May 10, 2023

Via Electronic Submission: Regulations.gov

Tina Namian
Director, School Meals Policy Division
Food and Nutrition Service
1320 Braddock Place
Alexandria, VA 22314

Re: Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans [2023-02102]

Dear Ms. Namian:

The New York City (NYC) Department of Health and Mental Hygiene (Health Department), the Mayor's Office of Food Policy (MOFP), and the NYC Department of Education (DOE) appreciate the opportunity to submit comments regarding U.S. Department of Agriculture's (USDA) proposed rule: Child Nutrition Programs: Revisions to Meal Patterns Consistent With the 2020 Dietary Guidelines for Americans, codified at 7 CFR Parts 210, 215, 220, 225 and 226. Overall, we support USDA's commitment to updating requirements for school meals and strengthening nutrition criteria to ensure meals are consistent with up-to-date nutrition science. School meals are a consistent source of nutritious foods for students, and we support continuously reviewing and updating the requirements. Improved nutrition standards that reduce sodium and added sugar content are necessary in order to serve healthier school meals to children.

We have based many of the recommendations included below on nutrition criteria in the NYC Food Standards. The NYC Food Standards are evidence-based nutrition criteria mandated by Mayoral Executive Order since 2008 for all City agencies and sub-contracted programs serving food. The NYC Food Standards, in a typical year, apply to approximately 230 million meals and snacks, including more than 165 million meals and snacks in schools.[1] The NYC Food Standards ultimately reach a variety of New Yorkers, including school children in New York City's public schools.[2] Along with the latest scientific evidence, marketplace availability, NYC agency input, and stakeholder feedback are important considerations when the NYC Food Standards are updated.[3] The NYC Food Standards, which are typically updated at least every three years and were most recently revised in 2022, enable us to create nutrition standards that are grounded in the purchasing realities of a diverse range and scale of meal providers, ensuring success of implementation.

Section 2: Added Sugars **[page 8056-8059]**

- USDA is proposing product-specific limits on the following foods to improve the nutritional quality of meals served to children: grain-based desserts, breakfast cereals, yogurt, and flavored milk. Do stakeholders have input on the products and specific limits included in this proposal?
- Do the proposed implementation timeframes provide appropriate lead time for food manufacturers and schools to successfully implement the new added sugars standards? Why or why not?

- What impact will the proposed added sugars standards have on school meal menu planning and the foods schools serve at breakfast and lunch, including the overall nutrition of meals served to children?

New York City Response:
We support efforts to limit added sugars in school lunch and breakfast programs through both product-based limits and a weekly dietary limit. We support the proposed implementation timeline and do not recommend extensions due to the urgency needed in reducing consumption of added sugars among children.

We also support product-based limits for the leading sources of added sugars in school meals— the NYC Food Standards similarly require product-specific sugar limits for breads and grains, breakfast cereal, and yogurt, as well as a calorie limit for flavored milk, many of which are common foods on school menus.[i]

To support feasibility of the proposed limit on grain-based desserts at breakfast to no more than 2 ounce-equivalents per week in school breakfast, we recommend introducing a weekly meat/meat alternate (protein food component) allowance in the breakfast meal pattern. Specifically, we recommend including a 2-to-6-ounce weekly meat/meat alternate (protein food component) allowance that is only creditable with a whole or minimally processed protein food such as egg, cheese, yogurt, legumes, nuts, seeds, nut butter or seed butters. Additionally, we request that processed meats such as ham, turkey ham, sausage and bacon not be creditable toward the requirement as processed meats have been linked to cancer[4] and are high in sodium.[5] Changing the current allowance to serve 1 meat/meat alternate in place of 1 grain ounce-equivalent at breakfast to an allowance to serve 2 to 6 meat/meat alternates at breakfast per week would ease reliance on sweetened grain-based products. Such a change would further support menus with meeting the weekly limit for <10% of calories from added sugars and support more balanced, nutrient-dense meals being offered to students.

