2013 <http://www.nsba.org/Advocacy/Key-Issues/SchoolNutrition/Public-Comment-on-Nutrition-Standards-for-All-Foods-Sold-in-Schools.pdf>



NSBA urges the Department to allow LEAs to make the determination regarding the frequency of fundraisers that may be exempt from competitive food standards, as long as the determination is consistent with the district's Local School Wellness Plan (LSWP). PL 111-296 gives the Secretary discretion to exempt infrequent fundraisers from competitive food standards. The proposed rule identifies two options for implementing this discretion: 1) option E1 would allow State agencies the discretion to establish limitations on the number of exempt fundraisers that may be held during the school year, and 2) option E2 would allow State agencies to set exempt fundraising standards subject to USDA approval. Neither option grants maximum flexibility to LEAs, whose operations and finances are directly affected. At the same time, PL 111-296 expands requirements for development, implementation, assessment, and reporting on LSWPs and establishes new reporting requirements on the school nutrition environment generally. PL 111-296 also requires LEAs to designate one or more district officials or school officials, as appropriate, to ensure that each school complies with the LSWP. LSWPs set a high bar for school districts, and a determination of fundraiser frequency aligned with the district's LSWP allows flexibility at the local level while assuring a healthy nutrition environment for children.

#### **Accompaniments:**

*Interim Final Rule:* USDA acknowledges that pre-portioning of accompaniments could add some cost and complication to competitive food service in some schools. The rule removes the proposed requirement for pre-portioning of competitive food accompaniments but retains the requirement that accompaniments be included in the nutrient profile of foods. Schools may determine the average serving size of the accompaniments at the site of service (e.g., school district).<sup>20</sup>

*SNA Recommendation:* SNA does not support pre-portioning since it is cost prohibitive to food programs on both the labor and product fronts. SNA reverts to our earlier statements calling for a calorie range, which would allow for flexibilities among accompaniments. By utilizing SNA's suggested approach with regard to calorie ranges and weekly averages, this would afford more flexibility in terms of menuing.

#### **Recordkeeping and Monitoring Requirements:**

*Interim Final Rule:* The Department states that they do not necessarily expect the responsibility to rest solely with the nonprofit school food service. School food service personnel are expected to have a clear understanding of the nutrition profile of foods purchased using nonprofit school food service funds for reimbursable meals, à la carte offerings, etc. Local educational agencies are responsible for ensuring that all entities involved in food sales within a school understand that the local educational agency as a whole must comply with these requirements.<sup>21</sup>

*SNA Recommendation:* We encourage FNS to be mindful about the budget and labor constraints SFAs already face. Absent additional funding for this training activity, we expect many schools will be depending upon FNS to provide clear, concise, and helpful materials. Specialized technical assistance and guidance will be needed because many SFAs will effectively be put in a position of training people with little or no food service background or experience.

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<sup>20</sup> Interim Final Rule 7 CFR 210.11 (n)

<sup>21</sup> Interim Final Rule 7 CFR 210.11 (b)(2)



In addition we support the National School Board Association's comments<sup>22</sup> on this matter bringing to light the added burden to school officials which state:

*NSBA urges the Department to postpone implementation of the proposed record keeping and compliance burden that applies to LEAs until a study has been completed on the costs to school districts. The proposed rule requires LEAs to monitor compliance and maintain records for foods provided in areas outside of the control of the school food services operation. At a minimum, LEAs would be required to maintain receipts, nutrition labels or product specifications and to document compliance with competitive food standards in such locations as school stores, vending machines, concession stands, fundraising events on campus and snack bars. NSBA urges the Department to delay implementation until such time as there is 1) adequate data upon which to determine the operational and financial impact of implementation on LEAs, and 2) adequate resources to implement them in school food authority (SFA) budgets. The comprehensive study called for in Recommendation 2 above could provide valuable data from which to determine the financial and other resources need to comply with this provision.*

**Other Food Programs in Schools:**

*Interim Final Rule:* USDA recognizes that Career centers and culinary arts programs present a more challenging issue. These programs often make and sell foods to students. In recognition of the potential conflict of legislative intent, the Department is willing to consider each situation on a case by case basis, and provide a waiver where appropriate. State agencies are advised to contact FNS Regional Offices as situations arise.

*SNA Recommendations:* SNA encourages USDA to reach out to the Department of Education as this presents a unique opportunity to look at the curriculum of culinary programs. This could present an opportunity to have culinary education incorporate nutrition trends and to be in line with the *Dietary Guidelines for Americans*.

Again, we would like to simply emphasize the need for flexible and simple regulations at the national level that are consistent with the meal pattern guidelines in order to limit any additional burden with regard to implementation and look to states and local wellness policies as a logical place for stricter guidance. We appreciate the opportunity to provide comments and our ongoing partnership with FNS and other USDA agencies. We look forward to working with you in the days to come.

Sincerely,

Leah Schmidt, SNS  
SNA President

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<sup>22</sup> National School Board Association Public Comment on Proposed Rule, April 9, 2013 <http://www.nsba.org/Advocacy/Key-Issues/SchoolNutrition/Public-Comment-on-Nutrition-Standards-for-All-Foods-Sold-in-Schools.pdf>