



March 25, 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 meals to students across the country, is pleased to submit the following comments in response to the proposed rule published by the Food and Nutrition Service (FNS) in the February 8, 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)" (the proposed rule). Our comments are based on the comment period ending April 9, 2013. In the event USDA grants an extension of the comment period, SNA will submit additional comments if warranted.

SNA recognizes that the proposed rule is a starting point for important public comment. From the federal perspective this is a matter of first impression. SNA supports flexible and simple regulations at the national level, yet understands that state and local policies can and do have stricter recommendations. We also acknowledge that schools can develop their own wellness policies that best fit their district needs.

SNA believes that school nutrition programs should be the primary food provider within school buildings and property, and this proposed rule should be reviewed with this perspective in mind.

SNA is keenly concerned about the additional labor and financial burden of the compliance with any new regulations.

The comments that we offer in response to the proposed rule are based on several principles.

SNA believes that the rule, when implemented, should:

- Provide flexibility, simplicity, and minimum standards, consistent with the Meal Pattern Guidelines, limiting the additional burden as required by HHFKA.



- SNA 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.
- Establish a level playing field between SFAs and other school food sellers such as stores, culinary arts programs, fundraisers, and vending machines.
- Mitigate the undue burden of monitoring of competitive foods by SFAs as well as training non-SFA employees.
- Consider the diversity of school programs and the desirability of maintaining participation in the NSLP and the SBP.
- Provide nutrition education to children.
- Incorporate and integrate, when possible, the standards provided by the HealthierUS School Challenge (HUSC), the Institute of Medicine (IOM), the most recent edition of the *Dietary Guidelines for Americans*, current state competitive food laws, and current nutrition guidelines.
- Recognize that School Food Directors make nutrition decisions that are best for students.

Our detailed comments follow.

Need for an Interim Final Rule

SNA Recommendation – SNA urges USDA to issue an interim final rule subject to an additional comment period rather than a final rule. While SNA does strongly support the purpose of the proposed rule, we know from experience that implementation will face several challenges and that adjustments based upon actual experience may be warranted. An interim final rule subject to an additional comment period preserves the integrity of the effort while allowing an assured opportunity for reasonable and responsible adjustments.

Definitions

SNA generally agrees with the proposed definitions of “competitive foods,” “school day,” “school campus,” and “combination foods.” SNA believes that the proposed definitions are consistent across all USDA programs.

General Nutrition Standards for Competitive Foods

Combination Foods –

Proposed Rule - The proposed rule requires that an allowable competitive food includes a “combination food that contains $\frac{1}{4}$ cup of fruit or vegetable.”¹

¹ Proposed Rule at 7 CFR 210.11(c)(2)(v).



SNA Recommendation - SNA notes that the current meal requirements for lunches and requirements for afterschool snacks² provide that a minimum creditable serving is 1/8 cup. In order to be consistent with the existing rule, SNA recommends that the fruit or vegetable requirement for a competitive combination food be reduced to 1/8 cup.

Exemptions –

Proposed Rule - The proposed rule offers two alternatives by which any menu item provided as part of the NSLP or the SBP would be exempt from all or some of the proposed competitive food standards.³

SNA Recommendation - SNA does not support Alternative A1 as it adds another layer of complexity. SNA does support Alternative A2 because we believe it would provide standard nutrition guidelines across the board and maintain the positive message of healthy nutritious meals. Consistency between a la carte and reimbursable meal offerings also eases implementation for school nutrition professionals.

Frequency of Service –

Proposed Rule – The proposed rule would allow serving NSLP or SBP items as a la carte items on either the same day or within four days of reimbursable meal service.⁴

SNA Recommendation - SNA does not support either alternative as proposed because they remove control of inventory as well as managing food costs. Instead, SNA suggests that once an item is served that meets current meal pattern guidelines, it should be available for service without frequency restrictions. The proposed rule adds extra complexity and, in particular, Alternative B1/B2 appears to focus on leftovers. While SFAs are creative in finding ways to not have leftovers or to properly use them, it should not be a focus in the proposed rule. If a food item sold meets the current meal pattern, that same item will still be healthy and within the guidelines if sold on another day. Schools should be allowed to provide options within the current meal guidelines so as to maintain participation. Cafeterias should not be restricted to how often they can serve items if they meet the Meal Pattern Guidelines.

