



Making the right food choices, together.

April 2, 2011

Julie Brewer, Chief
Policy and Program Development Branch
Child Nutrition Division
Food and Nutrition Service
U.S. Department of Agriculture
3101 Park Center Drive, Room 640
Alexandria, Virginia 22302-1594

Dear Ms. Brewer:

The Maryland School Nutrition Association (SNA), a state, nonprofit professional organization representing more than 1,000 members who provide high-quality, low-cost meals to students across the country, is pleased to submit the following comments in response to the January 13, 2011 publication in the Federal Register of a proposed rule revising the meal patterns and nutrition requirements for the National School Lunch Program and the School Breakfast Program.

MSNA is not and cannot be alone in working to change food preferences and the nutritional quality of food items. The issue requires the commitment of parents with respect to the food items and portions they serve at home, the restaurant industry in the food items and portions they provide to customers, and the food industry in terms of the quality and composition of products made available for home consumption. MSNA works closely with and appreciates our industry members and partners, who work with us to improve foods available for school meals.

Overview

MSNA members do have concerns regarding their ability to meet the requirements of the proposed rule, especially as the impacts of the regulations are theoretical at this point, having never been piloted or studied in “real world” School Food Authorities (SFAs). We are concerned that the timeframes within the rule are ambitious given the significant changes which will have to be made to school menus that will, at the same time, meet the rule’s requirements, while also retaining student participation.

We share the goal of having all students participate in school breakfast and lunch programs, and that nothing is done to overtly identify those students who are receiving free or reduced price meals. MSNA members are concerned that, while well intended, the revised meal standards themselves run the risk of unintentionally identifying free and reduced price recipients if paid students are inclined to opt to bring a bag lunch from home or to go off campus for foods that research has shown are less nutritious than school meals.

MSNA members have already worked to increase the use of lower sodium and lower fat foods, as well as working to increase whole grain products in school breakfasts and lunches. Our experience has taught us

that making these changes takes time. Revising meal standards often means that new food products have to be developed, and this development takes time. When new food products and food preparations are introduced at a gradual rate, the likelihood of student and parent acceptance is enhanced and ample time is available for operational adjustments and staff retraining. If new food products and food preparations are introduced at a too rapid rate, our ability to work with and educate students regarding the changes, and to make them part of the process is more difficult. Too rapid change can cause participation rates to drop, complaints from students and parents regarding the changing nature of meals, to increase costs to rise more rapidly than can be prudently managed, and the integrity and acceptability of the school food program may be called into question. Recent reports regarding record food price increases which exceed the cost projections in the proposed rule are of great concern as schools attempt to implement these proposed meal pattern revisions. These price increases are also likely to reduce the volume of USDA Foods received by schools, further complicating the management of school meal programs.

It is worth noting that a substantial lead time was provided when the Department updated the WIC Food Package. The proposed rule for modifying the WIC Food Package was published in the Federal Register on August 7, 2006. The Interim Final Rule implementing the modified food package was published in the Federal Register on December 6, 2007. This Interim Final Rule required states to utilize the revised food package beginning August 5, 2009. This implementation date was subsequently modified to October 1, 2009 in a Federal Register notice published March 17, 2008. The WIC Food Package is far more limited than the school meal package, and all of the items contained in the WIC package were commercially available twenty months prior to the mandatory implication of the changed package. The Department received 46,502 comment letters regarding the WIC Food Package modification, and gave twenty months to implement the rule. We understand that substantially more comments are anticipated to be received regarding the proposed school meal pattern rule. Yet the Department currently plans less time before implementing the rule, with less time for school food program operators to prepare for what will be significant changes. The revision of school meal patterns is certainly a worthwhile and necessary undertaking, but it is far more complex, impacting more operators and recipients. Menus, recipes and products will have to be reformulated. New products will have to be developed and tested for student acceptability. Procurement specifications and related documents will have to be changed. Staff will have to be retrained. Logistical changes will have to be made within front of the house and back of the house operations. This level of change was not the case with the revisions in the WIC package.