As demonstrated by the NYC Food Standards, lower added sugar limits than what are currently proposed by USDA is feasible for breakfast cereals. Furthermore, requirements that limit added sugars in flavored milk have been implemented in NYC for years, and requirements that limit added sugar in yogurt are currently being implemented as part of the most recent NYC Food Standards update. For example, in the NYC Food Standards, breakfast cereal must contain $\leq$ 6 g total sugar per serving size,[ii] which is a slightly more rigorous threshold than the "no more than 6 grams of added sugar," currently proposed by USDA. Regarding yogurt, the NYC Food Standards require the equivalent limit of $\leq$ 10.5 g total sugar per 6 oz yogurt, which is also slightly more rigorous than the 12 grams of added sugars per 6 ounces proposed by USDA. Lastly, for flavored milk, the NYC Food Standards require that flavored milk and flavored fluid milk substitutes be $\leq$ 130 calories per serving for children, which, due to the lower calories,

[i] Note: The current NYC Food Standards limits are based on total sugar or calories as added sugars information was not widely available in time to be considered for the marketplace research conducted to inform the 2022 updates.
[ii] The NYC Food Standards require that breakfast cereals that contain dried fruit must contain $\leq$ 17 g total sugar per serving. This higher limit for total sugar allows for the naturally occurring sugars provided in dried fruits while still working to limit added sugars.

is likely more rigorous than USDA's most rigorous proposal of ≤ 10 grams of added sugars per 8 fluid ounces. These product-specific sugar limits in the NYC Food Standards help our NYC schools better align their meals with the Dietary Guidelines recommendation to limit added sugars to < 10% calories.

We support USDA's proposal of a weekly dietary limit on added sugars in the school lunch and breakfast programs to less than 10 percent of calories offered per week. This aligns with the NYC Food Standards' requirement that total meals served daily have less than 10 percent of calories from added sugars. To support feasibility, we recommend that the added sugars limit be based on the weekly average of total calories for all meals and not by the average of calories by meal type. This would increase the feasibility of implementation as breakfast foods typically contribute a larger amount of added sugars than those served at lunch. For instance, breakfast cereals and bars contribute 7% of added sugars in the American diet.[6]

Section 4: Whole Grains **[pages 8062-8065]**
For the final rule, USDA is considering two different options and invites comments on both:

- Maintaining the current requirement that at least 80 percent of the weekly grains offered are whole grain-rich, based on ounce equivalents of grains offered; or
- Requiring that all grains offered must meet the whole grain-rich requirement, except that one day each school week, schools may offer enriched grains.

USDA invites public input on both these options in general, and requests specific input on the following questions:

- Which option would be simplest for menu planners to implement, and why?
- Which option would be simplest to monitor, and why?

New York City Response:
We support maintaining the current whole grains requirement that at least 80 percent of the weekly grains offered are whole grain-rich, based on ounce equivalents of grains offered.

Section 5: Sodium **[page 8065-8069]**

- USDA plans to recommend (but not require) sodium limits for certain products, such as condiments and sandwiches, to further support schools' efforts to procure lower sodium products and meet the weekly limits.
    - For which products should USDA develop best practice sodium limits?
    - What limits would be achievable for schools and industry, while still supporting lower-sodium meals for children?
- Does the proposed implementation timeframe provide appropriate lead time for manufacturers and schools to successfully implement the new sodium limits?
- Do commenters agree with USDA's proposed schedule for incremental sodium reductions, including both the number and level of sodium reductions and the timeline, or suggest an alternative? Why?

New York City Response:
We support incremental sodium reductions at lunch and breakfast that help achieve age-appropriate thresholds of the Chronic Disease Risk Reduction (CDRR) intake levels for sodium.[7] This approach is

consistent with sodium requirements of the NYC Food Standards, in which the sodium limit for breakfast is based on 25-30% of the CDRR, and the sodium limit for lunch is based on 30-35% of the CDRR. The current 2029 recommendations proposed by USDA go well above 30-35% of the CDRR for all age groups. We strongly recommend incrementally lowering the proposed sodium limits for the School Lunch Program in 2025, 2027, and 2029 so that by 2029 the limits align with the sodium recommendations in the 2020-2025 Child Nutrition Program. We support the proposed implementation timeline and do not recommend extensions due to the urgency needed in reducing consumption of sodium.

