KIDS' SAFE & HEALTHFUL FOODS PROJECT

Promoting Safe & Healthy School Foods Now

April 9, 2013

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U.S. Department of Agriculture
P.O. Box 66874
St. Louis, MO 63166

Docket ID: FNS-2011-0019

Re: National School Lunch Program and School Breakfast Program: Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010

Dear Ms. Brewer:

OVERVIEW OF COMMENTS

The Kids' Safe and Healthful Foods Project strongly supports the U.S. Department of Agriculture's proposed rule addressing nutrition standards for all food and beverages sold in schools. The project, a collaboration between The Pew Charitable Trusts and the Robert Wood Johnson Foundation, aims to reduce childhood obesity and increase access to safe and healthful meals for our nation's schoolchildren. This proposal represents the strongest national nutrition requirements for competitive foods to date and reflects the evidence-based analysis put forth in the 2010 Dietary Guidelines for Americans (DGAs) as well as the Institute of Medicine's (IOM) 2007 report *Nutritional Standards for Foods in Schools: Leading the Way Toward Healthier Youth*. It is clear that in developing this proposed rule, consideration was also given to model, state, and local policies and the practical application of such guidelines. The project respectfully submits the following comments for your consideration.

We commend USDA for proposing strong standards that promote students' consumption of healthy foods, such as fruits, vegetables, whole grains, and nonfat and low-fat dairy products, as well as limiting calories, fat, sugar, and sodium in snack foods and beverages. We agree that the rule should apply to all foods and beverages sold throughout the school day (until at least 30 minutes after school ends), campus-wide, and to the amount of food and beverages sold as packaged (rather than based on serving size). These guidelines support what parents want—healthy food for their children—and the recently updated standards for school meals. There are certain areas of the rule that we urge USDA to consider strengthening:

- We urge USDA to ensure that all foods meet these criteria, including items sold a la carte in the cafeteria, regardless of whether they're sold in a regular school meal. Exceptions for entree items sold a la carte undermine the standards and create a loophole that will increase students' access to and consumption of less-healthy foods.

- Similar to reimbursable meals, we advise USDA to implement calorie limits for snack foods and beverages that are tiered based on grade level. Caloric needs change as children grow: 200 calories may be a reasonable limit for secondary school snacks, but 200 calories is a significant portion of the daily need of an elementary student. We propose a limit of 100 calories for snacks and side dishes in elementary schools (grades K-5), 140 calories in middle schools (grades 6-8), and 180 calories in high schools (grades 9-12). Given the multitude of 100-calorie snack packs currently available, there would be plenty of options at all grade levels.

- We agree with the rationale of offering some flexibility in beverage choices in high schools but are concerned that sugary drinks are far less healthy than other options. Sugar-sweetened beverages add calories with little or no nutritional benefit and reduce consumption of other, healthier beverage choices. To ensure that the healthiest options are available, we recommend limiting the number of calories per container to as low as possible.

WHY UPDATED STANDARDS ARE CRUCIAL TO PROTECTING CHILDREN'S HEALTH

Childhood overweight and obesity rates have more than tripled during the past 30 years, putting an increasing number of children at risk for health issues such as cardiovascular disease, depression, high blood pressure, Type 2 diabetes, breathing problems, sleep disorders, and high cholesterol.[1, 2, 3, 4, 5, 6] While a variety of factors are involved in the rise in the prevalence of obesity, the central challenge is that many children take in more calories than they burn, and a large percentage of those calories are consumed in school. Many children ingest up to half of their daily calories during the school day,[7] and 40 percent of all children eat or drink at least one competitive food or beverage.[8] These students take in an average of 277 calories a day from competitive foods at school. This is significant, especially considering that research indicates as little as 110 to 165 calories a day may have been responsible for the rise in childhood obesity from 1988 to 2002.[9] Given the important role school-based snack foods and beverages play in children's diets, it is imperative that competitive foods are held to strong nutrition standards.

Although national school meal standards were recently updated, federal competitive food regulations have not been revised since 1979. Nutrition science has evolved, and the current competitive food standards are no longer practical or consistent with current science, dietary patterns, and public health concerns related to child nutrition and obesity. Existing nutritional criteria for foods sold outside of meals address only "foods of minimal nutritional value," such as seltzer water, hard candy, and popsicles, and do not address calories, saturated fat, trans fat, sodium, or other key nutrients or food components of concern.

Over the years, many states and localities have recognized the need for stronger standards and adopted more stringent competitive food and beverage guidelines, yet nutritionally poor foods are still widely available in most U.S. schools. According to an analysis of state competitive food policies by the Centers for Disease Control and Prevention, 39 different state guidelines for competitive foods existed as of October 2010, and none fully met the standards recommended by the Institute of Medicine.[10] In fact, most state policies were only weakly aligned with the IOM recommendations.[11] During the 2009-10 school year, 76 percent of high school students, 63 percent of middle school students, and 47 percent of elementary school students could buy less-healthy snack foods at school.[12] Sugar-sweetened beverages, including sodas, sports drinks, and high-calorie fruit drinks, were also widely available to students of all ages.[13] Additionally, progress at the state and local levels to limit the availability of less healthy snack foods has stalled in recent years.[14]

Given the outdated federal standards and the existing patchwork of state and local policies, we applaud USDA for issuing this proposal. Not only will improving the school snack food environment promote children's health, it will also benefit school food service operators and administrators, providing them a consistent set of minimum standards with the option to further tailor and strengthen them to meet the needs of a particular community or population. In addition, many food and beverage manufacturers support the development and implementation of national nutrition standards that are consistent with the 2010 Dietary Guidelines for Americans. This proposed rule complements and supports the recently updated meal requirements that together will create a healthy school food environment for all children regardless of where they live.

It is also essential to note that the vast majority of parents support national standards for snack and a la carte foods; thus, efficiently finalizing this rule is critical. Our 2012 survey (attached) demonstrated that more than 80 percent of parents are concerned about childhood obesity and more than 50 percent are very concerned. They think it is important that we are working to address this serious public health threat. In fact, 80 percent of parents support national nutrition standards for snacks and a la carte foods in schools.[15]

As USDA's Food and Nutrition Service reviews comments on the proposed rule, we support several areas and offer suggestions for revising others to ensure the final rule is practical, can be successfully implemented by schools, and is aligned with the recently updated nutrition standards for school meals.