For these reasons, MSNA believes that it is prudent to consider delaying the mandatory implementation of the rule until school year 2013-14. The Department could encourage that the revised meal patterns be implemented voluntarily prior to that date, and incentivize the early implementation with the additional reimbursement provided by the Act, just as the Department urged earlier voluntary compliance with the revised WIC food package. SNA also recommends that offer vs. serve be mandated, not discretionary, as part of the final rule when implemented. Mandating the taking of food items will result in plate waste, unnecessary costs creating a perception of wasteful spending in the program, and compromise program integrity.

MSNA also believes that, as was the case with the WIC Meal Package Revision, the rule should be issued as an interim final rule with a comment period following its implementation. An interim final rule would allow

the monitoring of the practical consequences and benefits of the revised meal pattern and afford an opportunity to make appropriate modifications should any be warranted.

Finally, MSNA does not support states imposing more restrictive meal components and nutritional requirements, and strongly urges the Department to assist us in ensuring consistent national meal standards. State standards that exceed federal standards are often not based on science, increase school meal costs without compensation, complicate administration of this national program, and make it more difficult for industry to provide acceptable products at reasonable prices.

We will expand upon these points throughout the specific comments that follow.

Fruits and Vegetables

MSNA has consistently supported the increased consumption of a variety of fruits and vegetables by children in the school lunch and school breakfast programs. Further, the Association supports those requirements outlined in the proposed regulation recognizing the availability and utilization of fruits and vegetables in all forms (i.e. fresh, frozen without sugar, dried or canned in fruit juice, water or light syrups). We must also advise you that some MSNA members believe that children will not have sufficient time to consume the higher volumes of fruit and vegetables required by the proposed rule. SFAs are concerned that the consequence will be higher food costs for food items that may not be consumed. Requiring children to take a fruit or vegetable serving rather than providing a true offer vs. serve option has the potential to increase plate waste, and convey the wrong impression regarding the acceptability and quality of school meals.

Fruits and Vegetables at Breakfast

MSNA is concerned with the increased offerings of fruit and vegetables at breakfast as planned from ½ cup to 1 cup.

Specific Recommendations and Concerns:

- **Breakfast in the Classroom** - For those schools that offer breakfast in the classroom, MSNA is concerned that the proposed requirement to offer 1 cup of fruit/vegetable could result in increased costs and logistical issues in serving.
- **Portion Required for Meal Reimbursement** - *MSNA recommends that the rule clearly identify that the 1 cup fruit and/or vegetable component at breakfast equals 2 – ½ cup servings, and that only a single ½ cup serving be required on the tray in order for the breakfast to qualify for reimbursement. MSNA also recommends that the meal pattern table be modified to indicate “servings” rather than “cups.”*
- **Starchy Vegetables** - *MSNA does not support the disallowing of starchy vegetables at breakfast and recommends 1 cup per week be allowed at all grade levels as common and popular breakfast menus include starchy vegetables. Many of these items go hand in hand with the proposed addition of protein at breakfast.*

Fruits and Vegetables at Lunch

MSNA generally supports the requirement for vegetables to come from a variety of sources such as dark green, orange and legumes and supports all fruits and vegetables as recognized components of the reimbursable meal. However, MSNA believes that consumption of an array of fruits and vegetables should

be encouraged, not prescribed. Instead, the proposed rule should be amended to encourage SFAs to vary vegetable selections for healthier school meals, as is currently done in the HealthierUS School Challenge.

Specific Recommendations and Concerns:

