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On February 8, 2013, USDA proposed a rule entitled "*Nutrition Standards for All Foods Sold in Schools as Required by the Healthy Hunger-Free Kids Act of 2010.*"

The School Nutrition Association of Pennsylvania (SNAPa) and the Pennsylvania Association for School Business Officials (PASBO) has formed a state wide Regulatory Task Force to provide public comment.

This proposed rule has critical financial implications on school food service operations in Pennsylvania. It has the potential to negatively affect jobs, industry and the financial solvency of school food service operations in Pennsylvania as well as across the nation.

Our first concern was the fact that there is only a 60 day comment period vs. the 90 days that was available for the Proposed Rule and the New Meal Pattern. Never before has the Secretary had the authority for rule-making on the school campus that is so broad in scope, with the potential for so many changes, affecting so many different industries. All stakeholders should have ample time to evaluate the impact and comment accordingly in a thoughtful and informed way.

Basically, the proposed rule primarily uses the Healthier US School Challenge (HUSC) standards. While these standards may be acceptable for elementary schools (K-5 or as defined by the LEA), they are overly restrictive for secondary schools (6-12 or as defined by the LEA). Given the difficulty with NSLP grade designations, a la carte regulations should be simplified to include elementary and secondary grade designations as defined by the LEA. Moreover, the HUSC standards are voluntary with a financial award for compliance. Only 5% of schools in the entire United States have voluntarily committed to the HUSC standards since 2004. Of the 3000+ schools in Pennsylvania, there are 30 HUSC. Only 1 of the 30 HUSC schools serves high school students and this is a residential school with only 40 students.

School nutrition professionals across Pennsylvania are committed to improving the overall well-being of students, but not at the risk of sacrificing student choice and a solvent food service operation. In this difficult financial climate, school food service professionals are facing significant financial challenges including: (1) increased retirement costs, (2) increased health benefit costs and (3) increased food costs related to the HHFKA meal patterns.

The additional burden of this proposed rule will further impact our program making it unsustainable and unrealistic to administer.

Furthermore, we believe there is disparity in the proposed standards because districts with low free/reduced eligibility will have the greatest financial impact. This may force districts to opt out of the NSLP and have a detrimental nutritional impact on these schools.

The Healthy Hunger Free Kids Act stringent standards have caused a decrease in meal participation across the nation, especially at the high school level. Therefore, having reasonable a la carte options for these students who do not feel NSLP meets their needs is important. In addition, the profits from a la carte sales help support and enhance quality programs. A la carte sales also help operators keep meal prices down. Program losses will result in lower quality lunches and may well result in schools dropping breakfast programs or out of NSLP altogether. While we support healthy a la carte options for our students, revenues from these sales enable us to maintain program integrity while serving high quality foods.

We suggest piloting the standards at elementary schools (as defined by the LEA) and re-evaluating the standards as part of reauthorization in 2015. This will allow for successful implementation and reasonable compliance. We certainly agree with the School Nutrition Association in making this rule an Interim Rule rather than a Final Rule, but only for elementary schools.

Further, Pennsylvania school food service professionals are concerned about the rulemaking in regards to compliance, monitoring and penalties. Compliance and monitoring will obviously increase paperwork and costs to both SFA and the State agency. In addition, the rule proposed the LEA is responsible for maintaining records that ensure compliance (on sales outside of the SFA's jurisdiction). Since LEA's have an entirely different agenda, compliance is unlikely. Additionally, without a financial incentive, it is unlikely SFA's will get the necessary LEA support for compliance.

Finally, school food service professionals in Pennsylvania feel it is necessary for USDA to publish the revised *"Nutrition Standards for All Foods Sold in Schools as Required by the Healthy Hunger-Free Kids Act of 2010"* for public comment. This will give key stakeholders another opportunity to comment especially on "alternative" items suggested in the first proposed rule.

Thank you in advance for the opportunity to provide public comment.

The following chart details the proposed rule and our comments in respect to each area of the proposed rule.