Naturally Occurring Nutrients

Proposed Rule - The proposed rule provides⁵ that food items must contain 10% of the Daily Value of a naturally occurring nutrient of public health concern: calcium, potassium, vitamin D, and dietary fiber, as a way for schools to encourage consumption of these nutrients.

² 7 CFR 210.10(c) footnote a.

³ Proposed Rule at 7 CFR 210.11(c)(3)(i) and (ii).

⁴ Proposed Rule at 7 CFR 210.11(c)(3).



SNA Recommendation - SNA does support providing food items containing 10% of naturally occurring micronutrients of concern, including fortification to obtain the 10%. Given the absence of standardized labels for these ingredients, SNA agrees that it would be difficult for schools to determine what percent of micronutrients may be from fortification. Finally, we do note that such ingredient requirements are not part of the NSLP or the HUSSC.

Fruits and Vegetables

Proposed Rule - The proposed rule provides that “Fresh, frozen and canned fruits and vegetables with no added ingredients except water or, in the case of fruit, packed in 100 percent fruit juice or extra light syrup.⁶ SNA is concerned that this standard is more stringent than the current standards in place for the NSLP and the SBP. The current standard allows fruit canned in light syrup, water or fruit juice, or dried.⁷ The current standard also provides that “Fresh, frozen or canned vegetables and dry beans and peas (legumes) may be offered to meet this requirement.”⁸

SNA Recommendation - SNA recommends that the standard for fruits and vegetables in the proposed rule be modified to align with those already in place for the NSLP and the SBP. Given that food items are often served as both a la carte and as components of the reimbursable meal, it is important to have the proposed standard be consistent with the meal standard already in place.

FNS Memo SP20-2012 - Revised September 11, 2012, provided that “most of the frozen strawberries, peaches and apricots offered by USDA currently contain added sugars” and “to recognize the time needed for industry to reformulate and to pack new frozen fruit products, schools may continue to serve frozen fruit with added sugar in the NSLP for SY 2012-2013 and SY 2013-2014.” Given this fact, we would urge that the proposed rule not impose a condition that FNS has already acknowledged industry is not yet able to meet.

Grain Items

Proposed Rule - SNA appreciates that the proposed rule for grain items⁹ measuring whole grains by weight or as the first ingredient is largely consistent with the NSLP Meal Pattern.

SNA Recommendation - The proposed rule needs to include all elements for identification included for the NSLP Meal Pattern. SNA supports modifying the whole grain requirement to be consistent with current guidance provided in Memo SP10-2012ar6 Revised January 25, 2013. This guidance provides:

⁵ Proposed Rule at 7 CFR 210.11(c)(2)(iv).

⁶ Proposed Rule at 7 CFR 210.11(d).

⁷ 7 CFR 210.10(c)(ii).

⁸ 7 CFR 210.10(c)(iii).

⁹ Proposed Rule at 7 CFR 210.11(c)(ii) and 7 CFR 210.11(e).



“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 ≥ 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 a la carte menu, they should bear the same standard.

Fats

Proposed Rule - The proposed rule provides that not more than 35 percent of the total calories per portion as packaged shall be derived from fat; that the saturated fat content of a competitive food must be less than 10 percent of total calories per portion; and that competitive foods must contain zero grams trans fat per portion as packaged (not more than 0.5 grams per portion).¹⁰ The rule also provides four exemptions.

SNA Recommendations –

1. To be consistent with other USDA programs including the NSLP, SNA recommends calculating only saturated fat and total calories. It would mean applying same standards across the program easing burden on school nutrition professionals and keeping costs level. Calculating saturated fat and calories limits will keep portion size appropriate and maintain the nutrition integrity of the School Nutrition Program.
2. SNA also recommends that the exemption for reduced fat cheese be changed to allow all types of cheese as calories will still be applicable and an effective way to deal with portion control.

Sugars

Proposed Rule - The proposed rule offers two alternatives for comment.¹¹ Alternative C1 provides that total sugars contained in a competitive food item must be not more than 35 percent of calories per portion. Alternative C2 provides that total sugars contained in a competitive food item must be not more than 35 percent of weight per portion.

SNA Recommendations –

1. SNA recommends consistency with other USDA programs including the NSLP. Absent that, SNA supports Alternative C2. HUSSC, the Alliance for a Healthier Generation, Industry and others are already calculating sugar by weight. Calculators to assist school nutrition professionals

¹⁰ Proposed Rule at 7 CFR 210.11(f).