- Availability of Fruits and Vegetables - MSNA recommends that the Department take into account the impact of increasing fruits and vegetables on our area as price fluctuations, variety and product availability during the winter months dwindle for the required domestic fruits and vegetables.
- Crediting Salad Bars and Self-Serve Foods – *MSNA recommends that the final rule provide direction for the Crediting of food served at Salad Bars and Self-Serve areas.* While FNS has issued policy memos regarding Salad Bars in the National School Lunch Program (including SP 02-2010 – Revised, January 21, 2011), the crediting of foods served at Salad Bars and Self-Serve areas is not expressly addressed within the proposed rule.
- Crediting of Tomato Paste - *MSNA urges continuing current tomato paste crediting as outlined in the Food Buying Guide for Child Nutrition Programs at pages 2-3: "Vegetable and fruit concentrates are allowed to be credited on an "as if single-strength reconstituted basis" rather than on the actual volume as served."* MSNA does not support basing the crediting of tomato paste based on volume served.
- Juice Served at Lunch - *MSNA recommends that at lunch, just as at breakfast, half of fruit offered per week may be 100% fruit and/or vegetable juice with a serving of 100% fruit or vegetable juice limited to no more than 4 fl. ounces per meal.*
- Portion Size - MSNA supports the provision requiring a fruit or vegetable on the lunch tray, but *recommends that only a ½ cup serving be required.* MSNA recommends that the meal pattern table be modified to indicate "servings" rather than "cups." MSNA also recommends that the final rule clarify the serving equivalency of fresh fruit.
- Starchy Vegetables – *MSNA recommends that, if the Department does not follow the encouragement standard of the HealthierUS School Challenge, starchy vegetables for K-5 be increased to 2 cups per week and that there be no restrictions on starchy vegetables for grades 6-12.* MSNA believes that due to a variety of delivery systems at secondary schools (i.e. scatter systems, ethnic serving lines, etc.) that limiting starchy vegetables will create unappealing and confusing menu options for students. In elementary schools, starchy vegetables are often paired strategically with traditional entrée foods and offered more frequently in the fall and winter when locally grown items are not plentiful. Regulations that are too prescriptive limit menu creativity as many mixed dish entrees and salads contain starchy vegetables. MSNA members have specific concerns that the limitation on starchy vegetables will limit regionally preferred foods, such as corn in Mexican foods, resulting in poor student acceptance of offered meals.
- Use of Commodity Dollars - Although the proposed rule does not include a discussion regarding the use of commodity dollars, *MSNA recommends that some latitude be given for schools to have the flexibility to use their commodity dollars to purchase local fruits and vegetables to help further the "Know Your Farmer Know Your Food" initiative and to bring more local products into our school meal programs.*

Meat/Meat Alternates

MSNA supports the utilization of low-fat, lower-sodium meats. However, MSNA is concerned that discouraging the use of processed meats is unnecessary and unduly restrictive. Any restriction on meats is already sufficiently covered in the meal pattern requirements for calories, fat, and sodium. Further, "processed meats" are not defined within current regulations or within the proposed rule. The term is

inconsistent with existing references in regulations and the Food Buying Guide for Child Nutrition Programs to meat/meat alternates.

MSNA encourages the Department to develop a standard definition for tofu which will help members to respond in a positive way to our students and parents request for vegetarian and vegan protein options.

Meat/Meat Alternates at Breakfast

MSNA recommends that the Department allow weekly averaging of the meat/meat alternate. SNA supports the inclusion of the meat/meat alternate at breakfast, but believes there is a need for flexibility in menu planning. Regulations that are too prescriptive limit menu creativity. Defining the menu structure each day eliminates the flexibility of developing popular, appealing, cost effective menu options. Further, the serving of 1 ounce of meat/meat alternate at breakfast is challenging, and could either eliminate popular breakfast choices or incur increased costs without the meal gaining credit for the components. Consideration has to also be given to the increase in cost for transporting breakfasts to the classroom given the need to hold temperature for cooked protein items.

Whole Grains

MSNA members are concerned that the whole grains timetable is overly ambitious. The proposed rule acknowledges the need for a whole grain rich definition and also states that the Grain/Bread Instructions will need to be updated. The lack of actual guidance in the proposed rule and the significant impact these changes would have on schools meeting any new guidance justifies a request for delay of implementation. Product development, reformulations, recipe adjustments and CN labels would all be impacted by these changes as grains are a major component in the program structure. In addition, there could be premium pricing in order to meet demands that exceed industry's ability to provide sufficient product. Reformulation of products to meet the new whole grain requirements risks increased prices. Some regions have little or no supply of whole grain products at the present time, and may have to secure new suppliers. Finally, USDA and the Food and Drug Administration have different standards for "whole grain rich." These standards need to be reconciled and grain instructions updated in order to provide clear guidance for SFAs and industry. For these reasons, *MSNA recommends that implementation of the whole grain requirement be delayed until SY 13-14 based on the final rule including the whole grain rich definition and any changes to the Grain/Bread Instructions. Future delayed implementation could be necessary if the final rule does not include the necessary guidance.*

