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April 22, 2020

The Honorable Sonny Perdue
Secretary
U.S. Department of Agriculture
1400 Independence Avenue SW
Washington, DC 20250

RE: Proposed Rule: Simplifying Meal Service and Monitoring Requirements in the
National School Lunch and School Breakfast Programs (RIN 0584-AE67)

Dear Secretary Perdue:

As Members of the House Committee on Education and Labor, we write to urge you to rescind the components of the proposed rule entitled “*Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs*”¹ that undermine evidence-based nutrition standards for child nutrition programs, thereby threatening the health and academic achievement of our nation’s children.

A 2016 study using data from the National Health and Nutrition Examination Surveys (NHANES) from 2007-2012 showed that approximately half of children’s daily dietary intake came from school breakfast and lunch.² An extensive body of research confirms the important role of nutrition in the health and academic outcomes of children.³ Dietary behaviors, including fruit and vegetable consumption, have been shown to be significantly associated with academic

¹ Simplifying Meal Service and Monitoring Requirements in the National School Lunch and School Breakfast Programs, 85 Fed. Reg. 4094 (proposed Jan. 23, 2020) (to be codified at 7 C.F.R. pts. 210, 215, 220, 226, and 235).

² Karen Weber Cullen & Tzu-An Chen, *The Contribution of the USDA School Breakfast and Lunch Program Meals to Student Daily Dietary Intake*, 5 Preventive Medicine Reports 82, 82-84 (2017).

³ H. Taras, *Nutrition and Student Performance at School*, 75 Journal of School Health 199, 199-213 (2005); D. MacLellan et al., *Food Intake and Academic Performance Among Adolescents*, 69 Canadian Journal of Dietetic Practice and Research 141, 141-44 (2008).

grades.⁴ Given the substantial role of school meal programs in nourishing children, the Department of Agriculture (Department) must take seriously its responsibility to promulgate nutrition standards that are in alignment with the Dietary Guidelines for Americans (DGAs).⁵

According to the Department's findings, the nutritional quality of school meals has improved significantly⁶ since implementation of the updated nutrition standards under the 2012 final rule, *Nutrition Standards in the National School Lunch and School Breakfast Programs*.⁷ Overall Healthy Eating Index (HEI) scores for School Breakfast Program (SBP) and National School Lunch Program (NSLP) meals increased from 49.6 to 71.3 and 57.9 to 81.5, respectively, between the 2008-2009 and 2014-2015 school years.⁸ The findings from this study also contradict the Department's assertion in the preamble of the proposed rule that program operators have experienced increased food waste since implementation of the 2012 final rule. The report states that the findings on plate waste for school year 2014-2015 "are generally comparable to findings from studies that examined plate waste prior to implementation of the updated nutrition standards."⁹

Several of the proposals contained in the proposed rule as well as some of the proposals on which the Department is seeking further public input – discussed below – raise significant public health concerns and go against the spirit of the statutory requirement for school meals to be consistent with the goals of the most recent edition of the DGAs.¹⁰

Proposed Flexibilities for Required Vegetable Subgroups

As part of the 2012 final rule establishing updated nutrition standards for school meals, the Department established requirements for schools to provide certain quantities of vegetables that fall into each of five subgroups, which parallel those included in the 2015-2020 Dietary Guidelines for Americans (dark-green vegetables, red and orange vegetables, legumes, starchy vegetables, and other vegetables).¹¹ The proposed rule would decrease the required quantity of red and orange vegetables served by 60 percent (from 1.25 cups per week to 0.5 cup per week), decrease the required quantity of other vegetables served by 33 percent (from 0.75 cup per week to 0.5 cup per week), and increase the quantity of vegetables for which providers can select any

⁴ U.S. Department of Health and Human Services Centers for Disease Control and Prevention, Making the Connection: Dietary Behaviors and Academic Grades 2, https://www.cdc.gov/healthyschools/health_and_academics/pdf/factsheetDietaryBehaviors.pdf.

⁵ 42 U.S.C. § 1753.

⁶ U.S. Department of Agriculture Food and Nutrition Service, School Nutrition and Meal Cost Study Final Report Volume 2: Nutritional Characteristics of School Meals (Summary) 1 (2019), <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS-Volume2-Summary.pdf>.

⁷ Nutrition Standards in the National School Lunch and School Breakfast Programs Final Rule, 7 C.F.R. § 210, 220 (2012).

⁸ *Id.*

⁹ U.S. Department of Agriculture Food and Nutrition Service, School Nutrition and Meal Cost Study Volume 4: Student Participation, Satisfaction, Plate Waste, and Dietary Intakes xxxiii (2019), <https://fns-prod.azureedge.net/sites/default/files/resource-files/SNMCS-Volume4.pdf>.

¹⁰ 42 U.S.C. § 1758.