¹¹ Proposed Rule at 7 CFR 210.11(i)(1).



already exist and it allows for greater flexibility. While SNA previously supported calculation by calories in 2008, USDA was not at the time using calculations by weight and it has become the standard. Therefore, we believe Alternative C2 is a better option.

2. SNA applauds USDA for including the three listed exemptions under Sugar involving dried whole fruits or vegetables as well as flavored and unflavored nonfat and low-fat yogurts.¹² SNA believes that the standards should include specific dried fruits that require nutritive sweeteners. We would urge that this list be maintained as guidance rather than as part of the rule so that USDA has the flexibility to modify the list as may be warranted without requiring a full rulemaking activity. The allowance of these dried fruits would be consistent with current regulations across USDA and the current Meal Pattern.

Sodium

Proposed Rule - The proposed rule limits snack and side items to not more than 200 mg of sodium per portion served¹³ and entrée items to not more than 480 mg sodium per portion served.¹⁴

SNA Recommendation - We urge USDA to not issue any sodium standard inconsistent with that being 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 a la carte or reimbursable meal selections.

Calories

Proposed Rule - The proposed rule limits snack and side items to not more than 200 calories,¹⁵ and entrée items to not more than 350 calories.¹⁶ Entrée items are exempt from this standard if the a la carte entrees are NSLP or SBP entrees as part of the reimbursable meal and are served in the same or smaller portion size as offered in the NSLP or the SBP.

SNA Recommendations –

1. SNA supports the 200 calorie limit for snacks and sides.
2. We also do not recommend having the same calorie limitations across all age groups as elementary students have different caloric needs than high school students.
3. SNA does not support the 350 calorie limit for a la carte entrees as such limits are not consistent with standard procedures from HUSSC and IOM, and are not required for entrees

¹² Proposed Rule at 7 CFR 210.11(i)(2).

¹³ Proposed Rule at 7 CFR 210.11(j).

¹⁴ Proposed Rule at 7 CFR 210.11(k)(2).

¹⁵ Proposed Rule at 7 CFR 210.11(j).

¹⁶ Proposed Rule at 7 CFR 210.11(k)(2).



served as part of the reimbursable meal. As many of the a la carte entrees are often the primary calorie source, we recommend a maximum of 400 calories.

4. SNA recommends that the rule include a definition of breakfast entrée. We urge using, as example of breakfast entrees, items that include 2 components, e.g. 2-ounce equivalents of grains, or 1-ounce equivalent of grain plus a 1-oz equivalent of protein.

Caffeine

Proposed Rule - The proposed rule requires that competitive foods and beverages served to elementary and middle school students must be caffeine free, with the exception of trace amounts of naturally occurring caffeine substances.¹⁷ The proposed rule does not include a similar restriction on caffeine served to high school students.

SNA Recommendation –SNA agrees with the standards that are being established for beverages including those established for high school students. However, we do have concerns about those schools that have blended grade ranges within the same building whereby elementary may be blended with middle school and middle schools may be blended with high schools. We would recommend additional guidance on how access can be provided to students without unfair restrictions due to combined buildings.

Beverages

Proposed Rule - The proposed rule suggests specific allowable beverages for elementary, middle, and high school students.¹⁸ The proposed rule goes on to offer two alternatives for the serving of other beverages to high school students outside of meal service area during the meal service period. Alternative D1 would allow 40 calories per 8 ounce serving of beverages, or no more than 60 calories per 12 ounce serving. Alternative D2 would allow 50 calories per 8 ounce serving of beverages, or no more than 75 calories per 12 ounce serving.

SNA Recommendations –

1. SNA supports the elementary beverage provision.
2. To be consistent with the standards established by the Food and Drug Administration, we support D2 with the modification to 80 calories per 12 ounce serving.
3. 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. To explicitly make certain beverages available outside of the meal service area during the meal service period invites students to

¹⁷ Proposed Rule at 7 CFR 210.11(l).

¹⁸ Proposed Rule at 7 CFR 210.11(m).



make those purchases outside of and to the detriment of the meal service area. If the alternative beverage is to be allowed, then it should be allowed regardless of the point of service. 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.¹⁹

4. In consideration of our partners such as school administrators, we urge using only two groups – elementary and secondary. Since many smaller districts can have 7-12 grades in one building, it would ease implementation of the proposed rule.