Milk

MSNA supports offering flavored non-fat milk and unflavored low-fat (1%) milk. However, MSNA is concerned that this product mix is not yet sufficiently available throughout the state of Maryland. *MSNA urges the Department to recognize these state limitations, and to work with SFAs regarding the implementation of this requirement.*

Sodium

MSNA agrees with the need to reduce sodium levels in foods and in meals and agrees that meeting Target 1 and Target 2 is achievable. However, achieving goals beyond that point will be a challenge and should be reassessed prior to imposing further reductions in sodium levels.

Specific Recommendation and Concerns:

- Future Sodium Reductions - MSNA supports the IOM alternative for reaching sodium targets over ten years, with intermediate targets set for every 2 years coupled with ongoing assessments of progress and effects of the actions on student participation rates, food cost, safety, and food service operations to determine a reasonable target for the next period, as recommended by IOM in its report “School Meals: Building Blocks for Healthy Children.” Further, MSNA points out that the IOM goal for 2020 was based on a ten-year phase-in program. Any changes in sodium standards should be based on a total of ten years from the date of the rule’s implementation as proposed to correspond to the IOM ten year program.
- Naturally Occurring Sodium – *MSNA believes that allowance should be made for naturally occurring sodium, including revising sodium targets to compensate for naturally occurring sodium.* MSNA members are concerned that insufficient allowance has been made for naturally occurring sodium. For example, factoring in the naturally occurring sodium found in milk, which is mandated by the program, makes meeting the revised sodium standards more difficult.
- Near Term Challenges - MSNA is concerned that achieving the sodium requirements in the near term will pose a challenge due to a reliance on canned items in certain areas when faced with extreme weather conditions such as drought, flooding and severe freezes that ruin crops.
- Nutrient Analysis Needed to Assess Sodium Levels - In the absence of conducting a regular nutrient analysis it will be virtually impossible for SFAs to assess how close they are to meeting the sodium requirements.
- Product availability and acceptability – SFAs traditionally order and sample products well in advance of a new school year. MSNA is concerned that sufficient lead time for product development, testing, menu development, sampling, and procurement changes need to be provided so that SFAs can make the adjustments necessary to ensure program compliance, student acceptance and continued participation in school meal programs.

Saturated Fats

MSNA supports retaining the current standard of less than 10% of calories from saturated fat, as recommended by the IOM, the 2005 Dietary Guidelines for Americans, and the 2010 Dietary Guidelines for Americans. While the proposed rule noted that the Report of the Dietary Guidelines Advisory Committee on the Dietary Guidelines for Americans, 2010 suggested lowering saturated fat consumption to less than 7% of total calories, the final report did not adopt this recommendation.

Cost Concerns

MSNA has several concerns regarding the implementation of the revised meal pattern requirements and the associated costs.

- Fiscal Condition of Local Education Agencies (LEA's)– Many local governments are facing significant financial challenges. As a consequence, they have been looking to all public entities, including SFAs, to reduce costs. Some LEA's are also giving serious reconsideration to the financial support they may provide to SFAs, while some have already reduced their support or increased Indirect Costs.
- Lack of Additional Federal Reimbursement for Breakfasts - Breakfast modifications will be challenging in the absence of additional resources to support the extra cost, particularly those costs associated with providing additional servings of fresh fruits and vegetables and protein. *MSNA recommends that implementation of the revised breakfast meal pattern requirements be delayed until additional funding is available to help offset these costs.*
- Logistical Challenges - There are several logistical challenges that could pose a barrier to implementation. It will take time and additional funds to make these changes:
 - Additional coolers, freezers, and dry storage spaces will be required to safely store the additional required amounts of fruits, vegetables and proteins.
 - Upgrades of small-wares and sinks could be required to wash and process the additional whole fresh products.
 - Time will be necessary to train and familiarize employees with the storage, preparation and service of these items.
 - Serving lines may need to be modified or replaced to meet the volume of food offered. In many schools, the current serving lines cannot accommodate the additional fruit and vegetable servings required by the regulation.
 - Trays and packaging required may not be designed to accommodate portion sizes.
- Need for Uniformity to Help Contain Costs – *MSNA recommends that USDA establish specific written criteria to ensure that all states administer and adhere to all program requirements uniformly.*

Administrative Changes

MSNA supports the administrative changes to the meal pattern requirements and offers further suggestions to strengthen them and improve their efficiency.