COSTS AND BENEFITS (Page 9531)

Despite concerns that switching to healthier foods and beverages will reduce revenue, school districts across the country have made these changes with little or no financial impact. Recent studies show that school districts are not likely to see a decline in overall revenue and in some cases may collect *more* money when implementing strong nutrition standards for competitive foods. This is largely due to a shift in student spending—students are more likely to purchase a reimbursable school meal than competitive food items when healthier standards are put in

place.[16, 17] School districts might experience an initial decline in revenue when strengthening nutrition guidelines; however, this typically reverses over time. A growing body of evidence from schools that have successfully made the transition suggests that they can have strong competitive food policies while maintaining financial stability.[18]

Another common misconception is that schools *need* to sell competitive foods to fund their meal programs. In reality, it's the other way around: Money earned through reimbursable school meals often fund a la carte foods. A 2008 national meal-cost study by USDA showed that revenue from competitive foods fell short of the cost of producing them by an average of 29 percent.[19] As a result, the average school uses revenue from its reimbursable meals to offset the cost of producing and selling a la carte and other non-reimbursable food items. Implementation of Section 206 of the Healthy, Hunger-Free Kids Act (HHFKA) will help correct this issue. It is estimated that school food service programs will bring an additional $7.2 billion in revenue over the next five years with more than 900,000 additional children participating in the school meal programs.[20]

Because the primary purpose of the proposed rule is to ensure that competitive foods are consistent with the most recent Dietary Guidelines for Americans, and thus held to the same criteria as school meals, it is likely that the updated standards will result in a significant improvement in public health. Recent research has found that the implementation of strong nutrition requirements for snack and a la carte foods and beverages will not only decrease students' access to, purchase of, and consumption of less-healthy foods and beverages, but also increase their access to, purchase of, and consumption of healthier options.[21] Even small changes to students' school-based diets—such as replacing a candy bar with an apple—may reduce children's risk of tooth decay, obesity, and chronic illness through decreased caloric, fat, and sugar intake at school. Further, with the clear link between poor diet and health problems such as childhood obesity, diabetes, and cardiovascular disease, improving the nutritional quality of all foods sold at school will likely produce significant long-term health savings for the nation.[22]

The Health Impact Assessment we conducted with the Health Impact Project (attached) found that with the proper support in place, schools can implement these standards without losing money. Thus, the assessment concluded that USDA should provide technical assistance to local education agencies and school food authorities to help with implementation. Such support may include:

- Partnering with other entities, such as the Department of Education, the Centers for Disease Control and Prevention, or other nongovernmental organizations that have an expertise in this area to provide technical assistance to these local officials.
- Sharing lessons learned from districts that have successfully made the transition to offer healthier competitive foods.
- Researching and distributing best practices for addressing common implementation issues, such as education, promotion of new items, revising purchasing and/or vendor contracts, and improving student acceptance of new items.

- Sharing ideas for nonfood fundraisers that were successfully used by student groups and school districts to generate revenue.
- Providing recommendations for schools and districts to consider for developing alternative revenue streams during the transition to healthier products.

Additionally, because research has shown that any potential revenue losses from competitive food sales can be offset by increased participation in the school meal programs, USDA should work with schools to increase enrollment and participation in the National School Lunch and Breakfast programs.

AVAILABILITY OF WATER DURING MEAL SERVICE (Page 9532)

We support the inclusion of measures to implement Section 203 of the Healthy, Hunger-Free Kids Act in this proposal, requiring that schools participating in the National School Lunch Program (NSLP) make potable water available to children at no charge in the place where lunches are served during the meal service. To date, USDA has provided guidance to schools on Section 203; however, this is only a first step in ensuring successful implementation. Through this regulatory process, USDA has an opportunity to create strong requirements for the new free-water provisions. As such, we urge USDA to strengthen the water requirements in the proposed rule to:

- Address the need for water to be "readily accessible without restriction" in addition to being "available."
- Expand the water requirement to include breakfast served in the school lunchroom.
- Require implementation by the time the snack food rules take effect.
- Include water requirement compliance in state agencies' administrative review responsibilities.

Water is essential to good health and, according to IOM recommendations, should be consumed with meals to meet daily needs.[23] In fact, drinking water is a simple, yet effective obesity-prevention strategy, and poor hydration impairs cognition, alters mood, and reduces physical activity.[24] Water provides zero calories and is a healthy alternative to caloric beverages. Thus, the surgeon general has promoted water consumption in schools as a tactic for combating obesity and supporting healthier drink options.[25]

According to the Dietary Guidelines for Americans, adequate water intake can be achieved when healthy individuals have regular access to drinking water and other beverages.[26] The combination of thirst and typical behaviors, such as drinking with meals, provides sufficient total water intake. Free drinking water must be readily accessible in schools at mealtime, and must be available in adequate quantities. Evidence has shown that water fountains in schools are sometimes inoperable, poorly maintained, and unhygienic, making overall water consumption inadequate.[27] Therefore it is imperative that USDA amend the proposed rule to not just include availability but also to reference accessibility. For example, we recommend that the final rule include a provision stating:

> Schools shall make potable water available and readily accessible without restriction to children at no charge in the place where lunches are served during the meal service.

Additionally, while the statute does not specifically require that potable water be available during service of the School Breakfast Program (SBP), USDA encourages the availability of water during all meal services in the proposed rule. Because the emphasis of this provision is on providing water "in the place where meals are served," we recommend that USDA expand the proposed rule to require that potable water be made available and readily accessible to students at all mealtimes in the meal service area, including breakfast. For example, we recommend that USDA add language providing:

> In the place where meals are served, schools shall make potable water available to children at no charge during the breakfast meal service.

Because the water requirements were mandated to go into effect no later than School Year 2011-12, USDA should require these updates be implemented immediately upon release of a final or interim-final rule. The department should continue to revise and strengthen guidance on this provision, and this process should be informed by feedback and findings from the implementation of this new requirement. USDA should also provide training and technical assistance encouraging a range of best practices to suit the needs of a wide variety of school situations.