Food/ Nutrient	Proposed	Comment/ Impact
General Standard	(1) meet all of the proposed competitive food nutrient standards; and (2) be a grain product that contains 50% or more whole grains by weight or have whole grains as the first ingredient or be one of the non-grain main food groups: a fruit, vegetable, dairy product, protein food (meat, beans, poultry, seafood, eggs, nuts, seeds, etc.), or (3) contain 10% of the Daily Value (DV) of a naturally occurring nutrient of public health concern (i.e., calcium, potassium, vitamin D or dietary fiber) or (4) be a combination food that contains at least 1/4 cup of fruit or vegetable. If water is the first ingredient, the second ingredient must be one of the above.	<p>Will have a significant impact on school districts that depend on ala carte sales to meet costs such as labor and benefits.</p> <p>Significant impact on manufacturers and PA agriculture including but not limited to: Dairy industry; milk, ice cream Single Serve Healthy Snack items; pretzels, baked chips, and other items; Herr's, Snyder's, J and J Snacks and Frito Lay.</p> <p>Allowing fortification can increase the variety of items that can be sold. Fortification has long been recognized as a good way to help people get access to important nutrients.</p> <p>Combination foods with 1/4 c fruit/veg. ...NSLP recognizes 1/8th cup as creditable components. - keeping that a consistent standard makes sense.</p>
NSLP/SBP Entrees and Side Dishes Sold A la Carte	<p><u>Alternative A1</u>: NSLP/SBP entrees and side dishes sold a la carte exempt from all standards except the fat and sugar standards ($\leq 35\%$ of total calories from fat or $\leq 35\%$ of calories or weight from total sugar (See Alternative C1 and C2) ; or</p> <p><u>Alternative A2</u>: NSLP/SBP entrees and side dishes (except grain based dessert products) sold a la carte exempt from all standards. Alternatives B1 and B2 describe two approaches to the timing of service associated with this exemption.</p>	<p>Align this standard with NSLP standards minus restrictions on total fat, sugar and sodium.</p> <p>Consider dropping the time standards all together.</p>
Grain Items	Acceptable grain products must include 50% or more whole grains by weight or have whole grains as the first ingredient.	Total offerings should be consistent with the Dietary Guidelines for Americans at 50% of grains should be whole grain. This includes ala carte entrees and all other snack items.
Total Fats	Dietary fat per portion as packaged: $\leq 35\%$ of total calories from fat per portion as packaged. Allows for reduced fat cheese, nuts, seeds and nut/seed butters.	<p><u>Too restrictive</u>; excludes:</p> <ul style="list-style-type: none"> • Ice cream • Cookies • Bagged Snacks • Popcorn • Soups • 2nd Entrees • Healthy Option Entrees
Saturated Fats	< 10% of total calories per portion as packaged; allows for reduced fat cheese.	<p><u>Too restrictive</u>; excludes:</p> <ul style="list-style-type: none"> • 2nd Entrees • Grilled Cheese • Chicken Tenders • Hot Dogs • Pizza • Healthy Option Entrees
Trans Fats	Zero grams of trans fat per portion as packaged.	School Food Service programs have already eliminated Trans Fat in most products. Manufacturers have complied and reformulated many products.

Food/ Nutrient	Proposed	Comment/ Impact
Sodium	Snack and side items: ≤200 mg sodium per portion as packaged for non NSLP/SBP snack items; Entree items: ≤480 mg sodium per portion for non-NSLP/SBP entree items.	<p><u>Too restrictive</u>; excludes:</p> <ul style="list-style-type: none"> • Bagged Snacks • Soups • 2nd Entrees • Healthy Option Entrees <p>HUSSC standards are 480/600 mg.</p> <p>Huge impact on manufacturers including; beef, chicken and other protein based entrees.</p> <p>Delay sodium targets until USDA conducts research regarding the current sodium levels for school meals (Target 1)</p> <p>Calorie limits will automatically limit the size of the food items which in and of itself will limit total sodium.</p>
Total Sugars	Alternative C1: ≤35% of calories from total sugars in foods; or Alternative C2: ≤35% of weight from total sugars in foods.	Limiting sugar by % of calories would be difficult. SNAPA suggests % by weight at all levels. (Alternative C2.)
Calories	≤200 calories per portion as packaged including any added accompaniments such as butter, cream cheese, salad dressing etc. for non NSLP/SBP snack items and side dishes sold a la carte; 350 calories for non NSLP/SBP entree items sold ala carte.	<p><u>Too restrictive</u>; excludes:</p> <ul style="list-style-type: none"> • Ice cream • Cookies • Bagged Snacks • Soups • 2nd Entrees • Healthy Option Entrees <p>Recommend different calorie levels for Elementary and Secondary schools.</p>
Accompaniments	Use of accompaniments should be limited when food is sold to students in school. All accompaniments shall be pre-portioned and must be included in the nutrient profile as a part of the item served and meet all proposed standards.	<p>Adding accompaniments to the nutritional analysis will eliminate numerous items, including:</p> <ul style="list-style-type: none"> • Cream cheese • Salad dressings • Cheese Sauce <p>Pre-portioning condiments would be expensive and restrict students from accessing condiments intended for NSLP.</p> <p>SFS professionals are already motivated to provide low fat, low sodium condiments in order to meet NSLP regulations.</p> <p>USDA should exempt allowable entrees from this restriction.</p>