Specific Recommendation and Concerns:

- CRE Frequency and Basis – *MSNA recommends continuing to have reviews every 5 years and remain for lunch only.* Section 207 of the Act does grant the Secretary the authority to conduct audits and reviews during a 3-year cycle *or other period* prescribed by the Secretary. Reviews every 5 years will allow state agencies more time to provide technical assistance and training. We also encourage SFAs to do their own nutrient analysis to monitor progress. *MSNA also recommends that USDA maintain the current one week menu analysis for the CRE review.* One week is a reasonable amount of time to determine if an SFA meets the meal pattern requirements.

- Need for Training and Documentation Materials Prior to Meal Pattern Implementation – *MSNA strongly recommends that training and documentation materials, including revised Food Guides, be provided by USDA a minimum of one year prior to implementation of this meal pattern.* Sufficient lead time needs to be provided so that software vendors providing meal pattern, nutrient analysis and other related products can develop and implement any updates that may be required by or may be a consequence of changes in school meal patterns. Doing so will help ease the significant changes required with the implementation process for SFAs.

Offer vs. Serve

MSNA supports the changes to offer vs. serve and suggests the following modifications to strengthen this provision:

- *MSNA recommends that students should be able to select from a combination of fruits and vegetables to equal a required serving.* This will take into account salad bars and self serve.
- *MSNA recommends that offer vs. serve should be required at all grade levels.*
- *MSNA recommends that USDA should allow SFAs to apply for a waiver for modified meal plans for non-traditional meal settings.* In some communities, older school buildings or special school services have caused SFAs to provide meals in non-traditional settings, such as grab and go, in classroom meals, etc. USDA should allow some flexibility for schools with these types of settings.
- *MSNA recommends that USDA specify the minimum number of items that must be offered, as it already states the minimum number of items that must be served.* SFAs offer a wide variety of menu selections. Specifying the minimum number of items that must be offered allows for this variance. Stating an absolute number risks limiting menu choices.

Other Recommendations and Concerns

MSNA members have expressed several additional concerns that we believe should be addressed as part of this rulemaking, a discussion of each follows.

- Condiments – *MSNA recommends clarification regarding the treatment of condiments under the new meal patterns.* The proposed rule does not address how condiments are to be treated. If Food Based Menu Planning is the standard under the rule, then clarification is needed.
- Conditions for Additional 6 Cents Reimbursement – *MSNA recommends that the Department provide some preliminary guidance or information on this matter as soon as possible to help both State Agencies and SFAs responsibly prepare for meeting the new meal standards.* While the proposed rule does not address the additional 6 cents for meal reimbursement provided by the Healthy, Hunger-Free Kids Act of 2010, and while we understand that the Department intends to address the issue of how SFAs are certified as meeting the new meal requirements as part of a separate rulemaking, MSNA believes that providing some preliminary guidance or information on this matter as soon as possible will help both State Agencies and SFAs responsibly prepare for meeting the new meal standards. We all agree that the new meal pattern will cost more than the current meal pattern. Accessing the additional reimbursement amounts as quickly as possible will be essential for SFA operations.
- Evaluation of Meal Pattern Changes – *MSNA recommends that the proposed rule be amended to include a clear statement regarding how the revised meal pattern will be evaluated.* Changes in meal patterns should be evaluated to determine which changes are successful and which ones are not. A

defined evaluation program will provide very helpful information for all SFAs, and provide an opportunity to make helpful and prudent changes based on experience, particularly if the rule is issued as an interim final rule with a subsequent comment period, as recommended above.