Finally, state agencies should be responsible for monitoring compliance with the water standards as part of the administrative review process. This can be accomplished by adding a new review requirement, "The state agency shall ensure that the local educational agency complies with the water requirements outlined in § 210.10(a)(1)" as 7 CFR 210.18(h)(8) in the general areas of state agency administrative review responsibilities. As with other program violations, if a state agency determined during an administrative review that a violation of the water requirements had occurred, the local educational agency and school food authority would have to submit corrective plans to the state agency.

DEFINITIONS (Page 9534)

The Healthy, Hunger-Free Kids Act requires that these standards must apply to all foods and beverages sold to students outside of reimbursable school meals on the school campus during the school day. We support the proposed definitions for "competitive food," "school day," and "school campus" to support schools in implementing these standards.

USDA's definition of the school day as the period from the midnight before to 30 minutes after the end of the official school day is consistent with current policies in several states, including California, Louisiana, and Massachusetts. Because school times vary, it is appropriate and necessary for USDA to define the school day and for this to extend beyond classroom instruction time. Students are often in the school building before the first class begins and after the end of the last instructional period, even if just to walk to their locker, get their backpack,

and wait for the bus. Breakfast times are particularly variable, so establishing the midnight timeline provides simple and straightforward criteria to ensure that all foods available during this time meet the standards.

While the definition of "school day" as proposed does not cover afterschool activities, it is important that USDA encourage states and districts to apply the standards to afterschool events and activities in order to protect afterschool snack and supper programs. Thousands of U.S. schools have already started serving healthier snacks and beverages that meet stringent nutrition guidelines through the Alliance for a Healthier Generation's Healthy Schools Program. These standards apply to activities after the school day ends, such as clubs, bands and sports practices, and afterschool programs.

The statute clearly intended the standards to apply to the full school setting and to include venues serving foods and beverages outside the cafeteria. Thus, we support USDA's definition of "school campus" as all areas of the property under the jurisdiction of the school that are accessible to students during the school day. Vending machines are often located throughout the campus, and school stores may operate near the cafeteria. Further, most foods and beverages students buy during the school day are purchased on campus. Currently, 90 percent of schools across the United States have a closed-campus policy; this includes a majority of high schools. Only 30 percent of high schools have an open-campus policy that allows students to leave during the lunch hour.[28, 29] Therefore, it is imperative that these standards apply to all items sold on the campus during the school day.

GENERAL NUTRITION STANDARDS FOR COMPETITIVE FOODS (Page 9535)

We strongly support USDA's proposal to rely on a food-based approach for snack and a la carte foods and beverages. By emphasizing foods that make a meaningful contribution to a healthful diet, the proposed regulations stay true to the basic premise of the Dietary Guidelines for Americans: that nutrient needs should be met primarily by consuming nutrient-dense foods. In addition, this approach is consistent with the new school meal patterns and other evidence-based recommendations, including the Institute of Medicine's 2007 Nutrition Standards for Foods in Schools.[30]

NATIONAL SCHOOL LUNCH/BREAKFAST PROGRAM ENTREES AND SIDE DISHES SOLD A LA CARTE (Page 9537)

The Healthy, Hunger-Free Kids Act stipulates that the nutrition standards for competitive foods and beverages should apply to all foods and beverages sold on campus throughout the school day. Therefore, we do not support exemptions for a la carte items from the nutrition standards as proposed in the rule. Any item sold a la carte that is also included as part of a school meal should be required to meet the same standards as other competitive foods.

Allowing the sale of any foods that are inconsistent with the standards is not allowed under the statute. This not only undermines the efforts of parents to provide healthy food options to

children, but also undercuts one of the key purposes of the rule: ensuring "that children are provided with healthy food options throughout the school day."

The vast majority of students have access to a la carte options. According to the latest data from the School Nutrition Dietary Assessment Study-IV, a la carte foods and beverages are available in more than 75 percent of elementary schools and 90 percent or more of middle and high schools.[31] By exempting meal items in a la carte lines, millions of students could have access to foods every day that are higher in fat, calories, sugars, and sodium than the standards allow. In fact, USDA estimates in the proposed rule that 93 percent of competitive food sales are through a la carte.

The exemption alternatives put forth in the proposal focus on entree items and side dishes provided as part of the National School Lunch or School Breakfast programs. School meals are carefully designed by school food service professionals to contain items that when served together create a balanced meal that includes key nutrients while controlling for calories, fats, sugars, and sodium. When planning meals, school food authorities average the nutritional components of all food items included in lunch or breakfast meals over the week. This allows individual foods that exceed caloric, fat, sugar, and sodium limits to be included in a reimbursable meal when paired with healthier side dishes. When such items are sold individually, students get the negative nutrition components (fats, calories, etc.) without receiving the positive nutrients from the other meal components. Research shows that the a la carte entree-type items served most often in schools are pizza, burgers, and breaded chicken patties.[32] Entree items such as these provide an estimated one-third of the total calories and at least 40 percent of the saturated fat and sodium in a typical lunch.[33] If they are offered as a la carte options, they create an opportunity for children to get multiple servings of these items and thus far more calories, fat, and sodium than is healthy. To exempt these foods would create a large loophole in the national competitive food standards, undermining children's diets, the goals of the rule, and the Healthy, Hunger-Free Kids Act.

While we recognize the importance of consistency between the foods served in meals and a la carte, this can be achieved without exempting a large number of a la carte items from nutrition standards. Meal items sold as a la carte options should be required to meet the same standards as all other competitive foods. These individual items should then easily fit into the healthful school lunch and breakfast program menus, allowing for consistency and flexibility for school food authorities while also safeguarding children's health. Additionally, leftover items from meals would be allowed to be sold a la carte any time without the need for a special exemption.