Food/ Nutrient	Proposed	Comment/ Impact
Caffeine	Elementary and Middle School Foods and beverages must be caffeine-free, with the exception of trace amounts of naturally-occurring caffeine substances. No caffeine restriction for high school students.	Eliminate any restriction for secondary schools including middle schools. Given the difficulty with NSLP grade designations, a la carte regulations should be simplified to elementary and secondary. Schools with non-traditional grade designations cannot control which students push which buttons on a vending machine.
Beverages	<p><u>Elementary School</u> No caffeinated beverages; Plain water (no size limit); Low fat milk, plain (≤8 oz.); Nonfat milk, plain or flavored (≤8 oz.), including nutritionally equivalent milk alternatives as permitted by the school meal requirements; and 100% fruit/vegetable juice (≤8 oz.).</p> <p><u>Middle School</u> No caffeinated beverages; Plain water (no size limit); Low fat milk, plain (≤12 oz.); Nonfat milk, plain or flavored (≤12 oz.) including nutritionally equivalent milk alternatives as permitted by the school meal requirements; and 100% fruit/vegetable juice (≤12 oz.).</p> <p><u>High School</u> Plain water (no size limit); Low fat milk/plain (≤12 fl. oz.); Nonfat milk, plain or flavored (≤12 fl. oz.), including nutritionally equivalent milk alternatives as permitted by the school meal requirements; 100% fruit/vegetable juice (≤12 fl. oz.); Calorie-free, flavored and/or unflavored, caffeinated or non-caffeinated carbonated water allowed (≤20 fl. oz.), but not during the meal service periods; Other calorie free caffeinated or non-caffeinated beverages that comply with the FDA standard of less than 5 kcals/serving. (≤20 fl. oz.), allowed, but not during the meal service periods; and <u>Alternative D1</u>: Other caffeinated or non-caffeinated beverages (≤40 calories/8 oz. serving or ≤60 calories/12 oz. serving) in ≤12 oz. servings allowed, but not during the meal service periods; or. <u>Alternative D2</u>: Other caffeinated or non-caffeinated beverages (≤50 calories/8 oz. or ≤75 calories/12 oz. serving) in ≤12 oz. servings, but not during the meal service periods.</p>	<p>We applaud USDA for not limiting non-nutritive sweeteners, as this allows for flexibility in beverage offerings especially at the secondary school level.</p> <p>Hugh impact on manufacturers such as Pepsico, Coca-Cola, and 4u2u Brand and Nestle.</p> <p><u>Too restrictive</u>: Alternative D1 and D2 do not allow for sales during the lunch periods. This drives alternate beverage sales to other areas in the school building benefitting other entities.</p> <p>There is no support for school nutrition programs given the fact that ala carte sales allows our programs to pay employee salaries, benefits and allows SNS professionals to improve our programs by offering higher quality foods.</p> <p>Beverages cannot be sold <u>in the food service area</u> during the meal period.....these beverages would still be able to be sold in spaces outside of the cafeteria during lunch. If they can be sold in the vending machines outside the cafe doors, they should also be available in the cafeteria.</p>

Food/ Nutrient	Proposed	Comment/ Impact
Miscellaneous		<p>A "limited" number of fundraisers as defined by the state agency are an unreasonable standard. It is much too vague. This places undue burden on both the state agency and the LEA.</p> <p>Absolutely no food fundraisers should be allowed during the school day. This is in direct competition with our program and exactly what we've been requesting for years.</p> <p>The proposed language indicates diet sodas are allowed. This should not be allowed; it opens the door for soda companies.</p> <p>Language should say distributed, served, or sold to avoid organizations from giving away unhealthy food options.</p> <p>School day as defined is too short. Should be at least 1 hour after the close of the day.</p> <p>All food sales in schools, including fundraisers, should comply with the final nutrition standards established by USDA. Not doing so, invites these fundraisers to compete with school meals and blurs the message of good nutrition practices.</p>

Respectfully submitted by the SNAPA/PASBO Regulatory Task Force on April 2, 2013.