- Food Service Management Companies (FSMCs) – MSNA members are concerned that in the proposed rule the Department said “FSMCs may find new opportunities to work with SFAs that currently do not contract for food service assistance, a “beneficial impact” of the regulation.” SFAs are doing their best to meet current and proposed school meal requirements, and are often challenged by those who believe, rightly or wrongly, that outsourcing the management of school meal programs is a “solution to all problems.” Too often this contracting has been a panacea that has created more difficulties. *MSNA urges that the Department refrain from making what may be misinterpreted as an endorsement or suggestion for the retaining of FSMCs. MSNA renews its request that the Department provide meaningful guidance and oversight regarding FSMC operations, and, to ensure the integrity of school meal programs, develop a model contract that may be used if a FSMC be retained.*
- Home Consumption Nutrition Education – *MSNA recommends that revised meal standards be coupled with a broader USDA-sponsored healthier home consumption nutrition education program.* While school meals are a very important component of a healthy diet, there is a significant need for a greater public understanding of and appreciation for improving our diets.
- Innovative ingredients – Higher nutritional standards may require the use of innovative foods and ingredients and their effects on meal acceptability. The Department should provide a separate assessment of which innovative foods and food ingredients offer new opportunities, and which innovative foods and ingredients are particularly successful in securing student participation.
- Plate Waste Concerns – Some MSNA members believe that the additional food volumes requested for breakfast and the increased requirements for fruit and vegetables at lunch are at risk of becoming “plate waste” rather than being consumed. *MSNA urges the Department to provide oversight and monitoring of what changes are working and what are not working as part of the implementation of the final rule.*

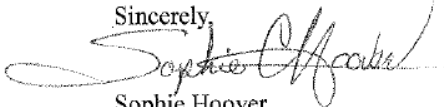
- School Responsibility for Adequate Meal Time - *MSNA recommends that the Department partner with the Department of Education to study, issue and periodically update “best practices” guidelines for school meal service to assist schools in improving their meal environment.* While MSNA recognizes that the Department does not have the authority to set the minimum time available for school breakfast and lunch, it is well recognized that children need sufficient time to consume their meals. The benefits of improved meal patterns will not be fully realized unless students have adequate time to consume their meals. Analyzing and recommending best practices can be of benefit to all SFAs.
- Student Acceptability and Participation Impact - *MSNA recommends that the Department establishes a baseline of school meal participation and monitor student acceptability and participation as the revised meal pattern is implemented.* MSNA remains concerned that rapid changes in school meal menus risk a loss of student acceptability that will harm participation and SFA financial viability. MSNA has a particular concern that school meal programs be broadly accepted by paid meal participants so that school meal program participation does not risk an assumption that the only students participating in the program are those who must because of their status as a free or reduced

price meal participant. Some MSNA members have suggested that changes in meal patterns should be phased in beginning with elementary schools, since younger students have not yet developed food preferences that may lead to rejection of the revised meal pattern. The Department should also assess if there may be a loss of schools offering breakfast due to increased costs as a result of the proposed rule, along with how many schools may drop lunch and breakfast programs altogether due to increased costs and student acceptability.

- USDA Foods – *MSNA recommends that the Department provide clear guidance regarding the use of remaining commodity foods inventory as the new meal standards are implemented. MSNA also has concerns regarding artificial sweeteners and requests that they not be allowed in USDA Foods.* USDA Foods are appreciated and effectively used within school meal programs. SFAs and state agencies are required to place their commodity food orders substantially in advance of the school year. In fact, orders are now being placed for commodity foods that may be impacted by these new food standards, without knowledge of what specifications will be used when the products are ordered. Orders are made based upon existing familiarity with product, and may be subject to change should specifications and the resultant product acceptability change. At the same time, it is likely that some SFAs and state agencies will have inventory based upon existing rather than revised specifications. As a matter of responsible transition, the Department should provide clear and public guidance that can be used by SFAs and state agencies to ensure that remaining inventories can be used without penalty.

Again, we appreciate the opportunity to provide you with these comments. We look forward to continuing to work with you in the development of the final rule, and to the successful implementation of the revised meal pattern for the benefit of students throughout the nation.

Sincerely,



Sophie Hoover

President, Maryland School Nutrition Association

Mary Klatko



Legislative Chairman