In addition, we strongly support introducing sodium limit requirements in products between the first year and the final year of implementation. In addition to per meal and per day limits, the NYC Food Standards require all individual food items contain 480 mg sodium or less per serving unless a lower sodium standard is specified. In addition, the NYC Food Standards require the following product-specific sodium limits per serving: sliced sandwich bread <180 mg sodium, other breads and grains <290 mg sodium, breakfast cereal <215 mg, canned and frozen vegetables < 290 mg sodium, canned and frozen beans < 220 mg sodium, canned and frozen seafood ≤ 290 mg sodium, salad dressing ≤ 290 mg, and cheese ≤350 mg.[8] These limits go a long way to help serve healthier meals that contain less sodium to NYC's school children.

Section 7: Traditional Foods **[page 8070-8071]**

- USDA has provided guidance[9] on crediting certain traditional foods. Are there any other traditional foods that schools would like to serve, but are having difficulty serving? If so, what specific challenges are preventing schools from serving these foods?

New York City Response:
We support this rulemaking regarding traditional foods along with initiatives to make school lunch and breakfast program foods familiar, culturally appropriate and inclusive of traditional foods.

We recommend requiring school lunch and breakfast programs solicit client feedback annually regarding cultural preferences, taste, and food quality and consider results as part of the menu planning process, as we have in the NYC Food Standards.

Section 10: Nuts and Seeds **[page 8072-8073]**
This rulemaking proposes to allow nuts and seeds to credit for the full meat/meat alternate (or protein source) component in all child nutrition programs and meals. This proposal would remove the 50 percent crediting limit for nuts and seeds at breakfast, lunch, and supper. USDA invites public input on this proposal in general but is not including any specific questions for commenter consideration.

New York City Response:
We support allowing nuts and seeds to credit for the full meat/meal alternate component in all child nutrition programs and meals. This aligns with the NYC Food Standard requirement of at least one serving of plant-based entrée featuring a whole or minimally processed plant-based protein per week per meal type (except breakfast). Nuts and seeds are nutrient-dense, whole and minimally processed plant foods that provide vitamins, minerals, protein, and healthy fats and have little added sugars or sodium.

Section 11: Competitive Foods - Hummus Exemption **[8073]**
This rulemaking proposes to add hummus to the list of foods exempt from the total fat standard in the competitive food, or Smart Snack, regulations. This change would allow hummus, which is already permitted as part of a reimbursable school meal, to also be sold as a Smart Snack.

New York City Response:
We support the inclusion of hummus as a nutrient-dense plant-based Smart Snack that accommodates cultural and dietary preferences.

Section 13: Buy American **[pages 8075-8076]**

- Is the proposed 5 percent ceiling on the non-domestic commercial foods a school food authority may purchase per school year a reasonable ceiling, or should a different percentage be used? Would the 5 percent cap encourage those school food authorities using exceptions to reduce the amount of non-domestic products they purchase? USDA requests that respondents include justification and reasons behind their response.
- How feasible would tracking and documenting the total amount of non-domestic food purchases be? Would purchasing and record keeping processes need to be altered? Does the documentation of total non-domestic purchases alleviate burden associated with documenting each limited exception that is used? And any additional information about how school food authorities would document the total amount of non-domestic food purchases versus total annual food purchases.

New York City Response:
We do not support the implementation of a 5% cap on products supplied from outside the United States. We understand there should be a focus on sourcing as much as possible from the United States, but constraints associated with price and availability should continue to be considered when sourcing products. Until the supply is robust for these products in the United States, we should not make any changes to this language. Constricting supply will make developing a menu with a variety of items and culturally relevant items more difficult. For example, if a district is importing a higher percentage of tropical fruits or vegetables to accommodate local preferences, they may exceed the 5% threshold.

In the meantime, we suggest USDA require a standard for identifying, including manufacturing and primary ingredient location, all food products distributed nationally. For example, USDA could require that a standard identifying database like a GTIN # be required on all food products sold both on the retail and wholesale markets. Once a national standard is mandated, USDA could require all data be provided by buyers to minimize the administrative burden.