As mentioned previously, the HHFKA clearly states that all foods sold outside of meals must meet the national nutrition standards.[1] A legal analysis by ChangeLab Solutions' National Policy and Legal Analysis Network to Prevent Childhood Obesity concluded that the law expressly requires USDA to set nutrition standards for all foods sold on school campuses at any time

[1] Healthy, Hunger-Free Kids Act of 2010, Pub. L. No. 111-296, 124 Stat. 3183 (2010).

during the day.[34] This would imply that USDA must apply the nutrition standards to all a la carte foods, including those items that are also sold as a part of the school lunch and breakfast programs.

For the reasons cited above, we strongly urge that no exemption be given to meal items sold as a la carte options. However, assuming for the sake of argument that USDA decides to go forward with an exemption despite the legal and other concerns noted above, we urge the department to consider, at a minimum, a modified version of Alternatives A1 and B1. This new option is a logical outgrowth of the proposal, and would:

- Require all items to meet limits on fat, sugars, and sodium (sodium limits could be phased in similarly to the meals).
- Allow only on the day the item is served in the meal and the following day.

These changes would provide flexibility for school food authorities, allowing service of leftover entrees, without compromising children's health to the same extent as the broader exemptions. Such an exemption might read:

> (3) Exemption.
> (i) Entree-type menu items provided as part of the NSLP or SBP reimbursable meal are exempt from these competitive food standards with the exception of the standards established for total fat, sugars, and sodium, as specified, on the same day that they are offered as part of the reimbursable school meal and on the day immediately following their service as part of the reimbursable school meal. Such menu items shall be served in the same or smaller portion sizes as in the NSLP or SBP to be allowable.

We strongly oppose Alternative B2, because it would allow items that do not meet the standards to be served almost every day. For example, if a school uses a one- or two-week rotating menu that includes "Pizza Friday," pizza that does not meet nutrition standards could be sold a la carte every day.

NATURALLY OCCURRING NUTRIENTS AND COMBINATION FOODS (Page 9537)

We strongly support the requirement that foods sold must provide a positive nutritional benefit to students. Specifically, we support the condition that foods contain at least 10 percent of the Daily Value of a naturally occurring nutrient of public health concern (i.e., calcium, potassium, vitamin D, or dietary fiber). The list of these nutrients should be reviewed and updated in accordance with updates to the Dietary Guidelines for Americans but not expanded for any other reason.

Limiting the nutrients to those naturally occurring will promote the intake of foods closer to their whole, natural state, which is recommended in both the DGA and the Institute of Medicine's 2007 report on competitive foods. The Dietary Guidelines for Americans state that "Ideally, nutrient-dense foods are in forms that retain naturally occurring components such as dietary fiber." The nutrient density of fruits, vegetables, and low-fat dairy products cannot be

duplicated by simply adding vitamins or minerals to nutrition-poor snack foods. For example, whole grains contain not only higher levels of dietary fiber than refined grains do, but also contain other micronutrients and phytonutrients that would not be found in refined grain products to which manufacturers have simply added 10 percent of the Daily Value of fiber.

There is no need to expand the list of nutrients to include ones that are not of public health concern, nor is there any basis for it. Doing so would dilute the rule's focus on food groups and nutrients to encourage, as identified in the Dietary Guidelines for Americans, but also would be inconsistent with current nutrition recommendations. While the Food and Drug Administration has recognized that fortification "can be an effective way of maintaining and improving the overall nutritional quality of the food supply,"[35] the agency also recognizes that fortification could "result in over- or under-fortification in consumer diets and create imbalances in the food supply."[36] Crediting nutrients added through fortification could lead food manufacturers to add nutrients to foods that would not usually be sources of a nutrient and could lead to nutrient imbalances, as well as overconsumption of calories, fat, sugar, and sodium. As stated in the proposed rule, limiting nutrients to those naturally occurring in the food will reduce the overconsumption of products for which nutrients of concern have been added during processing or packaging.

The final rule should be written so that nutrients of concern would be based on the most recent DGA, allowing specific nutrients to be updated in coordination with subsequent iterations.

We support one exemption to the condition that foods contain at least 10 percent of the Daily Value of a naturally occurring nutrient of public health concern—sugarless gum. Sugarless chewing gum does not provide calories and has been shown to protect high-risk children from dental caries. Given the potential oral health benefits and lack of nutritional concerns, USDA should not restrict this item, but rather let localities decide whether to sell it.

To assist with implementation of this provision, USDA's Food and Nutrition Service should provide training and technical assistance for school food service operators and others responsible for competitive food management within schools to determine if a nutrient in a product is naturally occurring or if it has been fortified. Guidance should include instruction on how to determine whether a nutrient has been added to a product, such as by reviewing the ingredient list, as well as examples of products that are naturally good sources of nutrients of concern (in this version, vitamin D, calcium, potassium, and fiber). Further, USDA should provide information about keywords to look for in the ingredient list that are likely sources of added nutrients.

In addition, food manufactures should be encouraged to provide information about the products that meet, or do not meet, this provision. Finally, USDA should work with FDA as it revises the Nutrition Facts panel to ensure that all nutrients of public health concern are listed, including potassium.

FRUITS AND VEGETABLES (Page 9537)

We support the exemption of fresh, frozen, and canned fruits and vegetables with no added ingredients (except water)—or, in the case of fruit, packed in 100 percent juice or extra-light syrup—from all of the nutrient standards included in this rule. Also, we recommend that USDA expand the exemption for canned fruit to include fruit packed in light syrup as well as extra-light syrup. There is little difference in total calories and sugars of fruits packed in light syrup versus those packed in 100 percent fruit juice. Such an exemption is consistent with both the Dietary Guidelines for Americans and the 2007 IOM recommendations to increase the consumption of fruits and vegetables by children.

GRAIN ITEMS (Page 9537)

We support the requirement that to qualify as an allowable competitive food, grain products must either contain at least 50 percent whole grains by weight or have whole grains listed as the first ingredient. This is consistent with the National School Lunch Program standards and aligns with the DGA, which recommend that at least half of total grains consumed be whole grains. Consumption of whole grains by children is significantly lower than current recommendations, with children ages 4 to 18 consuming, on average, less than one serving a day.[37] This requirement will help to ensure children are consuming more whole-grain-rich products.