¹¹ U.S. Department of Health and Human Services & U.S. Department of Agriculture, Dietary Guidelines 2015-2020 Eight Edition 15 (2015), https://health.gov/sites/default/files/2019-09/2015-2020_Dietary_Guidelines.pdf.

subgroup by 100 percent (from 1.5 cups per week to up to 3 cups per week). As a result, under the proposed rule, a provider could serve up to 3.5 cups out of a total of 5 cups of vegetables per week, or 70 percent of all vegetables, in a single subcategory, such as starchy vegetables. This goes against the spirit of the 2015-2020 Dietary Guidelines for Americans, which emphasize the need for a *variety* of vegetables from all five subgroups.¹²

Flexibility in School Breakfast Program Fruit Component

The 2012 final rule also required that one cup of fruit be offered at breakfast. Under the proposed rule, breakfast served outside the cafeteria would only be required to include 0.5 cup of fruit. While the use of novel breakfast service models, such as breakfast in the classroom, has been shown to increase participation, it should not mean sacrificing nutritional quality. According to the 2015-2020 Dietary Guidelines for Americans, nearly 80 percent of Americans are not consuming enough fruit, and increasing consumption of whole fruit is a recommended dietary shift.¹³ Decreasing the quantity of fruit served at breakfast by 50 percent runs counter to this recommendation.

Proposal to Extend the Entrée Exemption Timeframe

In 2016, the Food and Nutrition Service (FNS) published a final rule establishing updated nutrition standards for all foods served in schools outside of a reimbursable meal, also known as competitive foods.¹⁴ These standards, known as the Smart Snacks standards, establish unique nutritional requirements for foods served outside of the reimbursable meal, while including the flexibility to offer a reimbursable entrée as a competitive food on both the day it is served on the menu and the following day. The proposed rule would extend this flexibility for one additional school day. As a result, reimbursable entrées would be allowed to be served on three out of the five days of the school week, or the majority of school days. The nutrition standards for reimbursable meals are established over the course of a week, whereas the nutrition standards for competitive foods are established with the understanding that these foods can potentially be made available to a child on multiple occasions each day. Therefore, it is not nutritionally appropriate to allow items from the reimbursable meal to be served as competitive foods on the majority of school days. This proposal would have the effect of allowing a food that may be allowable as part of a reimbursable meal once per week, such as a cheeseburger, to be offered to children multiple times per day, every day of the week, thereby nullifying the effect of the Smart Snacks nutrition standards.

Substituting Vegetables for Fruits in the School Breakfast Program

In addition to the proposed change regarding the serving size of fruit at breakfast served outside of the cafeteria, the Department is also seeking public input on the possibility of allowing the flexibility to substitute vegetables for fruit at breakfast to be made permanent. We oppose this

¹² *Id.* at 21.

¹³ *Supra* note 11, at 39, 60.

¹⁴ Nutrition Standards for All Foods Sold in School as Required by the Healthy, Hunger-Free Kids Act of 2010, 7 C.F.R. § 210, 220 (2016).

proposal, which would allow fruit to be replaced with a starchy vegetable, which is not nutritionally equivalent. Further, as noted by the 2015-2020 DGAs, potatoes are already one of the two most-consumed vegetables in American diets.¹⁵

Competitive Foods: Definition of Entrée and Expanding Entrée Exemption to All School Breakfast Program/National School Lunch Program Foods

The Department is also seeking public input on the possibility of expanding the definition of an entrée and expanding the competitive foods exemption for entrées to all foods served as part of a reimbursable meal. As discussed above, we are concerned with any changes that would undermine the Smart Snacks standards. The Smart Snacks nutrition standards are intended to ensure that competitive foods served to children are nutritionally appropriate, with the understanding that these foods can be made available multiple times per day, each day of the week.

Grain-Based Desserts in the Child and Adult Care Food Program

The Department is also looking for public input on allowing up to two 1-ounce equivalents of grain-based desserts per week in the Child and Adult Care Food Program (CACFP) meal pattern, and/or options to permit grain-based desserts to be credited towards the grain requirement in CACFP. We are deeply concerned about these proposals. Under the 2016 final rule, *Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010*, which updated the nutrition standards for CACFP to align with the Dietary Guidelines for Americans, grain-based desserts were removed from the reimbursable meal.¹⁶ As FNS discussed in the 2016 final rule, “the Dietary Guidelines identify grain-based desserts as sources of added sugars and saturated fats...and recommends reducing consumption of added sugars and saturated fats. This recommendation is particularly pertinent to CACFP as the majority of participants are very young children whose taste preferences are being developed.” These same concerns FNS raised in 2016 continue to apply today.

Nearly 30 million children participated in the National School Lunch Program in fiscal year 2019, and 4.2 million children received meals at child care through CACFP. It is the responsibility of the Department to ensure that the foods children are served in school are nutritious and in alignment with the Dietary Guidelines for Americans as prescribed by law.¹⁷ The components of the proposed rule described in this letter represent a failure of the Department to meet this responsibility. We therefore urge the Department to rescind the components of the proposed rule discussed in this letter.

¹⁵ *Supra* note 11, at 47.

¹⁶ Child and Adult Care Food Program: Meal Pattern Revisions Related to the Healthy, Hunger-Free Kids Act of 2010, 7 C.F.R. § 210, 215, 220, 226, (2016).

¹⁷ 42 U.S.C. § 1753.

Sincerely,



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Chairman



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Member of Congress



RAÚL M. GRIJALVA
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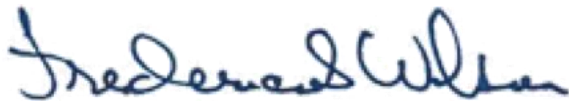
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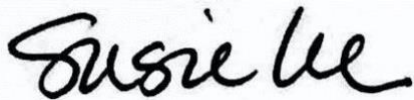
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