Fundraisers

Proposed Rule - The proposed rule provides an exemption from the proposed standards for food or beverages sold on school grounds during a limited number of fundraisers. The proposed rule offers two alternatives for how “a limited number of fundraisers” is to be determined. Alternative E1 allows State agencies total discretion on the number of exempt fundraisers that may be held during the school year. Alternative E2 would allow State agencies to set exempt fundraising frequency standards, subject to USDA approval.²⁰ The proposed rule does prohibit the sale of specially exempted fundraiser foods or beverages in competition with school meals in the food service area during the meal service.

SNA Recommendations –

1. SNA requests a definition of what is a school sponsored fundraiser. There are fundraiser events that are held on school property that are not “school sponsored,” and therefore may not be subject to the rule.
2. We support Alternative E2, and 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.
3. We also urge that non-compliant, exempted food and beverage fundraisers not be conducted during the school day, including fundraisers that provide free food/beverage items as a condition of a sale such as a free cupcake with the purchase of a t-shirt, class ring, or yearbook. Section 208 of HHFKA directs the Secretary to “consider” but does not mandate “special exemptions for school-sponsored fundraisers ... if the fundraisers are approved by the school and are infrequent within the school.” SNA believes that fundraisers held during the school day should be required to meet the same nutrition standards for all foods and beverages sold in schools. To not do so invites these fundraisers to be competitors with school meal programs, and impedes our ability to improve the recognition and acceptance of good nutrition practices.

¹⁹ 78 Fed. Reg. 9536 (February 8, 2013).

²⁰ Proposed rule at 7 CFR 210.11(b)(5).



4. SNA recommends exemptions for fundraisers not be included until the rules on penalties pursuant to Section 303 of HHFKA are promulgated and finalized. As it currently stands, SFAs are effectively held liable for violations of these proposed rules as part of the Administrative Review process, even if they have no control over those responsible for the violations. This is not a tenable situation. All state and local school authorities, including those responsible for exempted activities, should know their responsibilities before being allowed an exemption.

Accompaniments

Proposed Rule - The proposed rule requires that all accompaniments to a competitive food item be pre-portioned and the ingredients of the accompaniments must be included in the nutrient profile as a part of the food item served.²¹ They also must meet all of the nutrition standards for food.

SNA Recommendation – SNA does not support pre-portioning since it is cost prohibitive to food programs on both the labor and product fronts. Many programs already limit condiments via production records and due to excessive cost and calorie restrictions. This is consistent with current NSLP/SBP practice.

Recordkeeping and Monitoring Requirements

Proposed Rule - The proposed rule imposes recordkeeping requirements on local educational agencies (LEAs) for foods provided in areas outside of the control of the school food service operation, including for school stores, vending machines, concession stands, fundraising events held on campus, snack bars, etc.²² LEAs must require that, at a minimum, receipts, nutrition labels or product specifications must be maintained by those designated as responsible for competitive food service at venues throughout the school.

SNA Recommendations –

1. As part of these requirements, SNA is concerned about the need to train and educate non-SFA personnel as to how to comply with the regulation. 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 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. This is particularly difficult given that these other personnel are not under the SFA's authority.

²¹ Proposed rule at 7 CFR 210.11(n).

²² Proposed rule at 7 CFR 210.11(b)(3).



2. We also recommend that, with FNS assistance, States develop a hotline for handling compliance issues as it would alleviate time and labor burden for SFA staff during the transition time.

Availability of Water During Meal Service

Proposed Rule - The proposed rule requires that schools participating in the NSLP make potable water available to children at no charge in the place where lunches are served during the meal service, as required by Section 203 of HHFKA. The proposed rule also applies to afterschool snack service claimed through the NSLP.²³ While neither Section 203 nor the proposed rule require water be served as part of the SBP, the availability of water during all meal services is encouraged.

SNA Recommendation – SNA requests that USDA remove afterschool snack from this water requirement due to the complexity of service locations and service of snacks. The proposed regulation goes beyond what FNS has already put out in the current guidance memo, Memo SP10-2012ar6 Revised January 25, 2013.

Again, we appreciate this 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,

Sandra E. Ford, SNS
President

²³ Proposed rule at 7 CFR 210.11(a)(i) and (ii).