To assist with implementation of this provision, we urge USDA to work with FDA to require whole-grain labeling, which would significantly reduce the burden on school food service operators of identifying whole grains. USDA should also work with industry and stakeholders to ensure that program operators can identify and procure affordable whole-grain-rich foods.

FATS/SATURATED FATS/TRANS FATS (Page 9537)

We support the proposal to limit total fat, saturated fat, and trans fat as part of comprehensive nutrition standards for competitive foods. The proposed limits are consistent with National School Lunch Program meal pattern standards, as well as 2007 IOM and the DGA recommendations.

Limiting total, saturated, and trans fats is associated with reduced risk of cardiovascular and other chronic diseases. By limiting total fats, students can increase intake of nutrient-dense foods without exceeding overall calorie needs. The Dietary Guidelines for Americans indicate that dietary patterns with low caloric density, or the amount of calories provided per unit of food weight, may help reduce caloric intake and improve body weight outcomes.[38] Similarly, the DGA indicate that consuming less than 10 percent of calories from saturated fatty acids is correlated with low blood cholesterol levels and a lower risk of cardiovascular disease.

The Dietary Guidelines for Americans recognize that multiple studies have also identified an association between trans-fatty acid intake and increased risk of cardiovascular disease. Given

that natural trans-fatty acids are present in meat and milk products from grazing animals, a complete elimination of trans fat would have unintended consequences for nutrient adequacy. Thus, the proposed standard of no more than 0.5 grams of trans fat per portion as packaged is consistent with the Dietary Guidelines for Americans and practical for school food authorities to implement.

Because some food items have a naturally higher fat content than others, we recognize the importance of some exemptions to the standards. The exemption from the total fat and saturated-fat limitations for reduced-fat cheese is consistent with the DGA and is likely to limit consumption of full-fat cheese, which is the highest contributor of saturated fat in the American diet (9 percent total saturated fat intake). Additionally, we support the exemptions to total fat limitations for nuts and nut butters given the healthy fat profile and positive nutritional benefits of these products, provided they meet other applicable limitations. We also agree that these exemptions should not extend to combination products that include reduced-fat cheese and nuts/seeds and nut/seed butters. We do suggest that USDA clarify that combination products including reduced-fat cheese are not exempt from the fat standards. In addition, we fully support the proposed fat exemptions for dried fruit-and-nut combination products, which contain no added nutritive sweeteners or fats, and for seafood provided these combination products are still subject to other proposed standards.

SUGARS (Page 9538)

Of the two alternatives provided in the proposed rule regarding total sugars in foods, we support C1, allowing no more than 35 percent of calories from total sugars in foods. This standard is consistent with the Institute of Medicine's Tier 1 recommendation[39] and is the limit for total sugars recommended in our Health Impact Assessment.[40] A standard based on calories is more consistent with the science than one based on weight. Concerns about sugar consumption relate in large part to the excess calories that sugars provide and their contribution to obesity. Excess sugar consumption increases the risk for obesity, diabetes, associated chronic diseases including heart disease and cancer, and dental caries.

The DGA recommend reducing consumption of added sugars; and limiting sugars based on percentage of calories as opposed to percentage by weight is a more effective way of doing this. A limit on sugars by weight would allow a number of sugary foods to be sold that would be excluded using a limit based on percentage of calories, including some ice pops, fruit snacks, ice cream, pudding, granola bars, and snack cakes. For example, a 70-gram ice cream sandwich made with light ice cream that has 130 calories would be allowed to have 24 grams of total sugars under a 35 percent-by-weight sugar standard. However, the limit for total sugars would be less than half the amount—only 11 grams—under a 35 percent-of-calories sugar standard.

As such, we support the proposed exemptions from the sugar standard for fresh, frozen, and canned fruits and vegetables with no added sweeteners; dried fruits and vegetables with no added nutritive sweeteners; canned fruits packed in 100 percent juice, light or extra light syrup, and low- and nonfat yogurt with less than 30 grams total sugars per 8 ounces. For the yogurt

exemption, we recommend that the 30 grams per 8-ounce limit for total sugars be scaled proportionately by serving size. For example, a 6-ounce yogurt, a serving size commonly found in schools, would be required to have no more than 22 grams total sugars to qualify. We also recommend that USDA provide an exemption for fruit packed in light syrup. Additionally, USDA should consider exempting from the sugar standard canned fruits and vegetables with small amounts of sugars added during canning to maintain the structural integrity of the food. Such an exemption is allowed in the Women, Infants, and Children food package.[41]

We do not, however, support exemptions for dried fruits, such as cranberries, that are processed with added sugar. These products should be required to meet standard (c)(2)(iii), (c)(2)(iv), or (c)(2)(v) and all of the nutrient standards before being sold in schools.

Added sugars have many adverse effects, and nutrition standards should focus on them, rather than on naturally occurring sugars. A recent meta-analysis found consistent evidence for adults that changing intake of dietary sugars is associated with corresponding changes in body weight.[42] Youth with the highest sugar intakes also had a higher body weight or greater adiposity than youth with the lowest intake.[43] Most sugars consumed by study participants were added sugars. The major sources of added sugars in the diets of youths 2 to 18 include soda and fruit drinks (36.8 percent), grain-based desserts (10.9 percent), dairy-based desserts (7.9 percent), and candy (6.8 percent).[44] On average, youth consume 433 calories from added sugars a day,[45] more than 25 percent of the total recommended caloric intake for a sedentary 9- to 10-year-old boy or 11- to 13-year-old girl.[46]

The American Heart Association recommends that most children and adolescent girls consume no more than 20 grams (80 calories) of added sugars a day and that adolescent boys consume no more than 33 grams (132 calories) of added sugars a day.[47] The *American Cancer Society Guidelines on Nutrition and Physical Activity for Cancer Prevention* also recommend limiting consumption of foods high in added sugars, such as cakes, candy, cookies, sweetened cereals, and sugar-sweetened beverages such as soda and sports drinks, which promote obesity and indirectly increase cancer risk.[48]

Ideally, USDA should set a sugar standard based on added sugars, rather than total sugars. However, because added sugar is not included on the Nutrition Facts label, it would be difficult for school nutrition directors and other school staff to implement. If added sugars do become a required component of the nutrition panel, USDA should amend the rule to apply specifically to added sugars, rather than total sugars. With an added sugars standard, exemptions for certain fruits and yogurts with a large amount of naturally occurring sugar would not be needed.

