

November 20, 2012

The Honorable Thomas J. Vilsack
Secretary of Agriculture
1400 Independence Avenue, SW
Whitten Building, Room 200A
Washington, DC 20250

Dear Mr. Secretary:

As the U.S. Department of Agriculture (USDA) continues to implement the Healthy, Hunger- Free Kids Act (HHFKA) of 2010, we write to convey our concerns as prompted by constituent comments. Specifically, the U.S. Department of Agriculture's (USDA's) final rule, effective March 26, 2012, which implements changes to the National School Lunch Program and the School Breakfast Program as directed by the HHFKA has drawn negative feedback from school superintendents, school board members, parents and students from across the country.

Upon reviewing the rule, we first want to recognize and commend the science-oriented approach utilized in crafting the new nutrition guidelines for school meals, as Section 201 of HHFKA required. The nutrition and meal planning recommendations supplied by the Institute of Medicine, which the agency relied upon, were modeled after the 2010 Dietary Guidelines for Americans with the intent to facilitate the improved health of American youth, a goal we support.

Additionally, communities across the country are witnessing an increased incidence of lifestyle- related chronic diseases. Contributing risk factors such as overweight status and obesity are becoming even more prevalent among children and adolescents. As a deterrent to chronic disease onset especially early on in life, we support the promotion of nutrition principles in America's schools. Along with similarly important principles of physical activity and adequate health education, proper nutrition is foundational for successfully preventing debilitating chronic diseases.

However, the children, parents, and school systems attempting to comply with these new school meal standards have found that they lack the flexibility necessary to meet the nutrition needs of many growing boys and girls. For instance, one concerned parent remarked that her children, characterized as being in the 99th percentile of height for age, claim the new lunchtime calorie restrictions leave them hungry in the afternoon. Another parent described how her eighth grade son no longer gets enough to eat to sustain him through two hours of football practice. To sustain his energy level, she now packs multiple protein-rich sandwiches and snacks without which he cannot "make it" through practice.

It is important to note that these new standards do not appear to affect all school districts equally, as rural schools and low-income students are especially challenged. One rural school superintendent remarked that the school can only afford two cooks and cannot staff a dietitian to assist with implementation of the recommended meal plan. The two cooks now must divert time from food preparation to administrative paperwork and research to comply with the new regulation. Another school superintendent observed that for students from poorer families, school lunch serves as the primary and sometimes the only, meal of the day. In such cases, these students have fewer financial resources to supplement school meals with snacks to maintain satiety, as compared to other students.

These firsthand accounts are a small sample of the difficulties many Americans are experiencing under this new rule. Accordingly, we would appreciate having USDA's responses to the following:

NSLP Calorie Limit: The 2010 Dietary Guidelines for Americans clarified that the total number of calories a person requires each day varies depending on factors that include age, gender, height, weight, and level of physical activity. Yet, the new 2012 NSLP meal pattern mandates a maximum calorie limit based strictly on a student's grade level in school. Is it appropriate to restrict a

student's caloric intake without any consideration for gender, height, weight, or level of physical activity? Should a fifth grader who may be active in sports and undergoing a growth spurt receive, at maximum, the same caloric intake as a kindergarten student? How does this meal pattern take into consideration students' individual needs, especially those physically active and growing students?

Protein: The new 2012 NSLP meal pattern permits ten ounces of protein or a protein equivalent per week for students in kindergarten through eighth grade, and for students in ninth through twelfth grade, twelve ounces per week. However, the 2010 Dietary Guidelines for Americans indicates that children aged four through 18 require 10-30 percent of their diet from protein. A calculation of the protein percentage in the new NSLP meal pattern reveals that unless a student routinely eats extra servings of vegetables, the quantity of protein will never reach 20 percent across all grade levels. Is it sufficient to systematically feed students less than twenty percent protein at lunch? Protein is one of the macronutrients that contribute to satiety. Please explain whether a growing student involved in a rigorous school-sponsored sports program of both aerobic and anaerobic exercise would receive sufficient protein if his/her diet consists of at most 20 percent protein.

Cost Implications: The final rule projected some of the economic impact and financial burden to schools and municipalities, and acknowledged that costs of implementation at the local or statewide level could exceed \$100 million in any one year. Since Congress provided \$50 million for schools to comply with the HHFKA, and this regulation which USDA has promulgated will increase that cost by an *additional* \$50 million, how do you anticipate or recommend that schools absorb these extra costs? Some of the anticipated costs were left to speculation in the rule, such as the increased cost of labor to schools and the cost of implementing newly required sodium restrictions. Does USDA assume, as the rule suggests, that costs be passed on to those students who purchase their meals out-of-pocket? In the event schools raise the price of, for instance, *a la carte* meals to offset other costs of implementation, how will USDA prevent any disproportionately negative economic impact on poorer students?

Flexibility: In a recent letter written to nutrition program directors from USDA's Under Secretary of Food, Nutrition, and Consumer Services, Kevin Concannon stated that "implementation of these standards is generally proceeding smoothly across the country." However, constituent reports indicate implementation has not been smooth for many families and schools are having difficulty with the rigidity of these new standards. We are concerned this rule applies too narrow and formulaic an approach and we urge you to consider the need for additional flexibility.

We appreciate your attention to this matter and look forward to your timely response.

Sincerely,

Senator John Hoeven (R-ND)
Senator Mark Pryor (D-AR)
Senator Kent Conrad (D-ND)
Senator Jon Tester (D-MT)
Senator John Thune (R-SD)
Senator Mike Enzi (R-WY)
Senator John Barrasso (R-WY)
Senator James Inhofe (R-OK)
Senator Jerry Moran (R-KS)
Senator Dan Coats (R-IN)
Senator Tim Johnson (D-SD)