Section 14: Geographic Preference **[page 8077-8078]**
This rulemaking proposes to expand geographic preference options by allowing locally grown, raised, or caught as procurement specifications (criteria the product or service must meet for the vendor's bid to be considered responsive and responsible) for unprocessed or minimally processed food items in the child nutrition programs, in order to increase the procurement of local foods and ease procurement challenges for operators interested in sourcing food from local producers.

Specific public input requested, in addition to any other comments on the proposal:

- Do respondents agree that this approach would ease procurement challenges for child nutrition program operators interested in sourcing food from local producers?
- Do respondents agree that this approach would encourage smaller-scale producers to submit bids to sell local foods to child nutrition programs?

New York City Response:
We support efforts to expand geographic preference options for sourcing local foods and food products for use in the school lunch and breakfast program. This proposal aligns with NYC's Good Food Purchasing program, which provides transparency about City agency food procurements and their impacts across five core values, including local economies and environmental sustainability. Current New York State (NYS) law permits a price preference on NYS products. Aligning healthy and sustainable food practices reflects the interrelated nature of promoting individual, community and planetary health.

Section 15: Miscellaneous Changes **[page 8078-8079]**

- USDA invites public input on this terminology change for NSLP, SBP, and CACFP. Commenters are invited to provide feedback on the proposed change and to share their ideas for alternative options.

New York City Response:
We support changing the food category name "meat/meat alternate" to "protein source component." The term "protein source component" better represents the variety of plant-based protein items that satisfy this requirement. Whole and minimally processed plant-based items like beans, legumes, nuts and seeds are nutrient-dense foods that are good sources of fiber and protein have little added sugars or sodium. The NYC Food Standards address both health and sustainability with requirements for plant-based entrée offerings that feature whole or minimally processed proteins and limits on the number of servings of beef and processed meat. Changing the school lunch and breakfast program and CACFP category name to use a broader term complements these efforts.

Thank you for allowing public comment on this important topic.

Sincerely,

Kate MacKenzie, MS, RD
Executive Director
The Mayor's Office of Food Policy

Michelle Morse, MD, MPH
Deputy Commissioner, Chief Medical Officer
NYC Department of Health and Mental Hygiene

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[1] Food Metrics Report 2019. Mayor's Office of Food Policy. Food-Policy-Report-2019.pdf (nyc.gov)
[2] DOE Data at a Glance. NYC Department of Education. https://www.schools.nyc.gov/about-us/reports/doe-data-at-a-glance
[3] Meals and Snacks Purchased and Served. New York City Food Standards. New York City Food Standards - Meals and Snacks Purchased and Served (nyc.gov)
[4] Cancer: Carcinogenicity of the consumption of red meat and processed meat. World Health Organization. October 2015. Cancer: Carcinogenicity of the consumption of red meat and processed meat (who.int)
[5] Dietary Guidelines for Americans[6] Vercammen KA, Dowling EA, Sharkey AL, Johnson Curtis C, Wang J, Kenney EL, Micha R, Mozaffarian D, Moran AJ. Estimated Reductions in Added Sugar Intake among US Children and Youth in Response to Sugar Reduction Targets. J Acad Nutr Diet. 2022 Aug;122(8):1455-1464.e5. doi: 10.1016/j.jand.2022.02.008. Epub 2022 Feb 16. PMID: 35182788
[7] Dietary Reference Intakes for Sodium and Potassium. Consensus Study Report. National Academies of Science, Engineering, and Medicine. March 2019. 030519DRISodiumPotassium.pdf (nationalacademies.org)
[8] Meals and Snacks Purchased and Served. New York City Food Standards. New York City Food Standards - Meals and Snacks Purchased and Served (nyc.gov)
[9] U.S. Department of Agriculture, *Child Nutrition Programs and Traditional Foods*, July 15, 2015. Available at: https://www.fns.usda.gov/cn/child-nutrition-programs-and-traditional-foods.