SODIUM (Page 9538)

We support the sodium limits established for non-National School Lunch/School Breakfast snack items (200 milligrams or less) and for entrees outside the national meal programs (480 mg or less). These new limits will contribute significantly to sodium reduction in the school

environment and complement the gradual reduction that is happening in the school meal programs.

There is a growing prevalence of high blood pressure in American children that is linked to increasing obesity rates, high sodium intake levels, and high-calorie diets.[49, 50] Children are consuming salt in amounts that far exceed the recommended daily limits.[51] The Dietary Guidelines for Americans recommends less than 2,300 mg a day for many Americans and an even lower level, 1,500 mg, for certain populations, including people older than 51, all African Americans, and people with hypertension, diabetes, and chronic kidney disease. While the Guidelines have long recommended reducing sodium in the diet, the estimated average intake of Americans 2 and older is 3,600 mg a day.[52] It has been estimated that a national public health strategy to reduce daily salt intake by 1,200 mg of sodium (to near Guideline-recommended levels) could reduce the number of deaths annually from heart disease, stroke, and heart attack by 150,000 and reduce health care costs by $1.5 trillion over 20 years.[53] Additionally, a more recent study showed that reducing sodium consumption to recommended levels could save 280,000 to 500,000 lives in the United States over a decade.[54] Because many children consume up to half of their calories during the school day, USDA's proposed sodium limits will help reduce the current high intake of sodium in children's diets.

Children, at an early age, are becoming accustomed to high levels of sodium in processed and restaurant foods. Developing this high salt preference may result in a lifetime of difficulty adjusting to foods with healthier levels of sodium. However, the preference for salty taste can be changed. Evidence shows that a decrease in sodium can be accomplished successfully without affecting consumer satisfaction of food products, if it is done in a stepwise manner that systematically and gradually lowers sodium.[55] USDA's gradual sodium reduction in the school meal programs combined with the proposed sodium limits for competitive food items follows such an approach.

CALORIES (Page 9539)

We support the need for calorie limits for snacks and side dishes, but propose that USDA consider a tiered approach based on grade level. Younger students have lower calorie needs, so we recommend that USDA set competitive food calorie maximums at 100 calories for snacks and side dishes in elementary schools (grades K-5), 140 calories in middle schools (grades 6-8), and 180 calories in high schools (grades 9-12). Additionally, entree items should be limited to 300 calories at elementary and middle schools and 400 calories at the high school level.

With one in three children in the United States overweight or obese, it is important that children do not receive excess calories during the school day and that the calories they consume come from nutrient-rich foods. Excessive caloric intake leads not only to weight gain and obesity, but it also puts children at increased risk for health problems such as cardiovascular disease, depression, hypertension, and diabetes. As little as 110 to 165 calories a day may have been responsible for the increase in childhood obesity between 1988 and 2002,[56] and children that consume snack foods at school are eating, on average, 277 calories a day

from these foods.[57] This indicates that the foods children eat in school do matter. In fact, states that have issued strong nutrition standards for competitive foods have seen a reduction in students' weight gain.[58]

Children have different caloric needs as they grow; therefore, calorie limits should be tiered based on age/grade level. For low-activity students,[2, 59] the DGA estimate that daily calorie needs range from 1,200 at the elementary school level to 2,400 calories for high school-age boys. Because of this variation, USDA issued calorie ranges for National School Lunch Program meal standards that increase by school level (550 to 650 calories in elementary school lunches, 600 to 700 calories in middle school lunches, and 750 to 850 in high school lunches). This same logic should apply to competitive foods. Two hundred calories is a much greater proportion of daily caloric needs for an elementary school student than for a high school student. In a recent analysis, experts recommended setting caloric maximums for school-based snack foods at 100 calories in elementary schools, 140 in middle schools, and 180 in high schools.[60]

In addition, thousands of U.S. schools have already successfully implemented tiered calorie maximums for snack foods. More than 14,000 schools are working toward the voluntary guidelines set by the Alliance for a Healthier Generation's Healthy Schools Program and nearly 1,000 have achieved them. The Alliance's guidelines call for a 150-calorie limit on snack foods in elementary schools, 180 in middle schools, and 200 in high schools. While some snack food manufacturers may choose to repackage their products to meet the tiered calorie limits, plenty of snack options are available in various portion sizes. A number of 100-calorie packs are available, and even more snack options would be allowed at the higher grade levels.

We recommend that USDA set competitive food calorie maximums for snack items and side dishes at 100 calories for snacks and side dishes in elementary schools (grades K-5), 140 in middle schools (grades 6-8), and 180 in high schools (grades 9-12). Entrees outside of the national meal programs should be limited in the same way. Entree items should be limited to 300 calories for elementary and middle schools and 400 calories for high schools. This is a compromise that provides more appropriate calorie limits while still allowing for flexibility at middle and high schools.

BEVERAGES AND CAFFEINE (p. 9539)

<u>Water, juice, milk</u>

We generally support the provisions in the proposed rule addressing water, juice, and milk, and setting corresponding portion sizes for competitive beverages. It is important to provide "plain water" in any serving size at all grade levels, and we support the proposed milk standards and portion sizes for elementary, middle, and high schools.

However, we do propose the following revisions:

[2] Physical activity trend data for children are limited, but a report by the U.S. Department of Health and Human Services states that cross-sectional data indicate that one-third of adolescents are not getting recommended levels of moderate or vigorous activity, 10 percent are inactive, and physical activity levels fall as adolescents age.

- Provide clarification that "plain water" includes fluoridated water.
- Allow juice diluted with water at all school levels.
- Allow juices and carbonated water to be available in schools, with appropriate portion size restrictions:
    - 100 percent juice and 100 percent juice plus water in portion sizes of 8 ounces for elementary students and 12 ounces for middle and high school students.
    - Carbonated water, without additives, in elementary and middle schools. Adding carbonation to water does not reduce its nutritional value and should be allowed at all grade levels. This change would be consistent with the proposed rule's elimination of standards for foods of minimal nutritional value and the encouragement to provide water to all students.

Additional considerations

We oppose an exemption for any juices with added sweeteners, such as cranberry juice cocktail, which some argue should be exempted because cranberries may treat or prevent urinary tract infections. Urinary tract infections affect only 3 percent of children in the United States every year,[61] yet one-third of children in the United States are overweight or obese.[62] In addition, most children consume four to six times more added sugars than the maximum recommended daily amount.[63] With so many 100 percent juice cranberry blends available, we see no need to exempt cranberry juice cocktail.

Providing an exemption for one type of juice would likely lead other companies and commodity groups to ask for exemptions as well. It would create an undue burden on USDA to evaluate the health claims of such products.

<u>Sugar-sweetened beverages</u>

We strongly support the elimination of all sugar-sweetened beverages from elementary schools and middle schools, as well as the elimination of full calorie sodas and other sugary drinks from high schools. We support some flexibility with caloric beverages in high schools with the following recommendations:

Allow:
(vi) Calorie-free, flavored, and/or carbonated water (no more than 20 fluid ounces).
(vii) No more than 20-fluid-ounce-servings of other beverages that comply with the FDA requirement for bearing a "calorie free" claim of less than 5 calories per serving
(viii) Other beverages that contain few calories per container.

Sugary drinks are a top source of calories in U.S. diets. The 2010 DGA recommend that all Americans reduce their consumption of added sugars and to keep added sugar intake at 15 percent or less of total calories. Over the past three decades, children and adolescents have significantly increased their consumption of sugar-sweetened beverages,[64] which account for 10 to 15 percent of children's daily energy intake or 100 percent of reasonable sugar intake for the entire day.[65, 66] Consumption of these beverages is associated with excess weight gain, poor nutrition, displacement of healthful beverages, and a higher risk for obesity and diabetes.[67]

Research has found that replacing a 12-ounce sugar-sweetened beverage with water in students' diets could reduce their energy gap—the difference between energy intake and expenditure—by 150 calories a day.[68] In addition, recent research has demonstrated that calories from beverages do not contribute to feelings of fullness; thus, they often do not replace calories from food.[69, 70] Therefore, USDA should set calorie limits for beverages as close to zero as is practical to reduce students' likelihood of excess caloric consumption.

Support for the elimination of full-calorie sodas in all schools is widespread, as evidenced by industry's commitment in 2006 to eliminate sales of such beverages in schools, and the many state and local policies that eliminate full-calorie soft drinks. However, sports drinks and other midcalorie drinks are widely available in schools.[71] As a result, children are drinking more sports drinks in greater volume than in years past. From 1989 to 2008, the percentage of American children ages 6 to 11 consuming sports drinks increased significantly, from 2 percent to 12 percent. The amount of sports drinks consumed by these children also increased per day during the same time frame, from 255 milliliters per day to 289 ml.[72]

Although sports drinks have fewer calories than full-calorie sodas, they can be a significant contributor to added calories and are not generally necessary for hydration. The 2010 DGA recommend consuming water and other fluids with few or no calories for adequate hydration. The Academy of Nutrition and Dietetics recommends water as the best and most economical source of fluid for activity lasting less than an hour for adolescent athletes in organized sports.[73]

The American College of Sports Medicine's position on exercise and fluid replacement states, "During exercise lasting less than one hour, there is little evidence of physiological or physical performance differences between consuming a carbohydrate electrolyte drink and plain water."[74] The Institute of Medicine and the American Academy of Pediatrics conclude that sports drinks are unnecessary for students engaged in routine physical activity.[75, 76]

We believe it is important to ensure that healthy beverages are available in schools, and at the same time we support allowing choices, particularly at the high school level. However, the choices available should be required to meet sugar and calorie limits that will help students stay within the recommended caloric and sugar intake for the day. FDA defines low-calorie beverages as those with 40 calories or less per reference amounts customarily consumed. A recent report by a panel of scientists recommended that beverages, not including low-fat milk and fruit juice, be limited to 40 calories per container for youths ages 14 to 18.[77] Since any serving available in a vending machine or school store would be intended to be a single serving, one option would be to allow no more than 40 calories per container (rather than per 8 ounces with a 12-ounce portion cap). This would allow for more flexible portion sizes for lower-calorie drinks while capping levels at the moderate 40 calories, regardless of portion size.

Caffeine/energy drinks

We support USDA's proposal to require beverages in elementary and middle schools to be caffeine-free with the exception of trace amounts of naturally occurring caffeine substances, as is consistent with the Institute of Medicine recommendation.

Given the current challenges with assessing caffeine content in drinks and the lack of guidance on safe levels of caffeine for adolescents, we recommend that USDA revisit this provision of the rule as more evidence and better ways of assessing caffeine content become available. FDA is conducting a study on energy drinks—a class of beverages that could be particularly less healthy for young consumers; USDA should reevaluate school food standards based on these study results to ensure the standards are consistent with those findings.

Time/place restrictions

A key goal of the Healthy, Hunger-Free Kids Act was to remove the time and place restrictions on USDA's ability to address the nutritional quality of school foods. It aimed for parity across campuses and the school day for healthy foods. Children can purchase and consume food throughout campuses, especially in high schools, where they often are free to leave the cafeteria during mealtimes. Thus, we do not support the distinction between beverages allowed to be sold during mealtimes in meal service areas and those available outside of mealtimes and service areas. The nutrition standards governing which beverages can be sold to students should be consistent throughout the campus and school day.

FUNDRAISERS (Page 9540)

HHFKA allows special exemptions for school-sponsored fundraisers (other than fundraising through vending machines, school stores, snack bars, a la carte sales, and any other exclusions determined by the secretary), if the fundraisers are approved by the school and are infrequent. USDA leaves the issue of frequency up to the state agencies under one of two alternative approaches. We support, with revisions, allowing the frequency of specially exempted fundraisers to be specified by the state agency (Alternative E1). Suggested revisions include:

- §210.11(b)(5) Fundraiser restrictions. Food and beverage items sold during the school day shall meet the nutrition standards for competitive food as required in this part. A special exemption shall be allowed for the sale of food and/or beverages that do not meet the competitive food nutrient standards as required in this section for the purpose of conducting a school-sponsored fundraiser. Such specially exempted fundraisers shall be infrequent.

- The allowable frequency shall be specified by the state agency over the period that schools are in session. If a state does not specify the frequency, it will be implied that no exemptions are granted.

- No specially exempted fundraiser's foods or beverages may be sold in competition with school meals on the school campus during the meal service. "Meal service," for the purpose of this section, is defined as 30 minutes before breakfast service begins through 30 minutes after breakfast ends, and 30 minutes before the first lunch period through 30 minutes after the last lunch period ends.

- This approach offers states flexibility in defining the frequency of exemptions, and preserves the intent of the statute that exempted fundraisers be infrequent.

We are aware that many schools around the country rely on fundraising to raise revenue for important resources and activities for students and the school. Despite budget challenges, many schools have reconsidered whether selling low-nutrition foods is an appropriate way to raise money. A number of states' competitive food policies cover fundraising (Alabama, Arizona, California, Connecticut, Hawaii, Kentucky, Massachusetts, Mississippi, New Mexico, Texas, and West Virginia). In addition, many school districts are setting standards through local wellness policies to ensure that schools conduct only healthy fundraisers. As more schools adopt these policies, new promising practices are created and shared. For example, numerous practical and profitable healthy fundraising alternatives—such as walkathons, car washes, fruit sales, and school logo clothing sales—have been practical and successful in schools across the country. USDA should offer training and technical assistance to schools to implement healthy fundraising practices more effectively.

OTHER PROPOSED STANDARDS

Accompaniments (Page 9540)

Accompaniments often play a role in encouraging children to consume healthy foods, such as vegetables; however, many accompaniments are dense in calories, fats, and sugars, with little to no positive nutritional value. For example, ranch salad dressing, a popular accompaniment among children and adolescents, can contain 140 calories or more per serving, with more than 90 percent of those calories from fat.[78] Even light or fat-free alternatives can add more than 300 mg of sodium, which exceeds the proposed sodium limit for snack items and side dishes and provides more than 60 percent of the proposed sodium limit for entree items.[79] Therefore, we agree with the agency's intent to limit the use of accompaniments when competitive foods are sold to students in schools by requiring them to be included in the nutrient profile for the foods with which they are served.

However, we oppose the requirement that all accompaniments be preportioned. Logistically, preportioning may lead some schools to *prepackage* all accompaniments, which could cause additional cost, burden, and negative environmental impact from increased packaging and waste. Many schools use large dispensers of ketchup, mustard, and other accompaniments, and allow students to serve themselves. Under this proposed rule, these dispensers would not be allowed. An additional complication is that food service personnel are not currently required to preportion accompaniments that are served as part of the meal service. Many schools offer competitive food items in the same lines where reimbursable meals are served; thus, an unintentional consequence of this rule is these food service personnel will now be required to preportion accompaniments for meals as well as competitive foods, further increasing cost, labor, and waste.

We urge USDA to amend the proposed rule requiring schools to use the labeled serving size of an accompaniment rather than requiring them to preportion accompaniments. For example,

the labeled serving size of ketchup is one tablespoon, which contains 20 calories, 160 mg of sodium, and 4 grams of sugar. These values for ketchup should be included in the nutritional analysis of french fries because they are typically consumed with ketchup.

We also urge USDA to offer technical assistance to schools on strategies to limit accompaniments that are high in sodium, fat, and sugar (e.g., salad dressings, mayonnaise, cream cheese, etc.). For example, schools could use smaller scoops for self-serve salad dressings and could provide educational and marketing materials that teach students appropriate serving sizes.

Importance of standards being met for items as they are sold and packaged

The standards for calories, fat, sugar, and sodium are important nutritional tools and provisions in the proposed rule. However, they are easily undermined if snack foods and beverages are packaged with more than one serving per container and only the individual serving meets the standard. A robust body of literature shows that children consume larger amounts of food when served larger portions, even if that portion exceeds recommended serving sizes.[80, 81, 82, 83, 84, 85] Therefore when a snack food item is packaged as more than one serving, children in most cases will consume more than the recommended amount. To have the intended impact on health, it is important that the standard apply to the portion that will likely be consumed by students (i.e., the entire content of the package).

Foods of minimal nutritional value (Page 9540)

We support eliminating the restriction on foods of minimal nutritional value, because it is no longer relevant in light of the updated competitive foods nutrition standards.

Preemption

We applaud the proposed rule for both recognizing that the Healthy, Hunger-Free Kids Act requires the Food and Nutrition Service to set minimum nutrition standards for competitive foods, and for expressly authorizing states and local schools with the power to put in place additional restrictions for competitive foods at their schools, as long as such standards are consistent with the minimum federal standards. Currently, 39 states have laws regulating the sales of competitive foods at schools. In addition, through their federally mandated "wellness policies," schools will continue to set nutrition guidelines for competitive foods available on their campuses to promote student health and reduce childhood obesity. If these state regulations and local policies exceed minimum federal standards, they should remain in place. The proposed rule ensures that all competitive foods sold on campuses nationwide will meet the minimum federal nutrition standards, while respecting the traditional autonomy of states and local school districts by allowing them to exceed those minimum standards to meet specific dietary needs or cultural preferences of the populations they serve.

CONCLUSION

The Kids' Safe and Healthful Foods Project strongly supports USDA's proposed rule addressing nutrition standards for all food and beverages sold in schools. We commend USDA for

proposing strong standards that promote students' consumption of healthy foods, such as fruits, vegetables, whole grains, and nonfat and low-fat dairy products, as well as limiting calories, fat, sugar, and sodium in snack foods and beverages. It is important to make sure that these standards apply to ***all*** foods sold throughout the school day, including a la carte foods. Additionally, calorie limits should be tiered by school level, as they are for school meals, and caloric beverages should be allowed in high schools, up to 40 calories per container. We urge USDA to consider these points and to issue a final rule that will support the efforts of parents and school food service directors to provide healthy foods to all U.S. children.

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